

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF SOUTH DAKOTA

<p>CHAD MARTIN HELDT, CHRISTI W. JONES, SONJA CURTIS, and CHERYL A. MARTIN, individually and on behalf of all similarly situated individuals,</p> <p>Plaintiffs,</p> <p>-v-</p> <p>PAYDAY FINANCIAL, LLC, d/b/a Lakota Cash and Big Sky Cash; WESTERN SKY FINANCIAL, LLC, d/b/a Western Sky, and Westernsky.com; MARTIN A. (“Butch”) WEBB; CASHCALL, INC., a California Corporation; and WS Funding, LLC, a wholly owned subsidiary of CashCall, Inc.</p> <p>Defendants.</p>	<p>Court File No. 13-cv-3023-RAL</p> <p>AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR TRIAL BY JURY</p> <p>(EQUITABLE RELIEF SOUGHT)</p>
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Plaintiffs, on behalf of themselves and other similarly situated individuals, by and through their undersigned counsel, file this Amended Class and Collective Action Complaint pursuant to Fed. R. Civ. P. 15(a)(1)(B) and aver as follows:

NATURE OF ACTION

1. This is a Class Action Complaint brought to obtain declaratory, injunctive and monetary relief on behalf of a class of individuals who responded to advertisements made by a group of South Dakota and California business entities that conspired to charge usurious interest rates and deceive consumers to whom they offered consumer loans via the Internet. As part of the conspiracy, the Defendants represented to consumers and debt collectors that the loans are exempt from United States laws because of an affiliation with the Cheyenne River Sioux Tribe (“Tribe”). The loans had a minimum annual percentage rate (APR) of 89.68 %—ten times the legal limit—and up to 342.86 %. The usurious nature of the interest rates renders them void;

similarly, the deceptive and misleading nature of the groups' marketing materials and loan documents violate state consumer protection laws.

2. Western Sky holds itself out to the public as a stand-alone tribal entity that provides small loans to consumers. In reality, however, CashCall creates all advertising and marketing materials for Western Sky, CashCall reviews consumer applications for underwriting requirements, CashCall funds the loans, CashCall services the loans, CashCall reimburses Western Sky for administrative costs, and Western Sky does not receive any payment from consumers for the loans.

3. Usury laws are intended to protect the weak and necessitous from being taken advantage of by lenders who can unilaterally establish the terms of the loan transaction.

4. Defendants marketed fast, accessible, low-barrier loans to Plaintiffs and members of the class; in doing so, they preyed upon individuals who needed access to money as quickly as possible in order to meet their most basic human needs. Defendants took advantage of the weak and necessitous position of their target consumers by charging astonishingly high interest rates knowing that people will do whatever it takes to provide food for their family or keep their home out of foreclosure—even if the measure would only last a short time. Defendants provided the proverbial “desperate measure” for the desperate times in which Plaintiffs and members of the class found themselves. Loan fees and interest rates were lower, but still usurious, for higher dollar amount loans thus incentivizing borrowers to take more money than they needed.

5. Defendants know that their interest rates are usurious, so they developed what they, upon information and belief, believe is a “legal loop hole”—requiring Plaintiff and members of the class to agree to an exculpatory clause that purportedly extinguishes any right the consumer has to apply United States law to the relationship. The loan agreements state that

only the Tribe's law will apply to the relationship between consumers and the Lending Defendants and the consumer may not sue in any court of the United States or any state. But the loan agreement has *nothing* to do with Tribal law. But Defendants are South Dakota and California companies marketing and providing services to consumers throughout the United States using web servers located in the State of California.

6. Defendants cannot avoid the courts and laws of South Dakota, Minnesota, Virginia, or Texas—or the courts and laws of any other state or the United States by the mere fact that its controlling owner is a member of an American Indian tribe. Employees are mostly tribal members and their primary place of business is on tribal land. Similarly, Defendants cannot contract away their duty to follow the laws of each and every state in which they do business. This lawsuit seeks to end the Lending Defendants' illegal scheme to skirt the law and make consumers whole by returning Defendants' ill-gotten profits to consumers they have harmed.

THE PARTIES AND THEIR RELATIONSHIP

7. Plaintiff Chad Martin Heldt is a resident of Minnesota and applied for a loan from Western Sky in that state. Mr. Heldt borrowed \$9,925 from Western Sky on April 24, 2013 after seeing Western Sky television commercials in the State of Minnesota. CashCall acquired the loan shortly thereafter. Mr. Heldt also saw ads on various Internet websites. None of the advertisements revealed the relationship between Western Sky and CashCall. CashCall acquired the loan shortly thereafter. The loan carried an APR of 89.68 % and a fee of \$75.00. Finance charges on the loan are \$52,676.49 for a total payment of \$62,601.49 on a \$9,925 loan. He has paid approximately \$891.82 in interest and principal to CashCall to date.

8. Plaintiff Christi W. Jones (née Trusevich) is a resident of Texas and applied for a loan from WesternSky in that state. Ms. Jones borrowed \$2,525 from Western Sky on July 19, 2011 after seeing television commercials for the Western Sky loan product on the Nickelodeon

and other television channels airing on cable networks in the State of Texas. Additionally, Ms. Jones heard radio advertisements for the Western Sky loan product throughout the State of Texas. Ms. Jones has seen and heard identical television and radio advertisements in other states. Additionally, Ms. Jones received routine email advertisements from Defendants. Examples of such messages are attached to this Complaint as Exhibit E. None of the advertisements revealed the relationship between Western Sky and CashCall. CashCall acquired the loan nearly immediately after it was funded. The loan carried an APR of 139.13 % and a fee of \$75.00. Finance charges on the loan are \$11,441.37 for a total payment of \$13,966.37 on a \$2,525 loan. She has paid approximately \$3,635.07 in interest and \$45.20 in principal to CashCall to date.

9. Plaintiff Sonja Curtis is a resident of Texas and applied for a loan from Western Sky in that state. Ms. Curtis borrowed \$5,000 from Western Sky on August 8, 2011 after seeing Western Sky television commercials airing in the State of Texas. CashCall acquired the loan shortly thereafter. None of the advertisements revealed the relationship between Western Sky and CashCall. The loan carries an APR of 116.73 % and a fee of \$75.00. Finance charges on the loan are \$36,172.61 for a total payment of \$41,172.61 on a \$5,000 loan. She has paid approximately \$5,737.34 in interest and \$4.12 in principal to CashCall to date. Ms. Curtin has received, and continues to receive, email marketing messages from Western Sky.

10. Plaintiff Cheryl Annette Martin is a resident of Virginia and applied for a loan from Western Sky in that state. Ms. Martin borrowed \$1,500 from Western Sky on December 30, 2011 2011 after seeing Western Sky television commercials airing in the Commonwealth of Virginia. CashCall acquired the loan shortly thereafter. None of the advertisements revealed the relationship between Western Sky and CashCall. CashCall acquired the loan shortly thereafter. The fee on the loan was \$500, and so Ms. Martin received \$1,000. The loan carried an APR of

233.91 %. Finance charges on the loan are \$3,768.98 for a total payment of \$4,768.98 on a \$1,000 loan. She has paid approximately \$1,616.47 in interest and \$179.53 in principal to CashCall to date. Ms. Martin complained to CashCall about its loan practices, and in response, CashCall continued its charade of claiming the loans are immune from the laws of the United States because Western Sky participated in the loan process. *See* Exhibit D.

11. Defendant Payday Financial, LLC (“Payday Financial”) does business as Lakota Cash and Big Sky Cash. It is a limited liability company chartered under the law of the state of South Dakota as an ordinary business entity. Its principal place of business is 612 E Street, Timber Lake, South Dakota. Upon information and belief, Payday Financial caused the State of South Dakota to charter defendant Western Sky Financial and has served as the managing member of the entity. Payday Financial advertises and offers its loans to Minnesota, Texas, Virginia and other consumers through Internet websites including www.lakotacash.com. Payday Financial transacts business in South Dakota, Minnesota, Texas, and all other states in which it offers consumer loan products. The Lakota Cash website describes the company as follows:



<http://www.lakotacash.com> (accessed June 12, 2013). The typical visitor to the website is an African American female between the ages of 18 and 34, with children, and income of less than \$50,000 per year, and no college education. *See* <https://www.quantcast.com/lakotacash.com> (accessed June 24, 2013). On February 9, 2011, Defendant Webb filed a Statement of Dissociation stating that Defendant PayDay Financial, LLC is dissociated from Defendant Western Sky Financial, LLC.

12. Defendant Western Sky Financial, LLC, is a South Dakota limited liability company with its principal place of business at 612 E Street, Timber Lake, South Dakota. Western Sky advertises and offers loans to consumers by television advertisement and through a website accessible at www.westernsky.com. The company describes itself on its website as follows:

The screenshot shows a web browser window with the address bar displaying "www.westernsky.com". The page header includes the Western Sky Financial logo and the text "QUESTIONS? Call Us at 1-888-997-6895". Navigation links for "Home | Login | Rates | Contact Us" are present. The main headline reads "Loans from \$850 to \$10,000 In your Bank Account Overnight.*". Below this, a yellow box contains the text "Western Sky Loans", "Application Time is typically less than 5 minutes", "Western Sky is NOT a Payday Lender", "Not a short term lender, our loan periods range from 12 months to 7 years with **NO PREPAYMENT PENALTY**", and "Call us to apply or with any questions you have at **1-888-997-6895**". A red "Apply Now" button is also visible. To the right of the text is a circular logo featuring three stylized mountains or trees. Below the yellow box, a dark blue section contains three columns of text: "Loans from \$850 to \$10,000 In your Bank Account Overnight. Just complete our short online application and get an answer in minutes.", "We are an Installment lender and our rates are much lower than most payday lenders. You may apply now online or call 1-888-997-6895 to speak to a loan agent.", and "You may apply now or have a loan agent contact you!". A small disclaimer states "*Subject to credit approval. Additional documentation required." Below this, a paragraph explains that Western Sky Financial is owned by a Tribal Member of the Cheyenne River Sioux Tribe and is not owned or operated by the tribe or its subdivisions. It also lists states where loans are not available: California, Colorado, Connecticut, Illinois, Kentucky, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New York, Ohio, Oregon, Pennsylvania, South Dakota, Vermont, Washington, and West Virginia. The footer contains the copyright notice: "© 2013 Western Sky Financial, LLC. All Rights Reserved. 612 E Street, Timber Lake, SD 57656 (605)865-3311".

13. Defendant Martin A. “Butch” Webb resides in South Dakota. Webb is the owner and president of Payday Financial and the owner of Western Sky. He is the registered agent of Payday Financial, Great Sky, Western Sky, Red Stone, Management Systems, 24-7 Cash, Red River, and High Country. Webb is the organizer, managing member, and registered agent of Financial Solutions.

14. Defendant CashCall is a California corporation with principal place of business at 1600 S. Douglass Road, Anaheim, California. CashCall is engaged in the business of making or arranging high-interest loans to consumers over the Internet and then servicing the loans it made or arranged. On information and belief, CashCall has arranged with the Lending Defendants (or entities affiliated with them) to process the loans from their inception or otherwise purchase

loans made by the Lending Defendants shortly after they are made, or to receive the loans for collection or servicing. Upon information and belief, CashCall is aware of the terms of the loan agreements, including its exculpatory clause, and approved of those terms. Defendant CashCall owns or operates the webserver used by the Lending Defendants to market and form the loan agreements. Upon information and belief, CashCall operates and/or funds WS Funding, which is the entity that provides the money the Lending Defendants use to fund consumer loans.

15. Defendant WS Funding is a wholly-owned subsidiary of CashCall.

16. None of the Defendants is owned, operated, or chartered by the Tribe.

17. The remaining paragraphs in this section are based upon the facts uncovered by the New Hampshire Banking Department after the department issued an administrative subpoena to Defendants CashCall, WS Funding, and the entities sole owner. A copy of the department's Order to Cease and Desist (Case No. 12-308) is attached to this complaint as Exhibit C.

18. Consumers apply for small loans or payday loans through a call center, CashCall's website, or www.westernsky.com.

19. Pursuant to an agreement between Western Sky and WS Funding, CashCall provides website hosting and support for services for Western Sky.

20. CashCall reimburses Western Sky for all costs of maintenance, repair and/or update costs associated with Western Sky's server.

21. CashCall reimburses Western Sky for its office, personnel, and postage and provides Western Sky with a toll free telephone and fax number.

22. CashCall provides an array of marketing services to Western Sky such as creating and distributing print, Internet, television, and radio advertisements and other promotional materials.

23. Once a consumer application for a small or payday loan is received via the call center, CashCall's website, or www.westernsky.com, CashCall reviews the application for underwriting requirements.

24. When an application is approved, Western Sky executes a promissory note and debits a so-called "reserve Account" to fund the promissory note.

25. The Reserve Account is a demand-deposit bank account set up in the name of Western Sky that carries a balance equal to the full value of two days promissory notes calculated on the previous month's daily average.

26. Under an agreement between Western Sky and WS Funding, CashCall is required to set up, fund, and maintain the balance in the Reserve Account.

27. The initial balance in the Reserve Account was \$100,000.

28. After a loan is funded, CashCall is obligated by agreement to purchase the promissory note from Western Sky.

29. The agreement between WS Funding and Western Sky provides that Western Sky can debit the Reserve Account in payment for these purchased promissory notes at the end of every business day.

30. Consumer complaints indicate that CashCall generally makes contact with the consumer within one business day of the consumer filing an application for the small loan or payday loan.

31. Western Sky does not accept any payment from consumers on notes made under this business scheme.

32. As compensation for services provided, Western Sky pays CashCall 2.02% of the face value of each approved and executed loan transaction plus any additional charges with a net minimum payment of \$100,000 per month.

33. Conversely, in consideration for the terms of the agreement setting up the Reserve Account, CashCall agrees to pay Western Sky 5.145% of the face value of each approved and executed loan credit extension and/or renewal.

34. CashCall pays Western Sky a minimum monthly administration fee of \$10,000.

35. Under the terms of the agreement between WS Funding and Western Sky, CashCall agrees to indemnify Western Sky for all costs arising or resulting from any and all civil, criminal, or administrative claims or actions.

36. CashCall is responsible for tracking all consumer complaints regarding these payday and small loans and notifying Western Sky of these complaints.

37. Defendants have taken substantial steps to conceal this business scheme from consumers and state and federal regulators.

38. Western Sky does not identify its relationship with CashCall or WS Funding on its website or in any marketing materials.

39. The loan agreements identify Western Sky as the “lender.”

40. Western Sky disburses money to consumers using a Wells Fargo bank that is not located on Tribal land. The routing number used by Western Sky is for a Wells Fargo location in the State of Minnesota.

JURISDICTION AND VENUE

41. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d) because the vast majority of class members are citizens of a state different from the home state of

Defendants, and, upon information and belief, the amount in controversy exceeds five million dollars (\$5,000,000.00).

42. Venue is proper in this district pursuant to 28 U.S.C. § 1961 *et seq.* because the Lending Defendants' principal place of United States business operations is located in South Dakota, and as such resides within the district.

43. Venue is proper in this Court under 28 U.S.C §§ 1391(b)(2) and 1391(c) because a substantial part of the events giving rise to the claim occurred in this district.

CLASS ACTION ALLEGATIONS

44. Plaintiffs bring this Complaint as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a National Class and three subclasses: a Minnesota sub-class, a Texas sub-class, and a Virginia sub-class. The National Class is defined as follows:

All individuals whose loan agreement with Western Sky was made or formed using Defendants webserver located in the State of California and collected on a loan at more than 8 % interest at any time in the two years prior to the filing of this lawsuit.

Plaintiffs reserve the right to redefine the National Class prior to class certification.

The "Minnesota Sub-Class" is defined as follows:

All individuals to whom the Lending Defendants made or collected on a loan at more than 8 % interest at any time in the two years prior to the filing of this lawsuit and who had a Minnesota address at the time the loan or collection was made.

Plaintiffs reserve the right to redefine the Minnesota Sub-Class prior to class certification.

Plaintiffs also bring this Complaint as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a "Texas Sub-Class" defined as follows:

All individuals to whom the Lending Defendants made or collected on a loan at more than 10 % interest at any time in the two years prior to the filing of this lawsuit and who had a Texas address at the time the loan or collection was made.

Plaintiffs reserve the right to redefine the Texas Sub-Class prior to class certification.

Additionally, Plaintiffs bring this Complaint as a class action pursuant to Rule 23 of the Federal

Rules of Civil Procedure on behalf of a “Virginia Sub-Class” defined as follows:

All individuals to whom the Lending Defendants made or collected on a loan at more than 8 % interest at any time in the two years prior to the filing of this lawsuit and who had a Virginia address at the time the loan or collection was made.

Plaintiffs reserve the right to redefine the Virginia Sub-Class prior to class certification.

Collectively, the classes may be referred to as the “class.”

45. Numerosity: Members of the Class are so numerous that their individual joinder is impracticable. The precise number of Class members is unknown to Plaintiffs. However, upon information and belief, each sub-class is in excess of 100 individuals. The true number of class members is, however, likely to be known by the Defendants, and thus, class members may be notified of the pendency of this action by first class mail, electronic, and published notice.

46. Commonality: There are numerous questions of law and fact common to Plaintiffs and the Class; those questions predominate over any questions that may affect individual Class members, and include the following:

- a) whether Defendants made and collected loans that violated Minnesota, Texas, or Virginia usury laws;
- b) whether Plaintiffs and members of the Class are entitled to injunctive relief prohibiting Defendants from making automatic electronic transfers of funds to and from Plaintiffs and members of the class for their usurious loans;
- c) whether Plaintiffs and members of the Class are entitled to declaratory relief declaring that Defendants loans are usurious;
- d) whether the Defendants conspired to violate the law;

e) whether Plaintiffs and members of the Class are entitled to injunctive relief requiring Defendants to cease their illegal business practices.

47. Typicality: Plaintiffs' claims are typical of the other members of the Class. Plaintiffs are informed and believe that, like other consumers, Plaintiffs paid the same usurious interest rates as posted on the Defendants' various websites and the material terms of their loan documents are substantially similar.

48. Adequacy: The named Plaintiffs will adequately represent the interests of the Class. They have been treated in the same manner as other class members by Defendants and have been damaged by this treatment in the same manner as other class members by their overpayment of interest. Plaintiffs are committed to vigorously prosecuting this action. Plaintiffs have retained attorneys who are well qualified to handle lawsuits of this type. Plaintiffs have no interests that are adverse to those of the Class.

49. Predominance: This case should be certified as a class action because the common questions of law or fact concerning Defendants' liability predominate over any individual questions, including the amount of damages incurred by each person.

50. Superiority: A class action is the only realistic method available for the fair and efficient adjudication of the claims of the classes. The expense and burden of individual litigation makes it impracticable for members of the Class to seek redress individually for the wrongful conduct alleged in this Complaint. Were each individual member required to bring a separate lawsuit, the resulting multiplicity of proceedings would cause undue hardship and expense for the litigants and the Court, and create the risk of inconsistent rulings, which would be contrary to the interest of justice and equity. Litigating these claims in a single action will streamline discovery and avoid needless repetition of evidence at trial.

FACTUAL BASIS

51. The Lending Defendants offer high interest rate unsecured consumer loans of \$300 to \$10,000 through Internet websites, including to individuals throughout Minnesota, Texas, and Virginia. The APR on the loans range from approximately 89.68 % to 342.86 %. The Lending Defendants have offered such loans since at least mid-2007. Upon information and belief, Defendant CashCall has entered into agreements with the Lending Defendants to collect debts and service the loans made by the Lending Defendants.

52. Consumers who require a payday loan from Defendants visit one of several websites run by the Lending Defendants. Consumers apply for a loan through an online form or by calling a toll-free telephone number.

53. Defendants quickly provide money to the consumer. Shortly thereafter the Lending Defendants transfer the loan note to Defendant CashCall. In essence, the Lending Defendants act as a broker of CashCall loans under the guise of an American Indian Internet loan company.

54. If a consumer does not pay back a loan on time, Defendants attempt to collect the debt. Among other things, Defendants make negative reports to credit bureaus, call consumers multiple times per day, contact consumers' employers, and engage in other aggressive—and often intimidating—tactics.

55. All Defendants knew or should have known that the loans they made to Plaintiffs and the class contained interest rates that are unenforceable because they violate Minnesota, Texas, and Virginia usury statutes.

56. Defendants inform consumers—including Plaintiffs and members of the class—that the Indian Commerce Clause of the United States Constitution bars application of their states' laws. But the Indian Commerce Clause provides no such immunity—it narrowly grants

the United States Congress the authority to “regulate Commerce ... with the Indian tribes.” U.S. Const. Art.I § 8. It does not state, as Defendants would have consumers believe, that American Indians are free to violate state laws without repercussion.

57. Notably, the Lending Defendants refuse to offer loans to members of the Tribe or to residents of South Dakota where the tribe is located.

58. All consumers must sign a loan agreement form to indicate they accept the terms of the loan. There is a reasonable question of whether a consumer sees the entire term of the loan or arbitration clause before they accept the loan.

59. The loan agreement includes, among other things, the following statements:

This Loan Contract is subject solely to the exclusive laws and jurisdiction of the Cheyenne River Sioux Tribe, Cheyenne River Indian Reservation. By executing this Loan Agreement, you, the borrower, hereby acknowledge and consent to be bound to the terms of this Loan Agreement, consent to the sole subject matter and personal jurisdiction of the Cheyenne River Sioux Tribal Court, and that no other state or federal law or regulation shall apply to this Loan Agreement, its enforcement or its interpretation.

...

Governing Law. This Agreement is governed by the Indian Commerce Clause 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.

60. The loan agreement takes a “belt and suspenders” approach to depriving consumers of their state law rights. The agreement also contains an arbitration provision that requires, among other things:

“Arbitration shall be conducted in the Cheyenne River Sioux Tribal Nation by a panel of three Tribal Elders and shall be

conducted in accordance with the Cheyenne River Sioux Tribal Nation's consumer rules and the terms of this Agreement.”

The document continues:

“THIS ARBITRATION PROVISION IS MADE PURSUANT TO A TRANSACTION INVOLVING THE INDIAN COMMERCE CLAUSE OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, AND SHALL BE GOVERNED BY THE LAW OF THE CHEYENNE RIVER SIOUX TRIBE.”

Further, “The arbitrator will apply the laws of the Cheyenne River Sioux Tribal Nation and the terms of this Agreement.”

61. Contrary to the representations of the Lending Defendants in the loan agreement, there is no such thing as arbitration in the Cheyenne River Sioux judicial system. Further, “Cheyenne River Sioux Tribal Nation's consumer rules” do not exist. In response to a request for information regarding the Tribe's arbitration procedure, a Tribal Mediator/Magistrate stated, “the Cheyenne River Sioux Tribe, the governing authority does not authorize Arbitration as defined by the American Arbitration Association (AAA) here on the Cheyenne River Sioux Reservation located in Eagle Butte, SD 57625.” (Exhibit A.)

62. The “belt and suspender approach” of placing exclusive jurisdiction of disputes with the Cheyenne River Sioux Tribe, but at the same time, requiring arbitration pursuant to nonexistent arbitration rules, creates a conflict within the loan agreement. This dispute cannot simultaneously be subject to the jurisdiction of the Cheyenne River Sioux Tribe judicial system *and* a panel of non-judicial arbitrators who are chosen solely by the Defendants and who are members of the Tribe. This violates the Federal Arbitration Act. (Exhibit B.)

COUNT I
CIVIL CONSPIRACY
(Brought by All Plaintiffs and the National Class)

63. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding Paragraphs.

64. As set forth above, the four named defendants engaged in a civil conspiracy to conduct business as an Internet consumer loan lender. They agreed with one another to deceive consumers and violate usury laws, each of which is enumerated in this Complaint. That conduct constitutes an agreement to accomplish an unlawful objective, which is a conspiracy.

65. Western Sky is nothing more than a front to enable CashCall to evade licensure by state agencies and to exploit Indian Tribal Sovereign Immunity to shield its deceptive business practices from prosecution.

66. Plaintiffs have suffered and will suffer actual financial damage as a result of Defendants' conspiracy.

COUNT II
USURY IN VIOLATION OF STATE LAW
Minn. Stat. §§ 334.01, *et seq.*
Tex. Fin. Code § 342.001, *et seq.*
Va. Code § 6.2-306, *et seq.*
Calif. Const. Art. 15.
(Brought by All Plaintiffs and the National Class)

67. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding Paragraphs.

68. The loans provided to Plaintiffs by the Lending Defendants are not secured by a lien on real property.

69. None of the Lending Defendants are registered as a bank, credit union, finance company, or pawnbroker in any state in which they transact business.

70. Minnesota's usury laws are intended to protect the weak and necessitous from being taken advantage of by lenders who can unilaterally establish the terms of the loan transaction.

71. Minnesota statute limits the interest rate for personal or consumer loans to 8% for loans under \$100,000. Minn. Stat. § 334.01.

72. The Lending Defendants charged Plaintiff Heldt and all members of the Minnesota Sub-Class interest calculated at a rate of 89% or more.

73. Minnesota law permits Plaintiff and members of the Minnesota Sub-Class to file a lawsuit to recover "the full amount of interest or premium so paid, with costs" Minn. Stat. § 334.02.

74. Texas law specifies, "Except as otherwise fixed by law, the maximum rate of interest is 10 percent a year." Tex. Fin. Code § 342.004.

75. The Lending Defendants charged Plaintiffs Jones and Curtis an interest rate nearly nine times greater than the legal limit. There are no exceptions at law that apply to the Lending Defendants or the loans it issued to Plaintiffs.

76. The Lending Defendants' effort to apply Tribal law to the loan is void.

A person who is a party to a deferred presentment transaction may not evade the application of this subtitle or a rule adopted under this subchapter by use of any device, subterfuge, or pretense.

Tex. Fin. Code § 342.008.

77. In Virginia, the maximum rate of interest on a consumer loan is 8% and:

Any agreement or contract in which the borrower waives the benefits of this chapter or releases any rights he may have acquired under this chapter shall be deemed to be against public policy and void.

Va. Code § 6.2-306.

78. California, the place of contract formation of the loan agreements, imposes similar restrictions on lenders. The California Constitution, Article 15, allows parties to contract for interest on a loan primarily for personal, family or household purposes at a rate not exceeding 10% per year. California statutes further define usurious interest rates and remedies available to consumers.

79. Plaintiffs Jones and Curtis, on behalf of themselves and Texas sub-class members, seek recovery of twice the amount of interest contracted for, charged, or received; their attorneys' fees and costs, as provided by the Texas Finance Code § 349.001.

80. Plaintiff Heldt on behalf of himself and the Minnesota sub-class, seeks to recover all interest paid to Defendants plus costs, together with any other relief to which he or members of the class are entitled or the court may deem appropriate.

81. Plaintiff Martin on behalf of herself and the Virginia sub-class, seeks to recover twice the usurious interest paid to Defendants plus costs and reasonable attorney fees, together with any other relief to which she or members of the class are entitled or the court may deem appropriate.

82. All Plaintiffs on behalf of the Nationwide Class seek money damages for all money previously paid on the loans, damages equal to three times the interest paid during the 12 months prior to the filing of this lawsuit and after filing this lawsuit, a declaration to cancel all future interest, punitive damages in an amount to be requested at trial, attorneys fees and costs, and any other relief to which Plaintiffs or members of the class are entitled or the court may deem appropriate.

COUNT III
VIOLATION OF MINNESOTA REGULATED LOAN ACT
Minn. Stat. §§ 56.0001, *et seq.*
(Brought by Plaintiff Heldt and the Minnesota Sub-Class)

83. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding Paragraphs.

84. The Minnesota Regulated Loan Act provides,

no person shall engage in the business of making loans of money, credit, goods, or things in action, in an amount or of a value not exceeding [\$100,000], and charge, contract for or receive on the loan a greater rate of interest, discovery or consideration than the lender would be permitted by law to charge if not a licensee under this chapter.

Minn. Stat. §§ 56.01, 56.131, subdiv. 1.

85. Upon information and belief, none of the Lending Defendants have obtained a license from the Commissioner of Commerce to engage in the business of making loans of any kind.

86. Minnesota statute limits the interest rate for personal or consumer loans to 8% for loans under \$100,000. Minn. Stat. § 334.01.

87. With respect to unlicensed persons making loans, such as the Lending Defendants, the Minnesota Regulated Loan Act further provides,

No person, except as authorized in this chapter, shall, directly or indirectly, charge, contract for, or receive any interest, discount, or consideration greater than the lender would be permitted by law to charge if that person were not authorized hereunder upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit of the amount regulated by this chapter.

The foregoing prohibition shall apply to any person who, by any device, subterfuge, or pretense, shall charge, contract for, or receive greater interest, consideration, or charges than is authorized by this chapter for any such loan, use or forbearance of money,

goods, or things in action, or for any such loan, use or sale of credit.

Minn. Stat. Ann. § 56.18.

88. Defendant CashCall has conspired with the Lending Defendants to enforce and collect upon the illegal consumer loans made by the Lending Defendants. The loans are unenforceable under Minnesota law.

89. Plaintiff Heldt on behalf of himself and the Minnesota sub-class, seeks to recover all amounts paid to Defendants and all other remedies provided by Minn. Stat. § 56.19, together with any other relief to which he or members of the class are entitled or the court may deem appropriate.

COUNT IV

FALSE ADVERTISING

Minn. Stat. §§ 325F.67, *et seq.*

(Brought by Plaintiff Heldt and the Minnesota Sub-Class)

90. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding Paragraphs.

91. Minnesota's False Statement in Advertising Act ("FSAA"), Minn. Stat. § 325F.67, provides a cause of action to "any person, firm, corporation, or association" who purchases goods or services through advertising that "contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading."

92. Where, as here, plaintiffs' claims inure to the public benefit, Minnesota's private-attorney general statute, Minn. Stat. § 8.31, subdiv. 3a, allows individuals who have been injured through a violation of the FSAA to bring a civil action.

93. By engaging in the conduct herein, Defendants violated and continue to violate Minn. Stat. § 325F.67.

94. Defendants' misrepresentations, knowing omissions, and use of other sharp business practices include attempting to create a situation where its loan interest rates were not subject to state law, but only Tribal law; and averring that its practices are permitted by the Indian Commerce Clause.

95. As a result of Defendants' conduct, Plaintiff Heldt has suffered actual damages in that he entered into a loan agreement with Defendants under false pretenses. There is an association between Defendants' acts and omissions as alleged herein and the damages suffered by Plaintiff.

96. As a result of Defendants' untrue, deceptive, and misleading assertions and representations about their affiliation with the Tribe and its right to charge usurious interest, Plaintiff has and will continue to suffer damages in the form of usurious interest rates, damaged credit, harassment, embarrassment, and other damages.

COUNT V

Violation of the Virginia Consumer Protection Act, § 59.1-200(A)(5)
(Brought by Plaintiff Martin and the Virginia Sub-Class)

97. Plaintiff incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint.

98. The Virginia Consumer Protection Act, Va. Code. §59.1-200(A)(5), prohibits "[m]isrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits."

99. Defendants made the misrepresentation that the Indian Commerce Clause of the United States Constitution governed the loan agreement.

100. Defendants also misrepresented the fact that the Tribe administered consumer arbitrations and has consumer arbitration rules.

101. Plaintiff and putative class have suffered actual damages, caused by Defendants' misrepresentations, in that they entered into loan agreement with the Lending Defendants under the mistaken belief that due process would be available to them in the event of a dispute. As such, a causal nexus exists between Defendants' actions and the damages suffered by the Plaintiff and the Virginia Sub-Class.

102. As a direct, proximate and foreseeable result of Defendants' violation of the Virginia Consumer Protection Act, Plaintiff and putative class members have sustained damages.

103. Plaintiff Martin, on behalf of herself and the Virginia Sub-Class, demands judgment against Defendants for an amount to be determined at trial and pray for judgment as set forth below.

COUNT VI

Violation of the Texas Deceptive Trades Practices Act

Tex. Bus. & Com. Code § 17.46, *et seq.*

(Brought by Plaintiffs Jones and Curtis and the Texas Sub-Class)

104. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

105. The Texas Business and Commercial Code section 17.46, Deceptive Trade Practices Unlawful, states in part:

(a) False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful and are subject to action by the consumer protection division under Sections 17.47, 17.58, 17.60, and 17.61 of this code.

(b) Except as provided in Subsection (d) of this section, the term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

...

(12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

...

(24) failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed;

Id.

106. Defendants represented that the loan agreement conferred rights and remedies of tribal law arbitration; however, the reality is that Tribal arbitration did not exist at the time the Plaintiffs received the loan agreements and the Tribe's consumer arbitration rules are similarly illusive.

107. Plaintiff and putative class have suffered actual damages, caused by Defendants' misrepresentations, in that they entered into loan agreement with the Lending Defendants under the mistaken belief that due process would be available to them in the event of a dispute. As such, a causal nexus exists between Defendants' actions and the damages suffered by the Plaintiff and the Texas Sub-Class.

108. As a direct, proximate and foreseeable result of Defendants' violation of the Texas Deceptive Trade Practices statute, Plaintiff and putative class members sustained damages.

109. Plaintiffs Jones and Curtis, on behalf of themselves and the Texas Sub-Class demands judgment against Defendants for all relief available to them pursuant to Tex. Bus. & Com. Code § 17.50 in an amount to be determined at trial and pray for judgment as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request of this Court the following relief on behalf of themselves, all members of the Class and all other similarly situated individuals:

- a. An Order certifying the Class and sub-classes, and appointing the undersigned counsel of record as Class Counsel;
- b. An Order for declaratory and injunctive relief designating the Lending Defendants' interest rates illegal and enjoining Defendants from pursuing collection activities for such interest, and enjoining other acts and practices described in this Complaint;
- c. An Order requiring Defendants to correct any reports made to credit bureaus or reporting agencies regarding the loans at issue to completely remove the loans from each bureau or agencies databases or to reflect the illegal nature of the loans;
- d. An Order requiring Defendants to compensate Plaintiffs and the other members of the Class for the reasonable value of the overpaid interest Plaintiffs provided to Defendants;
- e. Payment of any penalties or other amounts under any applicable laws, statutes or regulations, including but not limited to liquidated and exemplary damages;
- f. Judgment in favor of each Class member for damages suffered as a result of the conduct alleged herein, to include pre-judgment interest;
- g. Award Plaintiffs reasonable attorneys' fees and costs;
- h. Award Plaintiffs and the other members of the Class punitive damages in an amount to be determined at trial; and
- i. Grant such other and further legal and equitable relief as this Court deems just and necessary.
- j. Declaration that the arbitration provisions and tribal jurisdiction names in loans is void.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so properly triable thereby.

Dated: September 9, 2013

/s/ Wade L. Fischer
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Attorneys for Named Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF SOUTH DAKOTA

CHAD MARTIN HELDT, CHRISTI W.
JONES, SONJA CURTIS, and CHERYL A.
MARTIN, individually and on behalf of all
similarly situated individuals,

Plaintiffs,

-v-

PAYDAY FINANCIAL, LLC, d/b/a Lakota
Cash and Big Sky Cash;
WESTERN SKY FINANCIAL, LLC, d/b/a
Western Sky, and Westernsky.com;
MARTIN A. ("Butch") WEBB;
CASHCALL, INC., a California
Corporation; and WS Funding, LLC, a
wholly owned subsidiary of CashCall, Inc.

Defendants.

Court File No. 13-cv-3023-RAL

**AMENDED
CLASS ACTION COMPLAINT AND
DEMAND FOR TRIAL BY JURY**

(EQUITABLE RELIEF SOUGHT)

EXHIBIT A



**Cheyenne River Sioux Tribal Court
Cheyenne River Sioux Tribe
Judges Chambers**

Phone: 605-964-6602

P. O. Box 120
Eagle Butte, South Dakota 57625

Fax: 605-964-6603

March 8, 2013

Abraham Inetianbor
4271 NW 5th Street, #247
Plantation, FL 33317


Re: Case #0:13-cv-60066-CIV-COHN-
SELTZER

Dear Mr. Inetianbor:

In response to your request, this is to inform you the Cheyenne River Sioux Tribe, the governing authority does not authorize Arbitration as defined by the American Arbitration Association (AAA) here on the Cheyenne River Sioux Reservation located in Eagle Butte, SD 57625.

The Cheyenne River Sioux Tribe authorized a Mediation program in 1993 and it is in operation under the supervision of the CRST Tribal Court system.

Sincerely,


Mona R. Demery
Mediator/Magistrate
Cheyenne River Sioux Tribe

Cc: Chief Judge Brenda Claymore

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF SOUTH DAKOTA

CHAD MARTIN HELDT, CHRISTI W.
JONES, SONJA CURTIS, and CHERYL A.
MARTIN, individually and on behalf of all
similarly situated individuals,

Plaintiffs,

-v-

PAYDAY FINANCIAL, LLC, d/b/a Lakota
Cash and Big Sky Cash;
WESTERN SKY FINANCIAL, LLC, d/b/a
Western Sky, and Westernsky.com;
MARTIN A. (“Butch”) WEBB;
CASHCALL, INC., a California
Corporation; and WS Funding, LLC, a
wholly owned subsidiary of CashCall, Inc.

Defendants.

Court File No. 13-cv-3023-RAL

**AMENDED
CLASS ACTION COMPLAINT AND
DEMAND FOR TRIAL BY JURY**

(EQUITABLE RELIEF SOUGHT)

EXHIBIT B

1 **Speaker 1:** Welcome to Akerman Senterfitt conferencing.
2 Please enter your passcode followed by the pound or hash key.
3 Please hold while I confirm your passcode. Thank you. Your
4 passcode is confirmed. Please wait for the tone. Then say
5 your name and press the pound or hash key.
6

7 **Mr. Intetianbor:** Abe.
8

9 **Speaker 1:** When you hear the tone you will be the third
10 person to join the meeting. Joining the meeting
11

12 **Speaker 2:** Good morning.
13

14 **Speaker 3:** Good morning.
15

16 **Mr. Intetianbor:** Hello
17

18 **Mr. Chasing Hawk:** Hello
19

20 **Mr. Intetianbor:** Yes this is Abraham Intetianbor with ...
21 Intetianbor versus CashCall.
22

23 **Mr. Chasing Hawk:** OK, can I put you guys on speaker phone.
24

25 **Mr. Intetianbor:** Say that again.
26

27 **Mr. Chasing Hawk:** Can I put you guys on the speaker phone.
28

29 **Mr. Intetianbor:** Yeah, go ahead.
30

31 **Speaker 2:** Sure.
32

33 **Mr. Chasing Hawk:** Then I have a tape recorder and I'm going to
34 record the proceedings. Is that OK?
35

36 **Mr. Intetianbor:** OK. That's fine and are we allowed to record
37 too?
38

39 **Mr. Chasing Hawk:** OK, I'll go ahead and get that recording
40 going and I'll put you guys on speaker phone here.
41

42 **Speaker 2:** You're Honor, Chris, Chris Carver is just running
43 a few minutes late. He should be here any minute. I'm not
44 sure if you're able to wait just a minute or two before we
45 begin.
46

47 **Mr. Chasing Hawk:** Yeah, we can wait. We can wait.

1
2 **Mr. Intetianbor:** And just so I know, now that he's running
3 late, how long is this preliminary hearing going to be for
4 because I was never given any whatever rules or time-line or
5 anything else, so how long is this going to be for that way I
6 know how to work on my schedule.

7
8 **Mr. Chasing Hawk:** It's going to be informal. I don't want to ...
9

10 **Mr. Intetianbor:** I didn't ask about the form Your Honor I ask
11 about the time.
12

13 **Mr. Chasing Hawk:** Ah the time, yeah the time it can ... for
14 however long you guys want to go for and I can go ... sit here
15 all day if I have to. It's up to you guys.
16

17 **Mr. Intetianbor:** OK, CashCall attorney do you have an idea
18 about the timing on this one?
19

20 **Speaker 2:** Again this is up to Your Honor to proceed. We'll
21 proceed as you deem fit. We have made ourselves available.
22

23 **Mr. Intetianbor:** OK, so we're just going to wait until Chris,
24 Christopher Carver gets in right?
25

26 **Speaker 2:** He's here right now Your Honor.
27

28 **Mr. Carver:** OK, hi, sorry about that. I had to take the dog to
29 the vet this morning. Is Mr. Intetianbor on the phone?
30

31 **Mr. Intetianbor:** I'm on the phone.
32

33 **Mr. Carver:** Oh, OK. So let's ... I guess we're going to ... we
34 need to set the final hearing and any additional briefing
35 schedule, correct?
36

37 **Mr. Chasing Hawk:** Correct.
38

39 **Mr. Carver:** OK. Mr. Intetianbor are there any dates when
40 you're not available for a final hearing?
41

42 **Mr. Intetianbor:** What dates do you guys have available?
43

44 **Mr. Carver:** I'm fairly flexible but more so the mid to later
45 portion of July is not good. I don't know whether we want to
46 try to do it ... We could do it the 12th of July or we could do
47 it ...

1
2 **Mr. Intetianbor:** What day is the 12th?

3
4 **Mr. Carver:** The 12th is a Friday.

5
6 **Mr. Intetianbor:** OK, what other options, dates do you have?

7
8 **Mr. Carver:** Yes, the problem that I have is I've got a hearing
9 ... a major hearing on the 10th which takes out the prior week,
10 and of course the prior week also includes the 4th of July
11 weekend and I'm technically on a two week trial calendar from
12 the 15th to the 26th but I can probably ... I don't think the
13 trial is going to go then so I can set it ... we can do the 19th
14 or the 26th of July which are also Fridays.

15
16 **Mr. Intetianbor:** OK, so the 12th is Friday and what time?

17
18 **Mr. Carver:** We can do it at noon but that depends on the
19 arbitrators choice.

20
21 **Mr. Chasing Hawk:** I'm available any time.

22
23 **Mr. Carver:** OK. Now Mr Intetianbor would you want to ... Do you
24 want to do any additional filings?

25
26 **Mr. Intetianbor:** At this point it doesn't really matter
27 because all I can do is just send a reply, if I'm allowed to
28 do that because I don't even know what the rules are, what
29 we're doing or what we're not doing. I can send a reply to
30 your answer and that's pretty much it because as we speak
31 right now I'm supposed to be the defendant even if it's
32 supposed to be my case but we'll just take it from there.
33 I'll pretty much send a reply in and then see what happens,
34 so.

35
36 **Mr. Carver:** OK, we have to ... there's going to need to be some
37 additional briefing because the demand for arbitration, your
38 answering counter-claim and our response don't address the
39 substantive law that applies. So ... are you available the 19th
40 and the 26th?

41
42 **Mr. Intetianbor:** Towards the end of July is not a good time
43 because I'm already using up too many times right now, so and
44 then I would rather just get this done and over with. So the
45 12th is fine. Maybe today I can send in some stuff to the
46 arbitrator, maybe more evidence or more exhibits and a reply
47 whichever way, if that's a part of the rules or if that's how

1 it works I'm not sure. If I send it then I guess there will
2 be a hearing, a full hearing and he makes his decision from
3 there. So, that's all pretty much that I can say right now
4 because anything else right ... I don't know what you mean by
5 the additional ... did you say additional hearing or ...
6

7 **Mr. Carver:** We ... we ... you have ... in a court situation where
8 you've filed a complaint if I filed an answer and counter
9 claim and you had filed an answer to the counter claim that
10 just lays out the basics of the claims but it doesn't lay out
11 the applicable statutes and laws that say which side wins. We
12 still need to submit that to the arbitrator, so what I was
13 thinking was that we can submit our evidence by the 12th and
14 then to avoid the problem of taking too many days in July we
15 can submit our evidence by the 12th, we can submit responses by
16 the 19th and then have the final hearing on August 2nd.
17

18 **Mr. Intetianbor:** OK, so you said evidence by the 12th.
19

20 **Mr. Carver:** Yeah, the arguments for why you win on your claims
21 and you win on CashCalls claims would be submitted on the 12th.
22

23 **Mr. Intetianbor:** OK, basically right now even with the
24 evidence I already submitted and submit even more doesn't
25 change anything because I'm still making a plea to a law or
26 rule I don't have a clue about. I don't even know what the
27 rules or laws of the Cheyenne River Sioux tribe is that be
28 applicable laws like you're saying because it's not readily
29 made available to the public and it's not made available to me
30 especially that's involved in this case.
31

32 **You guys are associated one way or the other and I don't even**
33 **know if you guys Akerman Senterfitt even knows the rule of the**
34 **tribe but I know CashCall just set it up, they need to provide**
35 **me with something, some way, somehow, saying OK, these are the**
36 **laws of the tribe and the rules and how it goes and this is**
37 **why you win or this is why you win or this ... you know like you**
38 **just said, but none of those is available right now. And to**
39 **even make matters worse, we're trying to defend or litigate a**
40 **matter at arbitration and we don't even know what rules apply**
41 **because I can't say for sure this is why this is wrong and you**
42 **can't say for sure why this is wrong or right.**
43

44 **We are both using the other laws of the either the Triple A or**
45 **the street court or the federal rules or state laws, this is**
46 **what we both are using right now, and continue to use until**
47 **arbitration that is supposed to be governed by the, what do**

1 you call it, the Cheyenne River Sioux tribal law, so this ...
2 I'm stuck just as much as you guys are.

3
4 **Mr. Carver:** We actually at this immediate moment you are stuck
5 more than we are, but I think I can solve that problem, I have
6 sitting in my office a copy of the Cheyenne Sioux River tribal
7 code. And I can send that to you so that you have all of the
8 applicable statutes and rules that I have.

9
10 **Mr. Intetianbor:** And ... I'm supposed to consume that in a
11 couple of months and go with it.

12
13 **Mr. Carver:** Well I ... I don't know whether it's a couple of
14 months but ...

15
16 **Mr. Intetianbor:** Or a month or so.

17
18 **Mr. Carver:** If you want ... I have no problem being reasonable,
19 if you want to have our final, our final submissions due on
20 August 2nd and then the responses due two weeks after that and
21 the final hearing at the end of August we can do that too.

22
23 **Mr. Intetianbor:** OK, what law is the arbitrator using?

24
25 **Mr. Carver:** Cheyenne Sioux River tribal code, is my
26 understanding. That's the applicable law set forth in the
27 agreement.

28
29 **Mr. Intetianbor:** OK, why don't you go ahead and send me
30 whatever information you have and let's set up a date for the
31 hearing or if the arbitrator is going to set up a date, he'll
32 let us know and then we'll go from there. And I have a few
33 questions too before the hearing. I don't know if we're doing
34 questions today or not, I don't know if it we're doing it ... at
35 another hearing, I have no clue so, regardless if it's
36 informal or not there's still got to be some kind of set rules
37 to follow. This way we don't keep dancing around back and
38 forth.

39
40 **Mr. Carver:** OK, well let's take this in two stages, one let's
41 set the schedule, you want ... do you want to set the final
42 submission date on the 2nd of August then have responses due
43 on the 16th and a final hearing at the end of August.

44
45 **Mr. Intetianbor:** So the second hearing you're saying for the
46 12th.

47

1 **Mr. Carver:** On the second of August we could ... I'll send you
2 this stack of materials.

3
4 **Mr. Intetianbor:** Mmhm

5
6 **Mr. Carver:** I'll send it out today. On the 2nd of August, you
7 and I can submit our filings as to why under the law we win,
8 then on the 16th we can submit our responses to the other sides
9 argument as to why the other side wins and then on the 30th we
10 can have the final hearing.

11
12 **Mr. Intetianbor:** OK. Is that what the arbitrator agrees on or
13 ...

14
15 **Mr. Carver:** Well first I was going to see whether you were
16 available and then I was going to make ... see whether the
17 arbitrator was available on those days because I think it's in
18 large part driven by your schedule.

19
20 **Mr. Intetianbor:** Oh, well I'm available by the 12th I just
21 said and towards the end of July, pretty much no and ... so if
22 we're going to have a hearing on the 12th and I can submit
23 whatever I need to submit before then and like you said if
24 there's anything else on the 2nd of August we can have that
25 done and towards the end of August, so ... whichever way it's
26 fine with me but for end of July, that's not going to work.

27
28 **Mr. Chasing Hawk:** As an arbitrator I have all the time in the
29 world to sit and listen to your arguments. So whatever dates
30 you guys listed already that days on my calendar and so if it
31 is agreed upon we will go with it.

32
33 **Mr. Carver:** OK, Mr. Intetianbor, why don't we set the final
34 hearing for August 30th, all right?

35
36 **Mr. Intetianbor:** OK, so ...

37
38 **Mr. Carver:** And then let's ... working backwards our submissions
39 will be due ... the submissions for why on your side why you
40 win, that submission will be due on August 2nd, and then my
41 submission for why I win will be due on August 2nd, and then on
42 August 16th you can file your opposition to my submission and
43 I'll file my opposition to your submission.

44
45 **Mr. Intetianbor:** OK, what are the submissions, this is what I
46 don't understand ... we already ... you guys already filed a claim
47 and I already ... I counter-claimed and you guys responded so

1 what's the submission for August 2nd again?

2
3 **Mr. Carver:** OK the submission for August 2nd would be ...
4 because I'm going to send you the stack of applicable laws and
5 regulations today.

6
7 **Mr. Intetianbor:** And how many pages ... let me just quickly ask,
8 how many pages would that be?

9
10 **Mr. Carver:** I don't know, it's a pretty thick stack, but not ...
11 it's the, it's the entire tribal code not all of them are
12 applicable. But I don't want to ... I don't want to pull it
13 apart.

14
15 **Mr. Intetianbor:** OK. And ... so we're talking about maybe a
16 book?

17
18 **Mr. Carver:** We're talking about maybe ... ballpark probably 2000
19 sheets of paper.

20
21 **Mr. Intetianbor:** Two Thousand sheets of paper.

22
23 **Mr. Carver:** That includes the cover page and things like that,
24 I'm looking at it sitting on the table, I haven't counted
25 them.

26
27 **Mr. Intetianbor:** OK, it doesn't hurt to send it but I can tell
28 you for sure that ... even if we have a year to go through that
29 it's not something that you could easily go through, so ...

30
31 **Mr. Carver:** OK

32
33 **Mr. Intetianbor:** But, go ahead, you said August the 2nd.

34
35 **Mr. Carver:** On August the 2nd, you know how you file a motion
36 with Judge Cohn, you would file a motion, I would file an
37 acquisition and you'd make your legal arguments in your motion
38 and I'd make legal arguments in the opposition.

39
40 **Mr. Intetianbor:** Yeah, I understand.

41
42 **Mr. Carver:** OK, this is the same thing except you're making
43 your legal arguments for why you win on your claim and why
44 CashCall loses on its claims and I'm making the, the same
45 arguments in reverse and then ... so we would do that on the 2nd
46 and then on the 16th you would file your opposition to my
47 filing and I would my opposition to your filing. And we'd have

1 to do that by, we'd have to send those by email.

2
3 **Mr. Intetianbor:** Yeah. I understand those that you just
4 mentioned.

5
6 **Mr. Carver:** OK.

7
8 **Mr. Intetianbor:** But my question is with Judge Cohn, like the
9 federal court, I kind of have an idea what the rules are
10 saying, OK, this is rule 26 A or whatever, this is rule this
11 and states that ... you'll file a motion for this item. Do you
12 understand what I'm saying like a motion to reconsider or a
13 motion to ... you understand, stuff like that.

14
15 **Mr. Carver:** OK, yes.

16
17 **Mr. Intetianbor:** So now that you guys already filed that
18 claim, I counter-claimed and you responded with your answer to
19 my counter claim the next step, you said, is August 2nd for
20 another filing or something, I don't know ...

21
22 **Mr. Carver:** OK.

23
24 **Mr. Intetianbor:** I don't know what that filing would be, would
25 it be like you are going to file claims again saying this is
26 why you win and then I respond saying this is why I win?

27
28 **Mr. Carver:** No this would be like, since you're familiar with
29 the federal rules, this would be sort of like the motion for
30 summary judgment.

31
32 **Mr. Intetianbor:** So you guys would file like a motion for
33 summary judgment.

34
35 **Mr. Carver:** Yeah ... yes because ...

36
37 **Mr. Intetianbor:** Oh, OK, then ...

38
39 **Mr. Carver:** We need to ... we need to provide the arbitrator
40 with the legal arguments and the factual support for why we
41 think we win on our respective claims.

42
43 **Mr. Intetianbor:** OK.

44
45 **Mr. Carver:** You need to provide that to the arbitrator and I
46 need to provide that.

47

1 **Mr. Intetianbor:** Yeah but we both can't file for summary
2 judgment, so you ... you guys file summary judgment because you
3 filed ... case then I file a response to the so-called summary
4 judgment and then after that the hearing for the 16th.
5

6 **Mr. Carver:** Well I was going to say we can file the ... the
7 response can be filed on the 16th and then the hearing would be
8 on the 30th.
9

10 **Mr. Intetianbor:** So the hearing August 30th.
11

12 **Mr. Carver:** Yes.
13

14 **Mr. Intetianbor:** Hearing and 16th is response ...
15

16 **Mr. Carver:** Yes.
17

18 **Mr. Intetianbor:** To something similar to summary judgment.
19

20 **Mr. Carver:** Yes.
21

22 **Mr. Intetianbor:** And August 2nd is similar to summary judgment
23 filing that you guys are going to file.
24

25 **Mr. Carver:** Yes, and you can file, you don't have to file one,
26 but you can file one that says I win on my claim, you lose on
27 your claim because you've also filed a claim.
28

29 **Mr. Intetianbor:** Yeah, we're not doing two claims at the same
30 time, are we?
31

32 **Mr. Carver:** Well my filing on August 2nd is going to be
33 CashCall wins on it's claims Mr ... and Mr. Intetianbor loses on
34 his claims.
35

36 **Mr. Intetianbor:** And then on the 16th I'm going to file a
37 response to that saying CashCall doesn't win and I win, that's
38 what you mean right?
39

40 **Mr. Carver:** OK, if you want to do it that way, you can do it
41 that way.
42

43 **Mr. Intetianbor:** No, I'm asking a question, that's what it is
44 right?
45

46 **Mr. Carver:** Yeah, that's ... yes. That's essentially what it is.
47 I more meant that on the 2nd I would file a motion and you

1 either win a motion or lose a motion. My motion would say I
2 win, you're opposition would say, no you don't. But for you
3 to win you would need to file a motion on the second saying I
4 win. But don't worry about that, I'm going to file on the 2nd,
5 you can file on the 16th and Mr. Chasing Hawk can sort out who
6 wins and who loses on the 30th.

7
8 **Mr. Intetianbor:** OK. And real quick am I allowed to ask a
9 question, Your Honor?

10
11 **Mr. Chasing Hawk:** Sure go ahead.

12
13 **Mr. Intetianbor:** OK, is there a reason why we can't go with
14 the regular federal or state law that ... is there a reason why
15 this contract is governed by the Cheyenne River Sioux tribe
16 and is the tribe aware of this?

17
18 **Mr. Chasing Hawk:** Yeah, I guess so. [inaudible 00:21:31] the,
19 the, the Western Sky is located on the reservation and so
20 their using the Cheyenne Sioux tribal law, the applicable law
21 with that and I guess that's who [inaudible 00:21:46] because
22 we don't cement ourselves to the state jurisdiction.

23
24 **Mr. Intetianbor:** OK, from my understanding the company has to
25 be legitimately within the jurisdiction of the reservation
26 and be registered and licensed by the tribal cooperation for
27 the company to have that protection that you just stated. And
28 as far as the state and the tribe is concerned, Western Sky
29 and CashCall are not within the jurisdiction of the
30 reservation and do not have that protection as stated by the
31 chairman. So why is the law not applicable when they're not a
32 tribal corporation and why are we using the tribal law when
33 it's not a registered tribal cooperation.

34
35 **Mr. Carver:** The law ... the law is applicable because that is
36 the law that is stated in the ...

37
38 **Mr. Intetianbor:** I was asking ... I'm sorry I was asking his
39 honor, not ... I wasn't asking CashCall.

40
41 **Mr. Chasing Hawk:** Because the Western Dakota or the Western Sky
42 have applied for tribal license to operate the business on the
43 reservation don't have to be incorporated but as long as the,
44 the owner has a tribal business license then he can operate on
45 this reservation, our law would be applicable to that. If I
46 own a business then I go to the [inaudible 00:23:19]
47 department, apply for [inaudible 00:23:21] license I get it,

1 and then I have to follow the tribal law.

2
3 **Mr. Intetianbor:** OK.

4
5 **Mr. Carver:** In this situation the reason why the law is
6 applicable is that that is the law that is stated in the
7 contract between Western Sky and Mr. Intetianbor.

8
9 **Mr. Chasing Hawk:** Right.

10
11 **Mr. Intetianbor:** OK, pretty much you are confirming right now
12 that Western Sky and CashCall, in this proceeding or this
13 preliminary hearing that you're recording, you're confirming
14 that the Western Sky is a tribal organization and under the
15 jurisdiction of the tribe licensed by the tribe.

16
17 **Mr. Chasing Hawk:** Right.

18
19 **Mr. Intetianbor:** Is this correct?

20
21 **Mr. Chasing Hawk:** Yeah, this is correct and also as an
22 arbitrator I have ... I don't know you, I don't know the
23 CashCalls I don't even ... any of this business until three or
24 four months ago you asked me to be arbitrator. I never met
25 this guy and so I guess the only way I know is my daughter
26 works there and that's about it. I have no [crosstalk
27 00:24:39]

28
29 **Mr. Intetianbor:** Yeah, but the thing is, if you know your
30 daughter worked there you should have made that disclosure in
31 your letter not just saying you don't know this guy or you
32 haven't met with this guy because any relationship if you're
33 an arbitrator, as an arbitrator that's supposed to be the
34 first thing that ... respectfully you should know that
35 regardless of if you ...

36
37 **Mr. Carver:** I disagree with your characterization of his
38 obligations of disclosure very strongly. He said he doesn't
39 have a relationship. The fact that his daughter might have
40 worked there does not mean that he has a relationship.

41
42 **Mr. Intetianbor:** OK, why was that not disclosed was my
43 question.

44
45 **Mr. Chasing Hawk:** My, my, my theory is that my daughter just
46 barely got a job there as giving out the loans and she's not
47 in a management position, she's just another worker that when

1 people like you calls in and gives out a loan. That's all she
2 does.

3
4 **Mr. Intetianbor:** Yeah, I understand that part, Your Honor.
5 But I'm saying even if she even is the smallest employer there
6 or she barely does anything or only gives out loans or
7 whatever she does there, she's employed by Western Sky and
8 that alone, even if the slightest thing, you should have made
9 that known, that's all I'm saying. You should have at least
10 just put it in the letter saying I ... I haven't been to dinner
11 with this guy that owns Western Sky or CashCall or whatever
12 but I do know my daughter works there and she's just an
13 employee and that's about it, you should have at least put
14 that in the letter.

15
16 **Mr. Carver:** Mr. Intetianbor you have your opinion about what
17 should be required in the letter and I disagree with you and
18 that's also not an issue for the arbitration.

19
20 **Mr. Intetianbor:** I was asking the arbitrator and he gave me
21 the permission to ask questions, that's why I was asking him.
22 I wasn't ...

23
24 **Mr. Carver:** You weren't asking a question, you were making a
25 statement as to your conclusion as to the law, that's not
26 asking a question.

27
28 **Mr. Intetianbor:** OK. Now that you're interrupting his answer.
29 How about now that we're going by the Cheyenne River Sioux
30 tribal law which he has affirmatively said that it's ... that
31 Western Sky is governed ... the [inaudible 00:27:10] is governed
32 by the law and Western Sky is an approved and licensed tribal
33 company and within the jurisdiction of the tribe. Is there a
34 way Mr. Chasing Hawk Your Honor can provide a copy of that
35 license or have them provide me with a copy of that license as
36 of today's date. This way we can ...

37
38 **Mr. Carver:** I object to that because I don't think it's
39 relevant to the arbitration whatsoever.

40
41 **Mr. Intetianbor:** I was ...

42
43 **Mr. Chasing Hawk:** I agree with that because don't think I want
44 to go up there and ask, "Hey [inaudible 00:27:42]." That's not
45 my job.

46
47 **Mr. Intetianbor:** Yeah, but Your Honor you gave that answer

1 saying that this is why they are using the tribal law because
2 they are approved by their tribe and licensed by the tribe
3 within the jurisdiction this is why the law applies. This is
4 why I'm asking [crosstalk 00:28:03]... can you hold on let me
5 finish with the arbitrator please?
6

7 **Mr. Carver:** Go ahead.
8

9 **Mr. Intetianbor:** Your Honor, you literally said that just now
10 and that's why I'm asking it doesn't hurt to ask them and say
11 ... to provide you with the license, being the arbitrator and
12 saying you have no relationship with them, even if your
13 daughter does. Can you just ask them to provide you with
14 their license? A company should not hold back on that. The
15 tribe should not hold back on that and will not hold back on
16 that. They should be able to provide you with a license
17 saying ... because any company can just walk out of anywhere and
18 tell you that they are part of the tribal corporation and
19 licensed by the tribe and you accept that. You can't do that.
20 Being able that you can do that you should still be able to
21 ask them to provide you with a license saying why they are
22 within the jurisdiction of the tribe and why they are tribal
23 corporation and they should be able to give you that for you
24 to accept that the laws of the tribe applies.
25

26 **Mr. Carver:** The reason why the laws ...
27

28 **Mr. Intetianbor:** I was asking his honor, [crosstalk 00:29:14]
29 please just let him answer, you shouldn't be answering his
30 questions. Let him decide that ... let him decide if it's
31 appropriate to ask or not. He is the arbitrator not you. So
32 please let him decide. [crosstalk 00:29:29] Your Honor can you
33 please take control please? Your Honor can you take control?
34

35 **Mr. Chasing Hawk:** [crosstalk 00:29:33] small Abraham, do you
36 mind if I call you Abraham?
37

38 **Mr. Intetianbor:** Yeah.
39

40 **Mr. Chasing Hawk:** It's a small reservation.
41

42 **Mr. Intetianbor:** I know.
43

44 **Mr. Chasing Hawk:** You have to ... you have to have [inaudible
45 00:29:55]. I got to have a tribal license to operate or the
46 governing department will be on my back and ask me to get a
47 license. Yes, if there is a business here, it's very

1 noticeable, it's obvious that they have to have a tribal
2 business even some of the men tribal business, non-Indian
3 business owners they have to have a tribal license.
4

5 **Mr. Intetianbor:** They have to have one, I understand Your
6 Honor. And that's why I'm asking for one. If it's not
7 available then they should know where to get one. So as of
8 today's date, the 21st of June and it's 12:29 PM, Your Honor,
9 you just said they have to have one to operate. So, where is
10 it? It should be publicly available. And especially to me
11 and to the attorneys of CashCall. So a copy of the license is
12 now required for me to believe that they are ...
13

14 **Mr. Carver:** A copy of the license is not now required this is
15 outside of the scope of the arbitration and it is not proper
16 for you to request that the arbitrator go get a document for
17 you.
18

19 **Mr. Intetianbor:** No, I'm not asking him. I'm asking Western
20 Sky to provide him with the document because they have claimed
21 to be a tribal corporation and he agreed that you have to be a
22 tribal corporation to be able to apply the laws of the tribe.
23 He confirmed that they are a tribal corporation, licensed by
24 the tribe, under the jurisdiction of the tribe. [crosstalk
25 00:31:15] So why is it so hard to get a license?
26

27 **Mr. Chasing Hawk:** I believe that the owner is a tribal member
28 and all I know is that he's got a tribal business license to
29 operate. He's not a corporation. I don't think is not a
30 corporation.
31

32 **Mr. Intetianbor:** Well, a business I'm guessing is a
33 corporation has a tribal license to operate his business.
34 It's a corporation.
35

36 **Mr. Carver:** I have to object, this is entirely beyond the
37 scope of this arbitration even if we were dealing with
38 substantive issues it's particularity entirely beyond the
39 scope of a preliminary hearing. The question is not how
40 Western Sky corporation works, the question is whether or not
41 under the loan agreement and with respect to issues relating
42 to the loan agreement CashCall and Mr. Intetianbor have claims
43 that are viable against each other.
44

45 **Mr. Intetianbor:** OK, with that being said, can I quickly say,
46 Your Honor, since we're not getting anywhere with that
47 question or answer to us, where the license is or if they're

1 actually licensed by the tribe, are you, Your Honor, the
2 arbitrator in this case, are you licensed by the Triple A,
3 American Arbitration Association or are you licensed by the
4 tribe, the Cheyenne River Sioux Tribe to be an arbitrator and
5 also for this case?
6

7 **Mr. Chasing Hawk:** I'm not licensed under Triple A because
8 that's not our jurisdiction over there it's outside the
9 reservation. As a arbitrator, as a tribal elder anybody can
10 become an arbitrator here as long as you know the rules and
11 regulations of the procedures that we have or the commercial
12 code that we have.
13

14 **Mr. Intetianbor:** OK.
15

16 **Mr. Chasing Hawk:** [inaudible 00:33:11] I'm the one that drafted
17 the law when I was on the tribal council back in 1996.
18

19 **Mr. Intetianbor:** OK, Your Honor, if I provided you with
20 information that says that you have to be trained and licensed
21 by the tribe to be an arbitrator will you confirm to me if you
22 were trained by the tribe to be an arbitrator or licensed by
23 the tribe to be an arbitrator or that there is a set rule or
24 regulation or some kind of formal rules that said there is a
25 tribal arbitration available at the Cheyenne River Sioux
26 tribe? Your Honor, remember you are recording this
27 conversation.
28

29 **Mr. Chasing Hawk:** Right, I'm recording it and I think I would
30 agree with the CashCall attorney that this is all irrelevant.
31 We're here to listen to your arguments on your loan and that's
32 what I'm here for. I don't think I should be giving out this
33 and that and the answers to your questions and I guess I'm
34 going to have to stay with the subject of your claims and
35 CashCall's claims.
36

37 **Mr. Intetianbor:** Your Honor, somebody's life depends on this
38 and somebody's livelihood depends on this and somebody's
39 future depends on this. If a jury selection is being made to
40 decide on a case, they are being asked questions to make sure
41 it's legitimate, OK, so this is why I'm asking Your Honor, to
42 ... these are not tough questions, these are just yes or no
43 questions and this is just legal questions that applies. This
44 is why I'm asking before we conclude this preliminary session
45 that way we know what we are doing and what we are dealing
46 with because you know that CashCall presented a case before
47 you and that I have a loan that I claimed and know that was

1 paid off to CashCall. They charged an excessive interest rate
2 and claiming that it's because it's a tribal corporation that
3 gave the loan out that the interest rate is legitimate.
4

5 And it is your job to decide if it's true or not. So if they are
6 just going to go out and select anyone to be the arbitrator,
7 you would agree with me that, that will not be legal. So, if
8 you agree with me meaning there is a requirement for every
9 arbitrator to meet before they become an arbitrator and that's
10 why I need to know what requirements you met by asking just a
11 few questions and those answers should be available, yes or no
12 or I'm licensed by the tribe to be the arbitrator or I was
13 selected by the tribe to be an arbitrator or the tribe gave me
14 the permission because the rules apply being that Western Sky
15 is a tribal ... I'm sorry Western Sky is a tribal corporation
16 owned by a tribal member and the business is licensed and
17 within the jurisdiction of the tribe. If those answers cannot
18 be available I don't know what else could be available.
19

20 **Mr. Carver:** Those answers are irrelevant because the
21 arbitration provision requires that the arbitrator be a tribal
22 elder and nothing more than that. And Mr. Chasing Hawk is a
23 tribal elder. So these other issues are entirely irrelevant
24 to both the arbitration and his qualifications as an
25 arbitrator as long as he is a tribal elder and on several
26 occasions he has said that yes he is a tribal elder.
27

28 **Mr. Intetianbor:** Yeah, you ... same contract though is written
29 by CashCall saying the arbitrator will be a tribal elder but
30 do you realize the meaning of the word arbitrator, right? So
31 we just can't jump to the conclusion that any elder will be an
32 arbitrator.
33

34 **Mr. Carver:** Actually, yes, that is what the requirement for an
35 arbitrator in this case, under this contract is only that the
36 arbitrator be a tribal elder. It's not someone who is an
37 arbitrator and a tribal elder. By virtue of being the selected
38 person you've become the arbitrator and to be selected as that
39 person you have to be a tribal elder. It doesn't mean you
40 need to be a professional arbitrator.
41

42 **Mr. Intetianbor:** OK, who selects the arbitrators?
43

44 **Mr. Carver:** Well we tried to work with you to select an
45 arbitrator and then Mr. Chasing Hawk received the demand for
46 arbitration.
47

1 **Mr. Intetianbor:** From who, from the the tribe or from
2 CashCall?

3
4 **Mr. Carver:** I ... to be honest ... to be honest with you I'm not
5 sure how he got the demand for arbitration.

6
7 **Mr. Intetianbor:** Your Honor, who selected you to be an
8 arbitrator, the tribe or CashCall?

9
10 **Mr. Chasing Hawk:** The Western Dakota owner.

11
12 **Mr. Intetianbor:** The owner of Western Sky?

13
14 **Mr. Chasing Hawk:** He also said that I've been told, he must
15 have seen me in action in the council because I'm a fair
16 person, I don't like corruption and I'm going to tell you
17 right off if there's going to be corruption I'm going to fight
18 corruption. That's where I'm coming from as a formal
19 legislature and a former trial attorney, I've been fighting
20 corruption all my life. I don't like corruption.

21
22 **Mr. Intetianbor:** So the owner of Western Sky asked you to be
23 an arbitrator for this case ...?

24
25 **Mr. Chasing Hawk:** Yes because I've been on the tribal council
26 for 20 years.

27
28 **Mr. Intetianbor:** Yeah, is the tribe aware of this selection
29 process?

30
31 **Mr. Chasing Hawk:** [Inaudible 00:39:03] because again this is a
32 private business deal. The tribe has nothing to do with any of
33 this business.

34
35 **Mr. Intetianbor:** Yes, Your Honor, the reason it has something
36 to do with is because I understand you said it's a private
37 business and you claim that the company is a tribal
38 corporation so the tribe would definitely have something to do
39 with it if it's true that a tribal corporation and then they
40 applying the laws of the tribe. So the tribe should be aware
41 of this and know about this and make the selection process to
42 make it legal. Otherwise it's not.

43
44 **Mr. Carver:** Mr. Intetianbor this is no different than a
45 company in Florida becoming registered as a Florida
46 corporation and operating under Florida law. That does not
47 mean that the governor of Florida knows anything about that

1 particular company.

2
3 **Mr. Intetianbor:** I understand you but now we're on ... coming on
4 to the same page because I have documentation showing that
5 Western Sky is not registered with the tribe or even under the
6 tribal corporation or even licensed in any way. So if I
7 present you with that documentation ...

8
9 **Mr. Carver:** If you want to make that argument as a basis for
10 why you win or CashCall loses that the time to make that
11 argument is not in this preliminary hearing it's in the filing
12 that you do either on August 2nd or on August 16th.

13
14 **Mr. Intetianbor:** I think during that hearing I will be
15 presenting my argument on why CashCall ...

16
17 **Mr. Carver:** You're entitled to argue whatever you want but my
18 point is I don't think ... today is not the day for that
19 argument, I don't think.

20
21 **Mr. Chasing Hawk:** Yeah, I'd agree with that.

22
23 **Mr. Intetianbor:** OK, I understand, Your Honor, you agree with
24 everything that's said pretty much ... So we will have something
25 similar to a summary judgment being filed by CashCall to ...
26 submitted on the 2nd. I will have a response on August 16th
27 and as arranged for August 30th that would be what, the final
28 hearing, right?

29
30 **Mr. Chasing Hawk:** Yes, August 30th would be the final hearing.

31
32 **Mr. Intetianbor:** OK. And finally, let's see, for the we
33 agreed so far that you will not disclose if you are licensed
34 by the tribe to be an arbitrator or disclose if Western Sky is
35 licensed by ... well you did say they were licensed by the tribe
36 but there is no evidence and my evidence proves otherwise.
37 And then you also said that Triple A doesn't apply because the
38 company is licensed by the tribe and the tribal law applies
39 but you couldn't give me a reason why it does.

40
41 **So pretty much I'll hold off on that for now. And even though I**
42 **strongly disagree with the evidence proving otherwise to**
43 **everything that has just been said and I would like for you to**
44 **respectfully disclose to the court, just as you wrote a letter**
45 **saying that you didn't have anything to do with the parties,**
46 **you need to also write a letter disclosing your relationship**
47 **with Mr. Webb that you claim in the beginning that you don't**

1 even know but he came to you personally and selected you as
2 the arbitrator, that you claim not to know him and all of the
3 sudden came to you and selected you as an arbitrator and also
4 you were well aware of your daughter that you just never made
5 those disclosure.
6

7 So, I would appreciate it if you would also make those
8 disclosure and any other disclosure which will ... we need to
9 know now before I make them myself. And then we'll go from
10 there.
11

12 **Mr. Carver:** I'm not entirely sure what Mr. Intetianbor is
13 requesting but I don't think that, from what I understand his
14 request to be that it is an appropriate request that the
15 arbitrator provide an additional letter beyond the initial
16 letter that was provided.
17

18 **Mr. Intetianbor:** It doesn't have to be a letter it could be
19 whatever form of disclosure he wants to make, he can make that
20 disclosure that way we know he's being fair and disclosure
21 doesn't harm, it's not ... it doesn't harm anything if you want
22 to be fair in arbitration, in trial. You just have to
23 disclose it, it doesn't hurt anything.
24

25 **Mr. Carver:** Mr. Intetianbor you're assuming that there are
26 things that are ... that exist that are required to be disclosed
27 that are within the scope of this arbitration and I disagree
28 with you whether or not the arbitrator agrees with me or
29 agrees with you is Your Honor's decision.
30

31 **Mr. Intetianbor:** That's why I'm asking His Honor and not you.
32

33 **Mr. Chasing Hawk:** I guess I can provide you with the disclosure
34 which it to me is irrelevant to what you're doing, I guess
35 from my perspective you're just saying right off the bat that
36 I'm a dishonest person, I don't belong in here and you want
37 somebody in your favor to be ... to give you a good judgment on
38 your part. And I disagree with that again because I'm a fair
39 person, I like to hear both sides of the story before I make a
40 decision and I've been doing that for 20 years.
41

42 **Mr. Intetianbor:** Yeah, Your Honor, I'm not asking for somebody
43 on my side to give me ... to do me a favor. Those questions I
44 asked they're not questions to favor me, I don't even want
45 somebody I know because according to the laws I'm not even
46 supposed to be associated with the arbitrator as much as the
47 defendant ... CashCall is not supposed to be associated with the

1 defendant.

2
3 Now that we know that it's not the case that's why I was asking
4 why those disclosures weren't made that the least you could
5 have done Your Honor was say this is my disclosure, Mr. Webb
6 the owner of Western Sky came to me to become the arbitrator
7 and the tribe is not aware of this or and also my daughter
8 works as an employee for the Mr. Webb and some other
9 information which I'm not going to say right now. You could ...
10 you could have just added that to the letter because simply
11 stating that you have no relationship whatsoever with both
12 parties is a really big statement that doesn't go well and
13 makes it a clear statement saying you don't even have an idea
14 who these people are.

15
16 But you've stated over and over again how you know this man, how
17 he has a business in the tribe and how he's registered with
18 his tribe and how he has a license with the tribe and how your
19 daughter works there and how he's came to you to become an
20 arbitrator. So those are contradicting statements this is why
21 I was asking for clarification and this is why I was asking
22 for you to make this same statement known or disclose it
23 before taking on a hearing for the arbitration this way we
24 both know. Nobody is saying anything else that's so
25 complicated or not doable. It is just a simple disclosure.
26 [crosstalk 00:47:07] And that's not taking you out of the
27 office.

28
29 **Mr. Chasing Hawk:** Mr. Intetianbor but if I was in your shoes I
30 wouldn't ask what you're asking to the arbitrator I would not
31 ask because that would question his integrity. No I will not
32 do that.

33
34 **Mr. Intetianbor:** So me asking those ... for the disclosure
35 [crosstalk 00:47:27] is questioning your integrity?
36

37 **Mr. Chasing Hawk:** Because I respect that arbitrator and I don't
38 care who that person is. All I know is that he is going to be
39 fair. That's my feelings and thinking about what I'm going to
40 do if I ever get into [inaudible 00:47:42]
41

42 **Mr. Intetianbor:** Yeah, but Your Honor [crosstalk 00:47:46] the
43 FAA rules require that those disclosures be made just like ...
44 CashCall they made that argument that the FAA the requirements
45 for arbitration and I had ... they had that in their argument to
46 compel arbitration. So if they can have that in their
47 argument to compel arbitration the FAA rule continues to

1 apply. Meaning that [crosstalk 00:48:14] disclosures could be
2 made to have at least we will know, me and them, everybody
3 will be on the same page, saying OK the arbitrator in this
4 case will be Mr. Chasing Hawk and this is who he is. And
5 we'll know, OK this is who you are and you're doing our
6 arbitration. But none of those disclosures were made so it's
7 like a half-way road and not having an idea who the arbitrator
8 is.
9

10 **Mr. Carver:** Mr. Intetianbor I don't know what rules you're
11 talking about but clearly you have all the information that
12 you claim was necessary to be disclosed so I'm not sure what
13 additional purpose this conversation has.
14

15 **Mr. Chasing Hawk:** I agree with that on that one. I think to me
16 ... I, I gave you the disclosure, what is your problem with
17 that? I agree with that even though that we talked about all
18 the details and I will hear both arguments and I will make my
19 decision on August 30th.
20

21 **Mr. Intetianbor:** OK, I look forward to that disclosure. And ...
22

23 **Mr. Carver:** Well wait, before we talk about this disclosure I
24 am somewhat, somewhat concerned about a disclosure that I
25 don't think is necessary and I'm not quite sure what Mr.
26 Intetianbor thinks he's going to do with it but I would hope
27 it would not be to post it on the internet.
28

29 **Mr. Intetianbor:** OK, why would I be posting a disclosure on
30 the internet. The arbitrator just agreed to submit his
31 disclosure before we proceed for a hearing and it's his
32 decision to give his disclosure not yours. So if he's
33 [crosstalk 00:50:00] giving a disclosure for me to proceed ...
34

35 **Mr. Carver:** Mr. Intetianbor you have a lengthy internet
36 activity. Our arbitrator needs to know that whatever he
37 writes for you is probably going to end up posted on a blog or
38 filed with Judge Cohn. It's only fairness that he understand
39 that.
40

41 **Mr. Intetianbor:** OK, if ...
42

43 **Mr. Chasing Hawk:** [crosstalk 00:50:20]
44

45 **Mr. Intetianbor:** He provided a letter that was ...
46

47 **Mr. Chasing Hawk:** [crosstalk 00:50:24] with the federal court

1 that he says I have ten kids. I don't have ten kids. This
2 gentleman from North Carolina called and made reference to
3 Intetianbor and [crosstalk 00:50:43]
4

5 **Mr. Intetianbor:** From North Carolina?
6

7 **Mr. Chasing Hawk:** [crosstalk 00:50:45] about the laws, the
8 tribal laws and all this stuff here.
9

10 **Mr. Intetianbor:** Your Honor you said that somebody called from
11 North Carolina saying he is Mr. Intetianbor?
12

13 **Mr. Chasing Hawk:** Yeah, he mentioned your name.
14

15 **Mr. Intetianbor:** He mentioned my name?
16

17 **Mr. Chasing Hawk:** Right. Supposed to have a hearing on
18 [inaudible 00:51:03] and I said yes it starts in about 30
19 minutes I have ... that was about 9:30 this morning he called.
20

21 **Mr. Intetianbor:** He called this morning about me.
22

23 **Mr. Chasing Hawk:** He gave me the number 800-849-5291.
24

25 **Mr. Intetianbor:** Hold on.
26

27 **Mr. Chasing Hawk:** [Inaudible 00:51:20] [crosstalk 00:51:22]
28

29 **Mr. Intetianbor:** Can you say that number again please, 800 ...
30

31 **Mr. Chasing Hawk:** 849-5291 from North Carolina.
32

33 **Mr. Intetianbor:** 5291?
34

35 **Mr. Chasing Hawk:** Yes, he works for Wallace and Graham.
36

37 **Mr. Intetianbor:** He works for Wallace and Graham?
38

39 **Mr. Chasing Hawk:** That's right. I don't know what city, they
40 called me and made reference to [inaudible 00:51:48] your name
41 Abraham Intetianbor.
42

43 **Mr. Intetianbor:** What did he say he wanted?
44

45 **Mr. Chasing Hawk:** He wanted some information as to what time
46 I'm going to have the hearing all that stuff. So [inaudible
47 00:52:02] [crosstalk 00:52:03]

1
2 **Mr. Intetianbor:** I don't have a clue to who these people are
3 but obviously the case is not a secret, but I will find out
4 who they are and why they called and mentioned my name, well
5 they probably mentioned my name because it's related to the
6 case. I will find that information out. But what I was going
7 to answer to Mr. Christopher Carter is don't say that my
8 activity is all over the internet and that's ... first that's
9 wrong. Even if I said I word or two here doesn't mean my
10 activity is all over the internet. That's a wrong statement.
11 And number two, the letter the arbitrator wrote to the judge,
12 you were the one that gave it to the judge, not me.
13

14 **And secondly if he has agreed as he has agreed to make his**
15 **disclosure and you will also have to give that to the judge or**
16 **to myself. Either way it doesn't harm a fly. It's just the**
17 **rule, you just have to make your disclosure known and the**
18 **selection process, know if you want to and then we are in the**
19 **clear. It does ... you can't say, tell him not to make his**
20 **disclosure when he's agreed to make his disclosure because you**
21 **think that I'm going to put it somewhere on the internet. I**
22 **don't know where you come up with your stuff or your idea but**
23 **at this point [crosstalk 00:53:31] you can't be using excuses**
24 **that ...**
25

26 **Mr. Chasing Hawk:** It's in the court order.
27

28 **Mr. Intetianbor:** Say that again Your Honor.
29

30 **Mr. Chasing Hawk:** You mentioned my name, that I'm on the
31 Facebook that's how you got your information that I have ten
32 kids which is not true.
33

34 **Mr. Intetianbor:** No, that's not how I got my information about
35 your kids, Your Honor, that information was from a reliable
36 source, stemming from two marriages combined, and that's not ...
37 we can't be fighting over that right now but at the least you
38 know and I know that from even your second marriage there was
39 seven kids from that, we can't deny that fact. This
40 information was provided from a reliable source and can not be
41 disputed and I do have all the proof and all the records, we
42 shouldn't even go there, that's number one. And number two ...
43

44 **Mr. Chasing Hawk:** You want a disclosure on that.
45

46 **Mr. Intetianbor:** No, I don't need a disclosure on that. We
47 don't even ... I don't need a disclosure on that. I just need a

1 disclosure on, that ... that your daughter ... for you not
2 mentioning earlier that your daughter works for Western Sky
3 and also for you not mentioning earlier that it was the owner
4 of Western Sky that came to you to ...
5

6 **Mr. Chasing Hawk:** You're repeating yourself ... you know I ... I
7 think you're just repeating yourself as a [inaudible 00:54:58]
8 redundancy whatever you call it.
9

10 **Mr. Intetianbor:** Your Honor I was clarifying the answer to
11 your question because you mentioned something I disagreed with
12 so I was clarifying it that way you know how it happens. I
13 don't know if you understood me when I said it the first time
14 so, I was answering your question.
15

16 **Mr. Carver:** OK, I think ... do we have any more procedural
17 issues that need to be resolved?
18

19 **Mr. Chasing Hawk:** I think that's been taken care of, I think
20 this one here went too far, it's irrelevant that I have to
21 provide the promise that he will not put those in any ...
22 [crosstalk 00:55:40]
23

24 **Mr. Intetianbor:** I already said that it's not going on the
25 internet and you can bet your words on that one. You
26 understand? I am not two years old, I don't play around, I
27 don't have time to dick around, I'm not two years old. I have
28 given you my word. I guarantee you. I don't even have time
29 for that nonsense. Why would I go post a letter from you on
30 the internet. It's not ... under my control what a court does
31 with it.
32

33 **Mr. Chasing Hawk:** When you were talking about my ex-wife where
34 you got the information, who is the ex-wife because as a
35 Vietnam veteran with PTSD I have five ex-wives that I have
36 [crosstalk 00:56:15]
37

38 **Mr. Intetianbor:** Yeah, this is why I said I didn't want to go
39 into that. I didn't say any of your ex-wives gave me the
40 information. That's not what I said. I just said about the
41 kids from previous marriages and current wife. That's not
42 what I even said that you ex-wife gave me any information.
43 I'm just saying that the information that I have at my
44 disposition. If I wanted to post [inaudible 00:56:36] on the
45 internet, I could have done that. I could have done it a long
46 time ago but you don't see me doing that. So that's not me.
47 Whatever I asked to be given to the judge has to be given to

1 the judge. It's just as simple as that. The clarification we
2 need is the same clarification you just agreed to provide this
3 your disclosure saying this guy came to me, I know him and
4 decided to be the arbitrator. And then my daughter only works
5 there as an employee. Period. It's not that difficult to do.
6

7 **Mr. Carver:** You're making statements as to what a disclosure
8 required that I don't think that you could adequately support.
9 And you're stating law to the arbitrator as if it is a fact
10 when it is only your opinion of the law. I think where we are
11 now is that we have a hearing set. I would request that the
12 arbitrator send out an email confirming the schedule so that
13 we both have it in writing. And I don't know that there's
14 anything more that we can do today in the preliminary hearing.
15

16 **Mr. Intetianbor:** OK, and then Mr. Carver you're confirming
17 that the FAA rules doesn't require you to disclose your
18 relationships with the parties. Is that what you're saying
19 Mr. Christopher Carver?
20

21 **Mr. Carver:** Mr. Intetianbor I'm saying that we're done for the
22 day. You have your opinion of the law, you have your opinion
23 as to whether or not the disclosure was adequate and that is
24 something that you can seek to address after the arbitration
25 but I don't think that the time for addressing it is right
26 now.
27

28 **Mr. Intetianbor:** OK, And, so when will the next telephone
29 hearing be? On the 12th?
30

31 **Mr. Carver:** No, I think ... I think the schedule was that
32 there's not going to be another telephonic hearing until the
33 final hearing on the 3rd, on the 30th I'm sorry, of August.
34

35 **Mr. Intetianbor:** OK, so no telephone hearing until the 30th of
36 August.
37

38 **Mr. Carver:** Yeah, I think ... unless you think we need one
39 before that.
40

41 **Mr. Intetianbor:** That would be for the arbitrator to decide
42 not me.
43

44 **Mr. Chasing Hawk:** I think we'll just stay with the August 30th
45 hearing. And we'll have a telephonic hearing at that time.
46

47 **Mr. Intetianbor:** All right. So we have a ...

1
2 **Mr. Chasing Hawk:** Is that Mountain Standard Time again?

3
4 **Mr. Intetianbor:** Say that again.

5
6 **Mr. Chasing Hawk:** Ten o'clock Mountain Standard Time.

7
8 **Mr. Intetianbor:** Ten o'clock, for the 30th?
9

10 **Mr. Carver:** Yeah, that would be noon Eastern Time Mr.
11 Intetianbor.

12
13 **Mr. Intetianbor:** OK, noon, Eastern Time and on August 30th for
14 the final hearing.

15
16 **Mr. Carver:** Right.

17
18 **Mr. Intetianbor:** OK, I have that on my calendar.
19

20 **Mr. Carver:** And then we have the submission dates are on the
21 second of August and the 16th of August.
22

23 **Mr. Chasing Hawk:** OK.
24

25 **Mr. Carver:** OK?
26

27 **Mr. Intetianbor:** You guys are submitting on the ... sorry, on
28 the 2nd of August and I'm responding on the 16th.
29

30 **Mr. Carver:** Yeah or if you [crosstalk 00:59:44]
31

32 **Mr. Chasing Hawk:** Can I have one request that either party
33 don't call me on my personal phone because that's what
34 Intetianbor did call me and I said this and that so he
35 mentioned that in the [inaudible 00:59:59] or files and I kind
36 of, that's like I got another call from Intetianbor on my home
37 phone but I didn't answer that phone.
38

39 **Mr. Intetianbor:** Yeah, Your Honor those are the numbers that
40 you provided in your email. So I don't know why you would
41 provide those numbers on your email to be called and you don't
42 want to be called on those numbers.
43

44 **Mr. Chasing Hawk:** [crosstalk 01:00:20] I don't want to talk
45 about anything because I guess witch hunting is the word that
46 ... he said this or he said that and I don't like to be put in
47 the paper and especially federal documents.

1
2 **Mr. Intetianbor:** OK, so, from now on no one can call you, we
3 can just wait until the 30th because we don't even have a
4 reason to call you before the 30th I guess. I'll wait to the
5 30th and call the same number to Akerman Senterfitt.
6

7 **Mr. Carver:** Yeah, we can use the same call in number, it's
8 just easier. That way you can call in from anywhere.
9

10 **Mr. Intetianbor:** OK. And is that an agreement Your Honor.
11

12 **Mr. Chasing Hawk:** Yes, agreement there. And then use the email
13 to write me something and I'll respond but it will be made
14 copies to the other party too. [crosstalk 01:01:25]
15

16 **Mr. Intetianbor:** Yes, I copied them in emails just like you
17 copied me in emails, so.
18

19 **Mr. Carver:** And Mr. Intetianbor do you want to agree to a page
20 limit on the filings?
21

22 **Mr. Intetianbor:** Those should already be set rules, it
23 shouldn't be decided now, it should be in existence, that's
24 what I'm saying. We just can't keep making rules as we go on
25 an arbitration case, we should already be in existence as you
26 guys have claimed.
27

28 **Mr. Carver:** Mr Intetianbor actually in an arbitration you can,
29 the arbitrator, if the parties want to agree to a particular
30 page length for their filings that's entirely appropriate in
31 an arbitration.
32

33 **Mr. Intetianbor:** OK, So what's the current set rule of the
34 Cheyenne River Sioux Tribe arbitration page rule. What's the
35 set law right now.
36

37 **Mr. Chasing Hawk:** [crosstalk 01:02:17] an arbitration and I
38 think both parties would compromise you don't have to really
39 follow rules and regulations that's why I mentioned it's going
40 to be informal and we'll agree we don't have to follow this
41 and that because if we follow all the rules and regulations
42 we're going to be jammed up here.
43

44 **Mr. Intetianbor:** That's a big statement Your Honor.
45

46 **Mr. Chasing Hawk:** I think that the pages, the page limit is I
47 agree with that. They don't have to be 20 pages or 30 pages,

1 it can be only six pages, five pages or whatever.

2
3 **Mr. Intetianbor:** Yeah, I understand Your Honor, but what's the
4 set rule right now being that there is already a rule in ... as
5 claimed, that there is already an arbitrational set rule,
6 what's the current rule that way I have an idea of what we're
7 sticking to or what we're going by. What is the the set rule
8 of the Cheyenne River Sioux Tribe as we speak on today's date
9 that's available.

10
11 **Mr. Chasing Hawk:** Well let me say this, that there's no set
12 rules and that's why I said we don't have any formal hearing
13 here.

14
15 **Mr. Intetianbor:** OK, so pretty much there's no set arbitration
16 rules.

17
18 **Mr. Chasing Hawk:** [crosstalk 01:03:29] unless if you want to
19 set some rules then the tribe has to adopt a Triple A which
20 they don't.

21
22 **Mr. Intetianbor:** As I said there's pretty much no arbitration
23 rules for arbitration at a tribe and we just have to come up
24 with one now and make it informal and just go from there.

25
26 **Mr. Carver:** Right.

27
28 **Mr. Intetianbor:** All right.

29
30 **Mr. Carver:** That raises actually my question Mr. Intetianbor
31 do you want to agree to a page limit for these filings.

32
33 **Mr. Intetianbor:** Pretty much, I don't even know what page
34 limits are agreed to.

35
36 **Mr. Carver:** No, my question is do you want to see if you and I
37 can agree to a certain number of pages which is acceptable to
38 the arbitrator would be the page limit that binds us.

39
40 **Mr. Intetianbor:** OK.

41
42 **Mr. Carver:** I'm trying to make it ... A simple question has
43 gotten much more complicated than I intended it to be.

44
45 **Mr. Intetianbor:** I understand what you're saying but remember
46 how simple questions got so much complicated than I expected
47 it to be. This is why. And this is why you're simple

1 questions get more complicated than it's supposed to be
2 because as far as I've known and heard from you guys there's
3 already a set rule of arbitration. If there is why is it not
4 being provided and why don't even you or the arbitrator know
5 what the set rule is. And that way I can use my guidance from
6 there. But since there is no set rule as to arbitration or
7 page limit and all that and now I guess we just have to make
8 one up. And say OK, ten pages for writing, five pages for
9 writing or certain of number of pages for exhibits and
10 whatever rules we're making right now which, it's not like I'm
11 agreeing to it but you guys can set a page that you want to
12 set and I'll submit the information that's required of me
13 because the court has ordered me to participate and we'll go
14 from there.

15
16 **Mr. Chasing Hawk:** Yes ... if I was a respondent I would agree
17 with the other party that yes, let's set up a page limit,
18 there's a ... maybe five pages to make it simple, five or ...
19

20 **Mr. Carver:** Hello.

21
22 **Mr. Intetianbor:** Hello.

23
24 **Mr. Carver:** Mr. Intetianbor I think we lost the arbitrator for
25 a second.

26
27 **Mr. Intetianbor:** Yeah, it sounds like something got
28 disconnected, I don't know.

29
30 **Mr. Carver:** Yeah, I suspect that he will call back in in a
31 second.

32
33 **Mr. Intetianbor:** Mr. Carver are you there.

34
35 **Mr. Carver:** I'm here, I'm sending the arbitrator an email.

36
37 **Mr. Intetianbor:** OK. And if he doesn't call in in about five
38 minutes should we just stick to the schedule that's already
39 discussed and go from there or ...
40

41 **Mr. Carver:** Yeah, exactly, if he doesn't call back in, I mean
42 who knows what happened, maybe the line was cut.

43
44 **Speaker 1:** Joining the meeting

45
46 **Mr. Carver:** There we go.
47

1 **Mr. Intetianbor:** OK.

2
3 **Mr. Chasing Hawk:** Hello, I got disconnected here.

4
5 **Mr. Intetianbor:** Yeah, it looks like your phone got
6 disconnected.

7
8 **Mr. Carver:** OK, I guess where we are is we have a schedule, we
9 will ... from CashCall's perspective we will try to keep our
10 filing on the 2nd as short as possible and we'll go from there.

11
12 **Mr. Intetianbor:** OK. And I'll try to keep mine as short as
13 possible and we'll go from there.

14
15 **Mr. Carver:** All right. And Mr. ... Your Honor you're going to
16 send out an email confirming the schedule?

17
18 **Mr. Chasing Hawk:** Yes.

19
20 **Mr. Carver:** OK, thank you all.

21
22 **Mr. Intetianbor:** All right thank you guys.

23
24 **Mr. Chasing Hawk:** [crosstalk 01:08:20] have a good day.

25
26 **Mr. Intetianbor:** You have a good day.

27
28 **Mr. Chasing Hawk:** Bye-bye.

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF SOUTH DAKOTA

CHAD MARTIN HELDT, CHRISTI W.
JONES, SONJA CURTIS, and CHERYL A.
MARTIN, individually and on behalf of all
similarly situated individuals,

Plaintiffs,

-v-

PAYDAY FINANCIAL, LLC, d/b/a Lakota
Cash and Big Sky Cash;
WESTERN SKY FINANCIAL, LLC, d/b/a
Western Sky, and Westernsky.com;
MARTIN A. (“Butch”) WEBB;
CASHCALL, INC., a California
Corporation; and WS Funding, LLC, a
wholly owned subsidiary of CashCall, Inc.

Defendants.

Court File No. 13-cv-3023-RAL

**AMENDED
CLASS ACTION COMPLAINT AND
DEMAND FOR TRIAL BY JURY**

(EQUITABLE RELIEF SOUGHT)

EXHIBIT C

STATE OF NEW HAMPSHIRE

BANKING DEPARTMENT

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

Case No. 12-308

ORDER TO CEASE AND DESIST

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

JURISDICTION

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

RESPONDENTS

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

GOVERNING LAW

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

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

FINDINGS

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

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

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

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

ORDER

Accordingly, the Commissioner orders as follows:

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

NOTICE OF RIGHT TO A HEARING

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

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

RECOMMENDED by:

June 4, 2013
Date

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

ORDERED by:

June 4, 2013
Date

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

CERTIFICATE OF SERVICE

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

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

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

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

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF SOUTH DAKOTA

CHAD MARTIN HELDT, CHRISTI W.
JONES, SONJA CURTIS, and CHERYL A.
MARTIN, individually and on behalf of all
similarly situated individuals,

Plaintiffs,

-v-

PAYDAY FINANCIAL, LLC, d/b/a Lakota
Cash and Big Sky Cash;
WESTERN SKY FINANCIAL, LLC, d/b/a
Western Sky, and Westernsky.com;
MARTIN A. ("Butch") WEBB;
CASHCALL, INC., a California
Corporation; and WS Funding, LLC, a
wholly owned subsidiary of CashCall, Inc.

Defendants.

Court File No. 13-cv-3023-RAL

**AMENDED
CLASS ACTION COMPLAINT AND
DEMAND FOR TRIAL BY JURY**

(EQUITABLE RELIEF SOUGHT)

EXHIBIT D



PO Box 66007
Anaheim, CA 92816

November 02, 2012



RE: Loan #7801802

Dear Cheryl Martin ,

This letter is being sent in response to your inquiry of October 31, 2012 in regards to the interest rate charged in conjunction with your loan.

Your loan was funded by Western Sky Financial ("Western Sky") on December 30, 2011, in the amount of \$1,000.00, which is the loan amount of \$1,500.00 minus the \$500.00 Prepaid Finance Charge/Origination Fee. Western Sky is a wholly Cheyenne River Sioux Tribal Member owned business and is located and operates within the exterior boundaries of the Cheyenne River Indian Reservation. Western Sky loans are initiated, approved, issued and disbursed within the confines of the Cheyenne River Indian Reservation. Western Sky is licensed with the Cheyenne River Sioux Tribe. Western Sky does not have any physical presence in your state or any other State of the Union. The laws of the Cheyenne River Sioux Tribe apply exclusively to the terms and conditions of your loan, and you further accepted this choice of law and jurisdiction by executing your loan document. These facts were explained to you when you applied and again when you signed your Promissory Note. As a courtesy, please find attached an additional copy of your loan Note for your records.

Please also be advised that on January 02, 2012, per the NOTICE OF ASSIGNMENT, SALE OR TRANSFER OF SERVICING RIGHTS e-mail sent to the e-mail address you provided, your loan was sold to WS Funding, LLC, and is currently being serviced by CashCall. If you have any questions regarding your loan, current balance, or payoff amount, you may call our Customer Service department at 1-877-525-2274. Our hours of operation are 6 a.m. to 8 p.m. Pacific



PO Box 66007
Anaheim, CA 92816

time Monday through Friday; 6 a.m. to 12 p.m. Pacific time Saturday. If you are unhappy with Western Sky, WS Funding, or your loan in any respect, we would advise you to pay it off now without penalty.

We hope that this response has answered your questions. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

Customer Service
CashCall, Inc.
(877) 525-2274

Enclosures

Cc: file

This communication is an attempt to collect a debt and any information obtained will be used for that purpose. As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF SOUTH DAKOTA

CHAD MARTIN HELDT, CHRISTI W.
JONES, SONJA CURTIS, and CHERYL A.
MARTIN, individually and on behalf of all
similarly situated individuals,

Plaintiffs,

-v-

PAYDAY FINANCIAL, LLC, d/b/a Lakota
Cash and Big Sky Cash;
WESTERN SKY FINANCIAL, LLC, d/b/a
Western Sky, and Westernsky.com;
MARTIN A. (“Butch”) WEBB;
CASHCALL, INC., a California
Corporation; and WS Funding, LLC, a
wholly owned subsidiary of CashCall, Inc.

Defendants.

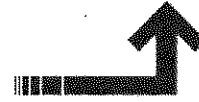
Court File No. 13-cv-3023-RAL

**AMENDED
CLASS ACTION COMPLAINT AND
DEMAND FOR TRIAL BY JURY**

(EQUITABLE RELIEF SOUGHT)

EXHIBIT E

Subject: Get a \$1,500 to \$10k Cash Loan Deposit In As Little As 24hrs!
From: Western Sky Financial (west.sky@coriumsexless.com)
To: 85a69c4372e8bab3d7dee4c1843879ae1af8d610@coriumsexless.com;
Date: Wednesday, May 22, 2013 6:46 AM



Click Show Images To Enable Links.

OR CLICK HERE TO CONTINUE TO THE WEB SITE

Get a \$1,500 - \$10,000 CASH Loan. Deposits In As Little As a Day. Start Here.

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Get anywhere from
\$1,500 to \$10,000*
in as little as a day!



Get a Personal Loan!
Pay it back in Months,
NOT Weeks!*



- Not a Payday Loan
- No Obligation
- No Cost to Apply

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⁴Subject to credit approval. Additional documentation required.
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612 E Street Timber Lake, SD 57656

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ON THE OUTSIDE OF THE ENVELOPE TO: 1600 STEELES AVE. WEST, SUITE 230, CONCORD ONTARIO, L4K 4M2

Subject: cwtrusevich; Get a \$1,500 – \$10,000 cash loan in as little as a day_
From: Western Sky Financial (Services@_Bounce_dn)
To: cwtrusevich@yahoo.com;
Date: Wednesday, December 31, 1969 6:00 PM

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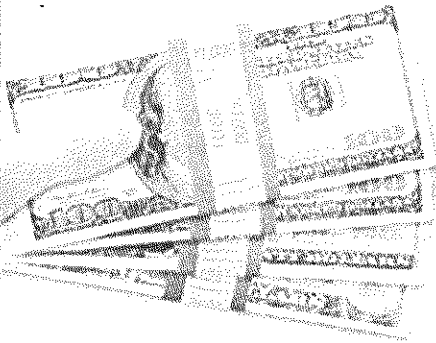
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\$1,500 to \$10,000*

in as little as a day!



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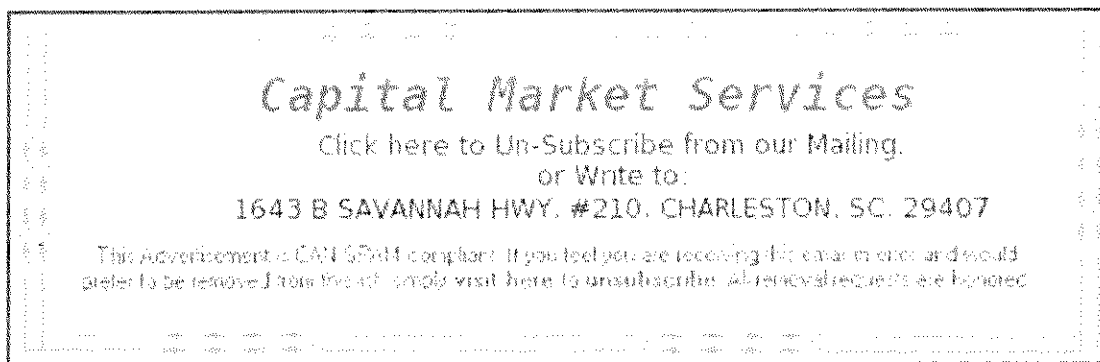
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