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14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 CONSUMER FINANCIAL  
17 PROTECTION BUREAU,

18 Plaintiff,

19 v.

20 CASHCALL, INC., WS FUNDING,  
21 LLC, DELBERT SERVICES  
CORPORATION, and J. PAUL  
22 REDDAM,

23 Defendants.

CASE NO.: 2:15-cv-07522-JFW (RAOx)

**PLAINTIFF CONSUMER FINANCIAL  
PROTECTION BUREAU'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES SUPPORTING MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

Date: August 1, 2016

Time: 1:30pm

Court: Hon. John F. Walter

Courtroom 16

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## INTRODUCTION

The Supreme Court, in rejecting a claim that tribal sovereignty preempted a state’s tax on tribal cigarette sales to non-Indians, found it “painfully apparent that the value marketed by the smokeshops to persons coming from outside is not generated on the reservations by activities in which the Tribes have a significant interest” because all they were marketing was “an exemption from state taxation to persons who would normally do their business elsewhere.” Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134, 155 (1980). That principle also lies at the heart of this case, in which CashCall, a non-Indian lender, paid Western Sky Financial, a South Dakota company owned by a member of an Indian tribe, to use its location on tribal land as a shield against state usury and licensing laws that would otherwise apply to the high-interest loans that CashCall made to borrowers throughout the United States.

CashCall, its subsidiary WS Funding, and its collection-affiliate Delbert Services Corp., violated the unfair, deceptive, or abusive act or practice provision of the Consumer Financial Protection Act of 2010<sup>1</sup> when they acquired, serviced, and collected on loans where no payments were due under the laws of 16 states. CashCall’s owner and president, J. Paul Reddam, directly participated in and had the authority to control these violations through his management of CashCall, his direction of the scheme involving Western Sky, his knowledge, and his reckless indifference to the truth.

The Court should grant partial summary judgment for Plaintiff Consumer Financial Protection Bureau (“the Bureau”) as to liability, and find Defendants’ sovereign-immunity affirmative defense unavailable as a matter of law. The Defendants are not sovereigns and cannot cloak themselves in the immunities of others.

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<sup>1</sup> 12 U.S.C. § 5536(a)(1)(B).

1 **STATEMENT OF FACTS**

2 **I. The Defendants**

3 CashCall is a California corporation that made and serviced unsecured loans to  
4 subprime borrowers throughout the United States. Uncontroverted Facts (“UF”) 1-3.  
5 CashCall’s headquarters is in Orange County. UF 1. J. Paul Reddam is CashCall’s owner  
6 and president. UF 4. WS Funding is a wholly-owned subsidiary of CashCall that was  
7 established as a holding company for loans made through CashCall’s agreement with  
8 Western Sky. UF 5-6. Because WS Funding has no books (UF 8), no owners other than  
9 CashCall (UF 9), and no purpose other than to hold loans that CashCall serviced (UF 10),  
10 references to CashCall in this memorandum include WS Funding.

11 Delbert Services is a Nevada corporation that Reddam established to service loans  
12 that CashCall deemed in default, or “charged-off,” and to provide collection services for  
13 other, unrelated, clients. UF 11-13.

14 **II. CashCall’s Unsecured Consumer Loan Business**

15 **A. CashCall used the state-chartered rent-a-bank scheme to expand its**  
16 **lending.**

17 Reddam formed the company that was later re-named CashCall in 2000, and its  
18 initial business was buying and selling houses. UF 14. In 2003, Reddam involved  
19 CashCall in unsecured consumer lending to compete with payday loan companies, and  
20 loaned CashCall about \$21 million. UF 15-16. CashCall initially loaned only to  
21 customers in California, but the scope of CashCall’s market changed in 2006, when  
22 Merrill Lynch conditioned further financing on CashCall’s diversification of its default  
23 risk by expanding its lending nationwide. UF 17-18.

24 CashCall could not expand its business by obtaining licenses to lend in additional  
25 states, because state usury laws would not have permitted CashCall to make or service  
26 loans at the rates CashCall deemed necessary to make a profit. UF 19. Instead, CashCall  
27 expanded its business by paying two state-chartered federally-regulated banks to make  
28

1 loans that CashCall then purchased and serviced. UF 20. This model of lending was “a  
2 smashing success” for CashCall, until the two state-chartered banks withdrew from the  
3 arrangement under pressure from the FDIC. UF 21.

4 The Maryland Court of Appeals recently referred to CashCall’s arrangement with  
5 the state-chartered banks as a “‘rent-a-bank’ scheme” designed to take advantage of a  
6 federally-insured bank’s exemption from state usury caps. CashCall, Inc. v. Maryland  
7 Comm’r of Fin. Regulation, No. 80, 2016 WL 3443971, \*2 n.12 (Md. Jun. 23, 2016). The  
8 court held that, despite the form of the arrangement, CashCall was the “de facto lender”  
9 because it retained “the exclusive right to collect all payments of principal, interest and  
10 fees, including the origination fee.” Id. at \*12. West Virginia’s Supreme Court of  
11 Appeals examined the same arrangement and also concluded that CashCall, rather than  
12 the state-chartered banks, was the “true lender,” based on the substance of the  
13 transactions, and not their “superficial appearance.” CashCall, Inc. v. Morrissey, No. 12-  
14 1274, 2014 WL 2404300, \*14-15 (W. Va. May 30, 2014).

15 **B. CashCall replaced the rent-a-bank scheme with the tribal-lending**  
16 **scheme.**

17 After CashCall lost its arrangement with the state-chartered banks, the lawyer who  
18 had designed and executed the rent-a-bank model told CashCall’s general counsel, Dan  
19 Baren, that she was recommending that her clients move to a “tribal model,” and “that  
20 under federal Indian law the tribal lender could make these loans, and they could sell the  
21 loans to a non-tribal entity, and the loans could be collected upon at the contract rate, and  
22 the loans would not be subject to state regulation.” UF 22. Baren described this model as  
23 “almost identical to the [state-chartered] bank model.” UF 23. Outside counsel introduced  
24 Baren to Martin Webb, who was a member of the Cheyenne River Sioux Tribe in South  
25 Dakota, and who had started two or three previous payday lending companies that used  
26 the tribal lending model. UF 25-26. Webb and Baren discussed forming a tribal lending  
27 entity through which Webb would sell “paper,” meaning loans, to CashCall. UF 33.



1 Webb formed Western Sky in late 2009 with CashCall in mind. UF 35 Western  
2 Sky was a South Dakota limited liability company, and Webb was its sole owner. UF 36.  
3 Webb's plan was to use the money that he made with Western Sky as venture capital to  
4 expand his own payday loan company, Lakota Cash. UF 37.

5 CashCall formed WS Funding as a subsidiary to purchase loans from Western Sky.  
6 UF 6. Baren considered WS Funding's purchase of the loans from Western Sky as the  
7 same as CashCall purchasing the loans, since CashCall was WS Funding's parent. UF 38.

8 **C. CashCall and Western Sky formed a business relationship.**

9 CashCall and Western Sky formalized their relationship in two agreements signed  
10 by Reddam and Webb: an assignment agreement and a service agreement. These  
11 agreements remained in effect from the time they were signed until Western Sky ceased  
12 doing business in September 2013. UF 40.

13 Under the assignment agreement, CashCall bought all of Western Sky's loans. UF  
14 47. To fund the Western Sky loans, CashCall set up a reserve account for Western Sky,  
15 into which it deposited enough money to fund two days of notes, calculated on the  
16 previous month's daily average. UF 50. Western Sky used this money to fund consumer  
17 loans. UF 52. Three days after a loan was funded, Western Sky sold it to CashCall. UF  
18 53. CashCall paid Western Sky for the full face value of the loans, plus 5.145%. UF 54.  
19 CashCall also guaranteed Western Sky a minimum payment of \$100,000 per month, and  
20 a \$10,000 monthly administrative fee. UF 55. Western Sky sold loans to CashCall before  
21 any payments on them had been made. UF 49, 56. Borrowers who took out Western Sky  
22 loans remitted all payments to CashCall. UF 57. Once Western Sky sold a loan, all  
23 economic risks and benefits of the transaction passed to CashCall. UF 58.

24 CashCall agreed to reimburse Western Sky for any repair, maintenance, and update  
25 costs associated with Western Sky's server. UF 61. CashCall reimbursed Western Sky for  
26 its marketing expenses, office and personnel costs, and bank fees. UF 62. CashCall also  
27

1 agreed to indemnify Western Sky for any legal expenses arising out of civil, criminal, or  
2 administrative litigation, agreed to pay fines, penalties, and costs imposed in any  
3 jurisdiction, and agreed to pay Western Sky's attorney's fees in connection with such  
4 litigation. UF 63. Under the service agreement between CashCall and Western Sky,  
5 CashCall agreed to provide Western Sky with customer support, marketing, website  
6 hosting and support, and a toll-free phone number; and it promised to handle electronic  
7 communications with customers. UF 64.

8 CashCall developed underwriting criteria for its unsecured consumer loans that  
9 guided how it would evaluate a borrower's credit before making a loan. UF 67. Webb  
10 also developed underwriting criteria for Western Sky, but in practice CashCall would not  
11 purchase a loan from Western Sky unless it met CashCall's underwriting criteria. UF 68.  
12 In July 2010, Baren sent Webb an email attaching underwriting criteria, which he asked  
13 Webb to put on Western Sky letterhead if he approved them and then to send back to  
14 him. UF 69. Three days later, Webb signed underwriting criteria for a \$700 loan on  
15 Western Sky letterhead and, three days after that, faxed them to Baren. UF 70.

16 In its 2011 and 2012 financial statements, CashCall did not differentiate the  
17 Western Sky loans from consumer loans that it made without tribal involvement. UF 72.

### 18 **III. CashCall directed the lending process for Western Sky loans.**

19 Consumers applied for Western Sky loans in two ways: by telephone or online. UF  
20 73. If a customer called a toll-free number advertised as being for Western Sky loans,  
21 they could be connected to a CashCall loan agent. UF 75. A former CashCall loan agent,  
22 Jeremiah Ellard, recalled that for a year or more after TV ads for Western Sky loans  
23 began to run, he was not aware of any functioning Western Sky entity in South Dakota.  
24 UF 76. All Western Sky calls during this time appeared to Ellard to go to CashCall loan  
25 officers, based in California. UF 77. CashCall loan agents processed Western Sky loan  
26 applications in essentially the same way as other CashCall loan applications. UF 78.  
27 CashCall loan agents used the same initial screening standards for CashCall and Western  
28

1 Sky loans, and forwarded Western Sky loans to the CashCall underwriting department.  
2 UF 79. Ellard was trained to tell loan applicants, if they asked, that he worked for  
3 CashCall and that CashCall was hired to take overflow calls for Western Sky. UF 81.  
4 This bothered him because he took the majority of calls for Western Sky. UF 82.

5 After Western Sky expanded its facilities and took some customer phone calls,  
6 most calls were still routed to CashCall loan agents, so that the total number of loan  
7 applications processed by Western Sky employees was a small fraction of the total  
8 number of Western Sky loan applications. UF 84. Western Sky did not have the  
9 infrastructure to handle on-site underwriting, incoming call queuing, or other functions  
10 necessary for broad-scale lending. UF 85. Western Sky employees used CashCall's  
11 Method software, located in California, to handle loan approvals. UF 86.

12 The Western Sky website was hosted by CashCall on a server in California. UF 87.  
13 CashCall's IT team uploaded any changes to the Western Sky website, and ensured that  
14 the website was running properly. UF 88. CashCall employees also communicated with  
15 some applicants for Western Sky loans via email. UF 94.

16 When a consumer applied for a Western Sky loan, CashCall employees verified the  
17 applicant's employment, performed a fraud check, and performed an automated credit  
18 check. UF 95. CashCall employees reviewed the documentation submitted by borrowers  
19 for Western Sky loans to see if it met program criteria. UF 96. CashCall conducted  
20 preliminary underwriting functions on Western Sky loans during the loan origination  
21 process. UF 97. According to Baren, "it would be very, very rare, in fact, probably  
22 impossible" for a loan applicant to know that CashCall was involved in the loan  
23 origination process, even though CashCall was always performing some tasks on behalf  
24 of Western Sky. UF 98.

25 The Western Sky loans included various loan products. One was a \$2,600 loan  
26 with an APR of 139.34%. UF 102. Another was a \$700 loan with an APR of 318.52%.

1 UF 104. Eventually, the Western Sky loans also included \$5,000 and \$10,000 loans. UF  
2 105. The typical CashCall borrower had a lower-than-average FICO score. UF 107.

3 The loan agreement for a Western Sky loan informed the borrower that it was  
4 “subject solely to the exclusive laws and jurisdiction of the Cheyenne River Sioux Tribe,  
5 Cheyenne River Indian Reservation.” UF 109. In a portion of the agreement titled  
6 “Governing Law,” the borrower was informed that:

7 This Agreement is governed by the Indian Commerce Clause of  
8 the Constitution of the United States of America and the laws of  
9 the Cheyenne River Sioux Tribe. We do not have a presence in  
10 South Dakota or any other states of the United States. Neither  
11 this Agreement nor Lender is subject to the laws of any state of  
the United States of America.

12 UF 110. Elsewhere, the borrower was informed that Western Sky “may assign or transfer  
13 this Loan Agreement or any of our rights under it at any time to any party.” UF 111. The  
14 loan agreement identified Western Sky Funding, LLC, as the lender. UF 112.

15 If a borrower was approved for a Western Sky loan and chose to accept it, the  
16 borrower would go onto the Western Sky website and electronically sign the loan  
17 agreement. UF 113. A person at Western Sky would then press a button and the loan  
18 proceeds would be transferred from the Western Sky’s account to the borrower’s account.  
19 UF 114. All of the Western Sky loans, as well as all of CashCall’s other consumer loans,  
20 were funded electronically in this way. UF 116. Three days after a borrower received the  
21 proceeds of a Western Sky loan, the borrower would receive a notice that the loan had  
22 been assigned to WS Funding, and that all payments on the loan should be made to  
23 CashCall as servicer. UF 100-101. If a Western Sky loan became so delinquent that  
24 CashCall decided to charge it off, meaning that it was heavily delinquent, the loan was  
25 transferred to Delbert for collection. UF 117. The charge-off date varied over time, from  
26 120 to 150 days delinquent. UF 118.

1 **IV. Reddam was directly involved with the Western Sky loans.**

2 Reddam is the founder, sole owner, and president of CashCall. UF 4. He was also  
3 the president of WS Funding, CashCall's wholly-owned subsidiary established to buy the  
4 Western Sky loans. UF 7. In a 2009 sworn filing with the Connecticut Department of  
5 Banking, Reddam stated that he "is responsible for devising and implementing all major  
6 company policies – including its various loan programs and interest rates." UF 123-24.  
7 Reddam stated that he "coordinates all marketing and advertising, and determines where  
8 advertising should be directed." UF 125. Reddam also founded Delbert. UF 13. Delbert's  
9 application for a debt-collector license to the Massachusetts Division of Banks, filed in  
10 January 2010, included a business plan that identified Reddam as its CEO, a member of  
11 its management team, and a member of Delbert's Board of Directors. UF 126. The filing  
12 notes that Reddam and Baren "have the principal responsibility for fulfillment of the  
13 company's mission and the legal accountability for its operations." UF 127.

14 Reddam loaned CashCall about \$21 million. UF 16. He personally guaranteed  
15 loans CashCall received from hedge funds, which CashCall used to finance the Western  
16 Sky loans and its other consumer loans. UF 128. Reddam hired an advertising agency that  
17 created advertising campaigns for CashCall, and also the Western Sky loans. UF 129.  
18 Reddam, along with Baren and CFO Delbert Meeks, was a member of CashCall's  
19 executive team, which was involved in negotiating the agreement with Western Sky. UF  
20 130. They met frequently to discuss CashCall business issues. UF 28. Reddam approved  
21 CashCall's purchase of the Western Sky loans. UF 131. He discussed the terms of the  
22 assignment agreement that governed Western Sky's sale of the Western Sky loans with  
23 Baren. UF 132. He had the authority to approve agreements that CashCall or its  
24 subsidiaries entered into with other companies, including WS Funding's purchase of the  
25 Western Sky loans. UF 133. He made the decision to wind down the Western Sky loan  
26 program in the face of "regulatory problems." UF 134. And he discussed the status of  
27 CashCall's many lawsuits over the Western Sky loans with Baren frequently. UF 135.

1 **V. CashCall bought Western Sky loans made to consumers nationwide.**

2 At the outset, CashCall’s agreement with Western Sky involved loans made to  
3 borrowers throughout the United States, with the exception of California (where CashCall  
4 was already making loans), South Dakota (because Webb did not want to compete with a  
5 bank that he was president of, and because he did not want to lend to anyone he knew),  
6 and West Virginia, which Baren considered a “hotbed of regulatory concern.” UF 143.

7 When the Western Sky loan program began, the number of loans that CashCall  
8 bought from Western Sky was small compared to the loans that CashCall originated  
9 directly, but as the program grew, the Western Sky loans eventually exceeded the number  
10 of loans that CashCall originated without Western Sky. UF 145. In its 2012 financial  
11 statement, CashCall reported funding \$537,896,000 in unsecured consumer loans that  
12 year, without differentiating Western Sky from CashCall loans. UF 146. CashCall  
13 stopped buying Western Sky loans in September 2013. UF 134, 144.

14 **ARGUMENT AND AUTHORITIES**

15 **I. CashCall cannot avoid state regulation because it, and not Western Sky, was**  
16 **the true lender.**

17 **A. The substance of the transaction controls CashCall’s status.**

18 With the express goal of evading state regulation, CashCall structured its consumer  
19 loan transactions to involve a company owned by a member of the Cheyenne River Sioux  
20 Tribe (“CRST”). UF 22, 24, 26, 34. The loan agreements purported to be governed by  
21 CRST law, and subject to CRST jurisdiction. UF 92. For the typical loan applicant, Baren  
22 testified that it would be “probably impossible” to discern CashCall’s involvement until  
23 three days after the loan was funded, when the borrower received notice that the loan  
24 would be serviced by CashCall. UF 98.

25 To decide whether the Western Sky loans are nevertheless subject to state law, the  
26 Court should look to the transaction’s substance rather than its form, and identify the true  
27 lender. *See, e.g., [Ubaldi v. SLM Corp.](#), 852 F. Supp. 2d 1190, 1197-1198 (N.D. Cal.*

1 [2012](#)); [West Virginia v. CashCall, Inc., 605 F.Supp.2d 781, 787 \(S.D.W.Va. 2009\)](#) (“If  
2 CashCall is found to be a de facto lender, then CashCall may be liable under West  
3 Virginia usury laws.”). The “determinative question” in the true lender analysis is which  
4 entity bears the financial risk. *See* [Easter v. Am. W. Fin., 381 F.3d 948, 955 \(9th Cir.](#)  
5 [2004\)](#). In this case, CashCall bore all the risk of the Western Sky loans. CashCall’s  
6 money funded the reserve account that Western Sky used to fund the Western Sky loans.  
7 UF 50, 115. CashCall purchased all of the Western Sky loans three days after the loan  
8 funds were disbursed, and before any payments on the loan had been made. UF 49, 53.  
9 CashCall assumed all risks and benefits of the loans immediately upon assignment, and  
10 guaranteed Western Sky a \$100,000 minimum monthly payment. UF 58. The default risk,  
11 which Meeks identified as CashCall’s most serious risk, was borne by CashCall. UF 59.  
12 The regulatory risk, which Reddam identified as CashCall’s most serious risk, was also  
13 borne by CashCall, given CashCall’s agreement to indemnify Western Sky for all civil,  
14 criminal, and regulatory penalties, including legal fees. UF 60.

15 As the Ninth Circuit held in *Easter*: “A lender is one who puts money at risk.” [381](#)  
16 [F.3d at 957](#). The Western Sky loan transactions are the same as the “table-funded loan”  
17 transactions that the Ninth Circuit addressed in *Easter*, where the loan originator closes  
18 the loan in its own name, and then assigns the loan to the true lender, who bears the  
19 financial risk in the transaction. [381 F.3d at 955](#). CashCall put money at risk; it was the  
20 true lender.

21 Baren described the tribal lending model as “almost identical to the [state-  
22 chartered] bank model.” UF 23. This admission is telling, given that courts have already  
23 found that CashCall was the true lender under the state-chartered bank model.  
24 Maryland’s highest court held that CashCall was the de facto lender in its state-chartered  
25 bank relationship because it received the “exclusive right to collect all payments of  
26 principal, interest and fees, including the origination fee.” [CashCall, 2016 WL 3443971](#)  
27 [at \\*12](#). That case describes a financial arrangement identical in all material respects to the  
28

1 Western Sky relationship: the state-chartered bank disbursed loan proceeds, and assigned  
2 the loan to CashCall three days later. *Id.* at \*13. The way that the origination fee was  
3 rolled into the loan principal, also described in the Maryland case, was identical to the  
4 transaction disclosed in the Western Sky loan agreement. *Id.*; UF 106.

5 West Virginia’s highest court also found CashCall to be the true lender in the state-  
6 chartered bank arrangement, because CashCall bore all the financial risk in the  
7 transaction. [CashCall, 2014 WL 2404300, at \\*14-15](#). The court held that in rent-a-bank  
8 cases, “most of which involve payday lenders,” the proper standard to determine the true  
9 lender is the predominant economic interest test. *Id.* Here, as in *CashCall*, the party with  
10 the predominant economic interest in the transaction is CashCall, which bore all  
11 economic risk of the transaction. UF 58. Reddam guaranteed CashCall’s loan obligations  
12 to the hedge funds that provided CashCall with capital to finance the loans. UF 128.  
13 CashCall promised to indemnify Western Sky for legal claims relating to the loans. UF  
14 63. CashCall treated the loans on its financial statements the same way as loans  
15 originated without Western Sky’s involvement. UF 72. Western Sky disbursed loan  
16 proceeds to borrowers with CashCall’s money, and CashCall treated that expense as an  
17 account receivable on its books until CashCall purchased the loan three days later. UF 50,  
18 51, 115. The Court should evaluate the Western Sky loans according to their substance,  
19 not their form, and conclude that CashCall, and not Western Sky, was the true lender.<sup>2</sup>

20 **B. The step-transaction doctrine supports the true-lender analysis.**

21 The step-transaction doctrine, a tax concept that courts have also applied in non-tax  
22 contexts, leads to the same conclusion as the true-lender analysis. The doctrine groups

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23  
24 <sup>2</sup> Two circuit courts have already found provisions in Western Sky loan agreements a  
25 sham. The Fourth Circuit called the arbitration provision in the Western Sky loan  
26 agreements a “farce” and “plainly forbidden.” [Hayes v. Delbert Servs. Corp., 811 F.3d](#)  
27 [666, 674-75 \(4th Cir. 2016\)](#). The Seventh Circuit found the forum selection clauses “a  
28 sham and an illusion,” and questioned the enforceability of the choice-of-law clauses.  
[Jackson v. PayDay Fin., LLC, 764 F.3d 765, 779 & n.23 \(7th Cir. 2014\)](#).



1 transactions that are technically separate into one transaction, to reflect their true  
2 substance. See Comm’r v. Clark, 489 U.S. 726, 738 (1989). By “linking together all  
3 interdependent steps with legal or business significance, rather than taking them in  
4 isolation,” the court takes “a realistic view of the entire transaction.” *Id.* (internal citation  
5 and quotation marks omitted). Courts have applied this doctrine to elevate substance  
6 over form in various non-tax contexts. Big V Supermarkets Inc. v. Wakefern Food Corp.,  
7 267 B.R. 71, 91-92 (Bankr. D. Del. 2001) (citations omitted) (noting that courts have  
8 “often appl[ied] the step transaction concept in [non-tax] fields..., including disputes  
9 involving issues of corporate governance, contract interpretation, and fraudulent  
10 conveyances.”).

11 One of the three alternate step-transaction doctrine tests, the “end-result test,” is  
12 pertinent here. Under the end-result test, the court will invoke the step-transaction  
13 doctrine “if it appears that a series of separate transactions were prearranged parts of what  
14 was a single transaction, cast from the outset to achieve the ultimate result.” Greene v.  
15 United States, 13 F.3d 577, 583 (2d Cir. 1994) (citations omitted). The entire Western  
16 Sky loan transaction was structured to achieve a single end result: the origination of loans  
17 for which CashCall would assume the risks and benefits, permitting it to expand its  
18 lending nationwide without restriction by state regulations. UF 22, 24. CashCall funded  
19 Western Sky’s operation, hosted its website, and funded its loans, and Western Sky sold  
20 all of its loans to CashCall before any payments had been made. UF 50, 51, 62, 87, 115.  
21 The Court should apply this test, and view CashCall’s lending as a single transaction in  
22 which Western Sky’s involvement was a formality included solely to evade state law.

23 **C. As the true lender, CashCall may not invoke tribal sovereignty.**

24 Once the Court considers the economic substance of the Western Sky transaction,  
25 either under the true-lender or step-transaction analysis, CashCall can lay no claim to  
26 tribal sovereignty as a ground for enforcing the CRST choice-of-law provision, or for  
27 treating the loans as if they were made from tribal territory. See Brendale v. Confederated  
28

1 [\*Tribes & Bands of Yakima Indian Nation\*, 492 U.S. 408, 426 \(1989\)](#) (holding that a  
2 transaction with no clear relationship to tribal self-government or internal relations did  
3 not implicate tribal sovereignty); and [\*Ubaldi v. SLM Corp.\*, No. C 11-01320-EDL, 2013](#)  
4 [\*WL 4015776\*, at \\*7 \(N.D. Cal. Aug. 5, 2013\)](#) (holding that the sham lender must be  
5 ignored in evaluating a choice-of-law provision). Western Sky’s involvement was a  
6 sham, and CashCall has no interest in applying CRST law to their loans other than to  
7 evade state law. And because Western Sky’s assignment of the Western Sky loans to  
8 CashCall was a pre-determined formality, CashCall cannot claim to have taken any tribal  
9 rights by assignment.

10 **D. The Court should reject CashCall’s sovereign-immunity defense**

11 For the same reasons, the Court should grant summary judgment in the Bureau’s  
12 favor on CashCall’s tribal-sovereign-immunity defense. Tribal sovereign immunity  
13 protects tribes. [\*Cook v. AVI Casino Enterprises, Inc.\*, 548 F.3d 718, 725 \(9th Cir. 2008\)](#).  
14 None of the Defendants is a tribe, or a member of a tribe, or owned by a tribe. UF 27, 29-  
15 32. Western Sky is neither a tribe nor an arm of the tribe; it is a South Dakota limited  
16 liability company owned by a member of a tribe. UF 26, 35, 36. Its profits do not inure to  
17 the tribe; Webb testified that he used his profits from Western Sky to fund Lakota Cash, a  
18 payday-lending company that he also owned. UF 37. Even if the Western Sky’s  
19 involvement in these loan transactions had economic substance, Western Sky would have  
20 had no sovereign-immunity rights to begin with.

21 **II. The Western Sky loans are void under 16 states’ usury and licensing laws.**

22 CashCall and Delbert serviced and collected on Western Sky loans made to  
23 borrowers in 16 states<sup>3</sup> (the “Subject States”) that have usury laws, or lender licensing  
24

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25 <sup>3</sup> Alabama, Arizona, Arkansas, Colorado, Illinois, Indiana, Kentucky, Massachusetts,  
26 Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, North  
27 Carolina, and Ohio.

1 laws, or both, the violation of which would render the loans void and uncollectible. For  
2 the reasons set forth below, the Subject States’ laws apply to the Western Sky loan  
3 agreements, rendering them void.

4 **A. The tribal choice-of-law clause is unenforceable.**

5 To evaluate the enforceability of the choice-of-law clause in the Western Sky loan  
6 agreements, the Court must first decide which choice-of-law rules to apply. Because this  
7 case is based on federal-question jurisdiction, federal common law supplies the choice-  
8 of-law rules. [Chan v. Soc’y Expeditions, Inc., 123 F.3d 1287, 1297 \(9th Cir.1997\)](#).  
9 Federal common law, in turn, follows the approach of the Restatement (Second) of  
10 Conflicts of Laws. *See id.*; [In re Vortex Fishing Sys., Inc., 277 F.3d 1057, 1069 \(9th](#)  
11 [Cir.2002\)](#). Restatement § 187 applies where, as here, the contract at issue selects the law  
12 of a particular jurisdiction to govern disputes. *See Chan, 123 F.3d at 1297*; Restatement  
13 (Second) of Conflicts of Laws § 187.

14 Under Restatement § 187(2), courts should honor the parties’ choice of law unless  
15 (1) “the chosen state has no substantial relationship to the parties or the transaction and  
16 there is no other reasonable basis for the parties’ choice” or (2) “application of the law of  
17 the chosen state would be contrary to a fundamental policy of a state which has a  
18 materially greater interest than the chosen state in the determination of the particular  
19 issue” and that state’s law would apply in the absence of a choice-of-law clause. *Id.* at §  
20 187(2); *see also Chan, 123 F.3d at 1297*.<sup>4</sup> The CRST choice-of-law provision in the  
21 Western Sky loan agreements fails both of these tests.

22  
23  
24  
25 <sup>4</sup> Subsection (1) of Restatement § 187 applies only where the contract provides that a  
26 particular matter is to be governed by the law of the specified forum, not where – as here  
27 – the choice-of-law clause provides that the chosen law governs the entire contract.  
28 [Flores v. Am. Seafoods Co., 335 F.3d 904, 917 \(9th Cir. 2003\)](#).

1           1.       *CRST has no substantial relationship to the parties.*

2           First, the CRST has no substantial relationship to the true parties to this  
3 transaction: CashCall, and an out-of-state borrower. UF 27, 74. The CRST has no  
4 substantial relationship to the true lender, CashCall, which is a California corporation  
5 domiciled in Orange County that the CRST neither owns nor manages. UF 1, 2, 27, 31.  
6 Western Sky’s involvement does not give the CRST a substantial relationship to the  
7 parties, as its sole function was to funnel CashCall’s money to borrowers through a  
8 company owned by a CRST member, and then to assign the borrower’s notes back to  
9 CashCall three days later.

10           The district court held in *Ubaldi* that the domicile of a party that is not the de facto  
11 lender does not have a substantial relationship to the transaction under the Restatement’s  
12 test. [Ubaldi, 2013 WL 4015776, at \\*6](#) (“If Plaintiffs’ de facto lender allegations are true,  
13 then Oklahoma does not have a substantial relationship to Sallie Mae or Plaintiffs or the  
14 loans.”). Also, there is no reasonable basis for CashCall and its borrowers to choose  
15 CRST law to govern their loan contract, when neither of them is a CRST member or  
16 resides on CRST land, and a typical borrower is unlikely to have access to CRST law.

17           2.       *Fundamental public policy disfavors the choice of CRST law.*

18           Second, each of the Subject States has expressed a fundamental public policy  
19 favoring usury restrictions, or lending licenses, or both, by enacting statutes that render  
20 contracts that violate those provisions void.<sup>5</sup> “[A] fundamental policy may be ‘embodied  
21 in a statute which makes one or more kinds of contracts illegal or which is designed to  
22 protect a person against the oppressive use of superior bargaining power.” [In re DirectTV](#)

23 \_\_\_\_\_  
24 <sup>5</sup> These provisions are set forth in full in the Bureau’s statement of undisputed facts:  
25 Alabama (UF 147), Arizona (UF 152), Arkansas (UF 157-58), Colorado (UF 161-65),  
26 Illinois (UF 169), Indiana (UF 174), Kentucky (UF 179), Massachusetts (UF 184),  
27 Minnesota (UF 189-90), Montana (UF 195), New Hampshire (UF 199-200), New Jersey  
28 (UF 207), New Mexico (UF 212), New York (UF 216-17), North Carolina (UF 223-25),  
and Ohio (UF 231).

1 [Early Cancellation Litigation, 738 F.Supp.2d 1062, 1087 \(C.D. Cal. 2010\)](#) (quoting  
2 Restatement § 187 comment g). CashCall, in this case, has the superior bargaining  
3 power, and its use of that power to choose law that removes the other party’s protections  
4 is the kind of conduct that the Subject States’ laws are designed to prevent.

5 Each of the Subject States has a materially greater interest than the CRST in the  
6 determination of the validity of the Western Sky loan agreements. The parties’  
7 citizenship is a factor in this analysis. [First Intercontinental Bank v. Ahn, 798 F.3d 1149,](#)  
8 [1158 \(9th Cir. 2015\)](#). The borrowers in this case are each citizens of states that have  
9 expressed a fundamental public policy of protecting citizens from usurious contracts and  
10 unlicensed lenders by voiding loans that violate their usury and licensing laws. [DirectTV,](#)  
11 [738 F.Supp.2d at 1087](#). The CRST has no material interest in a company that is neither an  
12 arm of the tribe nor the true lender of the Western Sky loans, but only a sham component  
13 of a transaction involving a California corporation that has no affiliation to the CRST.

14 Moreover, the lending transaction affected borrowers in the Subject States to a  
15 greater degree than the CRST. As a district court in Colorado noted in describing the  
16 Western Loan transactions, “[t]he borrowers do not go to the reservation in South Dakota  
17 to apply for, negotiate or enter into loans. They apply for loans in Colorado by accessing  
18 defendants’ website. They repay the loans and pay the financing charges from Colorado;  
19 Western Sky is authorized to withdraw the funds electronically from their bank accounts.  
20 The impact of the allegedly excessive charges was felt in Colorado.” [Colorado v. W. Sky](#)  
21 [Fin., L.L.C., 845 F. Supp. 2d 1178, 1181 \(D. Colo. 2011\)](#).

22 **B. Absent a valid choice-of-law clause, the Subject States’ laws apply.**

23 The final portion of the Restatement’s fundamental policy analysis examines  
24 whether the Subject States’ laws would apply absent a valid choice-of-law clause. [Chan,](#)  
25 [123 F.3d at 1297](#). Absent a valid agreement between the parties as to the governing law,  
26 Restatement § 188 is the general provision under which choice of law is determined for a  
27 contract. [Shannon-Vail Five Inc. v. Bunch, 270 F.3d 1207, 1211 \(9th Cir. 2001\)](#). It  
28

1 provides that the local law of the state which “has the most significant relationship to the  
2 transaction and the parties” is the applicable law, and lists five factors to guide this  
3 determination: the place of contracting; the place of negotiation of the contract; the place  
4 of performance; the location of the subject matter of the contract; and the domicile,  
5 residence, nationality, place of incorporation and place of business of the parties. *Id.* &  
6 [n.2.](#)

7 Each of these factors favors the application of the borrowers’ states’ laws. All of  
8 the significant steps required to get a Western Sky loan took place online, through the  
9 borrowers’ actions in their home states. UF 73, 74, 80. Western Sky’s involvement was  
10 rudimentary; its sole function was to take money from the reserve account that CashCall  
11 had established and disburse it to borrowers, whose loans would be sold to CashCall  
12 three days later, before any payments on them had been made. UF 49, 53. The CRST had  
13 no ownership interest in Western Sky and no profit interest in its business. UF 26, 36, 37.  
14 Western Sky bore no economic or legal risk in the transaction. UF 58-60.

15 Internet loans should be considered for legal purposes to have been made in the  
16 borrowers’ location. See [Otoe-Missouria Tribe of Indians v. New York State Dep’t of Fin.  
17 Servs., 974 F. Supp.2d 323, 361 \(S.D.N.Y. 2013\)](#) (“The undisputed facts demonstrate that  
18 the activity the State seeks to regulate is taking place in New York, off of the Tribes’  
19 lands.”). The Tenth Circuit has also held, in the internet lending context, that key portions  
20 of the loan transaction occur in the borrower’s state. [Quik Payday, Inc. v. Stork, 549 F.3d  
21 1302, 1308 \(10th Cir. 2008\)](#). And a Colorado state appellate court, in [Colorado v. Cash  
22 Advance and Preferred Cash Loans, 205 P.3d 389, 400 \(Colo.App.2008\)](#), determined the  
23 locus of tribal lending activity by looking to “where (1) the contract was entered into; (2)  
24 the contract was negotiated; (3) performance is to occur; (4) the subject matter of the  
25 contract is located; and (5) the parties reside.” The court concluded that, because “the  
26 contracts were entered into and negotiated [off-reservation]; the loans [were to be]  
27 delivered to consumers [off-reservation]; and performance [would] occur [off reservation  
28

1 where] consumers [would] repay the principal and pay interest,” the tribe's online lending  
2 operation was off-reservation activity. *Id.* at 400–01.<sup>6</sup>

3 Restatement § 195, which governs the law applied to contracts for the repayment  
4 of money lent, is consistent with this analysis. *Shannon-Vail Five*, 270 F.3d at 1211.  
5 Under § 195, the law of the state “where the contract requires that repayment be made”  
6 governs. Restatement (Second) of Conflict of Laws § 195 (1971). In the case of the  
7 Western Sky loan agreements, the borrower authorized Western Sky (in fact, CashCall)  
8 to withdraw the borrower’s loan payments by electronic funds transfer (“EFT”) from the  
9 borrower’s bank account. UF 99. Thus, the money was to be repaid by EFT from the  
10 borrower’s state to CashCall in California; the CRST was not involved.

11 Under this federal common-law analysis, the Court should find that the CRST  
12 choice-of-law provision is invalid, and that in the absence of this provision, the laws of  
13 the Subject States apply to the Western Sky loan agreements.

14 **C. Western Sky loan agreements are void under the Subject States’ laws.**

15 *1. The interest rates on Western Sky loans violate six states’ usury laws.*

16 CashCall has admitted that the interest rates that it charged on Western Sky loans  
17 in six of the Subject States – Arkansas, Colorado, Minnesota, New Hampshire, New  
18 York, and North Carolina – exceeded 80%. UF 159, 167, 191, 203, 219, 227. This  
19 interest rate substantially exceeds the maximum usury limits in each of these states:  
20 Arkansas’s usury limit is 17% (UF 157-158); Colorado’s usury limit is 12% (UF 163);  
21 Minnesota’s usury limit is 8% (UF 190); New Hampshire’s usury limit is 36% (UF 200);  
22 New York’s usury limit is 16% (UF 217); and North Carolina’s usury limit is 8% (UF  
23 224). A loan contract that violates any of these usury limits is void.<sup>7</sup>

24 <sup>6</sup> Three Subject States expressly apply state law to loans made online, by deeming online  
25 contracts made with a borrower within the state to have been made within the state. Mass.  
26 Gen. Laws 140 § 96; see also Ariz. Rev. Stat. § 6-603; N.H. Rev. Stat. Ann. § 399-A:2(I).

27 <sup>7</sup> Arkansas (UF 157); Colorado (UF 165); Minnesota (UF 190); New Hampshire (UF  
28 200); New York (UF 216); North Carolina (UF 225).

2. *CashCall and Western Sky violated 15 states' licensing laws.*

All but one of the Subject States (Arkansas) require consumer lenders to obtain a license before lending to consumers who reside there.<sup>8</sup> Lending without a license in these states renders the loan contract void.<sup>9</sup> CashCall admitted that, with the exception of New Mexico and Colorado, it did not hold a license to lend in any of these states. UF 149, 153, 171, 177, 182, 187, 193, 197, 205, 210, 221, 229, 234. Western Sky did not hold lending licenses in any Subject State. UF 148, 153, 166, 170, 176, 181, 186, 192, 196, 204, 209, 214, 220, 228, 233. The Court should find that the Western Sky loans extended to borrowers in these states were void.

**III. CashCall and Delbert violated the CFPA by servicing and collecting on loans where no payment was due.**

Under Section 5536(a)(1)(B) of the CFPA, it is unlawful for any covered person to engage in any unfair, deceptive, or abusive act or practice. [CFPB v. Gordon, 819 F.3d 1179, 1192 \(9th Cir. 2016\)](#). A “covered person” is “any person that engages in offering or providing a consumer financial product or service.” 12 U.S.C. §5481(6)(A). The CFPA includes acquiring and servicing loans as examples of financial products or services. 12 U.S.C. §5481(15)(A)(i). CashCall, WS Funding, and Delbert Services – by acquiring and servicing consumer loans – are “covered persons.”

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<sup>8</sup> Alabama (UF 147); Arizona (UF 152); Colorado (UF 161-63); Illinois (UF 169); Indiana (UF 174); Kentucky (UF 179); Massachusetts (UF 184); Minnesota (UF 189); Montana (UF 195); New Hampshire (UF 199); New Jersey (UF 207); New Mexico (UF 212); New York (UF 218); North Carolina (UF 223); Ohio (UF 231).

<sup>9</sup> Alabama (UF 147); Arizona (UF 152); Illinois (UF 169); Indiana (UF 174); Kentucky (UF 179); Massachusetts (UF 184); Minnesota (UF 189); Montana (UF 195); New Hampshire (UF 199); New Jersey (UF 207); New Mexico (UF 212); New York (UF 218); North Carolina (UF 223); Ohio (UF 231).



1           **A. CashCall and Delbert engaged in a deceptive practice.**

2           An act or practice is “deceptive” under the CFPA if (1) there is a representation,  
3 omission, or practice that (2) is likely to mislead consumers acting reasonably under the  
4 circumstances, and (3) the representation, omission, or practice is material. [Gordon, 819](#)  
5 [F.3d at 1193](#). The test is objective. Minute Order On Motion For Protective Order Re:  
6 Consumer Subpoenas, at 3 (ECF 135). Under the FTC Act, on which the CFPA was  
7 modeled, a deceptive act “does not require actual deception.” [FTC v. AMG Servs., Inc.,](#)  
8 [29 F. Supp.3d 1338, 1365 \(D. Nev. 2014\)](#). The Ninth Circuit has noted that “[s]ince 1982  
9 the FTC has interpreted ‘deception’ in Section 5 of the Federal Trade Commission Act to  
10 require a showing of ‘potential deception of consumers acting reasonably in the  
11 circumstances,’ not just any consumers.” [Freeman v. Time, Inc., 68 F.3d 285, 289 \(9th](#)  
12 [Cir. 1995\)](#). The Court, or a jury, “employs its common sense” in determining whether a  
13 representation is deceptive. [AMG Servs., 29 F. Supp.3d at 1365](#).

14           Deception may be found based on the “net impression” created by a representation.  
15 [Gordon, 819 F.3d at 1193](#). By servicing and collecting on the Western Sky loans,  
16 CashCall and Delbert created the net impression in consumers that they were servicing  
17 loans that were subject to CRST law and payable. This impression was likely to mislead  
18 customers acting reasonably under the circumstances, because it was false. [FTC v.](#)  
19 [Natural Solutions, Inc., No. CV 06-6112 JFW JTLx, 2007 WL 8315533, \\*4 \(C.D. Cal.](#)  
20 [Aug. 7, 2007\)](#) (holding that a statement is misleading if the express or implied message  
21 conveyed in the ad is false). Given representations that the Western Sky loans were  
22 governed by CRST law, reasonable consumers had no reason to doubt that the loans  
23 would continue to be governed by CRST law until they were paid in full. Indeed, Baren  
24 thought it was “probably impossible” for loan applicants to discern CashCall’s  
25 involvement before the loans were sold to CashCall. UF 98.

26           Finally, CashCall’s and WS Funding’s misleading statements were material. The  
27 district court in [AMG Servs., 29 F. Supp. 3d at 1372](#), held that the number of finance  
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1 charges and total amount owed are material terms of a loan contract. Here, it is beyond  
2 dispute that the enforceability and collectability of a loan contract is material to the  
3 borrower who makes payments on it. And as this Court has held, “a representation or  
4 omission is material if it is of the kind usually relied on by a reasonably prudent person.”  
5 [Natural Solution, 2007 WL 8315533, \\*3](#). A reasonably prudent borrower would rely on  
6 the state terms of a loan and representations that it was collectable; in fact, the declaration  
7 testimony of borrowers in this case indicates that they did. UF 119.

8 The Court should find that CashCall and Delbert engaged in a deceptive practice  
9 when they serviced and collected on the Western Sky loans.

10 **B. CashCall and Delbert engaged in an unfair practice.**

11 An act or practice is “unfair” under the CFPA if it is (1) likely to cause consumers  
12 substantial injury; (2) which is not reasonably avoidable; and (3) which is not outweighed  
13 by countervailing benefits to consumers or to competition. 12 U.S.C. § 5536(a)(1)(B).  
14 The substantial injury prong can be satisfied, by reference to the FTC Act’s analogous  
15 provision, if consumers were injured by a practice for which they did not bargain. [F.T.C.  
16 v. J.K. Pubs., Inc., 99 F. Supp. 2d 1176, 1201 \(C.D. Cal. 2000\)](#). In this case, a typical  
17 CashCall customer who had borrowed \$2,600 would pay over \$8,000 in interest and fees  
18 over the life of the loan. UF 103. While CashCall’s customers may have bargained for  
19 these terms, they could not have bargained to make payments on a loan that was void,  
20 because that aspect of the loan was never disclosed to them. Nevertheless, CashCall took  
21 money from consumers, typically via EFT, to which CashCall had no legal claim. UF 99,  
22 101. This practice caused consumers significant financial injury.

23 Furthermore, CashCall’s customers faced a substantial risk of default on loans that  
24 were void to begin with. For example, according to CashCall’s 2012 financial statement,  
25 the value of loans that CashCall charged off that year, meaning that CashCall considered  
26 the loan a financial loss because it had been in default for more than 150 days, was about  
27 a fifth of the value of loans funded that year. UF 121. And most of these defaults

1 occurred during the first six months after the loan was funded. UF 122. Default on void  
2 loans, as well as their significant interest expense, caused consumers substantial injury.  
3 Because CashCall transferred all of its charged-off Western Sky loans to Delbert for  
4 collection, Delbert's collection efforts also caused consumers substantial injury by  
5 collecting on loans for which no payment was due.

6 In determining whether consumers' injuries were reasonably avoidable, courts look  
7 to whether the consumers had a free and informed choice. [FTC v. Neovi, Inc., 604 F.3d](#)  
8 [1150, 1158 \(9th Cir. 2010\)](#). An injury is reasonably avoidable if consumers "have reason  
9 to anticipate the impending harm and the means to avoid it," or if consumers are aware  
10 of, and are reasonably capable of pursuing, potential avenues toward mitigating the injury  
11 after the fact. [Davis v. HSBC Bank Nevada, N.A., 691 F.3d 1152, 1168-69 \(9th Cir.](#)  
12 [2012\)](#). CashCall's and Delbert's customers did not have a free and informed choice  
13 regarding whether to make payments on the Western Sky loans, because they were not  
14 informed of the loans' true legal status: the Western Sky loan agreements stated that they  
15 were subject to CRST law and "no other state or federal law," and their servicing and  
16 collection efforts represented that the loans were payable. UF 93.

17 CashCall's and Delbert's customers received no benefit from making payments on  
18 a void loan. While an expensive loan might provide some benefit to a consumer in need  
19 of funds, the question here is not whether the loan was a benefit, but whether the  
20 consumers' payments on void contracts were a benefit that outweighed the injury from  
21 making those unnecessary payments. Given the unenforceability of the Western Sky  
22 loans in the Subject States, and the substantial rate of default within the first six months  
23 of payments on those loans, CashCall's and Delbert's customers did not receive a benefit  
24 by making payments on the Western Sky loans that outweighed the injury that those  
25 loans caused.

26 The Court should find that CashCall and Delbert engaged in an unfair practice  
27 when they serviced and collected on the Western Sky loans.



1 high probability of fraud along with an intentional avoidance of the truth.” Gordon, 819  
2 F.3d at 1193 (quoting FTC v. Stefanchik, 559 F.3d 924, 931 (9th Cir. 2009)).

3 Reddam both participated in and had the authority to control CashCall’s and  
4 Delbert’s deceptive acts. As the sole owner and president of CashCall, Reddam had the  
5 authority to control all of CashCall’s acts, and to decide when and whether to transfer  
6 delinquent CashCall loans to Delbert, a company that Reddam also founded. UF 4, 12,  
7 136, 138. Reddam had the authority to approve CashCall’s agreement with Western Sky,  
8 and participated in the transaction by signing the two governing agreements with Western  
9 Sky on behalf of CashCall and WS Funding. UF 137. Reddam claimed, in a sworn filing,  
10 that all CashCall managers reported directly to him, and that he had authority over  
11 CashCall’s day-to-day activities. UF 137. Reddam claimed similar authority over Delbert  
12 in another filing. UF 138.

13 Reddam made a personal loan to CashCall of about \$21 million. UF 16. He  
14 personally guaranteed CashCall’s loans from hedge funds, which CashCall used to  
15 finance the Western Sky loans and its other consumer loans. UF 128. Reddam hired an  
16 advertising agency that created advertising campaigns for CashCall, and also the Western  
17 Sky loans. UF 129. Reddam was a member of CashCall’s executive team, which was  
18 involved in negotiating the agreement with Western Sky. UF 130. Reddam approved  
19 CashCall’s purchase of the Western Sky loans. UF 131. Reddam discussed the terms of  
20 the assignment agreement that governed Western Sky’s sale of the Western Sky loans  
21 with Baren. UF 132. Reddam had the authority to approve agreements that CashCall or  
22 its subsidiaries entered into with other companies, including WS Funding’s purchase of  
23 the Western Sky loans. UF 133. Reddam made the decision to wind down the Western  
24 Sky loan program in the face of “regulatory problems.” UF 134.

25 Reddam also knew about CashCall’s deceptive conduct. Reddam discussed the  
26 status of CashCall’s litigation over the Western Sky loans with Baren frequently. UF 135.  
27 Reddam knew that CashCall, rather than Western Sky, was the true lender behind the  
28

1 Western Sky loans, because he knew how the transaction between CashCall and Western  
2 Sky was created and structured. UF 139. Reddam knew that despite what the Western  
3 Sky loan agreement said, all loans would be serviced by CashCall. UF 140. Reddam  
4 avoided lending to consumers in West Virginia, for fear of regulators there, and he  
5 testified that in his view, CashCall's biggest business risk was that it would be shut down  
6 by state or federal regulators. UF 141. And even if this evidence does not amount to  
7 knowledge, it amounts to reckless indifference. The transaction with Western Sky was  
8 structured almost exactly like the transaction Reddam had previously structured with  
9 state-chartered banks, and he was forced to terminate that transaction due to regulatory  
10 pressure. UF 142.

11 **CONCLUSION**

12 For the reasons stated above, the Court should grant partial summary judgment in  
13 the Bureau's favor.

14 DATED: June 30, 2016

Respectfully submitted,

15 /s/ Owen Martikan

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