

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

SUPERIOR COURT

Civil Action No.

15-3044D

COMMONWEALTH OF MASSACHUSETTS

Plaintiff,

v.

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

Defendants.

COMPLAINT

INTRODUCTION



1. The Commonwealth of Massachusetts, by and through its Attorney General, Maura Healey, brings this action against defendants Western Sky Financial LLC (“Western Sky”), Martin A. Webb, WS Funding, LLC, CashCall, Inc. (“CashCall”), Delbert Services Corporation (“Delbert”), and J. Paul Reddam (collectively, “Defendants”), for engaging in unfair or deceptive acts and practices in connection with their making, purchasing, servicing or collecting of high-interest consumer installment loans to Massachusetts residents in violation of Massachusetts licensing and registration laws and with interest rates far in excess of Massachusetts’ civil and criminal usury rates of 12% and 20%, respectively. *See* G.L. G.L. c. 140, § 96; G.L. c. 271, § 49. Pursuant to the Massachusetts Consumer Protection Act, G.L. c. 93A, §§ 2 and 4, the Commonwealth seeks permanent injunctive relief in order to prevent additional harm to Massachusetts consumers arising out of the Defendants’ conduct. The Commonwealth also seeks a

declaration that the unauthorized and usurious loans are void, discharge of the loans, restitution for consumers of payments made on such unlawful loans, civil penalties, costs, attorneys' fees, and other appropriate relief.

JURISDICTION AND VENUE

2. The Attorney General is authorized to bring this action pursuant to G.L. c. 93A, § 4 and G.L. c. 12, § 10.

3. This Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 93A, § 4 and G.L. c. 12, § 10, and personal jurisdiction over the Defendants pursuant to G.L. c. 223A, § 3.

4. Venue is proper in Suffolk County pursuant to G.L. c. 93A, § 4 and G.L. c. 223, § 5.

PARTIES

5. The Plaintiff is the Commonwealth of Massachusetts, represented by Attorney General Maura Healey, who brings this action in the public interest.

6. Defendant Western Sky Financial, LLC is a South Dakota limited liability corporation with its principal place of business at 612 E Street, Timber Lake, South Dakota 57656. Western Sky originated consumer installment loans to Massachusetts consumers.

7. Defendant Martin A. Webb (a/k/a "Butch Webb") is the sole officer, director, manager, owner, and principal of Western Sky.

8. Defendant CashCall, Inc. is a California corporation with its principal place of business at One City Boulevard West, Suite 1000, Orange, California 92868. CashCall transacted business in Massachusetts by servicing and collecting consumer installment loans made to Massachusetts consumers.

9. Defendant WS Funding, LLC is a limited liability corporation incorporated in Delaware. WS Funding is a wholly owned subsidiary of CashCall. WS Funding transacted business in Massachusetts by purchasing consumer installment loans made to Massachusetts consumers days after their issuance.

10. Defendant Delbert Services Corporation is a Nevada corporation with its principal place of business at 7125 Pollock Dr., Las Vegas, NV 89119. Delbert applied for, obtained, and currently has a license to engage in the business of debt collection in the Commonwealth of Massachusetts. Delbert acquired, serviced, and collected consumer installment loans made to Massachusetts consumers.

11. Defendant J. Paul Reddam is the CEO, president, sole director, and sole owner of CashCall; the president, manager, sole member, and sole owner of WS Funding; and the director and sole owner of Delbert. He has managerial responsibility for CashCall, WS Funding, and Delbert, and has materially participated in the conduct of their affairs.

FACTS

A. The Defendants Originated Usurious Loans to Massachusetts Consumers

12. Western Sky, CashCall, and WS Funding are in the business of making, purchasing or collecting on high-interest loans to consumers. WS Funding, CashCall's subsidiary, contracted with Western Sky to purchase all loans made by Western Sky. *See Affidavit of Aimee Desai, Massachusetts Division of Banks ("DOB"), at Exhibit ("Ex.") F1 (dated May 21, 2015), filed in Support of Defendant DOB's Opposition to Plaintiffs' Motion to Stay Enforcement of the Cease Order, CashCall, Inc., et al. v. Massachusetts DOB, Super. Ct. C.A. No. SUCV2013-01616 (filed May 22, 2013), Dkt. No. 14, Paper No. 9 ("Desai Aff."), attached hereto as Exhibit 1.*

13. Since 2010, these companies solicited high-interest loans in Massachusetts.¹ These defendants, using the “Western Sky” name, offered several loan products to Massachusetts consumers, with principal amounts ranging from \$400 to \$9,925.

14. The repayment period and interest rates for the Western Sky loan products varied based on the size of the loan, but all had interest rates of 89% to 135% with annualized percentage rates (“APR”) of 89.26% to 355.27%, far in excess of permissible usury limits in Massachusetts.

15. For example, on the lowest end of loan amounts, a loan of \$400 carried an interest rate of 95%, APR of 355.27%, a \$300 origination fee, and a 6 month term with monthly payments of \$151.04. On the highest end of loan amounts, a loan of \$9,925 carried an interest rate of 89%, APR of 89.68%, a \$75 origination fee, and an 84 month term with monthly payments of \$743.49.

16. All loans were charged an initial fee, alternatively referred to as an “origination fee,” a “loan fee,” or a “prepaid finance charge,” which was added to the principal amount loaned and varied in size depending on the amount of the loan. For the smaller loans especially, these origination fees were significant, adding 75% to the principal of \$400 loans and 50% to the principal of \$1,000 loans. This charge was considered “fully earned upon loan origination” and was not subject to rebate upon prepayment or acceleration of the loan. *See, e.g., Exhibit 1, Desai Aff., Ex. C1, at Western Sky Consumer Loan Agreement, p. 2.*

17. The following table reflects the loan products and accompanying fees, term, and monthly payment amount for loans made to Massachusetts consumers.

¹On April 4, 2013, the Massachusetts Commissioner of Banks issued three administrative Cease Orders to (1) CashCall, Inc. and WS Funding; (2) Western Sky LLC; and (3) Delbert Services, Corp. and John P. Reddam. In May of 2013, CashCall and WS Funding in one action, and Western Sky Financial in another action, brought suit in Massachusetts Superior Court against the Division of Banks seeking review of the Cease Orders. *See Cash Call, Inc., et al. v. Mass. Div. of Banks*, Mass. Super. C.A. No. 13-1616B and *Western Sky Financial, LLC v. Mass. Div. of Banks*, Mass. Super. C.A. No. 13-1641C. Plaintiffs’ emergency motion to stay the Cease Orders pending resolution of the judicial actions was

Loan Product	Borrower Proceeds	Origination Fee	Interest Rate	Loan Term (mos.)	Monthly Payment	APR
\$700	\$400	\$300	95%	6	\$151.04	358.81%
\$850	\$500	\$350	135%	12	\$132.49	295.27%
\$1,500	\$1,000	\$500	120%	24	\$166.95	194.93%
\$2,600	\$2,525	\$75	135%	36	\$298.94	139.35%
\$5,075	\$5,000	\$75	115%	84	\$486.58	116.73%
\$10,000	\$9,925	\$75	89%	84	\$743.49	89.68%

18. The loans were offered to Massachusetts' consumers using Western Sky's name through Western Sky television advertisements and through the Western Sky website, previously available at www.westernsky.com. *See, e.g.*, Exhibit 1, Desai Aff., Ex. C2, at Consumer Complaint, p. 2. Consumers applied for the loans online via an electronic application form on the Western Sky website or by calling a toll free number. *See id.*, Ex. C1, at Western Sky Consumer Loan Agreement.

19. Following completion of the loan application and submission of any attendant documentation, consumers typically received notice that they were approved for a loan – without appropriate evaluation by Western Sky of consumers' financial ability to repay these loans.

20. Upon approval, consumers were directed to the Western Sky website to sign their loan agreement/promissory note electronically. The terms of the loans were contained in the standard "Western Sky Consumer Loan Agreement" ("Loan Agreement" or "Promissory Note"). *See, e.g.*, Exhibit 1, Desai Aff., Ex. C1, at Loan Agreement.

21. On the website, consumers were asked to agree to the loan terms by electronically checking two boxes. The first box required the borrower to acknowledge that he/she read and understood the arbitration section of the Loan Agreement and agreed to be bound by the terms and conditions therein; the second box required the borrower to acknowledge that he/she read all of the

denied by the Superior Court and affirmed by the Appeals Court in June of 2013. Thus, upon information and belief, the Defendants' lending and related activities in Massachusetts have ceased since April of 2013.

terms and conditions of the Loan Agreement and agreed to be bound thereto, with legal force and effect upon execution. *See, e.g., id.* at p. 4.

22. The very first page of the Loan Agreement contained the following false and misleading statement:

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

Id. at p. 1 (emphasis in original). A similar statement was found on another page of the Loan Agreement, under the term describing “Governing Law.” *See, e.g., id.* at p. 2.

23. Among other things, the Loan Agreement authorized the Western Sky “and any subsequent holder of this Note” to electronically debit the amount due on the loan, including the monthly installment payment, fees, and charges accrued, from the borrower’s checking account on the monthly payment date. *See id.* at pp. 1, 2 & 4.

24. The Loan Agreement explained that the borrower’s monthly payments “will be applied first to any outstanding charges or late fees, then to earned interest and finally to principal.” *Id.* at p. 2.

25. After the Loan Agreement was digitally executed, the principal of the loan minus the origination fees (the borrower proceeds) were electronically transferred into the borrower’s bank account. *See, e.g., id.*, Exs. C1, at Loan Documents Signed Notice, and C3, at Jan. 10, 2013 Letter from CashCall to Consumer. For loans made to Massachusetts consumers, the funds were deposited into bank accounts in the Commonwealth of Massachusetts.

26. Since 2010, Western Sky made at least 4,744 loans to Massachusetts consumers. All but 124 of those loans were less than \$6,000, which would subject them to the civil usury rates of the Massachusetts small loan law, G.L. c. 140, § 96.

27. Western Sky is not, and has never been, a licensed originator of small loans (of \$6,000 or less) in Massachusetts, pursuant to G.L. c. 140, § 96. *See Cease Order, In the Matter of Western Sky Financial, LLC*, Commissioner of Banks Small Loan Licensing Dkt. No. 2013-011 (Apr. 4, 2013), attached hereto as Exhibit 2.

28. Western Sky has not notified the Attorney General's Office of its intent to make loans greater than \$6,000 with otherwise usurious interest rates, pursuant to G.L. c. 271, §49. *See Affidavit of Sarah E. Petrie ("Petrie Aff."), ¶¶ ___, attached hereto as Exhibit 3.*

B. The Defendants Collect Usurious Rates of Interest

29. All of the loans made by Western Sky were purchased by, and assigned to, CashCall's subsidiary, WS Funding. *See, e.g., Exhibit 1, Desai Aff., Exs. C4, at Notice of Assignment, Sale or Transfer of Servicing Rights, and F1.* The assignments were made within days after the loans were approved. *See, e.g., id., Ex. D1.*

30. Between 2010 and 2013, WS Funding purchased at least 4,744 loans made by Western Sky to Massachusetts consumers.

31. Following the assignment of a loan to WS Funding, CashCall would typically contact the borrower by e-mail or letter to notify the borrower that the loan had been assigned. *See, e.g., id., Ex. C4, at Notice of Assignment, Sale or Transfer of Servicing Rights.*

32. Pursuant to the Loan Agreement, the borrower provided authorization to Western Sky (or its assignee) to "initiate an automated clearinghouse or other electronic funds transfer ("EFT") from [the borrower's] bank account...to make each payment...on the day it is due." *See, e.g., id.,*

Ex. C2, at Loan Agreement, p. 5. The borrower also consented to authorize Western Sky (or its assignee) “to withdraw funds from [his/her] account on additional days throughout the month in the event [there are] delinquen[cies] on … loan payments” and “to attempt [to obtain] payment[s] up to two additional times.” *Id.*, Ex. C2, at p.5. These electronic debits would continue until the loan was repaid in its entirety, up to seven years, or until the borrower terminated such authorization in writing, or foreclosed access by closing the account. *See id.*, at pp. 5-6.

33. Since 2010, CashCall serviced at least 4,744 loans to Massachusetts consumers. In doing so, CashCall repeatedly debited money from bank accounts located in the Commonwealth.

34. Neither WS Funding nor CashCall had the required license from the Commissioner of Banks as entities “directly or indirectly engaged in the business of making loans of six thousand dollars or less” in Massachusetts, pursuant to G.L. c. 140, § 96. Neither entity has registered with the Commissioner of Banks as a third party loan servicer in Massachusetts, pursuant to G.L. c. 93, § 24A. *See Exhibit 1, Desai Aff., ¶¶ 4 & 16.*

35. Given the high interest rates and contractual payment structure in which initial payments are applied to interest and fees only, the Western Sky loans are very burdensome for Massachusetts consumers. *See id.*, ¶ 8 and Exs. C1-C4. It is not uncommon for borrowers to make timely payments for months and still owe more on the loan than the amount they received in principal. *Id.* For example, a borrower that receives \$1,000 in principal can owe as much as \$4,768.98, if carried to the full two year term. *See id.*, Ex. C4, at Loan Agreement, p. 1. Similarly, a borrower that receives \$2,525 in principal can owe as much as \$11,054.07, if carried to the full three year term. *See id.*, Ex. C1, at Loan Agreement, p. 1.

36. Many Massachusetts consumers have experienced difficulties making payments on their Western Sky loans. *See generally id.* at Exs. C1-C4. When consumers miss a payment,

CashCall tries to collect on the debt through repeated EFT attempts on the borrower's bank accounts, in some cases causing the borrower to incur fees for insufficient funds at their bank, as well as urging payment through phone calls, e-mails and letters. *Id.*

37. Pursuant to the terms of the Loan Agreement, CashCall also reports late or missed payments, or other defaults to credit bureaus. *See id.*, Ex. C1, at p. 2. This reporting has a negative impact on the credit of Massachusetts borrowers.

38. CashCall has assigned some Western Sky loans to Delbert for third party debt collection. *See id.*, Ex. F2. A review of Delbert's books and records in 2012 by the Massachusetts Division of Banks revealed that Delbert collected on at least 23 accounts for loans originated by Western Sky. *See Exhibit 2, Cease Order to Western Sky*, at ¶¶ 15-16.

39. Borrowers that contacted CashCall in an attempt to modify their payment plan have found CashCall unwilling to offer relief. The "Modification Agreement" offered by CashCall (not WS Funding) to such borrowers with delinquent accounts simply defers the past-due payments, extending the maturity date of the loan. CashCall offered no change in outstanding balance due or interest rate, or reduction to monthly payments. *See, e.g.*, Exhibit 1, Desai Aff., Ex. C1, at Nov. 5, 2011 Letter from CashCall to Borrower.

40. Borrowers that contacted CashCall to inquire about the interest rates they were being charged received a form letter that falsely represented that Massachusetts laws do not apply to their loans. CashCall stated:

Western Sky is a wholly Cheyenne River Sioux Tribal Member owned business and is located and operates within the exterior boundaries of the Cheyenne River Indian Reservation. Western Sky loans are initiated, approved, issued and disbursed within the confines of the Cheyenne River Indian Reservation. Western Sky is licensed with the Cheyenne River Sioux Tribe. Western Sky does not have any physical presence in your state or any other State of the Union. The laws of the Cheyenne River Sioux Tribe apply exclusively to the terms and conditions of your loan, and you further

accepted this choice of law and jurisdiction by executing your loan document. These facts were explained to you when you applied and again when you signed your Promissory Note.

See, e.g., id., Ex. C3, at Jan. 10, 2013 Letter from CashCall to Borrower. CashCall concluded these letters with the following advice: “If you are unhappy with Western Sky, WS Funding, or your loan in any respect, we would advise you to pay it off now without penalty.” *Id.*

41. In fact, Western Sky is a limited liability company organized and registered under South Dakota law. It is not owned or operated by the Cheyenne River Sioux Tribe, and several courts, including this Court,² have already rejected claims of tribal immunity made by Western Sky and its owner, Martin A. Webb.

C. The Defendants Have Engaged in a Deceptive Scheme to Circumvent Massachusetts Usury and Licensing Laws

42. Defendants’ lending arrangement described above, wherein loans are originated by Western Sky and immediately assigned to WS Funding, was an intentional scheme to disguise the Defendants’ true interests in the loans.

43. Western Sky, the purported tribal entity, was the originator of these loans in name only. In fact, it is WS Funding, CashCall’s subsidiary, which funded the Western Sky loans and bore the risk of Western Sky’s lending. CashCall provided the loan origination services in Western Sky’s name, handling all Western Sky loan applications.

44. This arrangement was captured in contracts between Western Sky, CashCall and WS Funding. Among other relevant provisions:

- a. WS Funding was obligated to purchase all loans made through the Western Sky website, www.westernsky.com;

²*See infra* note 3.

- b. WS Funding agreed to open a “Reserve Account” in Western Sky’s name and to maintain a balance in the account “to fund any unpurchased or unfunded” loans and “for payment of purchased notes”;
- c. WS Funding agreed to fully indemnify Western Sky;
- d. CashCall agreed to host and support the Western Sky website;
- e. CashCall agreed to provide a toll free phone and fax number in Western Sky’s name; and
- f. CashCall agreed to provide customer service support to handle incoming applications through both the Western Sky website and phone line;

45. Defendants have engaged in this scheme in an attempt to evade state usury and licensing laws, including those of Massachusetts.

46. In response to consumer complaints, the Massachusetts Division of Banks repeatedly contacted CashCall by phone and letter to address CashCall and WS Funding’s “business model” which does not comply with the statutory requirements of Mass. Gen. Laws c. 140, § 96. *See Exhibit 1, Desai Aff., Ex. A.*

47. On April 4, 2013, the Massachusetts Division of Banks issued three administrative Cease Orders to the Defendants to halt their unlicensed and usurious lending, servicing and debt collection practices.³ *See Exhibit 1, Desai Aff., Ex. B (Cease Order, In the Matter of CashCall, Inc. & WS Funding, LLC, Commissioner of Banks Small Loan Licensing Dkt. No. 2013-010 (Apr. 4,*

³ The Cease Orders against CashCall, WS Funding and Western Sky were appealed to this Court. *See supra* n. 1. On August 31, 2015, this Court issued a decision and order on the plaintiffs’ consolidated motion for judgment on the pleadings, denying the plaintiffs’ arguments that they are not subject to the laws of Massachusetts or regulation by the Division of Banks or to the jurisdiction of this Court. *See Memorandum of Decision and Order on Plaintiffs’ Consolidated Motion for Judgment on the Pleadings and the Defendant’s Motion for Order of Enforcement, C.A. Nos.*

2013)); Exhibit 2 (Cease Order to Western Sky); and Temporary Order to Cease & Desist, *In the Matter of Delbert Services Corp. & John P. Reddam*, Commissioner of Banks Debt Collector Licensing Dkt. No. 2013-009 (Apr. 4, 2013), attached hereto as Exhibit 4.

D. Defendants Webb and Reddam Have Knowledge Of and Have Participated In the Deceptive Scheme of CashCall, WS Funding and Western Sky to Circumvent Massachusetts Licensing and Lending Laws.

48. Defendant Webb is the sole officer, director, manager, owner and principal of Western Sky. In that capacity, he has knowledge of the activities of Western Sky and has exercised control over the company.

49. Defendant Reddam is President of CashCall and WS Funding, and the sole member of CashCall's Board of Directors. In those roles, he has knowledge of the activities of CashCall and WS Funding and exercised control over both companies.

50. Defendants Webb and Reddam executed the loan purchasing and servicing agreements described above on behalf of their respective companies, playing a central role in the deceptive, unlicensed, and unlawful lending scheme.

51. Defendant Western Sky's actions were for the benefit of Webb, the company's sole owner. Defendants' CashCall and WS Funding's actions were for the benefit of Reddam, the sole owner of CashCall.

13-CV-1616-B (Paper No. 38) and 13-CV-1641-C (Mass. Super. Ct. Aug. 31, 2015) (Curran, J.), attached hereto as Exhibit 5.

CAUSES OF ACTION

COUNT I

Failure to Register with the Division of Banks in Violation of G.L. c. 93, § 24A (Against CashCall, Inc.)

52. The allegations contained in paragraphs 1 through 51 of the Complaint are hereby re-alleged and incorporated by reference herein.

53. Mass. Gen. Law c. 93, § 24A requires debt collectors and third party loan servicers to be licensed by or to register with the Massachusetts Commissioner of Banks.

54. At all times relevant to this Complaint, defendant CashCall conducted business as a third party servicer of loans originated by Western Sky to Massachusetts consumers and did not register with the Commissioner of Banks.

55. By engaging in unregistered third party loan servicing conduct in the Commonwealth, CashCall violated G.L. c. 93, §24A.

COUNT II

Violation of the Small Loans Law, G.L. c. 140, §§ 96 through 114A (Against All Defendants)

56. The allegations contained in paragraphs 1 through 51 of the Complaint are hereby re-alleged and incorporated by reference herein.

57. Mass. Gen. Law c. 140, §§ 96 through 114A, inclusive, the “Small Loans Law,” requires persons or entities to be licensed by the Commissioner of Banks if they are engaged, directly or indirectly, in the business of making loans for primarily personal, family or household purposes of \$6,000 or less, and the interest and expenses on the loan exceed 12% in the aggregate per year. Specifically, Mass. Gen. Law c. 140, § 96 states:

No person shall directly or indirectly engage in the business of making loans of six thousand dollars or less, if the amount to be paid on any such loan for interest and expenses exceeds in the aggregate an amount equivalent to twelve per cent per annum upon the sum loaned, without first obtaining from the commissioner of banks, in sections ninety-six to one hundred and fourteen, inclusive, called the commissioner, a license to carry on the said business in the town where the business is to be transacted... The buying or endorsing of notes or the furnishing of guarantee or security for compensation shall be considered to be engaging in the business of making small loans within said sections[.]

58. Small loans made without proper license are void under the law. Specifically, Mass.

Gen. Laws c. 140, § 110 states, in pertinent part:

Whoever, not being duly licensed as provided in section ninety-six on his own account or on account of any other person not so licensed, engages in or carries on, directly or indirectly, either separately or in connection with or as a part of any other business, the business of making loans or buying notes or furnishing endorsements or guarantees, to which sections ninety-six to one hundred and eleven, inclusive, apply, shall be punished by imprisonment in the state prison for not more than ten years or in a jail or house of correction for not more than two and one half years, or by a fine of not more than ten thousand dollar, or by both such fine and imprisonment. Any loan made or note purchased or endorsement or guarantee furnished by an unlicensed person in violation of said sections shall be void.

59. A properly licensed small loan lender may charge up to 23% interest per year.

Specifically, the regulation establishing the Small Loan Rate Order, 209 CMR 26.01(a), states:

All persons subject, in whole or in part, to the provisions of M.G.L. c. 140, §§ 96 through 113, may charge, contract for, and receive the following maximum interest charges for loans not in excess of \$6,000: (a) 23% per annum of the unpaid balances of the amount financed calculated according to the actuarial method plus an administrative fee of \$20 upon the granting of a loan. An administrative fee is not permitted to be assessed to a borrower more than once during any 12 month period.

60. Defendants were engaged, directly or indirectly, in the business of making loans of \$6,000 or less to Massachusetts consumers.

61. At all times relevant to this Complaint, Defendants were not licensed by the Massachusetts Commissioner of Banks as licensed small loan lenders.

62. In the course of making, purchasing or collecting on loans made to Massachusetts consumers, Defendants repeatedly or persistently charged, contracted for, or received interest at rates that far exceeded the 12% rate of interest they were permitted by law to charge as unlicensed persons or entities in the business of making loans of \$6,000 or less.

63. In the course of making, purchasing or collecting on loans made to Massachusetts consumers, Defendants repeatedly or persistently charged, contracted for, or received interest at rates that far exceeded the 23% rate of interest they would be permitted by law to charge if they were licensed by the Commissioner of Banks.

64. By engaging in such conduct of directly or indirectly making unlicensed, usurious loans in the Commonwealth, each of the Defendants violated G.L. c. 140, § 96.

COUNT III

Violation of the Criminal Usury Law, G.L. c. 271, § 49 (Against All Defendants)

65. The allegations contained in paragraphs 1 through 51 of the Complaint are hereby re-alleged and incorporated by reference herein.

66. Mass. Gen. Law c. 271, § 49 establishes that it is usurious in Massachusetts to hold a loan contract which requires an interest rate in excess of 20% per year, punishable by imprisonment up to 10 years and fines of up to \$10,000.

67. Mass. Gen. Law c. 271, § 49 does not apply to loans that are separately regulated (i.e., loans of \$6,000 or less) or to any person who notifies the Attorney General of his intent to engage in otherwise prohibited transactions and maintains records of same.

68. Defendants were engaged, directly or indirectly, in the business of making loans greater than \$6,000 to Massachusetts consumers.

69. In the course of making, purchasing, or collecting on loans made to Massachusetts consumers, Defendants repeatedly or persistently charged, contracted for, or received interest at rates that far exceeded 20 percent.

70. At all times relevant to this Complaint, Defendants did not notify the Massachusetts Attorney General of their intent to engage in such usurious lending transactions.

71. By engaging in such conduct of directly or indirectly making usurious loans in the Commonwealth, each of the Defendants violated G.L. c. 271, § 49.

COUNT IV

Violation of G.L. c. 93A, §§ 2 and 4: Unfair Or Deceptive Practice of Making, Servicing or Collecting Loans In Violation of Licensing and Usury Laws (Against all Defendants)

72. The allegations contained in paragraphs 1 through 51 of the Complaint are hereby re-alleged and incorporated by reference herein.

73. Mass. Gen. Laws c. 93A, § 2(a) makes it unlawful to engage in any unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce in the Commonwealth.

74. In the course of making, servicing, or collecting on loans made to Massachusetts consumers, Defendants engaged in deceptive business practices in violation of G.L. c. 93A, § 2(a).

75. Defendants' unfair or deceptive acts or practices include, but are not limited to, the following:

- a. Repeatedly or persistently making, servicing, or collecting, or attempting to collect, on loans issued without proper license or registration in violation of Massachusetts laws, including G.L. c. 93, § 24A and c. 140, §§ 96 through 114A;

- b. Unconscionably making, servicing, or collecting, or attempting to collect, on loans issued to Massachusetts consumers without appropriate evaluation of their ability to repay these loans;
- c. Repeatedly or persistently charging and receiving illegal, usurious, and oppressive interest and fees;
- d. Repeatedly misrepresenting to consumers, expressly and by implication, that the rates of interest consumers were charged on their loans were legal;
- e. Repeatedly misrepresenting to consumers that Massachusetts law does not apply to their loans;

76. Each of the Defendants knew or should have known that by making, servicing, or collecting, or attempting to collect on these loans, Defendants engaged in unfair or deceptive acts or practices, in violation of G.L. c. 93A, §§ 2 and 4.

PRAYERS FOR RELIEF

WHEREFORE, the Commonwealth requests that this Court enter the following relief:

1. After trial on the merits, enter judgment in favor of the Commonwealth and order that the defendants pay:
 - a. Civil penalties of \$5,000 for each violation of G. L. c. 93A;
 - b. Attorneys' fees;
 - c. Costs; and
 - d. Other relief available under G. L. c. 93A.
2. After a trial on the merits, enter judgment in favor of the Commonwealth including permanent injunctive and equitable relief, including:

- a. Enjoining all defendants, and their officers, agents, servants, employees, attorneys, successors, and assigns, and all other persons and entities, whether acting individually or in active participation or concert with them, directly or indirectly, or through any corporation, trust or other device, who receive actual notice of the order from advertising, soliciting, brokering, purchasing, selling, assigning, or lending, including making, financing, servicing, or collecting, or facilitating or assisting in making, financing, servicing, or collecting, on any loans in Massachusetts;
- b. Enjoining all defendants, and their officers, agents, servants, employees, attorneys, successors, and assigns, and all other persons and entities, whether acting individually or in active participation or concert with them, directly or indirectly, or through any corporation, trust or other device, who receive actual notice of the order from applying for any type of license or registration under the purview of the Massachusetts Division of Banks;
- c. Enjoining all defendants, and their officers, agents, servants, employees, attorneys, successors, and assigns, and all other persons and entities, whether acting individually or in active participation or concert with them, directly or indirectly, or through any corporation, trust or other device, who receive actual notice of the order from engaging in any unfair or deceptive, fraudulent or illegal practices in violation of the Massachusetts Consumer Protection Act, M.G.L. c. 93A, in connection with the promotion or offering of financial goods or services to Massachusetts residents;
- d. Voiding every loan made to Massachusetts consumers in violation of Massachusetts licensing and usury laws;

- e. Directing Defendants to make restitution to each Massachusetts consumer of all moneys paid on loans made in violation of Massachusetts' licensing and usury laws;
 - f. Directing Defendants to disgorge all profits derived from any loan made to a Massachusetts consumer with a rate of interest in excess of the amount permitted under Massachusetts law; and
 - g. Directing the Defendants to notify all credit agencies to which they have reported that the loans made to Massachusetts consumers are invalid, and that all reports or scores that reflect these loans should be corrected.
3. The Commonwealth reserves the right to seek additional relief or orders, including relief available prior to the commencement of trial should the public interest so demand.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS
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