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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

CIVIL COMPLEX CENTER

CASHCALL, INC., a California corporation; J. PAUL REDDAM, an individual; and WS FUNDING, LLC, a California limited liability company,

Plaintiffs,

vs.

KATTEN MUCHIN ROSENMAN LLP; an Illinois limited liability partnership; CLAUDIA CALLAWAY, an individual; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 30-2017-00914968-CU-NP-CXC

Assigned for all purposes to The Honorable William Claster, Dept. CX104

THIRD AMENDED COMPLAINT

1. **LEGAL MALPRACTICE**
2. **BREACH OF CONTRACT**
3. **BREACH OF FIDUCIARY DUTY**
4. **BREACH OF FIDUCIARY DUTY**
5. **FRAUD AND DECEIT (Against Katten Muchin Rosenman only)**
6. **FRAUD AND DECEIT (Against Claudia Callaway only)**
7. **LEGAL MALPRACTICE (Failures to disclose actual conflicts)**
8. **LEGAL MALPRACTICE (Intentional misrepresentation of material facts)**
9. **LEGAL MALPRACTICE (Failures to advise)**

JURY TRIAL DEMANDED

Plaintiffs CashCall, Inc., J. Paul Reddam, and WS Funding, LLC (collectively, "Plaintiffs") allege the following against the defendants Katten Muchin Rosenman LLP ("Katten"), Claudia Callaway ("Callaway"), and Does 1 through 50 (collectively, "Defendants"):

I. INTRODUCTION

On Aug 14, 2013, at 5:37 PM, "Black, John W." <john.black@kattenlaw.com> wrote:

> Well, that may be true, all things considered.
>
> **JOHN W. BLACK**
> Associate
> **Katten Muchin Rosenman LLP**
> 2900 K Street NW, North Tower - Suite 200 / Washington, DC 20007-5118
> p / (202) 625-3645 f / (202) 298-7570
> john.black@kattenlaw.com / www.kattenlaw.com
> **From:** Dayal, Julian
> **Sent:** Wednesday, August 14, 2013 5:36 PM
> **To:** Black, John W.
> **Subject:** Fwd: 8th cir case
>
> Cannot rely on strained and erroneous statutory construction.
>
> It's almost as if we have to argue our advice was so bad you would be crazy to assert reliance as a defense.

1. "[O]ur advice was so bad you would be crazy to assert reliance [on it] as a defense." In August of 2013, it certainly must have seemed so to these two Katten associates as they looked back over Katten and Claudia Callaway's legal advice and the havoc that advice caused for CashCall. What the associates did not know was that Katten and Callaway's advice was not just "bad." It was deliberately bad. Katten and Callaway encouraged and advised Plaintiffs to build a nationwide consumer lending program even though Callaway had concluded years earlier that the program would be illegal.

2. In 2009, Callaway recommended to Plaintiffs that they partner with a member of the Cheyenne River Sioux Tribe to build a nationwide consumer lending program. Katten and Callaway insisted that loans issued by the tribal member's company, Western Sky Financial, LLC, operating on the Tribe's reservation, would be exempt from state and federal regulation. Katten and Callaway knew this was not so. Three years earlier, in 2006 while working for a different client, Callaway analyzed the lending program she would later recommend to Plaintiffs. She concluded correctly in 2006 that loans issued by the tribal member's company, even though operating entirely on the tribe's reservation, would be subject to, and illegal, under applicable

state laws. Callaway accordingly advised her client that it should not embark on a partnership with the tribal member's company. But in 2009, Callaway and Katten hid that legal advice and analysis from Plaintiffs—advice that any reasonably careful attorney, particularly one like Callaway and Katten claiming special expertise in the relevant field, would have provided—and advised Plaintiffs the complete opposite. They did so to encourage Plaintiffs, Callaway's largest client, to engage in the doomed lending program so that Katten and Callaway could reap over $5 million in fees for creating the program, facilitating financing for Plaintiffs' purchase of the consumer loans originated by the tribal member's company, and defending the fatally flawed program against well-founded attacks from both regulators and private parties.

3. Because Callaway was their trusted counsel, she fooled Plaintiffs by misrepresenting what law would govern the tribal member's activities. But investors who loaned CashCall funds to purchase the tribal loans had their own counsel who might look more skeptically at Callaway and Katten's misrepresentations of law. To convince these investors that the tribal lending program was sound, that the consumer loans would not be subject state and federal regulation, and that therefore the consumer loans were legal and good collateral, Callaway needed to misrepresent facts. This she did. In a series of legal opinion letters issued to CashCall's investors, Katten knowingly set out false facts in order to convince third-party investors to lend CashCall money to purchase the "tribal" loans. These letters were drafted by Callaway and reviewed by members of Katten's Third Party Legal Opinion Committee, including Katten partners Mark Conley and Virginia Davis. Callaway told the Opinion Committee reviewers of her knowing misrepresentations, but they nevertheless approved and allowed Katten to issue the known-to-be false and misleading opinions. The scheme worked, and investors lent CashCall hundreds of millions of dollars, without which it could not have pursued the doomed lending program. Katten and Callaway reaped the ever-increasing legal fees.

4. The house of cards Katten and Callaway constructed inevitably came crashing down upon Plaintiffs. Plaintiffs were hit with a tsunami of legal actions. Plaintiffs sought to defend themselves in those actions by arguing that they had relied at every step on the advice of

their trusted counsel. Defendants knew that if Plaintiffs presented an advice-of-counsel defense publicly, the legal world would discover and condemn Defendants' misconduct and deficient legal advice. Thus, Katten and Callaway first disavowed the legal advice they had given Plaintiffs repeatedly and consistently for over three years. When that tack seemed likely to fail, Katten and Callaway embarked on a scheme to manufacture evidence to support a plainly false story that Plaintiffs had withheld crucial factual information from Katten and Callaway. While pretending they were still acting as Plaintiffs' trusted counsel, Katten and Callaway sent Plaintiff's general counsel a series of duplicitous emails intended to provoke responses that Defendants would then announce provided information they had not previously known. When Plaintiffs fired Katten and Callaway, Defendants promoted this lie to Plaintiffs' new counsel, intending to deprive Plaintiffs of a defense, in order to protect Defendants' own financial and reputational interests.

5. In providing this advice, Callaway and Katten breached their duties of care and loyalty to Plaintiffs. They failed to investigate and ignored critical facts and controlling law, failed to identify and disclose material risks, and knowingly provided Plaintiffs with deeply flawed legal analysis. Defendants provided deficient professional advice and misleading representations to Plaintiffs, knowing that their legal advice would be reasonably relied upon by Plaintiffs and Plaintiffs' investors.

6. Further, once Defendants decided to disavow the legal advice in favor of the lending program Callaway had recommended, Defendants knew that a conflict had arisen between themselves and Plaintiffs. Although Defendants knew their interests were adverse to those of Plaintiffs, Defendants hid the conflict from Plaintiffs and thereby violated their ethical duties by continuing to represent Plaintiffs, failing to inform Plaintiffs of the conflict, and failing to withdraw from the representation of Plaintiffs. Instead, Callaway and Katten used Plaintiffs' continued trust in their attorneys to concoct a false narrative that Callaway and Katten could later use against Plaintiffs.

7. As a result of Callaway and Katten's fraud, malpractice, breach of contract, and breach of fiduciary duties, Plaintiffs have been subject to dozens of legal actions, have been

deprived of legal defenses and other recourse, and have incurred significant legal fees (over $50 million) defending against those legal actions. Although Katten and Callaway consistently and adamantly represented to Plaintiffs and Plaintiffs' investors that neither state nor federal law applied to consumer loans acquired by Plaintiffs from the tribal member's company, courts have universally concluded that both state and federal law *do* apply, and that the loans acquired by Plaintiffs were unlawful. Callaway knew her representations were false and that these judicial and regulatory determinations were inevitable, precisely as she concluded in 2006—*three years before* advising Plaintiffs to partner with the tribal member's company—but never advised Plaintiffs of this.

8. Katten and Callaway's unlawful conduct caused substantial harm to Plaintiffs' business, including to what had been very successful and profitable consumer lending and mortgage businesses. As a result of Katten and Callaway's unlawful conduct, Plaintiffs have paid more than $100 million dollars to resolve legal actions related to the tribal lending program and over $50 million in attorneys' fees for those actions. Plaintiffs' participation in the tribal lending program alone ultimately cost it hundreds of millions of dollars. The legal problems for Plaintiffs from the tribal lending program also harmed, effectively crippling, its established and profitable consumer lending and mortgage businesses. Those damages, which include substantial lost profits and lost business opportunities, continue to accrue today and amount to, at least, hundreds of millions of dollars. In total, Plaintiffs have suffered substantially more than $1 billion in damages, before accounting for prejudgment interest, as a result of Defendants' unlawful conduct. Defendants' unlawful conduct also had a devasting impact on the people who worked for CashCall: over 800 California residents lost their jobs because of the legal problems Katten and Callaway caused for Plaintiffs.

9. Given the nature and duration of Defendants' unlawful conduct, Plaintiffs are also entitled to punitive damages.

II. PARTIES

10. Plaintiff CashCall, Inc. ("CashCall") is a California corporation located at 1 City Boulevard West, Suite 1000, City of Orange, State of California.

11. Plaintiff J. Paul Reddam ("Reddam") is an individual residing in Orange County, California. Reddam is the chief executive officer, president, and sole owner of CashCall.

12. Plaintiff WS Funding, LLC ("WS Funding") is a Delaware limited liability company domiciled in Orange County, California and is a wholly owned subsidiary of CashCall. Based on advice from Defendants, Reddam and CashCall formed WS Funding for the purpose of purchasing loans from Western Sky Financial, LLC ("Western Sky"), a South Dakota limited liability company domiciled on the Cheyenne River Sioux Indian Reservation in South Dakota.

13. Defendant Katten Muchin Rosenman LLP ("Katten") is a limited liability partnership engaged in the practice of law, headquartered in Chicago, Illinois. Katten is an "AmLaw 100" law firm with more than 600 lawyers in thirteen offices in the United States, the United Kingdom, and China.

14. Defendant Claudia Callaway ("Callaway") is an individual who, upon information and belief, resides in or near Washington, D.C. Callaway began practicing law in 1991. She was a partner at Paul Hastings LLP between 1999 and 2006, and a partner at Manatt Phelps & Phillips, LLP ("Manatt") between 2006 and June 2009. Callaway has been a partner at Katten since July 2009.

15. The true names and capacities of defendants Does 1 through 50, inclusive, whether individual, corporate, associate or otherwise, are not known to plaintiffs, who therefore sue said defendants by such fictitious names. Plaintiffs will ask leave of court to amend this Complaint to show their true names and capacities when the same have been ascertained.

16. Plaintiffs are informed and believe, and thereon allege, that Katten, Callaway, and each of the Defendants designated as Does 1 through 50, inclusive: (1) are legally responsible in some manner for the events and happenings herein referred to and caused the injuries and damages to Plaintiffs herein alleged; and (2) were, in some manner or fashion, by contract or otherwise, the successor, assignee, joint venturer, co-venturer, partner, or were otherwise involved with the other Defendants in the wrongdoing alleged herein, and by virtue of such capacity, assumed the obligations herein owed by the Defendants to Plaintiffs, thereby rendering them liable and responsible on the facts alleged herein for all the damages sought.

17. Plaintiffs are informed and believe, and thereon allege, that at all relevant times, each Defendant was the agent and/or employee of each of the remaining Defendants, and in doing the things herein alleged, each Defendant was acting within the course and scope of his or her authority as such agent and/or employee and with the permission and consent of the other Defendants, and each of them.

III. JURISDICTION AND VENUE

18. This Court has jurisdiction over the subject matter of this action, and venue is proper in this Court, because many of the events giving rise to Plaintiffs' injuries took place in Orange County, and because Plaintiffs were at all times relevant domiciled in Orange County. Plaintiffs were injured in Orange County, and Defendants knew or should have known this at all relevant times.

19. Defendant Katten is, and at all relevant times has been, a limited liability partnership offering legal services around the world, and has an office in Orange County, California. Its attorneys and other employees regularly provide legal services to clients in Orange County. Katten and Callaway provided advice and other services to Plaintiffs on the telephone, through written correspondence, and by email while Plaintiffs were located in Orange County and during in-person meetings with Plaintiffs in Orange County.

20. Complete diversity between the parties does not exist. Plaintiffs are informed and believe, and thereon allege that multiple Katten partners reside and are licensed to practice law in California.

IV. DEFENDANTS' INTENTIONAL MALPRACTICE

a. CashCall and Reddam turn to Callaway and Katten for expert legal advice.

21. Reddam was a successful entrepreneur who created DiTech Funding Corporation ("DiTech") in 1995. Under Reddam's leadership, DiTech quickly grew to become one of the largest home mortgage lenders in the United States. In 1999, GMAC, a financing division of General Motors Corporation, acquired DiTech.

22. Reddam formed CashCall in 2000. In 2003, CashCall began making unsecured installment loans to California residents under a California lender license. Over the next several years, CashCall obtained lender licenses in other states as well.

23. CashCall's loan portfolio remained geographically concentrated in California, however. In 2005, Merrill Lynch, which was considering providing financing to CashCall at the time, urged CashCall to expand its portfolio of loans outside California. Merrill Lynch referred CashCall to Callaway, identifying her as a lawyer who could facilitate relationships with state-chartered depository banks, whose lending rates could be exported from their home states to other states nationwide. Dan Baren ("Baren"), CashCall's general counsel, contacted Callaway in December 2005.

24. At that time, Callaway presented herself to CashCall and Reddam as an expert in lending regulatory compliance, with a focus on avoiding civil litigation and enforcement actions by state and federal regulators. To this day, Callaway continues to present herself to the public and to clients as a leading expert in this area of the law. As part of her practice, Callaway counsels clients on how to structure transactions and craft consumer lending agreements and other contracts.

25. When Callaway joined Katten in July 2009, Katten boasted in a press release that Callaway was a nationally recognized consumer financial services lawyer who focused on, among other things, federal lending and debt collection laws, federal and state unfair and deceptive trade practices laws, the laws controlling consumer arbitration agreements, and state usury and consumer protection laws. Callaway has served as chair of Katten's Consumer Finance Litigation Group and co-chair of the Class Action and Multidistrict Litigation practice.

26. In July 2009 and thereafter, Katten presented itself to CashCall and Reddam—and continues to present itself to the public and clients to this day—as a major law firm rich in expertise in consumer lending and the consumer finance industry. On its website, Katten stated:

> Katten is also at the forefront in assisting clients in the development of consumer financial products and in bringing multiple innovative services to market. With extensive experience in corporate, banking, regulatory and tax law and a thorough,

real-time understanding of the regulations and consumer protection laws that affect consumer lenders, our Consumer Finance Litigation team guides clients through the state and federal regulatory framework that surrounds them.[1]

27. Based on Katten and Callaway's representations regarding their expertise and experience, Plaintiffs retained Defendants as their counsel, trusted Defendants' legal advice, and believed that Defendants' advice and other services would meet the standard of due care.

b. <u>The "Bank Model" of consumer lending.</u>

28. When CashCall first received Merrill Lynch's recommendation of Callaway in December 2005, Baren and Callaway discussed what is known in the lending industry as the "Bank Model" for direct consumer lending. Under the Bank Model, a consumer lending company such as CashCall contracts with a bank that is licensed to lend in states where the lending company is not licensed to make direct loans to consumers. The bank makes the loans and then sells them to the consumer lending company. The consumer lending company provides marketing support through advertising and, after purchasing the loans, services and collects on them and assumes the risk of nonpayment.

29. Consumer loans such as those purchased by CashCall are not secured by collateral. By not requiring collateral, a lending company such as CashCall makes it possible for people without substantial assets or with impaired credit to obtain loans, but it also increases the risk that loans will not be repaid in full. This risk requires the lending company to charge interest rates that are higher than those for secured loans.

30. Callaway told Baren she had represented numerous unsecured consumer lending companies and had previously arranged "bank partnerships" between other consumer lenders and state-chartered banks.

[1] Katten has since removed this quote from its website. Katten nevertheless still vaunts its Consumer Finance Litigation practice, claiming it has a strong track record of representing clients based on "a deep understanding of [their] clients' businesses, coupled with a comprehensive knowledge of the regulatory framework and consumer protection laws that affect consumer lending."

31. On December 12, 2005, Callaway met with Baren at CashCall's Orange County headquarters. Callaway explained the Bank Model and informed Baren she had several state-chartered banks in mind as potential partners for CashCall.

32. During the following months, Callaway introduced CashCall to potential bank partners and shared with Baren a model participation agreement based on forms she had prepared for other clients. In the first half of 2006, Callaway worked with CashCall to develop and implement the Bank Model and create a national direct lending platform for CashCall. This work included providing regulatory advice to CashCall. CashCall ultimately decided to partner with two banks suggested by Callaway.

33. First, in August 2006, CashCall launched a national lending program with First Bank & Trust of Milbank (South Dakota) ("FBT"), which Callaway had introduced to CashCall. Out-of-state consumer loan applications were received by CashCall, which sent the completed applications to FBT. FBT then underwrote and funded the loans from South Dakota, complying with South Dakota law governing interest rates and other lending terms. Three days after funding, FBT sold the loans to CashCall.

34. In October 2006, Callaway referred Baren to Alonzo Primus, the president of First Bank of Delaware ("FBD"). She told Baren that FBD had more sophistication in consumer lending and might be a better partner for CashCall.

35. Accordingly, in November 2006, with Callaway's assistance, CashCall negotiated a "bank partnership" with FBD. Callaway represented and advised CashCall in securing regulatory approval for the partnership with FBD.

36. CashCall became increasingly reliant on Callaway for her special expertise in direct consumer lending and her knowledge of CashCall's business. The relationship deepened throughout 2007 and into 2008 as CashCall began transitioning almost all of its litigation to Callaway and Katten. Callaway had become CashCall's trusted legal advisor.

37. The Bank Model was widely adopted in the United States by many direct consumer lenders. CashCall's use of the Bank Model was successful.

38. The financial crisis of 2007-08 caused a severe tightening of the credit markets in the United States. It became increasingly difficult for CashCall and its competitors to secure funding for direct consumer lending.

39. In June 2008, FBD informed CashCall that it must end its partnership with CashCall because the Federal Deposit Insurance Corporation had initiated proceedings against FBD over its dealings with another unsecured consumer lender, on matters unrelated to CashCall.

40. Callaway advised Baren that most banks were no longer willing to partner with unsecured consumer lenders because of the financial crisis. Callaway continued to assist CashCall in its attempts to find another Bank Model partner, and referred Baren to Palm Desert National Bank, a longtime Callaway client, and Green Bank. Callaway and Baren jointly marketed the CashCall direct lending program to Green Bank executives in Texas. Both banks ultimately declined to partner with CashCall, citing regulatory risk and market uncertainty.

41. In January 2009, just weeks after the Green Bank meeting, Callaway advised Baren that the Bank Model was coming under such pressure from regulators that CashCall would be unable to find a state-chartered bank to help it engage in national consumer lending.

c. Callaway advised CashCall to adopt the Tribal Member Model, a model Callaway knew would likely expose CashCall to untold litigation and regulatory scrutiny.

42. By this time, CashCall and Reddam were among Callaway's most important and valuable clients, and it would have been detrimental to Callaway to lose their business. So Callaway urged CashCall to take a different approach for consumer lending, which she presented as the "Tribal Model" or "Tribal Member Model." According to Callaway's Tribal Member Model, a company owned by a Native American, located on a Native American reservation, could originate unsecured consumer loans over the internet to non-Native American consumers off the reservation. Plaintiffs could then purchase those loans from the Native American-owned company, which would assign its rights to Plaintiffs. Callaway advised Plaintiffs that under this structure, the Native American reservation's laws would govern the loans, and the loans would not be subject to state or federal laws or regulations.

43. What Callaway did not tell CashCall, Reddam, or Baren was that *three years earlier*, Callaway had investigated the identical Tribal Member Model and determined it was fatally flawed, *i.e.*, that it would be subject to and illegal under state laws. In a memorandum dated April 20, 2006, authorized and approved by Callaway while she was a partner at Paul Hastings, Callaway concluded:

> the States to fully regulate the Indian lending company. But as fully set forth below, the legal authority shows that even with these favorable assumptions, a State is likely to be able to enforce its laws and regulations against an Indian lender doing business with non-Indians on the reservation.. As the Supreme Court recently explained:

44. The memorandum further concluded that because "States have the power to regulate loans made by Indians to non-Indians on Indian land . . . and it appears that being a tribal entity does not provide a haven from State regulations, the benefit of an Indian Lending Model is in some doubt." The memo therefore explained clearly that the loans issued under the Tribal Member Model would not be entitled to any special protection based on the fact they were originated by a Native American-owned company located on a reservation, the loans would be subject to state regulations, and the loans would be illegal under those state regulations.

45. Having concluded that loans made under the Tribal Member Model would be illegal, Callaway and her associate warned Callaway's other client against it in 2006. The April 20, 2006, cover email transmitting the memorandum to the client stated: "Attached is the memorandum regarding whether a state can regulate on-reservation loans made by an Indian company to non-Indian consumers. Unfortunately, the conclusion reached is that a state is likely to be able to regulate these tribal companies and the loans they make." On information and belief, Callaway's client followed her advice in 2006 and did not participate in the tribal lending program described in the memorandum.

46. Callaway admitted during her deposition that the law had not changed between 2006 when her other client considered participating in a Tribal Member Model, and 2009 when she advised Plaintiffs to use the Tribal Member Model.

47. Nevertheless, Callaway never informed CashCall, Reddam, or Baren about her conclusions that the Tribal Member Model was fatally flawed, that she advised at least one other

client to avoid participating in the model, that any consumer loans purchased as part of the model would be unenforceable, or that participating in the model would subject CashCall and Reddam to regulatory investigations, public and private litigation, and potential criminal liability.

48. Despite reaching these conclusions in 2006, Callaway told Baren in early 2009 that she was now advising her consumer lending clients to purchase loans made by entities owned by tribal members, who are entitled to sovereign immunity. Under this Tribal Member Model, a tribal-member-owned lender ("Tribal Member Lender") operating on a reservation would make loans to borrowers in any state over the internet or by phone. The Tribal Member Lender would assign the loans to a consumer lending company such as CashCall, which would service and collect the loans.

49. Callaway advised Plaintiffs and Baren that because the loans originated with a Tribal Member Lender, the loans did not have to adhere to the licensing and usury laws in the states where the loan applicants resided. Callaway advised Plaintiffs and Baren that the doctrine of tribal immunity would apply to the loans. Callaway assured Plaintiffs and Baren that when the loans were assigned by the Tribal Member Lender to CashCall, CashCall would succeed to all of the terms of the tribal lender's agreements with consumers, including the choice of tribal law.

50. This advice directly contradicted Callaway's conclusions from three years earlier that States would "have the power to regulate loans made by Indians to non-Indians on Indian land," and that "being a tribal entity does not provide a haven from State regulations." Additionally, since—as Callaway admitted during her deposition—neither the Tribal Member Model nor the applicable case law changed between 2006 and 2009, Callaway knew that her legal advice to Plaintiffs and Baren was false and that the federal government and states would be able to regulate the loans; necessarily, this also meant the usury laws would apply, rendering these loans illegal and unenforceable.

51. On information and belief, CashCall was, at that time, one of Callaway's largest clients. Callaway knew, however, that because the Bank Model lending program CashCall and Reddam had been involved in was ending, she would no longer earn the large fees she and her

firm charged CashCall for advising on the program, and her income and stature within her firm would be diminished. Moreover, in the spring and summer of 2009, Callaway negotiated and then consummated a partnership with Katten. On information and belief, in her negotiations with Katten, Callaway represented that she would bring with her clients whose need for legal representation would grow. And with that growth would come increased fees for Callaway and Katten. Having made these representations to gain her position at Katten, Callaway could not afford to have her largest client abandon national lending and return to a state-licensed model that would generate little or no legal fees for her.

52. By providing knowingly false advice and encouraging Plaintiffs to participate in the fatally flawed Tribal Member Model, Callaway sought to continue incurring substantial legal fees for herself and her firm for creating the program, facilitating financing for Plaintiffs' purchase of the loans originated by the tribal member's company, and defending the program against well-founded attacks from both regulators and private parties (as Callaway knew would be necessary).

53. CashCall was unaware of Callaway's motivations for recommending the Tribal Member Model and unfamiliar with the concept of lending under the protection of tribal immunity. Given Callaway's strong and repeated assurances of the legality of her Tribal Member Model, however, CashCall ultimately asked Callaway to recommend potential tribal lending partners.

54. Callaway told CashCall that finding the right tribal lender was critical to the model's success. She suggested that CashCall consider partnering with Martin "Butch" Webb ("Webb"), a consumer finance entrepreneur and a member of the Cheyenne River Sioux Tribe ("CRST"). At an industry conference in March 2009, Callaway introduced Baren to Webb, and told Baren that Webb was the "right tribal partner for CashCall."

55. When Baren asked Callaway whether other potential tribal lenders also should be considered, Callaway said that Webb was CashCall's best option. Callaway recommended no other possible tribal lending partner to CashCall. She encouraged Baren to partner with Webb quickly because she heard that "other lenders were knocking on Webb's door." Callaway also

told Baren that partnering with a tribal member such as Webb was preferable to partnering with a tribe itself or an entity controlled by a tribe, because tribes were notoriously untrustworthy in fulfilling their commercial obligations.

56. Callaway did not inform Baren, CashCall, or Reddam that she was already familiar with Webb and the business structure of any Webb entity that would be involved in the Tribal Member Model. In 2006, when Callaway was advising her other client to avoid the Tribal Member Model, that program envisioned the client's partnering with Webb, and a business owned by Webb and operated on the Reservation. The structure Callaway advised her other client in 2006 to avoid because of the significant legal risk was identical in all material aspects to the structure in which she in 2009 advised and encouraged CashCall to participate. Although the structures were identical, Callaway admitted during her deposition that there were no material changes in the controlling law between 2006 and 2009. But Callaway did not dissuade Reddam or CashCall from partnering with Webb. Rather, she strongly and repeatedly encouraged it.

57. Additionally, Callaway was intimately familiar with the proposed lending structure in early 2009, as she was simultaneously advising another client who was negotiating a structurally identical partnership with Webb.

58. In April 2009, Baren visited Webb on the Cheyenne River Sioux Indian Reservation to confirm he was a good fit and had the resources to partner with CashCall in a national consumer lending program. Throughout the summer and fall of 2009, and into early 2010, Callaway and (after Callaway joined Katten) Katten played an integral role in the formulation and implementation of the legal relationship and lending structure among CashCall, Webb, and Webb's newly created consumer lending company, Western Sky. During the course of the representation, Callaway made trips to the Cheyenne River Sioux Indian Reservation, including two trips with Baren, and presented herself to CashCall as well-informed about Webb, his company, the laws that governed Western Sky, and the loans Western Sky originated for borrowers across the country.

59. In July 2009, Callaway changed firms, moving from Manatt to Katten.

60. On information and belief, when Callaway was considering changing firms in the months preceding her move, she knew that her "portable book of business"—clients who would follow her from Manatt to Katten and continue using her services—would be a critical factor for Katten's willingness to hire her as a partner. CashCall had been one of Callaway's largest and most important clients during her tenure at Manatt. To have a successful transition, she needed to not only maintain CashCall as a fee-generating client, but to grow it.

61. Given CashCall's significance to Callaway's "book of business," Katten's public announcement on July 22, 2009, emphasized Callaway's work on behalf of CashCall, including two recent litigation victories, and her experience advising clients about a host of finance and lending laws and regulations. CashCall was the only client named in the announcement, and the only client whose cases were mentioned. CashCall was a critical fee-generating client for Callaway to maintain at her new firm, Katten.

62. Callaway told Baren that after joining Katten she wanted to continue to implement CashCall's consumer lending program with Webb. At Callaway's urging, Baren agreed to move all of the regulatory work, including the Tribal Member Model partnership with Western Sky, all of Plaintiffs' ongoing corporate work, and several pending litigation matters from Manatt to Katten.

63. Callaway and CashCall executed an engagement letter dated July 29, 2009, in which Katten agreed to advise CashCall "in connection with general regulatory work in connection with lending activities and/or regulations." Although Reddam was not named in the engagement letter, Callaway and Katten knew at that time and at all relevant times thereafter that Reddam was the sole shareholder of CashCall and its related entities (including WS Funding), Reddam was the signatory on key transactional documents and signed guarantees, and the transactions were intended to affect Reddam personally. Reddam was also listed as a party represented by Katten in many of the opinion letters Katten issued in connection with the Tribal Member Model. Reddam was an intended beneficiary of Callaway and Katten's legal services; an implied contract for competent legal services was formed between Callaway and Katten on the one hand and Reddam on the other; harm to Reddam from Callaway and Katten's

malpractice was foreseeable; and Reddam has suffered injury as a direct result of Callaway and Katten's malpractice.

64. Callaway also presented to Plaintiffs additional engagement letters in 2012 and 2013 for specific litigation, regulatory, and corporate matters relating to the Western Sky consumer lending program.

65. Katten and Callaway represented CashCall, Reddam, and WS Funding continuously from July 2009 until September 2013. Plaintiffs were critical, lucrative clients for Callaway. For each year before Plaintiffs terminated the representation (*i.e.*, 2009-2012), Callaway prepared a compensation memorandum (colloquially called a "brag sheet") that she submitted to impress Katten's National Compensation Committee and maximize her compensation; Callaway prominently and repeatedly listed her work for CashCall in these memoranda. Callaway's final compensation memorandum touting her representation of CashCall aptly summarized the significance of CashCall: "My success at 'institutionalizing' clients is best demonstrated by [Katten's] relationship with CashCall. We have grown CashCall from a $500,000 litigation client to a $2 million litigation and corporate client."

d. Katten and Callaway provide intentionally false advice and opinion letters to Plaintiffs and Third Parties.

66. CashCall and Reddam's decision to use the Tribal Member Model for consumer loans was based on legal advice given by Katten and Callaway. Baren informed Callaway by email and orally in August 2009 that CashCall would proceed with the Tribal Member Model lending program only if it was "blessed" by regulatory counsel (*i.e.*, Katten and Callaway) and supported by a legal opinion confirming that the loans and their assignment to CashCall would be enforceable and lawful.

67. Plaintiffs trusted Katten and Callaway because of their claimed expertise in consumer lending, their legal expertise, their expressions of confidence in the Tribal Member Model and in Webb as the appropriate partner for CashCall, their issuance of opinion letters in support of the model, and their development, formulation and implementation of the legal

relationship and lending structure among CashCall, Reddam, WS Funding, Webb, and Webb's company, Western Sky.

68. Consistent with the advice Katten and Callaway gave to Plaintiffs, Callaway and Katten prepared and provided to Plaintiffs and Plaintiffs' potential investors written opinions attesting to the legality of the Tribal Member Model and the terms, enforceability, and assignment of consumer loans made by Western Sky and assigned to CashCall and WS Funding by advance agreement. These opinions contained intentionally false statements of fact and law, and failed to disclose material risks, including the risk that CashCall would be considered by the courts and regulators—due to the structure of the lending program Katten and Callaway designed and endorsed—to be the "true lender" of consumer loans made by Western Sky, and, as a consequence, the loans would not fall within the scope of tribal sovereign immunity or be governed by tribal law.

69. From late 2009 until mid-2013, Katten and Callaway prepared and provided intentionally false and inaccurate oral and written legal opinions to Plaintiffs and their investors that consumer installment loans made by Western Sky and assigned by Western Sky to CashCall and WS Funding per an advance agreement were not subject to state licensing and usury laws in the states where borrowers resided, and were compliant with federal law as well. Katten and Callaway also spoke regularly with Plaintiffs' investors, and repeatedly assured them that the Western Sky lending program was immune from state and federal law, and that the terms of the Western Sky consumer loan agreements were enforceable after their assignment to Plaintiffs. On information and belief, if Callaway had not delivered the false and inaccurate oral and written legal opinions to Plaintiffs' third-party investors, those investors would not have provided the financing Plaintiffs needed to operate the Western Sky program.

70. Specifically, Defendants informed Plaintiffs and their investors that (a) the consumer loans made by Western Sky were valid when made, (b) the consumer loans could be lawfully assigned by Western Sky to CashCall pursuant to advance agreement, and (c) CashCall would succeed to all rights under the consumer loan agreements made by Western Sky, including the choice-of-law provision and the arbitration provision. Katten and Callaway provided to

Plaintiffs and their investors a professional opinion that the loans would be subject to tribal immunity, the states where borrowers lived would enforce tribal law, and the Western Sky loans assigned to CashCall would "not be subject to United States federal consumer protection or state law limiting interest rates."

71. Katten and Callaway made these statements even though they understood at the time that, among other things, borrowers did not physically visit the Cheyenne River Sioux Indian Reservation to obtain the loans, Western Sky was not a tribal entity, CashCall provided Western Sky with funding and acquired all interests in loans that were written by Western Sky pursuant to advance agreement, and CashCall bore all the risks of the loans once it purchased them from Western Sky.

72. Katten and Callaway knew that the Western Sky lending program was an implementation of the legally unsound Tribal Member Model. To make their scheme work, Katten and Callaway needed to issue opinion letters that plausibly asserted Western Sky's activities were lawful. To accomplish this, Katten and Callaway intentionally issued a series of opinion letters containing facts they knew to be false and legal analysis any competent lawyer would know to be deficient. Katten and Callaway did this to mislead the letters' readers.

73. First, in September 2009, Callaway circulated a draft opinion letter that intentionally stated numerous facts Callaway knew to be false. Callaway described Western Sky as being owned and operated by the Cheyenne River Sioux Tribe, and organized under the laws of the tribe, when Katten and Callaway knew that Western Sky was never owned or operated by the Cheyenne River Sioux Tribe. Callaway knew as of at least 2006 that Webb's entities were owned by Webb, not the Tribe, and that Webb's lending activities would not be sanctioned by the Tribe.

74. Webb's attorney, Cheryl Bogue, testified during her deposition that also in 2009 Callaway was negotiating a structurally identical partnership with Webb for one of her other clients. Callaway knew, based on the advice she was providing simultaneously to this other client that Webb's entities were owned by him, and not the Tribe.

75. Callaway therefore knew that Western Sky, a Webb entity, was not owned or operated by the Cheyenne River Sioux Tribe.

76. Nevertheless, Callaway included these false facts in her September 2009 opinion letter. And, based on these false facts, Callaway's draft September 2009 opinion letter concluded that Western Sky was an "arm of the tribe" and therefore, according to Callaway's draft legal opinion, the consumer loans Western Sky originated and issued to consumers would not be subject to state or federal regulation.

77. Upon receiving the draft September 2009 opinion letter, Baren forwarded the letter to Bogue. Baren was unaware that Callaway already knew, as of at least 2006, that the Tribal Member Model was legally unsupportable, and that she intentionally included the false facts in order to mislead opinion letter recipients and CashCall into believing that the Tribal Member Model she advocated was effective.

78. Upon receiving Callaway's draft letter, Bogue sent an email to Baren, which Baren forwarded to Callaway, reiterating in writing that Western Sky was not a tribe, nor was it owned or operated by the CRST, but was instead owned and operated by Webb, an individual independent of the tribe.

79. Believing that Callaway was simply mistaken, Bogue emailed Callaway, requesting a call to explain the structure of the Tribal Member Model. During that call, Bogue reiterated what Callaway already knew – that Western Sky would be owned and operated by Webb, operated on the CRST Reservation, and would issue loans to consumers outside the reservation and across the country via the Internet.

80. In October 2009, Callaway prepared another draft opinion. This opinion again failed to identify the correct Western Sky structure, instead stating that "WESTERN SKY is recognized as an Indian Tribe by the United States of America," and that certain lending activities would "occur on WESTERN SKY tribal lands." Based on this erroneous statement, Callaway reached the conclusion that because "WESTERN SKY is chartered by the CRSN [CRSN is sometimes used interchangeably with CRST] and is not 'completely independent of the tribe,' . . . the Loan Agreements will not be subject to United States federal consumer

protection law, or state law limiting interest rates." As Callaway knew, however, Western Sky *was* completely independent of the tribe.

81. In November 2009, Callaway prepared another draft opinion. This opinion again failed to identify the correct Western Sky structure. Like the October 2009 draft, this draft stated that "WESTERN SKY is recognized as an Indian Tribe by the United States of America," and that certain lending activities would "occur on WESTERN SKY tribal lands."

82. This draft did not opine on whether the loans were subject to state and federal regulation. Instead, the draft opined on whether CashCall, after it purchased the loans, would be able to assert the provision in the loan agreements specifying that CRST law applied, *i.e.*, a "choice of law" analysis. The draft was, however, missing critical portions of legal analysis. On information and belief, Callaway intentionally excluded these portions of the analysis because she knew they would contradict her advice on the legality of the Western Sky program for CashCall.

83. Callaway responded with a new draft in December 2009. Despite Baren's corrections on her prior draft, Callaway's December 2009 draft still stated that "WESTERN SKY is recognized as an Indian Tribe by the United States of America," and that certain lending activities would "occur on WESTERN SKY tribal lands." In February and March 2010, Callaway prepared two additional draft opinions. Like the past three opinions, Callaway's new draft opinions intentionally misrepresented Western Sky's structure, containing the same false claim that Western Sky was a recognized Indian Tribe. The December 2009, February 2010, and March 2010 draft opinions were all "choice of law" opinions designed to mislead the reader into believing that Western Sky loans were subject to CRST law, not state and federal regulation.

84. Though each was inaccurate in its own way, Callaway's draft opinions were thematically consistent: each was designed to give the impression that the Western Sky loans were subject to CRST law, not state or federal regulation. But none of the draft letters opined, based on the *actual* Western Sky structure and accurate underlying facts, that the Tribal Member Model loans were immune from state or federal regulation, that CRST law applied exclusively, and that CashCall would receive all of those same rights when it purchased the loans from

Western Sky. (Four years later in an email she wrote to herself in September 2013, Callaway inadvertently admitted that she intentionally misrepresented the Western Sky structure, by stating she would never issue the opinion letter based on the **actual** Western Sky structure.)

85. On information and belief, Callaway intentionally misrepresented facts and/or applied an inaccurate, incomplete legal analysis in the draft opinion letters because she knew, based on the 2006 memorandum prepared for one of her other clients, that the Tribal Member Model was illegal and would subject its participants to significant regulatory and litigation risks. Callaway intentionally failed to advise Baren, Reddam, or CashCall of these risks or to explain why she prepared misleading draft opinion letters based on facts she knew to be inaccurate. To the contrary, Callaway repeatedly assured and advised Baren, CashCall, and numerous third parties that the loans were valid and enforceable; on at least one occasion, Callaway described the Tribal Member Model as "bulletproof."

86. Had Callaway or Katten advised Baren, Reddam, or CashCall of these risks, CashCall would not have proceeded with the Tribal Member Model. Because Callaway and Katten did not advise Plaintiffs of these risks, Reddam and CashCall proceeded with the Tribal Member Model.

87. Over the next three years, Katten and Callaway issued multiple opinion letters that intentionally misrepresented Western Sky's structure, or improper legal analyses, to reach the concluding opinion that Western Sky loans were not subject to state or federal regulation and that CashCall would enjoy those benefits upon purchasing the Western Sky loans.

88. Katten and Callaway's issued opinion letters fell into two categories: (1) arm of the tribe letters; or (2) choice of law letters. Callaway and Katten based their first category of letters on an intentional misrepresentation of Western Sky's structure; they based their second on a flawed and misleading legal analysis, along with an intentional misrepresentation of the legal opinion given by Western Sky's counsel.

89. In the June 2010 and November 2010 "arm of the tribe" opinion letters, Katten and Callaway intentionally misrepresented Western Sky's structure by describing Western Sky as being owned and operated by the Cheyenne River Sioux Tribe, or organized under the laws of

the tribe. Based on the 2006 memorandum for Callaway's other client, and the multiple times that Baren and Bogue corrected Callaway in 2009, both Katten and Callaway knew before issuing the June 2010 and November 2010 letters that Western Sky was never owned or operated by the Cheyenne River Sioux Tribe, nor could it be. Callaway included these false facts in an attempt to deliver an opinion letter with a legal analysis she believed could withstand the scrutiny of CashCall's investors. This misrepresentation about Western Sky's structure allowed Callaway and Katten to misrepresent Western Sky as an "arm of the tribe," making the loans protected under tribal sovereign immunity.

90. When questioned during her deposition, Callaway admitted these opinion letters contained false underlying facts (which Callaway euphemized as "aspirational" facts), and that she and Katten intentionally included these facts, which she knew to be false, in the June 2010 and November 2010 final opinion letters transmitted to CashCall and third-party investors.

91. Callaway was not the only one within Katten who knew that Katten and Callaway intentionally issued opinion letters containing false underlying facts. During her deposition, Callaway admitted that Mark Conley, the Katten partner who was managing the preparation and execution of the transactional documents between CashCall and its third-party investors, was also aware the opinion letters contained facts that were false. On information and belief, Conley cooperated with Callaway in including these false facts in the opinion letters.

92. On information and belief, Conley was willing to include these false facts in the opinion letters because Callaway was giving him partial "origination" credit for the work he performed in connection with each of CashCall's financing transactions for the Tribal Member Model. This origination credit increased his compensation and stature within Katten.

93. Callaway also admitted during her deposition that Virginia Davis, the Katten partner responsible for reviewing and approving the June and November 2010 opinion letters, knew that the letters contained false facts. Davis nevertheless approved the letters, and Katten issued the letters to CashCall and CashCall's third-party investor.

94. Both Davis and Conley were, at the relevant times, members of Katten's internal Third Party Legal Opinion Committee. The members of the Opinion Committee are each

responsible for ensuring that whenever they review an opinion letter to be issued by Katten, the letter complies with the legal industry's customary practices for opinion letters. Issuing deceptive and misleading opinion letters by including false facts does not comply with customary practices.

95. As one Katten associate involved in Katten's representation of CashCall in the Western Sky matters explained during his deposition, attorneys do not lie in opinion letters "[b]ecause it's unethical[;] lawyers could lose their bar licenses[.]"

96. As Conley testified during his deposition, if an attorney preparing an opinion letter has "knowledge of a fact," the attorney "can't assume the contrary."

97. Similarly, one of Callaway's colleagues who has reviewed between 25 and 50 opinion letters, including third-party opinion letters, and has decades of experience, testified that opinion letters cannot be "aspirational," must be based on the actual facts, and must "be accurate and honest."

98. Despite Davis and Conley's positions as Katten partners and members of Katten's opinion letter review committee and their knowledge of opinion letter customary practices, neither Davis nor Conley objected to Katten's issuing the misleading June 2010 and November 2010 opinion letters containing false facts.

99. In fact, Conley was an active participant in the deception. During his deposition, Conley admitted that when reviewing the November 16, 2010, opinion letter, he corrected the facts contained within the letter to make them accurate. After a telephone call with Callaway, however, he modified the letter to "revert back" to the factual assumptions he knew were false. According to Conley, it was a "conversation with Claudia [Callaway], which caused [him] to change the - - change the opinion back."

100. After issuing the false arm of the tribe opinion letters intentionally misrepresenting the structure of Western Sky and the applicable law, Callaway and Katten were forced to change strategies when the authorities began to question the model.

101. Shortly after Katten issued the November 2010 opinion letter, Colorado's Attorney General began an investigation into CashCall and the Tribal Member Model, alleging

violations of Colorado law. In February 2011, Callaway assigned one of her associates to begin preparing a response letter.

102. The associate took notes of his meeting with Callaway. According to his notes, Callaway told him that Western Sky was an arm of the tribe, that CashCall purchased loans from an arm of the tribe, and that she would provide him with a previously issued arm of the tribe opinion letter to use as a model for his response. Callaway also told him to rely on case law that supported the arm of the tribe. In sum, Callaway misrepresented the Tribal Member Model's structure to her own associate during this meeting; Callaway knew since September 2009, at the latest, that Western Sky was not an arm of the tribe. Additionally, Callaway knew since at least 2006 that ***any*** Webb entity (such as Western Sky) could not become an arm of the tribe because Webb's relationship with the CRST was acrimonious and Webb's activities would not be sanctioned by the CRST.

103. The next day, the associate sent Callaway a draft of his response to the Colorado Attorney General. Consistent with directions he received from Callaway, the draft response asserted that Western Sky was an arm of the tribe. The draft response also included notes from the associate to Callaway requesting Callaway provide documents and other information that would confirm Western Sky was an arm of the tribe.

104. On information and belief, Plaintiffs allege that upon seeing her associate's requests for supporting information, Callaway determined she could not send the draft response asserting Western Sky was an arm of the tribe and that making demonstrably false representations to an investigative body could result in serious professional consequences. Accordingly, two weeks later, Callaway sent a response to the Colorado Attorney General that deleted any references to Western Sky's being an arm of the tribe.

105. Before sending the response, Callaway had also tasked her associate with preparing a "white paper" that would explain Katten and Callaway's legal analysis concluding that the Tribal Member Model was legal and the loans would not be subject to state or federal regulations. Because Callaway had previously misrepresented Western Sky and the Tribal Member Model's structure to the associate, the associate prepared the white paper assuming

Western Sky was an arm of the tribe. One month later, after she sent the response to the Colorado Attorney General, and without telling her associate, Callaway rewrote the white paper from one supporting an arm of the tribe model to one supporting the actual Tribal Member Model.

106. Callaway used the white paper to explain her legal analysis of the Tribal Member Model. In March 2011, Callaway sent her white paper to at least one broker who would locate potential third-party lenders and investors from which CashCall could obtain funding for the model.

107. Katten and Callaway's white paper, however, contained deeply flawed, deficient, and misleading legal advice and legal analysis. The white paper concludes that "Tribal Law, Not State Law, Should Govern Loans Made on Tribal Lands" (*i.e.*, loans made by Western Sky). Although the white paper purported to address the identical question posed in Callaway's 2006 memorandum, the white paper inexplicably reached the opposite legal conclusion from the memorandum.

108. Although Callaway actively used her white paper to promote the Tribal Member Model to third parties, and to explain her legal analysis of the Tribal Member Model to Plaintiffs, she did not want to issue additional opinion letters supporting the model.

109. In June 2011, Conley told Callaway that one of CashCall's third-party investors, BasePoint, was planning to provide financing to CashCall for the Tribal Member Model and had seen a copy of one of the opinion letters Callaway and Katten issued to a different third party as part of an earlier finance transaction for CashCall. Conley further informed Callaway that BasePoint wanted a similar opinion letter for its financing transaction with CashCall. Callaway responded, "[w]e wanted to avoid giving an opinion if we could and rely solely on [Western Sky's attorney, Cheryl Bogue]. Are they asking for it?" Conley replied, "yes".

110. Callaway did not inform Baren, Reddam, or CashCall of her reluctance to issue additional opinion letters supporting the Tribal Member Model. On information and belief, Callaway did not inform them of her reluctance to issue an opinion letter because it would have

alerted them that Callaway did not, in fact, believe the program could withstand regulatory scrutiny.

111. Had Callaway or Katten informed Baren, Reddam, or CashCall of Callaway's reluctance to issue additional opinion letters in support of the program, Reddam and CashCall would not have continued purchasing Western Sky loans or incurring indebtedness to third-party investors to purchase those loans.

112. Rather than inform Baren, Reddam, or CashCall of her belief that the Tribal Member Model would not withstand regulatory scrutiny, Callaway decided to limit the BasePoint letter and the future Katten opinion letters to a "choice of law" analysis.[2]

113. Callaway and Katten's purported theory for the choice of law opinion letters required three elements: (1) if the loans were validly made under CRST law on the reservation by an Indian or Indian-owned company, the loan would not be subject to state or federal law, and CRST law would apply instead; (2) if the loan agreements between Western Sky and the consumers contained a "choice of law" provision designating the CRST law, it would apply to the consumers and third parties; and (3) when CashCall purchased the loan from Western Sky it would receive the same rights and benefits as Western Sky, including any "tribal member immunity" Western Sky possessed. According to the advice provided by Callaway and Katten orally and in writing, if these three elements were satisfied, the loan would not be subject to state or federal laws or regulations, and CRST law would apply instead, even after CashCall purchased the loan from Western Sky.

114. Callaway sent to Baren an email that summarized her theory:

> The analysis flows as follows: the loan transaction is subject to sovereign immunity, and the initial choice of tribal law is enforceable. Because an assignee stands in the shoes of the assignor, CashCall takes subject to all rights that the tribe has at the time the loan is made. Assignment does not invalidate choice of law.

[2] In April 2010, Callaway and Katten provided the first executed opinion letter for the Tribal Model. In the April 2010 letter, Callaway and Katten gave a choice of law opinion that intentionally misrepresented Western Sky to be a federally recognized tribe. Like the earlier drafts, the April 2010 letter intentionally misleads a reader into believing CRST law, not state or federal law, applied to the Western Sky loans.

115. Every element of Callaway and Katten's choice of law theory was wrong. On information and belief, Callaway and Katten knew that every element of their choice-of-law analysis was wrong, incomplete, and misleading. In any event, any reasonably careful attorney claiming expertise in this particular field would have known the legal analysis was wrong, incomplete, and misleading.

116. Callaway and Katten nevertheless issued six opinion letters on behalf of CashCall and Reddam based Callaway and Katten's choice of law theory: (1) a letter to BasePoint Specialty Finance, LLC, dated July 1, 2011; (2) a letter to BasePoint Specialty Finance, LLC, dated May 1, 2012; (3) a letter to L4 Funding LLC, R4 Capital Management LLC, dated June 5, 2012; (4) a letter to BasePoint Specialty Finance, LLC, dated October 19, 2012; (5) a letter to Atalaya Special Opportunities Fund IV LP, Atalaya Asset Income Fund I LP, and Atalaya Administrative LLC, dated December 31, 2012; and (6) a letter to Bayberry Consumer Finance Fund LLC and Bayberry Consumer Finance Fund International, Ltd., dated January 31, 2013.

117. Callaway and Katten knew when they gave this advice that the choice of law theory they advocated orally and in opinion letters to Plaintiffs, Baren, and CashCall's third-party investors was incorrect, that the Western Sky loans would remain subject to state and federal laws and regulations, and that CashCall and Reddam were exposed to substantial, undisclosed regulatory risks by participating in the Tribal Member Model.

118. The first element of Callaway and Katten's choice of law theory contradicted Callaway's earlier advice to her other client in 2006 that "a state is likely to be able to regulate" "on-reservation loans made by an Indian company to non-Indian consumers."

119. Because Callaway and Katten knew the Western Sky loans would still be subject to state and federal regulation, Callaway and Katten were unwilling to issue an opinion letter as to this first element. Callaway and Katten therefore decided to request Western Sky's counsel, Cheryl Bogue, issue this portion of the opinion instead, and Callaway and Katten could then "rely" on Bogue's opinion. In other words, because Callaway and Katten were unwilling to issue the necessary opinion, they tried to have Bogue issue it, and Callaway and Katten would in

turn base their opinion on Bogue's (which Callaway and Katten knew or believed to be erroneous).

120. Callaway and Katten's decision to have Bogue issue an opinion letter they were unwilling to issue was improper, in particular because Callaway had previously concluded in the 2006 memorandum that, in analyzing the legality of loans issued under the Tribal Member Model, Bogue relied on cases that were "inapposite" and did "not reflect the true state of the law".

121. Moreover, while Bogue was willing to provide certain opinions related to the Tribal Member Model, she was not prepared to issue opinions that Katten could rely upon; Bogue was only willing to issue opinions that could be relied upon by her client, Webb.

122. Most importantly, Bogue flatly refused to provide the opinion that Callaway and Katten wanted: that state and federal law would not apply to the loans issued by Western Sky. Bogue made the scope of her opinion clear in the first paragraph of her letter, saying her opinion had been requested "as to the enforceability under the laws of the Cheyenne River Sioux Tribe of the Loan Agreement (the 'Loan Agreement') to be used by Western Sky Financial ('Western Sky')." She also made clear in her June 22, 2011, opinion letter that she was not offering the opinion Callaway and Katten wanted, stating:

> Finally, my opinion expressed above is limited to the laws of the Cheyenne River Sioux Tribe as it relates to enforceability of loan document provisions in the Loan Agreement, and I do not express any opinion herein concerning any other law. In addition, I express no opinion herein concerning any statutes, ordinances, administrative decisions, rules or regulations of the Federal Government, state, county, town, municipality or special political subdivisions (whether created or enabled through legislative actions at the federal, state or regional level). This opinion is

123. Bogue reiterated in four separate opinion letters between 2011 and 2013 that she was *not* opining whether state or federal law applied to the Western Sky loans. Each time she was asked, Bogue refused to issue the opinion Callaway and Katten requested.

124. Undeterred, Callaway and Katten lied about the substance of Bogue's opinion in each of their own choice of law opinions and "bringdown opinions,"[3] claiming that Bogue *did provide* the requested opinion.

[3] On multiple occasions, third-party lenders requested Katten issue a "bringdown" opinion that would confirm a previously issued opinion was still accurate and could be relied upon.

a. Katten and Callaway's letter to BasePoint Specialty Finance, LLC, dated July 1, 2011:

According to the Opinion of Counsel dated June 22, 2011 from Cheryl Bogue, counsel to Western Sky, the Loans are not subject to United States state or federal law (the "Bogue Opinion").

b. Katten and Callaway's bringdown letter to BasePoint Specialty Finance, LLC, dated May 1, 2012:

We have assumed, based on the Opinion of Counsel dated June 22, 2011, from Cheryl Bogue, counsel to Western Sky, that the Consumer Loans are not subject to United States state or federal law (the **"Bogue Opinion"**). In addition, for purposes of

c. Katten and Callaway's letter to L4 Funding LLC, R4 Capital Management LLC, dated June 5, 2012:

According to the Opinion of Counsel dated June 5, 2012 from Cheryl Bogue, counsel to Western Sky, the Loans are not subject to United States state or federal law (the "Bogue Opinion").

d. Katten and Callaway's bringdown letter to BasePoint Specialty Finance, LLC, dated October 19, 2012:

We have assumed, based on the Opinion of Counsel dated June 22, 2011, from Cheryl Bogue, as brought down by that certain bring down letter, dated October 19, 2012, from Cheryl Bogue (the "Bogue Opinion"), counsel to Western Sky, that the Consumer Loans are not subject to United States state or federal law. In addition, for purposes of this opinion, we have assumed, without

e. Katten and Callaway's letter to Atalaya Special Opportunities Fund IV LP, Atalaya Asset Income Fund I LP, and Atalaya Administrative LLC, dated December 31, 2012:

According to the Opinion of Counsel dated December 28, 2012 from Cheryl Bogue, counsel to Western Sky, the Loans are not subject to United States state or federal law (the **"Bogue Opinion"**).

f. Katten and Callaway's letter to Bayberry Consumer Finance Fund LLC and Bayberry Consumer Finance Fund International, Ltd., dated January 31, 2013:

According to the Opinion of Counsel dated January 30, 2013 from Cheryl Bogue, counsel to Western Sky, the Loans are not subject to United States state or federal law (the **"Bogue Opinion"**).

125. In total, Katten falsely represented the substance of Bogue's opinion to Plaintiffs and third-party investors in six separate opinion letters. Callaway admitted during her deposition that Bogue's opinion letter did **not** include the opinion Callaway and Katten represented it did.

126. During her deposition, Bogue confirmed that her issued opinion letters did not opine that the Western Sky loans were exempt from state and federal law and *never* included the opinion Callaway and Katten represented it did. Bogue also testified Katten's representations in their opinion letters were not true.

127. Bogue testified that she knew no reason that an honest lawyer would claim her issued opinion letters stated that the Western Sky loans were exempt from state and federal law.

128. Conley, as a member of Katten's Opinion Committee, although charged with the oversight duty of ensuring Katten's opinion letters were not false or misleading, actively participated in Defendants' deception. During his deposition, Conley admitted he reviewed and approved two Katten opinion letters knowing that they misrepresented the substance of Bogue's opinion. He approved these letters after having extensive correspondence with one third-party investor's counsel regarding the substance of the Bogue opinion, and explaining to that counsel that Bogue did not opine on whether state or federal law applied to the Western Sky loans.

129. Callaway, Conley, and Katten did not disclose to Baren, Reddam, or CashCall that Bogue's opinion never provided the foundation for Katten's opinion letters that Callaway and Katten claimed. Nor did they disclose that Callaway and Katten's opinion letters were based on a false representation about the substance of Bogue's opinion letters. Rather, Callaway and Katten represented orally and in writing to Baren, Reddam, CashCall, and multiple third-party investors that Bogue's opinion satisfied the first element of Callaway and Katten's choice of law theory, *i.e.*, that the Western Sky loans were not subject to state or federal law.

130. Had Katten and Callaway represented Bogue's opinion properly and advised Plaintiffs of the risk that state and federal law would apply to the Western Sky loans (as Callaway had advised her other client years earlier), Plaintiffs would not have continued the partnership with Webb and Western Sky, or incurred increasing amounts of debt from additional third-party financing transactions.

131. Additionally, the first element of Callaway and Katten's choice of law theory fails because—as Katten and Callaway later determined but failed to disclose to Baren or Plaintiffs—the Western Sky loans were not valid when made. Under CRST law, loans carrying interest rates over 18 percent are prohibited. Had Katten and Callaway exercised due care in researching and identifying the applicable CRST law, and disclosed the existence of this statute to Plaintiffs, Plaintiffs would never have partnered with Webb and Western Sky.

132. The second element of Callaway's choice of law theory—that if the loan agreements between Western Sky and the consumers contained a "choice of law" provision designating the CRST law, it would apply to the consumers and third parties (such as state regulators)—was also wrong.

133. Callaway's former associate admitted during his deposition that the choice of law provision in the Western Sky loan agreements had no effect on regulators:

> A: If you're asking whether the choice of law analysis or choice of law provision binds state regulators[,] I believe I've answered that it binds the parties to the contract.
>
> Q: Right and it binds the parties to the contract but if the state regulators[,] if they're not parties to the contract it doesn't bind them, correct?
>
> A: Correct.

134. Callaway and Katten did not disclose to Baren, Reddam, CashCall, or the third-party investors that the choice of law provision had no effect on federal or state regulators. Rather, Callaway and Katten represented orally and in writing to Baren, Reddam, CashCall, and multiple third-party investors that the choice of law provision in the Western Sky loan agreements was enforceable against third parties, including state regulators.

135. Had Katten and Callaway properly represented that the choice of law provision in the Western Sky loan agreements did not bind regulators, and advised Plaintiffs of the risk that state and federal regulators could apply state or federal law instead, Plaintiffs would not have continued the partnership with Webb and Western Sky, or indebted themselves with additional third-party financing transactions.

136. Finally, the third element of Callaway's choice of law theory—that when CashCall purchased the loan from Western Sky it would inherit the same rights and benefits as Western Sky, including "tribal member immunity"—was also wrong. Even if the other elements of Callaway's choice of law theory had been satisfied, and the choice of CRST law in the consumer loan agreements could be enforced, Western Sky's purported tribal member immunity would have to be transferred by the assignment for CashCall to have the same legal protections from, for example, state enforcement agencies.

137. Callaway's former associate who had worked extensively on the Tribal Member Model admitted during his deposition that there was no law supporting Callaway's claim that CashCall would receive all of Western Sky's rights upon purchasing the loan from Western Sky. When asked if he was "aware of any authority in any state that indicates that any type of immunity can be transferred to a third party," Callaway's former associate answered "no I'm not aware of any such authority."

138. Similarly, Callaway's colleague with over twenty-years' experience confirmed this, stating she was unaware of any cases supporting an argument that sovereign immunity transfers to the purchaser of a loan.

139. Callaway and Katten did not disclose to Baren, Reddam, CashCall, or the third-party investors that there was no support for Callaway's assertion that tribal member immunity could be transferred to a third party, such as CashCall or WS Funding. Rather, Callaway and Katten represented orally and in writing to Baren, Reddam, CashCall, and multiple third-party investors that upon purchasing the loans from Western Sky, Western Sky's immunity would transfer to CashCall.

140. Had Katten and Callaway informed Plaintiffs that there was no support for Callaway's theory that tribal member immunity could be transferred to a third party, like Plaintiffs, Plaintiffs would not have continued the partnership with Webb and Western Sky, or indebted themselves with additional third-party financing transactions.

141. In sum, the entire basis for Callaway and Katten's choice of law theory was predicated on misrepresenting underlying facts and applicable law. Had Callaway and Katten

disclosed any of the deficiencies in Callaway and Katten's choice of law theory to Plaintiffs, Plaintiffs would not have continued the partnership with Webb and Western Sky, or indebted themselves with additional third-party financing transactions.

142. Callaway and Katten's choice of law opinions were not the only ones that misrepresented the underlying facts and applicable law. In total, Callaway and Katten prepared approximately one dozen opinion letters. Not a single one was error-free or contained an accurate recitation of the underlying facts and Tribal Member Model's structure. As Judge John Walter, the United States District Judge presiding over a Consumer Financial Protection Bureau case involving CashCall, would later comment about Callaway's failure to provide a single accurate opinion: "At least she was consistent."

143. What Plaintiffs now know is that for each set of opinions—the initial draft opinions in 2009 and 2010, the "arm of the tribe" opinions in 2010, and the choice of law opinions in 2010 through 2013—Callaway intentionally misrepresented Western Sky's structure, the substance of other opinions (*i.e.*, the Bogue opinions), or the applicable law in a concerted effort to issue misleading opinion letters that appeared accurate to Plaintiffs and Plaintiffs' third-party investors. Had Callaway merely provided Plaintiffs the same advice she conveyed to her other client in 2006, Plaintiffs would not have participated in the Tribal Member Model.

e. Katten and Callaway provided negligent advice and opinion letters to Plaintiffs and Third Parties.

144. In addition to knowingly giving incorrect legal advice, Katten and Callaway also failed to use due care in advising Plaintiffs and in researching, preparing, and distributing the opinion letters by, among other things, misrepresenting Bogue's opinions that consumer loans by Western Sky were subject only to tribal law, and not subject to federal or state law. Katten and Callaway relied on and incorporated the opinions of Bogue, who did not have a duty of care to Plaintiffs. Katten and Callaway did this with the knowledge that Plaintiffs would, in turn, rely on and defer to Defendants' expertise regarding the Bogue opinions. Defendants failed to advise Plaintiffs that they had not conducted a proper review of Bogue's opinions before relying on them and distributing them to Plaintiffs' investors. Defendants also misrepresented the

substance of the Bogue opinions by failing to advise Plaintiffs that the Bogue opinions expressly refused to opine whether the Western Sky loans were subject to state or federal laws or regulations.

145. By failing to perform an independent and careful analysis of the facts and the law, Katten and Callaway also acted negligently.

146. Because Katten and Callaway knew their advice was inaccurate, they had no reasonable basis for advising and representing to Plaintiffs and others that the Western Sky loans were valid, could be enforced after assignment, and that CashCall would succeed to all of Western Sky's contractual rights with borrowers, including the choice of law and Western Sky's purported tribal member immunity, given the knowledge that Katten and Callaway had at the time.

147. Katten and Callaway failed to use due care in advising Plaintiffs and in researching, preparing, and distributing the opinion letters by, among other things, failing to identify, disclose and address whether CashCall might be deemed the "true lender" in a consumer loan made and then assigned by Western Sky to CashCall and WS Funding by advance agreement. Katten and Callaway failed to exercise due care by failing to identify, disclose and address the lending structure's substantial risk and the possible approaches to reducing or eliminating that risk, including the sale of partial interests in the consumer loans to a non-tribal entity such as CashCall, and the retention by the Tribal Member Lender of some interest in the loans. If CashCall were the "true lender," rather than Western Sky, tribal immunity would not apply to the loan under any circumstances, and the loan from the moment of its initiation would be subject to federal or state licensing and lending laws.

148. In failing to address the possibility that CashCall would be considered the "true lender," Katten and Callaway did not disclose a material risk. Katten and Callaway had actual knowledge of the facts that raised the risk that CashCall was the "true lender" under the law, as described below, but negligently disregarded those facts.

149. Further, Katten and Callaway failed to use due care in advising Plaintiffs and in researching, preparing, and distributing the opinion letters by, among other things, failing to identify, disclose, and address:

a. The risk that tribal immunity did not extend to individual tribe members who engaged in lending to non-tribe members;

b. The risk that tribal jurisdiction does not extend to Western Sky borrowers who do not physically enter the Cheyenne River Sioux Indian Reservation;

c. The risk that courts would hold that Western Sky loans were formed in the borrowers' states rather than on the Cheyenne River Sioux Indian Reservation;

d. The risk that courts would find that states could regulate Western Sky lending activity because its extraterritorial, off-reservation negative impact on non-tribal consumers was greater than any benefit received by the CRST or its members;

e. The risk that CashCall would not succeed to the terms of the consumer loan agreements as an assignee of the Western Sky loans;

f. The risk that courts would deem the choice-of-law clause in the Western Sky loan agreements invalid;

g. The risk that courts would deem arbitration provisions in the Western Sky loan agreements to be unenforceable; and

h. The risk that courts would find that the Western Sky loan agreements were unlawful, deceptive, or abusive.

150. Katten and Callaway also failed to use due care in advising Plaintiffs to engage in a consumer lending partnership with Webb and Western Sky when Katten and Callaway knew that: (1) Western Sky was not owned or controlled by the CRST, but merely had a business license issued by CRST; (2) Western Sky was owned and controlled solely by Webb; and (3) the CRST never had or retained interests in any consumer loans written by Western Sky.

151. Katten and Callaway also neglected to use due care by failing to research the issues and provide competent advice to Plaintiffs about CRST laws and their possible application to lending on the Cheyenne River Sioux Indian Reservation. As a consequence, Katten and Callaway failed to advise Plaintiffs regarding the possible effect of CRST laws regulating interest rates. Specifically, Katten and Callaway failed to research, identify and notify Plaintiffs of the existence of a CRST statute prohibiting loans that carry interest rates over 18 percent. Had Katten and Callaway exercised due care and disclosed the existence of this statute to Plaintiffs, Plaintiffs would not have partnered with Webb and Western Sky.

152. Katten and Callaway also failed to use due care in advising Plaintiffs and in researching, preparing, and distributing the opinion letters by, among other things, misrepresenting Bogue's opinions to assert that Bogue opined consumer loans by Western Sky were subject only to tribal law, and not subject to federal or state law. Katten and Callaway relied on and incorporated the opinions of Bogue, who did not have a duty of care to Plaintiffs. Katten and Callaway did this with the knowledge that Plaintiffs would, in turn, rely on and defer to Defendants' expertise regarding the Bogue opinions. Defendants failed to advise Plaintiffs that they had not conducted a proper review of Bogue's opinions before relying on them and distributing them to Plaintiffs' investors. Defendants also misrepresented the substance of the Bogue opinions by failing to advise Plaintiffs that the Bogue opinions expressly refused to opine whether the Western Sky loans were subject to state or federal laws or regulations. By failing to perform an independent analysis of the facts and the law, Katten and Callaway acted negligently.

153. Notwithstanding their representations that they had expertise in consumer lending and had fully researched and analyzed the critical legal issues of choice-of-law, sovereign immunity, tribal member immunity, and tribal law, Katten and Callaway lacked competency in these areas, and should have disclosed this to Plaintiffs and declined to provide advice to Plaintiffs on these critical issues, or obtained the assistance of competent counsel with the necessary expertise and with a duty of care to Plaintiffs.

154. Katten and Callaway advised Plaintiffs and prepared and provided to Plaintiffs and Plaintiffs' investors the opinion letters, knowing and intending that Plaintiffs and their investors would reasonably rely on these opinions.

f. Katten and Callaway were fully aware of the structure of the Western Sky Program.

155. Relying on the advice of Katten and Callaway, CashCall and Western Sky entered into two agreements, in December 2009 and February 2010: (1) February 1, 2010 Agreement for the Assignment and Purchase of Promissory Notes (the "Assignment Agreement"); and (2) December 28, 2009 Agreement for Service (the "Service Agreement"). Katten and Callaway were fully aware of the existence and terms of these agreements and the parties' performance throughout the period of time when Katten and Callaway represented and advised Plaintiffs.

156. In the Assignment Agreement, CashCall, through its subsidiary WS Funding, agreed to purchase from Western Sky loans made through its website, www.westernsky.com.

157. CashCall agreed to purchase all of Western Sky's loans after waiting a minimum of three days following the funding of each loan. CashCall paid Western Sky the full amount disbursed to the borrower under the loan agreement, plus a small premium. CashCall guaranteed Western Sky a minimum payment of $100,000 per month, as well as a $10,000 monthly administrative fee.

158. The loans were assigned to CashCall before any payments were made by the borrowers. Once Western Sky sold a loan to CashCall, all economic risks and benefits of the transaction passed to CashCall.

159. CashCall agreed to reimburse Western Sky for costs associated with Western Sky's computer server. CashCall also reimbursed Western Sky for marketing expenses and bank fees, and some office and personnel costs. In addition, CashCall agreed to "fully indemnify Western Sky Financial for all costs arising or resulting from any and all civil, criminal or administrative claims or actions, including but not limited to fines, costs, assessments and/or penalties . . . [and] all reasonable attorneys['] fees and legal costs associated with a defense of such claim or action."

160. Under the Service Agreement, Western Sky granted CashCall a "non-exclusive license, to reproduce the name, trade name, trademarks, and logos of Western Sky Financial." CashCall agreed to provide Western Sky with customer support, marketing, website hosting and support, assignment of a toll-free phone number, and to handle electronic communications with customers. In exchange for these services, Western Sky paid CashCall a small percentage of the face value of each loan that it sold to CashCall.

161. When Western Sky commenced operations, all telephone calls from prospective borrowers were routed to CashCall agents in California. The information collected by CashCall agents was then passed on to Western Sky. As the business developed, a growing number of Western Sky loan agents on the Cheyenne River Sioux Indian Reservation handled initial calls from prospective borrowers, and CashCall agents handled only overflow calls.

162. Western Sky approved the underwriting criteria for its loans, and decided whether to approve the loans. A borrower approved for a Western Sky loan would electronically sign the loan agreement on Western Sky's website. The loan proceeds would be transferred from Western Sky's bank account to the borrower's account. After a minimum of three days had passed, the borrower would receive a notice that the loan had been assigned to WS Funding, and that all payments on the loan should be made to CashCall as servicer.

163. The Western Sky consumer loan agreement identified Western Sky Funding, LLC as the lender, and informed the borrower, in bold type, that it was "subject solely to the exclusive laws and jurisdiction of the Cheyenne River Sioux Tribe, Cheyenne River Indian Reservation." In the "Governing Law" section of the agreement, the borrower was informed that the agreement "is governed by the Indian Commerce Provision of the Constitution of the United States of America and the laws of the Cheyenne River Sioux Tribe. We do not have a presence in South Dakota or any other states of the United States. Neither this Agreement nor Lender is subject to the laws of any state of the United States of America."

164. The Western Sky consumer loan agreement also contained a provision, approved and later revised by Katten and Callaway, that "any dispute . . . will be resolved by binding arbitration." The agreement stated that arbitration would be conducted "by an authorized

representative" of the CRST in accordance with its consumer dispute rules and the "terms of this Agreement." A revision gave the borrower the right to select the American Arbitration Association, Judicial Arbitration and Mediation Services, or another organization to administer the arbitration.

165. The borrower also was informed in the loan agreement that Western Sky "may assign or transfer this Loan Agreement or any of our rights under it at any time to any party." The interest rate on the Western Sky loans was clearly and prominently disclosed on the first page of the loan agreement.

166. The structure of the Western Sky lending program described above was reviewed and approved by Katten and Callaway. At all times Defendants knew, or should have known, that the agreements they had reviewed and approved exposed Plaintiffs to the risk that courts and regulators would likely determine CashCall was, under the law, the "true lender;" that Western Sky was not entitled to tribal member immunity; that CashCall might not succeed to that immunity even if it existed; or that CashCall might not benefit from the choice of CRST law in the consumer loan agreements upon assignment by Western Sky to CashCall. In the opinion letters prepared and distributed by Katten and Callaway, Katten and Callaway relied expressly upon the Assignment Agreement and the Service Agreement, and described the Western Sky lending program in detail. Katten and Callaway knew at the time that Plaintiffs relied upon such opinion letters.

g. <u>The negligent assurances of tribal immunity by Katten and Callaway.</u>

167. Throughout the period in which Plaintiffs were represented by Defendants, Western Sky was owned solely by Webb. Katten and Callaway repeatedly told Plaintiffs, informed their sources of financing, and stated publicly that it was not necessary for Western Sky to be an "arm of the tribe," *i.e.*, an entity owned and/or controlled by the tribe itself, for Western Sky to be protected by tribal sovereign immunity. According to Katten and Callaway, tribal immunity would allow Western Sky to make consumer loans nationwide without violating federal and state usury and licensing laws and then assign those loans to Plaintiffs.

168. Katten and Callaway's legal advice to Plaintiffs regarding tribal immunity was far below the standard of care exercised by competent counsel. Defendants knew as of 2006, at the latest, that the doctrine of tribal immunity would not insulate the consumer loans originated by an entity like Western Sky from state and federal regulation, despite their assurances to Plaintiffs. Rather, as demonstrated in the memorandum Callaway provided to her other client in 2006, Callaway knew throughout the duration of the Tribal Member Model that "being a tribal entity does not provide a haven from State regulations," and that even making "favorable assumptions, a State is likely to be able to enforce its laws and regulations against an Indian lender [i.e., Western Sky] doing business with non-Indians on the reservation."

169. Callaway was also aware from at least 2006 that Webb's lending companies were not owned or controlled by the CRST, nor could they be. As stated in the 2006 memorandum Callaway's associate prepared, the "potential Tribal partners [i.e., Butch Webb and his entities] have made clear that they are individuals and that this [lending] activity would not be specifically sanctioned by the tribe, and that it is not desirable to approach the Tribe and ask for an enabling law or resolution."

170. Nevertheless, Katten and Callaway intentionally mischaracterized Webb and Western Sky to Plaintiffs, to their investors, and to others, and misstated the controlling law, thereby causing Plaintiffs in reliance on those representations to enter into the Assignment Agreement and the Service Agreement with Western Sky, to take on hundreds of millions of dollars in debt for the Western Sky program, and to acquire approximately $870 million in consumer loans from Western Sky.

171. In retaining Katten and Callaway to advise on and prepare the transactional documents to fund the Western Sky lending program, Baren informed Callaway by email and orally in August 2009 that CashCall would proceed with the program only if it was "blessed" by regulatory counsel (*i.e.*, Katten and Callaway) and supported by a legal opinion confirming that the loans and their assignment to CashCall would be enforceable and lawful. Katten and Callaway agreed to render these legal services requested by CashCall, but failed to perform them with due care and instead issued intentionally false and misleading opinion letters.

172. Throughout the period in which Plaintiffs were represented by Defendants, Plaintiffs depended on Katten, as a major law firm with claimed expertise in the matters for which it was retained, to perform in the manner and with the care generally and reasonably expected of a major law firm, including attention to detail in its analysis, opinions, and work product. Instead, despite the importance of the lending structure and the applicability of tribal law to the consumer loan contracts that would be written by Western Sky and assigned to Plaintiffs, Katten and Callaway treated the critical facts and the issue of tribal immunity cavalierly.

173. On September 11, 2009, Callaway provided Baren with a draft opinion letter stating that "WESTERN SKY was organized by the CRSN [Cheyenne River Sioux Nation] to engage in the business of lending for the benefit of the CRSN. One or more CRSN tribal officers is an owner or director of WESTERN SKY, and the CRSN has the ability to remove directors." None of this was true, and Katten and Callaway should have known it was not true. Baren pointed out this error to Callaway at the time.

174. On November 4, 2009, Callaway provided Baren with another draft opinion letter stating that "WESTERN SKY was organized under the laws of the CRSN to engage in the business of lending." This was not true, and Katten and Callaway knew at the time that that it was not true. Western Sky was organized as a limited liability company under the laws of the South Dakota, and merely held a license to do business on the Cheyenne River Sioux Indian Reservation. (In an email dated March 9, 2010, Callaway told Baren that Bogue had stated in September 2009 (prior to the November 4, 2009, draft) that the tribe "did not yet have a mechanism" for companies to organize under tribal law.)

175. The November 4, 2009, draft opinion letter went on to state that Western Sky "is owned exclusively by Butch Webb, and [*sic*] an enrolled CRSN member. All of its offices, officers and employees are located on CRSN tribal lands, and it has no physical or other presence off of the CRSN reservation."

176. On December 10, 2009, Callaway provided Baren with another draft opinion letter removing the reference to "the laws of the CRSN," stating instead that "WESTERN SKY was organized to engage in the business of lending."

177. Katten and Callaway's incompetence is cast in stark relief by Callaway's March 9, 2010, email to Baren, about a month after Plaintiffs had begun purchasing Western Sky loans. In response to an inquiry about whether Western Sky was subject to tribal immunity, Callaway told Baren that Western Sky, by incorporating under CRST law (a legal status that did not exist), "would remove 'arm-of-the-tribe' questions." But Katten and Callaway knew, or should have known, that an entity is protected by tribal sovereign immunity as an "arm of the tribe" only if the entity is owned or controlled by the tribe itself, was created for and operates for the benefit of the tribe or serves a tribal function, or can bind the tribe or endanger the tribe's assets. Merely incorporating an enterprise owned and controlled by an individual, even if a member of a tribe, does not make that enterprise an "arm of the tribe" any more than incorporating under the laws of California makes an entity an arm of the State.

178. The false premise that Katten and Callaway advanced in 2009 and 2010, that Western Sky's mere presence on the Cheyenne River Sioux Indian Reservation and Western Sky's ownership by a tribal member protected it as an "arm of the tribe," infected Defendants' representations to Plaintiffs and to Plaintiffs' investors. Katten and Callaway disregarded the possibility that the loans, because of the lending structure, might be found by the courts to violate usury and other laws from the moment of their initiation. The adoption of this false premise demonstrated Katten and Callaway's lack of professional care for the quality and accuracy of their work and for their clients' interests. In an opinion letter addressed to Centurion Credit Resources LLC ("Centurion") dated April 12, 2010, Katten and Callaway stated that Western Sky was "owned exclusively by an enrolled [CRSN] member, and is registered with the tribe," but then went on to state: "[W]e have assumed, without any independent investigation or analysis[,] that [] WESTERN SKY is recognized as an Indian Tribe by the United States of America."

179. When Katten and Callaway squarely addressed the law of tribal sovereign immunity with CashCall, they assumed, again without any factual basis, that Western Sky was a tribal entity and had the rights of a Native American tribe. In a May 2010 draft opinion letter, Katten and Callaway stated that "WESTERN SKY was organized by the CRST to engage in the business of lending for the benefit of the CRST. One or more CRST tribal officers is an owner or director of WESTERN SKY, and the CRST has the ability to remove directors." This was completely false, as Katten and Callaway knew. Katten and Callaway then discussed the basics of the tribal immunity doctrine, without disclosing or analyzing the ample case law establishing the actual scope of the doctrine as applied to commercial entities, and concluded: "In light of the established case law, and based upon the assumptions and limitations set forth herein, we are of the opinion that, because WESTERN SKY is chartered by the CRST the Loan Agreements will not be subject to United States federal consumer protection law, or state law limiting interest rates."

180. Another May 2010 draft opinion letter described Western Sky differently, but also incorrectly: "Western Sky was created, and is licensed, by the CRST to engage in the business of lending." It went on to state that "CRST is recognized as an Indian tribe by the United States." This second May 2010 draft letter retained the same cursory, incompetent analysis of tribal sovereign immunity as the earlier letter, and concluded: "In light of the established case law, and based upon the assumptions and limitations set forth herein, we are of the opinion that, because WESTERN SKY is chartered by the CRST, and the Loan Agreements designate CRST law as the applicable law, the Loan Agreements will not be subject to United States federal consumer protection law, or state law limiting interest rates both before and after the Loan Agreements are assigned to CashCall."

181. Throughout, Katten and Callaway represented to Plaintiffs that Western Sky was an entity entitled to tribal immunity and adopted that premise in opining that Western Sky loans would not be subject to state and federal laws, and CashCall could then simply step into Western Sky's shoes. That the "true lender" risk was ignored was particularly egregious in light of

Callaway's prior handling of litigation involving "true lender" liability under the state-chartered bank programs.

182. On May 20, 2010, Callaway sent to Baren an email that stated, in its entirety:

> The analysis flows as follows: the loan transaction is subject to sovereign immunity, and the initial choice of tribal law is enforceable. Because an assignee stands in the shoes of the assignor, CashCall takes subject to all rights that the tribe has at the time the loan is made. Assignment does not invalidate choice of law.

183. On June 23, 2010, Katten and Callaway gave CashCall and Centurion, which provided funding to CashCall for the Western Sky lending program, an opinion letter signed by partner Virginia A. Davis and approved by Claudia Callaway, knowing that Centurion and Plaintiffs would reasonably rely on it. Notwithstanding Katten and Callaway's knowledge of the true facts, and notwithstanding Katten and Callaway's duty of care, which required them to provide competent legal counsel by researching the law and disclosing all material risks, Katten and Callaway stated the following:

a. That Western Sky is "a tribal company incorporated under the laws of the Cheyenne River Sioux Nation";

b. That "Western Sky and the Loan Agreements will be subject to tribal sovereign immunity";

c. That "the states set forth below will enforce the choice of CRST law set forth in the Loan Agreements";

d. That "upon assignment, CashCall, as assignee, will be entitled to sovereign immunity rights and choice of law rights held by Western Sky";

e. That "Western Sky was organized by the CRST to engage in the business of lending for the benefit of the CRST"; and

f. That "[o]ne or more CRST tribal officers is an owner or director of Western Sky, and the CRST has the ability to remove directors."

184. Katten and Callaway also failed to use due care in advising Plaintiffs and in researching, preparing, and distributing the June 23, 2010, letter by, among other things, failing to identify, disclose, and address:

a. The risk that CashCall might be determined to be the "true lender" in a consumer loan made and then assigned by Western Sky to CashCall and WS Funding pursuant to advance agreement;

b. The risk that tribal immunity did not extend to individual tribe members who engaged in lending to non-tribe members;

c. The risk that tribal jurisdiction did not extend to Western Sky borrowers who did not physically enter the Cheyenne River Sioux Indian Reservation;

d. The risk that courts would hold Western Sky loans were formed in the borrowers' states rather than on the Cheyenne River Sioux Indian Reservation;

e. The risk that courts would find states could regulate Western Sky lending activity because its extraterritorial, off-reservation negative impact on non-tribal consumers was greater than any benefit received by the CRST or its members;

f. The risk that CashCall would not succeed to the terms of the consumer loan agreements as an assignee of the Western Sky loans;

g. The risk that courts would deem the choice-of-law clause in the Western Sky loan agreements invalid;

h. The risk that courts would deem arbitration provisions in the Western Sky loan agreements to be unenforceable;

i. The risk that courts would find that the Western Sky loan agreements were unlawful, deceptive, or abusive; and

j. The risk that Western Sky loans might be subject to and violate CRST laws regulating interest rates.

185. Katten and Callaway proceeded in the June 23, 2010, letter to conclude and represent that, "In light of the established case law, and based upon the assumptions and limitations set forth herein, we are of the opinion that, because Western Sky is chartered by the

CRST, the Loan Agreements designate CRST law as the applicable law, and there is no express waiver of sovereign immunity in the Loan Agreements, the Loan Agreements will not be subject to United States federal consumer protection law or state law limiting interest rates."

186. On November 16, 2010, Katten and Callaway issued another formal opinion letter, this time addressed to Bayberry Consumer Finance Fund, LLC ("Bayberry"), which also provided funding to CashCall for the Western Sky lending program, knowing that Bayberry and Plaintiffs would reasonably rely on it. Notwithstanding Katten and Callaway's knowledge of the true facts, and notwithstanding Katten and Callaway's duty of care, which required them to provide competent legal counsel by researching the law and disclosing all material risks, Katten and Callaway stated the following:

a. That Western Sky is "a tribal company incorporated under the laws of the Cheyenne River Sioux Nation";

b. That "Western Sky and the Loan Agreements will be subject to tribal sovereign immunity";

c. That "the states set forth below will enforce the choice of CRST law set forth in the Loan Agreements";

d. That "upon assignment, CashCall, as assignee, will be entitled to sovereign immunity rights and choice of law rights held by Western Sky";

e. That "Western Sky was organized by the CRST to engage in the business of lending for the benefit of the CRST"; and

f. That "[o]ne or more CRST tribal officers is an owner or director of Western Sky, and the CRST has the ability to remove directors."

187. Katten and Callaway also failed to use due care in advising Plaintiffs and in researching, preparing, and distributing the November 16, 2010 letter by, among other things, failing to identify, disclose, and address:

a. The risk that CashCall might be determined to be the "true lender" in a consumer loan made and then assigned by Western Sky to CashCall and WS Funding pursuant to advance agreement;

b. The risk that tribal immunity did not extend to individual tribe members who engaged in lending to non-tribe members;

c. The risk that tribal jurisdiction did not extend to Western Sky borrowers who did not physically enter the Cheyenne River Sioux Indian Reservation;

d. The risk that courts would hold Western Sky loans were formed in the borrowers' states rather than on the Cheyenne River Sioux Indian Reservation;

e. The risk that courts would find states could regulate Western Sky lending activity because its extraterritorial, off-reservation negative impact on non-tribal consumers was greater than any benefit received by the CRST or its members;

f. The risk that CashCall would not succeed to the terms of the consumer loan agreements as an assignee of the Western Sky loans;

g. The risk that courts would deem the choice-of-law clause in the Western Sky loan agreements invalid;

h. The risk that courts would deem arbitration provisions in the Western Sky loan agreements to be unenforceable;

i. The risk that courts would find that the Western Sky loan agreements were unlawful, deceptive, or abusive; and

j. The risk that Western Sky loans might be subject to and violate CRST laws regulating interest rates.

188. Katten and Callaway again concluded: "In light of the established case law, and based upon the assumptions and limitations set forth herein, we are of the opinion that, because Western Sky is chartered by the CRST, the Loan Agreements designate CRST law as the applicable law, and there is no express waiver of sovereign immunity in the Loan Agreements, the Loan Agreements will not be subject to United States federal consumer protection law or state law limiting interest rates."

189. Katten and Callaway insisted that the Tribal Member Model, including its implementation with a tribal member rather than a tribal entity, was sound even as the model came under serious legal challenge by the states and drew attention from the media. Katten and Callaway's insistence that the Tribal Member Model was sound directly conflicted with the (accurate) legal advice Callaway provided to her other client that the Tribal Member Model was not sound and that it would subject its participants to state and federal scrutiny and potential litigation.

190. In March 2011, Katten and Callaway prepared and provided to CashCall a "white paper" regarding consumer loans made on tribal lands to non-tribal consumers. The white paper concluded that tribal law, not state law, would govern loans made on tribal lands. The white paper also asserted that tribal immunity applied to businesses owned by tribe members, and was not limited to tribes or entities controlled by tribes. It also concluded that non-tribal assignees of tribal lending contracts "stand in the shoes" of the Tribal Member Lender and possess all of that lender's rights and obligations.

191. Plaintiffs and their investors relied on the white paper, which reinforced Defendants' previous statements and opinions that the Western Sky loan program was legal and would accomplish the intended goal of allowing CashCall to become the assignee of the Western Sky loans without violating federal or state licensing or lending laws.

192. In fact, the analysis of the law, on which CashCall and its investors relied, failed to account for the realities of the Western Sky lending program, of which Defendants had knowledge. As with Defendants' prior advice to Plaintiffs and their opinion letters, the white paper failed to identify, disclose or address:

a. The risk that CashCall might be determined to be the "true lender" in a consumer loan made and then assigned by Western Sky to CashCall and WS Funding pursuant to advance agreement;

b. The risk that a court would find tribal immunity did not extend to individual tribe members who engaged in lending to non-tribe members;

c. The risk that tribal jurisdiction did not extend to Western Sky borrowers who did not physically enter the Cheyenne River Sioux Indian Reservation;

d. The risk that courts would hold Western Sky loans were formed in the borrowers' states rather than on the Cheyenne River Sioux Indian Reservation;

e. The risk that courts would find states could regulate Western Sky lending activity because its extraterritorial, off-reservation negative impact on non-tribal consumers was greater than any benefit received by the CRST or its members;

f. The risk that CashCall would not succeed to the terms of the consumer loan agreements as an assignee of the Western Sky loans;

g. The risk that courts would deem the choice-of-law clause in the Western Sky loan agreements invalid;

h. The risk that courts would deem arbitration provisions in the Western Sky loan agreements to be unenforceable;

i. The risk that courts would find that the Western Sky loan agreements were unlawful, deceptive, or abusive; and

j. The risk that Western Sky loans might be subject to and violate CRST laws regulating interest rates.

193. In reasonable reliance on Katten and Callaway's advice, opinion letters, and white paper, Plaintiffs took on hundreds of millions in debt from their investors.

h. <u>Katten and Callaway reassure Plaintiffs and their Investors.</u>

194. Continuing until 2013, Callaway and Katten vigorously defended the wisdom of the Tribal Member Model, and reassured Plaintiffs and Plaintiffs' investors that the program was lawful and the loans written by Western Sky and assigned to Plaintiffs were valid and enforceable by their terms.

195. When the State of Washington brought an enforcement action in August 2011 against CashCall alleging violations of Washington law over CashCall's collection of Western Sky loans, Callaway insisted to Baren that the case was an anomaly, and resulted from CashCall's possession of a Washington state mortgage license. This was incorrect: The Washington state action was just the first of an avalanche of enforcement actions and civil lawsuits filed throughout the country against Plaintiffs relating to Western Sky loans.

196. Despite the legal challenges, Katten and Callaway consistently advised and encouraged Plaintiffs and their sources of financing to continue with the Western Sky program. For example, on April 28, 2011, Callaway met with representatives of various hedge funds and tribal lenders, during which she described and promoted the Tribal Member Model. At the conclusion of the meeting, Ben Radinsky ("Radinsky"), a principal of Bayberry, one of CashCall's investors, asked Callaway why she had focused during the meeting on the form of the Tribal Member Model involving entities owned or controlled by tribes, rather than the use of a lender owned by a tribal member. Callaway responded that all of her clients in attendance were "arm of the tribe" lenders, and she was trying to solicit funds for them. Radinsky asked whether she thought that use of an "arm of the tribe" lender was better than use of a tribal member, as with Western Sky. Callaway responded that "both models work" and that she believed that use of an entity such as Western Sky had "significant advantages over the arm-of-the-tribe model," including the fact that Webb could be trusted, and she could not say the same about some of the tribes. She also said that "as long as Butch is an enrolled member working on the reservation, the model is as good or better than the arm-of-the-tribe model." Callaway explained that CashCall was better off with the tribal member model because CashCall was entitled to the same jurisdictional arguments under that model as the arm-of-the-tribe model, and that it was possible to make a sovereign immunity argument for the tribal member model as well. Radinsky later recounted this conversation to Baren.

197. Also, before closing a $35 million Bayberry facility with CashCall in March 2012, Radinsky called Callaway to discuss the Tribal Member Model and challenges being raised by some states. Callaway told Radinsky that the model was sound and the states did not

have jurisdiction over the loans. Radinsky shared this conversation with Baren, and continued to provide financing to CashCall for the Western Sky program.

198. Similarly, in May 2012, Callaway told Luke Myers and John Katzenmeyer of UBS, during a conference call in which Baren participated, that the Western Sky lending program was very sound, that Western Sky enjoyed tribal immunity from state regulation, and CashCall, as assignee, could enforce the loans it purchased from Western Sky. Callaway encouraged UBS to provide financing to CashCall to purchase Western Sky loans.

199. On May 21, 2012, Callaway spoke on a panel, which Baren attended, at a conference of attorneys general in Washington D.C. Callaway strongly defended both the "arm-of-the-tribe" and tribal member lending programs, stating that states do not have jurisdiction over the loans under both forms of the tribal model (*i.e.,* arm of the tribe or Tribal Member Model).

200. The next day, Callaway sent a legal memorandum to CashCall's local Kansas counsel and to Baren, explaining in detail the tribal member immunity model and concluding once again that individual tribe members operating on the reservation enjoyed the same immunity from state lending regulation as did tribes themselves.

201. Also, when CashCall acquired financing from GA Capital in June 2012, Callaway prepared an opinion for the closing and obtained a certificate for Western Sky to execute, that Conley had prepared. The certificate and opinion both clearly stated that CashCall handled all solicitation and took Western Sky loan applications from consumers. The opinion stated that Western Sky was owned solely by a member of the CRST and was licensed by the CRST to engage in the business of lending.

202. In August 2012, Callaway held a regulatory call with BasePoint, as part of another financing transaction. On the call, Callaway once again advised on the legal soundness of the Western Sky program and told the principals and the attorney at BasePoint that state actions challenging the Tribal Member Model would fail.

203. As CashCall prepared in January 2013 to close a new $70 million facility with Bayberry, Callaway again held a call with the Bayberry principals to discuss the Tribal Member

Model and legal challenges that had been made. Callaway said the Tribal Member Model worked, with no reservations, and encouraged Bayberry to close the facility.

204. What Callaway did not disclose to Plaintiffs, Baren, or the Bayberry principals was that also in January 2013, Callaway had directed her associate to research CRST law to determine whether the Western Sky loans were legal under the tribe's own laws.

205. After less than three hours of research, Callaway's associate concluded that the CRST had a *criminal* usury statute prohibiting loans that carry interest rates over 18 percent, and that the CRST's adoption of the Uniform Commercial Code did not affect the enforceability of this criminal usury prohibition.

206. Despite knowing that the Western Sky loans exceeded 18 percent interest and violated CRST law, Callaway and Katten still issued an opinion letter later that month in connection with the Bayberry financing. In that opinion letter, Defendants included as one of their assumptions that:

> (c) the Loans are lawful and valid when made under the laws of the CRST;

207. Defendants knew based on the research done by Callaway's associate earlier that month that this assumption was false. Yet, despite learning that the Western Sky loans were invalid under CRST law, Callaway and Katten still issued an opinion letter to Bayberry claiming the loans were legal.

208. In issuing the opinion letter and continuing to advise Plaintiffs and third-party investors that the Western Sky loans were legal under CRST law, Callaway and Katten knowingly exposed their clients to potential criminal liability.

209. Had Defendants not misrepresented the validity of the Western Sky loans under CRST law, Plaintiffs would not have proceeded with the financing. On information and belief, Plaintiffs allege that if Defendants had disclosed to Bayberry that the loans were not valid under CRST law, Bayberry would not have proceeded with the financing.

210. In January 2013, Defendants were representing both Plaintiffs and Webb and his entities, including Western Sky. Upon discovering the Western Sky loans violated CRST law, a

potential conflict existed between Western Sky and Plaintiffs. While it was in the interests of Webb and Western Sky to continue to make loans that would be sold at a profit to CashCall, it was not in CashCall's interest to buy loans that violated even CRST law. Katten and Callaway did not disclose to CashCall the research they had performed. Instead, they elevated the interests of Webb and Western Sky over those of CashCall. Nor did they obtain informed written consent to allow them to continue representing CashCall and Western Sky simultaneously despite the existence of the conflict.

i. Katten and Callaway abandon CashCall, disavow the Tribal Member Model, and sabotage CashCall and Reddam's Legal Defenses.

211. On March 6, 2013, Callaway and two other Katten lawyers met with Reddam and Baren at CashCall's headquarters in Orange County. Reddam and Baren were worried; they sought assurances from their trusted attorneys as to Katten and Callaway's prior legal advice about the Tribal Member Model, given the growing onslaught of regulatory investigations and litigation against Plaintiffs.

212. At the Meeting, Callaway reassured Reddam and Baren that she and Katten still believed the Tribal Member Model remained legally sound, and blamed the situation on a shift in "public opinion."

213. Plaintiffs continued to rely on Callaway and Katten's assessment that the Tribal Member Model was legally proper. But in an abundance of caution, faced with escalating lawsuits and regulatory actions Plaintiffs reduced their purchases of Western Sky loans, and ultimately stopped the purchases altogether in September 2013.

214. After the March 2013 meeting, Katten and Callaway continued to advise Plaintiffs and others that the Tribal Member Model was legally proper. Katten and Callaway continued to advocate the validity of the Tribal Member Model in discussions and communications with CashCall, CashCall's investors, regulators, and in court.

215. But Plaintiffs, in approximately April 2013, decided to retain a non-Katten attorney, David Wiechert, for advice on the litigation and regulatory actions arising from Plaintiffs' participation in the Tribal Member Model.

216. In June 2013, Plaintiffs received notice that the New York Attorney General's office intended to file a lawsuit against Plaintiffs based upon Plaintiffs' alleged violations of New York State's usury and licensing laws in connection with Plaintiffs' participation in the Tribal Member Model.

217. According to Callaway's deposition testimony, in late July 2013, to begin preparing a defense to the impending lawsuit, Wiechert visited Callaway at Katten's offices in Washington, D.C., and informed Callaway that Plaintiffs intended to assert an "advice of counsel defense" to the New York lawsuit. Callaway testified that she did not believe CashCall could assert such a defense. As a result of this conversation, Callaway stated that she felt "threatened" and discussed the meeting with Katten's then-general counsel, Ted Helwig.

218. In July 2013, Plaintiffs retained another national law firm, Jenner & Block, to represent them in the mounting regulatory investigations and litigation, including the expected action by the New York Attorney General.

219. On August 12, 2013, the New York State Attorney General filed its action against Plaintiffs, Webb, and Western Sky. The lawsuit was highly publicized, and was prominently covered by Reuters, the Wall Street Journal, the Los Angeles Times, and other media outlets.

220. On August 14, 2013, Wiechert informed Defendants that Plaintiffs did indeed intend to assert an "advice of counsel" defense in response to the lawsuit.

221. To assert an "advice of counsel" defense, Plaintiffs would submit evidence demonstrating they disclosed the pertinent facts to Defendants and followed Defendants' legal advice. In other words, Plaintiffs would disclose in public filings the advice they received from Katten and Callaway, including the correspondence and opinion letters containing the intentional misrepresentations and flawed advice (which was, at the time, unknown to Plaintiffs). To prepare their defense, Wiechert asked Callaway to provide documents that Plaintiffs could submit showing Defendants' legal advice and support for Plaintiffs' participation in the Tribal Member Model.

222. Upon receiving this email from Wiechert, Defendants knew the erroneous advice they had given Plaintiffs for the past four years would be subjected to exacting scrutiny in a

highly publicized case. Defendants knew or should have known that Plaintiffs' decision to assert an advice of counsel defense would be highly damaging to Defendants because it would publicize that Defendants' advice had subjected one of Katten's clients to a storm of litigation. Worse yet, Defendants knew they might be exposed as having provided advice and opinion letters that were—unbeknownst to Plaintiffs—intentionally deceptive and misleading, or at minimum, grossly negligent.

223. Faced with this possibility, two of the Katten associates who had worked extensively on Plaintiffs' matters had a short email exchange about the disastrous exposure Plaintiffs' advice of counsel defense could have to Defendants:

From: Dayal, Julian
Sent: Wednesday, August 14, 2013 5:36 PM
To: Black, John W.
Subject: Fwd: 8th cir case

Cannot rely on strained and erroneous statutory construction.

It's almost as if we have to argue our advice was so bad you would be crazy to assert reliance as a defense.

224. The second associate responded:

On Aug 14, 2013, at 5:37 PM, "Black, John W." <john.black@kattenlaw.com> wrote:

Well, that may be true, all things considered.

JOHN W. BLACK
Associate
Katten Muchin Rosenman LLP
2900 K Street NW, North Tower - Suite 200 / Washington, DC 20007-5118
p / (202) 625-3645 f / (202) 298-7570
john.black@kattenlaw.com / www.kattenlaw.com

225. And the first associate closed out the chain:

From: Dayal, Julian
Sent: Wednesday, August 14, 2013 4:48 PM
To: Black, John W.
Subject: Re: 8th cir case

I would say so.

On Aug 14, 2013, at 5:37 PM, "Black, John W." <john.black@kattenlaw.com> wrote:

226. Defendants recognized the calamitous damage Plaintiffs' advice of counsel defense would cause to their reputations. Given this looming specter, Defendants Katten, Callaway, and Callaway's associates engaged in an orchestrated effort to protect themselves, place their interests before their clients', and destroy Plaintiffs' ability to assert the advice of counsel defense.

227. By this point, if not earlier, according to the deposition testimony of Callaway's colleague, Katten and Callaway believed they were potentially adverse to CashCall.

228. Around this same period—August 14, 2013—Callaway had a discussion with one of her colleagues about Plaintiffs' plan to assert an advice of counsel defense. During that discussion, Callaway explained that Plaintiffs would not be able to assert an advice of counsel defense if Plaintiffs did not fully disclose facts to Callaway and Katten. During this same time period, Callaway also explained to her colleague that if CashCall misrepresented any facts to Defendants, it would be a defense to a possible malpractice claim against Katten by Plaintiffs.

229. On September 2, 2013, Callaway responded to Wiechert's request for documents demonstrating Defendants supported the Tribal Member Model and that Plaintiffs had followed Defendants' advice. Callaway provided Wiechert with a narrow and misleading selection of emails that, Plaintiffs allege on information and belief, she thought would dissuade Wiechert from pursuing the advice of counsel defense.

230. Wiechert persisted. In an email that night at 11:03 pm, Wiechert asked Callaway: "[p]lease see if you have any communications, around the time that you introduced CashCall to Butch [Webb], and thereafter when Western Sky commenced lending, regarding the soundness, or lack thereof, of a tribal member model."

231. The next day, September 3, 2013, Callaway had a series of communications with Katten's general counsel. The exact substance of those communications is unknown to Plaintiffs, but involved potential claims by CashCall against Defendants.

232. After the communications with Katten's general counsel, Callaway responded to Wiechert's request, falsely asserting that she and Katten had never supported or endorsed the Western Sky lending program. Callaway also claimed the documents she had selected and sent

the previous day expressed Defendants' "lack of confidence in the model, our concern that the model would not withstand scrutiny, and our recommendation that it be changed."

233. Merely disclaiming their prior legal advice was not sufficient for Defendants. It was well-documented in emails, opinion letters, and oral representations to Plaintiffs and innumerable third parties that Defendants had advised repeatedly and consistently that the Tribal Member Model was legally sound. To protect themselves and eliminate Plaintiffs' advice of counsel defense, Callaway and Katten needed to claim that Plaintiffs misrepresented the facts to Katten as well.

234. On September 12, 2013, Plaintiffs' new counsel, Webb, a Western Sky representative, and Bogue participated in a teleconference. Defendants also participated, as Plaintiffs' current counsel and the counsel having the most familiarity with the Tribal Member Model. But Defendants did not disclose on the call that Defendants were adverse to Plaintiffs at the time of the call, and that they were using their status as Plaintiffs' trusted counsel to manufacture a false story that they would then use to block Plaintiffs from asserting an advice of counsel defense.

235. During this teleconference, the Western Sky representative explained for Plaintiffs' new counsel how the loan application and approval process worked. The loan application and approval process explanation matched what Plaintiffs, Western Sky, and Bogue had told Defendants previously.

236. In the days after this teleconference, Callaway and her associates corresponded with Katten's general counsel. Again, the exact substance of those communications is unknown to Plaintiffs, but, as one of Callaway's colleagues admitted while being deposed, the communications involved potential claims by CashCall against Defendants.

237. On September 16, 2013, Callaway sent two emails a minute apart, one to Cheryl Bogue and Butch Webb, and the other to Baren and Wiechert.

238. Callaway's emails executed the strategy she had discussed with her colleague a month earlier (and well before the September 12th call where they purportedly learned the "new facts"). The language of the emails was slightly different, but the substance was the same:

Callaway claimed that she and Katten had learned new information on the September 12th call regarding how the Western Sky loans were processed. She claimed that information conflicted with what they were told previously. This was all false. It was part of a carefully orchestrated scheme to protect Callaway's and Katten's reputations at the expense of their clients' interests.

239. From the very beginning of the Western Sky program more than four years earlier, Katten and Callaway had a complete understanding of the Western Sky lending program, as shown by their draft opinion letters and their communications with Plaintiffs, with Plaintiffs' investors, and with others. Katten and Callaway were intimately familiar with the agreements between Western Sky and Plaintiffs and the implementation of the Western Sky lending program; Callaway reviewed, edited, and opined on the underlying agreements between CashCall and Western Sky, and the language of certain portions of the Western Sky loan agreements. Katten and Callaway also understood all details of the program during the course of their representation of Plaintiffs in regulatory proceedings and civil litigation.

240. Katten and Callaway knew all of the relevant facts and failed to use the honesty, skill, and care that a reasonably careful attorney would have used in forming advice about the Western Sky loan program, given those facts: that CashCall took phone calls from loan applicants; that CashCall provided funding through a reserve bank account that enabled Western Sky to fund the consumer loans after they were approved; that consumer loans written by Western Sky were invariably assigned to Plaintiffs by agreement, before any payments became due; that CashCall reimbursed Western Sky for many of its expenses; and that CashCall indemnified Western Sky. Katten and Callaway refused to acknowledge that they had failed to identify, disclose, and provide an accurate, competent assessment of the Western Sky program and its implementation in light of these facts, which they were fully aware of from the outset and throughout the life of the program.

241. Instead, as part of their effort to destroy any potential advice of counsel defense, in the September 16th email to Baren and Wiechert, Callaway took it a step further. Callaway falsely claimed that in light of the "new" information from the September 12th call, Plaintiffs needed to revise factual assertions made in regulatory and litigation proceedings.

242. Tellingly, Callaway's associate later admitted not hearing anything about CashCall failing to disclose facts until *after* CashCall indicated it would assert an advice of counsel defense.

243. Faced with these acts of abandonment and disloyalty by trusted counsel, Plaintiffs terminated Callaway's representation on September 17, 2013, and Katten's representation at the end of September 2013.

244. This was still not enough for Defendants. To further protect themselves and foreclose Plaintiffs' ability to assert an advice of counsel defense, Defendants transmitted a memorandum to Plaintiffs' *new* counsel falsely claiming that documents *Defendants had prepared* (with full knowledge of the facts) contained incorrect facts that required correction.

245. Callaway's colleague admitted that the emails from Callaway and others at Katten were prepared and sent because Plaintiffs' new counsel—the same counsel that was preparing to assert the advice of counsel defense—was coming into the case and would be examining Defendants' advice and the factual representations Plaintiffs made to Defendants.

246. But, by the time Defendants reversed course, Plaintiffs had already bought hundreds of millions of dollars in consumer loans in reliance on Katten's and Callaway's advice and other legal services, had undertaken hundreds of millions of dollars in indebtedness, and exposed themselves to possible civil liability, regulatory investigations, and enforcement actions.

247. By the time Defendants denied knowledge of facts of which they had been aware since the outset of the representation, Katten and Callaway had billed Plaintiffs more than $5 million for legal services, most of which related to the Western Sky lending program, including the legal opinions provided to Plaintiffs and their investors.

248. In sum, Defendants provided inaccurate, misleading legal advice to Plaintiffs and Plaintiffs' third-party investors knowing that if Plaintiffs followed the advice it would expose Plaintiffs to substantial litigation risk; Defendants fleeced Plaintiffs for more than $5 million in legal fees to provide that faulty legal advice and then to defend Plaintiffs when the model Defendants endorsed was challenged by regulators and private litigants; and when Plaintiffs tried to assert an appropriate defense—that they had relied on Defendants' advice—Defendants,

including numerous other Katten attorneys, engaged in a methodical, coordinated effort to deprive Plaintiffs of that defense so that Defendants' incompetent, dishonest advice would not be exposed.

249. When CashCall began to suffer the full consequences of following Defendants' advice, it was forced to lay off nearly 800 employees. Remarkably, two of the Katten attorneys who had represented Plaintiffs callously joked about the hundreds of CashCall employees who had lost their jobs: "Wow - - that fancy new website may not be working out for them":

From: [redacted]@kmz.com>
Sent: Thursday, October 24, 2013 4:43 PM
To: [redacted]@kattenlaw.com>
Subject: Re: CashCall

Wow -- that fancy new website may not be working out for them.

Sent from my iPhone

On Oct 24, 2013, at 4:40 PM, [redacted]@kattenlaw.com> wrote:

It's only this:

CashCall Inc., an Internet lender based in Anaheim, may lay off as many as 769 employees in Orange County, according to filings with the state.

The 10-year-old company, founded by horseracing enthusiast J. Paul Reddam, said in an Oct. 2 notice with the California Employment Development Department it may cut 486 positions by Dec. 1 at its Anaheim office and 283 in Orange. The layoffs would come across numerous divisions, including loan production, compliance, risk management and information technology.

[redacted]
Associate
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j. The State of New York and the federal Consumer Financial Protection Bureau sue Plaintiffs for using Katten and Callaway's Tribal Member Model.

250. In August 2013, the New York State Attorney General brought an enforcement action against Plaintiffs seeking penalties and restitution of all payments made by residents of New York State who had obtained consumer loans from Western Sky. The enforcement action was based upon Plaintiffs' alleged violations of New York State's usury and licensing laws. Numerous other states followed New York in the summer and fall of 2013, making substantively similar allegations in legal actions filed against Plaintiffs.

251. In December 2013, after 16 states had initiated actions against Plaintiffs alleging violation of state laws, the federal Consumer Financial Protection Bureau ("CFPB") filed a civil

action in U.S. District Court for the District of Massachusetts, which was subsequently transferred to the Central District of California, *Consumer Financial Protection Bureau v. CashCall, Inc.*, No. 2:15-cv-7522-JFW ("Federal Action"), naming as defendants CashCall, Reddam, WS Funding and Delbert Services Corp., and alleging violation of the Consumer Financial Protection Act of 2010 ("CFPA"), which prohibits "unfair, deceptive, or abusive" acts or practices. 12 U.S.C. § 5536(a)(1)(B).

252. The CFPB alleged in the Federal Action that the Western Sky loans were void or uncollectable *ab initio* under state laws where the borrowers lived, and attempts by Plaintiffs to collect on the loans pursuant to their terms were abusive, unfair and deceptive practices under the CFPA. The CFPB sought restitution of all interest and fees paid by borrowers, along with penalties and costs.

253. Plaintiffs filed a motion for summary judgment against the CFPB, contending that:

a. The CFPB's discovery responses showed it was predicating its claims under the CFPA on purported violations of state law, which is not permitted because Congress did not incorporate state law into the CFPA;

b. The Western Sky loans are not void, because the loan agreements compelled application of CRST law;

c. The CFPB's discovery responses made clear it was using the litigation to establish a federal usury limit, contravening the express language of the CFPA;

d. Plaintiffs' actions were not unfair, deceptive, or abusive given the disclosures in the Western Sky loan agreements and that a borrower could avoid harm by not proceeding with the loan;

e. Plaintiffs' actions were not unfair, deceptive, or abusive because the CFPB cannot allege a violation of the CFPA based on purported violations of state usury laws;

f. Plaintiffs' actions were not unfair, deceptive, or abusive because they reasonably believed the choice-of-law provisions in the Western Sky loan agreements were enforceable and governed by CRST law;

g. The CFPB was violating Plaintiffs' due process rights by seeking to penalize them for violations of the CFPA without fair notice of what constitutes "abusive" conduct;

h. Reddam could not be held personally liable because the CFPB could not establish corporate liability, or that Reddam had knowledge of, or was recklessly indifferent to, the alleged misrepresentations; and

i. The CFPB's underlying structure raised constitutional issues.

254. The CFPB also moved for partial summary judgment against Plaintiffs for violations of the CFPA, and to declare their tribal immunity defense unavailable as a matter of law. The CFPB contended that: (a) CashCall was the "true lender" of the Western Sky loans; (b) Plaintiffs could not enjoy tribal immunity because CRST law did not apply; (c) the choice-of-law clause in the Western Sky loans was invalid, making the loans subject to the various states' usury and licensing laws; (d) the Western Sky loans were invalid under the various states' laws; and (e) Reddam was personally liable for violating the CFPA.

255. On August 31, 2016, the District Court granted the CFPB's motion for partial summary judgment against Plaintiffs, and denied Plaintiffs' motion for summary judgment. The District Court found CashCall was the "true lender" for the Western Sky loans. As such, the Court concluded that the laws of the states where borrowers reside, rather than CRST law, governed the Western Sky loans. Further, the Court found that the Western Sky loans were void under the various states' usury and licensing laws. Lastly, the Court concluded that Reddam was individually liable under the CFPA.

256. In October 2017, the matter was tried to the District Court in a two-day bench trial. Because liability was resolved by the District Court's decision on the CFPB's motion for partial summary judgment, the only issues remaining for trial were the CFPB's requested

remedies of restitution in the amount of $235,597,529.74, a statutory penalty in the amount of $51,614,708, and a permanent injunction.

257. On January 19, 2018, the District Court issued its Findings of Fact and Conclusions of Law. In its ruling, the District Court denied the CFPB's request for $235 million in restitution because there was no evidence presented that CashCall or Reddam deliberately misled consumers. In declining to award restitution, the Court found restitution was not an appropriate remedy because the "evidence presented demonstrated that Baren and Reddam only agreed to participate in the Western Sky Loan Program after consulting with prominent legal counsel [*i.e.*, Callaway and Katten] and receiving advice that the structure of the Western Sky Loan Program was not unlawful."

258. The District Court further found that "Reddam and Baren relied on Callaway's advice when structuring the Western Sky Loan Program, which was virtually identical to the unchallenged Bank Lending Model, and that they continued to rely on her advice throughout the duration of the program. Notwithstanding the extensive cross-examination of Baren by the CFPB's counsel, Baren consistently and credibly defended the Western Sky Loan Program and CashCall's reliance on outside counsel in adopting the Tribal Lending Model."[4]

259. The only remedy provided to the CFPB was that the District Court impose the lowest level of statutory fines permissible, a "Tier One" penalty which, because of the extended duration of the tribal lending program (1,861 days), totaled $10,283,866. In support of its findings that a Tier One penalty was appropriate, the District Court noted that Reddam and Baren are "not regulatory experts," and, "[t]hus, the Court cannot conclude that [CashCall and Reddam] should have known that the structure of the Western Sky Loan Program would subject them to liability under the CFPA or that it was obvious they would be subject to such liability."

260. The District Court's Findings of Fact made clear that based on the advice Baren and Reddam received from Callaway, neither CashCall nor Reddam knowingly or recklessly violated the CFPA. The District Court also emphasized that Callaway never revoked the Katten

[4] The District Court also found "that even if the CFPB could have established that restitution is an appropriate remedy (which it did not), the CFPB did not show that the amount of restitution [sought] [wa]s appropriate."

opinions, even when the regulatory climate had dramatically shifted and regulators began to closely scrutinize the Tribal Member Model. Further, the District Court expressly found that Callaway did not change her original opinions that CashCall or Reddam would not be subject to relevant state and federal laws.

261. Finally, in the January 19 Order, the District Court denied the CFPB's request for an injunction. The CFPB case is currently on appeal before the United States Court of Appeals for the Ninth Circuit. The CFPB's arguments on appeal include challenges to the District Court decision not to order restitution, as well as the District Court's imposition of only the Tier One penalty.

262. Meanwhile, two circuits of the U.S. Court of Appeals have found that the arbitration provisions in the Western Sky loan agreements, which were edited and later revised by Katten and Callaway, were unenforceable. The Seventh Circuit held the original version of the provision providing only for CRST arbitration was a "sham from stem to stern" because the tribe did not have a proper forum for arbitration. *Jackson v. PayDay Fin., LLC*, 764 F.3d 765 (7th Cir. 2014). The revised version, which Callaway drafted and revised, allowing for private arbitration, was also rejected; the Fourth Circuit held that the provision was invalid because it represented a waiver of substantive federal civil rights. *Hayes v. Delbert Servs. Corp.*, 811 F.3d 666 (4th Cir. 2016).

k. <u>The undisclosed "True Lender" material risk.</u>

263. The Federal Action exposed a material risk of which Katten and Callaway were aware or would have known of through the exercise of reasonable care and should have been disclosed to Plaintiffs: That the predominant economic interest "true lender" test, if applied by the courts, would defeat the choice-of-law provision in the Western Sky loan agreements and make Plaintiffs subject to state licensing and usury laws, rather than tribal law.

264. The District Court held in the Federal Action that application of the choice-of-law principles of The Restatement (Second) of Conflict of Laws required the identification of the true parties to the loan agreement. The court held that it "should look to the substance, not the form, of the transaction to identify the true lender," and, in doing so, it should "consider the totality of

the circumstances and . . . examine[] which party or entity has the predominant economic interest in the transaction." The structure of the Western Sky lending program – of which Katten and Callaway were fully aware, developed, and approved – made CashCall the "true lender," the District Court held. "The key and most determinative factor is whether Western Sky placed its own money at risk at any time during the transactions, or whether the entire monetary burden and risk of the loan program was borne by CashCall."

265. The District Court held that because CashCall acquired all loans written by Western Sky before any payment by the borrower, per an advance agreement between CashCall and Western Sky, and because CashCall took on all risk of nonpayment and indemnified Western Sky, "CashCall, and not Western Sky, had the predominant interest in the loans and was the 'true lender' and real party in interest."

266. Given that CashCall was determined to be the "true lender" of the consumer loans at issue, the District Court also found that the CRST lacked a substantial relationship to the parties or the transactions. The District Court also held that applying CRST law would be contrary to a fundamental policy of the states where the borrowers resided, since the states had adopted usury and licensing laws. Since the loan agreements' choice of CRST law was invalid, the court held the law of the borrowers' home states controlled, and those laws made the Western Sky loans void or uncollectable in at least some of the states. The District Court held that this, in turn, made the loan agreements deceptive.

267. The "true lender" doctrine and the risk it posed for Plaintiffs should have been disclosed to Plaintiffs and addressed by Katten and Callaway before the launch of the Western Sky lending program. The doctrine and its possible application to the Western Sky lending program should have been disclosed and addressed in the opinion letters and white paper prepared by Katten and Callaway under their engagement by Plaintiffs, and when Katten and Callaway made representations about the program to Plaintiffs' investors.

268. With the exercise of reasonable care by Katten and Callaway, Plaintiffs would have been advised by their trusted counsel of the risks presented by the "true lender" doctrine,

allowing Plaintiffs to develop and implement a consumer lending program not vulnerable to challenge under that doctrine.

269. In addition to the CFPB suit, there are or have been approximately 20 state enforcement and private civil actions, including putative class actions, individual lawsuits, and arbitrations. These actions, and the damages resulting from them, are a direct result of Defendants' malpractice, breach of contract, fraud, and breach of fiduciary duty in their representations to Plaintiffs and in their failure to disclose material risks to Plaintiffs about the Western Sky lending program. Many of the actions named Reddam individually, personally exposing him to claims for millions of dollars in damages.

270. As a result of Plaintiffs' reliance on Defendant's deficient and misleading legal advice, Plaintiffs have paid over a hundred million dollars to resolve legal actions related to the use of Katten and Callaway's Tribal Member Model, and over fifty million in legal fees to defend those actions. At least three of those legal actions remain pending today.

I. <u>Defendants' fraudulent billing of CashCall in connection with the opinion letters.</u>

271. On August 4, 2017, Katten and Callaway filed their Answer to Plaintiffs' First Amended Complaint in this action (the "Answer").

272. In their Answer, Katten and Callaway allege, among other things, that Katten and Callaway completely relied upon Plaintiffs, and in particular Baren, for all factual information to support the assertions Katten was making in its various opinion letters (*see* Answer ¶109) and that Baren was directly and personally involved in the drafting and content of Katten's various opinion letters (*see* Answer ¶117). Callaway reiterated this reliance during her deposition, asserting that the facts she included in her opinion letters, though knowingly false, were provided by Baren.

273. Katten and Callaway further allege they relied heavily upon Bogue (apparently, with little to no investigation or analysis resulting from their own purported legal expertise or knowledge) as to legal opinions issued by Bogue on various important subjects, including but not limited to: (1) whether Western Sky loans were made by an entity duly and lawfully licensed to make such loans; (2) whether the documents evidencing or securing the loans complied with

applicable CRST requirements; (3) whether Western Sky was licensed by the CRST to make consumer loans from the reservation; (4) whether assignments of the loans by Western Sky to WS Funding were enforceable; and (5) whether under CRST law the rights of the original lender were assignable and could be enforced by the assignee (*see* Answer ¶¶105, 116). Katten and Callaway assert in their Answer that they deferred to and relied on Bogue's opinions without any original legal analysis or work, even though they knew Bogue did *not* represent Plaintiffs but instead represented only Webb and his interests. And whether they actually relied on Bogue's opinions, they misrepresented the substance of those opinions to Plaintiffs and third parties, claiming that Bogue opined that state and federal law would not apply to the Western Sky loans, even though she refused to offer that opinion.

274. Notwithstanding the foregoing factual and legal allegations from the Answer, various invoices from Katten and Callaway demonstrate that between 2009 and 2013 Katten and Callaway billed hundreds, if not thousands, of attorney hours to Plaintiffs to draft, revise, and finalize various opinion letters, with attendant legal and factual research by Katten. For example, in just one month in 2009, Callaway personally billed over 20 hours for researching and preparing opinion letters:

Date	Billing Entry	Hours
9/1/09	Review P.L. 280 and related materials for Opinion	3
9/04/09	Review sovereign nation materials for Opinion.	1.4
9/07/09	Draft Opinion.	1.5
9/08/09	Draft Opinion.	2
9/09/09	Revise opinion letter.	3.5
9/10/09	Revise opinion; review case law regarding same.	3.5
9/11/09	Revise opinion; telephone conference with D. Baren regarding same.	2.5
9/23/09	Telephone conference with D. Baren and C. Bogue; extensive review of case law.	2.5
9/28/09	Review and analyze multiple cases regarding tribal immunity doctrine.	2
9/29/09	Telephone conference with D. Baren regarding status; email correspondence with C. Bogue regarding questions; review case regarding tribal immunity.	0.8

275. Similarly, other Katten invoices over the four years between 2009 and 2013 reflect numerous additional billing entries related to researching and drafting the various opinion letters. For example, Katten attorneys, including Callaway, billed CashCall for the following tasks:

Date	Billing Entry	Hours
12/01/09	Telephone conference with D. Baren regarding opinion letter and other matters; review voicemail; review opinion letter.	0.6
12/8/09	Telephone conference with D. Baren regarding opinion letter; telephone conference with M. Conley regarding same; review cases regarding contractual choice of law.	1.8
12/9/09	Research choice of law and usury issues; draft and revise opinion letter; review closing documents; meet with M. Conley re: choice of law issues; telephone and email correspondence with M. Conley, [redacted], D. Baren and lender's counsel re: closing issues and documents; loan closing.	3.5
3/02/10	Review New Jersey and Massachusetts law regarding choice of law clauses; revise Opinion.	1.5
3/08/10	Review Colorado "tribal entity" case and P.L. 280 materials.	3
4/7/10	Revise Opinion Letter; telephone conference with V. Davis regarding review of same.	3
4/8/10	Conference with V. Davis regarding Opinion Letter; conference with [redacted] regarding assignment and choice of law.	5.5
4/9/10	Research state law regarding assignment of contracts and effect of same on enforcement of contractual choice of law provisions; prepare insert to opinion letter regarding same; emails and discussions with C. Callaway and [redacted] regarding same.	7
4/12/10	Revise and finalize opinion letter; multiple emails and telephone conference with R. Bourguignon and D. Baren regarding same.	4
5/7/10	Review case law regarding tribal sovereignty; revise opinion; email correspondence with D. Baren regarding same.	2.5

Date	Billing Entry	Hours
5/9/10	Review multiple cases regarding Indian Sovereign Immunity.[5]	2.7
10/20/10	Research regarding assignability, enforceability of contractual choice of law provisions and tribal immunity; revise opinion letter; discuss same with C. Callaway	6
10/20/10	Conference with [redacted] regarding opinion letter; email correspondence with D. Baren regarding same; review opinion letter vis-à-vis update.	1.5
10/21/10	Research regarding assignability, enforceability of contractual choice of law provisions and tribal immunity; revise opinion letter; discuss same with C. Callaway	4
10/22/10	Attend to opinion letter.	2.5
10/24/10	Review choice of law/assignment/tribal loan opinion letter and make revisions; distribute comments; telephone call to C. Callaway regarding opinion; review bogue opinion, loan agreement and other documents.	2
11/1/10	Email and telephone conference with V. Davis re: opinion changes; attend to same; email client team re: same.	2.5
11/16/10	Finalize Opinion Letter.	1.5
2/09/11	Review cases and factual materials; prepare "white paper" regarding tribal sovereignty.	2
2/16/11	Caselaw research regarding enforceability of choice of law provisions in allegedly illegal contracts.	0.6
6/23/11	Telephone conference and email correspondence with [redacted] regarding regulatory matters; attend to opinion letter.	3
6/27/11	Attend to Opinion letter.	1.2
6/30/11	Telephone conference with [redacted]; revise Opinion letter.	2.5

[5] Indeed, on May 9, 2010, Callaway sent an email to Baren reiterating the work she had been doing, stating: "I have done substantail [sic] research on the 'state/federal law doesn't apply to tribal TRANSACTIONS' issue. I need to discuss with my opinion reviewer before I send. There is good law on this. I will send the draft tomorrow."

Date	Billing Entry	Hours
9/06/11	Conference call regarding documentation and diligence; review and revise Second Amendment to [redacted] Purchase Agreement; further revise and distribute Amendment; review and comment on legal opinions and other closing documents; further revisions to Second Amendment.	5.3
9/09/11	Review and comment on draft opinion letter as reviewing partner; review communications with respect to prior opinion letter; communicate with E. Miron re same.	0.6
4/23/12	Attend to Opinion letter.	1
4/25/12	Review latest drafts of amendment documents and provide comments to lender's counsel; finalise Katten general opinion and exhibits; draft Katten choice of law bringdown [sic] opinion; finalize amendment documents; draft true sale opinion re CashCall loans sold to SPE; coordinate closing deliveries.	6.7
6/06/12	Correspondence regarding legal opinion and closing documents; follow-up with Claudia Callaway regarding changes to legal opinion; revise certificate from Western Sky; revise legal opinion; email to D. Baren regarding opinion issues concerning Western Sky.	5.4
8/28/12	Telephone conference with M. Conley re: choice of law opinion; conference with [redacted] re: case review; review correspondence from M. Conley re: opinion.	1.8
9/5/12	Draft fact section in opinion letter regarding the application of choice of law provisions to certain states; research state law in each jurisdiction to confirm whether a given state would be likely to enforce a choice of law provision.	4.1
9/7/12	Research states where there is "bad law" regarding the application of a choice of law provision and determine if it is possible to get around the law in order to cement the application of choice of law provision.	3.5

Date	Billing Entry	Hours
12/27/12	Review and edit choice of law opinion letter; research individual state law regarding choice of law methodology and enforceability of choice of law provision; research state law regarding assignment of contracts.	5.8
1/15/13	Call to R. Bourguignon. Draft email re restructuring. Call to D. Baren. Circulate drafts of Bogue opinion and Choice of Law opinion. Attend to various details re closing certificates, legal opinions, etc.	3.7
1/30/13	Review, revise and comment on loan documents, legal opinions, and other documents. Call to C. Callaway re legal opinion. Review additional draft. Provide language to Bourguignon.	4.4

The quoted entries detailed above are only a small sampling of the countless entries Katten billed CashCall over four years for time purportedly spent in direct connection with Katten's drafting and finalizing various opinion letters and attendant legal and factual research.

276. Despite being paid millions of dollars in compensation for legal work Plaintiffs believed to have been performed by Katten and Callaway (although now known to have been done in a reckless and erroneous manner), Katten and Callaway now try to distance themselves from their previous legal advice. In doing so, they call into considerable question the veracity of the invoices sent to Plaintiffs. Katten and Callaway cannot "have it both ways."

277. To the extent that Katten's and Callaway's allegations asserted in their Answer are proven correct at trial, the invoices prepared by Katten and Callaway and paid by Plaintiffs for work supposedly performed by Katten and Callaway on the various opinion letters did not accurately reflect or describe the actual work performed by Katten and Callaway, and must be fraudulent.

278. Moreover, if Katten's and Callaway's allegations in the Answer and during Callaway's deposition—*i.e.,* that Callaway and Katten relied completely on Baren for all factual information and that Baren was personally involved in the content of Katten's opinion letters—are proven correct, those facts were never disclosed to Reddam. Reddam as an individual and as the CEO of CashCall was represented by Callaway and Katten, and was, according to Katten's

Answer, paying millions to Katten and Callaway just to follow the advice of *his own general counsel*. In short, neither Callaway nor any Katten representative ever told Reddam that Baren was the architect of the opinion letters or explained to Reddam why Katten and Callaway were charging him and his company millions of dollars to act as Baren's scriveners.

279. Plaintiffs reasonably relied on the invoices from Katten as being accurate, as they believed Katten and Callaway were performing the legal work for which they had been retained. Plaintiffs were damaged and harmed when they paid those fraudulent invoices in reasonable reliance on their accuracy and acted in accordance with the legal advice they had hired Katten and Callaway to perform (and thought they were receiving based on the invoices and other representations made by Defendants).

m. Defendants' unlawful conduct had a devasting impact on CashCall's entire business.

280. Defendants' unlawful conduct caused CashCall to participate in the Western Sky program, which led to a plethora of legal actions against CashCall by states, private plaintiffs, and the Consumer Financial Protection Bureau ("CFPB"). Those legal problems ultimately had a devasting impact on every aspect of CashCall's business. As a result of Defendants' unlawful conduct:

- CashCall suffered substantial financial losses—including over $100 million to resolve the legal actions and over $50 million in attorneys' fees to defend those actions—from its participation in the Western Sky program;
- CashCall's other unsecured consumer lending businesses—*e.g.*, its established and profitable business of unsecured consumer lending in California—suffered lost profits and lost business opportunities because of the damage to the company's brand, reputation, financial condition, and relationships from the legal problems associated with its participation in the Western Sky program; and
- CashCall's mortgage business—a rapidly growing, successful, and profitable business in 2012 as the economy continued to recover—lost profits and declined substantially in value because of CashCall's legal problems associated with the Western Sky program.

These damages to CashCall caused by Defendants' unlawful conduct began to accrue at the start of the Western Sky program in late 2009 (or early 2010) and continue to accrue today. Accordingly, prejudgment interest is necessary to fully compensate CashCall for the damages caused by Defendants. Given the extreme and prolonged nature of Defendants' conduct, CashCall

is also entitled to punitive damages.

(a) Defendants' unlawful conduct caused CashCall to suffer significant losses from its participation in the Western Sky Program.

281. Defendants' unlawful conduct caused CashCall to implement the Western Sky program at the end of 2009, to obtain numerous rounds of financing for the Western Sky program, and to continue the Western Sky program for approximately 3.5 years until September 2013. CashCall would not have participated in the Western Sky program had that program not been reviewed, approved, and "blessed" by Katten and Callaway, whom CashCall believed to be highly competent legal counsel with significant experience in the field of consumer lending laws. Furthermore, CashCall would not have obtained the financing necessary for its participation in the Western Sky program absent the opinion letters issued by Katten and Callaway. And CashCall would have ended its participation in the Western Sky program much earlier than September 2013, if Katten and Callaway had not persisted in their faulty legal advice despite the mounting number of legal actions, Katten's knowledge that other major law firms were unwilling to defend the Western Sky program, and Katten's apparent discovery and applicability of the CRST's usury laws.

282. As a result of Defendants' unlawful conduct and CashCall's participation in the Western Sky program, CashCall was the subject of numerous legal actions by state agencies and attorneys general; numerous legal actions, including class actions, by private plaintiffs; and, a legal action by the CFPB. As of today, those legal actions have been resolved except for the CFPB action that is on appeal, a class action case brought by private plaintiffs, and a recently filed action by the state of Arizona. To resolve those actions so far, by settlement or otherwise, CashCall has paid well over $100 million. CashCall also has paid approximately $10 million pursuant to the judgment entered by the federal district court in the CFPB action, a judgment that is currently on appeal. CashCall also paid over $50 million in attorneys' fees for its legal defenses in those actions. Those legal fees continue to accrue today.

283. The resolution of the legal actions against CashCall often required CashCall to modify outstanding Western Sky loans, to cancel outstanding Western Sky loans, or otherwise to

deem outstanding Western Sky loans paid back in full. CashCall therefore collected significantly less on the Western Sky loans than otherwise would have been expected.

284. CashCall's participation in the Western Sky program ultimately caused it to incur a net financial loss of millions of dollars on the operating aspects of the program—accounting for, among other things, financing costs, the costs to purchase loans from Western Sky, and the Western Sky operations costs paid for by CashCall—before taking into consideration the amounts paid by CashCall to resolve the legal actions and the associated attorneys' fees.

285. Furthermore, Katten's and Callaway's unlawful conduct and coverup in and around September 2013 precluded CashCall from effectively presenting an advice-of-counsel defense in many of the legal actions against CashCall related to the Western Sky program. If CashCall had been able to present that defense, it would have obtained a more favorable settlement, or other resolution, of many of those legal actions.

(b) Defendants' unlawful conduct caused CashCall's unsecured consumer lending business to suffer lost profits and lost business opportunities.

286. In addition to CashCall's financial losses from its participation in the Western Sky program, Defendants' unlawful conduct caused harm to CashCall in the form of lost profits and lost business opportunities for its unsecured consumer lending businesses.

287. Before its participation in the Western Sky program, CashCall originated unsecured consumer loans in California and a few other states (*e.g.*, Idaho, Nevada, New Mexico, and Utah). That was an established and profitable business. Although this business generally declined with overall economic conditions during the recession from 2007 through 2009, CashCall was well positioned to continue and to grow this business when economic conditions improved after 2009. CashCall was one of the leading innovators in the market for unsecured consumer installment loans; CashCall had an established, well recognized, and trusted brand; CashCall had an efficient and robust lending platform; and, CashCall was able to access the financing necessary to expand its unsecured consumer lending business.

288. CashCall's unsecured lending business in California, which it continued for the duration of the Western Sky program, grew profitably from 2010 until 2013. But CashCall's

participation in the Western Sky program—and the legal actions that arose from it—significantly damaged its brand, its reputation, its relationships, its overall financial condition, and its ability to continue to do business. Those negative effects caused a significant decline, in volume and profits, for CashCall's unsecured consumer lending business in California. This was particularly harmful because the market for unsecured consumer loans of the type CashCall offered has grown tremendously since 2010.

289. CashCall's origination of unsecured consumer loans in states other than California largely stopped from 2010 through about September 2013 as a result of its participation in the Western Sky program. Absent Defendants' unlawful conduct, CashCall would have continued and expanded its unsecured consumer lending business in states where it had, or could have obtained, the necessary licenses to offer its products. Those states include, but are not limited to: Alabama, Arizona, Florida, Idaho, Iowa, Kansas, Louisiana, Missouri, Nevada, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, Utah, and Wyoming.

290. When CashCall pulled out of the Western Sky program in September 2013, it tried to expand its unsecured consumer lending business through direct originations in states other than California, including states where it had operated before the Western Sky program. The legal problems and other negative effects associated with its participation in the Western Sky program, however, seriously impeded those efforts.

291. Given the unique and advantageous position CashCall had in the market for unsecured consumer lending in or around 2010, and the tremendous growth in that market since 2010, CashCall would have had a large and highly profitable unsecured consumer lending business but for Defendants' unlawful conduct. Defendants' unlawful conduct therefore caused CashCall's unsecured consumer lending business to lose a significant amount of profits from 2010 through the present, an amount of damages well into the hundreds of millions.

(c) Defendants' unlawful conduct caused substantial harm to CashCall's mortgage business.

292. CashCall started its mortgage business at the end of 2009. From the start, CashCall's mortgage business had many competitive advantages. Mr. Reddam had significant

experience in the mortgage industry before starting CashCall, including having started, built, and eventually sold a large mortgage company in the 1990s. CashCall had an established and well recognized brand. CashCall was obtained the financing necessary to build a substantial mortgage business. And CashCall, as a new entrant in the mortgage business, did not have the serious legacy problems from the mortgage crisis in 2007-2009 that plagued many banks and other mortgage originators.

293. CashCall's mortgage business grew rapidly. It originated approximately $1.5 billion in mortgages in 2010 and nearly $3 billion in 2011. In 2011, CashCall was approved to be a direct originator and servicer for Fannie Mae, a critical and extremely valuable relationship for a mortgage originator. In 2012, CashCall originated over $10 billion in mortgages and its mortgage business generated over $100 million in profits.

294. A leading investment bank retained by CashCall determined that the value of CashCall's mortgage business in October 2012 was between $850 million and $1.05 billion. At about the same time, CashCall entered negotiations to sell its mortgage business to NationStar. A letter of intent was signed in November 2012, NationStar conducted extensive due diligence, the parties filed Hart-Scott-Rodino notification forms with the federal government, and the parties negotiated a detailed purchase agreement through about the middle of December 2012. NationStar, however, abruptly called off the deal in late December 2012.

295. NationStar learned of a major, imminent legal action against CashCall related to its participation in the Western Sky program, and NationStar was unwilling to proceed with an acquisition of CashCall's mortgage business under those circumstances. At the time NationStar walked away from the deal, the major financial terms had largely been agreed upon. Those terms would have provided CashCall with a total estimated value (including upfront cash and a significant share of future earning) close to or within the valuation range set by CashCall's investment bankers.

296. Despite the fallout of the proposed deal with NationStar, CashCall's mortgage business continued to thrive in early 2013, until the mounting legal actions related to its participation in the Western Sky program caused significant damage to the mortgage business

and the entire company. CashCall received approval from Freddie Mac in early 2013 to be a direct originator and servicer of mortgages, another very valuable relationship for CashCall. Freddie Mac, however, terminated that relationship in August 2013 because of the legal actions against CashCall related to the Western Sky program. Freddie Mac's termination letter to CashCall explained:

> Freddie Mac has determined that subsequent to the February 6, 2013 approval of [CashCall] as a Seller/Servicer, [CashCall] has been subject to an increasing number of actions taken against it by State and regulatory agencies, including but not limited to the Temporary Cease and Desist Order issued by the State of Connecticut Department of Banking, Cease and Desist Orders issued by the Commonwealth of Massachusetts and the State of New Hampshire. The increasing number of actions coupled with those previously disclosed by [CashCall] in its application for eligibility is the bases for Freddie Mac's serious concern about [CashCall's] ability to perform the duties and responsibilities of a Freddie Mac Seller/Servicer in accordance with the *Guide*.

The legal actions referenced in Freddie Mac's letter all arose from CashCall's participation in the Western Sky program. Freddie Mac's termination included stripping CashCall of certain servicing rights, which alone were worth millions of dollars.

297. Fannie Mae expressed similar concerns with the increasing number of legal actions against CashCall, particularly following the announcement in August 2013 of the action by the New York Attorney General. Fannie Mae did not immediately terminate its relationship with CashCall, but CashCall had no realistic choice but to voluntarily suspend its business with Fannie Mae in September 2013 in order to avoid a formal termination. By the end of 2013 and early 2014, with the announcement of the CFPB action against CashCall, the relationship between Fannie Mae and CashCall was unsalvageable. CashCall voluntarily terminated the relationship in 2014, an attempt to reduce the long-term damage to the business from a formal termination by Fannie Mae. The combined loss of its relationships with Fannie Mae and Freddie Mac significantly damaged CashCall's mortgage business, in terms of its originations, revenues, and profits.

298. The legal actions related to Western Sky also caused numerous state agencies to revoke or suspend CashCall's state mortgage license, or to deny an application for such a license.

In addition, those legal actions have negatively impacted CashCall's brand and reputation—critical components of success in the mortgage and consumer lending businesses—as well as Mr. Reddam's reputation and the overall ability of CashCall and Mr. Reddam to operate in the mortgage and consumer lending businesses.

299. These adverse effects on CashCall's mortgage business as a result of Defendants' unlawful conduct were clearly foreseeable. Indeed, Katten and Callaway represented or advised CashCall as to numerous state actions and investigation where CashCall's mortgage license was in jeopardy because of legal issues related to its unsecured consumer lending business, including CashCall's prior utilization of the so-called "bank model" and its participation in the Western Sky program. It is widely known and expected in the financial industry—and certainly known by a large law firm like Katten and by an attorney like Callaway who promoted herself as an expert in consumer lending laws—that a company seeking to originate consumer loans or mortgages will have its entire history, all of its businesses, and its entire litigation record closely scrutinized by state regulators, federal agencies, entities like Fannie Mae and Freddie Mac, and entities that might consider providing capital to, or otherwise investing in, the company.

300. CashCall eventually sold its mortgage business in two pieces: certain rights to service mortgages held by Fannie Mae in late 2013, at a "fire sale" price given the extreme time pressure in light of the possibility Fannie Mae would revoke those rights; and the remainder of its mortgage business in early 2015. As a result of Defendants' unlawful conduct, the combined value received by CashCall for those two pieces (approximately $250 million) was substantially less than the value of the mortgage business in late 2012 and early 2013, substantially less than NationStar was offering at the end of 2012, and substantially less than CashCall's mortgage business would have been worth today but for Defendants' unlawful conduct. In sum, Defendants' unlawful conduct caused CashCall's mortgage business to generate significantly less in profits than it otherwise would have, in terms of the profits CashCall would have otherwise received from selling its mortgage business or the profits CashCall would have generated from the continuing operation of its mortgage business up to and including the present.

(d) The economic damages CashCall suffered as a result of Defendants' unlawful conduct include prejudgment interest.

301. The damages to CashCall caused by Defendants' unlawful conduct began to accrue at the start of CashCall's participation in the Western Sky program. Those damages have continued to accrue over the last ten years, at different times and in different forms, as explained above. To compensate CashCall for the full extent of damages caused by Defendants, prejudgment interest on those damages is required.

(e) CashCall is entitled to punitive damages.

302. Katten's and Callaway's unlawful conduct reflects oppression, fraud, and malice towards CashCall. Their unlawful conduct fell far below the standards for legal malpractice, including numerous instances of legal malpractice, grossly misleading statements, and intentional misrepresentations.

303. Katten's and Callaway's unlawful conduct, furthermore, extended over a prolonged period of time. Despite many opportunities over more than three years to revise their faulty legal advice and correct their misrepresentations, Katten and Callaway perpetuated, as long as they possibly could, their course of unlawful conduct. Katten and Callaway even advised Plaintiffs and third-party investors that the Western Sky loans were legal under CRST law despite Katten and Callaway's having concluded the loans violated the CRST's criminal usury statute. Shockingly, Callaway and Katten even knowingly exposed their clients to potential criminal liability.

304. When the deficiencies in their legal advice were finally about to be exposed, Katten and Callaway turned on their own client with lies and misrepresentations, causing even greater harm to CashCall.

305. CashCall accordingly is entitled to punitive damages.

FIRST CAUSE OF ACTION

LEGAL MALPRACTICE (Against All Defendants)

306. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 305, inclusive, as if fully set forth herein.

307. An attorney-client relationship existed between, on the one hand, Katten and Callaway, and on the other hand, among CashCall, Reddam, and WS Funding.

308. At all times that Defendants provided professional legal services to Plaintiffs, Defendants owed Plaintiffs a duty to use such skill, prudence, and diligence as is commonly possessed by other attorneys in performing the tasks they undertake on behalf of their clients. Defendants held themselves out as having special skills in consumer lending and consumer finance regulation and litigation. Defendants held themselves out as competent attorneys with knowledge of critical doctrines, statutes, regulations and controlling court decisions concerning choice of law, tribal law, the doctrine of sovereign immunity, and deceptive lending practices. Defendants knew with reasonable certainty that if Defendants failed to render their legal services to Plaintiffs in a manner befitting of a specialist in this field, or at least using ordinary skill, prudence, and diligence, that Plaintiffs would suffer injury.

309. Moreover, throughout the representation, Defendants owed duties of honesty and loyalty to Plaintiffs. The attorney-client relationship is built on trust and founded on the notion that attorneys cannot put their own interests ahead of the interests of their client.

310. Plaintiffs trusted Defendants. Had Defendants provided competent, non-negligent legal advice and disclosed all material risks, including those Callaway knew about for three years before recommending the Tribal Member Model to Plaintiffs, Plaintiffs would not have used the Tribal Member Model, would not have entered into the Agreements with Webb and Western Sky, would not have acquired consumer loans from Western Sky, and would not have taken on debt to finance the Western Sky lending program.

311. Defendants gave knowingly false, or, in the alternative, negligent legal advice to Plaintiffs recommending use of the Tribal Member Model, and they devised and endorsed the Western Sky lending program based on that bad advice, including the Agreements with Webb and Western Sky, the acquisition of consumer loans from Western Sky, and Plaintiffs' borrowing to finance the program. Defendants had full knowledge of the relevant facts at the time Defendants provided and maintained that advice.

312. In advising Plaintiffs, Defendants failed to identify, disclose, and address material risks, and made misstatements of fact and law. In providing legal advice and other legal services to Plaintiffs, including the preparation of formal opinion letters endorsing a lending model knowing it would fail, or in the alternative, without adequate investigation and analysis, and without an adequate basis in fact and law, Defendants failed to exercise the reasonable skill, care, and diligence required by legal professionals, and the skill, care and diligence expected of those attorneys who hold themselves out as having specialized knowledge in the field, and thereby breached their duties owed to Plaintiffs.

313. Defendants failed to exercise due care in representing to Plaintiffs that the loans made by Western Sky were valid when made, could be lawfully assigned by Western Sky to CashCall, and that CashCall would succeed to all rights under the loan agreements made by Western Sky.

314. Defendants failed to exercise due care in representing to Plaintiffs that loans made by Western Sky would be subject to tribal immunity (even though Western Sky was not an arm of the tribe) that the states where borrowers lived would enforce tribal law, and that Western Sky loans assigned to CashCall would "not be subject to United States federal consumer protection or state law limiting interest rates."

315. Defendants also failed to exercise due care in advising Plaintiffs by, among other things, failing to identify, disclose, and address:

a. The risk that CashCall might be determined to be the "true lender" in a consumer loan made and then assigned by Western Sky to CashCall and WS Funding pursuant to advance agreement;

b. The risk that tribal immunity did not extend to individual tribe members who engaged in lending to non-tribe members;

c. The risk that tribal jurisdiction did not extend to Western Sky borrowers who did not physically enter the Cheyenne River Sioux Indian Reservation;

d. The risk that courts would hold Western Sky loans were formed in the borrowers' states rather than on the Cheyenne River Sioux Indian Reservation;

e. The risk that courts would find states could regulate Western Sky lending activity because its extraterritorial, off-reservation negative impact on non-tribal consumers was greater than any benefit received by the CRST or its members;

f. The risk that CashCall would not succeed to the terms of the consumer loan agreements as an assignee of the Western Sky loans;

g. The risk that courts would deem the choice-of-law clause in the Western Sky loan agreements invalid;

h. The risk that courts would deem arbitration provisions in the Western Sky loan agreements to be unenforceable;

i. The risk that courts would find that the Western Sky loan agreements were unlawful, deceptive, or abusive; and

j. The risk that Western Sky loans might be subject to and violate CRST laws regulating interest rates.

316. Defendants also failed to use due care by relying on the opinion of Cheryl Bogue, an attorney representing Webb with no legal duty to Plaintiffs, and in failing to perform an independent, competent analysis of the facts and the law. Defendants' failure was particularly egregious given that Defendants had previously concluded in 2006 that Bogue relied on cases that were "inapposite" and did "not reflect the true state of the law" in analyzing the legality of loans issued under the Tribal Member Model.

317. Defendants also failed to use due care to Plaintiffs by knowingly misrepresenting the substance of Bogue's opinion, and in failing to perform an independent, competent analysis of Bogue's opinion.

318. Defendants also understood at the time they were made that the representations they made to Plaintiffs and their investors could directly cause Plaintiffs to incur hundreds-of-

millions of dollars in indebtedness, thereby placing at risk Plaintiffs entire direct lending business and other businesses.

319. Defendants knew at the time they rendered their advice and performed other legal services, including the preparation and issuance of their opinion letters, that Plaintiffs would reasonably rely on that advice and those services. Defendants knew at all relevant times that the foregoing representations and failures to disclose were material.

320. But for Defendants' acts of professional negligence, Plaintiffs would not have adopted the Tribal Member Model or entered into the Western Sky lending program.

321. As an actual and a proximate result of Defendants' malpractice, Plaintiffs have been damaged in an amount subject to proof at trial.

SECOND CAUSE OF ACTION

BREACH OF CONTRACT (Against All Defendants)

322. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 321, inclusive, as if fully set forth herein.

323. Defendants and CashCall, including (upon its creation) its subsidiary WS Funding, entered into a written contract in July 2009, under which Defendants were obligated to give CashCall and WS Funding competent legal advice. Reddam, the sole owner, chief executive officer and president of CashCall, was an intended beneficiary of that written contract.

324. Further, Defendants and Reddam entered into an implied contract in July 2009, under which Defendants, by their conduct, agreed to provide to Reddam competent legal advice. Defendants understood their advice would be relied upon by Reddam as sole owner, chief executive officer and president of CashCall and as an individual. In giving advice to Reddam, Defendants acted intentionally and with knowledge or reason to believe that Reddam would interpret Defendants' conduct as an agreement to enter into a contract.

325. Plaintiffs fully performed under the written and implied contracts.

326. Defendants breached the written and implied contracts by failing to render competent legal services to Plaintiffs.

327. As a proximate result of this breach, Plaintiffs have been damaged in an amount subject to proof at trial.

THIRD CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY (Against All Defendants)

328. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 327, inclusive, as if fully set forth herein.

329. Defendants, through the attorney-client relationship, had a fiduciary duty to render legal advice to Plaintiffs in an honest and competent manner and to stand by that advice. Defendants owed Plaintiffs an unwavering commitment to loyalty, candor, and full disclosure to Plaintiffs. Defendants were bound to act in the highest good faith and with the highest regard for Plaintiffs' best interests within the scope of the representation, placing Plaintiffs' interests above their own.

330. Defendants breached these duties to Plaintiffs. Throughout the representation, as alleged, Defendants failed to identify, disclose, and address material risks, and made intentional and/or negligent misstatements of fact and law. Defendants failed to exercise the reasonable skill, care, and diligence required by legal professionals, and the skill, care and diligence expected of those attorneys who hold themselves out as having specialized knowledge in the field, and thereby breached their duties owed to Plaintiffs.

331. Further, rather than vigorously defending the Tribal Member Model they designed, implemented, and advocated (or properly admitting and taking responsibility for the errors in their legal advice), Defendants abandoned Plaintiffs by falsely asserting they had been unaware of material facts and by disavowing their previous advocacy that Plaintiffs partner with Webb and their previous legal advice approving of the Western Sky lending program.

332. Given the trust and confidence Plaintiffs placed in Defendants, Defendants acted with malice and oppression when they disavowed their prior advice, falsely asserted they had been unaware of material facts, and abandoned Plaintiffs. Plaintiffs are therefore entitled to punitive damages to make an example of and punish Defendants.

333. Defendants' breaches of their duties of care and loyalty undermined Plaintiffs' defense of the regulatory actions and civil litigation and increased potential damages.

334. As an actual and proximate result of Defendants' abandonment of Plaintiffs, which constituted a breach of fiduciary duty, Plaintiffs have been damaged in an amount subject to proof at trial.

FOURTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY (Against All Defendants)

335. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 334, inclusive, as if fully set forth herein.

336. Defendants, through the attorney-client relationship, had a fiduciary duty to render legal advice to Plaintiffs in an honest and competent manner and to stand by that advice. Defendants owed Plaintiffs an unwavering commitment to loyalty, candor, and full disclosure to Plaintiffs. Defendants were bound to act in the highest good faith and with the highest regard for Plaintiffs' best interests within the scope of the representation, placing Plaintiffs' interests above their own.

337. Defendants breached these duties to Plaintiffs. In January 2013, after less than three hours of research, a Katten associate working under Callaway determined the CRST had a statute prohibiting loans that carry interest rates over 18 percent. Defendants did not advise Plaintiffs of this conclusion.

338. Instead, despite knowing that the Western Sky loans exceeded 18 percent interest and that CRST law prohibited such loans, Defendants issued an opinion letter later that month that assumed the Western Sky loans were valid under CRST law. Defendants knew based on the research done by Callaway's associate earlier that month that this assumption was false.

339. In March 2013, Defendants facilitated an additional loan by CashCall for the purchase of Western Sky loans after assuring both the investor and Plaintiffs that nothing had occurred to call into question the Defendants' prior opinions that courts should enforce the choice of law provision contained in the Western Sky consumer loan agreements. In fact, Defendants knew the same Katten associate had determined that because the Cheyenne River

Sioux Tribe prohibited loans carrying an interest rate in excess of 18 percent, courts might find that the choice of law provision posed no obstacle to applying the law of any state with a similar usury prohibition.

340. Defendants intentionally withheld the results of Callaway's associate's research into CRST usury law from Plaintiffs. Plaintiffs are informed and believe, and on that basis allege, that Defendants withheld the research results to conceal the deficiencies in the advice Defendants previously provided to Plaintiffs, and to continue billing Plaintiffs for legal services performed in connection with the Western Sky lending program and the associated third-party financings.

341. Had Defendants complied with their fiduciary obligations, informed Plaintiffs of the research into CRST usury law, and not misrepresented the validity of the Western Sky loans under CRST law, Plaintiffs would not have proceeded with any additional financings.

342. Moreover, in January 2013, Defendants were representing both Plaintiffs and Webb and his entities, including Western Sky. Upon discovering that the Western Sky loans did not comply with CRST law, a potential conflict existed between Western Sky and Plaintiffs. Defendants did not disclose this potential conflict, or the results of their research, to Plaintiffs. Instead, Defendants concealed the research and resulting conflict from Plaintiffs and continued representing both sets of parties.

343. By placing their own interests and the interests of at least one other client ahead of Plaintiffs', Defendants breached their duty of loyalty to Plaintiffs.

344. Given the trust and confidence Plaintiffs placed in Defendants, Defendants acted with malice and oppression when they concealed the results of their research into the CRST's usury prohibition in order to advance their own interests and those of another client at the expense of Plaintiffs.

345. Defendants' breaches of their duties of care and loyalty exposed Plaintiffs to additional liability and indebtedness.

346. As an actual and proximate result of Defendants' abandonment of Plaintiffs, which constituted a breach of fiduciary duty, Plaintiffs have been damaged in an amount subject to proof at trial.

FIFTH CAUSE OF ACTION

FRAUD AND DECEIT (Against Defendant Katten Muchin Rosenman, LLP)

347. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 346, inclusive, as if fully set forth herein.

348. To deflect and deny responsibility for their legal malpractice and other wrongdoing, Defendants averred in their Answers to Plaintiffs' First and Second Amended Complaints that, in connection with the various opinion letters drafted and issued by Katten and Callaway and in providing legal advice related to the tribal lending program, Defendants completely relied upon information and analysis provided to them by Plaintiffs including, in particular, Baren, in total abdication of the role and responsibility Defendants undertook in providing legal representation to Plaintiffs.

349. Defendants further allege Baren was directly and personally involved in the drafting and content of Katten's various opinion letters, even though Katten and Callaway were hired to advise Plaintiffs as the regulatory legal experts Katten and Callaway held themselves out to be. Katten and Callaway also claim they relied heavily upon Bogue (apparently, without any investigation or analysis resulting from or based on their own purported legal expertise or knowledge) as to legal opinions issued by Bogue on various critical subjects, including but not limited to: (1) whether Western Sky loans were made by an entity duly and lawfully licensed to make such loans; (2) whether the documents evidencing or securing the loans complied with applicable CRST requirements; (3) whether Western Sky was licensed by the CRST to make consumer loans from the reservation; (4) whether assignments of the loans by Western Sky to WS Funding were enforceable; and (5) whether under CRST law the rights of the original lender were assignable and could be enforced by the assignee.

350. This is no defense, however. Even if Katten's and Callaway's allegations in the Answer and during Callaway's deposition—*i.e.*, that Callaway and Katten relied completely on

Baren for all factual information and that Baren was personally involved in the content of Katten's opinion letters—were true (and they are not), those facts were never disclosed to CashCall or Reddam. Defendants' obligations were to CashCall and Reddam, as the clients, not to Baren. Neither Callaway nor any Katten representative ever told Reddam about Baren's purported involvement in the opinion letters or explained to Reddam why Katten and Callaway were charging him and his company millions of dollars to act as Baren's scriveners.

351. Notwithstanding the foregoing factual and legal contentions recently made by Defendants, Katten and Callaway billed Plaintiffs for hundreds, if not thousands, of attorney hours from 2009 through 2013 for Katten's preparation and certification of various opinion letters, and attendant legal and factual research and advice by Katten and Callaway relating to the Tribal Member Model. Those opinion letters, and the legal advice Plaintiffs received from Katten and Callaway (or thought they were getting from them), formed the foundation of CashCall's tribal lending program.

352. By presenting these invoices to Plaintiffs for payment, Katten represented that they were true and accurate, including the amount and descriptions of time spent by Callaway and other Katten personnel. Katten intended Plaintiffs to rely on the accuracy of those invoices, and Plaintiffs reasonably relied on those representations and paid millions of dollars to Katten for expert legal work purportedly performed by Katten and Callaway.

353. Katten and Callaway now try to distance themselves from the previously-given legal advice and, in their Answer, suggest the legal work and tasks integral to the tribal lending program were not performed by them at all – even though Defendants billed Plaintiffs extensive amounts for work on the various "opinion letter[s]." The Answer calls into considerable question the veracity of the invoices sent by Defendants to CashCall. To the extent their new allegations are found to be correct (meaning they did not provide the legal work or legal opinions at issue), then the invoices were fraudulent. And as they created and presented those invoices to Plaintiffs, Katten knew those invoices were inaccurate, or acted with reckless disregard for whether the invoices accurately reflected the amount and type of work performed by Katten and Callaway.

354. Despite their feigned ignorance, Katten and Callaway knew what they were hired to do. Plaintiffs did not retain Katten and Callaway merely to repackage and regurgitate factual information and legal analysis fed to them by their own general counsel or others. Plaintiffs hired Katten and Callaway to apply their specialized legal expertise and knowledge and to advise Plaintiffs on devising and implementing a tribal lending model that complied with the law and met Plaintiffs' business needs.

355. Indeed, Baren informed Callaway in mid-2009 (months before any tribal loans were marketed or issued and contemporaneous with Katten's written engagement to provide "general regulatory work in connection with lending activities and/or regulations") that Plaintiffs intended to (1) proceed with the tribal lending program only if the model was "blessed" by regulatory counsel who could analyze the issues and produce necessary legal opinions including one attesting to its enforceability and (2) retain Katten for such purposes. And that is what Plaintiffs thought they were receiving from Katten and Callaway, especially when Katten regularly sent Plaintiffs invoices describing hundreds of attorney hours ostensibly related to such work and, through their statements and actions, led Plaintiffs to believe Katten and Callaway had carried out the tasks for which they had been retained.

356. Plaintiffs would not have engaged in the tribal lending program if Plaintiffs had known Katten and Callaway did not undertake a fulsome analysis in providing their legal opinions to Plaintiffs and Plaintiffs' investors (as suggested by Defendants' invoices and statements to Plaintiffs), but instead merely compiled information and/or analyses provided to or assumed by them, with little to no original legal work, analysis, or investigation.

357. Plaintiffs also would not have engaged in the Western Sky lending program if Plaintiffs had known that Callaway, three years before recommending the program, had concluded that loans made as part of a Tribal Member Model would remain subject to state and federal laws, and that participating in a Tribal Member Model would result in significant regulatory litigation risk.

358. Katten issued these numerous opinion letters relating to the Tribal Member Model in part to assist Plaintiffs in negotiating and closing financing deals related to the tribal lending

program. Katten and Callaway knew from the outset that Plaintiffs were embarking on a large-scale tribal lending program structured under on the "member of the tribe" model (*see, e.g.*, Answer ¶ 57). And Katten and Callaway had led Plaintiffs to believe that structure would be legally sound. But according to their Answer, Katten and Callaway provided their opinion letters to facilitate the Western Sky lending program (and billed Plaintiffs for work on those opinion letters) while knowing or recklessly disregarding substantial regulatory risk about which Katten and Callaway never warned Plaintiffs.

359. Plaintiffs retained Katten and Callaway, among other things, to advise about and "bless" the tribal lending program that Plaintiffs first learned about only through Callaway's recommendation – not to bill Plaintiffs for legal work now claimed to have been not performed, or to remain silent while Plaintiffs entrenched themselves in a lending program that Katten and Callaway knew (but never communicated) would be a regulatory and litigation minefield. Through their invoices and concomitant statements and actions, Defendants fraudulently represented to Plaintiffs that they had discharged the tasks for which they were hired, and Plaintiffs reasonably relied on those false representations to their detriment.

360. Katten's fraudulent representations and demands for payment embodied in the invoices have resulted in substantial damages to Plaintiffs in an amount subject to proof at trial. Such damages include but are not limited to the amount of fees paid to Katten for work not performed and the losses suffered by Plaintiffs for participating in a tribal lending program Katten and Callaway recklessly or intentionally led Plaintiffs to believe had been "blessed" by them after a thorough and competent legal analysis and investigation.

361. Further, given the trust and confidence Plaintiffs placed in Defendants, Katten acted with malice and oppression when it fraudulently prepared and transmitted the invoices described above. Plaintiffs are therefore entitled to punitive damages to set an example of and to punish Katten.

SIXTH CAUSE OF ACTION

FRAUD AND DECEIT (Against Defendant Claudia Callaway)

362. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 361, inclusive, as if fully set forth again.

363. In early 2009, Callaway recommended that CashCall and Plaintiffs participate in the Tribal Member Model. Callaway knew when she provided this advice that it would lead to disaster.

364. *Three years earlier*, in April 2006, Callaway had investigated the Tribal Member Model and determined it was fatally flawed. In a memorandum dated April 20, 2006, authorized and approved by Callaway while she was a partner at Paul Hastings, Callaway concluded that "the legal authority shows that even with . . . favorable assumptions, a State is likely to be able to enforce its laws and regulations against an Indian lender doing business with non-Indians on the reservation."

365. The memorandum further concluded that because "States have the power to regulate loans made by Indians to non-Indians on Indian land . . . and it appears that being a tribal entity does not provide a haven from State regulations, the benefit of an Indian Lending Model is in some doubt." The loans issued under the Tribal Member Model would be illegal under these state regulations.

366. Having concluded that loans made under the Tribal Member Model were illegal, Callaway and her associate warned Callaway's other client against it. The April 20, 2006, cover email transmitting the memorandum stated "Attached is the memorandum regarding whether a state can regulate on-reservation loans made by an Indian company to non-Indian consumers. Unfortunately, the conclusion reached is that a state is likely to be able to regulate these tribal companies and the loans they make." On information and belief, Callaway's other client did not to participate in the Tribal Member Model.

367. Callaway admitted during her deposition that the law had not changed between 2006 when her other client considered participating in a Tribal Member Model, and 2009 when she advised Plaintiffs to use the Tribal Member Model.

368. In mid-2009 (months before any tribal loans were marketed or issued and contemporaneous with Katten's written engagement to provide "general regulatory work in connection with lending activities and/or regulations") Plaintiffs stated they intended to (1) proceed with the tribal lending program only if the model was "blessed" by regulatory counsel who could analyze the issue and produce necessary legal opinions including one attesting to its enforceability and (2) retain Katten for such purposes.

369. Despite knowing at the time that the Tribal Member Model loans would be subject to state and federal regulation, Callaway falsely told Plaintiffs that the Tribal Member Model loans would *not* be subject to state and federal regulation. Callaway encouraged and supported Plaintiffs' participation in the Tribal Member Model, and reiterated that support orally and in writing for four years.

370. Callaway knew that Plaintiffs would rely upon her dishonest advice. Plaintiffs were unaware of Callaway's 2006 conclusions that the Tribal Member Model was illegal and would subject its participants to liability.

371. Plaintiffs did, in fact, rely upon Callaway's advice and, based on that advice, participated in the Tribal Member Model implementation with Western Sky.

372. During the course of representing Plaintiffs, Defendants intentionally made numerous false and misleading statements to Plaintiffs and third parties to perpetuate Callaway's lie that the Tribal Member Model was proper and that the loans were not subject to state or federal regulation. These false representations included, but are not limited to:

a. Including false statements regarding Western Sky's structure into the opinion letters Defendants issued, and issuing misleading opinions based on those false statements.

b. Misrepresenting the substance of Bogue's opinions in the opinion letters Defendants issued; and

c. Beginning in January 2013, misrepresenting the status and application of CRST law to the Western Sky loans, and issuing misleading opinion letters based on those misrepresentations.

373. Based on these misrepresentations, which Callaway made orally and in writing, Plaintiffs continued participating in the Tribal Member Model. Moreover, based upon these same misrepresentations, third parties agreed to provide financing to Plaintiffs. The third parties' financing allowed Plaintiffs to purchase Western Sky loans. Defendants knew at all relevant times that the opinion letters were being issued to facilitate the third-party financings and that Plaintiffs were using the funds from those financings to purchase Western Sky loans.

374. Based on Callaway's fraudulent advice and material misrepresentations perpetuating that fraudulent advice, Plaintiffs incurred hundreds of millions of dollars in indebtedness and were exposed to substantial liability arising from Plaintiffs' purchase of the Western Sky loans.

375. Callaway's fraudulent representations and advice have resulted in substantial damages to Plaintiffs in an amount subject to proof at trial. These damages include but are not limited to the losses suffered by Plaintiffs for participating in a tribal lending program Callaway intentionally led Plaintiffs to believe she had "blessed."

376. Further, given the trust and confidence Plaintiffs placed in Callaway, she acted with malice and oppression when she betrayed her clients, disavowed her false advice to Plaintiffs and engaged in a concerted effort to manufacture evidence she could use against Plaintiffs. Plaintiffs are therefore entitled to punitive damages to set an example of and to punish Callaway.

SEVENTH CAUSE OF ACTION

LEGAL MALPRACTICE BASED ON DEFENDANTS' UNDISCLOSED CONFLICTS OF INTEREST (Against All Defendants)

377. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 376, inclusive, as if fully set forth herein.

378. An attorney-client relationship existed between, on the one hand, Katten and Callaway, and on the other hand, among CashCall, Reddam, and WS Funding.

379. At all times that Defendants provided professional legal services to Plaintiffs, Defendants owed Plaintiffs a duty to use such skill, prudence, and diligence as is commonly

possessed by other attorneys in performing the tasks they undertake on behalf of their clients. Defendants held themselves out as having special skills in consumer lending and consumer finance regulation and litigation. Defendants held themselves out as competent attorneys with knowledge of critical doctrines, statutes, regulations and controlling court decisions concerning choice of law, tribal law, the doctrine of sovereign immunity, and deceptive lending practices. Defendants knew with reasonable certainty that if Defendants failed to render their legal services to Plaintiffs in a manner befitting of a specialist in this field, or at least using ordinary skill, prudence, and diligence, that Plaintiffs would suffer injury.

380. Defendants, through the attorney-client relationship, had a fiduciary duty to render legal advice to Plaintiffs in an honest and competent manner. Defendants owed Plaintiffs an unwavering commitment to loyalty, candor, and full disclosure to Plaintiffs. Defendants were bound to act in the highest good faith and with the highest regard for Plaintiffs' best interests within the scope of the representation, placing Plaintiffs' interests above their own.

381. Defendant Callaway is a member of the District of Columbia Bar and is bound by the ethical rules governing attorneys.

a. In January 2013, Defendants breached their ethical obligations when Defendants concealed a conflict between their representations of Plaintiffs, Webb, and Western Sky

382. Under D.C. Rule of Professional Conduct 1.7(b)(2), a lawyer may not represent a client if that "representation will be or is likely to be adversely affected by representation of another client."

383. In January 2013, after less than three hours of research, Callaway's associate concluded that state and federal courts would almost certainly conclude that CRST law prohibited loans carrying interest rates over 18 percent. Defendants did not advise Plaintiffs of this conclusion.

384. Starting in 2012, Defendants were representing Plaintiffs, Webb, and Webb's entities, including Western Sky. Upon discovering that the Western Sky loans did not comply with CRST law, a potential conflict existed between Western Sky and Plaintiffs: if Defendants

informed Plaintiffs that the Western Sky loans did not comply with CRST law, Plaintiffs would have stopped purchasing Western Sky loans, to the detriment of Webb and Western Sky.

385. Defendants did not disclose this potential conflict, or the results of their research, to Plaintiffs. Defendants also failed to seek or obtain a written waiver from Plaintiffs regarding the conflict. Instead, Defendants concealed the research and resulting conflict from Plaintiffs and continued representing both sets of parties.

386. Despite knowing that the Western Sky loans exceeded 18 percent interest and were prohibited under CRST law, Defendants issued an opinion letter later that month that assumed the Western Sky loans were valid under CRST law. Based on this opinion letter and Defendants' continued support of the Tribal Loan Program, Defendants prepared, and Plaintiffs executed, additional financing documents with the third-party investors and, as a result, incurred additional indebtedness. Defendants knew that Plaintiffs would use the funds they received from the third-party financing to purchase additional Western Sky loans, exposing Plaintiffs to additional liability.

387. In March of 2013, Defendants facilitated an additional loan by CashCall for the purchase of Western Sky loans after assuring both the investor and Plaintiffs that nothing had occurred to call into question the Defendants' prior opinions that courts should enforce the choice of law provision contained in the Western Sky consumer loan agreements. In fact, Defendants knew the same Katten associate had determined that because the Cheyenne River Sioux Tribe prohibited loans carrying an interest rate in excess of 18 percent, courts might find that the choice of law provision posed no obstacle to applying the law of any state with a similar usury prohibition

388. Had Defendants complied with their ethical obligations, informed Plaintiffs of the research into CRST usury law, and not misrepresented the validity of the Western Sky loans under CRST law, Plaintiffs would not have proceeded with any additional financings.

389. By not obtaining informed, written consent upon discovering the conflict between Plaintiffs and Webb, and by continuing to represent both Plaintiffs and Webb after the conflict arose, Defendants violated District of Columbia Rules of Professional Conduct 1.7.

390. As a result of Defendants' breach, Plaintiffs incurred additional indebtedness to third parties and suffered additional losses by purchasing additional Western Sky loans, exposing Plaintiffs to additional liability.

b. Beginning in August 2013, Defendants breached their ethical obligations when a conflict arose between Plaintiffs and Defendants.

391. Under D.C. Rule of Professional Conduct 1.7(b)(4), a lawyer "shall not represent a client with respect to a matter if: . . . The lawyer's professional judgment on behalf of the client will be or reasonably may be adversely affected by the lawyer's responsibilities to or interests in . . . the lawyer's own financial, business, property, or personal interests." Under D.C. Rule of Professional Conduct 1.7(c), a lawyer may, nevertheless, continue representing a client in such circumstances if the "client provides informed consent to such representation after full disclosure of the existence and nature of the possible conflict and the possible adverse consequences of such representation[.]"

392. Under D.C. Rule of Professional Conduct 1.16, "a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) The representation will result in violation of the Rules of Professional Conduct or other law[.]"

393. In August 2013, Plaintiffs told Defendants that CashCall and Reddam would defend against a lawsuit filed by the New York attorney general by asserting an advice of counsel defense, *i.e.*, that they had relied on Defendants' advice when participating in the Tribal Loan Program.

394. Defendants became aware that the resulting scrutiny would expose their substandard and knowingly false legal advice. On information and belief, this exposure and publicity regarding Defendants' substandard advice would have been highly detrimental to Defendants professionally, and would have caused unknown amounts of harm to Defendants and their business prospects.

395. Because of the potential harm to their business and professional reputations, Defendants knew as of July 2013 and, by the latest, September 3, 2013, that a conflict had arisen

and believed that they were adverse to Plaintiffs. Additionally, Callaway's colleague admitted that Defendants were discussing potential malpractice claims by Plaintiffs against Defendants as of July 2013.

396. Although Defendants knew that a conflict had arisen and believed that they were adverse to Plaintiffs, Defendants concealed this conflict from Plaintiffs.

397. Upon becoming adverse to Plaintiffs, Callaway, Katten, and/or Katten's general counsel had an obligation to inform Plaintiffs of the conflict, obtain a written waiver, or terminate the attorney-client relationship.

398. Defendants did not alert Plaintiffs to their conflict of interest, or that Defendants were adverse to Plaintiffs. Defendants did not seek, discuss, or attempt to obtain an informed written consent from Plaintiffs to continue representing Plaintiffs after the conflict arose. Nor did Defendants attempt to terminate the attorney-client relationship. Instead, Defendants continued to represent Plaintiffs without disclosing the conflict, and between the time the conflict arose and September 17, 2013, used the trusted status of their relationship to obtain information that Defendants could use for their benefit and against Plaintiffs.

399. By failing to (1) obtain Plaintiffs' informed consent or (2) terminate the attorney-client relationship, Defendants breached their ethical obligations under District of Columbia Rule of Professional Conduct 1.7.

400. By continuing to represent Plaintiffs after Defendants knew and believed that they were adverse to Plaintiffs, Defendants' violated District of Columbia Rules of Professional Conduct 1.16.

401. Additionally, under D.C. Rule of Professional Conduct 1.3(b), a "lawyer shall not intentionally: (1) Fail to seek the lawful objectives of a client through reasonably available means permitted by law and the disciplinary rules; or (2) Prejudice or damage a client during the course of the professional relationship." Katten and Callaway violated Rule 1.3(b) by betraying their clients and orchestrating an effort between August and November 2013 to destroy Plaintiffs' ability to assert an advice of counsel defense, while insulating Defendants from responsibility for their false legal advice. Defendants' conduct prejudiced Plaintiffs.

402. Through these multiple breaches of the District of Columbia Rules of Professional Conduct, Defendants were able to use their position as Plaintiffs' counsel to obtain information that Defendants used against Plaintiff to prejudice Plaintiffs by eliminating Plaintiffs' ability to assert an advice of counsel defense in litigation.

403. Because Defendants' breaches of their ethical obligations deprived Plaintiffs of a meritorious advice of counsel defense, Plaintiffs were disadvantaged in litigation, including the action brought by the New York Attorney General, and were forced to settle the litigation on less favorable terms, causing Plaintiffs harm.

404. Because Defendants violated, at minimum, the District of Columbia's Rules of Professional Responsibility by not obtaining a waiver or terminating the relationship with Plaintiffs, but instead continuing to represent Plaintiffs despite multiple conflicts of interest, prejudicing and damaging Plaintiffs, Defendants' conduct fell below the standard of care, Defendants breached the standard of care they owed to Plaintiffs, and Defendants committed malpractice.

405. Given the trust and confidence Plaintiffs placed in Defendants, Defendants acted with malice and oppression when they violated their ethical obligations and used their position as Plaintiffs' trusted counsel to obtain information to be used by Defendants against Plaintiffs. Plaintiffs are therefore entitled to punitive damages to make an example of and to punish Defendants.

406. As an actual and proximate result of Defendants' breaches of the District of Columbia's Rules of Professional Responsibility, Plaintiffs have been damaged in an amount subject to proof at trial.

EIGHTH CAUSE OF ACTION

LEGAL MALPRACTICE BASED ON DEFENDANTS' INTENTIONAL MISREPRESENTATIONS (Against All Defendants)

407. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 406, inclusive, as if fully set forth herein.

408. An attorney-client relationship existed between, on the one hand, Katten and Callaway, and on the other hand, among CashCall, Reddam, and WS Funding.

409. At all times that Defendants provided professional legal services to Plaintiffs, Defendants owed Plaintiffs a duty to use such skill, prudence, and diligence as is commonly possessed by other attorneys in performing the tasks they undertake on behalf of their clients. Defendants held themselves out as having special skills in consumer lending and consumer finance regulation and litigation. Defendants held themselves out as competent attorneys with knowledge of critical doctrines, statutes, regulations and controlling court decisions concerning choice of law, tribal law, the doctrine of sovereign immunity, and deceptive lending practices. Defendants knew with reasonable certainty that if Defendants failed to render their legal services to Plaintiffs in a manner befitting of a specialist in this field, or at least using ordinary skill, prudence, and diligence, that Plaintiffs would suffer injury.

410. Defendants, through the attorney-client relationship, had a fiduciary duty to render legal advice to Plaintiffs in an honest and competent manner. Defendants owed Plaintiffs an unwavering commitment to loyalty, candor, and full disclosure to Plaintiffs. Defendants were bound to act in the highest good faith and with the highest regard for Plaintiffs' best interests within the scope of the representation, placing Plaintiffs' interests above their own.

411. Defendant Callaway is a member of the District of Columbia Bar and is bound by the ethical rules governing attorneys. District of Columbia ethics rules prohibit intentional misstatements of material facts to third parties.

412. Under D.C. Rule of Professional Conduct 4.1, "[i]n the course of representing a client, a lawyer shall not knowingly: (a) Make a false statement of material fact or law to a third person." Further, the "Comments" to D.C. Rule of Professional Conduct 4.1 state that a "misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements."

413. Mark Conley was, at the relevant times, a partner with Defendant Katten and a member of the California Bar. Conley was bound by the ethical rules then in effect in California governing attorneys.

414. Under the then-operative California Rule of Professional Conduct 3-110, a "member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." Rule3-110(B) defines "competence" as applying "the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service."

415. During the course of representing Plaintiffs, Defendants, including then-partner Mark Conley, made numerous false and misleading statements to Plaintiffs and third parties. These false representations included, but are not limited to:

a. Representing that the Tribal Member Model was valid and that the Western Sky loans would be subject to CRST law, not state or federal law, even though Callaway knew as of 2006, at the latest, that the Tribal Member Model was invalid and would subject its participants to substantial regulatory and civil litigation.

b. Inserting false statements about Western Sky's structure into the opinion letters Defendants issued, and issuing misleading opinions based on those false statements.

c. Misrepresenting the substance of Bogue's opinions in the opinion letters Defendants issued; and

d. Beginning in January 2013, misrepresenting the status and application of CRST law to the Western Sky loans, and issuing misleading opinion letters based on those misrepresentations.

416. Based on these misrepresentations, which Defendants and Conley made orally and in writing, third parties agreed to provide financing to Plaintiffs. The third parties' financing allowed Plaintiffs to purchase Western Sky loans. Defendants and Conley knew at all relevant

times that the opinion letters were being issued to facilitate the third-party financings and that Plaintiffs were using the funds from those financings to purchase Western Sky loans.

417. Based on Defendants' and Conley's material misrepresentations to Plaintiffs and the third-party investors, Plaintiffs incurred hundreds of millions of dollars in indebtedness to third-party investors. Based on Defendants' and Conley's material misrepresentations to the third-party investors, Plaintiffs continued purchasing Western Sky loans. Plaintiffs incurred hundreds of millions of dollars in indebtedness and were exposed to substantial liability arising from Plaintiffs' purchase of the Western Sky loans.

418. As an actual and proximate result of Defendants' material misrepresentations to the third-party investors, Plaintiffs have been damaged in an amount subject to proof at trial.

419. Conley failed to provide competent legal advice by either knowingly or recklessly participating in making misrepresentations to Plaintiffs and their third-party investors.

420. Because Defendant Katten, through its then-partner Mark Conley, violated, at minimum, California Rule of Professional Responsibility 3-110 by knowingly or recklessly making material misrepresentations and thereby failing to provide competent legal advice, Defendant's conduct fell below the standard of care, Defendant breached the standard of care they owed to Plaintiffs, and Defendant committed malpractice.

421. Because Defendants violated, at minimum, the District of Columbia's Rules of Professional Responsibility when making the material misrepresentations to Plaintiffs' third-party investors, Defendants' conduct fell below the standard of care, Defendants breached the standard of care they owed to Plaintiffs, and Defendants committed malpractice.

NINTH CAUSE OF ACTION

LEGAL MALPRACTICE BASED ON DEFENDANTS' FAILURES TO ADVISE AND COMMUNICATE (Against All Defendants)

422. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 421, inclusive, as if fully set forth herein.

423. An attorney-client relationship existed between, on the one hand, Katten and Callaway, and on the other hand, among CashCall, Reddam, and WS Funding.

424. At all times that Defendants provided professional legal services to Plaintiffs, Defendants owed Plaintiffs a duty to use such skill, prudence, and diligence as is commonly possessed by other attorneys in performing the tasks they undertake on behalf of their clients. Defendants held themselves out as having special skills in consumer lending and consumer finance regulation and litigation. Defendants held themselves out as competent attorneys with knowledge of critical doctrines, statutes, regulations and controlling court decisions concerning choice of law, tribal law, the doctrine of sovereign immunity, and deceptive lending practices. Defendants knew with reasonable certainty that if Defendants failed to render their legal services to Plaintiffs in a manner befitting of a specialist in this field, or at least using ordinary skill, prudence, and diligence, that Plaintiffs would suffer injury.

425. Defendants, through the attorney-client relationship, had a fiduciary duty to render legal advice to Plaintiffs in an honest and competent manner. Defendants owed Plaintiffs an unwavering commitment to loyalty, candor, and full disclosure to Plaintiffs. Defendants were bound to act in the highest good faith and with the highest regard for Plaintiffs' best interests within the scope of the representation, placing Plaintiffs' interests above their own.

426. Defendant Callaway is a member of the District of Columbia Bar and is bound by the ethical rules governing attorneys. District of Columbia ethics rules prohibit counseling or assisting a client in perpetrating a fraudulent practice, and mandate that an attorney give an honest opinion about a client's conduct. Despite the clear dictates of this rule, Callaway hid from Plaintiffs her knowledge that the loans issued by Western Sky would be subject to and would violate state laws, including state criminal usury provisions, and encouraged Plaintiffs to partner with Western Sky to make loans in states with such criminal usury prohibitions. In short, Callaway counseled Plaintiffs to engage in criminal conduct.

427. Under D.C. Rule of Professional Conduct 1.2(e), "[a] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning, or application of the law."

428. Comment 7 to the Rule provides: "A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. However, a lawyer may not knowingly assist a client in criminal or fraudulent conduct. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity."

429. Katten and Callaway failed to give an honest opinion to Baren or Plaintiffs about the consequences of engaging in the tribal member model, which they knew, and had previously concluded, was illegal. Katten and Callaway also failed to ensure that their clients, Plaintiffs, were informed of their honest opinions. Instead, Defendants concealed their true views throughout their representation of Plaintiffs, intentionally misrepresenting the law and the facts to mislead Plaintiffs into believing Defendants supported the Tribal Member Model and believed it was a lawfully designed and executed lending program.

430. D.C. Rule of Professional Conduct 1.4(b) provides that a "lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Comment 1 to the Rule provides: "The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so." Comment 2 to the Rule provides: "The lawyer must be particularly careful to ensure that decisions of the client are made only after the client has been informed of all relevant considerations." Comment 3 to the Rule provides: "Adequacy of communication depends in part on the kind of advice or assistance involved. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with (1) the duty to act in the client's best interests, and (2) the client's overall requirements and objectives as to the character of representation." Comment 5 to the Rule provides: "A lawyer may not withhold information to serve the lawyer's own interest or convenience."

431. Katten and Callaway failed to explain the model they recommended with sufficient detail to allow the client to make informed decisions. For example, Defendants did not inform Plaintiffs that Callaway had previously concluded the Tribal Member Model was illegal; Defendants failed to explain that organizing Western Sky under the laws of the tribe would not make it an arm of the tribe and, thus, would not have any effect on the immunity of the loans from federal and state law; Defendants failed to explain that the choice of law opinions were irrelevant because the loans violated the CRST's own statute; and Defendants failed to explain that their Tribal Member Model theory, including the choice of law provision in the consumer loan contracts, would offer no protections because federal and state regulators were not bound by the choice of law provision.

432. Had Katten and Callaway fulfilled their obligation to communicate necessary information, including the above points, to Plaintiffs, Plaintiffs would not have participated in the Tribal Member Model lending program.

433. Defendants violated Rule 1.4(b) by failing to act in Plaintiffs' (*i.e.*, their clients') best interests, recommending a program that Callaway knew was unlawful, concealing their honest opinions from their client, and then betraying their client by orchestrating a coverup to prevent their client from invoking an advice of counsel defense. Defendants intentionally withheld information from their clients, preventing their clients from making informed decisions, for the purpose of serving Katten's and Callaway's own interests in generating billings and origination credits.

434. Had Plaintiffs known that Katten and Callaway did not support the model, did not believe the model was lawful, and actually believed the Tribal Member Model would result in litigation and regulatory actions, Plaintiffs would not have pursued or participated in the Tribal Member Model.

435. Mark Conley was, at the relevant times, a partner with Defendant Katten and a member of the California Bar. Conley was bound by the ethical rules then in effect in California governing attorneys.

436. Under the then-operative California Rule of Professional Conduct 3-500, a "member shall keep a client reasonably informed about significant developments relating to the employment or representation[.]"

437. According to Callaway's deposition testimony, Conley was aware that certain of Defendants' opinion letters contained false underlying facts. Conley was also aware that multiple opinion letters for which he was the "reviewing partner" misrepresented the substance of Bogue's opinions.

438. Had Katten, through its then-partner Mark Conley, kept Plaintiffs informed by alerting them that the opinion letters Defendants issued included false facts and misrepresented the substance of Bogue's opinions, Plaintiffs would not have pursued or participated in the Tribal Member Model lending program. By failing to communicate this information to Plaintiffs, Defendant Katten violated California Rule of Professional Responsibility 3-500.

439. As an actual and proximate result of Defendants' failures to advise Plaintiffs and communicate with Plaintiffs, Plaintiffs have been damaged in an amount subject to proof at trial.

440. Because Defendants violated, at minimum, the District of Columbia's Rules of Professional Responsibility and California Rules of Professional Responsibility by intentionally failing to advise Plaintiffs honestly and communicate relevant information to Plaintiffs, Defendants' conduct fell below the standard of care, Defendants' breached the standard of care they owed to Plaintiffs, and Defendants committed malpractice.

PRAYER FOR RELIEF

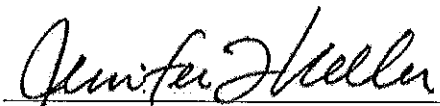
WHEREFORE, Plaintiffs pray for relief and judgment against Defendants, as follows:

1. For damages suffered by Plaintiffs, including punitive damages, according to proof;
2. For disgorgement of attorneys' fees and costs paid by Plaintiffs;
3. For Plaintiffs' costs incurred herein;
4. For Plaintiffs' reasonable attorneys' fees, as permitted by law;
5. For pre-judgment and post-judgment interest at the maximum allowable rate on any amounts awarded; and

6. For such other and further relief that this Court deems just and proper.

Dated: February 26, 2020

KELLER/ANDERLE LLP

By: 

Jennifer L. Keller
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all claims and causes of action so triable in this lawsuit.

Dated: February 26, 2020

KELLER/ANDERLE LLP

By: 

Jennifer L. Keller
Attorneys for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am over the age of 18 and not a party to the within action. My business address is 18300 Von Karman Avenue, Irvine, California 92612-1057.

On February 26, 2020, I served the foregoing document described as

STIPULATION AND [PROPOSED] ORDER ALLOWING PLAINTIFFS TO FILE THIRD AMENDED COMPLAINT

on the interested parties through their counsel identified on the attached service list by the following means of service:

☐ **BY MAIL:** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, the document(s) would be deposited with the U.S. Postal Service the same day, in a sealed and addressed envelope, with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

☒ **BY ONELEGAL ELECTRONIC ONLINE COURT SERVICES:** I caused the document(s) to be sent by electronic service by transmitting a true and correct pdf version via each individuals' email through OneLegal Electronic Online Court Services.

☒ **BY EMAIL:** The document(s) was sent electronically to each individual at the email address(es) indicated on the attached service list, pursuant to C.C.P § 1010.6 and C.R.C. Rules 2.256 and 2.251. The transmission was made with no error reported.

☐ **BY HAND DELIVERY:** The document(s) were sent via e-mail to ASAP Legal, LLC with instructions to print, place in a sealed envelope, and deliver to the address(es) indicated on the attached service list by messenger on the above-mentioned date.

☐ **BY OVERNIGHT NEXT DAY DELIVERY:** On the above-mentioned date, I placed a true copy of the above mentioned document(s) in a sealed envelope or package designated by the overnight delivery provider with delivery fees paid or provided for, at the address(es) indicated on the attached service list and deposited same in a box or other facility regularly maintained by the overnight delivery provider or delivered same to an authorized courier or driver authorized by the overnight delivery provider to receive documents.

☒ **STATE** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 26, 2020.

/s/ Courtney McKinney
Courtney McKinney

CashCall, Inc., et al. vs. Katten Muchin Rosenman LLP, et al.
Orange County Superior Court, Case No. Case No. 30-2017-00914968-CU-NP-CXC

SERVICE LIST

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