

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

State of Minnesota, by its Attorney General,
Lori Swanson and its Commissioner
of Commerce, Michael Rothman,

Court File No. _____

Plaintiffs,

vs.

CashCall, Inc., a California
corporation; WS Funding, LLC,
a Delaware limited liability company,
doing business in its own name and/or
as a division or subsidiary of
CashCall; and WS Financial, LLC,
doing business in its own name and/or
as an incorporated or unincorporated
division or subsidiary of CashCall,

COMPLAINT

Defendants.

The State of Minnesota, by its Attorney General, Lori Swanson, and its Commissioner of
Commerce, Michael Rothman, for its Complaint against Defendants CashCall, Inc., WS
Funding, LLC, and WS Financial, LLC (collectively "Defendants"), allege as follows:

INTRODUCTION

1. Defendants are affiliated companies that fund, purchase, service, and collect on
loans to Minnesota consumers that accrue interest at rates far in excess of those allowed under
Minnesota law. Defendants seek to evade state licensure, usury, and consumer protection laws
by using as a front a fourth company, Western Sky Financial, LLC ("Western Sky"), which
falsely holds itself out as a tribal entity that purports to be exempt from state consumer protection

laws under the doctrine of tribal sovereign immunity. In reality, Western Sky is not owned or operated by a tribe or for the benefit of a tribe, and the doctrine of tribal sovereign immunity does not apply to the loans made to Minnesota borrowers. Defendants' use of Western Sky as a front is designed to mislead borrowers and regulators about the loans and is an illegitimate attempt to circumvent state law. Defendants fund and operate virtually every aspect of Western Sky's operations, including conducting advertising in Western Sky's name, funding the underlying loans that Western Sky supposedly originates, funding Western Sky's business operations, conducting communications with borrowers, underwriting the loans, and performing numerous other core functions. After Western Sky supposedly originates the loans, it immediately assigns them to Defendants, which then collect all the payments on the loans, charge interest on the loans at rates far in excess of those allowed under Minnesota law, and indemnify Western Sky for all costs and penalties associated with any regulatory action taken against the lending scheme.

2. Since 2010, at least nine other states and the Federal Trade Commission have taken action against Defendants or Western Sky for unlawfully making loans without proper state licensure and in violation of state usury laws, for misrepresentations, and/or for illegal debt collection practices. The State of Minnesota, by its Attorney General, Lori Swanson, and its Commissioner of Commerce, Michael Rothman, brings this action seeking to end Defendants' illegal practices and obtain restitution for Minnesota consumers.

PARTIES

3. Lori Swanson, the Attorney General of the State of Minnesota, is authorized under Minn. Stat. §§ 8.01, 8.31, 8.32, and 47.601, subd. 7 and has common law authority,

including *parens patriae* authority, to bring this action on behalf of the State of Minnesota and its citizens to enforce Minnesota law.

4. Michael Rothman, the Commissioner of Commerce of the State of Minnesota, is authorized under Minn. Stat. § 45.027, subd. 5 to initiate enforcement actions in district court related to his duties and responsibilities as Commissioner.

5. CashCall, Inc. ("CashCall") is a California corporation located at 1600 S. Douglass Road, Anaheim, California 92806 and was formed in the year 2000. It sometimes operates through subsidiaries using the names WS Funding, LLC and/or WS Financial, LLC. It is not licensed to make consumer loans to Minnesota borrowers.

6. WS Funding, LLC ("WS Funding") is a Delaware limited liability company and a wholly-owned subsidiary of CashCall. WS Funding was incorporated in Delaware on March 15, 2010. The President of WS Funding is also the President and owner of CashCall. WS Funding is not licensed to lend to Minnesota borrowers, nor is it registered with the Minnesota Secretary of State. This lawsuit is filed against WS Funding in its own capacity and in its capacity as a division, subsidiary, or assumed name of CashCall.

7. CashCall also sometimes does business under the name WS Financial, LLC ("WS Financial"). The owner and president of CashCall signs contracts as President of WS Financial. WS Financial, LLC is not registered with the Minnesota Secretary of State to conduct business in Minnesota and is not registered with the Minnesota Department of Commerce as a lender of any type. This lawsuit is filed against WS Financial, LLC in its own capacity and in its capacity as an incorporated or unincorporated division, subsidiary, or assumed name of CashCall.

JURISDICTION

8. This Court has jurisdiction over the subject matter of this action pursuant to Minn. Stat. §§ 8.01, 8.31, 8.32, subd. 2(a) and 47.601, subd. 5. In addition, the Commissioner of Commerce is authorized to bring suit to enforce laws related to his duties and responsibilities under Minn. Stat. § 45.027, subd. 5.

9. This Court has personal jurisdiction over Defendants pursuant to Minn. Stat. § 543.19 because Defendants conducted business in Minnesota and committed acts in Minnesota causing injury to Minnesota consumers.

VENUE

10. Venue in Hennepin County is proper under Minn. Stat. § 542.09 because the cause of action arose, in part, in Hennepin County.

BACKGROUND

CashCall's "Rent-A-Bank" Scheme.

11. Before Defendants devised the lending scheme that is the subject of this lawsuit, one of the Defendants—CashCall—engaged in a similar effort to evade state law through a device known as a “rent-a-bank” or “rent-a-charter” scheme. That scheme works like this: in general, unless federally chartered, companies must be licensed as some type of lender by a state to make small, unsecured loans to a state’s consumers. Their lending is then governed by the state’s usury and consumer protection laws. Some unlicensed companies have attempted to unlawfully evade state laws by engaging in sham transactions in which they purport to affiliate with a national or state-chartered bank to make consumer loans, claiming federal preemption of state usury and other law. They do so even though the real party in interest behind the transaction is the unlicensed company.

12. In 2003, the Office of the Comptroller of the Currency (“OCC”) initiated a series of enforcement actions against national banks that were engaged in such schemes. *See* OCC Press Release dated January 21, 2003, NR 2003-03 (quoting the Comptroller of the Currency as stating that rent-a-bank schemes are a “matter of great concern to us”). In 2005, the Federal Deposit Insurance Corporation followed suit with respect to state-chartered banks, warning banks about the “credit, operational, legal and reputation risks” that such schemes posed and threatening “enforcement action” against banks engaged in such schemes. FDIC Financial Institutions Letters, Guidelines for Payday Lending, FIL 14-2005, February 2005, at 2. These combined banking regulatory actions are credited with helping to curb “rent-a-bank” or “rent-a-charter” schemes.

13. CashCall, however, continued to engage in “rent-a-bank” lending long after other lenders ceased operations. The West Virginia Attorney General filed suit against CashCall in 2008, alleging that CashCall entered into an improper relationship with a South Dakota bank (First Bank and Trust of Milbank, South Dakota) for purposes of evading West Virginia’s usury and consumer protection laws. *West Virginia v. CashCall et al.*, Civil File No. 08-C-1964, Kanawha County Circuit Court, Complaint at ¶¶ 3-7. The West Virginia Attorney General alleged that the lending program between CashCall and the bank was “essentially a sham intended to make improper use of federal preemption in order to unlawfully evade West Virginia’s lender licensing and usury laws.” *West Virginia v. CashCall*, Final Order on Phase I of the Trial: the State’s Debt Collection Claims, at 2, ¶ 4. Following a trial, on September 10, 2012, the West Virginia court found that “the purpose of the lending program was to allow CashCall to hide behind the Bank’s charter and its right to export interest rates under federal banking law, as a means for CashCall to deliver its loan product to states like West Virginia,

with usury laws.” *West Virginia v. CashCall*, Final Order on Phase II of the Trial: the State’s Usury and Lending Claims, at 25. The court found that CashCall was “the de facto lender of such loans” (*id.* at 27) and enjoined it from making loans in West Virginia without a license and from making or collecting usurious loans, imposed a civil penalty of \$730,000, awarded judgment of \$10,045,687, and declared all loans made by CashCall in West Virginia null and void.

14. Around the same time, the FDIC brought an enforcement action against another one of the banks used by CashCall—First Bank of Delaware—for engaging in such a scheme with CashCall and other non-bank lenders. The FDIC issued a Notice of Charges, which sought an order requiring First Bank of Delaware to cease and desist its lending operations with CashCall and to pay restitution and civil penalties for various violations of law. *In the Matter of First Bank of Delaware and CompuCredit Corp.*, FDIC-07-256b, FDIC 257k, Federal Deposit Insurance Corporation, June 10, 2008.

15. Following the regulatory scrutiny of such schemes, CashCall’s “rent-a-bank” activities came to an end.

CashCall’s Relationship with Western Sky and the “Rent-a-Tribe” Scheme.

16. Another unlawful scheme used by unlicensed companies to make usurious loans to a state’s consumers is called the “rent-a-tribe” scheme. In this scheme, an unlicensed lender purports to affiliate with an Indian tribe in an improper attempt to claim federal tribal sovereign immunity from state licensure and lending laws. This scheme is similar to the “rent-a-bank” scheme, but instead of improperly attempting to capitalize on protections afforded to national banks under federal law, it improperly attempts to capitalize on the sovereign immunity afforded to Indian tribes under federal law. Even the payday lending industry has decried “rent-a-tribe”

lending as improper. In February 2011, the Community Financial Services Association of America, which represents the payday lending industry, condemned the practice of affiliating with tribes to circumvent state regulation and announced that it would expel members who engaged in such schemes. *See* Press Release, Community Financial Services Association of America, Storefront Payday Lenders Reject Native American Partnerships (Feb. 10, 2011).

17. On December 28, 2009—about 13 months after the West Virginia Attorney General sued CashCall for engaging in the “rent-a-bank” scheme and about 18 months after the FDIC took action against one of the “front” banks used by CashCall—Defendant WS Financial, a CashCall subsidiary, entered into an “Agreement with Western Sky Financial for the Assignment and Purchase of Promissory Notes.” The agreement is signed on behalf of WS Financial by CashCall’s owner and president.

18. Advertisements for Western Sky appear on television and radio broadcast into Minnesota. CashCall also advertises in its own name in ads that reach into Minnesota, offering loans to borrowers. If a loan applicant contacts CashCall directly, CashCall will process the loan application, but the loan itself will be supposedly funded by Western Sky and then sold to CashCall’s subsidiaries, in the same way that loans made through Western Sky’s website are sold to CashCall’s subsidiaries. CashCall routes these loans through the Western Sky entity to give the loan the false appearance of being protected by tribal sovereign immunity, and to purportedly skirt state usury and consumer protection law.

19. Western Sky purports to originate the loans to Minnesota consumers, but then sells the loans to WS Funding or WS Financial on a daily basis. Western Sky warrants to WS Financial that borrowers will not have made *any* payments on the loans before their purchase by

WS Financial. WS Financial or WS Funding then assume all rights of Western Sky to collect on the loans.

20. CashCall and its subsidiaries fund the loans and bear all the risk of nonpayment on the loans. Defendants fund the loans originated by Western Sky by maintaining a deposit account in Western Sky's name with a balance equal to the full value of two days of loans made to consumers. Funds in this account are used to fund the loans to borrowers. Defendants 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" and attorney's fees.

21. CashCall and its subsidiaries also run virtually every other aspect of Western Sky's operations. For example, in an Agreement for Service between WS Financial and Western Sky dated December 28, 2009, Defendant WS Financial agrees to conduct the underwriting review of loan applications, to provide inbound and outbound customer service support including communication with borrowers by telephone, email and text message during the origination and servicing of the loans, to provide website hosting and technical support, to provide a toll free telephone and facsimile number, and to service the loans in all other respects. In addition, Western Sky grants to CashCall the right to use its artwork, designs, trademarks, slogans, logos and other advertising material to engage in advertising online, on television, on the radio and in print. Pursuant to a Promissory Note dated December 28, 2009, Defendant WS Financial also provides the working capital used by Western Sky to run its operations.

22. Courts have recognized that the "true lender" or "de facto lender" behind a loan transaction cannot evade state law by engaging in these sorts of deceptive relationships. In determining if a party is the "true lender," courts consider the substance of the transaction. *See*

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 (Kanawha County Court, Sept. 10, 2012). In all significant substantive respects, Defendants are the lender and the real party in interest to the loan transactions. As it relates to loans purportedly made by Western Sky to Minnesota consumers, Defendants: (1) supply the funds for the loans; (2) bear the risk of loss on the loans; (3) make the underwriting decisions, i.e., the decisions to lend or not to lend to a particular applicant; (4) develop and use forms and brands, and platforms; and (5) collect the vast majority of fees and interest on loans, among other things. Accordingly, Defendants are the “de facto” lender of the loans made to Minnesota borrowers.

Western Sky Is Not a Tribal Entity and Is Not Subject to Tribal Sovereign Immunity.

23. Under the doctrine of tribal sovereign immunity, certain legitimate activity actually carried out by Indian tribes on tribal reservations for the benefit of a tribe is exempt from certain state regulations. Western Sky, however, is not owned or operated by an Indian tribe, is not a tribal entity, and does not exist for the benefit of a tribe. Instead, Western Sky is a limited liability company created under South Dakota law, and its sole member is an individual named Martin Webb. While Mr. Webb holds himself out as a member of the Cheyenne River Sioux Tribe, no approval was required from the Cheyenne River Sioux Tribe for Western Sky to become a South Dakota limited liability company. The profits made by Western Sky are distributed to Mr. Webb, and Western Sky does not operate for the benefit of an Indian tribe. The doctrine of tribal sovereign immunity does not apply to the loans made by Western Sky to Minnesota consumers.

Numerous Other States Have Rejected Defendants' Unlawful Scheme.

24. The Defendants or Western Sky have been the subject of enforcement actions in at least nine states, as well as by the federal government, in relation to their lending schemes.

25. For example, Colorado sued Western Sky on January 27, 2011, alleging that Western Sky's loans to Coloradans were illegal, violated Colorado's usury laws, and that Western Sky unlawfully made consumer loans to Coloradans without the required license. *Colorado v. Western Sky Financial, LLC et al.*, Case No. 11CV638, Denver County District Court, Complaint. The Denver County District Court ruled in favor of Colorado on its summary judgment motion, holding that "Webb, as an enrolled member of the Tribe, is not individually entitled to immunity, nor does his membership in the Tribe confer such immunity upon Western Sky." *Colorado v. Western Sky Financial, LLC et al.*, Case No. 11CV638, Denver County District Court, April 15, 2013 Order at 8. In addition to granting Colorado's motion for summary judgment, the judge rejected Western Sky's assertion of tribal sovereign immunity and ordered Western Sky to pay Colorado's attorney fees incurred litigating the sovereign immunity issue. *Id.* at 14.

26. On June 4, 2013 the State of New Hampshire issued a Cease and Desist Order against WS Funding and CashCall. The State of New Hampshire found that CashCall and/or WS Funding are the de facto lender for the loans made to New Hampshire customers and that the companies deceptively concealed their relationship. The Order required CashCall and WS Funding to disgorge any finance charges already collected, to pay restitution to New Hampshire consumers, and to pay a fine of approximately \$1.9 million.

27. On April 4, 2013 the Commonwealth of Massachusetts issued Cease and Desist Orders against CashCall, WS Funding and Western Sky which ordered them to cease and desist

from engaging in the scheme described above. The Order further directed CashCall and WS Funding to cease and desist from collecting on loans made to Massachusetts consumers and to refund to consumers all interest, finance charges, and fees already collected.

28. The Maryland Commissioner of Financial Regulation issued a Final Opinion and Final Cease and Desist Order dated June 22, 2012 ordering Western Sky to cease and desist from making loans in Maryland, from collecting on loans already made to refund all amounts collected from Maryland consumers, and to pay a civil penalty. *Commissioner v. Western Sky Financial et al.*, Case No. CFR-FY2011-182, OAH No. DLR-CFR-76A-47146, Opinion and Final Order dated May 22, 2013. In rejecting Western Sky's sovereign immunity defense, the Commissioner held that it "is undisputed that tribal sovereign immunity does not protect individual tribal members." (quoting *Cash Advance and Preferred Cash Loans v. State*, 242 P.3d 1099, 1111 (Colo. 2010)).

29. West Virginia also rejected the sovereign immunity defense asserted by other lending entities owned by Mr. Webb. In so doing, the court held that business conducted by an entity organized under South Dakota law, owned by an individual rather than a tribe, and conducted over the Internet was not protected by the doctrine of tribal sovereign immunity. *State of West Virginia v. Payday Loan Resource Center, LLC*, Kanawha County Circuit Court, West Virginia, No. 10-MISC-372, Oct. 28, 2011 Final Order Granting State's Petition To Enforce Investigative Subpoena.

30. Oregon's Division of Finance and Corporate Securities issued a Final Order to Cease and Desist against Western Sky in 2012, compelling Western Sky to cease lending in Oregon, cease collection of interest in Oregon, and to pay a \$2,500 civil penalty for each loan given to an Oregon borrower.

31. The Illinois Department of Financial & Professional Regulation issued a Cease and Desist Order against Western Sky dated March 8, 2013. This Order found that Western Sky had been advertising in Illinois on multiple television networks, had sent email communications to borrowers in Illinois, and had solicited loans to Illinois consumers from its website. As Western Sky was not licensed to offer such loans in Illinois, the Order instructed Western Sky to cease from all lending to Illinois borrowers.

32. Both the Missouri Attorney General's Office and the Washington Department of Financial Institutions have pending enforcement actions against Western Sky and other entities owned by Mr. Webb. These actions allege that Western Sky engaged in usurious and unlicensed lending in violation of state law and seek restitution and penalties against Western Sky. Also, the Georgia Attorney General announced he had reached an agreement with Western Sky that it would no longer lend to Georgians in 2012.

33. In addition, on September 6, 2011 the Federal Trade Commission filed a lawsuit against Western Sky and other entities owned by Mr. Webb. The Amended Complaint alleges that the entities' loan contracts contain illegal provisions calling for wage garnishment if the borrower defaulted, unlawfully conditioned the extension of credit on borrowers agreeing to "pre-authorized transfers" out of their bank accounts, and falsely asserted that the Cheyenne River Sioux Tribal Court had jurisdiction to enter judgment against borrowers who defaulted on their loans. The lawsuit is pending in the United States District Court for the District of South Dakota.

34. Other governmental regulators have also brought action against CashCall for engaging in deceptive lending conduct. For example, in August, 2009 the California Attorney General filed a lawsuit against CashCall alleging that it violated the consumer protection laws by

advertising interest rates that were not available to the general public, misrepresenting the amount needed to pay off a loan, and using unlawful means to collect the loans. *People of the State of California v. CashCall, Inc.*, Los Angeles Superior Court (Case No. BC420115). The lawsuit was resolved through a Final Judgment and Permanent Injunction, which barred CashCall from engaging in various debt collection practices and ordered it to pay \$500,000 in civil penalties.

Unlawful Loans Made to Minnesota Consumers.

35. Western Sky and CashCall engage in advertising in Minnesota. As set forth on Western Sky's website www.westernsky.com, Western Sky offers loans to Minnesotans that range from \$850 to \$10,000 and bear annual percentage rates of between 89.68 and 342.86 percent. Neither Defendants nor Western Sky are licensed to offer or arrange for consumer loans in Minnesota. Defendants and Western Sky have given numerous loans to Minnesotans, including some loans for \$1,000 or less.

36. Borrowers are charged a \$350 fee for a \$850 loan, and a \$500 fee for a \$1,500 loan, which is taken off the top as a fee. Borrowers are then required to make monthly payments on the loans which are subject to hefty rates of interest. The following chart from Western Sky's website sets forth the loans Western Sky purports to make to Minnesota borrowers:

Product	Borrower Proceeds	Loan Fec	APR	Number of Payments	Payment Amount
\$10,000	\$9,925	\$75	89.68%	84	\$743.49
\$5,075	\$5,000	\$75	116.73%	84	\$486.58
\$2,600	\$2,525	\$75	139.22%	47	\$294.49
\$1,500	\$1,000	\$500	234.25%	24	\$198.19
\$850	\$500	\$350	342.86%	12	\$150.72

37. Minnesota consumers take out these loans while physically located in Minnesota, using computers or telephones in Minnesota. Minnesota consumers do not travel to South

Dakota to apply for the loan, to sign the loan, or to pick up the loan proceeds. Instead, Western Sky deposits the loans directly into Minnesotans' bank accounts in Minnesota through an electronic transfer. Defendants routinely advertise in Minnesota, call Minnesotans in Minnesota about originating and servicing the loans, send email and text messages to Minnesotans in Minnesota, collect money in Minnesota, and direct many other commercial acts into the State. Minnesota consumers who call Western Sky or apply for a loan from Western Sky's website deal with CashCall representatives to complete the loan origination.

38. Minnesota consumers who receive a loan purportedly from Western Sky are almost immediately sent a Notice of Assignment, Sale or Transfer of Servicing Rights which states "your loan has been sold to WS Funding, LLC" and that "effective today, your loan is now owned by WS Funding, LLC and will be serviced by a company called CashCall." They are also told that "[g]oing forward, CashCall will handle the servicing of your loan, which means collecting your payments and handling related issues."

39. The Notice also tells Minnesota consumers that, "[u]nless you dispute the validity of the debt, or any portion thereof, within thirty days after receipt of the notice, CashCall will assume the debt to be valid." Consumers are told this even though Defendants know that the loans are illegal and unenforceable under Minnesota law because neither Defendants nor Western Sky are licensed as lenders in Minnesota and the loans do not comply with Minnesota usury and consumer protection laws.

40. Great lengths are taken to give the misleading impression to consumers that Western Sky is a tribal entity subject to tribal sovereign immunity. For example, Western Sky's logo is the sun setting behind three teepees, which is prominently displayed in its advertising and online. Its website states that it is "a Native American business operating within the exterior

boundaries of the Cheyenne River Sioux Reservation, a sovereign nation located within the United States of America.” The loan contract is designed to give the borrower the false impression that the loan is protected by tribal sovereign immunity.

41. Defendants and Western Sky do not disclose to Minnesota consumers that the loan will immediately be sold to Defendants or that Defendants are the de facto lender. Even though the doctrine of tribal sovereign immunity does not apply to the loans, after the loans are assigned to Defendants, they routinely represent to borrowers that the loans are immune from state law, and in particular state usury law and other lender regulations, because they were originated by Western Sky and are supposedly subject to tribal immunity. These representations are false and mislead borrowers about the status of their loans.

42. Choice of law and choice of venue clauses in consumer short-term loan contracts are specifically forbidden under Minnesota law. The representations that the loan is performed solely on the Cheyenne River Sioux Reservation are false and misleading in that performance of the contract occurs off the reservation. Minnesota borrowers are not on the reservation, neither WS Funding nor WS Financial are on the reservation, and CashCall, which services the loans, is not on the reservation. The Cheyenne River Sioux Tribal Code does not govern the loans. Moreover, Defendants know that every court which has considered the issue on the merits has held that state law *does* apply to Defendants’ lending, and that the Defendants’ “rent-a-tribe” scheme is a failed attempt to evade state law.

COUNT I
MINN. STAT. §§ 8.31 AND 47.601

43. Plaintiff re-alleges all prior paragraphs of this Complaint.

44. Defendants meet the definition of a consumer short-term lender as set forth in Minn. Stat. § 47.601 because they engaged in the business of making or arranging for consumer

short-term loans and are not a financial institution or other entity that is exempt from the requirements of Minn. Stat. § 47.601. Defendants' loans for \$1,000 or less required the payment of 25% or more of the principal balance within 60 days, in part because of the \$350 fees that borrowers paid on \$850 loans. Defendants failed to obtain a license from the Minnesota Department of Commerce to operate as a consumer short-term lender in Minnesota, and failed to provide the Minnesota Commissioner of Commerce with the annual reports required by Minn. Stat. § 47.601, subd. 4.

45. Defendants have further violated Minn. Stat. § 47.601 by purchasing, servicing and collecting on loans that violate numerous provisions of Minn. Stat. § 47.601. For example, the interest rates accrued by Defendants on the loans were higher than the interest rates and fees set forth in Minn. Stat. § 47.601, subd. 2(a)(3); the loan contracts contain a choice of law clause that violates Minn. Stat. § 47.601, subd. 2(a)(1); the loan contracts contain a choice of forum clause that violates Minn. Stat. § 47.601, subd. 2(a)(2); at least some of the loan contracts contain a class action ban, which violates Minn. Stat. § 47.601, subd. 2(a)(3); and the loans were originated by an entity that does not have a license from the Commissioner of Commerce to extend consumer short-term loans to Minnesotans.

46. Defendants' consumer short-term loans are void and unenforceable under Minn. Stat. § 47.601, subd. (6)b, yet Defendants collected on those loans from Minnesotans. Moreover, under Minn. Stat. § 47.601, subd. 2(d), Defendants took the loans subject to all the claims and defenses that the borrower would have had against the originator of the loans. Accordingly, Defendants had no legal right under Minnesota law to collect on the loans and knew or should have known that their sham rent-a-tribe scheme was a failed attempt to evade state law.

47. Minn. Stat. § 47.601, subd. 3 further requires that all consumer short-term lenders must not engage in collection practices that are prohibited by Minn. Stat. § 332.37. Defendants have violated Minn. Stat. § 332.37 (3) by using or threatening to use methods of collection that violate Minnesota law. Specifically, Defendants threatened to collect on and did collect on loans that are illegal, void, and unenforceable under Minnesota law. In addition, Defendants made representations which threaten to bring an action against borrowers in the Cheyenne River Sioux Tribal Court, which violates Minnesota law because such choice of law and choice of forum clauses are forbidden in consumer short-term loans under Minnesota law. In addition, Defendants represented to borrowers that their loans were not subject to state law and were protected by the doctrine of tribal sovereign immunity. These representations were false and misleading.

48. In addition, Minn. Stat. § 332.37 (12) prohibits any methods of collection which violate the Fair Debt Collection Practices Act of 1977, Public Law 95-109 ("FDCPA"). 15 U.S.C. § 1692e prohibits the use of "any false, deceptive, or misleading representation or means in connection with the collection of any debt," including false representations regarding the "legal status" of any debt. By representing that the loans owned by WS Funding and/or WS Financial were legally enforceable, and that the interest rates on those loans were enforceable, and by representing that the loans were protected by tribal law or the doctrine of tribal sovereign immunity, Defendants engaged in false, deceptive and misleading representations in connection with the collection of debt in violation of Minn. Stat. § 332.37 (12). In addition, Defendants made false, deceptive and misleading representations in that they represented to borrowers that they owed interest accrued at rates far in excess of those allowed under Minnesota law, which Defendants had no legal right to collect from Minnesota borrowers.

49. The Minnesota Attorney General and the Minnesota Commissioner of Commerce are entitled to the relief set forth in Minn. Stat. § 47.601, subd. 6, including a declaration that all Defendants' loans to Minnesotans are void under Minn. Stat. § 47.601, subd. 6 (b)(1). In addition, the State is entitled to recover all money collected on the loans, incidental, actual and consequential damages, statutory damages of up to \$1,000 per violation, and all costs, disbursements and attorney fees. Minn. Stat. §§ 47.601, subd. (6)(1)-(4); Minn. Stat. § 45.027, subd. 5 (empowering Commissioner of Commerce to initiate litigation to enforce laws related to his duties and responsibilities).

COUNT II
MINN. STAT. §§ 53.01 *ET SEQ.* AND 56.01 *ET SEQ.*

50. Plaintiff re-alleges all prior paragraphs of this Complaint.

51. The Minnesota Commissioner of Commerce has authority to regulate the business practices of lenders in Minnesota that offer small unsecured loans. One part of that regulation is the enforcement of the licensing requirements for lenders under Minnesota law. Minn. Stat. § 47.601, discussed above, governs lenders that extend small unsecured loans for \$1,000 or less in Minnesota and requires such lenders to obtain a license from the Commissioner to operate as a consumer short-term lender. Unless federally chartered, lenders that make small consumer loans in excess of \$1,000 also must be licensed with the Commissioner of Commerce. For example, lenders that make small unsecured loans may register with the Commissioner as an Industrial Loan & Thrift under Minnesota Statutes Chapter 53 or as a Regulated Lender under Minnesota Statutes Chapter 56. These statutes allow such lenders to offer unsecured loans to individual Minnesotans of up to \$100,000, and requires such entities to submit regular reports to the Commissioner regarding their lending business. Lenders may not make small loans to Minnesota consumers without being licensed to do so in Minnesota under a pertinent lending

statute. Neither Defendants nor Western Sky, however, obtained a license from the Commissioner of Commerce, nor submitted the reports required by such lenders to the Commissioner, or otherwise complied with the various regulations that govern such lending.

52. The Commissioner of Commerce is empowered under Minn. Stat. § 45.027, subd. 5 to initiate actions in district court to enforce provisions of Minnesota law within his duties and responsibilities. The Commissioner of Commerce is further empowered to seek injunctive relief under Minn. Stat. § 45.027, subd. 5 to enjoin lenders who operate in Minnesota without the proper licensure from the Commissioner, and otherwise in violation of Minnesota Chapters 53 & 56.

53. Though this Court, the Commissioner seeks prospective injunctive relief to enjoin future violations of these statutes and to enjoin Defendants from making or collecting on loans in violation of state law.

COUNT III
MINN. STAT. §§ 8.31 AND 334.01

54. Plaintiff re-alleges all prior paragraphs of this Complaint.

55. The general usury rate caps under Minnesota law are set forth in Minn. Stat. § 334.01 *et seq.* These interest rate caps apply unless the lending is governed by another Minnesota statute, or unless the lending is governed by federal law. Neither Defendants nor Western Sky are licensed to operate as any type of lender under Minnesota law, and their loans to Minnesota consumers are not made pursuant to federal law. While Defendants' loans for \$1,000 or less are subject to Minn. Stat. § 47.601, the loans for more than \$1,000 are not. Accordingly, Defendants' loans for more than \$1,000 are subject to the interest rate caps set forth in Minn. Stat. § 334.01 *et seq.*

56. Minn. Stat. § 334.01, subd. 1 caps the annual interest rate for written loan contracts at 8 percent. In violation of Minn. Stat. § 334.01, subd. 1, Defendants charged and collected on loans with interest rates from 89.68 percent to 342.86 percent. This rate of interest is usurious under Minnesota law and violates Minn. Stat. § 334.01, subd. 1. Under Minn. Stat. § 334.02, the Minnesota borrowers who paid this usurious rate of interest are entitled to be refunded all such interest, and the loan contracts are void under Minn. Stat. §§ 334.03 and 334.05.

57. The Minnesota Attorney General is entitled to enforce Minn. Stat. § 334.01 *et seq.* pursuant to Minn. Stat. § 8.31.

COUNT IV PREVENTION OF CONSUMER FRAUD ACT

58. Plaintiff re-alleges all prior paragraphs of this Complaint.

59. Minn. Stat. § 325F.69, subdivision 1 provides:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided in section 325F.70.

The term “merchandise” within the meaning of Minn. Stat. § 325F.69 includes services. *See* Minn. Stat. § 325F.68, subd. 2 (2008).

60. Defendants use Western Sky as a front for their illegal lending operations in order to mislead borrowers about who they are receiving their loan from and to falsely give borrowers the impression that the loans are subject to the doctrine of tribal sovereign immunity. Western Sky is held out to the public as a stand-alone tribal entity which provides small loans to consumers. In reality, Defendants create the advertising and marketing materials for Western Sky and reimburse Western Sky for the costs of its operations. Defendants review consumer

applications for underwriting requirements, contact and provide customer support to borrowers during the loan origination process, fund and service the loans, and immediately buy the loans. Western Sky does not receive any payment from consumers for the loans; to the contrary, Western Sky contracts with Defendants that it will not accept payments from consumers on the loans before the loans are sold to Defendants. Defendants nonetheless represent to Minnesota borrowers that the loans are subject to Indian tribal sovereign immunity. Defendants engage in this elaborate ruse to deceive borrowers and regulators regarding their lending operations.

61. In the course of this scheme, Defendants make numerous misrepresentations to borrowers, and engage in a number of deceptive acts. For example, borrowers view advertising for Western Sky without realizing that in fact CashCall and/or its subsidiaries are conducting the advertising. When borrowers try to contact Western Sky during the loan origination process, the customer service response they receive is actually from an employee of Defendants. Even though borrowers submit their loan applications through Western Sky's website, it is CashCall that completes the loan underwriting. It is not until after borrowers receive their loan that Defendants notify them that their loan has been sold to WS Funding and/or WS Financial and will be serviced by CashCall. In reality, the substance of the loan transactions that Defendants engaged in with Minnesota borrowers shows that CashCall, or its wholly owned subsidiaries, WS Funding and WS Financial, are the actual or de facto lender for the loans, a fact that Defendants go to great lengths to conceal from borrowers until after the loan transaction is complete.

62. Through this elaborate deception and misrepresentation, CashCall attempts to legitimize the high-interest loans it provides to Minnesotans and to deceive borrowers about the legal status of the loans, when in fact Defendants' lending is illegal. Through this fraud and misrepresentation, Defendants charge and collect from Minnesota consumers rates of interest and

fees far higher than are allowed under Minnesota law, and purport to bind Minnesotans to contract terms that are specifically prohibited under Minnesota law.

63. Defendants' conduct described above constitutes multiple, separate violations of Minn. Stat. § 325F.69, subd. 1. Defendants have engaged in deceptive and fraudulent practices, and have made false and misleading statements, with the intent that others rely thereon in connection with the sale of Defendants' services. By failing to disclose and omitting material facts, Defendants have further engaged in deceptive and fraudulent practices in violation of the Consumer Fraud Act.

64. The Minnesota Attorney General is empowered to enforce Minn. Stat. §§ 8.31 and 325F.69 against Defendants, and is entitled to the relief set forth in those statutes.

**COUNT V
UNIFORM DECEPTIVE TRADE PRACTICES ACT**

65. Plaintiff re-alleges all prior paragraphs of this Complaint.

66. Minn. Stat. § 325D.44, subdivision 1 provides, in part:

A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

(5) represents that goods or services have...characteristics...[or] benefits...that they do not have...;

(7) represents that goods or services are of a particular standard, quality, or grade...if they are of another;

(9) advertises goods or services with intent not to sell them as advertised;

(11) makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

67. Defendants use Western Sky as a front for their illegal lending operations in order to mislead borrowers about who they are receiving their loan from and to falsely give borrowers the impression that the loans are subject to the doctrine of tribal sovereign immunity. Western Sky is held out to the public as a stand-alone tribal entity which provides small loans to consumers. In reality, Defendants create the advertising and marketing materials for Western Sky and reimburse Western Sky for the costs of its operations. Defendants review consumer applications for underwriting requirements, contact and provide customer support to borrowers during the loan origination process, fund and service the loans, and immediately buy the loans. Western Sky does not receive any payment from consumers for the loans; to the contrary, Western Sky contracts with Defendants that it will not accept payments from consumers on the loans before the loans are sold to Defendants. Defendants nonetheless represent to Minnesota borrowers that the loans are subject to Indian tribal sovereign immunity. Defendants engage in this elaborate ruse to deceive borrowers and regulators regarding their lending operations.

68. In the course of this scheme, Defendants make numerous misrepresentations to borrowers, and engage in a number of deceptive acts. For example, borrowers view advertising for Western Sky without realizing that in fact CashCall and/or its subsidiaries are conducting the advertising. When borrowers try to contact Western Sky during the loan origination process, the customer service response they receive is actually from an employee of Defendants. Even though borrowers submit their loan applications through Western Sky's website, it is CashCall that completes the loan underwriting. It is not until after borrowers receive their loan that Defendants notify them that their loan has been sold to WS Funding and/or WS Financial and will be serviced by CashCall. In reality, the substance of the loan transactions that Defendants engaged in with Minnesota borrowers shows that CashCall, or its wholly owned subsidiaries, WS

Funding and WS Financial, are the actual or de facto lender for the loans, a fact that Defendants go to great lengths to conceal from borrowers until after the loan transaction is complete.

69. Through this elaborate deception and misrepresentation, CashCall attempts to legitimize the high-interest loans it provides to Minnesotans and to deceive borrowers about the legal status of the loans, when in fact Defendants' lending is illegal. Through this fraud and misrepresentation, Defendants charge and collect from Minnesota consumers rates of interest and fees far higher than are allowed under Minnesota law, and purport to bind Minnesotans to contract terms that are specifically prohibited under Minnesota law.

70. Defendants created this deceptive scheme to cause a likelihood of confusion or misunderstanding as to the affiliation, connection, or association between CashCall, WS Funding, WS Financial, and Western Sky, and to mislead borrowers regarding the legal status of their loans.

71. Defendants' conduct described above constitutes multiple, separate violations of Minn. Stat. § 325D.44, subd. 1. Defendants have engaged in deceptive practices by representing that services have characteristics and benefits that they do not have; representing that services are of a particular standard, quality, or grade when they are of another; advertising services with intent not to sell them as advertised; making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; and engaging in other conduct which similarly creates a likelihood of confusion or of misunderstanding. By failing to disclose and omitting material facts, Defendants have further engaged in deceptive and fraudulent practices in violation of the Uniform Deceptive Trade Practices Act.

72. The Minnesota Attorney General is empowered to enforce Minn. Stat. §§ 8.31 and 325D.44 against Defendants, and is entitled to the relief set forth in those statutes.

**COUNT VI
UNJUST ENRICHMENT**

73. Plaintiff re-alleges all prior paragraphs of this Complaint.

74. By paying Defendants interest rates that far exceed those allowed by Minnesota law on their loans, Minnesota borrowers conferred a benefit on Defendants.

75. Defendants knowingly accepted such benefit, to which they were not entitled.

76. Defendants' acceptance and retention of such benefit under these circumstances would be unjust and inequitable.

77. As a matter of equity and Minnesota common law, Minnesota borrowers should be made whole by application of the doctrine of unjust enrichment.

RELIEF

WHEREFORE, the State of Minnesota, by its Attorney General, Lori Swanson, and State of Minnesota by its Commissioner of Commerce, Michael Rothman, respectfully asks this Court to award judgment against Defendants as follows:

1. Declaring that Defendants' actions, as set forth above, constitute multiple violations of Minn. Stat. §§ 47.601, 53.01 *et seq.*, 56.01 *et seq.*, 47.59, 334.01 *et seq.*, 332.31 *et seq.*, 325F.69 and 325D.44;
2. Enjoining Defendants and its employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with it, from engaging in conduct in violation of Minn. Stat. §§ 47.601, 47.59, 334.01 *et seq.*, 332.31 *et seq.*, 325F.69, 325D.44, or ch. 53 or 56;
3. For the relief authorized in Minn. Stat. §§ 47.601, 47.59, 334.01 *et seq.*, 332.31 *et seq.*, 325F.69 and 325D.44;

4. Awarding judgment against Defendants for restitution under the *parens patriae* doctrine, the general equitable powers of this Court, Minn. Stat. § 8.31, and other authority, for all persons injured by Defendants' acts described in this Complaint;

5. Awarding judgment against Defendants for civil penalties pursuant to Minn. Stat. § 8.31, subd. 3, for each separate violation of Minnesota law;

6. Disgorging Defendants' ill-gotten gains pursuant to the doctrine of unjust enrichment;

7. Awarding Plaintiff its costs, including costs of investigation and attorney's fees, as authorized by Minn. Stat. § 8.31, subd. 3a; and

8. Granting such further relief as provided by law or as the Court deems appropriate and just.

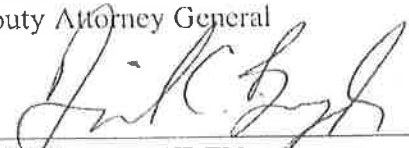
Dated: _____

7/11/2013

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota

NATHAN BRENNAMAN
Deputy Attorney General



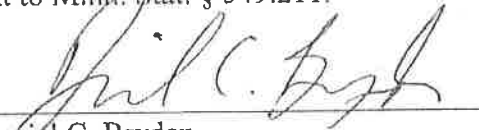
DANIEL C. BRYDEN
Assistant Attorney General
Atty. Reg. No. 302284

445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101-2130
(651) 757-1478 (Voice)
(651) 296-1410 (TTY)

ATTORNEYS FOR PLAINTIFFS

MINN. STAT. § 549.211 ACKNOWLEDGMENT

~~The party on whose behalf the attached document is served~~ acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211.



Daniel C. Bryden