

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA, <i>ex rel.</i>)	
SAMUEL S. OLENS,)	
Attorney General of the)	CIVIL ACTION
State of Georgia,)	NO. _____
)	
Plaintiff,)	
)	
v.)	
)	
WESTERN SKY FINANCIAL, LLC,)	
MARTIN A. WEBB, and)	
CASHCALL, INC.,)	
)	
Defendants.)	

COMPLAINT

Plaintiff, the State of Georgia, *ex rel.* Samuel S. Olen (‘‘Plaintiff’’), Attorney General for the State of Georgia, for its Complaint alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action under the Payday Lending Act, O.C.G.A. § 16-17-1 through 10 (‘‘Payday Lending Act’’), for civil penalties and injunctive and other equitable relief against Defendants Western Sky Financial, LLC, its owner and principal Martin A. Webb, and CashCall, Inc. The Payday Lending Act prohibits the making of loans of \$3,000.00 or less (‘‘payday loans’’) unless, *inter alia*, the lender is licensed pursuant to the Georgia Industrial Loan Act, O.C.G.A. § 7-3-1 through 29 (‘‘GILA’’).
2. Although not licensed to lend in Georgia, Defendants have collaborated in a common enterprise to make high-interest payday loans to Georgia consumers over the Internet. These loans carry usurious interest rates of up to 340% and trap the borrower in a cycle of debt. As an example, a consumer borrowing \$2,600.00 from Defendants will ultimately pay over \$14,000.00

in principal and interest over the life of the loan. Despite receiving notice from Plaintiff that their lending practices violate the Payday Lending Act, Defendants continue to make payday loans to consumers in Georgia and engage in harassing and abusive collection practices in willful violation of Georgia law. Defendants' acts have caused and will continue to cause substantial and irreparable harm to Georgia consumers unless permanently enjoined by this Court.

PARTIES

3. Plaintiff Samuel S. Olens is the duly elected, qualified, and acting Attorney General of the State of Georgia and brings this action in his official capacity pursuant to O.C.G.A. § 16-17-4 to enforce provisions of the Payday Lending Act.

4. Defendant Western Sky Financial, LLC ("Western Sky") is a limited liability company organized and existing under the laws of South Dakota with a principal place of business at 612 E Street, Timber Lake, South Dakota 57656. Western Sky may be served with process on its registered agent, Martin A. Webb, at 612 E Street, Timber Lake, South Dakota 57656. Western Sky transacts business in Georgia and within this judicial district by offering, making, and collecting payments on payday loans to consumers in Georgia.

5. Defendant Martin A. Webb ("Webb") is an individual residing in the state of South Dakota. Webb is the sole owner, executive officer, and registered agent of Western Sky. Webb may be served with process at 612 E Street, Timber Lake, South Dakota 57656. Webb transacts business in Georgia and within this judicial district by offering, making, and collecting payments on payday loans to consumers in Georgia.

6. Defendant CashCall, Inc. ("CashCall") is a corporation organized and existing under the laws of California with a principal place of business at 1600 South Douglass Road, Anaheim, California 92806. CashCall may be served with process on its registered agent, National

Registered Agents, Inc., at 818 W. Seventh Street, Los Angeles, California 90017. CashCall transacts business in Georgia and within this judicial district by offering, originating, servicing, and collecting payments on payday loans to consumers in Georgia.

7. Defendants have operated as a common enterprise while engaging in the unlawful acts and practices alleged in this Complaint, and therefore each Defendant is jointly and severally liable for the alleged violations. At all times relevant to this Complaint, Webb personally has directed, controlled, managed, authorized, or participated in the acts and practices of Western Sky and CashCall that constitute the common enterprise.

JURISDICTION AND VENUE

8. The Court has personal jurisdiction over Defendants pursuant to O.C.G.A. §§ 9-10-90 and 9-10-91 because Defendants transact business within the State of Georgia and this action arises out of Defendants' activities within the State of Georgia. The Court has subject matter jurisdiction over this action pursuant to Ga. Const. Art. VI, § IV, Para. I.

9. Venue is proper in this forum pursuant to O.C.G.A. § 9-10-93 because a substantial part of Defendants' business is transacted within this judicial district.

FACTS COMMON TO ALL COUNTS

10. Western Sky is engaged in the business of making personal, unsecured loans over the Internet to consumers in Georgia and throughout the United States. Western Sky advertises, markets, and solicits its loan services to Georgia consumers through television advertising and its Internet website located at www.westernsky.com. Western Sky is solely owned and operated by Webb and serves as the mere alter ego or business conduit for Webb's lending business.

11. Western Sky's website advertises and offers a variety of loan products, including loans of \$850.00, \$1,500.00, and \$2,600.00. The loans have annual percentage rates ("APRs") of

approximately 140% to 343% and initial fees of \$75.00 to \$500.00. Payments are made in monthly installments, and the length of the loan ranges from twelve (12) to forty-seven (47) months. A true and correct copy of Western Sky's website showing its loan products and interest rates is attached as Exhibit A.

12. Georgia consumers who are interested in obtaining a loan from Western Sky complete an online application via Western Sky's website or call an advertised toll-free telephone number to apply. Once approved, Western Sky disburses the loan proceeds by electronically transmitting money to the consumer's bank account located in Georgia. As part of the loan application process, Western Sky requires that consumers authorize Western Sky to electronically debit funds from the consumer's bank account for the scheduled monthly installment payments, which are then taken from the consumer's same bank account in Georgia.

13. Within approximately three to five business days after the loan is funded by Western Sky, the loan is assigned or sold to Defendant CashCall. CashCall remains the servicer of the loan and manages the collection of payments.

14. In addition to servicing loans originated by Western Sky, CashCall also directly offers loans to Georgia consumers through its website, www.cashcall.com. Georgia consumers may apply for a loan online through CashCall's website or call an advertised toll-free telephone number to apply. CashCall's advertised loan products include a \$2,600.00 loan with an APR of 184%. A true and correct copy of CashCall's website showing its loan products and interest rates is attached as Exhibit B.

15. On information and belief, CashCall offers the same loan products offered by Western Sky in addition to those advertised on the CashCall website.

16. On information and belief, when a consumer applies for a loan via Western Sky's website or toll-free telephone number, the application is received and processed by representatives of CashCall. Thus, Defendants collaborate in all aspects of the loan-making process.

17. All loans offered and made by CashCall to Georgia consumers are funded by Western Sky, which electronically transmits the loan proceeds to the consumer's bank account in Georgia once the loan is approved.

18. Defendants are not licensed to engage in consumer lending in Georgia pursuant to GILA and are not exempt from GILA. The interest rates on Defendants' loan products exceed the allowable interest rate of 10% that may be charged by licensed lenders under GILA pursuant to O.C.G.A. § 7-3-14.

19. Western Sky is not a bank or thrift chartered under the laws of the United States.

20. Western Sky is not a bank chartered under the laws of another state and insured by the Federal Deposit Insurance Corporation ("FDIC").

21. CashCall is not a bank or thrift chartered under the laws of the United States.

22. CashCall is not a bank chartered under the laws of another state and insured by the FDIC.

23. All consumers applying for a loan through Western Sky or CashCall are required to electronically sign a loan agreement entitled the "Western Sky Consumer Loan Agreement" ("Loan Agreement") that identifies Western Sky as the lender for the loan. A true and correct copy of a redacted Loan Agreement is attached as Exhibit C.

24. The Loan Agreement contains the following terms:

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 that no other state or federal law of regulation shall apply to this Loan Agreement, its enforcement or interpretation.

...

You also expressly agree that this Agreement shall be subject to and construed in accordance only with the provisions of the laws of the Cheyenne River Sioux Tribe, and that no United States state or federal law applies to this Agreement.

25. The Loan Agreement also contains an arbitration clause stating, “[A]ny dispute you have with Western Sky or anyone else under this loan agreement will be resolved by binding arbitration...which shall be conducted by the Cheyenne River Sioux Tribal Nation by an authorized representative in accordance with its consumer dispute rules and the terms of this Agreement.”

26. While Western Sky operates within the boundaries of the Cheyenne River Sioux Reservation, Western Sky is not an arm of the Cheyenne River Sioux Tribe. The Tribe does not have any ownership interest or operating role in Western Sky.

27. Webb is a member of the Cheyenne River Sioux Tribe, but he is not a Tribal official and does not operate his lending business in any official Tribal capacity.

28. Consumers in Georgia never travel to the office of Western Sky, 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. Consumers in Georgia repay the principal and interest on the loans from bank accounts located in Georgia through electronic transactions.

29. CashCall services all loans funded by Western Sky, whether the consumer applies through CashCall or Western Sky. CashCall manages payment and collection efforts and

handles all loan-related communications with consumers in Georgia from CashCall's California office.

30. In response to consumer complaints regarding Western Sky loans received by Plaintiff, Plaintiff sent a letter to Western Sky on November 17, 2010, advising that its lending practices violate the Payday Lending Act and demanding that it cease and desist from making any further payday loans in Georgia. A true and correct copy of this correspondence is attached as Exhibit D.

31. In a letter of response dated December 1, 2010, counsel for Western Sky stated that Western Sky would not cease its lending activities in Georgia. Counsel further claimed that because "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," it is immune from suit in the State of Georgia under the Indian Commerce Clause of the U.S. Constitution. A true and correct copy of this correspondence is attached as Exhibit E.

32. On May 1, 2012, Plaintiff sent counsel for Western Sky a second letter demanding that Western Sky cease and desist its lending activities in the State of Georgia, which attached a copy of an April 17, 2012 order issued by the Denver County District Court in *Colorado ex rel. Suthers v. Western Sky Financial, LLC and Martin Webb* rejecting Western Sky's tribal immunity arguments. A true and correct copy of this correspondence is attached as Exhibit F.

33. Western Sky's counsel responded in a letter dated May 11, 2012, representing that "my client has decided to cease making any payday loans in the State of Georgia." The letter further stated, "A disclaimer has been added to the state pull down on the business websites specifically stating that his payday loans are not available to residents of the State of Georgia. This decision

was fully effective May 10, 2012.” A true and correct copy of this correspondence is attached as Exhibit G.

34. Despite its representation that it would cease making payday loans as of May 10, 2012, Western Sky continued to offer and make such loans to consumers in Georgia. Western Sky also failed to add a disclaimer to its website stating that its loan products are not available in Georgia or remove Georgia from the pull-down menu of states in which Western Sky loans are offered.

35. Because of continued consumer complaints, on December 14, 2012, Plaintiff sent another letter to counsel for Western Sky again demanding that Western Sky cease making any payday loans in Georgia and modify its website pursuant to its prior agreement. A true and correct copy of this correspondence is attached as Exhibit H. Plaintiff never received a response to this letter.

36. Plaintiff continues to receive a substantial number of consumer complaints regarding Western Sky’s payday loans, including that Western Sky continues to electronically withdraw funds from consumers’ bank accounts to collect high-interest payments even though the consumers have repaid the full amount of the principal on the loan. Upon further investigation of these complaints, Plaintiff became aware that Western Sky is collaborating with CashCall in the offering, making, and collection of payday loans to consumers in Georgia.

37. Plaintiff also has received numerous complaints from Georgia consumers regarding CashCall’s collection practices. Consumers have reported that CashCall representatives are harassing them with repeated telephone calls at all hours of the day and night, using obscene and abusive language over the telephone, threatening consumers with wage garnishment or other legal action, calling consumers’ employers to threaten wage garnishment or other legal action, and other methods of intimidation.

38. As a result of Defendants' actions, Georgia consumers have been substantially and irreparably harmed and will continue to be harmed by Defendants' unlawful payday lending unless permanently enjoined by this Court.

COUNT I: VIOLATIONS OF THE PAYDAY LENDING ACT

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

40. Defendants are engaged in a common enterprise to make, offer, arrange, or act as an agent in the making of loans of \$3,000.00 or less to consumers in the State of Georgia.

41. Defendants are not licensed under GILA to make, offer, arrange, or act as an agent in the making of loans of \$3,000.00 in the State of Georgia pursuant to O.C.G.A. § 7-3-8, and are not exempt from the provisions of GILA pursuant to O.C.G.A. § 7-3-6.

42. Neither Western Sky nor CashCall are a bank or thrift chartered under the laws of the United States.

43. Neither Western Sky nor CashCall are a bank a chartered under the laws of a state other than Georgia that is insured by the FDIC.

44. 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 constitute a violation of the Payday Lending Act pursuant to O.C.G.A. § 16-17-2(a).

45. Defendants' Loan Agreement contains forum selection and choice of law clauses providing that the laws and jurisdiction of the Cheyenne River Sioux Tribe apply to any dispute arising out of the agreement. As such, the Loan Agreement violates O.C.G.A. § 16-17-2(c)(1), which prohibits any provision in a loan agreement by which the laws of a state other than Georgia govern the terms and enforcement of the agreement or designate a court for the

resolution of disputes other than a court of competent jurisdiction in the county in which the borrower resides.

46. Defendant's Loan Agreement contains an impermissible mandatory arbitration clause in violation of O.C.G.A. § 16-17-2(c)(2).

47. 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.

48. 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.

49. As a result of Defendants' acts, Georgia residents have suffered and will continue to suffer irreparable harm. Plaintiff has no adequate remedy at law and is entitled to 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.

WHEREFORE, Plaintiff prays as follows:

(a) that judgment be entered against Defendants jointly and severally;

(b) that the Court enter an award of 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;

(c) that Defendants' loan transactions in violation of O.C.G.A. § 16-17-2 be deemed null and void *ab initio* and that Defendants be permanently enjoined from violating the provisions of O.C.G.A. § 16-17-1 through § 16-17-3, including but not limited to:

- (i) 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;
- (ii) 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;
- (iii) collecting or attempting to collect payment of interest or principal pursuant to any Loan Agreement with any person in the State of Georgia;
- (iv) 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
- (v) 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.

(d) that Plaintiff be awarded its costs of the action and attorneys' fees; and

(e) that Plaintiff be awarded any and all other relief as justice may require and that

the Court may deem proper.

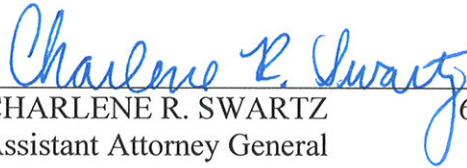
Respectfully submitted this 26th day of July, 2013.

SAMUEL S. OLENS 551540
Attorney General

ISAAC BYRD 101150
Deputy Attorney General



DANIEL WALSH 735040
Senior Assistant Attorney General



CHARLENE R. SWARTZ 697316
Assistant Attorney General

PLEASE DIRECT ALL
COMMUNICATIONS TO:

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Atlanta, Georgia 30334
(404) 656-4103

EXHIBIT A



QUESTIONS? Call Us at 1-888-997-6895

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Loans from \$850 to \$10,000 In your Bank Account Overnight.*

Western Sky Loans

Application Time is typically less than 5 minutes

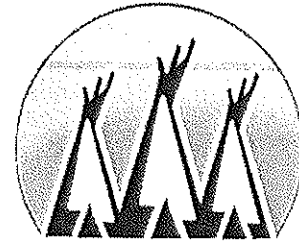
Western Sky is NOT a Payday Lender

Not a short term lender, our loan periods range from 12 months to 7 years with **NO PREPAYMENT PENALTY**

Call us to apply or with any questions you have at

1-888-997-6895

Apply Now



WESTERNSKY
FINANCIAL

Loans from \$850 to \$10,000 In your Bank Account Overnight. Just complete our short online application and get an answer in minutes.

We are an installment lender and our rates are much lower than most payday lenders. You may apply now online or call 1-888-997-6895 to speak to a loan agent.

[You may apply now](#)
[or have a loan agent contact you!](#)

*Subject to credit approval. Additional documentation required.

WESTERN SKY FINANCIAL is owned wholly by an individual Tribal Member of the Cheyenne River Sioux Tribe and is not owned or operated by the Cheyenne River Sioux Tribe or any of its political subdivisions. WESTERN SKY FINANCIAL is a Native American business operating within the exterior boundaries of the Cheyenne River Sioux Reservation, a sovereign nation located within the United States of America. Western Sky loans are not available to consumers in California, Colorado, Connecticut, Illinois, Kentucky, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New York, Ohio, Oregon, Pennsylvania, South Dakota, Vermont, Washington and West Virginia .

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Apply Now

Here are Western Sky's current rates. Please be aware that not all applicants will qualify for every loan product or the lowest interest rate for a particular loan product. Some applicants will not qualify for any of the products. **Western Sky reserves** the right to change the rates and loan products *listed below* without notice.

What state do you live in?

Loan Product	Borrower Proceeds	Loan Fee	APR	Number of Payments	Payment Amount
\$10,000	\$9,925	\$75	89.68%	84	\$743.49
\$5,075	\$5,000	\$75	116.73%	84	\$486.58
\$2,600	\$2,525	\$75	139.22%	47	\$294.46
\$1,500	\$1,000	\$500	234.25%	24	\$198.19
\$850	\$500	\$350	342.86%	12	\$150.72

WESTERN SKY FINANCIAL is owned wholly by an individual Tribal Member of the Cheyenne River Sioux Tribe and is not owned or operated by the Cheyenne River Sioux Tribe or any of its political subdivisions. WESTERN SKY FINANCIAL is a Native American business operating within the exterior boundaries of the Cheyenne River Sioux Reservation, a sovereign nation located within the United States of America. Western Sky loans are not available to consumers in California, Colorado, Connecticut, Illinois, Kentucky, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New York, Ohio, Oregon, Pennsylvania, South Dakota, Vermont, Washington and West Virginia .

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EXHIBIT B

For a CashCall's Mortgage Division Loan
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[Customer Login](#)

Just Minutes

Is all it takes to get your free credit score!
A complete application is required.

[Apply Now](#)



Apply NOW!
or call us at
1-866-590-CASH
Or

We'll call you. Just fill out this simple form:

First Name

Last Name

Email Address

Telephone Number

By clicking the Submit button, I expressly consent to receiving any live or prerecorded telephone call, including to my wireless phone, regarding loans options for CashCall.

How Does CashCall Work?

Just complete our short online application, and receive an answer in minutes. It doesn't get any easier than this!
[More](#)

- \$2,600 Loan
- \$5,075 Loan
- \$10,000 Loan
- \$25,000 Loan

[Our Products](#)
[More](#)

It only takes minutes to get your free Credit Score. A complete application is required.
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What do our Clients have to say?

"... You guys have been an answer to my prayers. Without CashCall, I would not have been able to fix my car and get back to work. I would recommend CashCall to anyone..."

Sarah W. Newport Beach, CA
[More](#)

Click to [Apply Now](#) or call 1-866-590-CASH



For a CashCall's Mortgage Division Loan
[Click here.](#)

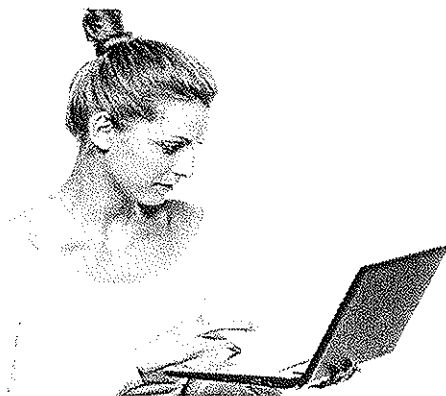
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Now Let's Talk Numbers

Take Notice

that not all applicants will qualify for every loan product or the lowest interest rate for a particular loan product. Some applicants will not qualify for any of our products. Our lowest rates and higher loan products are reserved for customers with excellent credit.



CashCall reserves the right to change the rates and loan products shown without notice.

Loan Product	Borrower Proceeds	Loan Fee	APR	Number of Payments	Payment Amount
\$25,000	\$24,925	\$75	35.87%	120	\$767.44
\$10,000	\$9,925	\$75	89.68%	84	\$743.49
\$5,075	\$5,000	\$75	116.73%	84	\$486.58
\$2,600	\$2,525	\$75	184.36%	47	\$388.40
\$2,600	\$2,525	\$75	139.22%	47	\$294.46

Click to [Apply Now](#) or call 1-866-590-CASH



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EXHIBIT C

WESTERN SKY CONSUMER LOAN AGREEMENT

Loan No.: 8019992	Date of Note: March 01, 2012
	Expected Funding Date: March 01, 2012
Lender: Western Sky Financial, LLC	Borrower: [REDACTED]
Address: P.O. Box 378 Timber Lake, SD 57656	Address: [REDACTED]

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 that no other state or federal law or regulation shall apply to this Loan Agreement, its enforcement or interpretation.

You further agree that you have executed the Loan Agreement as if you were physically present within the exterior boundaries of the Cheyenne River Indian Reservation, a sovereign Native American Tribal Nation; and that this Loan Agreement is fully performed within the exterior boundaries of the Cheyenne River Indian Reservation, a sovereign Native American Tribal Nation.

In this Loan Agreement, the words "you" and "your" mean the person signing as a borrower. "We," "us," "our," and "Lender" mean Western Sky Financial, LLC, a lender authorized by the laws of the Cheyenne River Sioux Tribal Nation and the Indian Commerce Clause of the Constitution of the United States of America, and any subsequent holder of this Note ("Western Sky").

TRUTH IN LENDING DISCLOSURES: The disclosures below are provided to you so that you may compare the cost of this loan to other loan products you might obtain in the United States. Our inclusion of these disclosures does not mean that we consent to application of state or federal law to us, to the loan, or this Loan Agreement.

TRUTH IN LENDING ACT DISCLOSURE STATEMENT

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
<i>The cost of your credit as a yearly rate</i>	<i>The dollar amount the credit will cost you</i>	<i>The amount of credit provided to you</i>	<i>The amount you will have paid after all payments are made as scheduled</i>
232.67%	\$3,942.81	\$1,000.00	\$4,942.81

PAYMENT SCHEDULE

One payment of \$186.25 on April 01, 2012.
24 monthly payments of \$198.19 beginning on May 01, 2012.

Late Charge: If a payment is more than 15 days late, you will be charged \$29.00.

Prepayment: If you pay off this loan early, you will not have to pay any penalty.

Please see the remainder of this document for additional information about nonpayment, default and any required repayment in full before the scheduled date.

ITEMIZATION OF AMOUNT FINANCED

Amount Financed:	\$1,000.00
Amount Paid to Borrower Directly:	\$1,000.00
Prepaid Finance Charge/Origination Fee:	\$500.00

You promise to pay to the order of Western Sky or any subsequent holder of this Note the sum of \$1,500.00, together with interest calculated at 149.00% per annum and any outstanding charges or late fees, until the full amount of this Note is paid. You promise to repay this loan by making, at a minimum, the payments described on the payment schedule listed above.

Payments will be applied first to any outstanding charges or late fees, then to earned interest and finally to principal. The payment schedule described above may change in the event you do not make all payments as scheduled or in the event you accrue any fees.

Interest is calculated on a 360/360 simple interest basis. This means that interest is calculated by dividing the annual interest rate by 360, multiplying that number by the outstanding principal balance, and multiplying that number by the number of days the principal balance is outstanding, assuming that each full month is comprised of 30 days.

You may prepay all or any part of the principal without penalty.

If you fail to make any payment due hereunder, the holder of this Note shall have the right, after a 30-day grace period, to declare this note to be immediately due and payable. If you file for an assignment for the benefit of creditors, or for bankruptcy, the holder of this Note shall have the right to declare this Note to be immediately due and payable.

Except as may be provided in the "Arbitration" section of this Note, if we are required to employ an attorney at law to collect any amounts due hereunder, you will be required to pay the reasonable fees of such attorney to protect our interest or to take any other action required to collect the amounts due hereunder.

The Prepaid Finance Charge disclosed above is fully earned upon loan origination and is not subject to rebate upon prepayment or acceleration of this Note.

LATE FEES. You will be subject to a late fee of \$29.00 if you fail to make your payment within 15 days of the due date. We can collect any late fees immediately via Electronic Funds Transfer (EFT) from your bank account.

INSUFFICIENT FUNDS. You will be subject to a fee of \$29.00 if any payment you make is returned by your bank for insufficient funds.

E-SIGN/ELECTRONIC COMMUNICATIONS. Although federal law does not apply to this Agreement, this Note is in original format an electronic document fully compliant with the Electronic Signatures in Global and National Commerce Act (E-SIGN) and other applicable laws and regulations, and the one, true original Note is retained electronically by us. All other versions hereof, whether electronic or in tangible format, constitute facsimiles or reproductions only. You understand that you have previously consented to receive all communications from us, including but not limited to all required disclosures, electronically.

CREDIT REPORTS. You agree that we may obtain credit reports on you on an ongoing basis as long as this loan remains in effect. You also authorize us to report information concerning this account to credit bureaus and anyone else we believe in good faith has a legitimate need for such information. Late payments, missed payments, or other defaults on this account may be reflected in your credit report.

CALL MONITORING/RECORDING. You understand that, from time to time, we may monitor or record telephone calls between us for quality assurance purposes. You expressly consent to have your calls monitored or recorded.

TELEPHONE CALLS. You hereby agree that in the event we need to contact you to discuss your account or the repayment of your loan, we may telephone you at any number, including any cell phone number provided, and that we may leave an autodialed or prerecorded message or use other technology to make that contact or to communicate to you the status of your account.

VERIFICATION. You authorize us to verify all of the information you have provided in obtaining approval of this Loan.

GOVERNING LAW. This Agreement is governed by the Indian Commerce Clause of the Constitution of the United States of America and the laws of the Cheyenne River Sioux Tribe. We do not have a presence in South Dakota or any other states of the United States. Neither this Agreement nor Lender is subject to the laws of any state of the United States of America. By executing this Agreement, you hereby expressly agree that this Agreement is executed and performed solely within the exterior boundaries of the Cheyenne River Indian Reservation, a sovereign Native American Tribal Nation. You also expressly agree that this Agreement shall be subject to and construed in accordance only with the provisions of the laws of the Cheyenne River Sioux Tribe, and that no United States state or federal law applies to this Agreement. You agree that by entering into this Agreement you are voluntarily availing yourself of the laws of the Cheyenne River Sioux Tribe, a sovereign Native American Tribal Nation, and that your execution of this Agreement is made as if you were physically present within the exterior boundaries of the Cheyenne River Indian Reservation, a sovereign Native American Tribal Nation.

ASSIGNMENT. We may assign or transfer this Loan Agreement or any of our rights under it at any time to any party.

WAIVER OF JURY TRIAL AND ARBITRATION.

PLEASE READ THIS PROVISION OF THE AGREEMENT CAREFULLY. Unless you exercise your right to opt-out of arbitration in the manner described below, any dispute you have with Western Sky or anyone else under this loan agreement will be resolved by binding arbitration. Arbitration replaces the right to go to court, including the right to have a jury, to engage in discovery (except as may be provided in the arbitration rules), and to participate in a class action or similar proceeding. In Arbitration, a dispute is resolved by an arbitrator instead of a judge or jury. Arbitration procedures are simpler and more limited than court procedures. Any Arbitration will be limited to the dispute between yourself and the holder of the Note and will not be part of a class-wide or consolidated Arbitration proceeding.

Agreement to Arbitrate. You agree that any Dispute, except as provided below, will be resolved by Arbitration, which shall be conducted by the Cheyenne River Sioux Tribal Nation by an authorized representative in accordance with its consumer dispute rules and the terms of this Agreement.

Arbitration Defined. Arbitration is a means of having an independent third party resolve a Dispute. A "Dispute" is any controversy or claim between you and Western Sky or the holder or servicer of the Note. The term Dispute is to be given its broadest possible meaning and includes, without limitation, all claims or demands (whether past, present, or future, including events that occurred prior to the opening of this Account), based on any legal or equitable theory (tort, contract, or otherwise), and regardless of the type of relief sought (i.e. money, injunctive relief, or declaratory relief). A Dispute includes, by way of example and without limitation, any claim based upon marketing or solicitations to obtain the loan and the handling or servicing of my account whether such Dispute is based on a tribal, federal or state constitution, statute, ordinance, regulation, or common law, and including any issue concerning the validity, enforceability, or scope of this loan or the Arbitration agreement. For purposes of this Arbitration agreement, the term "the holder" shall include Western Sky or the then-current note holder's employees, officers, directors, attorneys, affiliated companies, predecessors, and assigns, as well as any marketing, servicing, and collection representatives and agents.

Choice of Arbitrator. Any party to a dispute, including a Holder or its related third parties, may send the other party written notice by certified mail return receipt requested at the address appearing at the top of this Agreement of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Regardless of who demands arbitration, you shall have the right to select any of the following arbitration organizations to administer the arbitration: the American Arbitration Association (1-800-778-7879) <http://www.adr.org>; JAMS (1-800-352-5267) <http://www.jamsadr.com>; or an arbitration organization agreed upon by you and the other parties to the Dispute. The arbitration will be governed by the chosen arbitration organization's rules and procedures applicable to consumer disputes, to the extent that those rules and procedures do not contradict either the law of the Cheyenne River Sioux Tribe or the express terms of this Agreement to Arbitrate, including the limitations on the Arbitrator below. The party receiving notice of Arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. You understand that if you demand Arbitration, you must inform us of your demand and of the arbitration organization you have selected. You also understand that if you fail to notify us, then we have the right to select the arbitration organization. Any arbitration under this Agreement may be conducted either on tribal land or within thirty miles of your residence, at your choice, provided that this accommodation for you shall not be construed in any way (a) as a relinquishment or waiver of the Cheyenne River Sioux Tribe's sovereign status or immunity, or (b) to allow for the application of any law other than the law of the Cheyenne River Sioux Tribe of Indians to this Agreement.

Cost of Arbitration. We will pay the filing fee and any costs or fees charged by the arbitrator regardless of which party initiates the Arbitration. Except where otherwise provided by the law of the Cheyenne River Sioux Tribal Nation, each party will be responsible for its own attorneys' fees and other expenses. Unless prohibited by law, the arbitrator may award fees, costs, and reasonable attorneys' fees to the party who substantially prevails in the Arbitration.

Waiver of Rights. YOU HEREBY AGREE THAT YOU ARE WAIVING YOUR RIGHT TO A JURY TRIAL, TO HAVE A COURT DECIDE YOUR DISPUTE, TO PARTICIPATE IN A CLASS ACTION LAWSUIT, AND TO CERTAIN DISCOVERY AND OTHER PROCEDURES THAT ARE AVAILABLE IN A LAWSUIT. The arbitrator has the ability to award all remedies available by statute, at law, or in equity to the prevailing party, except that the parties agree that the arbitrator has no authority to conduct class-wide proceedings and will be restricted to resolving the individual disputes between the parties. The validity, effect, and enforceability of this waiver of class action lawsuit and class-wide Arbitration is to be determined solely by a court of competent jurisdiction located within the Cheyenne River Sioux Tribal Nation, and not by the arbitrator. If the court refuses to enforce the class-wide Arbitration waiver, or if the arbitrator fails or refuses to enforce the waiver of class-wide Arbitration, the parties agree that the Dispute will proceed in tribal court and will be decided by a tribal court judge, sitting without a jury, under applicable court rules and procedures.

Applicable Law and Judicial Review. THIS ARBITRATION PROVISION IS MADE PURSUANT TO A TRANSACTION INVOLVING THE INDIAN COMMERCE

CLAUSE OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, AND SHALL BE GOVERNED BY THE LAW OF THE CHEYENNE RIVER SIOUX TRIBE. The arbitrator will apply the laws of the Cheyenne River Sioux Tribal Nation and the terms of this Agreement. The arbitrator must apply the terms of this Arbitration agreement, including without limitation the waiver of class-wide Arbitration. The arbitrator will make written findings and the arbitrator's award may be filed in the Cheyenne River Sioux Tribal Court, which has jurisdiction in this matter. The Arbitration award will be supported by substantial evidence and must be consistent with this Agreement and applicable law or may be set aside by a court upon judicial review.

Small Claims Exception. All parties, including related third parties, shall retain the right to seek adjudication in a small claims tribunal in the Cheyenne River Sioux Tribal Small Claims Court for disputes within the scope of such tribunal's jurisdiction. Any dispute, which cannot be adjudicated within the jurisdiction of a small claims tribunal, shall be resolved by binding arbitration. Any appeal of a judgment from a small claims tribunal shall be resolved by binding arbitration.

Other Provisions. This Arbitration provision will survive: (i) termination or changes in this Agreement, the Account, or the relationship between us concerning the Account; (ii) the bankruptcy of any party; and (iii) any transfer, sale or assignment of my Note, or any amounts owed on my account, to any other person or entity. This Arbitration provision benefits and is binding upon you, your respective heirs, successors and assigns. It also benefits and is binding upon us, our successors and assigns, and related third parties. The Arbitration Provision continues in full force and effect, even if your obligations have been paid or discharged through bankruptcy. The Arbitration Provision survives any termination, amendment, expiration, or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing. If any of this Arbitration Provision is held invalid, the remainder shall remain in effect.

Right to Opt Out. If you do not wish your account to be subject to this Arbitration Agreement, you must advise us in writing at P.O. Box 370, Timber Lake, South Dakota, 57565, or via e-mail at info@westernsky.com. You must clearly print or type your name and account number and state that you reject Arbitration. You must give written notice; it is not sufficient to telephone us. We must receive your letter or e-mail within sixty (60) days after the date your loan funds or your rejection of Arbitration will not be effective. In the event you opt out of Arbitration, any disputes hereunder shall nonetheless be governed under the laws of the Cheyenne River Sioux Tribal Nation.

Payments. You have previously authorized and requested us to initiate an automated clearinghouse or other electronic funds transfer ("EFT") from the bank account identified on your Application (the "Bank Account") to make each payment required hereunder on the day it is due. You also authorize us to initiate an EFT to or from the Bank Account to correct any erroneous payment and, in the event any EFT is unsuccessful, to attempt such payment up to two additional times. You understand that unsuccessful EFTs may result in charges by your bank, and you agree that we are not liable for such charges. We will notify you 10 days prior to any given transfer if the amount to be transferred varies by more than \$50 from your regular payment amount. You also authorize us to withdraw funds from your account on additional days throughout the month in the event you are delinquent on your loan payments. Your request and authorization for us to initiate EFTs is entirely voluntary, and you may terminate this authorization by notifying us in writing via fax (866-347-0666) or email (customer.service@westernsky.com) soon enough to allow us a reasonable opportunity to act on your termination (generally at least three business days in advance).

THIS LOAN CARRIES A VERY HIGH INTEREST RATE. YOU MAY BE ABLE TO OBTAIN CREDIT UNDER MORE FAVORABLE TERMS ELSEWHERE. EVEN THOUGH THE TERM OF THE LOAN IS 25 MONTHS, WE STRONGLY ENCOURAGE YOU TO PAY OFF THE LOAN AS SOON AS POSSIBLE. YOU HAVE THE RIGHT TO PAY OFF ALL OR ANY PORTION OF THE LOAN AT ANY TIME WITHOUT INCURRING ANY PENALTY. YOU WILL, HOWEVER, BE REQUIRED TO PAY ANY AND ALL INTEREST THAT HAS ACCRUED FROM THE FUNDING DATE UNTIL THE PAYOFF DATE.

CAUTION: IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS AGREEMENT BEFORE YOU SIGN IT. YOU ARE ENTITLED TO A COPY OF THIS AGREEMENT.

<input checked="" type="checkbox"/>	YOU HAVE READ AND UNDERSTAND THE ARBITRATION SECTION OF THIS NOTE AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THAT SECTION.
<input checked="" type="checkbox"/>	YOU HAVE READ ALL OF THE TERMS AND CONDITIONS OF THIS PROMISSORY NOTE AND DISCLOSURE STATEMENT AND AGREE TO BE BOUND THERETO. YOU UNDERSTAND AND AGREE THAT YOUR EXECUTION OF THIS NOTE SHALL HAVE THE SAME LEGAL FORCE AND EFFECT AS A PAPER CONTRACT.

CONSUMER COMPLAINTS - If you have a complaint about our loan, please let us know. You can contact us at P.O. Box 370, Timber Lake, South Dakota, 57565, telephone (877) 860-2274.

Click [here](#) to print out a copy of this document for your records.

EXHIBIT D

SFmc



Department of Law
State of Georgia

THURBERT E. BAKER
ATTORNEY GENERAL
17 November 2010

40 CAPITOL SQUARE SW
ATLANTA, GA 30334-1300

Western Sky Financial
P.O.Box 370
Timber Lake, SD, 57656

Direct Dial:
404.656.4103
Facsimile:
404.656.0677
Email:
ABurns
@law.ga.gov

RE: Online payday lending in Georgia.

Dear Sir or Madame:

This office has received a complaint from a Georgia citizen regarding a loan made by your company which appears to violate Georgia law. Georgia law specifically prohibits the making of payday loans, including the making of payday loans to Georgia residents through the internet. See O.C.G.A. § 16-17-1, *et seq.* Please note this law is part of the criminal code of Georgia, and as such, violation is subject to felony criminal prosecution and racketeering charges. Loans made to Georgia residents via the internet are subject to Georgia law. See O.C.G.A. § 16-17-2(c)(1); *Colorado v. Cash Advance and Preferred Loans*, 205 P.3d 389 (Colo. App. 2008) and *Cash America Net of Nevada, LLC v. Commonwealth of Pennsylvania*, 2010 Pa. LEXIS 2386 (Pa., Oct. 19, 2010).

Even if Western Sky is a Native American owned company operating within the boundaries of the Cheyenne River Sioux Tribe, when it conducts business in Georgia, Georgia law applies. See *Dept. of Health and Human Services v. Scott B. Maybee*, 965 A.2d 55 (Me. 2009); *State ex rel. Suthers v. Cash Adv. & Preferred Loans*, 205 P.3d 389 (Colo. App. 2008).

I would like to know if it is your company's intent to continue offering payday loans to Georgia residents and if so, why you believe this matter should not be referred to the appropriate district attorney for prosecution. Otherwise, I request you immediately modify your website to eliminate Georgia as an option in the state pull down menu and add a disclaimer that these loans are not available to residents of Georgia. Also, as loans made in violation of Georgia law are void as a matter of law, please confirm that no further collections will occur on any outstanding loans to Georgia citizens.

I look forward to your response.

Sincerely,

Amy C. M. Burns
Assistant Attorney General