

STATE OF NORTH CAROLINA **FILED** IN THE GENERAL COURT OF JUSTICE
 COUNTY OF WAKE 2013 DEC 16 11:11:13 SUPERIOR COURT DIVISION
 FILE NO: _____

WAKE COUNTY, C.S.C.

STATE OF NORTH CAROLINA, *ex rel.*)
 Roy COOPER, Attorney General and)
 RAY GRACE, Commissioner of Banks,)

Plaintiff,)

v.)

COMPLAINT

WESTERN SKY FINANCIAL, LLC,)
 CASHCALL, INC.,)
 WS FUNDING, LLC,)
 DELBERT SERVICES CORPORATION,)
 and JOHN PAUL REDDAM,)
 Defendants.)

I. INTRODUCTION

1. This is an action for injunctive relief to restrain Defendants Western Sky Financial, LLC (“Western Sky”), CashCall, Inc. (“CashCall”), WS Funding, LLC (“WS Funding”), Delbert Services Corporation (“Delbert”), and John Paul Reddam (“Mr. Reddam”), (collectively, “Defendants”) from offering, funding, servicing and collecting on illegal usurious consumer loans made to North Carolina borrowers, in violation of North Carolina’s Consumer Finance Act, N.C. Gen. Stat. § 53-164, *et seq.*; North Carolina’s usury laws, N.C. Gen. Stat. § 24-1, *et seq.*; and North Carolina’s Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*; and to obtain restitution and other relief.

2. CashCall, WS Funding, and Delbert are affiliated companies that make, fund, purchase, service, and collect on illegal loans to North Carolina consumers that accrue interest at rates far in excess of those allowed under North Carolina law. These Defendants seek to evade

the State of North Carolina's licensure, usury, and consumer protection laws by using as a front an unrelated fourth company, Western Sky. Western Sky falsely holds itself out as an Indian tribal entity that purports to be exempt from state laws under the doctrine of tribal sovereign immunity. In reality, Western Sky is a for-profit South Dakota company that is owned by an individual who happens to be a member of an Indian tribe. Western Sky is not owned or operated by any Indian tribe or for the benefit of any tribe; therefore, the doctrine of tribal sovereign immunity does not apply to the loans made to North Carolina borrowers.

3. CashCall is the real or "*de facto*" lender in these loan transactions, and it controls virtually all aspects of the transactions. Pursuant to its arrangement with Western Sky, among other activities, CashCall, itself or through its subsidiaries, creates and distributes advertising materials for the loans; reviews all loan applications for underwriting requirements; funds the loans; assumes all risk of loss on the loans; receives all payments on the loans; services the loans; and indemnifies Western Sky for all costs and any liability associated with the loans.

4. Based on these facts, regulators and courts have concluded 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." *In re CashCall, Inc., John Paul Reddam, President and CEO of CashCall, Inc. and WS Funding, LLC*, State of New Hampshire Banking Department, Case No.: 12-308 (June 4, 2013).

5. Since 2010, at least fourteen states, on relation of the respective State's Attorney General or through the State's banking or consumer credit regulator, have taken action against Defendants for unlawfully making loans without proper state licensure and in violation of state usury and consumer protection laws.

II. PARTIES

6. Plaintiff is the State of North Carolina, acting on relation of its Attorney General, Roy Cooper, pursuant to authority granted by Chapters 75 and 114 of the General Statutes, and on relation of its Commissioner of Banks, Ray Grace, pursuant to authority granted by Chapter 53 of the General Statutes.

7. Western Sky is a for-profit South Dakota limited liability company with a principal place of business at 612 E Street, Timber Lake, South Dakota 57656. Western Sky does not hold any license issued by the North Carolina Commissioner of Banks.

8. CashCall is a for-profit California corporation with a principal place of business at 1600 South Douglass Road, Anaheim, California 92806. CashCall is engaged in the business of offering, making, purchasing, servicing, and collecting on consumer loans. CashCall makes mortgage loans in North Carolina and since 2010, has been licensed as a mortgage lender with the North Carolina Commissioner of Banks under the North Carolina Secure and Fair Enforcement Mortgage Licensing Act, N.C. Gen. Stat. § 53-244.010, *et seq.* CashCall does not hold any other license issued by the North Carolina Commissioner of Banks and does not hold a license to make consumer loans in North Carolina.

9. WS Funding is a for-profit Delaware limited liability company and is a wholly-owned subsidiary of CashCall. WS Funding has a principal place of business at 1600 South Douglass Road, Anaheim, California 92806, the same office address as CashCall. WS Funding does not hold any license issued by the North Carolina Commissioner of Banks.

10. Delbert is a Nevada corporation with places of business located at 7125 Pollock Drive, Las Vegas, Nevada 89119 and at 1600 South Douglass Road, Anaheim, California 92806, the same office address as CashCall. Delbert is engaged in the business of purchasing, servicing,

and collecting on consumer loans made by CashCall; and Delbert currently holds and/or services loans made to North Carolina borrowers by CashCall and WS Funding through Western Sky. Delbert does not hold any license issued by the North Carolina Commissioner of Banks. Delbert is currently licensed as a collection agency by the North Carolina Department of Insurance.

11. John Paul Reddam is a resident of California. At all times relevant herein, Mr. Reddam is and was the sole owner and shareholder, President, and Chief Executive Officer of CashCall; the President and sole member, manager, and owner of WS Funding; and the Director and owner of Delbert. At all times relevant herein, Mr. Reddam directed, controlled, and had managerial responsibility for the activities of CashCall, WS Funding, and Delbert, including the unlawful practices alleged herein.

III. FACTUAL ALLEGATIONS

A. Defendants' Loan Activities in North Carolina

12. Since at least 2010, Defendants have regularly offered, made, collected, and are continuing to collect on, illegal unsecured loans to North Carolina consumers. Defendants have promoted these consumer loans through Western Sky's website, www.westernsky.com, and through national television advertising broadcast in North Carolina in the name of Western Sky. A copy of Western Sky's former website homepage is attached hereto as Exhibit A, and is incorporated herein.

13. On its website, Western Sky has offered North Carolina consumers personal loans ranging in amounts from \$850 to \$10,000. On these loans, Defendants have charged North Carolina consumers interest rates from 89.68% to 342.86% per annum. In addition to these exorbitant rates of interest, borrowers are charged loan origination fees from \$75 to \$500, which are added to the loan principal. The loan agreements require borrowers to re-pay the loans in

monthly installments, with re-payment periods ranging from twelve (12) to eighty-four (84) months. Below is a chart from Western Sky's website,

<http://www.westernsky.com/General/Rates.aspx> on May 3, 2013, setting forth the loan amounts and rates offered by Western Sky to North Carolina consumers:

What state do you live in? North Carolina ▼					
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

A copy of Western Sky's webpage showing these rates of interest is attached hereto as Exhibit B, and is incorporated herein.

14. To obtain the loans, consumers are invited to submit an on-line application through Western Sky's Internet website or to call an advertised toll-free telephone number to apply. Western Sky communicates its approval or denial of the borrower's loan application by Internet or by phone. Once approved, loan funds are electronically disbursed to consumers' bank accounts. Under the loan agreements, North Carolina consumers are required to authorize that their monthly payments be electronically debited from their bank accounts.

15. After a consumer executes a loan agreement, the loan is immediately sold and transferred from Western Sky to WS Funding. Consumers are then informed that the loans will be serviced by CashCall. In some instances, WS Funding or CashCall have subsequently sold or transferred the loans to Delbert, an affiliate of CashCall, for servicing and collections.

16. Thus, North Carolina consumers never make any loan payments to Western Sky.

Instead, CashCall and its affiliates, including Delbert, collect all payments on the loans, service the loans, and handle all communications with borrowers regarding the loans.

B. Defendants' Arrangement with Western Sky

17. In a cease and desist order recently issued by the New Hampshire Banking Department to Defendants CashCall, WS Funding, and Mr. Reddam, the Banking Commissioner laid bare the Defendants' arrangement with Western Sky and concluded, under both the facts and the law, that the arrangement is a subterfuge used by the Defendants to make illegal loans and usurp state lending laws. *In re CashCall, Inc., John Paul Reddam, President and CEO of CashCall, Inc. and WS Funding, LLC.*, Case No.: 12-308 (June 4, 2013).

18. The New Hampshire Banking Commissioner's Order followed an examination of the contractual agreements between CashCall, WS Funding, and Western Sky and other documents relating to CashCall's relationship with Western Sky. The Commissioner's findings show that CashCall has the predominant economic interest in the loans purportedly originated by Western Sky, and that CashCall controls virtually all aspects of the lending process.

19. Among other determinations, the New Hampshire Banking Commissioner made the following salient findings of fact, which the State of North Carolina adopts and alleges here:

- (a) CashCall creates all advertising and marketing materials for Western Sky;
- (b) CashCall provides website hosting and support services for Western Sky;
- (c) CashCall reimburses Western Sky for all costs of maintenance, repair and/or update costs associated with Western Sky's server;
- (d) Cash Call reimburses Western Sky for its office, personnel, and postage, and provides Western Sky with a toll free telephone and fax number;
- (e) Once a consumer applies for a loan, CashCall reviews the application for underwriting requirements;
- (f) Once a loan application is approved, Western Sky executes a promissory

note and debits a so-called "Reserve Account" to fund the promissory note;

- (g) CashCall is required to set up, fund, and maintain the balance in this Reserve Account;
- (h) After a loan is funded, CashCall is obligated to purchase the promissory note from Western Sky;
- (i) CashCall bears all risk of loss on the loans;
- (j) CashCall generally makes contact with the consumer within one business day of the consumer filing an application for the loan and once the loan has been made;
- (k) Western Sky accepts no payments from consumers on the loans;
- (l) CashCall services the loans;
- (m) CashCall is responsible for tracking all consumer complaints regarding the loans;
- (n) CashCall has agreed to indemnify Western Sky for all costs arising or resulting from any and all civil, criminal or administrative claims or actions relating to the loans, including but not limited to fines, costs, assessments, and/or penalties which may arise in any jurisdiction;
- (o) 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; and
- (p) CashCall pays Western Sky 5.145% of the face value of each approved and executed loan credit extension and/or renewal, as well as a minimum monthly administration fee of \$10,000.

20. The New Hampshire Banking Commissioner further found that CashCall, WS Funding, and Mr. Reddam "have taken substantial steps to conceal this business scheme from consumers and state and federal regulators," and that Defendants' scheme "prevents consumers from understanding which entity is making the loans." Additionally, the Commissioner found:

- (a) Western Sky does not identify its relationship with CashCall or WS Funding on its website or in any marketing materials;

- (b) The promissory notes identify the lender as Western Sky with an address of Timber Lake, South Dakota; and
- (c) 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.”

21. Based upon this careful review, the New Hampshire Banking Commissioner concluded: “[I]t 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.” The Commissioner ordered CashCall, WS Funding, and Mr. Reddam to cease and desist from their unlawful lending activities, including making further loans through Western Sky or collecting on existing loans. The Commissioner further ordered CashCall, WS Funding, and Mr. Reddam to pay restitution to all New Hampshire borrowers, and assessed an administrative fine against them in the amount of \$1,967,500 for knowingly making illegal loans to 787 New Hampshire borrowers.

22. As observed by the New Hampshire Banking Commissioner, and as long recognized by appellate courts in North Carolina and throughout the country, in considering usury claims, courts and regulators look to the substance of a transaction rather than its form to determine whether the transaction is a loan. If determined to be a loan, courts and regulators then determine the real or *de facto* lender of the loan. *State ex rel. Cooper v. NCCS Loans, Inc.*, 174 N.C. App. 630 (2005); *In re Advance America*, North Carolina Commissioner of Banks, Docket No. 05:008 (Dec. 22, 2005); *Goleta National Bank v. Lingerfelt*, 211 F.Supp.2d 711 (E.D.N.C. 2002).

23. In all substantive respects, CashCall, through and in conjunction with its wholly-

owned subsidiary WS Funding, is engaged in the business of lending, and is the actual or *de facto* lender and the real party in interest to the loan transactions with North Carolina consumers.

C. Impact of Defendants' Loans on North Carolina Consumers

24. The loans made by Western Sky and serviced by CashCall, WS Funding, and Delbert have imposed substantial hardships on North Carolina consumers due to the oppressive terms of the loans. To date, the Attorney General's Consumer Protection Division and the Office of the Commissioner of Banks have received approximately 100 complaints from North Carolina consumers about the Defendants' loans. Most of the consumers who have taken the loans are financially distressed and many are living paycheck-to-paycheck. Many consumers have asserted in their complaints that after re-paying the loan amount plus additional sums, they believed they were close to paying off the loans; however, after contacting CashCall or Delbert, or receiving collection calls or notices from CashCall or Delbert, consumers learned that due to the loans' exorbitant interest rates, virtually all of their payments were allocated to interest – thus making it impossible for many consumers to re-pay the loans, and further ensnaring them in a cycle of debt.

25. For example, in July 2011, North Carolina consumer Coretta Clark of Greensboro saw an advertisement for Western Sky on television. Ms. Clark called the phone number in the advertisement and, after she provided the information requested, Western Sky issued her a loan of \$2,600.00, out of which she received \$2,525.00, after payment of an origination fee of \$75.00. The interest rate on Ms. Clark's loan was 139.12%. Her payment schedule consisted of one payment of \$263.25, to be followed by 47 monthly payments of \$294.46, for a total repayment of \$14,102.87 on an amount financed of \$2,525.00. Pursuant to the Defendants' arrangement, the loan was immediately sold to WS Funding, and CashCall began servicing the loan. Ms. Clark

struggled to make payments on the loan. From August 2011 through September 2012, she made payments totaling \$4,395.98. However, in September 2012, after making payments for over a year, she learned that the remaining principal balance on her loan – excluding interest – totaled \$2,529.39. At that time, Ms. Clark realized that virtually none of her payments had been applied to the loan principal. Therefore, she ceased making payments. However, Delbert continued to contact her, demanding immediate repayment on the loan. Ms. Clark's affidavit, together with the affidavits of North Carolina consumers Harold Anderson, Jacqueline Brown, Edwin R. Sevits, and Shirley H. Smith, are attached hereto as Exhibit C and incorporated herein.

26. In contrast, if Ms. Clark's loan of \$2,600.00 had been made under applicable North Carolina law, pursuant to N.C. Gen. Stat. § 53-176(a)(1), the maximum rate she could have been charged in 2011 would have been a blended rate of 24.49% per annum. Hypothetically, using the same payment schedule of 47 months (which likely would have been shorter at this lower interest rate), Ms. Clark would have been required to make payments of \$86.54 per month, for an approximate total of payments of \$4,067.38.

27. Multiple consumers have complained about the collection practices of CashCall and Delbert, including that their representatives repeatedly called at all hours of the day and night; used obscene and abusive language; threatened wage garnishment or other legal action; contacted consumers' employers or called them at work, despite requests not to do so, which placed some consumers in jeopardy of losing their jobs; and contacted other third parties, such as consumers' family members, regarding collection on the loans.

28. CashCall and Delbert regularly report consumers' payment histories to national credit reporting agencies, including Experian and Equifax. Where consumers have failed to make timely payments or have had difficulty paying, CashCall and Delbert have urged and

coerced consumers to continue making their payments in order to prevent further damage to their credit histories.

29. The Consumer Protection Division of the Attorney General's Office and the Office of the Commissioner of Banks have notified Defendants of the State of North Carolina's laws prohibiting usurious consumer loans. In response to these notices, Defendants contend that the loans are subject only to tribal law, and that their loan activities are not subject to North Carolina law. Specifically, Defendants contend that Western Sky is "a wholly Cheyenne River Sioux Tribal Member owned business [that] is located and operates within the exterior boundaries of the Cheyenne River Indian Reservation;" that Defendants' Western Sky loans are made "within the confines of the Cheyenne River Indian Reservation;" and that the choice of law provision in the loan agreement states that the laws of the Cheyenne River Sioux Tribe apply. CashCall further contends that, as an assignee of the loans, it is permitted to "stand in the shoes" of Western Sky to claim tribal sovereign immunity and to enforce the choice-of-law provisions in the loan agreements. A copy of a response letter by CashCall, asserting that the loans are not subject to North Carolina law, is attached hereto as Exhibit D and is incorporated herein.

D. Western Sky Is Not a Tribal Entity, and Defendants' Loan Activities Are Not Shielded By Tribal Sovereign Immunity

30. Although Western Sky allegedly has an office located within the boundaries of the Cheyenne River Sioux Reservation, the Cheyenne River Sioux Tribe has absolutely no ownership interest in Western Sky, nor does the Tribe play any role in the operation of Western Sky. Western Sky is not a tribal enterprise, or in any sense an entity formed by or controlled by the Cheyenne River Sioux Tribe or its tribal government; and Western Sky is not an arm of the Tribe.

31. Instead, Western Sky is a for-profit limited liability company created under South

Dakota law. A copy of Western Sky's Certificate of Organization is attached hereto as Exhibit E, and is incorporated herein. The sole member of Western Sky is an individual named Martin Webb. Although Mr. Webb is a member of the Cheyenne River Sioux Tribe, Mr. Webb is not a tribal official or other representative of the Tribe's government. Thus, Mr. Webb does not operate Western Sky in any official tribal capacity. Further, Western Sky does not operate in any way for the benefit of the Tribe. Instead, all profits made by Western Sky inure to the benefit of, and are distributed solely to, Mr. Webb.

32. Notwithstanding Defendants' claims that the loans in question are made under tribal law, in actuality, Defendants' loan activities are prohibited by the very laws which Defendants seek to use as a shield. The laws of the Cheyenne River Sioux Tribe expressly ban usury, and provide that the violation of the Tribe's usury statute is a criminal offense. Specifically, Section 3-4-52 of the Cheyenne River Sioux's Law and Order Code prohibits the charging of interest greater than 18% per annum for loans in excess of \$100.00. A copy of Section 3-4-52 of the Cheyenne River Sioux Tribe Law and Order Code is attached hereto as Exhibit F, and is incorporated herein. All of the loans in question made to North Carolina borrowers, and on which CashCall and Delbert are currently collecting, grossly exceed the maximum rate allowed by Tribal law.

33. The Defendants employ what is known as a "rent-a-tribe" scheme, in which the unlicensed lender CashCall makes usurious consumer loans, heedless of state regulation, by purporting to affiliate with an Indian tribe to claim federal tribal sovereign immunity. Even the payday lending industry has decried "rent-a-tribe" lending as improper. In February 2011, the Community Financial Services Association of America, a trade association which represents the payday lending industry, condemned the practice of affiliating with Indian tribes to circumvent

state regulation and announced that it would expel members who engaged in such schemes. *See* Press Release, Community Financial Services Association of America, Storefront Payday Lenders Reject Native American Partnerships (Feb. 10, 2011).

34. Notably, prior to entering into its current “rent-a-tribe” arrangement with Western Sky in late 2009, CashCall previously entered into an identical “rent-a-bank” arrangement with at least two state-chartered banks, one based in South Dakota and another in Delaware – states that have no usury laws and therefore no interest rate limitations – in an effort to circumvent state licensure and state law restrictions on consumer loans. The State of West Virginia, which has usury laws, filed suit against CashCall in 2008, for making illegal loans to West Virginia consumers. Following a trial, the West Virginia court agreed with the State, and found that “the purpose of the lending program was to allow CashCall to hide behind the Bank’s charter and its right to export interest rates under federal banking law, as a means for CashCall to deliver its loan product to states like West Virginia with usury laws.” *West Virginia v. CashCall, et al.*, Civil File No. 08-C-1964, Kanawha County Circuit Court, Final Order on Phase II of the Trial; the State’s Usury and Lending Claims, at 25. The Court found that CashCall was the *de facto* lender of such loans and enjoined it from making loans in West Virginia without a license and from making or collecting on usurious loans, imposed a civil penalty of \$730,000, awarded a judgment of \$10,045,687, and declared all loans made by CashCall in West Virginia null and void.

35. In addition to the State of West Virginia’s action against CashCall, other states, including North Carolina, took action against other illegal “rent-a-bank” payday lending schemes. *See In re Advance America*, North Carolina Commissioner of Banks, Docket No. 05:008; *State of North Carolina ex rel. Cooper v. Ace Cash Express, Inc.*, No. 02-CVS-330

(Wake County Sup. Ct.). These actions, together with warnings and enforcement actions by the Office of the Comptroller of the Currency (“OCC”) and the Federal Deposit Insurance Corporation (“FDIC”) at the federal level largely ended “rent-a-bank” or “rent-a-charter” schemes used by CashCall and other payday lenders or high interest rate installment lenders. With the demise of the “rent-a-bank” scheme in the wake of federal and state enforcement actions, CashCall now partnered with Western Sky under a “rent-a-tribe” arrangement — thus, retaining the exact same business model as before of making unlicensed high interest rate loans.

E. Numerous Other States Have Rejected Defendants’ Unlawful Schemes

36. In addition to the recent Order issued by the New Hampshire Banking Commissioner, numerous other states have taken action against Defendants for unlicensed lending activities and for violation of states’ usury and consumer protection laws. Each and every court or regulator that has addressed Defendants’ contention that their loans are shielded from state laws under the doctrine of tribal sovereign immunity has rejected this claim.

37. In a case brought by the State of Colorado, the Court granted the State’s motion for summary judgment, holding that Mr. Webb, as an enrolled member of the Tribe, “is not individually entitled to immunity, nor does his membership in the Tribe confer such immunity upon Western Sky.” In addition to granting Colorado’s motion for summary judgment, the Court ordered Western Sky to pay Colorado’s attorneys’ fees incurred in litigating the sovereign immunity issue. *State of Colorado v. Western Sky Financial, LLC and Martin A. Webb*, No. 11 CV 638 (State of Colorado, Denver County District Court, April 15, 2013.)

38. In a similar Opinion and Final Order issued on May 22, 2013, the Maryland Commissioner of Financial Regulation ordered Western Sky to cease and desist from making unlicensed loans in Maryland, from collecting on loans made to Maryland consumers, and to pay

a civil penalty. In issuing his Order, the Commissioner rejected Western Sky's defense of sovereign immunity, holding that it "is undisputed that tribal sovereign immunity does not protect individual tribal members." *Commissioner v. Western Sky Financial et al.*, Case No. CFR-FY2011-182, OAH No. DLR-CFR-76A-47146 (May 22, 2013).

39. Similarly, in a recent order issued by the Washington Department of Financial Institutions, the Hearing Officer held that Western Sky is not protected by tribal sovereign immunity. (OAH Docket No. 2012-DFI-0027, DFI No. C-11-0810-12-SC01, August 16, 2013). In a previous order issued against CashCall in January 2013, the Department of Financial Institutions held that CashCall's Western Sky loans were subject to the State's usury law, stating: "CashCall failed to establish that federal Indian law insulated Western Sky and CashCall from Washington usury law when they reached into Washington and made loans to and transacted loans with Washington residents." Order at p. 6. The order further required CashCall to cease and desist collecting usurious interest. (*In the Matter of: CashCall, Inc.*, OAH Docket No. 2011-DFI-0041, DFI No. C-11-0701-12-SC03, January 30, 2013).

40. In yet another recent ruling in an action brought by the Iowa Division of Banking against CashCall, an Administrative Law Judge held that Iowa law, not tribal law, applied to CashCall's Western Sky loans. *In the Matter of: CashCall, Inc.*, DIA Nos. 12 IDB002, 131IDB001, IDOB Nos., 2012-NRR 2003-0154, 2012-NRR-2012-0099, Ruling On Whether Loans At Issue Are Subject to Iowa Law (September 26, 2013).

41. In an earlier proceeding brought by the West Virginia Attorney General to enforce an administrative subpoena against Western Sky, the West Virginia Court held that Western Sky was not protected by the doctrine of tribal sovereign immunity. *State of West Virginia v. Payday Loan Resource Center, LLC*, Kanawha County Circuit Court, West Virginia, No. 10-MISC-372

(October 28, 2011). The case was settled in 2012, with Webb promising to permanently stop lending in West Virginia and to pay restitution of \$135,000 for excess fees charged to borrowers. West Virginia Attorney General, *In the Matter of: Payday Financial LLC d/b/a Lakota Cash and Martin A. Webb*, Assurance of Discontinuance (October 5, 2012).

42. Other state regulators, including those in Illinois, Massachusetts, and Oregon have issued cease and desist orders to Western Sky and/or CashCall, ordering them to stop making or collecting upon loans in their respective states. In addition, Arkansas, Georgia, Minnesota, Missouri, and New York all have pending enforcement actions against Western Sky and/or CashCall.

43. As a result of these enforcement actions, Western Sky announced on its website that, as of September 3, 2013, it was suspending business operations. Western Sky's announcement does not state the duration of this suspension, or whether this suspension is temporary or permanent.

44. Notwithstanding Western Sky's announcement, CashCall and Delbert continue to collect on illegal loans made to North Carolina consumers, including servicing the loans, contacting North Carolina consumers, and demanding payment on the loans.

IV. CLAIMS FOR RELIEF

COUNT I:

VIOLATIONS OF THE NORTH CAROLINA CONSUMER FINANCE ACT: NORTH CAROLINA GENERAL STATUTES § 53-164, et seq.

45. The State realleges and incorporates herein the allegations of paragraphs 1 through 44 above.

46. The North Carolina Consumer Finance Act, N.C. Gen. Stat. § 53-166(a), requires that any person engaged in the business of lending cannot "directly or indirectly" contract for or

receive consideration greater than that allowed by Chapter 24 without being licensed by the Commissioner of Banks as a consumer finance lender. Specifically, N.C. Gen. Stat. § 53-166(a) provides, in pertinent part:

No person shall engage in the business of lending in amounts of fifteen thousand dollars (\$15,000) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24 of the General Statutes, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner.

47. The maximum rate allowed by Chapter 24, N.C. Gen. Stat. § 24-1.1, on contract loans of \$25,000 or less, is 16% per annum.

48. The North Carolina Consumer Finance Act provides an exception to the 16% cap on interest rates set forth by Chapter 24, and allows consumer finance lenders licensed by the Commissioner of Banks to make consumer loans of up to \$15,000 at interest rates permitted by the Act.

49. For loans made on or after July 1, 2013,¹ pursuant to N.C. Gen. Stat. § 53-176, the maximum interest rate that may be charged for consumer loans in North Carolina under the Act is 30% per annum.

50. For loans made prior to July 1, 2013, pursuant to former N.C. Gen. Stat. § 53-173, the maximum interest rate that may be charged by licensed lenders to North Carolina consumer borrowers is 36% per annum.

51. In an effort to address “illicit lending schemes” devised by lenders seeking to

¹ Session Law 2013-162 (SB 489), which became effective on July 1, 2013, made amendments to the Consumer Finance Act, which included increasing the maximum loan amount permitted under the Act from \$10,000 to \$15,000; altering the brackets governing the blended interest rates authorized by the Act; and reducing the maximum interest rate from 36% per annum to 30% per annum.

evade state usury laws, in 2006, the North Carolina General Assembly amended the Consumer Finance Act to add a new provision, N.C. Gen. Stat. § 53-166(b), which expressly provides that the prohibitions of N.C. Gen. Stat. § 53-166(a) “apply to any person who seeks to avoid its application by any device, subterfuge, or pretense whatsoever.”

52. CashCall and WS Funding, in conjunction with Western Sky, have engaged in the business of lending and are therefore subject to the provisions of the Consumer Finance Act, including N.C. Gen. Stat. § 53-166. Defendants are not licensed as consumer finance lenders by the Commissioner of Banks, and have never been so licensed.

53. CashCall and WS Funding, in conjunction with Western Sky, have regularly made consumer loans to North Carolina borrowers at rates far in excess of the allowable limits in the Consumer Finance Act.

54. Pursuant to N.C. Gen. Stat. § 53-166(d), all Western Sky loans made to North Carolina borrowers in violation of the Consumer Finance Act and held or collected on by CashCall, WS Funding, Delbert, or any of their affiliates are void. Defendants are expressly prohibited under the Act from collecting, receiving, or retaining any principal or charges made or collected on by Defendants from North Carolina borrowers. Specifically, N.C. Gen. Stat. § 53-166(d) provides, in pertinent part:

Any contract of loan, the making or collecting of which violates any provision of this Article, or regulation thereunder, except as a result of accidental or bona fide error of computation is void, and the licensee or any other party in violation shall not collect, receive, or retain any principal or charges whatsoever with respect to the loan.

55. Pursuant to N.C. Gen. Stat. § 53-190(a), all such loans made to North Carolina borrowers in violation of the North Carolina Consumer Finance Act are unenforceable in North Carolina notwithstanding Defendants’ efforts to style the loans as having been made in South

Dakota or on an Indian reservation. N.C. Gen. Stat. § 53-190(a) expressly provides:

No loan contract made outside this State in the amount or of the value of ten thousand dollars (\$10,000) or less, for which greater consideration or charges than are authorized by G.S. 53-173 and G.S. 53-176 of this Article have been charged, contracted for, or received, shall be enforced in this State. Provided, the foregoing shall not apply to loan contracts in which all contractual activities, including solicitation, discussion, negotiation, offer, acceptance, signing of documents, and delivery and receipt of funds, occur entirely outside North Carolina.

56. Defendants' loans are therefore unenforceable pursuant to N.C. Gen. Stat. § 53-190(a) because the following contractual activities, among others, undisputedly occur in North Carolina:

- (a) Defendants have solicited North Carolina resident borrowers through the Internet, television advertisements, and other means which have targeted and reached North Carolina borrowers in their homes;
- (b) Discussions by Defendants with North Carolina resident borrowers regarding the loans have been conducted over the Internet or by telephone with borrowers in their homes or while such borrowers were located in North Carolina;
- (c) Defendants transmitted the loan documents to North Carolina resident borrowers via the Internet to borrowers while the borrowers were located in North Carolina;
- (d) North Carolina resident borrowers were requested by Defendants to electronically sign the loan documents at their computers, and such computers were located in borrowers' homes or elsewhere in North Carolina;
- (e) Defendants have disbursed loan funds to North Carolina borrowers to borrowers' banks and bank accounts located in North Carolina; and
- (f) Defendants have received loan payments from North Carolina borrowers from funds in borrowers' bank accounts located in North Carolina.

57. Further, N.C. Gen. Stat. § 53-180(g) prohibits deceptive acts or practices both with regard to the making of loans and collecting or attempting to collect money alleged to be

due under loans subject to the Act.

58. Accordingly, Defendants' activities are prohibited by the North Carolina Consumer Finance Act, and the State of North Carolina is entitled to injunctive relief prohibiting Defendants from offering or making any consumer loans to North Carolina borrowers in violation of the North Carolina Consumer Finance Act and from collecting on or retaining any principal or charges collected from North Carolina borrowers on such loans.

COUNT II:
VIOLATIONS OF NORTH CAROLINA USURY STATUTE:
NORTH CAROLINA GENERAL STATUTES CHAPTER 24

59. The State realleges and incorporates herein the allegations of paragraphs 1 through 58 above.

60. The usury laws of North Carolina make clear that the protection of North Carolina borrowers from illegal, usurious loans is a "paramount public policy" of the State, as N.C. Gen. Stat. § 24-2.1(g) mandates: "It is the paramount public policy of North Carolina to protect North Carolina resident borrowers through the application of North Carolina interest laws."

61. North Carolina usury law, N.C. Gen. Stat. § 24-1.1, provides that the maximum interest rate that may be charged on contract loans of \$25,000 or less is 16% per annum.

62. North Carolina's usury laws mandate that they are to be applied to protect North Carolina resident borrowers, "regardless of the situs of the contract," as N.C. Gen. Stat. § 24-2.1(a) and (b) provide:

- (a) For purposes of this Chapter, any extension of credit shall be deemed to have been made in this State, and therefore subject to the provisions of this Chapter if the lender offers or agrees in this State to lend to a borrower who is a resident of this state, or if such borrower accepts or makes the offer in this State to borrow, *regardless of the situs of the contract as specified therein.*

- (b) Any solicitation or communication to borrow, oral or written, originating within this State, from a borrower who is a resident of this State, but forwarded to, and received by a lender outside of this State, *shall be deemed to be an acceptance or offer to borrow in this State.*

(Emphasis added.)

63. Defendants' consumer loans to North Carolina borrowers are usurious because the rates and charges of such loans grossly exceed the rates and charges permitted by North Carolina usury law.

64. Pursuant to N.C. Gen. Stat. § 24-2, the penalty for usury is the forfeiture of interest on the loan, together with the recovery of twice the amount of interest paid by the borrower. Accordingly, pursuant to N.C. Gen. Stat. § 24-2, the interest on any Western Sky loans made, held, or collected on by Defendants should be forfeited, and Defendants should be required to disgorge twice the amount of all interest collected from North Carolina borrowers on such loans.

COUNT III:
VIOLATIONS OF NORTH CAROLINA UNFAIR AND DECEPTIVE PRACTICES ACT:
NORTH CAROLINA GENERAL STATUTES § 75-1.1

65. The State realleges and incorporates herein the allegations of paragraphs 1 through 64 above.

66. In the course of offering, arranging, making and collecting on their illegal consumer loans, Defendants have engaged in unfair and deceptive acts or practices in trade or commerce in violation of N.C. Gen. Stat. § 75-1.1.

67. Defendants' unfair and deceptive acts or practices include, but are not limited to, the following:

- (a) Engaging in an unfair business enterprise of offering, making, and collecting on consumer loans to North Carolina borrowers, when

such loans are in gross violation of the usury laws of this State and violate the public policy of this State;

- (b) Continuing to offer, make, and collect on consumer loans in willful violation of North Carolina law, despite being advised by the State that such loans are in violation of North Carolina law;
- (c) Making and collecting on loans at oppressive and unfair rates, and making such loans without accounting for the borrower's ability to repay;
- (d) Attempting to circumvent North Carolina lending and consumer protection laws by deceptively asserting that such loans are made by an Indian tribe and are not subject to North Carolina lending laws, despite the fact that neither Western Sky nor Defendants are a tribal enterprise, and cannot claim tribal sovereignty for their lending and collections activities; and
- (e) Deceptively asserting that such loans are made pursuant to the tribal law of the Cheyenne River Sioux Tribe, when such loans are prohibited by the Tribe's criminal usury law.

68. Pursuant to N.C. Gen. Stat. § 75-14, the Attorney General has the right to obtain injunctive relief to restrain Defendants from further violations of N.C. Gen. Stat. § 75-1.1.

69. Pursuant to N.C. Gen. Stat. § 75-15.1, the Attorney General has the right to obtain a refund of moneys obtained by Defendants as a result of violations of N.C. Gen. Stat. § 75-1.1.

70. Pursuant to N.C. Gen. Stat. § 75-15.1, the Attorney General has the right to obtain civil penalties for Defendants' willful violations of North Carolina law.

V. PRAYER FOR RELIEF

WHEREFORE, the State of North Carolina prays the Court for the following relief:

- A. That this verified Complaint be treated as an affidavit for all purposes for which the Court deems appropriate;
- B. That Defendants and their owners, directors, officers, agents, subsidiaries, and affiliates be preliminarily and permanently enjoined from offering, making, arranging, or

collecting on loans to North Carolina consumers that violate the lending and consumer protection laws of this State;

C. That all usurious loans made to or collected from North Carolina consumers in violation of the Consumer Finance Act, and which are held or serviced by any of the Defendants, be declared void pursuant to N.C. Gen. Stat. § 53-166(d), and all money collected by Defendants pursuant to such unlawful loans be refunded, including principal, interest, or other charges;

D. That all loans made or collected on by Defendants at rates in excess of the interest rates allowed by Chapter 24 of the General Statutes, and which are held or serviced by any of the Defendants, be declared usurious and Defendants be ordered to forfeit all interest and to refund two times the interest collected from North Carolina borrowers;

E. That all loans made or collected on by Defendants in violation of N.C. Gen. Stat. § 75-1.1, *et seq.*, and which are held or serviced by any of the Defendants, be cancelled pursuant to N.C. Gen. Stat. § 75-15.1, and that Defendants be ordered to refund all money collected from such loans;

F. That Defendants be ordered to notify all credit reporting agencies to which they have reported that all Western Sky loans made to North Carolina consumers are invalid, and that all reports or scores that reflect such loans should be corrected;

G. That Defendants be required to pay appropriate civil penalties pursuant to N.C. Gen. Stat. § 75-8 and § 75-15.2; and

H. That the Court award the State attorneys' fees and costs, and such other and further relief as may be just and proper.

This the 16th day of December, 2013.

**ROY COOPER
ATTORNEY GENERAL**

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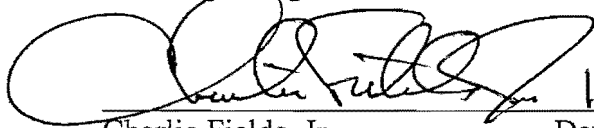
STATE OF NORTH CAROLINA

COUNTY OF WAKE

VERIFICATION

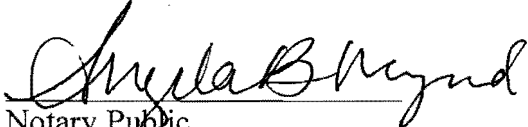
Charlie Fields, Jr., being first duly sworn, deposes and says:

That he is the Director of the Non-Depository Entities Division of the North Carolina Commissioner of Banks Office; that he is authorized to make this Verification; that he assisted in the investigation of the named Defendants; that he has read the foregoing Complaint, and that upon his information and belief, the matters and things alleged therein are true.


Charlie Fields, Jr. 12/12/13
Date

Sworn and subscribed before me

this 12th day of December, 2013.


Notary Public

My Commission Expires: 11/5/2016

