IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA ex rel.
DARRELL V. McGRAW, Jr.,
ATTORNEY GENERAL,
Plaintiff,

v.

Civil Action No.: 08-C-1964
Judge Louis H. Bloom

CASHCALL, INC., and
J. PAUL REDDAM, in his capacity as
President and CEO of CashCall, Inc.,
Defendants.

FINAL ORDER ON PHASE II OF TRIAL: THE STATE'S USURY AND LENDING CLAIMS[1]

On October 31 and November 1, 2011, came the Plaintiff, the State of West Virginia ex rel. Darrell V. McGraw, Jr., Attorney General ("State" or "Attorney General"), by Norman Googel and Douglas Davis, Assistant Attorney Generals, and the Defendants, CashCall, Inc. ("CashCall") and J. Paul Reddam ("Mr. Reddam" or collectively "Defendants"), by counsel, Charles L. Woody, Bruce M. Jacobs, and Eric N. Whitney, *pro hoc vice*, for a bench trial pursuant to W. Va. Code § 46A-7-112, upon the "Amended Complaint for Injunction, Consumer Restitution, Civil Penalties, and Other Appropriate Relief" ("Amended Complaint") in the above-styled action. Upon the parties' agreement, the Court bifurcated for trial the counts of the Plaintiff's Amended Complaint. On October 31 and November 1, 2011, the Court heard all of the evidence on the State's debt collection claims, as set forth in the fifth through fifteen causes of action in the Amended Complaint. On January 3, 2012, the Court heard all of the evidence on the State's usury and lending claims, as set forth in the second through fourth causes of action in

[1] The Court will enter a separate final order on Phase I of the trial regarding the State's debt collection claims against CashCall.

the Amended Complaint. Upon review of the evidence, including the testimony offered at trial, the pleadings of record, the parties' proposed findings of fact and conclusions of law, and the applicable law, the Court makes the following findings of fact and conclusions of law, as to the State's usury and lending claims.

FINDINGS OF FACT

Background and Procedural History

1. In 2007, the State opened a formal investigation of CashCall and Mr. Reddam, its sole owner and shareholder, after receiving many complaints from West Virginia consumers about CashCall's usurious interest rates and its debt collection practices.

2. On August 30, 2007, the Attorney General issued an investigative subpoena, as authorized by W. Va. Code § 46A-7-104, directing CashCall to produce all of its lending and debt collection activities in West Virginia.

3. By letter dated October 22, 2007, CashCall responded but did not comply with the subpoena. In the letter, CashCall asserted that it was not the lender, but was merely a "marketing agent" for the state-chartered bank, First Bank & Trust, Milbank, South Dakota ("Bank").[2] Ex. C, Amended Complaint, Subpoena Response Letter, p. 3.

4. Based upon its investigation of the consumer complaints, CashCall's responses and its independent review of the applicable law, the State concluded that the lending program established by CashCall with the Bank was essentially a sham intended to make improper use of federal preemption in order to unlawfully evade West Virginia's lender licensing and usury laws. *See* Amended Complaint. Based on its conclusions, the State demanded that CashCall cease the

[2] The State originally included a claim for failure to comply with the subpoena against CashCall ("First Cause of Action"), but agreed to dismiss this claim as moot. *See* Pre-Trial Order.

continued collection of its loans and make appropriate restitution to aggrieved consumers. CashCall declined to do so.[3]

5. On October 8, 2008, the State commenced the above-styled civil action by filing a "Complaint for Injunction, Consumer Restitution, Civil Penalties and Other Appropriate Relief" ("Complaint") against the Defendants.

6. On November 17, 2008, the Defendants removed the case to federal court, asserting that the Bank is the real party in interest and as such the State's usury law claims against CashCall are completely preempted by §27 of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §1831d. Defendant's Notice of Removal; *See* Discussion, *infra*.

7. By order entered March 11, 2009, U.S. District Court Judge Joseph R. Goodwin found that because the State only asserts state law claims against CashCall, a non-bank entity, "the claims do not implicate the FDIA, the FDIA does not completely preempt the state-law claims, and there are no federal questions on the face of the Complaint." *West Virginia v. CashCall, Inc.*, 605 F.Supp.2d 781 (S.D.W. Va. 2009). The case was remanded back to this Court. *See id.*

8. The State filed a motion for leave to amend its Complaint, which was granted by this Court by order entered June 4, 2010. It is the Amended Complaint that is before the Court in this trial.

9. On October 27, 2011, the Court entered a Pre-Trial Order by which it granted, in part, and denied, in part, the Motion to Dismiss filed by the Defendant, J. Paul Reddam. Specifically, the Court found that because there is no allegation in the Amended Complaint, except ¶ 13, referencing the Defendant J. Paul Reddam as a party and that the State does not seek any relief

[3] CashCall made and/or collected the loans in West Virginia, as alleged by the State, from August 2006 to March 2007. Ex. C, Amended Complaint, Subpoena Response Letter, p. 2; Transcript of January 3, 2012 Trial ("Tr. Vol. III"), p. 105.

against Defendant Reddam, the Court would not impose any liability on Defendant Reddam. However, Defendant Reddam was ordered to remain a party to the action. Pre-Trial Order, ¶ 2.

10. The Court ordered the trial be bifurcated into two phases: (1) Phase I on the alleged violations of the West Virginia Consumer Credit Protection Act by CashCall and (2) Phase II on the alleged violations of West Virginia usury and lending laws by CashCall. This Final Order only addresses Phase II of the trial.

DISCUSSION

1. CashCall is a California corporation whose principal business office is located in Anaheim, California. CashCall also maintains a facility in Las Vegas, Nevada.

2. The Bank was and is a South Dakota state-chartered bank insured and regulated by the FDIC, at all times pertinent times herein. Pursuant to §27 of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1831d, as a state-chartered bank, the Bank may charge interest rates permitted in South Dakota on loans made outside of South Dakota, even if such interest rates are illegal in the state where the loans are made.

3. The marketing, making, and collection of consumer loans is subject to the provisions of the West Virginia Consumer Credit and Protection Act ("WVCCPA"), W. Va. Code § 46A-1-101, et seq., which is enforced by the Attorney General pursuant to W. Va. Code § 46A-7-101, et seq.

4. CashCall and the Bank are completely separate entities. *See* First Amended and Restated Consumer Loan Marketing, Organization, and Sale Agreement, Section 11.8, p. 24, State's Ex. 8. Specifically, the parties' agreement states that the "Bank and CashCall agree they are independent contractors to each other in performing their respective obligations [under the agreement]." *Id.*

5. The West Virginia Legislature created the Lending and Credit Rate Board ("Lending Board") and authorized the Lending Board to prescribe maximum interest rates and charges on loans, credit sales or transactions. W. Va. Code § 47A-1-1, et seq. The maximum interest rate that could be charged to West Virginia consumers on the type of loans at issue is eighteen percent (18%) per annum. Ex. A, Amended Complaint.

6. The State argues that CashCall is the de facto lender of the loans made to West Virginia consumers and that the collective agreements between it and the Bank are nothing more than sham agreements intended to usurp state usury and lending laws by making an improper assertion of federal preemption. Specifically, the State argues that CashCall, as the de facto lender, violated the State's usury and lending laws by making usurious loans with interest rates far exceeding those allowed by West Virginia law. Based upon the testimony presented and the evidence offered, specifically that of the four agreements between CashCall and the Bank, the Court agrees with the State that CashCall was the de facto lender and thus, is subject to West Virginia's usury and lending laws.

7. The four agreements between CashCall and the Bank allocate the risk and define the lending program at issue in this action. State's Ex. 5, 6, 7 and 8 (collectively "Agreement"). The Agreement was admitted by stipulation. Transcript of January 3, 2012, Trial ("Tr. Vol. III"), pp. 40-42.

8. The Agreement established a business model under which CashCall's role was purportedly limited to marketing and servicing the loans, whereas, the Bank's roles was to underwrite and fund the loans. Agreement, Sections 3.1-3.2, pp. 4-6. Because the Agreement characterizes the Bank as the lender, CashCall argues that the interest rates on the subject loans

were governed by the law of the Bank's home state, South Dakota, which has no usury laws, not the laws of West Virginia which caps interest rates for the type of loans at issue at 18%.

9. Under the lending program established by the Agreement, a total of 292 loans were made to West Virginia consumers, beginning in August 2006 up to and including March 2007. Joint Ex. 1. Three types of loans were made in West Virginia: (1) loans in the amount of $1,000 at 89% interest; (2) loans in the amount of $2,525 at 96 % interest; and (3) loans in the amount of $5,000 at 59% interest. Tr. Vol. III, p. 23; Joint Ex. 1. There were a total of 292 loans made to West Virginia consumers, consisting of 15 loans of $1,000; 214 loans of $2,525; and 63 loans of $5,000. *See* Joint Ex. 1.

10. The evidence shows that to date, West Virginia consumers made total payments of $1,201,366.12 to CashCall throughout the duration of the lending program. *See* Joint Ex. 1. The total amount of interest "agreed to be paid" by West Virginia consumers (as distinguished from the amount actually paid) is $2,511,421.99. *See* Joint Ex. 1.

11. The State does not dispute that a national or state-chartered bank may charge whatever interest rates are permitted by its home state and that it would not be required to obtain a lender license from any state other than its home state. *See* § 27 of the FDIA, 12 U.S.C. § 1831d.

Testimony of the State's Expert Witness: Margot Saunders

12. The State called Margot Freeman Saunders as its first and only witness in support of its second through fourth causes of actions ("Phase II of trial"). The State had previously disclosed Ms. Saunders as its expert witness in this case in accordance with the Scheduling Order entered by the Court.

13. Ms. Saunders is a lawyer who currently resides in Charleston, West Virginia, and has been employed by the National Consumer Law Center ("NCLC") from 1991 through the present. Ms. Saunders indicated her expertise includes policy analysis and advocacy in the areas of predatory lending, credit reporting, debt collecting, electronic commerce and benefits transfer, preservation of home ownership, credit math, electronic transaction issues, utility costs for low-income households, and other consumer credit issues. State's Ex. 1, Tr. Vol. III, p. 18 (Ms. Saunder's resume). She has provided written and oral testimony as a witness to Congressional Committees regarding policy issues affecting low-income consumers on at least nineteen occasions. These Committees include the Subcommittee on Financial Institutions and Consumer Credit, House Financial Services Committee, House Ways and Means Committee, Senate Finance Committee, Senate Banking Committee, House Subcommittee on Financial Institutions and Consumer Credit, Senate Committee on Banking, Housing and Urban Affairs, and many others. State's Ex. 1, Tr. Vol. III.[4]

14. As of October 2011, Ms. Saunders provided an expert report, was deposed, and/or provided testimony in court as an expert witness in twenty nine cases involving such subjects as mortgage lending, consumer credit, and predatory lending. *See* State's Ex. 1, Tr. Vol. III. Ms. Saunders was qualified to testify as an expert witness in a predatory mortgage lending case by the Honorable Arthur Recht, Circuit Court of Ohio County, in *Lourie Brown and Monique Brown v. Quicken Loans, Inc., et al.*, Civil Action No. 08-C-36. Tr. Vol. III, p. 8-9. She was also qualified to testify as an expert witness on the subject of predatory lending by the United States Bankruptcy Court in Delaware. *See In re: American Home Mortgage Holdings, Inc., et al.*, U.S.

[4]Ms. Saunders has also served as a presenter and trainer on policy issues relating to such topics as low-income consumers, electronic commerce, predatory mortgage lending, payday lending, interest calculation methods, and other credit issues sponsored by a variety of private associations and government agencies. *See* State's Ex. 1, Tr. Vol. III.

Bankruptcy Court for the District of Delaware, Case No. 07-11047. State's Ex. 1, Tr. Vol. III, p. 9.

15. On cross-examination, Ms. Saunders testified that as part of her analysis in predatory lending cases she regularly examines contracts between the lender and brokers and that the brokers in those cases operate much like CashCall. She testified that she was "quite familiar with interpreting bank contracts . . . and with its agents." Tr. Vol. III, p. 59. Ms. Saunders also testified that she has reviewed contracts between a bank and a purported agent relating to their marketing or assistance in solicitation of loans to the bank. *Id.* For example, Ms. Saunders explained that it is a "standard part of [her] review in mortgage cases to analyze contracts between the lender and brokers to determine such issues as who has the underwriting requirements, who has what obligations to analyze the borrower's income and ability to repay, and who determines the ultimate decision of whether the loan will be made." *Id.* Such analyses are very similar to what she was asked to do as an expert witness in this case.

16. Pending the issuance of this Order, the Court held in abeyance its ruling on the qualifications of Ms. Saunders to testify as an expert witness. Upon review of Ms. Saunders' testimony and in light of her professional experience, as set forth in State's Exhibit 1, the Court now finds that Ms. Saunders is qualified to testify as an expert witness on the subject of consumer lending. The Court further finds that Ms. Saunder's expertise in the field of predatory lending, particularly her analysis of contracts and relationships between lenders and brokers, qualifies her to testify about the contracts and agreements between CashCall and the Bank and to assist the Court in determining those parts of the Agreement that show which party bore the economic risk as between CashCall and the Bank in regards to the subject consumer loans. Such testimony, as well as the Agreement between CashCall and the Bank, assisted the Court in

deciding the ultimate question of which party to the Agreement was the true lender in the loans to West Virginia consumers.

17. Based upon the documents produced by CashCall during discovery, Ms. Saunders was asked to describe the loan amounts offered to West Virginia consumers. She testified that the program offered loans in the amounts of $1,075, at 89% interest; $2,600, at 96% interest; and $5,075, at 59% interest. Tr. Vol. III, p. 23; State's Ex. 2.[5] Ms. Saunders was asked to perform an analysis of what the interest rates charged to West Virginia consumers would have been if the loans had been governed by West Virginia law, with an interest rate of 18%, in comparison to the rates actually charged to consumers. Using a loan of $2600.00 as an illustrative example, Ms. Saunders explained that at an interest rate of 18%, the consumer would make 42 payments of $81.47 per month, with total interest payments of $896.62. In contrast, a consumer who borrowed $2,600.00 at the 96% interest rate would make 42 payments of $216.55, with total interest payments of $6,494.92. State's Ex. 3, Tr. Vol. III; Tr. Vol. III, p. 33.

18. Ms. Saunders also offered an opinion as to how CashCall's business model worked. According to Ms. Saunders, CashCall entered into a contract with a state-chartered bank to use the bank's charter to make loans in states like West Virginia that have usury laws. Under such arrangement, the non-bank entity, in this case CashCall, asserts that it may charge whatever interest rate is allowed by the state-chartered bank's home state under the protection of § 27 of the FDIA. Tr. Vol. III, p. 34. Since the Bank is based in South Dakota, which has no usury laws, there is no limit to the amount of interest that West Virginia consumers could allegedly be charged on the subject loans.

[5] As previously stated, according to the parties' "Joint Exhibit 1," agreed to and submitted by the parties after the close of evidence, the program offered loans in the amounts of $1,000.00; $2,525.00; and $5,000.000.

19. Ms. Saunders also testified that the business model in question here, which has been characterized as "rent-a-bank" or "rent-a-charter," has been under considerable challenge for many years by state regulators and private parties. Tr. Vol. III, p. 36. Ms. Saunders testified that regulators challenged such arrangements by contending that the non-bank entity was the true lender rather than the bank. *Id.* When asked specifically how regulators approach this type of business model, Ms. Saunders explained:

> There would generally be a discussion of whether function follows the form or form follows function. In other words, just because the name of the bank was on the loan, did that indicate that the back was actually the lender? And the analysis often boiled down to which party, the bank or the non-bank lender, had the predominant economic risk in relation to the loans.

Tr. Vol. III, p. 37.

20. Ms. Saunders was also asked to analyze the lending program's underwriting guidelines in connection with her testimony in this case. She testified that she could not find many differences of any significance between CashCall's underwriting guidelines and the Bank's underwriting guidelines. Tr. Vol. III, p. 38. The document containing the underwriting guidelines of CashCall and the Bank analyzed by Ms. Saunders was admitted into evidence as State's Exhibit 4. Tr. Vol. III, p. 40.

21. Ms. Saunders was also asked in connection with her testimony to analyze the Agreements between the Bank and CashCall and to state in her opinion which party bore the economic risk in relation to the loans made to consumers. Tr. Vol. III, p. 47. She testified that she created a table or chart that summarizes the parts of all the agreements that she found relevant to the question of which party bore the economic risk of the loans. Ms. Saunders highlighted the following terms in her testimony: CashCall has the duties of preparing all the advertising materials, soliciting consumers, taking all the applications, verifying the identity of the applicants, providing on the

Bank's behalf all completed adverse action notices, and maintaining all of these applications. Tr. Vol. III, p. 50.

22. Ms. Saunders also testified that CashCall was obligated to deposit with the Bank $1.5 million, or the sum of the loans made in the highest yielding two days in the previous thirty days; CashCall's owner, J. Paul Reddam, in addition, was required to give a personal guarantee of all CashCall's monetary obligations to the Bank under the lending program; the Bank sold all loans to CashCall without recourse; and CashCall was obligated to indemnify the Bank against CashCall's mistakes and the Bank's losses, including all claims that materials or other aspects of the program violate any rule and claims by borrowers. Tr. Vol. III, p. 51; *See* ¶ 50, *infra*. The chart containing Ms. Saunders' summary of the terms from the agreements that are relevant to which party bore the predominant economic risk of the loans was admitted into evidence as State's Exhibit 9. Tr. Vol. III, p. 54.

23. Based upon her review and analysis of the agreements between CashCall and the Bank, Ms. Saunders testified that in her opinion "[i]t appeared that CashCall bore the entire economic risk from these loans." Tr. Vol. III, p. 55.

24. During cross-examination by CashCall's counsel, Ms. Saunders was asked whether she had identified any evidence to demonstrate that it was CashCall and not the Bank that actually made the decision to extend credit. She said she had. Based upon a review of the depositions of J. Paul Reddam (CashCall's owner) and Elissa Chavez (CashCall's director of fraud prevention and dispute resolution), the contracts themselves and the marketing guidelines, she looked for evidence that the Bank had independently made underwriting decisions. She found "different indicia that the Bank really didn't make its own underwriting decisions and instead it was CashCall." Tr. Vol. III, p. 61-62.

25. Ms. Saunders testified that she had consulted with the FDIC in connection with her testimony in this case and that representatives of the FDIC had pointed out two FDIC actions involving CashCall in which it had disallowed this and similar lending programs for unfair trade practices. Tr. Vol. III, p. 64.[6] Ms. Saunders explained that the FDIC's action concerning First Bank of Delaware (the other bank that partnered with CashCall) and CompuCredit outlined the aspects of the bank's third-party lending program "that it deemed problematic and characterized under the unfair trade practices section of its Order." Tr. Vol. III, p. 70. Ms. Saunders explained that the FDIC document identified all of the "third-party lending programs" of concern involving the bank on Exhibit A, one of which was the bank's arrangements with CashCall. Tr. Vol. III, pp. 72-73; Defendant's Ex. 1.

26. CashCall's counsel pressed Ms. Saunders to concede that the FDIC's concerns were only directed at the bank and not CashCall, but she disagreed: "I think that the FDIC's goal here was to shut down the bank's third-party arrangements with CompuCredit and other entities, including CashCall. . . . That's how I read that, and that's what I was told by . . . an employee of the FDIC, what was happening here." Tr. Vol. III at 76. Furthermore, Ms. Saunders testified that "the FDIC thought the bank [First Bank of Delaware] had reputational risks" as distinguished from economic risks in the individual loan transactions. Tr. Vol. III, p. 77.

27. Ms. Saunders also answered affirmatively when the Court observed that "the Bank in question here in the CashCall case had no economic risks as to the individual loans. It was all being indemnified and held harmless by CashCall?" Tr. Vol. III, pp. 77-78. She explained:

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[6] *See In the Matter of First Bank of Delaware, and CompuCredit Corporation, Notice of Charges for an Order to Cease and Desist and for Restitution, Federal Deposit Insurance Corporation*, FDIC-07-256b, June 15, 2008, available at http://www.FDIC.gov/news/press/2008/FBDNoticeofCharges.pdf; *See also In the Matter of First Bank of Delaware, Stipulation and Consent to the Issuance of an Order to Cease and Desist, Order for Restitution, and Order to Pay*, October 3, 2008, available at http://www.FDIC.gov/bank/individual/enforcement/2008-10-20.pdf.

> That's correct. The FDIC shut down the arrangement [third-party arrangements between banks and non-bank entities like CashCall] because of the reputational risk to the banks and because the FDIC was getting quite a bit of heat from members of Congress and consumer groups over allowing these products—practice. . . . And what the FDIC did beginning in 2006 was stop these actions by individual compliance reviews so that the . . . FDIC actions were not public. In fact, I cited in my report the one evidence that we were able to find publicly of these FDIC shut downs that was reported in the Securities, Securities and Exchange Reports.

Tr. Vol. III, pp. 78-79.

Testimony of Dan Baron—CashCall's General Counsel

28. In Phase II of the trial, on the State's usury and lending claims against CashCall, CashCall presented only one witness, Dan Baron, CashCall's general counsel. Mr. Baron has been employed by CashCall since its inception in 2003. He testified that he is in charge of all regulatory matters, all of the litigation that comes in, and has negotiated most, if not all, of the major contracts between CashCall and its financing partners. He also said that he negotiated the agreements between CashCall and the two banks involved in the lending program at issue here. Tr. Vol. III, pp. 94-95.

29. CashCall's headquarters are currently located in Anaheim, California, and CashCall also has a servicing office in Las Vegas, Nevada. CashCall currently employs a little over 1,000 persons. Tr. Vol. III, pp. 97-98. CashCall currently is a direct lender in California only. CashCall secured its first lending license in California in 2003 and has fourteen consumer lending licenses that would allow it to make direct loans in thirteen other states. Tr. Vol. III, pp. 98-99.

30. Mr. Baron testified that CashCall extended its operations beyond California at the urging of its different financing partners. "They didn't like the fact that there was a huge concentration in borrowers, and they wanted us to diversify our service portfolio if we wanted more money

from them, basically." Tr. Vol. III, p. 102. By that time CashCall had secured lending licenses in three or four other states, and it was lending there, but he recounted the difficulties and length of time it took to get state lending licenses. Tr. Vol. III, pp. 102-103. Mr. Baron also testified that CashCall developed all the materials from scratch in connection with its direct lending program prior to entering into any third-party arrangements with banks. Tr. Vol. III, pp. 100-101.

31. Mr. Baron testified that around the time CashCall was diversifying it was approached by First Bank & Trust. They expressed interest in having CashCall market loans for them on a nationwide basis. According to Mr. Baron, CashCall's objective was to expand its loan program nationally, but primarily on the servicing side. The Bank's goal was to start consumer lending, but the Bank could not do that because it did not have the capacity to market or the ability and manpower to service the loans once they were originated. Tr. Vol. III, pp. 103-105.

32. During negotiations to establish the agreements with the Bank, Mr. Baron stated that the Bank was very concerned about how CashCall would be servicing the loans and wanted to make sure that CashCall would not do anything to "embarrass them or jeopardize their charter." Tr. Vol. III, p. 109. Mr. Baron testified that CashCall had the abilities to market and service a high volume of loans because it had been operating on its own with the systems it had created. "It had 100,000 outstanding loans in California at that point." Tr. Vol. III, p. 106.

33. In regards to how the online application process operated for West Virginia consumers, Mr. Baron testified that when a loan applicant clicked on "West Virginia," they would be directed to a website owned by the Bank on the Bank's system. Tr. Vol. III, p. 115. Once the applicant "passed their initial automated underwriting," a system that Mr. Baron stated was developed and controlled by the Bank, the file would get referred to the Bank where it would be

manually underwritten by a Bank underwriter. Mr. Baron testified that all loans were reviewed and approved by a Bank underwriter on Bank property who worked for the Bank with no input whatsoever from CashCall. Tr. Vol. III, pp. 115-116. However, Mr. Baron agreed that CashCall was not obligated to buy loans that deviated from the parties' agreed upon underwriting criteria set forth in the Agreement. Although Mr. Baron stated the Bank could alter the underwriting criteria, he admitted that CashCall was only obligated to purchase loans that met the criteria agreed to by CashCall and the Bank under the program guidelines. Tr. Vol. III, p. 119.

34. When asked his opinion on which party bore the economic risk of the loans under the agreements with the Bank, Mr. Baron explained: "We [CashCall] bore the economic risk. But the Bank was still on the hook for the underlying loan. . . . If there were Regulation Z problems, truth in lending problems, FTC issues, unfair and deceptive practices, the Bank was the entity that was going to get hit, and the Bank was the one who was going to lose its Charter in the event that there was something amiss." Tr. Vol. III, p. 134. He further testified that CashCall did purchase all of the West Virginia loans as required by the Agreement for "a hundred cents on the dollar." Tr. Vol. III, pp. 171-172. When asked about the specific provisions of the Agreement between CashCall and the Bank during cross-examination, Mr. Baron explained that the actual practice of how things sometimes operated deviated from the literal wording or meaning of the Agreement. *See generally* Tr. Vol. III, pp. 165-221.

35. Mr. Baron also admitted that the lending program with the Bank employed the accounting system that "CashCall had built from scratch." CashCall's accounting system tracked loan progress, the number of loans at various stages, the number of loans funded, and the loan amounts. Tr. Vol. III, pp. 179-180. CashCall's accounting system was used "because the Bank didn't want to start from scratch and have to spend God knows how much money or have us

spend God knows how much money to reinvent the wheel. It saw our system and said, 'You know what? The system you have here would work for us.'" Tr. Vol. III, p. 180.

36. In response to questions about the various provisions in the Agreement that required CashCall to pay large sums of money to the Bank, Mr. Baron explained this was because:

> They didn't want to execute a contract and then have CashCall decide to go in a different direction...they're putting their charter at risk. They wanted to make sure that CashCall was invested, that CashCall was committed and that CashCall was going to do the right thing... the Bank expended a lot of money and a lot of time and subjected its charter to potential reputational risk as well as other regulatory issues. They wanted to make sure that they were adequately compensated and that CashCall wasn't going to be a flake about this.

Tr. Vol. III, p. 184.

37. Mr. Baron did acknowledge that J. Paul Reddam was obligated to personally guarantee all of CashCall's obligations to the Bank under the subject lending program and that he was required to do so in CashCall's other financing agreements. He estimated Mr. Reddam's net worth was about $25-$30 million at the time of CashCall's agreement with the Bank. Tr. Vol. III, pp. 192-193. He further acknowledged that no state banks are currently partnering with CashCall or any companies like CashCall to do marketing and loan purchases in the United States. Tr. Vol. III, p. 186. However, Mr. Baron testified that it had nothing to do with that FDIC order [referring to CompuCredit]. It was over the crisis in Wall Street at that particular point. *Id.*

38. To the extent that Mr. Baron's testimony is inconsistent with the Court's finding that CashCall bore the entire economic risk of the loan program and thus, was the de facto lender, hiding behind the Bank's charter, the Court finds such testimony not credible. In making such determination, the Court notes the fact that CashCall was required to purchase and did in fact purchase all of the loans which met the program guidelines agreed to by CashCall for "one

hundred cents on the dollar" within three business days of the origination date, as Mr. Baron testified.

The Agreement between CashCall and the Bank[7]

39. Even if the Court were to find and conclude that Ms. Saunders is not qualified to testify and offer an expert opinion on the subject of consumer lending and specifically, on the relationship between CashCall and the Bank, the Court finds and concludes that the Agreement between CashCall and the Bank, as well as, the practical application and implementation of the business arrangement between the Bank and CashCall, fully support the Court's finding that CashCall is the de facto lender of the subject loans, as it clearly bore the economic risk of the loans. *See Discussion, infra.*

40. The First Amended and Restated agreement confirms that the entire financial burden and risk of the loans to West Virginia consumers under the program was placed upon CashCall. Such conclusion is supported by at least twenty four provisions in the First Amended and Restated Agreement, including the following:

a. CashCall's sole owner and stockholder, J. Paul Reddam, is the "Guarantor" of all of CashCall's monetary obligations to the Bank. *See* Article I, Section 1.1, Definitions, p. 2.

b. CashCall is obligated to purchase, and did purchase, all loans from the Bank within three (3) days after the loan was allegedly originated and funded by the Bank. The purchase price for each loan to be paid by CashCall was required to be equal to the outstanding balance due on each loan, including all principal, interest, origination fees, and other charges or sums owed by the borrower. *See* Article VI, Section 6.1, p. 9.

c. CashCall is responsible for the marketing and solicitation of the loans at its own expense through use of the approved Advertising and Program Materials prepared by CashCall. *See* Article III, Section 3.1(b), p. 4.

[7] State's Exhibits 5-8, the four contracts between CashCall and the Bank.

d. CashCall shall pay bank the Bank's reasonable attorneys' fees associated with the Bank's compliance review of the Advertising Materials and Program Materials prepared by CashCall. *See* Article III, Section 3.1(k), p. 5.

e. CashCall shall maintain at its expense employee dishonesty coverage and the general comprehensive liability policy, each with a financially sound and reputable insurer reasonably acceptable to Bank, with coverage of not less than $3 million and $1 million, respectively, together with commercial umbrella coverage with a general aggregate limit of not less than $3 million. *See* Article III, Section 3.1(n), p. 6.

f. CashCall is obligated to pay all reasonable attorney fees associated with review of the Program Materials prepared by CashCall for compliance with applicable Rules, subject to an annual cap of $30,000. *See* Article IV, Section 4.1, p. 7.

g. CashCall shall develop and maintain, at its own cost and expense, a comprehensive accounting and loan tracking system to accurately and immediately reflect all Applications, Loans, and related information regarding the Program to satisfy the information requirements of Bank, Regulatory Authorities, and Bank's internal and external auditors, as such information requirements have been disclosed to CashCall. *See* Article VI, Section 4.2, p. 8.

h. CashCall is obligated to pay the Bank a non-refundable Program Implementation Fee of the greater of $50,000 or the sum of all itemized costs incurred by the Bank prior to the Commencement Date, including but not limited to reasonable legal costs, equipment costs, due diligence costs, and facility costs (the "Bank Implementation Fee"). The Bank Implementation Fee is due upon executions of the Agreement and shall not exceed $100,000. *See* Article VII, Section 7.1, p. 10.

i. CashCall is obligated to pay the Bank fees characterized as "Minimum Bank Revenue" in accordance with the following schedule during the term of the Program: $30,000 per month for months 1-3; $60,000 per month for months 4-6; $125,000 per month for months 7-12; and $200,000 per month for months 13-18. *See* Article VII, Section 7.3, p. 10.

j. CashCall is obligated to reimburse the Bank for all of its Operational Costs for the Program in excess of 15% of the Net Revenue earned by the Bank. *See* Article VII, Section 7.4, pp. 11-12.

k. Upon execution of the Agreement with the Bank, CashCall must deposit a Settlement Reserve with the Bank in the sum of $500,000 and, thereafter, CashCall must maintain a balance in the Settlement Reserve equal to the sum of the total dollar amount of Loans originated by the Bank but yet to be purchased by CashCall ("loans on book") or $500,000, whichever is greater. CashCall must calculate and replenish the Settlement Reserve on a daily basis. *See* Article IX, Section 9.1(a), pp. 13-14.

l. CashCall must further maintain an additional deposit with the Bank denominated as a "Cash Reserve" in the amount of $1 million. The funds in the Cash Reserve shall be held in a non-interest bearing deposit account and shall be maintained in the name of CashCall, but shall be subject to the sole control of the Bank until such time as any amounts remaining in the account are returned by Bank to CashCall upon termination of the Agreement. CashCall also grants the Bank a security interest and right of offset in the Cash Reserve and all funds held therein and also all other amounts due and owing from Bank to CashCall as security for all of CashCall's obligations owed to the Bank under this Agreement. *See* Article IX, p. 9.1(b), pp. 14-15.

m. CashCall must procure the personal guarantee of Guarantor (Reddam) of all its obligations to Bank, and must compel Guarantor to provide a signed personal financial statement to Bank prior to execution of the agreement and annually thereafter. *See* Article IX, Section 9.2, p. 15.

n. CashCall is obligated to indemnify and hold harmless the Bank against all "losses" arising out of the Agreement, including any claims asserted by Borrowers in connection with the Program. *See* Article XI, Section 11.1(a), p. 18.

41. The previous provisions, when viewed collectively, place the entire monetary burden and risk of the loan program on CashCall and not the Bank. CashCall paid more for each loan than the amount actually financed and "purchased" such loans almost immediately after their origination, so that the Bank had no economic risk on the loans. Presumably, CashCall agreed to such terms on the belief that its business scheme would successfully evade state usury laws and it could reap the benefits of the excessive interest rates charged on each loan. Furthermore, CashCall had to procure the personal guarantee of its sole owner and stockholder, J. Paul Reddam, to personally guarantee all of CashCall's financial obligations to the Bank, including the amounts of the loans prior to "purchase" by CashCall. Also, CashCall had to indemnify the Bank against all "losses" arising out of the Agreement, including claims asserted by borrowers. Clearly, the Agreements do not place any monetary burden or risk on the Bank. Finally, a document called "CashCall, Inc. and Subsidiaries Consolidated Financial Statements, December 31, 2007," prepared by the firm Squar Milner and paid for by CashCall as one of its obligations under its agreement with the Bank, further supports the conclusion that CashCall was the de

facto lender of the subject loans. Specifically, under the heading "Organization and Summary of Significant Accounting Policies," the auditing firm of Squar Milner stated the following:

> CashCall was under contractual obligation to purchase the loans originated and funded by FBT (the South Dakota Bank) only if CashCall's underwriting guidelines were followed when approving the loan. For financial reporting purposes, CashCall treated such loans as if they were funded by CashCall.

(emphasis added). The fact that for financial reporting purposes CashCall considered itself the originator of the loans further supports the finding that CashCall was the de facto lender and the Bank was not the true lender. *See* Appendix, State's Pre-Trial Memorandum, Tab 5.

Discussion of the Predominate Economic Interest Standard and Whether CashCall was the De Facto Lender Subject to the State's usury and lending claims

42. Under W. Va. Code § 46A-7-115, "every person engaged in West Virginia in making consumer loans . . . shall file notification with the state tax department within thirty days after commencing business in this state." The State argues that CashCall violated this statute by serving as the de facto lender in transactions with West Virginia consumers without a business registration certificate from the state tax department. Furthermore, pursuant to W. Va. Code § 47-6-6, all contracts made directly or indirectly for the loan or forbearance of money at a greater interest rate than is permitted by law *shall be void* as to all interest provided and the borrower or debtor may, in addition, recover from the original lender or creditor an amount equal to four times all *interest agreed to be paid* and at least a minimum of one hundred dollars. (emphasis added).

43. In examining what constitutes a usury loan, the Supreme Court of Appeals of West Virginia held: "The usury statute contemplates that a search for usury shall not stop at the mere form of the bargains and contracts relative to such loan, but that all shifts and devices intended to

cover a usurious loan or forbearance shall be pushed aside, and the transaction shall be dealt with as *usurious if it be such in fact.*" Syl. Pt. 4, *Carper v. Kanawha Banking & Trust Company*, 157 W. Va. 477, 207 S.E.2d 897 (1974) (citations omitted) (emphasis added).

44. In attempting to resolve the question of who is the true lender, trial courts and administrative agencies have most often conducted an inquiry to determine which party, as between the bank and the non-bank entity, had the "predominate economic interest" or risk in the loans. Based upon the review of how rent-a-bank cases have been approached by other courts and regulators, the Court concludes that the predominant economic interest standard is the proper standard to determine who the true lender is in the present case.

45. In one of the earliest "rent-a-bank" cases, the North Carolina Commission of Banking was investigating Ace, a storefront payday lender, in connection with its rent-a-bank arrangement with Goleta National Bank. Although the state had not sued the bank, Goleta filed a separate suit against the state agency in federal court asserting federal preemption and seeking to enjoin the state's investigation of Ace. In its order dismissing Goleta's case, the Court in *Goleta National Bank v. Lingerfelt*, 211 F.Supp.2d 711 (E.D.N.C. 2002), framed the precise factual issue that CashCall also raised in its notice of removal:

> Although Ace contends that Goleta is the real maker of the loans at issue, the State contends just the opposite; that Ace is using Goleta's name as mere subterfuge for its own unlawful lending practices. Thus, a sharp factual issue is presented as to whether Goleta, the national bank, is the real lender at issue. <u>If Ace is the de facto lender, then its payday loans may violate the North Carolina Check Casher Act (citation omitted), which prohibits licensed check cashers from making loans</u>.

Id. at 717 (emphasis added). The court in *Lingerfelt* noted that even if Goleta is the true maker of the payday loans, Ace would still have to comply with the North Carolina Loan Broker Act. *Id.* at 718. The latter act, which is very similar to the West Virginia Credit Services

Organizations Act ("CSO ACT"), W. Va. Code § 46A-6C-1, et seq., requires that the loan broker obtain a bond in favor of the State and provide certain written disclosures to prospective borrowers. The Court notes that the State also alleged that CashCall violated the CSO Act by assisting consumers in obtaining extensions of credit from the Bank. *See* Fourth Cause of Action, Amended Complaint.

46. In another case involving Ace, *State of Colorado ex rel. Salazar v. Ace Cash Express, Inc.*, 188 F.Supp.2d 1282 (D.Colo. 2002), the court again sided with the state in its challenge to Ace's rent-a-bank arrangement and similarly found that the state's case was not preempted. In *Salazar*, the state of Colorado sued Ace and did not sue the national bank. Ace, like CashCall in the case at bar, removed the case to federal court on the grounds of federal preemption. Specifically, Ace sought to assert the preemption of Goleta National Bank which was not a party to the case. The court in *Salazar* rejected Ace's argument, stating that the National Banking Act "regulates national banks and only national banks," and also noting that Ace "attempts to circumvent this result by arguing that it is an agent for loans made by Goleta." *Id.* at 1284. In remanding the case to state court, the court in *Salazar* distinguished the case from *Marquette v. Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp.*, 439 U.S. 299, 99 S.Ct. 540 (1978), "where the defendant was a subsidiary of a national bank established to administer its credit card program," and *Krispin v. May Dept. Stores Co.*, 218 F.3d919, 922-24 (8th Cir.2000), where the national bank was a wholly-owned subsidiary of the store. *Salazar*, 188 F.Supp.2d at 1284-85.

47. In *Flowers v. EZPawn Oklahoma, Inc.*, 307 F.Supp.2d 1191 (N.D.Okla.2004), the United States District Court for the Northern District of Oklahoma examined a challenge to a rent-a-bank arrangement in which a non-bank entity removed the case to federal court. As in the present case, the plaintiffs in *Flowers* asserted that the non-bank entity was the real lender. The *Flowers*

court remanded the private class action to state court, citing *Salazar, supra*, with approval and noting that the plaintiffs' complaint was strictly about a non-bank's violation of state law and alleged no claims against a national bank. *Id.* at 1194.

48. In *West Virginia v. CashCall, Inc., supra*, Judge Goodwin followed the precedent of the federal cases discussed above in granting the State's motion to remand. In his reasoning of the conclusion that the State's usury law claim against CashCall is not preempted, Judge Goodwin explained: "If CashCall is found to be a de facto lender, then CashCall may be liable under West Virginia usury laws." 605 F.Supp.2d 781, 787. In making this observation, Judge Goodwin legitimized the State's position that the Court must conduct an inquiry to determine whether CashCall, the non-bank entity, was the de facto lender, and if so, the State will prevail on these claims. Pertinent to this Court's review, Judge Goodwin also found that "CashCall and the Bank are completely separate entities." *Id.* at 786. Further acknowledging the legitimacy of the State's claim that the key inquiry is whether CashCall was the de facto lender, Judge Goodwin stated: "I cannot determine which entity is the true lender based on the record before the Court. Therefore, even assuming that the Bank's definite status as the true lender would be dispositive of the complete preemption question, CashCall has not sustained its burden of establishing that fact." *Id.* at 797, n. 9 (referring to the defendant's burden of establishing federal jurisdiction).

Federal Regulatory Efforts to End Rent-a-Bank

49. During this litigation CashCall has stated and implied that the subject lending program was approved by the FDIC, the primary federal agency that regulates state-chartered banks such as the Bank in question in the present case. *See* Subpoena Response Letter, pp. 1-2. However, CashCall never produced any evidence that the FDIC had approved its practices. In fact, the evidence of record and the legal authority presented indicate that both the Office of the

Comptroller of the Currency ("OCC"), the agency that primarily regulates national banks, and the FDIC issued directives and took other actions intended to terminate the practice characterized as "rent-a-bank," including enforcement action against CashCall's former partner, First Bank of Delaware, and CompuCredit. Furthermore, the FDIC document identified all of the objectionable "third-party lending programs" in which the Delaware bank was involved, one of which was the bank's arrangements with CashCall. *See* Testimony of Ms. Saunders, *supra.*

50. The OCC's concerns about the misuse of bank charters in rent-a-bank arrangements with payday lenders and other non-bank entities to evade state usury laws is also evidenced in its Preemption Determination issued May 23, 2001 to clarify the extent of national bank preemption in response to questions and concerns from state regulators and other parties. Among other things, the OCC clarified that national banks may use the services of agents and other third parties in connection with its lending activities, even when agents undertake those activities at sites other than the main office or branch office of the bank. But the OCC noted a distinction applicable to facts of this case: "This is not a situation where a loan product has been developed by a non-bank vendor that seeks to use a national bank as a delivery vehicle, and where the vendor, rather than the bank, has the preponderant economic interest in the loan." *See Preemption Determination*, 66 Fed. Reg. 28,593 (May 23, 2001), p. 28,595, n.6. (emphasis added). Although the loans offered by CashCall are installment loans as opposed to payday loans, the business model used by CashCall is essentially the same as the rent-a-bank arrangements subject to scrutiny and termination actions by federal regulatory agencies, as the arrangement between CashCall and the Bank was designed to enable a non-bank entity, CashCall, to make improper use of the Bank's federal preemption status to evade states' usury laws.

51. Based on the documentary and testimonial evidence produced during Phase II of the trial and the prevailing law on the subject matter as set forth above, the Court makes the following findings of fact:

a. That CashCall bore the predominant economic risk of the subject loans made to West Virginia consumers and thus, was the true lender of such loans, not the Bank;

b. That CashCall was not the agent of the Bank, but was an independent contractor;

c. That the purpose of the lending program was to allow CashCall to hide behind the Bank's charter and its right to export interest rates under federal banking law, as a means for CashCall to deliver its loan product to states like West Virginia, with usury laws;

d. That CashCall established the subject lending program with the purpose to deliver the loan product CashCall had already been offering in other states prior to its relationship with the Bank in an attempt to evade the lender licensing and usury laws of West Virginia;

e. That the maximum allowable interest rate under West Virginia law for the loans in question was 18%;

f. That the loans made by CashCall to West Virginia consumers under the lending program greatly exceeded the maximum allowable interest rates under West Virginia and are usurious loans;

g. That CashCall made loans in West Virginia, directly or indirectly, without obtaining a business registration certificate from the State Tax Department, in violation of W. Va. Code § 46A-7-115;

h. That CashCall, by the making and the collecting of usurious loans and excess charges without a license, has engaged in unfair or deceptive acts or practices in violation of W. Va. Code § 46A-6-104; and

i. That CashCall has engaged in a course of repeated and willful violations of the WVCCPA, specifically, repeatedly and willfully violating W. Va. Code § 46A-7-115 (making loans in West Virginia without a license) and §46A-6-104 (unfair or deceptive acts or practices), as to warrant assessment by this Court of a civil penalty of up to $5,000 for each violation, as set forth in W. Va. Code § 46A-7-111(2).

Overview of Relief for Consumers and the State

52. Generally, the State seeks a final order from the Court permanently enjoining CashCall from engaging in unlawful lending and debt collection practices as alleged in the Amended Complaint, as authorized by W. Va. Code § 46A-7-108.[8] The State also asks that a Final Order be entered that: (1) grants the consumers restitution, debt cancellation disgorgement, and other appropriate relief, as authorized by W. Va. Code § 46A-7-108; (2) refunds and awards to the consumers the unlawful interest agreed to be paid by the consumers, as authorized by W. Va. Code § 47-6-6; (3) finds that CashCall engaged in a course of repeated and willful violations of the WVCCPA and awards the State a civil penalty of up to $5,000.00 for each violation, pursuant to W. Va. Code § 46A-7-111; and (4) grants reimbursement to the State for its attorney's fees and costs expended in connection with investigation and litigation of this action.

53. As stated above, pursuant to W. Va. Code § 47-6-6 the penalty for usury is that all usurious loan contracts shall be void as to all interest and that the borrower, in addition, may recover an amount equal to four times all interest agreed to be paid. The total amount of interest agreed to be paid by West Virginia consumers in relation to the usurious loans is $2,511,421.99. *See* Joint Ex. 1. According to the Court's calculations four times the amount of interest agreed to be paid by all West Virginia consumers is $10,045,687.96.

54. The State also seeks its attorney's fees and costs for the prosecution of this enforcement action against CashCall. As to relief available under the WVCCPA, the Supreme Court of Appeals of West Virginia held that the use of the phrase "other appropriate relief" in W. Va. Code § 46A-7-108 "indicates that the Legislature means the full array of equitable relief to be available in suits brought by the Attorney General." *State By and Through McGraw v. Imperial*

[8] Under W. Va. Code § 46A-7-108, "the attorney general may bring a civil action to restrain a person from violating this chapter and for other appropriate relief."

Marketing, 203 W. Va. 203, 215-216, 506 S.E.2d 799, 811-812 (1998). In his concurring opinion in *Imperial Marketing*, Justice Starcher concluded that the Attorney General would "be entitled to collect the attorneys' fees and costs incurred for the work necessary in the filing and prosecution of [consumer protection] lawsuits." *Id.* at 219, 815, n. 6 (Starcher, J., concurring). Furthermore, the Supreme Court of Appeals of West Virginia has held that "there is authority *in equity* to award to the prevailing litigant his or her reasonable attorneys' fees as 'costs' without express statutory authorization, when the losing party has acted in bad faith, vexatiously, wantonly or for oppressive reasons." Syl. Pt. 3, *Sally-Mike Properties v. Yokum*, 179 W. Va. 48, 365 S.E.2d 246 (1986) (emphasis added). Based on the forgoing, the Court finds and concludes that the Attorney General should be awarded his costs, including reasonable attorney's fees for Phase II of the trial.

CONCLUSIONS OF LAW
(Phase II of Trial)

1. Based on the Court's finding that CashCall bore the predominant economic risk of the lending program and thus, was the de facto lender of such loans, the Court concludes that as the lender of consumer loans CashCall violated W. Va. Code § 46A-7-115 by failing to obtain a business registration certificate from the state tax department.

2. The Court also concludes that the loans made by CashCall to West Virginia consumers were usurious loans, having interest rates that exceeded the maximum legal amount of 18%. Therefore, under W. Va. Code § 47-6-6, the Court concludes that the loan contracts made are void as to all interest set forth in such loan contracts.

3. The Court also concludes that by making and collecting usurious loans without a license, CashCall engaged in unfair or deceptive acts or practices in violation of W. Va. Code § 46A-6-104. As stated above, the Court finds that such violations were repeated and willful violations of the WVCCPA.

4. The Court need not reach the question of whether CashCall violated the CSO Act based on its finding that CashCall was the true lender. However, the Court rejects CashCall's position that it would exempt from the CSO Act because it was a "bank service company," as defined by the Bank Service Company Act. In order to qualify as a bank service company, all of the capital of the company organized to perform such services must be owned by one or more insured depository institutions. 12 U.S.C. § 1861(b)(2)(A)(ii). The Court concludes that CashCall does not meet the definition of a bank service company as defined by the Bank Service Company Act, and thus, would not be exempt from the WV CSO Act.

DECISION

Based upon all of the foregoing, the Court hereby **ORDERS** as follows:

(1) The State is hereby awarded an injunction against CashCall, as authorized by W. Va. Code § 46A-7-108, permanently prohibiting CashCall from violating the WVCCPA and specifically prohibiting CashCall from engaging, directly or indirectly, in making loans in West Virginia without a license, making or collection usurious loans, and collecting or attempting to collect excess charges, as set forth in the WVCCPA.

(2) The State is hereby awarded a civil penalty against CashCall in the amount of $730,000.00 for repeatedly and willfully making loans in West Virginia without a license in violation of W. Va. Code § 46A- 7-115 of the WVCCPA. Such amount consists of a civil penalty of $2,500.00 for each of the 292 loans made to West Virginia consumers.

Such money awarded as a civil penalty shall be placed in the State Treasury to be appropriated by the West Virginia Legislature.

(3) The State is hereby awarded a civil penalty against CashCall in the amount of $730,000 for repeatedly and willfully engaging in unfair or deceptive acts or practices in violation of W. Va. Code § 46A-6-104 of the WVCCPA, by the making and the collecting of usurious loans. Such amount consists of a civil penalty of $2,500.00 for each of the 292 loans made to West Virginia consumers. Such money awarded as a civil penalty shall be placed in the State Treasury to be appropriated by the West Virginia Legislature.

(4) The State is hereby awarded a judgment against CashCall in the amount of $10,045,687.96 for making usurious loans in violation of W. Va. Code §47-6-6, said amount being equal to "four times all interest agreed to paid" by each consumer on each of the 292 loans made in West Virginia as provided in W. Va. Code § 47-6-6. This amount shall be refunded to the consumers in accordance with W. Va. Code § 46A-7-111. Any such refunded money owed to a consumer, but unable to be paid to such consumer, shall be held in a trust account, pending a later determination by this Court as to the proper distribution of such money.

(5) In accordance with the equitable powers of the Court and the policy underlying W. Va. Code § 46A-6-105, the Court **ORDERS** that all of the loan contracts entered into between West Virginia consumers and CashCall are void, that any debts still allegedly owed by any West Virginia consumer to CashCall are cancelled, and that CashCall shall notify credit bureaus to delete all references to West Virginia accounts regarding the subject loan accounts from the credit record of the West Virginia consumers. However, CashCall is not required to delete the accounts in those instances where it has only

reported positive payment history. Furthermore, in light of voidance of the subject loan contracts, CashCall shall not file 1099(c) debt cancellation forms with the Internal Revenue Service.

(6) The Court further **ORDERS** that the State is awarded judgment against CashCall for all of its costs, including its reasonable attorney's fees, for the prosecution of Phase II of the trial. This amount shall be determined at a later date upon petition by the State to be filed within a reasonable time after entry of this Order.

The objections of any party aggrieved by this Order are noted and preserved. The Clerk is **DIRECTED** to send a certified copy of this Order to all counsel of record.

ENTERED this 10 day of September, 2012.

Louis H. Bloom, Judge

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT
THIS 10 DAY OF SEPTEMBER 2012
CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA