

**IN THE SUPERIOR COURT OF FULTON COUNTY  
ATLANTA JUDICIAL DISTRICT  
STATE OF GEORGIA**

**STATE OF GEORGIA, *ex rel.*  
CHRISTOPHER M. CARR, Attorney  
General of the State of Georgia,**

**Plaintiff,**

**CASHCALL, INC., WS FUNDING, LLC,  
DELBERT SERVICES CORPORATION,  
PAUL REDDAM, WESTERN SKY  
FINANCIAL, LLC, and MARTIN WEBB,**

**Defendants.**

**CIVIL ACTION  
NO. 2013-CV-234310**

**JUDGE CRAIG L. SCHWALL, SR.**

**SECOND AMENDED COMPLAINT**

1. The State of Georgia, *ex rel.* Christopher M. Carr, Attorney General of the State of Georgia (the “State”), brings this action against Defendants CashCall, Inc., WS Funding, LLC, Delbert Services Corporation, Paul Reddam, Western Sky Financial, LLC, and Martin Webb (collectively, “Defendants”) under Section 16-17-4 of Georgia’s Payday Lending Act (the “Act”), O.C.G.A. §§ 16-17-1 through 16-17-10, to obtain preliminary and permanent injunctive relief, a declaratory judgment, an award of damages, penalties, costs, and attorneys’ fees, and all such other relief as may be equitable and just for Defendants’ acts and practices in violation of Section 16-17-2 of the Act.

**JURISDICTION AND VENUE**

2. Each of the defendants, in connection with the acts and practices set forth in this Complaint, transacts or has transacted business in this judicial district and throughout the State of

Georgia by making, offering, arranging, or acting as an agent in making of loans to Georgia borrowers. *See Amerireach.com LLC v. Walker*, 290 Ga. 261, 264-69 (2011) (holding that a nonresident individual is subject to personal jurisdiction if, acting in a corporate capacity, the individual was a “primary participant in the activities forming the basis of jurisdiction over” a corporate wrongdoer).

3. The Court therefore has personal jurisdiction over Defendants under Sections 9-10-90 and 9-10-91; subject-matter jurisdiction over this action under Article VI, Section IV, Paragraph I, of the Georgia Constitution; and is a proper venue under Section 9-10-93.

#### **PLAINTIFF STATE OF GEORGIA**

4. Attorney General Christopher M. Carr brings this action on behalf of the State of Georgia pursuant to Section 16-17-4 of the Act, which section expressly authorizes “the Attorney General, any district attorney, or a private person” to bring a civil action against any person who violates Section 16-17-2 of the Act.

#### **DEFENDANTS**

5. *Defendant CashCall, Inc.* is a California corporation, with its principal place of business at 1600 South Douglass Road, Anaheim, California 92806. CashCall was organized as a California corporation in 2003.

6. *Defendant WS Funding, LLC* is a Delaware corporation, with its principal place of business at 1600 South Douglas Road, Anaheim, California 92806. WS Funding was organized as a Delaware corporation in March 2010.

7. *Defendant Delbert Services Corporation* is a Nevada corporation, with its principal place of business at 7125 Pollock Drive, Las Vegas, Nevada 89119. Delbert Services was organized as a Nevada corporation in January 2008.

8. *Defendant Paul Reddam*, a resident of California, is, and at all relevant times was, the sole shareholder, sole director, president, and chief executive officer of CashCall; owns, controls, and is the President of WS Funding, as WS Funding is a wholly owned subsidiary of CashCall; and is the sole shareholder and sole director of Delbert Services.

9. *Defendant Western Sky Financial, LLC* is a South Dakota limited liability company, with its principal place of business at 612 E Street, Timber Lake, South Dakota 57656. Western Sky Financial was organized as a South Dakota corporation in May 2009.

10. *Defendant Martin “Butch” Webb*, a resident of South Dakota, is, and at all relevant times was, an owner, officer, director, manager, or principal of Western Sky Financial.

#### **THE PAYDAY LENDING ACT**

11. In 2004, the Georgia General Assembly enacted the Payday Lending Act. *See* 2004 Ga. Laws 60 (codified at O.C.G.A. §§ 16-17-1 through 16-17-10). The Act was intended to end the business of usurious, small-dollar lending, which, as the General Assembly noted in its legislative findings, has “an adverse effect upon military personnel, the elderly, the economically disadvantaged and other citizens of the State of Georgia.” O.C.G.A. § 16-17-1(c).

12. Section 16-17-2 is the principal operative provision of the Act. It declares that, subject to certain narrow and express exemptions tied to federal and state licensing regimes, it is unlawful “for any person to engage in any business, in whatever form transacted, including, but not limited to, by mail, electronic means, the Internet, or telephonic means, which consists in whole or in part of making, offering, arranging, or acting as an agent in the making of loans of \$3,000.00 or less.” § 16-17-2(a).

13. Moreover, because lenders have attempted “to disguise these [illegal] transactions or to cause these transactions to appear to be ‘loans’ made by a national or state bank chartered

in another state,” § 16-17-1(c), the General Assembly instructed courts applying Section 16-17-2’s prohibition on usurious, small-dollar lending to:

- disregard any “element introduced to disguise the true nature of the transaction as an extension of credit” (§ 16-17-2(b)(3));
- disregard any “arrangement by which a de facto lender purports to act as the agent of an exempt entity” if “the entire circumstances of the transaction show that the purported agent holds, acquires, or maintains a predominant economic interest in the revenues generated by the loan” (§ 16-17-2(b)(4); *see* § 16-17-6); and
- “review the terms of the transaction in their entirety in order to determine if there has been any contrivance, device, or scheme used by the lender in order to avoid” the Act’s prohibitions (§ 16-17-6).

## **DEFENDANTS’ UNLAWFUL CONDUCT**

### **A. Defendants’ Common Enterprise**

14. In 2009, Paul Reddam and Butch Webb organized a usurious, small-dollar lending enterprise.

15. Reddam acted through two of his existing business entities, CashCall, Inc., and Delbert Services Corporation, and through a new subsidiary of CashCall, WS Funding, LLC, that he formed for the sole purpose of engaging in the lending enterprise.

16. Webb acted through a new business entity, Western Sky Financial, LLC, that he formed for the sole purpose of engaging in the lending enterprise.

17. Acting through these business entities, Reddam and Webb entered into at least five separate agreements related to the lending enterprise.

18. As the agreements demonstrate, the lending enterprise relied almost exclusively on the operational capacity of Reddam's business entities (CashCall, Delbert Services, and WS Funding), while Webb's business entity (Western Sky Financial) was the front of the operation—*i.e.*, CashCall, Delbert Services, and WS Funding did almost all of the work and provided all of the funds necessary to make loans to consumers, but the loans were made in Western Sky Financial's name.

19. For instance, in a January 9, 2010, agreement for services between CashCall and Western Sky Financial, CashCall agreed to develop promotional materials for Western Sky Financial; agreed to provide inbound and outbound customer service support for Western Sky Financial, including underwriting review, marketing, lead purchase, suppression review, and website hosting and support services; agreed to assign Western Sky Financial toll-free phone and fax numbers; and agreed to provide Western Sky Financial other communications services, including email and text correspondence with borrowers. And Western Sky Financial, for its part, agreed in the January 9, 2010, agreement for services to pay CashCall a fixed percentage of the face value of the loans (~2.00%) for the services that CashCall would provide.

20. Then, in the February 1, 2010, assignment agreement between WS Funding and Western Sky Financial, WS Funding agreed to fund a reserve account in Western Sky Financial's name that would be used by Western Sky Financial to fund consumer loans; agreed to purchase all loans made by Western Sky Financial for a fixed percentage of their face value; and agreed to pay Western Sky Financial monthly administration fees and reimburse Western Sky Financial for other office and personnel costs. And Western Sky Financial, for its part, agreed in the February 1, 2010, assignment agreement to use loan forms and underwriting

criteria that were pre-approved by WS Funding, and agreed to sell all loans made in its name to WS Funding for a fixed percentage of their face value (~5.00%).

21. The agreements between Reddam's business entities and Webb's business entity created a business structure that was intended to serve one principal purpose: It would enable the Defendants to assert (wrongly) that their lending activities were immune from state-law prohibitions on usurious, small-dollar lending. Specifically, from the inception of their lending enterprise, Defendants intended to argue that their conduct was immune from state-law prohibitions under a tribal sovereignty or tribal immunity theory because Western Sky Financial's owner, Butch Webb, is an enrolled member of the Cheyenne River Sioux Tribe. The Supreme Court of the United States has held, however, that "absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State." *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49 (1973). Accordingly, Defendants' business structure provides no immunity from Section 16-17-2's broad prohibition of usurious, small-dollar lending.

## **B. Defendants' Lending**

22. In February 2010, Defendants' began offering and making usurious, small-dollar loans to Georgia consumers.

23. Pursuant to the terms of their written agreements, the loans, though made in Western Sky Financial's name, were marketed by CashCall, financed by WS Funding, almost immediately sold and assigned to WS Funding, and then serviced and collected by CashCall and/or a CashCall subsidiary, Delbert Services.

24. Defendants advertised their loan products to Georgia consumers. Their advertisement, which appeared on television and on Western Sky Financial's website, offered a variety of loan products, including loans of \$850.00, \$1,500.00, and \$2,600.00, with annual percentage rates ("APRs") ranging from 140% to 343% and initial fees ranging from \$75.00 to \$500.00.

25. Between 2010 and mid-2013, Defendants made loans to Georgia consumers. Georgia consumers applied for loans via Western Sky Financial's website or by calling an advertised toll-free telephone number. Once approved and executed, Defendants funded the loans by electronically transmitting money to consumers' bank accounts.

26. Within approximately one to five business days after the loans were funded, consumers received notices that their loan has been sold to WS Funding and would be serviced by CashCall (or, sometimes, Delbert Services). Then, to collect payments on its loans, CashCall (or sometimes Delbert Services) electronically debited funds from consumers' bank accounts.

27. Between 2010 and the present, Delbert Services serviced CashCall's "charge-off" portfolio, which are those loans within CashCall's portfolio that are more than 150 days past due, including the loans made to Georgia borrowers within CashCall's "charge-off" portfolio. In September 2013, CashCall transferred most of its remaining loans made to Georgia borrowers to Delbert Services for servicing.

28. Georgia borrowers never travel to Western Sky Financial's offices, the Cheyenne River Sioux Reservation, or anywhere outside of the State of Georgia for any reason related to the application, funding, or repayment of the loans. Rather, the entire loan process occurs exclusively through the Internet or by telephone or email, and Georgia borrowers repay the

principal and interest on the loans from bank accounts located in Georgia through electronic transactions.

### **C. Defendants' Law Violations**

29. Defendants' lending enterprise violated Section 16-17-2 of the Act, which declares that it is unlawful, subject to only narrow and express exemptions, "for any person to engage in any business, in whatever form transacted, including, but not limited to, by mail, electronic means, the Internet, or telephonic means, which consists in whole or in part in making, offering, arranging, or acting as an agent in the making of loans of \$3,000.00 or less." O.C.G.A. § 16-17-2(a).

30. Defendants' lending was not permissible under any of express exemptions from Section 16-17-2(a)'s prohibition on usurious, small-dollar lending.

31. Defendants were not engaged in financial transactions permitted pursuant to:

(A) The laws regulating financial institutions as defined under Chapter 1 of Title 7, the "Financial Institutions Code of Georgia";

(B) The laws regulating state and federally chartered credit unions;

(C) Article 13 of Chapter 1 of Title 7, relating to Georgia residential mortgages;

(D) Chapter 3 of Title 7, the "Georgia Industrial Loan Act";

(E) Chapter 4 of Title 7, relating to interest and usury;

(F) Chapter 5 of Title 7, "The Credit Card and Credit Card Bank Act," including financial institutions and their assignees who are not operating in violation of said chapter; or

(G) Paragraph (2) of subsection (a) of Code Section 7-4-2 in which the simple interest rate is not greater than 16 percent per annum.

32. Defendants' loans were not lawful under the term of:

(A) Article 1 of Chapter 1 of Title 10, "The Retail Installment and Home Solicitation Sales Act."

(B) Article 2 of Chapter 1 of Title 10, the "Motor Vehicle Sales Finance Act"; or

(C) Part 5 of Article 3 of Chapter 12 of Title 44, relating to pawnbrokers.

33. None of the defendants is "a bank or thrift chartered under the laws of the United States, a bank chartered under the laws of another state and insured by the Federal Deposit Insurance Corporation, or a credit card bank and is not operating in violation of the federal and state laws applicable to its charter."

34. Defendants' loans were not "made as a tax refund anticipation loan."

35. Defendants operated as a common enterprise while engaging in the unlawful acts and practices alleged in this complaint, and each defendant is therefore jointly and severally liable for the alleged violations of the Act.

36. In addition, although Western Sky Financial initially holds the predominant economic interest in the revenues generated by the loans transactions in issue here, shortly after the loans are made, Western Sky assigns the entire interest in the revenues generated by the loans to defendants CashCall and WS Funding, which thereby acquire a predominant economic interest in the loans. Defendants CashCall, WS Funding, and Western Sky Financial are thus de facto lenders. *See* O.C.G.A. § 16-17-2(b)(4).

37. At all times relevant to this complaint, Reddam and Webb personally directed, controlled, managed, authorized, or participated in the acts and practices of CashCall, WS Funding, Delbert Services, and Western Sky Financial that constitute the common enterprise. They are, accordingly, personally liable for the alleged violations of the Act.

38. Reddam formed CashCall, WS Funding, and Delbert Services, and Webb formed Western Sky Financial, for the illegitimate purpose of engaging in defendants' lending enterprise, and those corporations served as the mere alter ego of Reddam and Webb and were the business conduit through which Reddam and Webb engaged in the unlawful lending. Accordingly, the corporate veil does not shield Reddam and Webb from personal liability for the alleged violations of the Act by CashCall, WS Funding, Delbert Services, and Western Sky Financial.

## **COUNT I**

### **Violations of Georgia's Payday Lending Act**

#### **(All Defendants)**

39. Plaintiff incorporates the preceding paragraphs by reference as if specifically stated herein.

40. Defendants have engaged in the business of making, offering, arranging, or acting as agents in the making of loans of \$3,000.00 or less to consumers in the State of Georgia.

41. Defendants' lending was not permissible under any of the express exemptions from Section 16-17-2(a)'s prohibition on usurious, small-dollar lending.

42. Defendants operated as a common enterprise while engaging in the unlawful acts and practices alleged in this Complaint.

43. CashCall, Delbert Services, and WS Funding, based on the entire circumstances of the transactions, were de facto lenders under the Act by acquiring, holding, and maintaining a predominant economic interest in the revenues generated by the loans at issue.

44. Reddam and Webb personally directed, controlled, managed, authorized, or participated in the acts and practices of CashCall, WS Funding, Delbert Services, and Western Sky Financial that constitute the unlawful lending enterprise. Reddam formed CashCall, WS Funding, and Delbert Services, and Webb formed Western Sky Financial, for the illegitimate purpose of engaging in defendants' lending enterprise, and those corporations served as the mere alter ego of Reddam and Webb and were the business conduit through which Reddam and Webb engaged in the unlawful lending. Reddam and Webb are, accordingly, personally liable for the alleged violations of the Act.

45. Defendants' acts of making, offering, arranging, or acting as agent in the making of loans of \$3,000.00 or less in the State of Georgia violate Section 16-17-2(a) of the Payday Lending Act.

#### **REMEDIES UNDER LAW**

46. Pursuant to O.C.G.A. § 16-17-3, Defendants are jointly and severally liable to Georgia borrowers for three times the amount of any interest or other charges to the borrowers in Defendants' unlawful loan transactions.

47. Pursuant to O.C.G.A. § 16-17-4, Defendants are jointly and severally liable for a civil penalty equal to three times the amount of any interest or other charges to the borrowers in Defendants' unlawful loan transactions.

48. Pursuant to O.C.G.A. § 16-17-3, any and all loan agreements between Western Sky and consumers in Georgia are void ab initio and Defendants are barred from the collection of any indebtedness created by the Loan Agreements.

49. As a result of Defendants' violations of the Act, Georgia residents have suffered and will continue to suffer irreparable harm. The State has no adequate remedy at law and is entitled to permanent injunctive relief prohibiting Defendants from offering or making any loan transactions in violation of O.C.G.A. § 16-17-2 and collecting on any indebtedness created by any loan transactions in violation of O.C.G.A. § 16-17-3.

### **PRAYER FOR RELIEF**

50. The State respectfully requests that the Court:

51. Enter judgment against Defendants jointly and severally;

52. Award damages pursuant to O.C.G.A. § 16-17-3 equal to three times the amount of any interest or other charges to the borrowers arising out Defendants' loan transactions in violation of O.C.G.A. § 16-17-2;

53. Award civil penalties pursuant to O.C.G.A. § 16-17-4 equal to three times the amount of any interest or other charges to the borrowers arising out Defendants' loan transactions in violation of O.C.G.A. § 16-17-2;

54. Declare Defendants' loan transactions in violation of O.C.G.A. § 16-17-2 null and void ab initio;

55. Permanently enjoin Defendants from violating the provisions of O.C.G.A. § 16-17-1 through § 16-17-3, including but not limited to:

- engaging in any business, in whatever form transacted, including but not limited to by mail, electronic means, the Internet, or telephonic means, that consists in whole

or in part of making, offering, arranging, or acting as an agent in the making of loans of \$3,000.00 or less in the State of Georgia;

- advertising, marketing, or soliciting in the State of Georgia for a business that consists in whole or in part of making, offering, arranging, or acting as an agent in the making of loans of \$3,000.00 or less through any media, including but not limited to the Internet, television, print, and radio;
- collecting or attempting to collect payment of interest or principal pursuant to any Loan Agreement with any person in the State of Georgia;
- enforcing or attempting to enforce any Loan Agreement with any person in the State of Georgia in any court or other tribunal, including but not limited to the Cheyenne River Sioux Tribal Court; and
- selling or assigning any agreement for a non-mortgage loan of \$3,000.00 or less between Defendants and any person residing in the State of Georgia to any third party.

56. Award the State its costs and attorneys' fees; and

57. Award any and all other relief as justice may require and that the Court may deem

proper.

Dated: December 9, 2016

Respectfully submitted,

CHRISTOPHER M. CARR  
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*/s/ Timothy A. Butler*

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of this *Second Amended Complaint*, by electronic service (where email addresses are provided below) and U.S. Mail, on the following counsel for Defendants:

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Dated: December 9, 2016

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