

ORDER SUMMARY – Case Number: C-11-0701

Name(s): CashCall, Inc

Order Number: C-11-0701-14-FO01

Effective Date: May 30, 2014

License Number: DFI: 25279 NMLS ID: 38512
Or NMLS Identifier [U/L]

License Effect: Revoked

Not Apply Until: N/A

Not Eligible Until: N/A

Prohibition/Ban Until: N/A

Investigation Costs	\$14,875.85	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Fine	\$244,100.00	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$6,131,694.35	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Judgment	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Satisfaction of Judgment Filed?		<input type="checkbox"/> Y <input type="checkbox"/> N		
No. of Victims:				

Comments:



**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

CASHCALL, INC.,

Respondent.

DFI No. C-11-0701-14-FO1

[OAH Docket No. 2011-DFI-0041]

FINAL DECISION AND ORDER

THIS MATTER comes now before SCOTT JARVIS, Director (“Director”) of the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS (“Department”), pursuant to the Order Granting Department’s Motion for Partial Summary Judgment, dated February 2013 (“Partial Summary Judgment”), and the Findings of Fact,¹ Conclusions of Law,² and Initial Order dated October 21, 2013 (“Findings & Conclusions”), (collectively, “Initial Order”), against Respondent, CASHCALL, INC. (“CashCall” or “Respondent”), on the Petition for Review (“Petition for Review”), brought by Neil M. Barofsky, Esq., Brian J. Fischer, Esq., and Katya Jestin, Esq. of JENNER & BLOCK LLP, and Gavin W. Skok, Esq., of RIDDELL WILLIAMS P.S. (collectively, “Respondent’s Counsel”) from the Initial Order by Administrative Law Judge Terry Schuh (“ALJ”), from which the Division of Consumer Services (“Division”), by and through Ian S. McDonald, Assistant Attorney General, and Kim O’Neal,

¹ References herein to the Findings of Fact of the Initial Order are denoted “FOF.”

² References to his Conclusions of Law of the Initial Order are denoted “COL.”

Senior Counsel of the WASHINGTON ATTORNEY GENERAL (collectively, "Division's Counsel"), have lodged the Department's Response to Petition for Review ("Reply to Petition"), after Respondent's Counsel and Division's Counsel were both granted an Order Granting Limited Extension of Time to File Petition for Review, and after the Petition for Review and Reply to Petition were timely filed pursuant to said interlocutory order granting extension of time; and the Director having taken into consideration the entire record on review, including, without limitation, all pleadings, affidavits and recorded oral and written argument before the ALJ, the Initial Order, the Petition for Review, and the Reply to the Petition (collectively, the "Record on Review");

NOW, THEREFORE, the Director issues the following Final Decision and Order³:

1.0 ISSUES ON PETITION FOR REVIEW

This case is about whether CashCall, a Washington-licensed Consumer Loan Company, is liable for violating the Washington Consumer Loan Act⁴ and Washington Usury Act⁵ by intentionally cooperating with Western Sky, an unlicensed entity owned by an enrolled member of the Cheyenne River Sioux Tribe, so as to permit CashCall to be the owner and servicer of consumer loans at between 95% to 169%— interest rates far in excess of what it could have charged under its Washington Consumer Loan Act License.

The specific issues on Petition for Review are (in restated form) as follows:

1.1 Did the ALJ correctly conclude in the Initial Order that Respondent violated the Washington Consumer Loan Act and Washington Usury Act by "facilitating" and assisting an

³ Pursuant to RCW 34.05.461(3), not just the Initial Order but also the Final Decision and Order must include findings of fact and conclusions of law, and the bases for those findings and conclusions.

⁴ Chapter 31.04 RCW.

⁵ Chapter 19.52 RCW.

unlicensed entity, Western Sky Financial LLC (“Western Sky”),⁶ to make illegal loans to Washington consumers?

1.2 Was the ALJ correct in concluding that Respondent violated the Washington Consumer Loan Act by using an unlicensed trade name?

1.3 Was the ALJ correct in awarding restitution to Washington consumers?

1.4 Was the ALJ correct in concluding that the Western Sky loans were illegal when made and, in the context of Western Sky’s relationship with Respondent, were not beyond the authority and sanction of the Division? In this regard—

1.4.1 Did the ALJ correctly conclude that Respondent is liable for the acts of its wholly owned subsidiary, Western Sky Funding (a/k/a “WS Funding”), because the actions of Respondent constituted grounds for disregarding the corporate form?

1.4.2 Are certain Western Sky loans subject to administrative adjudication in Washington State?

1.5 Did the ALJ correctly conclude that Respondent violated the Washington Consumer Loan Act by failing to comply with the Division’s administrative subpoena?

2.0 **DIRECTOR’S CONSIDERATIONS**

Based on the Director’s review and deliberation of the Record on Review, in light of Respondent’s assignments of error in its Petition for Review and other considerations, including the Reply to Petition, the Director makes the following specific determinations:

⁶ As determined by the ALJ and not disputed by Respondent’s Counsel, Western Sky is a consumer lender wholly owned by Martin Webb. *Partial Summary Judgment*, FOF 4.21.

2.1 The ALJ correctly determined that CashCall “facilitated” illegal loan-making activity by Western Sky with Washington State consumers.

2.1.1 The ALJ correctly determined that CashCall is liable for the acts of its wholly owned subsidiary, Western Sky Funding (a/k/a “WS Funding”), because CashCall’s actions constituted grounds for disregarding the corporate form. Respondent argues in its Petition for Review that it cannot be held responsible for “facilitating” loans because a parent and a subsidiary are for legal purposes generally treated as separate entities. Respondent further argues that the ALJ made no findings in the Initial Order that justify disregarding the corporate separateness between it and any of its subsidiaries.

Though Washington courts ordinarily recognize a parent corporation as a legal entity distinct and separate from its subsidiary, they have disregarded the distinction between a parent corporation and its subsidiary when necessary to do justice in particular cases.⁷ Courts will ignore separate corporate entities in order to defeat a fraud, wrong, or injustice, at least where the rights of third persons are concerned.⁸ Thus, when one corporation so dominates and controls another as to make that other one a simple instrumentality or adjunct to it, the courts will look beyond the legal fiction of distinct corporate existence, as the interests of justice require.⁹

Moreover, if the corporation is so organized that it can be used to defeat the rights of innocent parties, defeat public convenience, or cut off the right of redress, or of action against it or against other corporations of which it is, in effect, an agent, a court of equity will look through the form of the corporation and examine the substance of it, and if several corporations are organized for a common purpose, it will look through the forms of all such corporations to the

⁷ *In re Wade Cook Fin. Corp.*, 375 B.R. 580, 598 (B.A.P. 9th Cir. 2007).

⁸ *Kueckelhan v. Fed. Old Line Ins. Co. (Mut.)*, 69 Wash. 2d 392, 411, 418 P.2d 443, 456 (1966).

⁹ *H. E. Briggs & Co. v. Harper Clay Products Co.*, 150 Wn.2d 235, 239, 272 P. 962, 963 (1928); *Kueckelhan, supra*, 69 Wn. 2d at p. 411.

substance thereof, and the fact that several corporations are organized to carry out a common purpose will not prevent redress to an injured party, though the corporation which causes the injury or loss claims to have no connection with the general purpose for which the principal corporation is organized. Its legal entity will not alone protect it.¹⁰

It is a well-recognized principle of law that a corporation may not be used as a cloak or disguise to escape corporate liability, and that the corporate veil may be pierced when necessary to do justice in particular cases.¹¹ Where one corporation acts as a conduit through which another operates, it is unnecessary under such circumstances that actual fraud be shown. Rather, it is sufficient if the existence of distinct corporate entity would bring about a result amounting to a denial of justice and the consummation of a wrong.¹² This principle, requiring that a corporate entity on occasion be disregarded, is especially applicable in cases involving a parent or principal corporation and subsidiary corporations which merely acquiesce in and register the decrees of their principal.¹³

In this case, the preponderance of the evidence in the Record on Review supports the proposition that CashCall so dominated and controlled WS Funding as to make the latter a mere instrumentality or adjunct to it.

However, assuming arguendo that disregarding the corporate form is not applicable in this case, the relevant administrative record still supports the ALJ's finding that CashCall facilitated Western Sky loans. It does not require disregarding the corporate form to conclude

¹⁰ *J. I. Case Credit Corp. v. Stark*, 64 Wash. 2d 470, 477, 392 P.2d 215, 220 (1964).

¹¹ *Platt v. Bradner Co.*, 131 Wash. 573, 579, 230 P. 633, 635 (1924); *State v. Davies*, 176 Wash. 100, 113, 28 P.2d 322, 327 (1934); *National Bank of Commerce of Seattle v. Dunn*, 194 Wash. 472, 499-500, 78 P.2d 535, 547 (1938); 1 Fletcher Cyc. Corp. § 41.

¹² *Dummer v. Wheeler Osgood Sales Corp.*, 198 Wash. 381, 392, 88 P.2d 453, 458 (1939).

¹³ *Kueckelhan v. Fed. Old Line Ins. Co. (Mut.)*, *supra*, 69 Wash. at p. 411.

that the acts of WS Funding, a wholly owned subsidiary of CashCall, may be attributed to its parent corporation. As the Division noted in its Reply to the Petition for Review, CashCall's representatives represented that it was CashCall that acquired the Western Sky loans with Washington consumers by purchase or assignment.¹⁴ Furthermore, documents provided to Washington consumers, which informed them of the "servicing company" as the entity with which they would be dealing during the duration of the loan agreements, all indicated "CashCall" rather than "WS Funding"¹⁵ as the company that had acquired their loans and would be collecting the amounts due on them.¹⁶ Furthermore, CashCall's own general counsel, Dan Baren, testified to extensive participation by CashCall employees in loan origination tasks. Such tasks included speaking with prospective borrowers, obtaining information from them, answering questions, and assisting with loan applications and qualifications.¹⁷

2.1.2 CashCall was liable for facilitating loans by providing call centers and other services to borrowers. Respondent argues that the factual findings made by the ALJ in support of a holding of "facilitation" were based on a vague conclusion that CashCall provided unspecified call center services that facilitated in unexplained ways some loan applications generated by Western Sky. Respondent contends that such findings do not constitute a violation of the Consumer Loan Act.

¹⁴ *Reply to Petition*, ¶2(a), pp. 7-8, citing, by way of example: July 22, 2011, Letter from CashCall counsel Claudia Calloway in response to Department's subpoena, Exhibit 9 to CashCall's Motion for Partial Summary Judgment, p. 2; CashCall's Opposition to Department's Motion for Partial Summary Judgment, p. 2; CashCall's Reply in Support of Motion for Partial Summary Judgment, p. 7; Declaration of Mark Olson in Support of Department's Motion for Summary Judgment and its Attachment A—CashCall's loan spreadsheet produced in response to the Department's subpoena in February 2012, which confirmed that CashCall purchased 2,200 Western Sky loans (up to February 2012) with Washington borrowers. The documents provided to Washington consumers informing them of the switch from Western Sky to CashCall as the entity with which they would be dealing during the pendency of the loan agreements all stated "CashCall," not "WS Funding," had acquired their loans and would be collecting the amounts due on them. See Declaration of *Sheri Meigs*, Attachment 2.

¹⁵ Western Sky Funding (a/k/a "WS Funding") is a wholly owned subsidiary of CashCall.

¹⁶ See Declaration of *Sheri Meigs*, Attachment 2.

¹⁷ See Testimony of Dan Baren, CashCall General Counsel); *Partial Summary Judgment*, FOF 4.25.

The ALJ made no specific findings as to what services were provided, how CashCall provided them, or how those services facilitated applications or constituted a violation of the Consumer Loan Act. Respondent contends that the ALJ never found that the loan applications CashCall purportedly “facilitated” were from Washington residents. In addition, the ALJ never specifically found that CashCall assisted Western Sky in advertising, locating borrowers, or assisting borrowers in applying for a loan.

Nevertheless, the Division contends that the Findings of Fact establish that CashCall’s employees provided call centers and other services indiscriminately to Washington borrowers. In its Reply to Petition, the Division based its argument on testimony from Mr. Baren explaining the services CashCall provided under its agreement with Western Sky. Mr. Baren testified that at times Western Sky’s call center was so overloaded that excess calls would come to CashCall employees to handle. Furthermore, the Division points to other facts — such as testimony in the Record on Review from Washington borrowers — that they communicated with CashCall employees in seeking, applying, and concluding the loans at issue in this case.

There is thus substantial and sufficient evidence in the Record on Review to support the position of the Division. As the Division noted, CashCall employees participated in loan origination activities, thereby facilitating the illegal loans. As well, Washington borrowers testified to speaking directly during the loan application process with persons who identified themselves as being from CashCall.

2.2 The record establishes that CashCall was the proximate cause of Western Sky lending. Respondent argues that the ALJ erred in assuming that its participation in “some” part of the loan process establishes “facilitation.” Mere participation is not enough to establish proximate cause. Respondent contends that the ALJ merely found that Western Sky made loans

and that CashCall bought and serviced them. While the ALJ concluded that it bought and serviced Western Sky loans, he never found that the loans would not have been made but for CashCall's role. Nor did the ALJ find that CashCall's conduct was a proximate cause of the loans being made. Thus, Respondent asserts, the ALJ never found that its actions supported or had any effect on Western Sky's making of loans.

The Division counters, arguing that there is no legal requirement to prove that CashCall's assistance (with or without participation in loan origination activities) was a proximate cause of Western Sky making the illegal loans with Washington borrowers. The conduct the Division alleges is *intentional* action by CashCall, *not* negligence. Furthermore, the Division contends that even though it is not required to prove proximate cause, nonetheless proximate cause has been established by CashCall's connection with and knowledge of the Western Sky loans.

Proximate cause is not an element of the Consumer Loan Act violations alleged. Thus, any act that assisted, facilitated, or accomplished a violation, either directly or indirectly, violates the Consumer Loan Act. Nevertheless, as the Division contends, even though it is not required to prove proximate cause, it would be established regardless. Proximate cause under Washington law recognizes two elements: cause in fact and legal causation.¹⁸ "Cause in fact" refers to the "but for" consequences of an act — the physical connection between an act and an injury.¹⁹

In contrast, "legal causation" involves a determination of whether liability should attach as a matter of law given the existence of "cause in fact." It is a much more fluid concept, grounded in policy determinations as to how far the consequences of a defendant's or

¹⁸ *Christen v. Lee*, 113 Wn.2d 479, 507, 780 P.2d 1307 (1989).

¹⁹ *Hartley v. State*, 103 Wn.2d at 778.

respondent's acts should extend.²⁰ The focus is on "whether, as a matter of policy, the connection between the ultimate result and the act of the defendant or respondent is too remote or insubstantial to impose liability."²¹ This inquiry depends on "mixed considerations of logic, common sense, justice, policy, and precedent."²²

The evidence of Respondent's conduct satisfies the "cause in fact" requirement of proximate cause. "Cause in fact" requires proof that there was a sufficiently close, actual, causal connection between Respondent's conduct and the actual damage suffered.²³ The Record on Review establishes CashCall's connection with and knowledge of Western Sky lending. As noted in the Division's Reply to Petition, the Record on Review contains substantial evidence of CashCall purchasing Western Sky loans within a few days of their being made.²⁴ CashCall agreed to be *the* market for the loans, assisted with making the loans, and collected the loans. It is *foreseeable* that providing such services "encouraged" Western Sky to make more of these loans, affecting Washington consumers.

Accordingly, the "legal causation" requirement of proximate cause has been satisfied. As noted earlier, "legal causation" involves a determination of whether liability should attach given "cause in fact" and is a question of law based on policy considerations as to how far the consequences of the defendant's or respondent's act should go.²⁵ The focus in a "legal causation" analysis is whether, as a matter of policy, the connection between the ultimate result and the act

²⁰ *Colbert v. Moomba Sports, Inc.*, 163 Wn.2d 43, 176 P.3d 497 (2008); *Schooley v. Pinch's Deli Market, Inc.*, 134 Wn.2d 468, 951 P.2d 749 (1998).

²¹ *Schooley v. Pinch's Deli Market, Inc.*, 134 Wn.2d at 478–79.

²² 6 Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 15.01 (6th ed.).

²³ *Maltman v. Sauer*, 84 Wn. 2d 975, 981, 530 P.2d 254, 259 (1975).

²⁴ *Division's Reply to Petition*, p. 13.

²⁵ *Colbert v. Moomba Sports, Inc.*, 163 Wn. 2d 43, 51, 176 P.3d 497, 501 (2008).

of the defendant or respondent is too remote or insubstantial to impose liability. A determination of legal liability will depend upon mixed considerations of logic, common sense, justice, policy, and precedent.²⁶ Once “cause in fact” has been established, it is apparent that the connection between the ultimate result affecting Washington consumers and the acts of CashCall is substantial enough to impose liability.

2.3 The Western Sky loans are subject to the laws of the State of Washington as enforced by the Department. Respondent’s principal argument is that the loans were made on the Cheyenne River Indian Reservation and not in Washington, regardless of whether any pre-loan formation or post-loan formation acts occurred in Washington State. Thus, Respondent contends that any of its conduct surrounding the Western Sky loans is not subject to the laws of the State of Washington, but rather to the laws of the Cheyenne River Sioux Tribe.

In contrast, the Division contends that the ALJ correctly rejected CashCall’s argument that Western Sky is not required to be licensed to make consumer loans with Washington borrowers because it operates on an Indian reservation.

2.3.1 Respondent has ignored the basis of Washington’s jurisdiction. The Washington Legislature has explicitly made both the Washington Consumer Loan Act²⁷ and Washington Usury Act²⁸ applicable to *all* businesses transacting loan activity *with Washington consumers*, whether those businesses are located in Washington State or not.²⁹

2.3.2 The Director is obliged to not decide constitutional questions. Hovering over this case has been the issue, raised by Respondent, of (1) Indian sovereign

²⁶ *Schooley v. Pinch's Deli Mkt., Inc.*, 134 Wn. 2d 468, 478-79, 951 P.2d 749, 754 (1998).

²⁷ Chapter 31.04 RCW.

²⁸ Chapter 19.52 RCW.

²⁹ RCW 31.04.025(1); RCW 31.04.027(13); RCW 19.52.005; RCW 19.52.034.

immunity based on the Supremacy Clause³⁰ and (2) federal preemption based on the Indian Commerce Clause.³¹ The Division has repeatedly argued that “[t]ribal law protects tribal activities primarily involving transactions where both parties are in Indian country, which [the Division argues] is not the case in the transactions here. The whole purpose of the tribal protections would be made a mockery if those protections extended not only to Western Sky but also to CashCall, which doesn’t even pretend to be connected to a tribe or to Indian country.”³² Both the ALJ and the Director have been asked to make specific rulings in relation to such law.

In response to these arguments, the Director notes in passing that this issue has been the subject of continuous litigation since the early days of this nation. As a general proposition, the U.S. Supreme Court has repeatedly declared:

“[E]ven on reservations, state laws may be applied unless such application would interfere with reservation self-government or would impair a right granted or reserved by federal law.”³³ State authority over Indians (as opposed to a tribe) is even more extensive over activities not on any reservation.³⁴ Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the State.”³⁵

³⁰ U.S. Constitution, Article XI, Clause 2: “This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.” [Emphasis added.]

³¹ U.S. Constitution, Article I, Section 8, Clause 3: “[The Congress shall have Power] To regulate Commerce . . . with the Indian tribes; . . .”

³² *Reply to Petition*, p. 21.

³³ *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148, 93 S.Ct. 1267, 1270 (1973) [citing *Organized Village of Kake v. Egan*, 369 U.S. 60, 75, 82 S.Ct. 562, 570 (1962); *Williams v. Lee*, 358 U.S. 217, 79 S.Ct. 269 (1959); *New York ex rel. Ray v. Martin*, 326 U.S. 496, 499, 66 S.Ct. 307 (1946); *Draper v. United States*, 164 U.S. 240, 17 S.Ct. 107 (1896)].

³⁴ *Ibid.* [citing *Organized Village of Kake*, *supra*, 369 U.S. at 75, 82 S.Ct. at 571.]

³⁵ *Mescalero Apache Tribe v. Jones*, *supra*, 411 U.S. at 148-149, 93 S.Ct. at 1270-1271 [citing *Puyallup Tribe v. Department of Game*, 391 U.S. 392, 398, 88 S.Ct. 1725, 1728 (1968); *Organized Village of Kake*, *supra*; *Tulee v. Washington*, 315 U.S. 681, 683, 62 S.Ct. 862, 863 (1942); *Shaw v. Gibson-Zahniser Oil Corp.*, 276 U.S. 575, 48 S.Ct. 333 (1928); *Ward v. Race Horse*, 163 U.S. 504, 16 S.Ct. 1076 (1896)].

Moreover, while “[s]uits against Indian *tribes* are barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation³⁶ . . . several courts have held that [immunity] does not extend to every business that happens to be tribally chartered or owned by individuals of Native American ancestry. It has been held that an enterprise is clothed with a tribe’s sovereign immunity from suit only if it operates as an extension of a tribe.”³⁷

But once having decided the sovereign immunity question, there is still the second question of whether Congress – by and through the exercise of its power under the Indian Commerce Clause – has preempted the State of Washington from enforcing the Washington Consumer Loan Act or Washington Usury Act against a private corporation which happens to be chartered by the Cheyenne River Sioux Tribe of South Dakota and is wholly owned by an enrolled member of that tribe.

This second question has been the subject of nearly two hundred years of U.S. Supreme Court jurisprudence.³⁸ Beginning in 1832, the “notion of Indian communities as semi-independent nations led the [U.S. Supreme] Court to deny to the states the right to play any role within a reservation’s boundaries. However, that bright line of separation has long since disappeared.”³⁹ There is no longer a rigid rule by which to resolve the question whether a particular state law may be applied to tribal members acting for their own benefit and not as an “arm of the tribe.” Notably, in White Mountain Apache Tribe v. Bracker, the U.S. Supreme Court

³⁶ *State ex rel. Edmondson v. Native Wholesale Supply*, 237 P.2d 199, 210 (Okla. 2010) [Oklahoma Attorney General brought action against cigarette importer/distributor corporation that was chartered by the tribe and wholly owned by a member of the tribe but was not an “arm of the tribe,” the purpose of which was to benefit its sole shareholder] [citing *Kiowa Tribe of Okla. v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 754, 118 S.Ct. 1700, 1702 (1998); *Okla. Tax Comm’n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (note 42), 111 S.Ct. 905 (1991); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58, 98 S.Ct. 1670, 1677, 56 L.Ed.2d 106 (1978).]

³⁷ *Ibid.* See also *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046 (9th Cir. 2006); F. Cohen, *Handbook of Federal Indian Law*, §7.05(1)(a) at 636 (2005 ed.).

³⁸ *Native Wholesale Supply*, *supra*, at 211.

³⁹ *Ibid.* [Citing *Worcester v. Georgia*, 31 U.S. 515 (1832); *Williams v. Lee*, 358 U.S. 217, 219, 79 S.Ct. 269, 270 (1959)].

integrated various aspects of its Indian law jurisprudence into a two-prong test to determine which state laws may be enforced in Indian country without congressional consent: (1) Does state law conflict with federal law? and (2) Does the enforcement of state law impermissibly infringe on the right of reservation Indians to make their own laws and be ruled by them?⁴⁰ The Bracker test has been applied mostly in state taxation cases, but it has also been used when a state seeks to apply a non-discriminatory, non-tax-related state law to an activity alleged to be “on the reservation.” If the state’s assertion of authority touches upon an alleged on-reservation activity that (1) is recognized by the federal government as a means for the tribe to achieve self-sufficiency and economic development, or (2) if there is a historical tradition of Indian control of activity, then the activity in question will be held to be preempted from state regulation unless the State is able to offer justification for asserting its authority that outweighs the asserted federal or tribal interests. In this regard, it has been possible for the U.S. Supreme Court to make seemingly opposite determinations, albeit, based on a consistent application of the Bracker balancing test: (1) Ruling that a tribal liquor retailer could be required to obtain a state liquor license for the sale of alcohol for off-premises consumption (because there was no historical tradition of control of alcohol licensing and distribution and the state had a strong interest in regulating such activity); and (2) Alternatively ruling that the State of California could not regulate tribally owned bingo games because there was a clear federal policy of promoting tribal gaming as a means of Indian economic development. Moreover, resort to the Bracker balancing test is not even necessary, in the view of the U.S. Supreme Court, when activities are conducted

⁴⁰ White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 100 S.Ct. 2578 (1980).

by Native Americans off the reservation— the activities are generally held to be subject to non-discriminatory state laws.⁴¹

If it were within the authority of the Director to rule dispositively on the Indian Commerce Clause question raised by Respondent, the Director would have to seriously consider an application of the Bracker test to the established facts of this case. In that event, the Director would have to seriously consider Bracker and more recent cases applying the same balancing test.⁴²

However, at least this second question of preemption under the Indian Commerce Clause is, in the view of the Director, ultimately constitutional in nature.

As a general proposition, the Department does not have the authority to determine the constitutionality of the law *as applied* or which it seeks to enforce; only the courts have that power.⁴³ Moreover, the Department cannot delegate to the Director or the ALJ, as the Director's

⁴¹ Mescalero Apache Tribe v. Jones, *supra*, 411 U.S. at 157-158 (note 82).

⁴² For example, the recent case of Native Wholesale Supply, *supra*, is in some ways particularly analogous and instructive. There, the Supreme Court of Oklahoma (a state tribunal with a significant history in Indian law jurisprudence) recently ruled against a tribally chartered corporation wholly owned by a tribal member, which was engaged in importation and distribution of Seneca brand cigarettes. Oklahoma sought non-discriminatory enforcement of the Master Settlement Agreement in the National Tobacco Cases ("MSA"). In order to prevent tobacco manufacturers not participating in the MSA from gaining a cost advantage over the settling manufacturers and to provide the states with a source of money from which to recover tobacco-related health care costs attributable to the sales of cigarettes by non-participating manufacturers, the MSA called for each settling state (including Oklahoma) to enact and enforce a *qualifying statute* requiring all tobacco manufacturers not participating in the MSA who sell cigarettes in a state to make annual payments into an escrow account based on the manufacturer's relative market share in each state. Soon after passage of the qualifying statutes, it became clear to the states that non-participating cigarette manufacturers were evading their escrow obligation. Oklahoma, along with several other states responded to this noncompliance by enacting complementary enforcement legislation. Known as the Master Settlement Agreement Complementary Act ("MSACA"), this legislation obligates all tobacco product manufacturers whose products are sold in Oklahoma to provide the Attorney General's Office with an annual certification that the manufacturer has either signed on to participate in the MSA or is fully compliant with the qualifying statute's escrow requirement. The MSACA also makes it unlawful for any person to sell or distribute, or acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the State of Oklahoma in violation of the MSACA. In this case, Native Wholesale Supply was tribally chartered and wholly owned by a Native American, but was in no way an instrumentality or "arm of the tribe." Native Wholesale Supply was not able to cite any federal enactment that expressly prevented the State of Oklahoma from regulating tobacco product distribution and sales in Oklahoma for the defense of public health and protection of the public treasury. Native Wholesale Supply merely sought to cloak itself in its Native American identity in a failed effort to avoiding the strictures and incidence of state law regulating the distribution and sale of cigarettes— a law designed to specifically protect the general public of the State of Oklahoma.

⁴³ See Bare v. Gorton, 84 Wn.2d 380, 383 (1974), citing United States v. Kissinger, 250 F.2d 940 (3d Cir. 1958); cert. denied, 356 U.S. 958 (1958). 3 K. Davis, Administrative Law Treatise, § 20.04, at p. 74 (1958); see also Johnson v. Robison, 415 U.S. 361, 368 (1974), quoting Oestereich v. Selective Serv. System Local Bd. No. 11, 393 U.S. 233, 242 (1968); accord, Califano v. Sanders, 430 U.S. 99, 109 (1977). See also, 73 C.J.S. Public Administrative Law and Procedure § 134.

agent, authority which it lacks.⁴⁴ The superior court, on judicial review of a final order of the Director, may hear arguments and rule on the constitutionality of the Department's orders.⁴⁵ Moreover, consistent with the authority of the highest tribunals of Washington State and federal jurisprudence,⁴⁶ the Director (in keeping with the determination of the ALJ in his Initial Order) is of the view that, if there truly are any constitutional questions in this case, the Department, as an executive branch *administrative* agency, is not the appropriate forum in which to consider them.⁴⁷

Despite the general prohibition on administrative agencies deciding constitutional questions, but with an eye toward assuring that this issue has been properly addressed at the administrative level, the Director has reviewed non-controlling authority from other jurisdictions and has found none of it compelling as applied to an examination of the Record on Review. Far from rejecting the hearing of any evidence with respect to Respondent's relationship to the Cheyenne River Sioux Tribe, the Record on Review demonstrates that Respondent was permitted by the ALJ to present all evidence that it deemed relevant to the issue of whether the location of its business on tribal land gave rise to a claim of tribal status or tribal immunity.⁴⁸ Therefore, if there are constitutional questions that are subject to judicial review, it is the view of

⁴⁴ See *McGuire v. State*, 58 Wash. App. 195, 198 (1991).

⁴⁵ See RCW 34.05.570(3)(a).

⁴⁶ See again, *Footnote 18* above.

⁴⁷ Conf. *Metro. Dade Cnty. v. Dep't of Commerce*, 365 So.2d 432, 435 (Fla. Dist. Ct. App. 1978).

⁴⁸ Although the prevailing view denies administrative agencies the power to review constitutional issues, departures from this rule suggest that Administrative Law Judges at least should have the ability to provide complete, initial records of both the factual and legal issues raised in a particular case. C. Stuart Greer, *Expanding the Judicial Power of the Administrative Law Judge to Establish Efficiency and Fairness in Administrative Adjudication*, 27 U. Rich. L. Rev. 103, 105 (1992). While the Director is not bound to follow this minority view as authority in this state and declines to do so, the Director also acknowledge the ALJ's prudence and fairness in this case in permitting (Cont'd at p. 16) (Cont'd from p. 15) the Record on Review to fairly address all factual and legal issues – including perceived issues asserting tribal immunity and federal preemption of state law.

the Director that the ALJ and the parties established a substantial and adequate record from which a court could make a full and fair decision in this regard.

2.3.3 The ALJ correctly applied state law within his authority. Pursuant to the Consumer Loan Act, Western Sky was required to be licensed in Washington. In the case at hand, CashCall argued that Western Sky was insulated from Washington law in this matter by Federal Indian Law. However, the ALJ held in the Initial Order that Western Sky was making unsecured loans for money in Washington. Thus, the Department reasonably determined Western Sky was required to be licensed in Washington under RCW 31.04.035. The ALJ reasoned that Washington consumers who transacted loans at issue herein were contacted by Western Sky advertising in Washington. The Washington Legislature made both the Consumer Loan Act and Usury Act applicable to all businesses transacting loan activity with Washington consumers, whether those businesses are located in Washington or not.⁴⁹ Furthermore, loan documents were completed and executed in Washington. Moreover, loan proceeds were received by means of direct deposit in Washington accounts and loan payments were made by direct withdrawal from Washington accounts.

Accordingly, the ALJ held that he was persuaded that CashCall and Western Sky cooperated to allow CashCall to own and service loans at interest rates far above what it could have charged under its Consumer Loan Act License. Thus, CashCall performed unfair and deceptive acts in violation of the Consumer Loan Act.⁵⁰ Here, CashCall acquired from Western Sky in excess of 6,900 loans Western Sky made to Washington residents. CashCall typically acquired loans within three days of funding, relying upon a contract to that effect between CashCall and Western Sky. Therefore, Western Sky made such loans with the intent of

⁴⁹ RCW 31.04.027(13); RCW 19.52.034.

⁵⁰ RCW 31.04.027.

transferring them to CashCall.⁵¹ These loans carried interest rates ranging from 95% to 169%, rates neither CashCall nor Western Sky could have charged under Washington law. CashCall could not have lawfully made loans in excess of 25%, but CashCall then serviced and collected on the loans.

2.4 The ALJ was correct in concluding that CashCall advertised using an unlicensed trade name. CashCall contends that the ALJ's conclusion that it advertised using an unlicensed trade name is not supported by substantial evidence and is not a correct application of the law. The evidence presented at evidentiary hearing was a single advertisement, which the ALJ found on a local radio station on one date. CashCall argues, therefore, that no evidence was presented that any Washington borrower heard the advertisement, much less that they were somehow misled or understood that "CashCall mortgage" was a different company. CashCall contends that the advertisement did include the name that appears on CashCall's CLA license (CashCall) and included its correct CLA license number.

The Department responds, arguing that the evidence in the administrative record establishes that CashCall advertised in Washington in the form of a radio advertisement broadcast. The advertisement referenced "CashCall Mortgage," a name CashCall has never sought or received approval from the Department to use. Thus, the Department argues, by advertising using that unapproved name, CashCall violated WAC 208-620-420 and -620.

A licensee may only transact business using the name on the license or may apply to the Department for the use of a trade name. The Division's rules pursuant to the Consumer Loan Act govern.⁵² These rules inform the public how to identify one's consumer loan business when

⁵¹ Indeed, the Director notes in passing that there is now evidence from CashCall's own arguments on Petition for Review that it may have itself solicited Western Sky into engaging in the loan business in the first place. *Petition for Review*, p. 14, note 11.

⁵² WAC 208-620-420; WAC 208-620-620.

advertising and whether one can transact company business using a name other than the name on the company license. Under the Consumer Loan Act,⁵³ one may only transact business using the name on the license, or one may apply to the Division to add a trade (“doing business as” or “d/b/a” name).⁵⁴ A consumer loan company must identify its business using the given Washington consumer loan license name.⁵⁵ A consumer loan company may also use an unapproved “doing business as” name if the main office license name and license number is included.⁵⁶

Accordingly, as the evidence in the Record on Review demonstrates, CashCall advertised using an unlicensed trade name that it had not received required approval to use. On July 25, 2011, CashCall identified itself as “CashCall Mortgage” on a local Washington radio station. Nevertheless, the radio advertisement specified CashCall’s correct Consumer Loan License number. However, CashCall, having a license name of “CashCall Inc.,” never sought or received approval from the Division to use the name “CashCall Mortgage.” As the ALJ found, CashCall did not apply for or obtain the approval of the Department for the use of the trade name of “CashCall Mortgage.”⁵⁷

2.5 The ALJ correctly awarded restitution in this case. Based upon the Record on Review and the Findings and Conclusion of the Initial Order, the Director is of the view that the ALJ correctly applied the 12% interest ceiling under the Washington Usury Act when determining the restitution CashCall must pay to Washington borrowers. Only loans lawfully made by a licensed entity under the Consumer Loan Act may permissibly include terms requiring

⁵³ WAC 208-620-420.

⁵⁴ *Ibid.*

⁵⁵ WAC 208-620-620.

⁵⁶ *Ibid.*

⁵⁷ *Initial Order, FOF 4.19.*

up to 25% interest. Nowhere does CashCall claim that it actually made the loans, but rather that Western Sky did. In reliance upon the Consumer Loan Act, the loans made to Washington borrowers by Western Sky were unlawful loans made by an unlicensed entity required to be licensed.

2.6 The untimely response to the January 11, 2011, administrative subpoena was unlawful. The Director has determined that the January 11, 2011, subpoena (“Final Subpoena”) was lawfully issued. Based on the testimony of CashCall’s own general counsel, Mr. Baren, who admitted at hearing that all of the documents eventually (and belatedly) provided were readily available in July 2011 and could have been produced six (6) months earlier, the Director concludes that CashCall failed to timely respond to the Division’s Final Subpoena in violation of the Consumer Loan Act. Moreover, the Director is also of the view that, since CashCall failed to raise this issue prior to producing the documents in question and also did not raise the issue at the July 2013 hearing, CashCall has waived the issue for purposes of this Petition for Review.⁵⁸

2.7 The ALJ did not abuse his discretion in denying CashCall’s motion to consolidate its case with the Division’s case against Western Sky. The Director has reviewed the circumstances surrounding the ALJ’s denial of CashCall’s motion to consolidate the CashCall and Western Sky cases. Nothing in the Record on Review indicates that the ALJ abused its discretion in making this discretionary decision against consolidation.

WHEREFORE, the Director, by way of Final Decision and Order, makes the following Findings of Fact and Conclusions of Law, as set forth in Sections 3.0 and 4.0 below.

⁵⁸ *State v. Silvers*, 70 Wash.2d 430, 423 P.2d 539 (1967); *State v. Guloy*, 104 Wash.2d 412, 422, 705 P.2d 1182 (1985).

3.0 FINDINGS OF FACT

The Director concurs in and hereby re-affirms and incorporates herein FOF 4.1 through 4.46, inclusive, of the ALJ's Findings and Conclusions.⁵⁹

4.0 CONCLUSIONS OF LAW

The Director, having made Findings of Facts as set forth in Section 3.0 above, does now concur in and hereby re-affirms and incorporates herein COL 5.1 through 5.37, inclusive, of the ALJ's Findings and Conclusions,⁶⁰ except to the extent that such Conclusions of Law are augmented or modified by the Director's Considerations as set forth in Section 2.0 above.

5.0 FINAL DECISION AND ORDER

NOW, THEREFORE, the Director having made Findings of Fact and Conclusions of Law as set forth in Sections 3.0 and 4.0, respectively, the Director does hereby make the following Final Decision and Order:

5.1 Revocation of License. The Consumer Loan License (Washington License No. CL-38512) of Respondent, CASHCALL, INC., is hereby revoked.

5.2 Investigative Fees. Respondent, CASHCALL, INC., is liable to and shall pay to the WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS, as and for investigative fees, the sum of Fourteen Thousand Eight Hundred Seventy-Five U.S. Dollars and Eighty-Five U.S. Cents (\$14,875.85).

5.3 Fine. Respondent, CASHCALL, INC., is liable to and shall pay to the WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS, as and for investigative fees, the sum of Two Hundred Forty-Four Thousand One Hundred U.S. Dollars (\$244,100.00).

⁵⁹ The findings of fact contained in the Partial Summary Judgment (4.1 through 4.16, inclusive) were re-incorporated into the Findings and Conclusions dated October 21, 2013. The enumeration of the Findings and Conclusions of October 21, 2013, are herein cited and relied upon.

⁶⁰ The conclusions of law contained in the Partial Summary Judgment (5.1 through 5.38, inclusive) were re-incorporated into the Findings and Conclusions dated October 21, 2013. The enumeration of the Findings and Conclusions of October 21, 2013, are herein cited and relied upon.

5.4 Restitution. Respondent, CASHCALL, INC., is liable to and shall pay to the order WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS, as and for refunds (restitution) and for the benefit of consumers, a total of Six Million One Hundred Thirty-One Thousand Six Hundred Ninety-Four U.S. Dollars and Thirty-Five U.S. Cents (\$6,131,694.35), itemized as follows:

5.4.1 **Category 1: Refunds.** Refunds for the benefit of consumers identified in Division's Exhibits 355 and 356⁶¹ for the interest amounts paid in excess of the interest that would have been collected on such loans with an interest of twelve percent (12%), in the aggregate amount of Four Million Two Hundred Fifteen Thousand Six Hundred Eighty-Seven U.S. Dollars and Twenty-Eight U.S. Cents (\$4,215,687.28); and

5.4.2 **Category 2: Refunds.** Refunds for the benefit of consumers identified in Division's Exhibits 355 and 356⁶² by way of a principal balance adjustment so that interest that was actually paid by such consumers is applied as though the loans were at twelve percent (12%) interest with the principal reduced by said amount, in the aggregate amount of One Million Nine Hundred Sixteen Thousand Seven U.S. Dollars and Seven U.S. Cents (\$1,916,007.07).

5.5 Injunctive Relief – Loan Recasting. Respondent, CASHCALL, INC., shall recast the loans identified in Division's Exhibits 355 and 356⁶³ (to the extent that said consumers are not making payments and/or have not made payments) in amounts sufficient to reduce the principal balances on each of them as documented in the spreadsheet contained in Division's Exhibits 355 and 356.⁶⁴

⁶¹ *Testimony of Beeman, Department's Exhibits 355 and 356.*

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

6.0 RECONSIDERATION

Pursuant to RCW 34.05.470, Respondent has the right to file a Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition must be filed in the Office of the Director of the Department of Financial Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of this Final Order upon Respondent. The Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in this matter. A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on a petition.

7.0 STAY OF ORDER

The Director has determined not to consider a Petition to Stay the effectiveness of this order. Any such requests should be made in connection with a Petition for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

8.0 JUDICIAL REVIEW

Respondent has the right to petition the superior court for judicial review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

9.0 SERVICE

For purposes of filing a Petition for Reconsideration or a Petition for Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service attached hereto.

10.0 EFFECTIVENESS AND ENFORCEMENT OF FINAL ORDER

Pursuant to the Administrative Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective immediately upon deposit in the United States Mail.

Dated at Tumwater, Washington, on this 30th day of May, 2014.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By:



Scott Jarvis, Director

NOTICE TO THE PARTIES

In accordance with RCW 34.05.470 and WAC 10-08-215, any Petition for Reconsideration of this FINAL DECISION & ORDER must be filed with the Director within ten (10) days of service of this FINAL DECISION & ORDER. It should be noted that Petitions for Reconsideration do not stay the effectiveness of said FINAL DECISION & ORDER. Judicial Review of this FINAL DECISION & ORDER is available to a party according to provisions set out in the Washington Administrative Procedure Act, RCW 34.05.570.

This is to certify that this FINAL DECISION & ORDER has been served upon the following parties on May 30, 2014, by depositing a copy of same in the United States mail, postage prepaid.

WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS

By:


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Executive Assistant to the Director

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RECEIVED

OCT 22 2013

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF FINANCIAL INSTITUTIONS

Enforcement Unit
Division of Consumer Services
Dept. of Financial Institutions

IN THE MATTER OF DETERMINING
Whether there has been a violation of
the Consumer Loan Act of Washington
by:

CASHCALL, INC.,

Respondent.

OAH Docket No. 2011-DFI-0041
DFI No. C-11-0701-12-SC03

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND
INITIAL ORDER

I. ISSUES PRESENTED

1.1 Whether CashCall, Inc. failed to comply with a directive and/or subpoenas as alleged in the Second Amended Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist, Revoke or Suspend License, Make Restitution, Impose Fine, and Collect Investigation Fee, dated December 13, 2012. If so, whether such conduct violated statutes and/or regulations as asserted in the same document.

1.2 Whether CashCall, Inc. serviced loans made by an unlicensed entity as alleged in the Second Amended Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist, Revoke or Suspend License, Make Restitution, Impose Fine, and Collect Investigation Fee, dated December 13, 2012. If so, whether such conduct violated statutes and/or regulations as asserted in the same document.

1.3 Whether CashCall, Inc. advertised using an unlicensed name as alleged in the Second Amended Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist, Revoke or Suspend License, Make Restitution, Impose Fine, and Collect Investigation Fee, dated December 13, 2012. If so, whether such conduct violated statutes and/or regulations as asserted in the same document.

1.4 If any of the foregoing alleged conduct occurred and violated statutes and/or regulations as asserted, whether that alleged conduct and those asserted violations constitute bases additional to and independent of any such bases determined in the Order Granting Department's Motion for Partial Summary Judgment, issued January 13, 2013, for revocation of CashCall, Inc.'s Consumer Loan License and/or other sanctions.

1.5 Whether CashCall, Inc. is liable for the payment of an investigation fee and, if so, in what amount.

1.6 Whether CashCall, Inc. is liable for payment of a fine and, if so, in what amount.

1.7 Whether CashCall, Inc. is liable for payment of restitution and, if so, in what amount.

II. ORDER SUMMARY

2.1 CashCall, Inc. failed to comply with the directive issued to CashCall, Inc. by the Department of Financial Institutions on Jun 29, 2011, and CashCall, Inc. failed to timely and fully respond to the subpoena issued to CashCall, Inc. by the Department of Financial Institutions on July 11, 2011. In doing so, CashCall, Inc. violated the authority of the Department of Financial Institutions under RCW 31.04.145.

2.2 CashCall, Inc. serviced loans made by an unlicensed entity in violation of RCW 31.04.027(2).

2.3 CashCall, Inc. advertised using an unlicensed name in violation of WAC 208-620-420 and WAC 208-620-620.

2.4 CashCall, Inc.'s failure to timely and fully respond to the July 11, 2011, subpoena, its use of an unlicensed trade name in advertising, and its facilitation of unlicensed lending activity constitute bases additional to other bases previously relied upon for granting revocation of CashCall, Inc.'s Consumer Loan License.

2.5 CashCall, Inc. is liable for payment of an investigation fee in the amount of \$14,875.85.

2.6 CashCall, Inc. is liable for payment of a fine in the amount of \$244,100.00.

2.7 CashCall, Inc. is liable for payment of restitution in the amounts of \$4,215.687.28 and of \$1,916.007.07.

III. HEARING

3.1 **Hearing Dates:** July 10-11, 2013

3.2 **Administrative Law Judge:** Terry A. Schuh

3.3 Respondent: CashCall, Inc.

3.3.1 Representatives: Claudia Calloway, John Black, Julian Dayal, Katten Muchin Rosenman LLP, Attorneys at Law; David Bukey, Attorney at Law

3.3.2 Witness: Dan Baren, Outside Counsel for CashCall, Inc.

3.3.3 Observer: Gavin Skok, Attorney at Law

3.4 Agency: Department of Financial Institutions

3.4.1 Representative: Kim O'Neal, Senior Counsel, Office of the Attorney General

3.4.2 Witnesses:

3.4.2.1 Deborah Taellious, Financial Legal Examiner, Department of Financial Institutions

3.4.2.2 Kevin Beeman, Financial Legal Examiner, Department of Financial Institutions

3.4.2.3 Charles E. Clark, Enforcement Chief, Division of Consumer Services, Department of Financial Institutions

3.5 Exhibits: Department's Exhibits 1 through 362 and Respondent's Exhibits 1-10 were admitted at the evidentiary hearing. Respondent Exhibit 11 was admitted upon receipt on August 1, 2013.

3.6 Completion of the Record: At the request of the parties and by agreement, the record remained open for specific, voluntary and discretionary post-hearings submissions. CashCall, Inc. had until August 1, 2013, to submit evidence rebutting the evidence offered by the Department of Financial Institutions regarding the calculation of proposed restitution. CashCall, Inc. timely submitted such rebuttal evidence, which was admitted as Respondent Exhibit 11. The Department of Financial Institutions had until August 8, 2013, to submit evidence rebutting any post-hearing evidence timely submitted by CashCall, Inc. The Department of Financial Institutions made no such submission. Both parties had until August 22, 2013, to submit proposed Findings of Fact and Conclusions of Law. Both parties timely submitted proposed Findings of Fact and Conclusions of Law. The record closed on August 22, 2013.

IV. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

4.1 On August 15, 2011, the Department of Financial Institutions ("the Department") issued to CashCall, Inc. ("CashCall") a Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist, Revoke or Suspend License, Make Restitution, Impose Fine, and Collect Investigation Fee ("Statement of Charges").

4.2 The Statement of Charges was served on CashCall on August 15, 2011, by U.S. First-Class mail and by Federal Express.

4.3 On September 1, 2011, CashCall filed an Application for Adjudicative Hearing with the Department.

4.4 On July 3, 2012, The Department issued to CashCall an Amended Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist, Revoke or Suspend License, Make Restitution, Impose Fine, and Collect Investigation Fee ("Amended Statement of Charges").

4.5 On August 7, 2012, Administrative Law Judge Terry A. Schuh held a Status Conference to discuss with the parties the procedural ramifications of the Amended Statement of Charges and on August 10, 2012, Administrative Law Judge Terry A. Schuh issued an Amended Notice of Hearing and Order Following Status Conference of August 7, 2012, which amended the issue statement for the evidentiary hearing to reflect the Amended Statement of Charges instead of the Statement of Charges.

4.6 On December 13, 2012, the Department issued to CashCall a Second Amended Statement of Charges and Intention to Enter an Order to Cease and Desist, Revoke or Suspend License, Make Restitution, Impose Fine, and collect Investigation Fee ("Second Amended Statement of Charges").

4.7 After a hearing held on December 13, 2012, Administrative Law Judge Terry A. Schuh issued on December 19, 2012, an Order Granting Department's Letter Motion to Amend Operative Statement of Charges and Order Amending Issue Statement for Evidentiary Hearing on the Merits. This Order amended the issue statement to reflect the Second Amended Statement of Charges instead of the Statement of Charges and Amended Statement of Charges and this Order also deemed that CashCall's initial appeal incorporated the Second Amended Statement of Charges.

Order Granting Partial Summary Judgment

4.8 On January 30, 2013, Administrative Law Judge Terry A. Schuh issued an Order Granting Department's Motion for Summary Judgment, holding that CashCall violated the Usury Act and the Consumer Protection Act by collecting usurious interest; that CashCall violated the Consumer Loan Act by violating the Usury Act and the Consumer Protection Act; that the Department could revoke CashCall's Consumer Loan Act license for having violated the Consumer Loan Act; that the Department could order CashCall to immediately cease and desist from collecting usurious interest; that the Department could revoke CashCall's Consumer Loan Act license because Maryland suspended CashCall's mortgage lender license; and ordering CashCall to immediately stop collecting interest in excess of 12% and revoking its Consumer Loan Act License No. CL-38512.

CashCall's license

4.9 CashCall obtained a Consumer Loan Act license from the Department in October 2003 and maintained its license, Consumer Loan Act License No. CL-38512, until revoked pursuant to the Order Granting Partial Summary Judgment. Resp. Ex. 10.

Subpoenas and directive

4.10 On May 17, 2011, the Department issued two witness subpoenas to CashCall under the legal authority of RCW 31.45.100 requesting CashCall to produce all records, documents, and information regarding three specified Washington consumers' loans as well as a list of all Washington consumers for whose loans it was providing servicing or collections services on behalf of specified lenders from January 1, 2010, through the date of the subpoena along with specified information about those loans. Dept. Exs. 1 and 2.

4.11 The May 17, 2011, subpoenas were sent via Federal Express overnight delivery and were signed for on May 19, 2011. Dept. Exs. 1 and 2.

4.12 CashCall responded to the subpoenas with an objection to the legal authority under which the subpoenas were issued and a statement that CashCall was not related to the lender described in the subpoena. Dept. Ex. 3. CashCall did not produce the borrower files requested until July 22, 2011. Testimony of Dan Baren ("Baren").

4.13 On June 29, 2011, the Department issued a directive under Chapter 31.04 RCW, the Consumer Loan Act, to CashCall requesting that it produce the information previously requested in the May 17, 2011, subpoenas. Dept. Ex. 7.

CashCall's response was due by July 7, 2011. Dept. Ex. 7, p. 2.

4.14 At all relevant times, CashCall was licensed as a consumer loan company under the authority of Chapter 31.04 RCW. Resp. Ex. 10.

4.15 On July 11, 2011, the Department issued a subpoena under Chapter 31.04 RCW with a due date of July 22, 2011, requesting the information requested in the June 29, 2011, directive. Testimony of Deborah Taellious ("Taellious"); Testimony of Charles E. Clark ("Clark"); Dept. Ex. 8. The June 29, 2011, directive required CashCall to provide four kinds of information: a list of all Washington consumers with contact information who received loans from Western Sky, etc. that were acquired by CashCall from June 1, 2009, to date; a list of loans related to Washington consumers purchased from Western Sky, etc. between June 1, 2009, and present; all records, documents, and information regarding loans to consumer BL; and all records, documents, and information regarding loans to consumers AL and SB. Dept. Ex. 7, p. 2.

4.16 On approximately July 25, 2011, CashCall provided part of the information requested, regarding the specified consumers' loans, but refused to provide the list of Washington consumers whose loans CashCall was servicing for specified lenders, stating that CashCall did not originate or service loans in Washington. Dept. Ex. 9. More specifically, CashCall provided the information regarding consumers BL, AL, and SB but refused to provide the information regarding consumers and loans more generally. Dept. Ex. 9; Dept. Exs. 13 and 14; Testimony of Baren. CashCall did not deny that loans it was servicing involved Washington consumers. See Dept. Ex. 9.

4.17 Despite the due date of July 22, 2011, the Department did not receive a complete response from CashCall to the July 11, 2011, subpoena until February 22, 2012, 215 days after the due date upon which the response was due. Testimony of Taellious; Testimony of Baren; Dept. Ex. 10.¹ The response CashCall provided on February 22, 2012, included information on 2,226 loans it was servicing that involved Washington consumers. Dept. Exs. 11 and 12. CashCall could have produced this information by July 22, 2011. Testimony of Baren.

CashCall advertised using an unlicensed trade name

4.18 At least on July 25, 2011, CashCall advertised in Washington on a local

¹ Dept. Ex. 10 is date-stamped received February 23, 2012. However, Ms. Taellious testified that the document was received by the Department on February 22, 2012, which is consistent with the date employed by the Department when it calculated the fine for CashCall's alleged late response to the subpoena. Dept. Ex. 45, p. 2. Accordingly, I find that the Department received this particular response from CashCall on February 22, 2012.

radio station using the trade name CashCall Mortgage. Testimony of Taellious; Dept. Ex. 41. The purpose was to advertise CashCall's mortgage business. Testimony of Baren; See Dept. Ex. 41. The radio advertisement specified CashCall's correct Consumer Loan License number. Dept. Ex. 41.

4.19 CashCall did not apply for or obtain the approval of the Director of the Department of Financial Institutions for the trade name of CashCall Mortgage. Testimony of Taellious.

4.20 The name on CashCall's license is "CashCall Inc." Testimony of Taellious.

CashCall facilitated unlicensed conduct

4.21 Western Sky Financial, LLC ("Western Sky") is a consumer lender wholly owned by Martin Webb. Testimony of Taellious.

4.22 Western Sky is not and never has been licensed by the Department to provide consumer loans to Washington residents. Testimony of Taellious.

4.23 During the time relevant herein, Western Sky advertised in Washington, offering to provide consumer loans to Washington residents. See, e.g., Testimony of Cleveland Hickmon ("Hickmon"); Testimony of Jay T. Crowell ("Crowell"); Testimony of Dennis R. Turner ("Turner"); Dept. Exs. 15-37 and 47-353.

4.24 Western Sky has entered into numerous consumer loan agreements with Washington residents. See, e.g., Testimony of Hickmon; Testimony of Crowell; Testimony of Turner; Dept. Exs. 15-37 and 47-353.

4.25 Most of the Western Sky loan applications were received, reviewed, and accepted or denied at its facility on the Cheyenne River Sioux Indian Reservation. Testimony of Baren. Nevertheless, Washington residents were contacted by advertising in Washington, completed and executed loan documents in Washington, received the loan proceeds by means of direct deposit in their Washington accounts, and made loan payments by means of direct withdrawal from their Washington accounts. Testimony of Taellious; see, e.g., Testimony of Hickmon; see *generally*, Dept. Exs. 15-37 and 47-353.

4.26 The consumer loans made by Western Sky carry interest rates ranging from 95% to 169%. See, e.g., Dept. Ex. 24, p. 8 and Dept. Ex. 17, p. 8; see *generally*, Dept. Exs. 15-37 and 47-353.

4.27 CashCall and Western Sky entered into a Servicing Agreement in which

CashCall agreed to purchase consumer loans made by Western Sky, including loans made to Washington consumers. Testimony of Baren; Dept. Ex. 360.

4.28 CashCall, through its subsidiary Western Sky Funding, bought consumer loans from Western Sky, including all or most of loans Western Sky made to Washington consumers, typically within three days of origination. Testimony of Baren; Dept. Ex. 360.

4.29 In addition to purchasing loans from Western Sky, CashCall provided call center services that facilitated some of the loan applications generated by Western Sky. Testimony of Baren.

4.30 CashCall purchased from Western Sky more than 6,900 consumer loans made to Washington consumers, all of which had interest rates that exceeded 25%. Testimony of Taellious; *see generally*, Dept. Exs. 15-37 and 47-353.

4.31 After purchasing the loans, CashCall serviced and collected payments at the interest rate of the Western Sky loan agreements. Testimony of Baren.

4.32 On January 20, 2011, the Department issued two Resolution and Closure of Complaints, Nos. 32395 and 31910, which provided that CashCall was not required to take any action regarding those complaints because Washington law did not apply to loans issued to Washington consumers by a Delaware bank which were assigned to and serviced by CashCall. Resp. Exs. 8 and 9; Testimony of Taellious; Testimony of Baren. Subsequently, Delaware stopped its program because of issues the program raised with the FTC and the FDIC. Testimony of Baren. CashCall has never received documents like the aforementioned Resolution and Closure of Complaints regarding loans it serviced for and/or acquired from Western Sky. Testimony of Baren. CashCall did not ask the Department or any other agency if its program with Western Sky was acceptable. Testimony of Baren. Nevertheless, CashCall chose to interpret these documents to imply that its program with Western Sky was acceptable. Testimony of Baren

4.33 CashCall collected more than \$9.2 million in interest on the consumer loans purchased from Western Sky. Testimony of Taellious.

Calculation of proposed investigation fee

4.34 The Department expended more than 450 hours investigating this matter. Dept. Ex. 46, p. 4; Testimony of Taellious.

4.35 The Department seeks an investigation fee of \$14,857.85. Testimony of Taellious.

Calculation of proposed fine

4.36 The Department sought a fine based only on two asserted violations: CashCall's asserted violation of RCW 31.04.145 for allegedly failing to timely comply with the July 11, 2011, subpoena that was issued under Chapter 31.04 RCW; and CashCall's asserted violation of RCW 31.04.027 for allegedly servicing illegal loans. See Dept. Ex. 45; Testimony of Taellious.

4.37 In determining the daily fine amount, the Department considered the type of violation, what CashCall intended, what CashCall gained, and the number of incidents of each violation. Dept. Ex. 45; Testimony of Taellious. Therefore, the Department determined a daily fine amount of \$100.00 for each of the asserted violations. Dept. Ex. 45; Testimony of Taellious.

4.38 CashCall's response to the July 11, 2011, subpoena was due on July 22, 2011. Dept. Ex. 8. The Department received CashCall's completed response on February 22, 2012, 215 days later. Testimony of Taellious. Thus, the Department calculated CashCall's fine for this asserted violation as $215 \times \$100.00 = \$21,500.00$. Dept. Ex. 45, p. 2.

4.39 Although CashCall's discovery responses ultimately revealed that it serviced more than 6,900 loans that Western Sky made to Washington residents, the Department calculated the fine for CashCall's alleged servicing unlicensed loans based upon the 2,226 loans CashCall revealed in its Discovery response filed with the Department on February 22, 2012. Testimony of Taellious; Testimony of Clark. Accordingly, the Department calculated CashCall's fine for this asserted violation as $2,226 \times \$100.00 = \$222,600.00$. Dept. Ex. 45, p. 3.

Calculation of proposed restitution

4.40 The Department presented evidence in the form of an Excel spreadsheet showing the difference between interest attributed to the loans as recast at 12% interest versus interest attributed and collected as per the loan agreement terms. Testimony of Beeman. The Department used raw data from CashCall. Testimony of Beeman; see Dept. Exs. 357 and 358. The Department calculated the affect on principal from payments received if the interest rate incorporated into the consumers' payments was reduced from the rate charged to the rate of 12%. Testimony of Beeman; see Dept. Exs. 355, 356, and 362.

4.41 CashCall did not present evidence that the method employed by the Department was flawed and that the Department did not accurately calculate the affect on the principal by a payment history with an interest rate reduced to 12%.

4.42 Recasting the loans at 12% interest, the Department's calculation demonstrated an overpayment of interest. Testimony of Beeman; see Dept. Exs. 355, 356, and 362. The Department sought the rate of 12% rather than that of 25% allowed under the Consumer Loan Act because CashCall did not originate the loans and Western Sky was not a licensed lender in Washington, much less was it licensed under the Consumer Loan Act. Testimony of Clark. Throughout the period of time at issue herein, the State Maximum Interest Rate under RCW 19.52.025 was 12%. Dept. Ex. 42.

4.43 The remedy sought by the Department entails three categories of loans: (1) loans that were paid in full as per the terms of the loan agreement; (2) loans in which consumers are making payments but are not paid in full; and (3) loans in which consumers are not making payments. Testimony of Beeman; see Dept. Exs. 355, 356, and 362.

4.44 In the first category, the Department seeks refunds for the customers for the interest amounts paid in excess of the interest that would have been collected on the loan with an interest rate of 12%. Testimony of Beeman; Dept. Exs. 355, 356, and 362. The Department calculated restitution in the first category to be \$4,215,687.28, as documented in the spreadsheets the Department filed as Exhibits 355 and 356. Testimony of Beeman; Dept. Exs. 355, 356, and 362.

4.45 In the second category, the Department seeks a principal balance adjustment so that interest that was actually paid is applied as though the loan was 12% interest and the principle balance is reduced by that amount. Testimony of Beeman; Dept. Exs. 355, 356, and 362. The Department has calculated restitution in the second category to be \$1,916,007.07, as documented in the spreadsheets the Department filed as Exhibits 355 and 356. Testimony of Beeman; Dept. Exs. 355, 356, and 362.

4.46 In the third category, the Department seeks only a recasting of these loans as consumers are not making payments and/or have not made payments sufficient to reduce the principle balance as documented in the spreadsheet the Department filed as Exhibits 355 and 356. Testimony of Beeman; Dept. Exs. 355, 356, and 362.

////

V. CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I make the following Conclusions of Law:

Jurisdiction

5.1 I have jurisdiction to hear and decide this matter under Chapter 31.04 RCW; Chapter 34.05 RCW, Chapter 34.12 RCW, Chapter 208-620 WAC, and Chapter 10-08 WAC.

Incorporation of Order Granting Department's Motion for Partial Summary Judgment

5.2 The Order Granting Department's Motion for Partial Summary Judgment issued January 30, 2013, including the Facts as a Matter of Law and the Conclusions of Law recited therein, is incorporated by this reference into this order.

5.3 The Order Granting Department's Motion for Partial Summary Judgment ordered CashCall to immediately cease and desist collecting or attempting to collect interest in excess of the Washington Usury Act Cap and to immediately cease and desist collecting or attempting to collect fees or penalties in excess of the maximum allowed by state law. That order also ordered CashCall's Consumer Loan Act License No. CL-38512 revoked. Those orders are not altered by this order.

Applicable law

5.4 The conduct at issue occurred from 2010 through the date of this order. Accordingly, the statutes and regulations in effect during this period apply. All citations to statutes and regulations are to those in effect during this period.

CashCall's failure to timely and fully respond to the Department's July 11, 2011, subpoena and June 29, 2011 directive constituted a violation

5.5 Chapter 31.04 RCW, the Consumer Loan Act, applies to loans made under that chapter. RCW 31.04.025(1). Chapter 31.04 RCW does *not* apply to "[e]ntities making loans under chapter 31.45 RCW (check cashers and sellers). RCW 31.04.025(2)(d).

5.6 *"For the purpose of discovering violations of this chapter or securing information lawfully required under this chapter, the director may at any time, either personally or by designees, investigate or examine the loans and business and, wherever located, the books, accounts, records, papers, documents, files, and other information used in the business of every licensee and of every person who is engaged in the business making or assisting in the making of loans at interest rates authorized by this chapter, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter."* RCW

31.04.145(1)(in pertinent part)(emphasis added).

5.7 "The director has the power, and broad administrative discretion, to administer and interpret this chapter to facilitate the delivery of financial services to the citizens of this state by consumer loan companies, residential mortgage loan services, and mortgage loan originators subject to this chapter. The director shall adopt all rules necessary to administer this chapter and to ensure complete and full disclosure by licensees of *lending transactions governed by this chapter*." RCW 31.04.165(1)(emphasis added).

5.8 In order to investigate violations of Chapter 31.04 RCW, the Department may seek the production of records or copies and has subpoena authority. WAC 208-620-610.

5.9 Chapter 31.45 RCW applies to an entity primarily engaged in the business of cashing or selling checks. RCW 31.45.020.

5.10 On May 17, 2011, the Department issued to CashCall two subpoenas under RCW 31.45.100. CashCall is not engaged primarily in the business of cashing or selling checks. Accordingly, CashCall is not subject to Chapter 31.45 RCW. CashCall asserted precisely that in its response to the Department to the May 17, 2011, subpoenas. Therefore, CashCall's response to the May 17, 2011, subpoenas was sufficient and proper and CashCall did not violate RCW 31.04.145 or any other statute or regulation by means of that response.

5.11 On the other hand, the directive that the Department issued on June 29, 2011, to CashCall and the subpoena it issued to CashCall on July 11, 2011, were issued under Chapter 31.04 RCW. CashCall's response to the subpoena issued July 11, 2013, was due on July 22, 2011. CashCall responded essentially in a timely fashion but only minimally. Substantially, CashCall failed to respond until February 22, 2012. CashCall could have and should have responded timely. Its failure to do so violated the authority of the Department under RCW 31.04.145.

CashCall's use of an unlicensed trade name in its advertising constituted a violation

5.12 A licensee may only transact business using the name on its license or may apply to the Department for the use of a trade name. WAC 208-620-420; WAC 208-620-620.

5.13 CashCall's licensed name in Washington is CashCall, Inc. CashCall has not applied to the Department to use a trade name, much less the trade name CashCall Mortgage. Nevertheless, in a radio advertisement on a local Washington station on July 25, 2011, CashCall identified itself as CashCall

Mortgage although referencing its Consumer Loan Act license number. CashCall argued that its reference did not involve a trade name but merely identified the service it was offering. However, the advertisement did not identify CashCall Mortgage as the service but rather as the entity offering the service. Therefore, CashCall's advertisement violated the foregoing authority.

CashCall's facilitating unlicensed lending activity constituted a violation

5.14 "No person may engage in the business of making . . . unsecured loans of money . . . without first obtaining and maintaining a license in accordance with this chapter, except those exempt under RCW 31.04.025." RCW 31.04.035.

5.15 None of the aforementioned exemptions apply to Western Sky. See RCW 31.04.025(2).

5.16 CashCall argued that no court has held that Western Sky must be licensed in order to offer loans in Washington. But no court has held to the contrary either. CashCall argued that Western Sky was insulated from Washington law in this matter by federal Indian law. CashCall's argument did not persuade me in its motion for partial summary judgment and does not persuade me here. CashCall argued that a federal district court ruled that Western Sky makes its loans on the Cheyenne River Sioux Indian reservation.² However, I am not bound by that ruling. Moreover, the Washington consumers who transacted the loans at issue herein were contacted by Western Sky advertising in Washington; they completed and executed loan documents in Washington; they received the loan proceeds by means of direct deposit in their Washington accounts; and they made loan payments by direct withdrawal from their Washington accounts. Thus, I am persuaded that Western Sky was making unsecured loans for money in Washington. Accordingly, I hold, given the evidence in the record herein, and specifically for the purposes of the instant matter, that the Department reasonably determined that Western Sky was required to be licensed in Washington under RCW 34.05.035.

5.17 CashCall also argued that it reasonably relied upon the two Resolution and Closure of Complaints issued by the Department on January 20, 2011, where the Department determined that Washington law did not apply to loans issued to Washington consumers by a Delaware bank and serviced by CashCall. However, CashCall did not confirm with the Department and has not persuaded me that the loans involved in the Delaware matters, which were governed by federal banking law, are analogous to those in the instant matter, which are not governed by federal banking law. Accordingly, I am not persuaded by this

² CashCall cited to *Federal Trade Commission v. Payday Financial, LLC*, ___ F.Supp. 2d ___, 2013 WL 1309437, at *10 (D.S.D. Mar. 28, 2013).

argument.

5.18 “It is a violation of this chapter for a licensee . . . to “[d]irectly or indirectly engage in any unfair or deceptive practice toward any person[.]” RCW 31.04.027(2).

5.19 Here, CashCall acquired from Western Sky in excess of 6900 loans Western Sky made to Washington residents. CashCall typically acquired the loans within three days of funding, relying upon a contract to that effect between CashCall and Western Sky. Clearly, Western Sky made these loans with the intent of transferring them to CashCall. These loans carried interest rates ranging from 95% to 169%. CashCall knew this. CashCall could not have lawfully made loans in excess of 25%. CashCall then serviced and collected on the loans. These loans were made by an entity not licensed in Washington to do so. Moreover, they were made at rates neither CashCall nor Western Sky could have charged under Washington law. I am persuaded that CashCall and Western Sky cooperated to allow CashCall to own and service loans at interest rates far above what it could have charged under its Consume Loan Act license. I hold that CashCall's conduct in this regard and to this affect constituted CashCall's direct engagement in an “unfair or deceptive act” towards more than 6900 Washington consumers in violation of RCW 31.04.027(2).

CashCall's license revoked

5.20 In my Order Granting Department's Motion for Partial Summary Judgment, I ordered CashCall's consumer Loan License No. CL-38512 revoked under RCW 31.04.093(3) because CashCall violated the Consumer Loan Act and the Consumer Protection Act by collecting usurious interest and because Maryland revoked CashCall's mortgage lender license.

5.21 I hold that The Department can revoke CashCall's license under RCW 31.04.093(3) as well because in addition to the foregoing violations, CashCall also violated the Consumer Loan Act by failing to timely and completely respond to the July 11, 2011, subpoena, by using an unlicensed trade name in its advertising, and by facilitating unlicensed lending activity.

CashCall liable for investigation fee

5.22 “Every licensee examined or investigated by the director or the director's designee shall pay to the director the cost of the examination or investigation of each license place of business as determined by rule by the director.” RCW 31.04.145(3).

5.23 “A licensee will be charged \$69.01 per hour for regular and special

examinations of the licensee's records." WAC 208-620-590(1).

5.24 Here, the Department seeks \$14,857.85. At \$69.01 per hours, that means the Department seeks to charge CashCall for 215.3 hours. The Department spent more than 450 hours investigating the case. Therefore, 215.3 seems reasonable. Thus, the Department may seek an investigation and CashCall is liable for an investigation fee of \$14,875.85.

CashCall liable for fine

5.25 "The director may impose fines of up to one hundred dollars per day upon the licensee . . . for any violation of this chapter." RCW 31.04.093(4)(a).

5.26 "The director may impose fines of up to one hundred dollars per day upon the licensee . . . for failure to comply with any order or subpoena issued by the director under this chapter." RCW 31.04.093(4)(b).

5.27 Here, CashCall was 215 days late responding to the subpoena the Department issued on July 11, 2011. The Department calculated the fine for this violation as \$21,500.00.

5.28 Here, CashCall service more than 6,900 loans that Western Sky made to Washington residents. However, the Department asserted a fine based only on the 2,226 loans CashCall reported in the response to discovery it presented on February 22, 2012. The Department calculated the fine for the violation represented by servicing these loans as \$222,600.00.

5.29 Accordingly, the Department may impose a fine of \$244,100.00.

CashCall liable for restitution

5.30 The Department can order an entity to "make restitution to a borrower or other person who is damaged as a result of a violation of this chapter." RCW 31.04.093(5)(c).

5.31 The Department seeks restitution to Washington consumers who paid off their loans in refunds totaling \$4,215,687.28 and to Washington consumers who have not paid off their loans in principal reductions totaling \$1,916,007.07. The Department calculated restitution by recasting the loans at issue at 12%.

5.32 CashCall argued that restitution was not apt because CashCall had a good faith belief it was complying with applicable law and because restitution constituted an unjustifiable windfall to affected consumers. CashCall also argued that, even if restitution was proper, it should be calculated based upon an interest

rate corrected to 25%, the maximum allowed under the Consumer Loan Act. Finally, CashCall argued that the tribunal should conduct further fact finding and development of the record, including a full opportunity to CashCall to respond to the Department's calculations.

5.33 CashCall's "good faith" argument suggests that the basis for restitution is punitive. However, the statute recited above suggests that the basis for restitution is making whole the persons damaged by CashCall's violation. The damage suffered by the borrowers is the same regardless of CashCall's good faith or lack of good faith. Therefore, I need not determine if CashCall's assertion of good faith is deserved and I am not persuaded by this argument.

5.34 CashCall argued that restitution constituted an unjustifiable windfall to affected consumers. Perhaps restitution could be characterized as "unjustifiable" in the sense that it reflects an interest rate considerably lower than that recited in the loan documents. Perhaps restitution could be characterized as "unjustifiable" as well in the sense that the borrowers knew or should have known before accepting the loan what the recited interest was and its impact on the cost of repaying the loan. However, these borrowers were apparently desperate and vulnerable and likely unsophisticated regarding financial matters. More to the point, the violation as held herein was not based upon CashCall allegedly taking advantage of borrowers. Rather, it was based upon the unlawfulness of the interest rates charged. It was the interest rates that injured the Washington consumers. If there was an unjustifiable windfall, it was received by CashCall when it collected unlawful interest. Thus, I am not persuaded by this argument.

5.35 CashCall argued that, if restitution was determined to be apt, it should be calculated based upon an interest corrected to 25%, the maximum allowed under the Consumer Loan Act. I fail to see how an entity operating outside the parameters of the Consumer Loan Act should be afforded the opportunities offered by the Consumer Loan Act. Failing to distinguish between unlicensed activity and licensed activity renders licensure virtually irrelevant. To be sure, CashCall was licensed. However, its activity, under the auspices of Western Sky, was not licensed. Accordingly, regarding the loans at issue, CashCall does not qualify for the 25% rate allowed under the Consumer Loan Act. Therefore, I am not persuaded by this argument.

5.36 CashCall argued the tribunal should conduct further fact finding and development of the record, including a full opportunity to CashCall to respond to the Department's calculations. However, the issue of restitution was raised in the Amended Statement of Charges and in the Second Amended Statement of Charges. Moreover, the Department specifically stated in those documents that it sought restitution in the form of a refund of interest fees charged in excess of the maximums allowed by law. CashCall had notice of this issue and of its

specific affect for approximately a year before the evidentiary hearing and had ample opportunity to prepare to address it at hearing. Furthermore, the Department's calculations were based upon the information CashCall provided. Finally, CashCall had an opportunity after the hearing to examine the Department's calculations in as much detail as it wished and to rebut that calculation as it saw fit. CashCall, in its scheduled post-hearing response, offered no criticism of the mathematical formula employed by the Department to reach its restitution calculations. Thus, I am not persuaded that the hearing record is deficient in any manner. Accordingly, I am not persuaded to re-open the hearing record. Therefore, I am not persuaded by this argument.

5.37 Thus, the Department has the authority to order the restitution recited above.

INITIAL ORDER

IT IS HEREBY ORDERED THAT:

The sanctions ordered by the Order Granting Department's Motion for Partial Summary Judgment issued on January 30, 2013, are not altered by this order.

As ordered by the Order Granting Department's Motion for Partial Summary Judgment and for the additional reasons recited herein, CashCall Inc.'s Consumer Loan Act License No. CL-38512 is revoked.

CashCall, Inc. is liable for payment of an investigation fee in the amount of \$14,875.85 in a manner and subject to timing to be determined by the Department of Financial Institutions.

CashCall, Inc. is liable for payment of a fine in the amount of \$244,100.00 in a manner and subject to timing to be determined by the Department of Financial Institutions.

CashCall, Inc. is liable for payment of restitution in the amounts of \$4,215,687.28 and of \$1,916,007.17, in a manner and subject to timing to be determined by the Department of Financial Institutions.

Signed and Issued at Tacoma, Washington, on the date of mailing.


Terry A. Schuh
Lead Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

Under RCW 34.05.464 and WAC 10-08-211, any party to an adjudicative proceeding may file a Petition for Review of this Initial Order. Such a Petition for Review shall be filed with the Director of the Department of Financial Institutions within twenty (20) days of the date of service of the Initial Order. The address for filing the Petition for Review is:

Director
Department of Financial Institutions
PO Box 41200
Olympia, WA 98504-1200.

Copies of the Petition for Review shall be served upon all other parties or their representatives at the time the Petition for Review is filed with the Director.

The Petition for Review shall specify the portions of the Initial Order to which exception is taken and shall refer to the evidence in the record which is relied upon to support the Petition for Review.

Any party may file a Reply to a Petition for Review. Replies shall be filed with the Director within ten (10) days of the date of service of the Petition for Review and copies of the Reply shall be served upon all other parties or their representatives at the time the Reply is filed with the Director.

After the time for filing a Petition for Review has elapsed, the Director of the Department of Financial Institutions will issue a Final Order subject to appeal rights that will be explained at that time.

CERTIFICATION OF MAILING IS ATTACHED

RECEIVED

Certificate of Service, OAH Docket No. 2011-DFI-0041

OCT 22 2013

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

Enforcement Unit
Division of Consumer Services
Dept. of Financial Institutions

Kim O'Neal Senior Counsel Office of the Attorney General PO Box 40100 Olympia, WA 98504-0100	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid, Certified mail, return receipt
Charles Clark Enforcement Unit Department of Financial Institutions Division of Consumer Services PO Box 41200 Olympia, WA 98504-1200	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid, Certified mail, return receipt
Claudia Callaway, Partner Katten Muchin Rosenman LLP 2900 K Street NW Washington, DC 20007	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid, Certified mail, return receipt
CashCall, Inc. c/o Claudia Callaway, Partner Katten Muchin Rosenman LLP 2900 K Street NW Washington, DC 20007	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid, Certified mail, return receipt
David B. Bukey Law Offices of David B. Bukey 520 Pike Street, Suite 2500 Seattle, WA 98101-1385	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid, Certified mail, return receipt
Julian Dayal Katten Muchin Rosenman LLP 2900 K Street NW Washington, DC 20007	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid, Certified mail, return receipt
John Black Katten Muchin Rosenman LLP 2900 K Street NW Washington, DC 20007	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid, Certified mail, return receipt

Date: October 21, 2013

Cyndi Michelena
Office of Administrative Hearings

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No. C-11-0701-12-SC03

SECOND AMENDED STATEMENT OF CHARGES and NOTICE OF INTENTION TO ENTER AN ORDER TO CEASE AND DESIST, REVOKE OR SUSPEND LICENSE, MAKE RESTITUTION, IMPOSE FINE, AND COLLECT INVESTIGATION FEE

Respondent.

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Charges SC02 by issuing Second Amended Statement of Charges C-11-0701-12-SC-03. This Second Amended Statement of Charges includes the following modifications: addition of certain factual allegations; addition of certain grounds for entry of order; addition of certain authority to impose sanctions; and updating the investigation costs as of the date of this Second Amended Statement of Charges.

I. FACTUAL ALLEGATIONS

1.1 Respondent. CashCall, Inc. (Respondent) was licensed by the Department to conduct business as a Consumer Loan Company on or about October 27, 2003, and has continued to be licensed to date. Respondent is licensed to conduct the business of a consumer lender at two different locations. Respondent's main office¹ is located at 1600 South Douglass Road, Anaheim, California.

1.2 Failure to Comply with Directives and Subpoenas.

A. On or about May 17, 2011, the Department served, under the authority of the Check Cashers and Sellers Act, Subpoena No. 037861-11-SB01 on Respondent by Federal Express overnight delivery and United States Postal Service First-Class mail (First-Class mail). The subpoena sent via Federal Express overnight delivery was signed for on May 19, 2011. The subpoena sent via First-Class mail was not returned to the Department by the United States Postal Service. Respondent was required to comply with the subpoena no later than 5:00 p.m. on June 2, 2011.

B. On or about May 17, 2011, the Department served, under the authority of the Check Cashers and Sellers Act, Subpoena No. 038191-11-SB01 on Respondent by Federal Express overnight delivery and United States Postal Service First-Class mail (First-Class mail). The subpoena sent via Federal Express overnight delivery was signed for on May 19, 2011. The

¹ Respondent has one branch office. Respondent's branch office is located at 7125 Pollock Drive, Las Vegas, Nevada.

1 subpoena sent via First-Class mail was not returned to the Department by the United States Postal
2 Service. Respondent was required to comply with the subpoena no later than 5:00 p.m. on June 2,
3 2011.

4 C. On or about June 2, 2011, Respondent sent a letter to the Department objecting to the
5 two Department subpoenas. On or about June 6, 2011, the Department responded to Respondent that
6 compliance with the subpoenas was not voluntary. The Department also extended the deadline to
7 comply with the subpoenas to the close of business on June 13, 2011.

8 D. On or about June 14, 2011, Respondent requested an additional extension to June 15,
9 2011, to comply with the subpoenas. On or about June 14, 2011, the Department extended the
10 deadline to comply with the subpoenas such that Respondent was required to submit its response
11 prior to 9:00 a.m. on June 16, 2011.

12 E. On or about June 16, 2011, at 2:30 p.m., Respondent submitted a letter to the
13 Department objecting to the subpoenas again. Respondent did not comply with either of the
14 Department's subpoenas.

15 F. On or about June 29, 2011, the Department served, under the authority of the
16 Consumer Loan Act, a directive on Respondent by Federal Express overnight delivery and First-
17 Class mail. The directive sent via Federal Express overnight delivery was signed for on June 30,
18 2011. The directive sent via First-Class mail was not returned to the Department by the United States
19 Postal Service. Respondent was required to comply with the directive by close of business on July 7,
20 2011. Respondent did not comply with the directive².

21
22 ² On or about July 8, 2011, Respondent's legal representative left a voicemail message stating she was at her son's game
23 and requesting an extension to the time to respond. The message was received on or about July 11, 2011. Also, on or
24 about July 11, 2011, Respondent's legal representative contacted the Department again requesting an extension to the
deadline in the directive. The request was declined as the deadline had already passed on July 7, 2011. However,
Respondent's legal representative was notified that a subpoena had been sent that required a response by the close of
business on July 22, 2011.

1 **G.** On or about July 11, 2011, the Department served, under the authority of the
2 Consumer Loan Act, a subpoena on Respondent by Federal Express overnight delivery. The
3 subpoena sent via Federal Express overnight delivery was signed for on July 12, 2011. The subpoena
4 required Respondent to comply with the subpoena by 5:00 p.m. on July 22, 2011. Respondent did
5 not submit a complete or timely response to the Department. On or about July 22, 2011 at 8:15 p.m.,
6 Respondent's legal representative submitted only a partial response to the Department, and refused to
7 comply with the rest of the Department's directive or subpoena.

8 **H.** On February 23, 2012, the Department received Respondent's response to the
9 Department's directive discussed in paragraph 1.7 above and the Department's subpoena discussed in
10 paragraph 1.8 above (Responsive Documents).

11 **1.3 Servicing Loans Made by an Unlicensed Entity.** The Responsive Documents indicate that,
12 from at least March 2010 through at least January 2012, Western Sky Financial, LLC (Western Sky)
13 made over 2,000 loans, ranging from \$700 to \$5,075 and totaling over \$4,400,000, to consumers
14 residing in the state of Washington. Western Sky has never been licensed by the Department to
15 conduct the business of a consumer loan company and does not appear to qualify for an exemption
16 from licensure under the Act. The Responsive Documents indicate that, from at least March 2010
17 through at least February 2012, Western Sky routinely transferred the servicing of the loans discussed
18 above to Respondent within three days of funding, and further that Respondent proceeded to attempt
19 to collect and to collect payments from consumers residing in the state of Washington on these loans
20 and allocate these payments between principal, interest, and fees, apparently according to the terms of
21 the Western Sky loan agreements.

22 **1.4 Servicing Loans with Illegal Rates of Interest.** The Responsive Documents indicate that
23 the loans made by Western Sky carried interest rates ranging from 95% to 169%, well above the 12%

1 maximum interest rate allowed under RCW 19.52, the state of Washington's usury statute, and the
2 25% maximum interest rate allowed by a consumer loan company licensed under the Act. The
3 Responsive Documents indicate that, while servicing Western Sky loans from at least March 2010
4 through at least February 2012, Respondent collected over \$2,000,000 in interest and over \$35,000 in
5 fees from consumers residing in the state of Washington, apparently according to the terms of the
6 Western Sky loan agreements.

7 **1.5 Consumer Complaints.** From at least April 2011 through at least June 2012, the Department
8 has received at least 13 complaints against Respondent from consumers residing in the state of
9 Washington. In these complaints, these consumers allege: they obtained loans from Western Sky
10 from at least October 2010 through at least April 2012; these loans ranged from \$1,500 to \$2,600;
11 these loans carried an interest rate of 135%; these consumers were notified shortly after obtaining
12 these loans that the loans would be serviced by Respondent; and these consumers made payments to
13 Respondent on these loans and received correspondence from Respondent seeking to collect on these
14 loans. The Responsive Documents related to these complainants provide the following examples.

15 **A. Complainant D.T.** borrowed \$2,600 from Western Sky in October 2010, made
16 payments to Respondent totaling \$3,415, and still had a principal balance of \$2,472 in February
17 2012. Respondent allocated the payments \$128 to principal and \$3,287 to interest.

- 18 • If D.T. had received this loan at the maximum interest rate allowed under RCW 19.52,
19 the payments should have been allocated \$2,600 to principal and \$138 to interest, this
20 loan would have been paid off in August 2011, and the total payments made would
21 actually have exceeded the amount due by about \$677.
- 22 • If D.T. had received this loan at the maximum interest rate allowed by a licensed
23 consumer loan company, the payments should have been allocated \$2,600 to principal
24 and \$309 to interest, this loan would have been paid off in September 2011, and the total
payments made would actually have exceeded the amount due by about \$506.

1 **B. Complainant C.H.** borrowed \$2,600 from Western Sky in December 2010, made
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17 and \$362 to interest, and this loan would have had a principal balance of about \$203 in
18 February 2012.

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17 to Respondent totaling \$2,071, and still had a principal balance of \$2,581 in February 2012.
18 Respondent allocated the payments \$19 to principal and \$2,052 to interest.

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21 loan would have had a principal balance of about \$680 in February 2012.
- 22 • If L.L. had received this loan at the maximum interest rate allowed by a licensed
23 consumer loan company, the payments should have been allocated \$1,739 to principal
24 and \$332 to interest, and this loan would have had a principal balance of about \$860 in
February 2012.

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2 payments to Respondent totaling \$1,580, and still had a principal balance of \$2,306 in February 2012.
3 Respondent allocated the payments \$294 to principal and \$1,286 to interest.

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6 loan would have had a principal balance of about \$1,128 in February 2012.
- 7 • If H.G. had received this loan at the maximum interest rate allowed by a licensed
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10 February 2012.

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- 14 • If P.W. had received this loan at the maximum interest rate allowed under RCW 19.52,
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16 loan would have had a principal balance of about \$1,950 in February 2012.
- 17 • If P.W. had received this loan at the maximum interest rate allowed by a licensed
18 consumer loan company, the payments should have been allocated \$560 to principal and
19 \$175 to interest, and this loan would have had a principal balance of about \$2,040 in
20 February 2012.

21 **G. Complainant S.B.** borrowed \$2,600 from Western Sky in March 2011, made
22 payments to Respondent totaling \$3,019, and the loan was paid off in May 2011. Respondent
23 allocated the payments \$2,600 to principal and \$419 to interest.

- 24 • If S.B. had received this loan at the maximum interest rate allowed under RCW 19.52,
the payments should have been allocated \$2,600 to principal and \$37 to interest, and he
total payments made would actually have exceeded the amount due by about \$382.
- If S.B. had received this loan at the maximum interest rate allowed by a licensed
consumer loan company, the payments should have been allocated \$2,600 to principal
and \$77 to interest, and the total payments made would actually have exceeded the
amount due by about \$342.

1 Complainant S.B. borrowed another \$2,600 from Western Sky in July 2011, made payments to
2 Respondent totaling \$2,325, and still had a principal balance of \$936 in February 2012. Respondent
3 allocated the payments \$1,664 to principal and \$661 to interest.

- 4 • If S.B. had received this loan at the maximum interest rate allowed under RCW 19.52,
5 the payments should have been allocated \$2,270 to principal and \$55 to interest, and this
6 loan would have had a principal balance of about \$330 in February 2012.
- 7 • If S.B. had received this loan at the maximum interest rate allowed by a licensed
8 consumer loan company, the payments should have been allocated \$2,207 to principal
9 and \$118 to interest, and this loan would have had a principal balance of about \$393 in
10 February 2012.

11 **1.6 Unlicensed Trade Name.** Beginning at least July 25, 2011, through at least July 27, 2011,
12 Respondent advertised on the radio using the name CashCall Mortgage. Respondent did not apply
13 for or obtain Director approval for the trade name of CashCall Mortgage.

14 **1.7 Maryland Mortgage Lender License.** On or about June 1, 2012, the Maryland
15 Commissioner of Financial Regulation issued an Opinion and Final Order (Maryland Final Order)
16 revoking Respondent's Maryland Mortgage Lender License (Maryland License). Respondent
17 appealed the Maryland Final Order to the Circuit Court for Harford County, Maryland (Circuit
18 Court). On or about August 7, 2012, the Circuit Court entered an order that, during the pendency of
19 the judicial review process, enforcement of the Maryland Final Order is stayed and Respondent's
20 Maryland License is suspended.

21 **1.8 On-Going Investigation.** The Department's investigation into the alleged violations of the
22 Act by Respondent continues to date.

23 **II. GROUNDS FOR ENTRY OF ORDER**

24 **2.1 Requirement to Comply with Department Directives or Subpoenas.** Based on the Factual
Allegations set forth in paragraphs 1.7 and 1.8 of Section I above, Respondent is in apparent violation

of RCW 31.04.145 for failure to comply with the Director's investigatory authority by failure to timely comply with the Department's directives or subpoenas.

2.2 Unlicensed Trade Name. Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of WAC 208-620-420 and WAC 208-620-620 for failure to apply for or obtain approval of the Director for a trade name or for advertising with a trade name not approved by the Director.

2.3 Requirement to Obtain Consumer Loan Company License. Pursuant to RCW 31.04.035 and WAC 208-620-230, no person may engage in the business of making secured or unsecured loans of money, credit, or things in action, or servicing residential mortgage loans, without first obtaining and maintaining a license in accordance with the Act, except those exempt under RCW 31.04.025. Pursuant to WAC 208-620-252, any person that conducts business under the Act with Washington residents, including any person offering loans by mail or internet to Washington residents, must obtain a license for all locations including those that offer loans by mail or internet.

2.4 Washington State Usury Act – Application to Loan or Forbearance Made Outside State. Pursuant to RCW 19.52.034, whenever a loan or forbearance is made outside of Washington state to a person then residing in this state the usury laws found in chapter 19.52 RCW, as now or hereafter amended, shall be applicable in all courts of this state to the same extent such usury laws would be applicable if the loan or forbearance was made in this state.

2.5 Maximum Rate of Interest Allowed Under the Act. Pursuant to RCW 31.04.105(1) and WAC 208-620-235, a licensee may lend money at a rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed.

2.6 Washington State Usury Act – Maximum Rate of Interest Allowed. Pursuant to RCW 19.52.020(1), any rate of interest shall be legal so long as the rate of interest does not exceed the

higher of: (a) Twelve percent per annum; or (b) four percentage points above the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve System) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the later of (i) the establishment of the interest rate by written agreement of the parties to the contract, or (ii) any adjustment in the interest rate in the case of a written agreement permitting an adjustment in the interest rate. No person shall directly or indirectly take or receive in money, goods, or things in action, or in any other way, any greater interest for the loan of forbearance of any money, goods, or things in action. Pursuant to RCW 19.52.025, each month the state treasurer shall compute the highest rate of interest permissible under RCW 19.52.020(1) for the succeeding month, and shall file these rates with the state code reviser for publication in the next available issue of the Washington State Register.³

2.7 Consumer Loan Act – Application of Consumer Protection Act. Pursuant to RCW 31.04.208, the legislature finds that the practices governed by the Act are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of the Act is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

2.8 Washington State Usury Act – Application of Consumer Protection Act. Pursuant to RCW 19.52.036, entering into or transacting a usurious contract is declared to be an unfair act or practice in the conduct of commerce for the purpose of the application of the consumer protection act found in chapter 19.86 RCW.

³ For at least the period Respondent has been servicing Western Sky loans, the maximum rate of interest permissible under RCW 19.52.020(1), as published by the state treasurer in the Washington State Register, has been 12%.

1 **2.9 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondent
2 is in apparent violation of RCW 31.04.027(2) for directly or indirectly engaging in any unfair or
3 deceptive practice toward any person, and RCW 31.04.027(12) for failing to comply with any
4 requirement of any applicable state statute or regulation⁴.

5 **2.10 Requirement of No Prior License Revocation or Suspension.** Based on the Factual
6 Allegations set forth in Section I above, if the revocation or suspension of Respondent's Maryland
7 Mortgage Lender License had existed at the time of Respondent's original application for license
8 from the Department, Respondent would have failed to meet the requirements of RCW
9 31.04.055(1)(c) in effect at that time by having a license issued under this section or any other
10 section, in this state or another state, revoked or suspended within the last five years of the date of
11 filing of the application, and the Director would have denied Respondent's license application
12 pursuant to RCW 31.04.055(2) and RCW 31.04.093(2) in effect at that time.

13 **III. AUTHORITY TO IMPOSE SANCTIONS**

14 **3.1 Authority to Issue Order to Cease and Desist:** Pursuant to RCW 31.04.093(5), the Director
15 may issue an order directing a licensee, its employee or loan originator, or other person subject to the
16 Act to cease and desist from conducting business in a manner that is injurious to the public or violates
17 any provision of the Act.

18 **3.2 Authority to Revoke or Suspend License:** Pursuant to RCW 31.04.093(3)(a)-(c), and WAC
19 208-620-570(11) and (13), the Director may revoke or suspend a license if a licensee fails to comply
20 with any specific order or demand of the Director lawfully made and directed to the licensee in
21 accordance with the Act, or violates any provision of the Act or any rule adopted under the Act either
22 knowingly or without exercise of due care, or if a fact or condition exists that, if it had existed at the

23 ⁴ RCW 31.04.027(12) was amended to include failure to comply with any applicable state statute or regulation effective
24 June 7, 2012.

1 time of the original application for the license, clearly would have allowed the director to deny the
2 application for the original license. Pursuant to WAC 208-620-570(8), the Director may suspend or
3 revoke a license if the licensee, or any principal, officer, or board director of the licensee, has aided
4 or abetted an unlicensed person⁵ to practice in violation of the Act.

5 **3.3 Authority to Order Restitution:** Pursuant to RCW 31.04.093(5)(c), the Director may issue
6 an order directing a licensee, its employee or loan originator, or other person subject to the Act to
7 make restitution to a borrower or other person who is damaged as a result of a violation of the Act.

8 **3.4 Authority to Impose Fine:** Pursuant to RCW 31.04.093(4), the Director may impose fines
9 of up to one hundred dollars per day upon the licensee, its employee, or any other person subject to
10 the Act for any violation of the Act or failure to comply with any order or subpoena issued by the
11 Director under the Act.

12 **3.5 Authority to Charge Examination Fee and Investigation Fee:** Pursuant to RCW
13 31.04.145(3) and WAC 208-620-590, every licensee examined or investigated by the Director or the
14 Director's designee shall pay for the cost of the examination or investigation, calculated at the rate of
15 sixty-nine dollars and one cent (\$69.01) per staff hour devoted to the examination or investigation,
16 and shall pay travel costs if the licensee maintains its records outside the state.

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23 ⁵ Pursuant to RCW 31.04.015(18) and WAC 208-620-010, "person" includes individuals, partnerships, associations,
24 limited liability companies, limited liability partnerships, trusts, corporations, and all other legal entities.

1 **IV. NOTICE OF INTENTION TO ENTER ORDER**

2 Respondent's violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC,
3 as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose
4 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, and
5 RCW 31.04.205. Therefore, it is the Director's intention to ORDER that:

6 **4.1** Respondent CashCall, Inc. cease and desist advertising or otherwise transacting business with
7 Washington residents using the name CashCall Mortgage, unless and until Respondent CashCall, Inc.
has applied for and obtained approval to use the trade name by the Director.

8 **4.2** Respondent CashCall, Inc.'s license to conduct the business of a consumer loan company be
9 revoked or suspended.

10 **4.3** Respondent CashCall, Inc. pay a fine. As of the date of this Second Amended Statement of
Charges, the fine totals \$244,100.

11 **4.4** Respondent CashCall, Inc. cease and desist collecting, or attempting to collect, or both, any
12 and all interest and fees in excess of the maximum interest and fees allowed by Washington state law
on any and all loans made by Western Sky Financial LLC to Washington state residents.

13 **4.5** Respondent CashCall, Inc. refund any and all interest and fees in excess of the maximum
14 interest and fees allowed by Washington state law collected by Respondent from Washington state
residents on any and all loans made by Western Sky Financial LLC to Washington state residents.

15 **4.6** Respondent CashCall, Inc. pay an investigation fee. As of the date of this Second Amended
Statement of Charges, the investigation fee totals \$14,857.85.

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1 **V. AUTHORITY AND PROCEDURE**

2 This **Second Amended** Statement of Charges is entered pursuant to the provisions of RCW
3 31.04.093, RCW 31.04.165, RCW 31.04.202 and RCW 31.04.205, and is subject to the provisions of
4 chapter 34.05 RCW (The Administrative Procedure Act).

5 Dated this 13th day of December, 2012



11 [REDACTED]
12
13 DEBORAH BORTNER
14 Director
15 Division of Consumer Services
16 Department of Financial Institutions

17 Presented by:

18 [REDACTED]
19
20 MARK T. OLSON
21 Financial Legal Examiner

22 Approved by:

23 [REDACTED]
24
25 CHARLES E. CLARK
26 Enforcement Chief

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

CASHCALL, INC.,

Respondent.

No. C-11-0701-12-SC02

**AMENDED STATEMENT OF CHARGES
and NOTICE OF INTENTION TO ENTER
AN ORDER TO CEASE AND DESIST,
REVOKE OR SUSPEND LICENSE, MAKE
RESTITUTION, IMPOSE FINE, AND
COLLECT INVESTIGATION FEE**

INTRODUCTION

Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act) and chapter 31.45 RCW, the Check Cashers and Sellers Act. After having conducted an investigation pursuant to RCW 31.04.145, and based upon the facts available as of August 15, 2011, the Director, through his designee Division of Consumer Services Director Deborah Bortner (Division Director Bortner), issued Statement of Charges C-11-0701-11-SC01 (Statement of Charges SC01) on August 15, 2011. Respondent was served with Statement of Charges SC01 and filed an Application for Adjudicative Hearing with the Department of Financial Institutions of the State of Washington (Department). Certain events occurring after the issuance of Statement of Charges SC01 require the amendment of Statement of Charges SC01. Based upon the facts available as of the date of this Amended Statement of Charges, the Director, through Division Director Bortner, now proceeds to amend Statement of Charges SC01 by issuing Amended Statement of Charges C-11-0701-12-SC-02. This Amended Statement of Charges includes the following modifications: addition of certain factual allegations; addition of and removal of certain grounds for entry of order; addition of and removal of certain authority to impose sanctions; removal of intention

1 to order Respondent to comply with the directive and subpoena referenced in paragraph 1.7 and 1.8
2 and to maintain records in compliance with the Act; modification of the intention to order
3 Respondent to cease and desist certain collection activity and make certain restitution related to loans
4 made to Washington state residents by Western Sky Financial LLC; updating the fine amount and
5 investigation costs as of the date of this Amended Statement of Charges; and certain typographical
6 corrections.

7 I. FACTUAL ALLEGATIONS

8 **1.1 Respondent.** CashCall Inc (Respondent) was licensed by the Department to conduct business
9 as a Consumer Loan Company on or about October 27, 2003, and has continued to be licensed to
10 date. Respondent is licensed to conduct the business of a consumer lender at two different locations.
11 Respondent's main office¹ is located at 1600 South Douglass Road, Anaheim, California.

12 **1.2 Failure to Comply with Directives and Subpoenas.**

13 **A.** On or about May 17, 2011, the Department served, under the authority of the Check
14 Cashers and Sellers Act, Subpoena No. 037861-11-SB01 on Respondent by Federal Express
15 overnight delivery and United States Postal Service First-Class mail (First-Class mail). The
16 subpoena sent via Federal Express overnight delivery was signed for on May 19, 2011. The
17 subpoena sent via First-Class mail was not returned to the Department by the United States Postal
18 Service. Respondent was required to comply with the subpoena no later than 5:00 p.m. on June 2,
19 2011.

20 **B.** On or about May 17, 2011, the Department served, under the authority of the Check
21 Cashers and Sellers Act, Subpoena No. 038191-11-SB01 on Respondent by Federal Express
22 overnight delivery and United States Postal Service First-Class mail (First-Class mail). The
23

24 ¹ Respondent has one branch office. Respondent's branch office is located at 7125 Pollock Drive, Las Vegas, Nevada.

1 subpoena sent via Federal Express overnight delivery was signed for on May 19, 2011. The
2 subpoena sent via First-Class mail was not returned to the Department by the United States Postal
3 Service. Respondent was required to comply with the subpoena no later than 5:00 p.m. on June 2,
4 2011.

5 **C.** On or about June 2, 2011, Respondent sent a letter to the Department objecting to the
6 two Department subpoenas. On or about June 6, 2011, the Department responded to Respondent that
7 compliance with the subpoenas was not voluntary. The Department also extended the deadline to
8 comply with the subpoenas to the close of business on June 13, 2011.

9 **D.** On or about June 14, 2011, Respondent requested an additional extension to June 15,
10 2011, to comply with the subpoenas. On or about June 14, 2011, the Department extended the
11 deadline to comply with the subpoenas such that Respondent was required to submit its response
12 prior to 9:00 a.m. on June 16, 2011.

13 **E.** On or about June 16, 2011, at 2:30 p.m., Respondent submitted a letter to the
14 Department objecting to the subpoenas again. Respondent did not comply with either of the
15 Department's subpoenas.

16 **F.** On or about June 29, 2011, the Department served, under the authority of the
17 Consumer Loan Act, a directive on Respondent by Federal Express overnight delivery and First-
18 Class mail. The directive sent via Federal Express overnight delivery was signed for on June 30,
19 2011. The directive sent via First-Class mail was not returned to the Department by the United States
20 Postal Service. Respondent was required to comply with the directive by close of business on July 7,
21 2011. Respondent did not comply with the directive².

22
23 ² On or about July 8, 2011, Respondent's legal representative left a voicemail message stating she was at her son's game
24 and requesting an extension to the time to respond. The message was received on or about July 11, 2011. Also, on or
about July 11, 2011, Respondent's legal representative contacted the Department again requesting an extension to the
deadline in the directive. The request was declined as the deadline had already passed on July 7, 2011. However,

1 **G.** On or about July 11, 2011, the Department served, under the authority of the
2 Consumer Loan Act, a subpoena on Respondent by Federal Express overnight delivery. The
3 subpoena sent via Federal Express overnight delivery was signed for on July 12, 2011. The subpoena
4 required Respondent to comply with the subpoena by 5:00 p.m. on July 22, 2011. Respondent did
5 not submit a complete or timely response to the Department. On or about July 22, 2011 at 8:15 p.m.,
6 Respondent's legal representative submitted only a partial response to the Department, and refused to
7 comply with the rest of the Department's directive or subpoena.

8 **H.** On February 23, 2012, the Department received Respondent's response to the
9 Department's directive discussed in paragraph 1.7 above and the Department's subpoena discussed in
10 paragraph 1.8 above (Responsive Documents).

11 **1.3 Servicing Loans Made by an Unlicensed Entity.** The Responsive Documents indicate that,
12 from at least March 2010 through at least January 2012, Western Sky Financial, LLC (Western Sky)
13 made over 2,000 loans, ranging from \$700 to \$5,075 and totaling over \$4,400,000, to consumers
14 residing in the state of Washington. Western Sky has never been licensed by the Department to
15 conduct the business of a consumer loan company and does not appear to qualify for an exemption
16 from licensure under the Act. The Responsive Documents indicate that, from at least March 2010
17 through at least February 2012, Western Sky routinely transferred the servicing of the loans discussed
18 above to Respondent within three days of funding, and further that Respondent proceeded to attempt
19 to collect and to collect payments from consumers residing in the state of Washington on these loans
20 and allocate these payments between principal, interest, and fees, apparently according to the terms of
21 the Western Sky loan agreements.

22
23 Respondent's legal representative was notified that a subpoena had been sent that required a response by the close of
24 business on July 22, 2011.

1 **1.4 Servicing Loans with Illegal Rates of Interest.** The Responsive Documents indicate that
2 the loans made by Western Sky carried interest rates ranging from 95% to 169%, well above the 12%
3 maximum interest rate allowed under RCW 19.52, the state of Washington's usury statute, and the
4 25% maximum interest rate allowed by a consumer loan company licensed under the Act. The
5 Responsive Documents indicate that, while servicing Western Sky loans from at least March 2010
6 through at least February 2012, Respondent collected over \$2,000,000 in interest and over \$35,000 in
7 fees from consumers residing in the state of Washington, apparently according to the terms of the
8 Western Sky loan agreements.

9 **1.5 Consumer Complaints.** From at least April 2011 through at least June 2012, the Department
10 has received at least 13 complaints against Respondent from consumers residing in the state of
11 Washington. In these complaints, these consumers allege: they obtained loans from Western Sky
12 from at least October 2010 through at least April 2012; these loans ranged from \$1,500 to \$2,600;
13 these loans carried an interest rate of 135%; these consumers were notified shortly after obtaining
14 these loans that the loans would be serviced by Respondent; and these consumers made payments to
15 Respondent on these loans and received correspondence from Respondent seeking to collect on these
16 loans. The Responsive Documents related to these complainants provide the following examples.

17 **A. Complainant D.T.** borrowed \$2,600 from Western Sky in October 2010, made
18 payments to Respondent totaling \$3,415, and still had a principal balance of \$2,472 in February
19 2012. Respondent allocated the payments \$128 to principal and \$3,287 to interest.

- 20 • If D.T. had received this loan at the maximum interest rate allowed under RCW 19.52,
21 the payments should have been allocated \$2,600 to principal and \$138 to interest, this
22 loan would have been paid off in August 2011, and the total payments made would
23 actually have exceeded the amount due by about \$677.
- If D.T. had received this loan at the maximum interest rate allowed by a licensed
consumer loan company, the payments should have been allocated \$2,600 to principal

1 and \$309 to interest, this loan would have been paid off in September 2011, and the total
2 payments made would actually have exceeded the amount due by about \$506.

3 **B. Complainant C.H.** borrowed \$2,600 from Western Sky in December 2010, made
4 payments to Respondent totaling \$4,042, and still had a principal balance of \$2,428 in February 2012.
5 Respondent allocated the payments \$172 to principal and \$3,870 to interest.

- 6 • If C.H. had received this loan at the maximum interest rate allowed under RCW 19.52,
7 the payments should have been allocated \$2,600 to principal and \$138 to interest, this
8 loan would have been paid off in October 2011, and the total payments made would
9 actually have exceeded the amount due by about \$1,304.
- 10 • If C.H. had received this loan at the maximum interest rate allowed by a licensed
11 consumer loan company, the payments should have been allocated \$2,600 to principal
12 and \$307 to interest, this loan would have been paid off in November 2011, and the total
13 payments made would actually have exceeded the amount due by about \$1,135.

14 **C. Complainant S.L.** borrowed \$2,600 from Western Sky in March 2011, made
15 payments to Respondent totaling \$2,759, and still had a principal balance of \$2,508 in February 2012.
16 Respondent allocated the payments \$92 to principal and \$2,667 to interest.

- 17 • If S.L. had received this loan at the maximum interest rate allowed under RCW 19.52, the
18 payments should have been allocated \$2,597 to principal and \$162 to interest, and this
19 loan would have had a principal balance of about \$3 in February 2012.
- 20 • If S.L. had received this loan at the maximum interest rate allowed by a licensed
21 consumer loan company, the payments should have been allocated \$2,397 to principal
22 and \$362 to interest, and this loan would have had a principal balance of about \$203 in
23 February 2012.

24 **D. Complainant L.L.** borrowed \$2,600 from Western Sky in May 2011, made payments
to Respondent totaling \$2,071, and still had a principal balance of \$2,581 in February 2012.
Respondent allocated the payments \$19 to principal and \$2,052 to interest.

- If L.L. had received this loan at the maximum interest rate allowed under RCW 19.52,
the payments should have been allocated \$1,919 to principal and \$152 to interest, and this
loan would have had a principal balance of about \$680 in February 2012.
- If L.L. had received this loan at the maximum interest rate allowed by a licensed
consumer loan company, the payments should have been allocated \$1,739 to principal

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2 February 2012.

3 **E. Complainant H.G.** borrowed \$2,600 from Western Sky in October 2011, made
4 payments to Respondent totaling \$1,580, and still had a principal balance of \$2,306 in February 2012.
5 Respondent allocated the payments \$294 to principal and \$1,286 to interest.

- 6 • If H.G. had received this loan at the maximum interest rate allowed under RCW 19.52,
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- 9 • If H.G. had received this loan at the maximum interest rate allowed by a licensed
10 consumer loan company, the payments should have been allocated \$1,352 to principal
11 and \$228 to interest, and this loan would have had a principal balance of about \$1,248 in
12 February 2012.

13 **F. Complainant P.W.** borrowed \$2,600 from Western Sky in October 2011, made
14 payments to Respondent totaling \$735, and still had a principal balance of \$2,596 in February 2012.
15 Respondent allocated the payments \$4 to principal and \$731 to interest.

- 16 • If P.W. had received this loan at the maximum interest rate allowed under RCW 19.52,
17 the payments should have been allocated \$652 to principal and \$83 to interest, and this
18 loan would have had a principal balance of about \$1,950 in February 2012.
- 19 • If P.W. had received this loan at the maximum interest rate allowed by a licensed
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21 \$175 to interest, and this loan would have had a principal balance of about \$2,040 in
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23 **G. Complainant S.B.** borrowed \$2,600 from Western Sky in March 2011, made
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allocated the payments \$2,600 to principal and \$419 to interest.

- If S.B. had received this loan at the maximum interest rate allowed under RCW 19.52,
the payments should have been allocated \$2,600 to principal and \$37 to interest, and he
total payments made would actually have exceeded the amount due by about \$382.
- If S.B. had received this loan at the maximum interest rate allowed by a licensed
consumer loan company, the payments should have been allocated \$2,600 to principal

1 and \$77 to interest, and the total payments made would actually have exceeded the
2 amount due by about \$342.

3 Complainant S.B. borrowed another \$2,600 from Western Sky in July 2011, made payments to
4 Respondent totaling \$2,325, and still had a principal balance of \$936 in February 2012. Respondent
5 allocated the payments \$1,664 to principal and \$661 to interest.

- 6 • If S.B. had received this loan at the maximum interest rate allowed under RCW 19.52,
7 the payments should have been allocated \$2,270 to principal and \$55 to interest, and this
8 loan would have had a principal balance of about \$330 in February 2012.
- 9 • If S.B. had received this loan at the maximum interest rate allowed by a licensed
10 consumer loan company, the payments should have been allocated \$2,207 to principal
11 and \$118 to interest, and this loan would have had a principal balance of about \$393 in
12 February 2012.

13 **1.6 Unlicensed Trade Name.** Beginning at least July 25, 2011, through at least July 27, 2011,
14 Respondent advertised on the radio using the name CashCall Mortgage. Respondent did not apply
15 for or obtain Director approval for the trade name of CashCall Mortgage.

16 **1.7 On-Going Investigation.** The Department's investigation into the alleged violations of the
17 Act by Respondent continues to date.

18 **II. GROUNDS FOR ENTRY OF ORDER**

19 **2.1 Requirement to Comply with Department Directives or Subpoenas.** Based on the Factual
20 Allegations set forth in paragraphs 1.7 and 1.8 of Section I above, Respondent is in apparent violation
21 of RCW 31.04.145 for failure to comply with the Director's investigatory authority by failure to
22 timely comply with the Department's directives or subpoenas.

23 **2.2 Unlicensed Trade Name.** Based on the Factual Allegations set forth in Section I above,
24 Respondent is in apparent violation of WAC 208-620-420 and WAC 208-620-620 for failure to apply
for or obtain approval of the Director for a trade name or for advertising with a trade name not
approved by the Director.

2.3 Requirement to Obtain Consumer Loan Company License. Pursuant to RCW 31.04.035 and WAC 208-620-230, no person may engage in the business of making secured or unsecured loans of money, credit, or things in action, or servicing residential mortgage loans, without first obtaining and maintaining a license in accordance with the Act, except those exempt under RCW 31.04.025. Pursuant to WAC 208-620-252, any person that conducts business under the Act with Washington residents, including any person offering loans by mail or internet to Washington residents, must obtain a license for all locations including those that offer loans by mail or internet.

2.4 Washington State Usury Act – Application to Loan or Forbearance Made Outside State. Pursuant to RCW 19.52.034, whenever a loan or forbearance is made outside of Washington state to a person then residing in this state the usury laws found in chapter 19.52 RCW, as now or hereafter amended, shall be applicable in all courts of this state to the same extent such usury laws would be applicable if the loan or forbearance was made in this state.

2.5 Maximum Rate of Interest Allowed Under the Act. Pursuant to RCW 31.04.105(1) and WAC 208-620-235, a licensee may lend money at a rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed.

2.6 Washington State Usury Act – Maximum Rate of Interest Allowed. Pursuant to RCW 19.52.020(1), any rate of interest shall be legal so long as the rate of interest does not exceed the higher of: (a) Twelve percent per annum; or (b) four percentage points above the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve System) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the later of (i) the establishment of the interest rate by written agreement of the parties to the contract, or (ii) any adjustment in the interest rate in the case of a written agreement permitting an adjustment in the interest rate. No person shall directly or

1 indirectly take or receive in money, goods, or things in action, or in any other way, any greater
2 interest for the loan of forbearance of any money, goods, or things in action. Pursuant to RCW
3 19.52.025, each month the state treasurer shall compute the highest rate of interest permissible under
4 RCW 19.52.020(1) for the succeeding month, and shall file these rates with the state code reviser for
5 publication in the next available issue of the Washington State Register.³

6 **2.7 Consumer Loan Act – Application of Consumer Protection Act.** Pursuant to RCW
7 31.04.208, the legislature finds that the practices governed by the Act are matters vitally affecting the
8 public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any
9 violation of the Act is not reasonable in relation to the development and preservation of business and
10 is an unfair and deceptive act or practice and unfair method of competition in the conduct of trade or
11 commerce in violation of RCW 19.86.020. Remedies provided by chapter 19.86 RCW are
12 cumulative and not exclusive.

13 **2.8 Washington State Usury Act – Application of Consumer Protection Act.** Pursuant to
14 RCW 19.52.036, entering into or transacting a usurious contract is declared to be an unfair act or
15 practice in the conduct of commerce for the purpose of the application of the consumer protection act
16 found in chapter 19.86 RCW.

17 **2.9 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondent
18 is in apparent violation of RCW 31.04.027(2) for directly or indirectly engaging in any unfair or
19 deceptive practice toward any person, and RCW 31.04.027(12) for failing to comply with any
20 requirement of any applicable state statute or regulation⁴.

21
22 ³ For at least the period Respondent has been servicing Western Sky loans, the maximum rate of interest permissible
under RCW 19.52.020(1), as published by the state treasurer in the Washington State Register, has been 12%.

23 ⁴ RCW 31.04.027(12) was amended to include failure to comply with any applicable state statute or regulation effective
June 7, 2012.

III. AUTHORITY TO IMPOSE SANCTIONS

3.1 Authority to Issue Order to Cease and Desist: Pursuant to RCW 31.04.093(5), the Director may issue an order directing a licensee, its employee or loan originator, or other person subject to the Act to cease and desist from conducting business in a manner that is injurious to the public or violates any provision of the Act.

3.2 Authority to Revoke or Suspend License: Pursuant to RCW 31.04.093(3)(a) and (b), and WAC 208-620-570(11) and (13), the Director may revoke or suspend a license if a licensee fails to comply with any specific order or demand of the Director lawfully made and directed to the licensee in accordance with the Act, or violates any provision of the Act or any rule adopted under the Act either knowingly or without exercise of due care. Pursuant to WAC 208-620-570(8), the Director may suspend or revoke a license if the licensee, or any principal, officer, or board director of the licensee, has aided or abetted an unlicensed person⁵ to practice in violation of the Act.

3.3 Authority to Order Restitution: Pursuant to RCW 31.04.093(5)(c), the Director may issue an order directing a licensee, its employee or loan originator, or other person subject to the Act to make restitution to a borrower or other person who is damaged as a result of a violation of the Act.

3.4 Authority to Impose Fine: Pursuant to RCW 31.04.093(4), the Director may impose fines of up to one hundred dollars per day upon the licensee, its employee, or any other person subject to the Act for any violation of the Act or failure to comply with any order or subpoena issued by the Director under the Act.

3.5 Authority to Charge Examination Fee and Investigation Fee: Pursuant to RCW 31.04.145(3) and WAC 208-620-590, every licensee examined or investigated by the Director or the Director's designee shall pay for the cost of the examination or investigation, calculated at the rate of

⁵ Pursuant to RCW 31.04.015(18) and WAC 208-620-010, "person" includes individuals, partnerships, associations, limited liability companies, limited liability partnerships, trusts, corporations, and all other legal entities.

sixty-nine dollars and one cent (\$69.01) per staff hour devoted to the examination or investigation, and shall pay travel costs if the licensee maintains its records outside the state.

IV. NOTICE OF INTENTION TO ENTER ORDER

Respondent's violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, and RCW 31.04.205. Therefore, it is the Director's intention to ORDER that:

4.1 Respondent CashCall, Inc. cease and desist advertising or otherwise transacting business with Washington residents using the name CashCall Mortgage, unless and until Respondent CashCall, Inc. has applied for and obtained approval to use the trade name by the Director.

4.2 Respondent CashCall, Inc.'s license to conduct the business of a consumer loan company be revoked or suspended.

4.3 Respondent CashCall, Inc. pay a fine. As of the date of this Amended Statement of Charges, the fine totals \$244,100.

4.4 Respondent CashCall, Inc. cease and desist collecting, or attempting to collect, or both, any and all interest and fees in excess of the maximum interest and fees allowed by Washington state law on any and all loans made by Western Sky Financial LLC to Washington state residents.

4.5 Respondent CashCall, Inc. refund any and all interest and fees in excess of the maximum interest and fees allowed by Washington state law collected by Respondent from Washington state residents on any and all loans made by Western Sky Financial LLC to Washington state residents.

4.6 Respondent CashCall, Inc. pay an investigation fee. As of the date of this Amended Statement of Charges, the investigation fee totals \$12,984.23.

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1 **V. AUTHORITY AND PROCEDURE**

2 This **Amended** Statement of Charges is entered pursuant to the provisions of RCW 31.04.093,
3 RCW 31.04.165, RCW 31.04.202 and RCW 31.04.205, and is subject to the provisions of chapter
4 34.05 RCW (The Administrative Procedure Act).

5 Dated this 3rd day of July, 2012

6 [Redacted Signature]
7
8 DEBORAH BORTNER
9 Director
10 Division of Consumer Services
11 Department of Financial Institutions

12 Presented by: [Redacted Signature]

13 MARK T. OLSON
14 Financial Legal Examiner

15 Approved by:

16 [Redacted Signature]
17 CHARLES E. CLARK
18 Enforcement Chief



**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

CASHCALL INC,

Respondent.

No. C-11-0701-11-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER AN
ORDER TO CEASE AND DESIST, REVOKE
OR SUSPEND LICENSE, IMPOSE FINE,
ORDER AFFIRMATIVE ACTION, AND
COLLECT INVESTIGATION FEE

INTRODUCTION

Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act) and chapter 31.45 RCW, the Check Casher and Seller Act. After having conducted an investigation pursuant to RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondent. CashCall Inc (Respondent) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a Consumer Loan Company on or about October 27, 2003, and has continued to be licensed to date. Respondent is licensed to conduct the business of a consumer lender at two different locations. Respondent's main office¹ is located at 1600 South Douglass Road, Anaheim, California.

1.2 Failure to Comply with Directives and Subpoenas. On or about May 17, 2011, the Department served, under the authority of the Check Cashers and Sellers Act, Subpoena No. 037861-

¹ Respondent has one branch office. Respondent's branch office is located at 7125 Pollock Drive, Las Vegas, Nevada.

1 11-SB01 on Respondent by Federal Express overnight delivery and United States Postal Service
2 First-Class mail (First-Class mail). The subpoena sent via Federal Express overnight delivery was
3 signed for on May 19, 2011. The subpoena sent via First-Class mail was not returned to the
4 Department by the United States Postal Service. Respondent was required to comply with the
5 subpoena no later than 5:00 p.m. on June 2, 2011.

6 **1.3** On or about May 17, 2011, the Department served, under the authority of the Check Cashers
7 and Sellers Act, Subpoena No. 038191-11-SB01 on Respondent by Federal Express overnight
8 delivery and United States Postal Service First-Class mail (First-Class mail). The subpoena sent via
9 Federal Express overnight delivery was signed for on May 19, 2011. The subpoena sent via First-
10 Class mail was not returned to the Department by the United States Postal Service. Respondent was
11 required to comply with the subpoena no later than 5:00 p.m. on June 2, 2011.

12 **1.4** On or about June 2, 2011, Respondent sent a letter to the Department objecting to the two
13 Department subpoenas. On or about June 6, 2011, the Department responded to Respondent that
14 compliance with the subpoenas was not voluntary. The Department also extended the deadline to
15 comply with the subpoenas to the close of business on June 13, 2011.

16 **1.5** On or about June 14, 2011, Respondent requested an additional extension to June 15, 2011, to
17 comply with the subpoenas. On or about June 14, 2011, the Department extended the deadline to
18 comply with the subpoenas such that Respondent was required to submit its response prior to 9:00
19 a.m. on June 16, 2011.

20 **1.6** On or about June 16, 2011, at 2:30 p.m., Respondent submitted a letter to the Department
21 objecting to the subpoenas again. Respondent did not comply with either of the Department's
22 subpoenas.
23

1.7 On or about June 29, 2011, the Department served, under the authority of the Consumer Loan Act, a directive on Respondent by Federal Express overnight delivery and First-Class mail. The directive sent via Federal Express overnight delivery was signed for on June 30, 2011. The directive sent via First-Class mail was not returned to the Department by the United States Postal Service. Respondent was required to comply with the directive by close of business on July 7, 2011. Respondent did not comply with the directive².

1.8 On or about July 11, 2011, the Department served, under the authority of the Consumer Loan Act, a subpoena on Respondent by Federal Express overnight delivery. The subpoena sent via Federal Express overnight delivery was signed for on July 12, 2011. The subpoena required Respondent to comply with the subpoena by 5:00 p.m. on July 22, 2011. Respondent did not submit a complete or timely response to the Department. On or about July 22, 2011 at 8:15 p.m., Respondent's legal representative submitted only a partial response to the Department, and refused to comply with the rest of the Department's directive or subpoena.

1.9 Unlicensed Trade Name. Beginning at least July 25, 2011, to present, Respondent advertised on the radio using the name CashCall Mortgage. Respondent did not apply for or obtain Director approval for the trade name of CashCall Mortgage.

1.10 On-Going Investigation. The Department's investigation into the alleged violations of the Act by Respondent continues to date.

² On or about July 8, 2011, Respondent's legal representative left a voicemail message stating she was at her son's game and requesting an extension to the time to respond. The message was received on or about July 11, 2011. Also, on or about July 11, 2011, Respondent's legal representative contacted the Department again requesting an extension to the deadline in the directive. The request was declined as the deadline had already passed on July 7, 2011. However, Respondent's legal representative was notified that a subpoena had been sent that required a response by the close of business on July 22, 2011.

II. GROUNDS FOR ENTRY OF ORDER

2.1 Requirement to Comply with Department Directives or Subpoenas. Based on the Factual Allegations set forth in paragraphs 1.7 and 1.8 of Section I above, Respondent is in apparent violation of RCW 31.04.145 for failure to comply with the Director's investigatory authority by failure to timely or fully and completely comply with the Department's directives or subpoenas.

2.2 Record Keeping. Based on the Factual Allegations set forth in paragraphs 1.7 and 1.8 of Section I above, Respondent is in apparent violation of RCW 31.04.155 and WAC 208-620-520 for failing to maintain certain records to enable the Director to determine whether the licensee is complying with the Consumer Loan Act.

2.3 Unlicensed Trade Name. Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of WAC 208-620-420 and WAC 208-620-620 for failure to apply for or obtain approval of the Director for a trade name or for advertising with a trade name not approved by the Director.

2.4 Prohibited Acts. Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW 31.04.027(2) for directly or indirectly engaging in any unfair or deceptive practice toward any person.

III. AUTHORITY TO IMPOSE SANCTIONS

3.1 Authority to Issue Order to Cease and Desist: Pursuant to RCW 31.04.093(5), the Director may issue an order directing a license, its employee or loan originator, or other person subject to the Act to cease and desist from operating in a manner that is injurious to the public or that violates any provision of the Act.

3.2 Authority to Revoke or Suspend License: Pursuant to RCW 31.04.093(3)(a) and (b), the Director may revoke or suspend a license if a licensee fails to pay any fee due the state of

Washington, or violates any provision of the Act or any rule adopted under the Act either knowingly or without exercise of due care.

3.3 Authority to Impose Fine: Pursuant to RCW 31.04.093(4), the Director may impose fines of up to one hundred dollars per day upon the licensee, its employee, or any other person subject to the Act for any violation of the Act or failure to comply with any order or subpoena issued by the Director under the Act.

3.4 Authority to Issue Orders to Take Affirmative Action: Pursuant to RCW 31.04.093(5)(b), the Director may issue an order directing a licensee, its employee, or any other person subject to the Act to take affirmative action as is necessary to comply with this chapter.

3.5 Authority to Charge Examination Fee and Investigation Fee: Pursuant to RCW 31.04.145(3) and WAC 208-620-590, every licensee examined or investigated by the Director or the Director's designee shall pay for the cost of the examination or investigation, calculated at the rate of sixty-nine dollars and one cent (\$69.01) per staff hour devoted to the examination or investigation, and shall pay travel costs if the licensee maintains its records outside the state

IV. NOTICE OF INTENTION TO ENTER ORDER

Respondent's violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, and RCW 31.04.205. Therefore, it is the Director's intention to ORDER that:

4.1 Respondent CashCall Inc cease and desist advertising or otherwise transacting business with Washington residents using the name CashCall Mortgage, unless and until Respondent CashCall Inc has applied for and obtained approval to use the trade name by the Director; and

4.2 Respondent CashCall Inc's license to conduct the business of a consumer loan company be revoked or suspended; and

1 **4.3** Respondent CashCall Inc pay a fine, which as of the date of these charges totals \$7,200
2 continuing to accrue at \$100 per day, per violation, until the requirements of the directive and subpoena
referenced in paragraphs 1.7 through 1.8 are fully complied with; and

3 **4.4** Respondent CashCall Inc fully comply with the directive and subpoena referenced in
4 paragraphs 1.7 and 1.8 above to the Department's satisfaction AND cease and desist any and all
collection activities, including receipt of any and all funds or attempts to collect on any and all loans
5 originated by Western Sky Financial LLC with Washington residents and refund any and all monies
obtained and retained by CashCall Inc from Washington consumers for loans originated by Western
6 Sky Financial LLC; and

7 **4.5** Respondent CashCall Inc pay an investigation fee, which as of the date of these charges, totals
\$2,225.57 calculated at \$69.01 per hour for thirty-two and one quarter hours (32.25) staff hours devoted
8 to the investigation; and

9 **4.6** Respondent CashCall Inc maintain records in compliance with the Act and provide the
Department with the location of the books, records and other information relating to Respondent
10 CashCall Inc's consumer loan company business, and the name, address, and telephone number of
the individual responsible for maintenance of such records in compliance with the Act.

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24 STATEMENT OF CHARGES
C-11-0701-11-SC01
CashCall Inc

1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges is entered pursuant to the provisions of RCW 31.04.093, RCW
3 31.04.165, RCW 31.04.202 and RCW 31.04.205, and is subject to the provisions of chapter 34.05
4 RCW (The Administrative Procedure Act). Respondent may make a written request for a hearing as
5 set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING
6 accompanying this Statement of Charges.

7 Dated this 15th day of August, 2011

8 [Redacted Signature]

9
10 DEBORAH BORTNER
11 Director
12 Division of Consumer Services
13 Department of Financial Institutions

14 Presented by:

15 [Redacted Signature]

16 MARNIE SHEERAN
17 Financial Legal Examiner

18 Approved by:

19 [Redacted Signature]

20 JAMES R. BRUSSELBACK
21 Enforcement Chief

