KELLER/ANDERLE LLP
JENNIFER L. KELLER (SBN 84412)
E-mail: jkeller@kelleranderle.com
SHAUN A. HOTING (SBN 260656)
E-mail: shoting@kelleranderle.com
18300 Von Karman Avenue, Suite 930
Irvine, California 92612-1057
Telephone: (949) 476-8700
Facsimile: (949) 476-0900

ALGER LAW APC
TIMOTHY L. ALGER (SBN 160303)
E-mail: tlalger@algerlaw.net
4695 MacArthur Court, Suite 1100
Newport Beach, California 92660
Telephone: (888) 562-0562

Attorneys for Plaintiffs CashCall, Inc., J. Paul Reddam, and WS Funding, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

CASHCALL, INC., a California corporation; J. PAUL REDDAM, an individual; and WS FUNDING, LLC, a California limited liability company,

Plaintiffs,

vs.

KATTEN MUCHIN ROSENMAN LLP; an Illinois limited liability partnership; CLAUDIA CALLAWAY, an individual; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 30-2017-00914968-CU-NP-CXC

Judge William Claster

COMPLAINT

1. **LEGAL MALPRACTICE**
2. **BREACH OF CONTRACT**
3. **BREACH OF FIDUCIARY DUTY**

JURY TRIAL DEMANDED

Plaintiffs CashCall, Inc., J. Paul Reddam, and WS Funding, LLC (collectively, "Plaintiffs") allege the following against the Defendants Katten Muchin Rosenman LLP, Claudia Callaway, and Does 1 through 50 (collectively, "Defendants"):

I. INTRODUCTION

1. This lawsuit arises from negligent advice and other legal services provided by an incompetent attorney and her law firm. Defendants' malpractice destroyed an $870 million consumer lending program, harmed Plaintiffs' other successful businesses, tarnished Plaintiffs' business reputation, and caused Plaintiffs to suffer hundreds of millions of dollars in damages.

2. Plaintiffs built a nationwide consumer lending program based on Defendants' negligent representations that Native American laws, rather than federal and state laws, would govern direct consumer loans consummated on a reservation and then assigned to Plaintiffs.

3. Defendants breached their duties of care and loyalty to Plaintiffs. They failed to investigate and ignored critical facts and controlling law, failed to identify and disclose material risks, and provided Plaintiffs with deeply flawed legal analysis. Defendants provided negligent professional advice and representations to Plaintiffs, knowing that they would be reasonably relied upon by Plaintiffs and Plaintiffs' funding sources.

4. As a direct result of Defendants' malpractice, breach of contract, and breach of fiduciary duties, Plaintiffs have been subject to multiple judgments across the United States, continue to face litigation and regulatory proceedings, have been deprived of legal defenses and other recourse, and have incurred hundreds of thousands of dollars in legal fees defending against suits and regulatory investigations. Although Defendants consistently and vigorously represented to Plaintiffs and Plaintiffs' funding sources that neither state nor federal law applied to consumer loans acquired by Plaintiffs from a tribal lender, courts have universally concluded that both state and federal law *do* control, and that the loans acquired by Plaintiffs were unlawful.

5. After Defendants became aware of their exposure resulting from their substandard legal advice, Defendants disavowed their own advice and representations, blamed Plaintiffs for Defendants' own reckless and careless work, and violated their duty of loyalty, causing further

damage to Plaintiffs. Rather than accepting responsibility for failing to identify, disclose and address the material risks of a *lending* structure designed by Defendants, Defendants attempted to deny their involvement in the development of the program, attempted to divert the discussion to issues of *corporate* structure and ownership (even though Defendants were incompetent in that area as well), and falsely asserted that Plaintiffs did not tell Defendants about facts of which Defendants were fully aware throughout the representation.

6. Defendants' malpractice, breach of contract, and breach of fiduciary duties to Plaintiffs have caused Plaintiffs to suffer more than $500 million in damages in the form of civil judgments, regulatory fines and penalties, restitution, unrecoverable loans, lost interest, the reduction in the value of their businesses, lost business opportunities, attorneys' fees, and litigation expenses. Plaintiffs' damages resulting from Defendants' acts continue to increase to this day.

II. PARTIES

7. Plaintiff CashCall, Inc. ("CashCall") is a California corporation located at 1 City Boulevard West, Suite 1000, City of Orange, State of California.

8. Plaintiff J. Paul Reddam ("Reddam") is an individual residing in Orange County, California. Reddam is the chief executive officer, president, and sole owner of CashCall.

9. Plaintiff WS Funding, LLC ("WS Funding") is a California limited liability company domiciled in Orange County, California and is a wholly owned subsidiary of CashCall. Based on advice from Defendants, Reddam and CashCall formed WS Funding for the purpose of purchasing loans from Western Sky Financial, LLC ("Western Sky"), a South Dakota limited liability company domiciled on the Cheyenne River Sioux Indian Reservation in South Dakota.

10. Defendant Katten Muchin Rosenman LLP ("Katten") is a limited liability partnership engaged in the practice of law, headquartered in Chicago, Illinois. Katten is a law firm that has more than 600 lawyers in thirteen offices in the United States, the United Kingdom, and China.

11. Defendant Claudia Callaway ("Callaway") is an individual who, upon information

and belief, resides in or near Washington, D.C. Callaway began practicing law in 1991. She was a partner at Paul Hastings LLP between 1999 and 2006, and a partner at Manatt Phelps & Phillips, LLP ("Manatt") between 2006 and June 2009. Callaway has been a partner at Katten since July 2009.

12. The true names and capacities of defendants Does 1 through 50, inclusive, whether individual, corporate, associate or otherwise, are not known to plaintiffs, who therefore sue said defendants by such fictitious names. Plaintiffs will ask leave of court to amend this Complaint to show their true names and capacities when the same have been ascertained.

13. Plaintiffs are informed and believe, and thereon allege, that Katten, Callaway, and each of the Defendants designated as Does 1 through 50, inclusive: (1) are legally responsible in some manner for the events and happenings herein referred to and caused the injuries and damages to Plaintiffs herein alleged; and (2) were, in some manner or fashion, by contract or otherwise, the successor, assignee, joint venturer, co-venturer, partner, or were otherwise involved with the other Defendants in the wrongdoing alleged herein, and by virtue of such capacity, assumed the obligations herein owed by the Defendants to Plaintiffs, thereby rendering them liable and responsible on the facts alleged herein for all the damages sought.

14. Plaintiffs are informed and believe, and thereon allege, that at all relevant times, each Defendant was the agent and/or employee of each of the remaining Defendants, and in doing the things herein alleged, each Defendant was acting within the course and scope of his or her authority as such agent and/or employee and with the permission and consent of the other Defendants, and each of them.

III. JURISDICTION AND VENUE

15. This Court has jurisdiction over the subject matter of this action, and venue is proper in this Court, because many of the events giving rise to Plaintiffs' injuries took place in Orange County, and because Plaintiffs were at all times relevant domiciled in Orange County. Plaintiffs thereby were injured in Orange County, and Defendants knew or should have known this at all relevant times.

16. Defendant Katten is, and at all relevant times has been, a limited liability partnership offering legal services around the world, and has an office in Orange County, California. Its attorneys and other employees regularly provide legal services to clients in Orange County. Katten and Callaway provided advice and other services to Plaintiffs on the telephone, through written correspondence, and by email while Plaintiffs were located in Orange County and during in-person meetings with Plaintiffs in Orange County.

17. Complete diversity between the parties does not exist. Plaintiffs are informed and believe, and thereon allege that multiple Katten partners reside and are licensed to practice law in California.

IV. BACKGROUND

a. CashCall and Reddam Turn to Callaway and Katten for Expert Legal Advice.

18. Reddam was a successful entrepreneur who created DiTech Funding Corporation ("DiTech") in 1995. Under Reddam's leadership, DiTech quickly grew to become one of the largest home mortgage lenders in the United States. In 1999, GMAC, a financing division of General Motors Corporation, acquired DiTech.

19. Reddam formed CashCall in 2000. In 2003, CashCall began making unsecured installment loans to California residents under a California lender license. Over the next several years, CashCall obtained lender licenses in other states as well, and also began purchasing consumer loans from state-chartered and federally regulated banks around the country.

20. CashCall's loan portfolio remained geographically concentrated in California, however. In 2005, Merrill Lynch, which was considering providing financing to CashCall at the time, urged CashCall to expand its portfolio of loans outside California. Merrill Lynch referred CashCall to Callaway, identifying her as a lawyer who could facilitate relationships with state-chartered depository banks, whose lending rates could be exported from their home states to other states nationwide. Dan Baren ("Baren"), CashCall's general counsel, contacted Callaway in December 2005.

21. At that time, Callaway presented herself to CashCall and Reddam as an expert in

lending regulatory compliance, with a focus on avoiding civil litigation and enforcement actions by state and federal regulators. To this day, Callaway continues to present herself to the public and to clients as a leading expert in this area of the law. As part of her practice, Callaway counsels clients on how to structure transactions and craft consumer lending agreements and other contracts.

22. When Callaway joined Katten in July 2009, Katten boasted in a press release that Callaway was a nationally recognized consumer financial services lawyer who focused on, among other things, federal lending and debt collection laws, federal and state unfair and deceptive trade practices laws, the laws controlling consumer arbitration agreements, and state usury and consumer protection laws. Callaway has served as chair of Katten's Consumer Finance Litigation Group and co-chair of the Class Action and Multidistrict Litigation practice.

23. In July 2009 and thereafter, Katten presented itself to CashCall and Reddam – and continues to present itself to the public and clients to this day – as a major law firm rich in expertise in consumer lending and the consumer finance industry. On its website, Katten states:

> Katten is also at the forefront in assisting clients in the development of consumer financial products and in bringing multiple innovative services to market. With extensive experience in corporate, banking, regulatory and tax law and a thorough, real-time understanding of the regulations and consumer protection laws that affect consumer lenders, our Consumer Finance Litigation team guides clients through the state and federal regulatory framework that surrounds them.

24. Based on Katten and Callaway's representations regarding their expertise and experience, Plaintiffs retained Defendants as their counsel, trusted Defendants' legal advice, and believed that Defendants' advice and other services would meet the standard of due care.

b. <u>The "Bank Model" of Consumer Lending.</u>

25. When they first came into contact on Merrill Lynch's recommendation in December 2005, Baren and Callaway discussed what is known in the lending industry as the "Bank Model" for direct consumer lending. Under the Bank Model, a consumer lending

company such as CashCall contracts with a bank that is licensed to lend in states where the lending company is not licensed to make direct loans to consumers. The bank makes the loans and then sells them to the consumer lending company. The consumer lending company provides marketing support through advertising and, after purchasing the loans, services and collects them and assumes the risk of nonpayment.

26. Consumer loans such as those purchased by CashCall are not secured by collateral. By not requiring collateral, a lending company such as CashCall makes it possible for people without substantial assets to obtain loans, but it also increases the risk that loans will not be repaid in full. This risk requires the lending company to charge interest rates that are higher than secured loans.

27. Callaway told Baren that she had represented numerous unsecured consumer lending companies and had previously arranged "bank partnerships" between other consumer lenders and state-chartered banks.

28. On December 12, 2005, Callaway met with Baren at CashCall's Orange County office. Callaway explained the Bank Model and informed Baren that she had several state-chartered banks in mind as potential partners for CashCall.

29. During the following months, Callaway introduced CashCall to potential bank partners and shared with Baren a model participation agreement based on forms she had prepared for other clients. In the first half of 2006, Callaway worked with CashCall to develop and implement the Bank Model and create a national direct lending platform for CashCall. This work included providing regulatory advice to CashCall. CashCall ultimately decided to partner with two banks suggested by Callaway.

30. First, in August 2006, CashCall launched a national lending program with First Bank & Trust of Milbank (South Dakota) ("FBT"), which had been introduced to CashCall by Callaway. Out-of-state consumer loan applications were received by CashCall, which sent the completed applications to FBT. FBT then underwrote and funded the loans from South Dakota, complying with South Dakota law governing interest rates and other lending terms. Three days after funding, FBT sold the loans to CashCall.

31. In October 2006, Callaway referred Baren to Alonzo Primus, the president of First Bank of Delaware ("FBD"). She told Baren that FBD had more sophistication in consumer lending and might be a better partner for CashCall.

32. Accordingly, in November 2006, with Callaway's assistance, CashCall negotiated a "bank partnership" with FBD. Callaway represented and advised CashCall in securing regulatory approval for the partnership with FBD.

33. CashCall became increasingly reliant on Callaway for her special expertise in direct consumer lending and her knowledge of CashCall's business. The relationship deepened throughout 2007 and into 2008 as CashCall began forwarding to Callaway almost all of the company's litigation. Callaway was CashCall's trusted advisor.

34. The Bank Model was widely adopted in the United States by many direct consumer lenders. CashCall's use of the Bank Model was successful.

35. The financial crisis of 2007-08 caused a severe tightening of the credit markets in the United States. It became increasingly difficult for CashCall and its competitors to secure funding for direct consumer lending.

36. In June 2008, FBD informed CashCall that it must end its partnership with CashCall because the Federal Deposit Insurance Corporation initiated proceedings against FBD over its dealings with another unsecured consumer lender, on matters unrelated to CashCall.

37. Callaway advised Baren that most banks were no longer willing to partner with unsecured consumer lenders because of the financial crisis. Callaway continued to assist CashCall in its attempts to find another Bank Model partner, and referred Baren to Palm Desert National Bank, a longtime Callaway client, and Green Bank. Callaway and Baren jointly marketed the CashCall direct lending program to Green Bank executives in Texas. Both banks ultimately declined to partner with CashCall, citing regulatory risk and market uncertainty.

38. In January 2009, just weeks after the Green Bank meeting, Callaway advised Baren that the Bank Model was coming under such pressure from regulators that CashCall would be unable to find a state-chartered bank to help engage in national consumer lending.

c. Callaway Advises CashCall to Adopt the Tribal Model.

39. By this time, CashCall and Reddam were among Callaway's most important and valuable clients, and it would have been detrimental to Callaway to lose their business. So Callaway urged CashCall to take a different approach for direct consumer lending, which she presented as the "Tribal Model."

40. Callaway told Baren in early 2009 that she was now advising her consumer lending clients to adopt an arrangement where a Native American tribal entity or member would serve the same role as a state-chartered bank. Under the Tribal Model, a lender operating on a reservation would make loans to borrowers in any state over the internet or by phone. The tribal lender would assign the loans to a consumer lending company such as CashCall, which would service and collect the loans.

41. Callaway told Baren that because the loans originated with a tribal lender, the loans did not have to adhere to the licensing and usury laws in the states where the loan applicants resided. Callaway advised Baren that the doctrine of tribal immunity would apply to the loans. Callaway assured Baren that when the loans were assigned by the tribal lender to CashCall, CashCall would succeed to all of the terms of the tribal lender's agreements with consumers, including the choice of tribal law.

42. CashCall was unfamiliar with the concept of lending under the protection of tribal immunity, but it was unable to continue its successful consumer lending business under the Bank Model. Relying on Callaway's expertise and her enthusiasm for the Tribal Model, CashCall ultimately asked Callaway to recommend potential tribal lending partners.

43. Callaway told CashCall that finding the right tribal lender was critical to the model's success. She suggested that CashCall consider partnering with Martin "Butch" Webb ("Webb"), a consumer finance entrepreneur and a member of the Cheyenne River Sioux Tribe ("CRST"). At an industry conference in March 2009, Callaway introduced Baren to Webb, and told Baren that Webb was the "right tribal partner for CashCall."

44. When Baren asked Callaway whether other potential tribal lenders also should be considered, Callaway said that Webb was CashCall's best option. Callaway recommended no

other possible tribal lending partner to CashCall. She encouraged Baren to partner with Webb quickly because she heard that "other lenders were knocking on Webb's door." Callaway also told Baren that partnering with a tribal member such as Webb was preferable to partnering with a tribe itself or an entity controlled by a tribe, because tribes were notoriously untrustworthy in fulfilling their commercial obligations.

45. In April 2009, Baren visited Webb on the Cheyenne River Sioux Indian Reservation to confirm that he was a good fit and had the resources to partner with CashCall in a national consumer lending program. Throughout the summer and fall of 2009, and into early 2010, Callaway and (after Callaway joined Katten) Katten played an integral role in the formulation and implementation of the business relationship and lending structure among CashCall, Webb, and Webb's newly created consumer lending company, Western Sky. During the course of the representation, Callaway made trips to the Cheyenne River Sioux Indian Reservation, including two trips with Baren, and presented herself to CashCall as well-informed about Webb and his company and the laws that controlled Western Sky and lending on the reservation.

46. In July 2009, Callaway changed firms, moving from Manatt to Katten. Katten's public announcement on July 22, 2009, made much of Callaway's work on behalf of CashCall, including two recent litigation victories, and her experience advising clients regarding a host of finance and lending laws and regulations.

47. Callaway told Baren that after joining Katten she wanted to continue to design and implement CashCall's consumer lending program with Webb. At Callaway's urging, Baren agreed to move all of the regulatory work, including the Tribal Model partnership with Western Sky, all of Plaintiffs' ongoing corporate work, and several pending litigation matters from Manatt to Katten.

48. Callaway presented to CashCall an engagement letter dated July 29, 2009, in which Katten agreed to advise CashCall "in connection with general regulatory work in connection with lending activities and/or regulations." Although Reddam was not named in the engagement letter, Callaway and Katten knew at that time and at all relevant times thereafter that

Reddam was the sole shareholder of CashCall and its related entities (including WS Funding), Reddam was the signatory on key transactional documents and signed guarantees, and the transactions were intended to affect Reddam personally. Reddam was an intended beneficiary of Callaway and Katten's legal services; an implied contract for competent legal services was formed between Callaway and Katten on the one hand and Reddam on the other hand; harm to Reddam from Callaway and Katten's malpractice was foreseeable; and Reddam has suffered injury as a direct result of Callaway and Katten's malpractice.

49. Callaway also presented to Plaintiffs additional engagement letters in 2012 and 2013 for specific litigation, regulatory, and corporate matters relating to the Western Sky consumer lending program.

50. Katten and Callaway represented CashCall, Reddam, and WS Funding continuously from July 2009 until September 2013.

51. In 2009, Reddam re-entered the home mortgage business. CashCall quickly became a leading prime home mortgage lender, making low-interest residential mortgage loans under several state licenses.

d. <u>Katten and Callaway Provide Negligent Advice and Opinion Letters to Plaintiffs.</u>

52. CashCall's decision to use the Tribal Model for consumer loans was based on legal advice provided by Katten and Callaway. Plaintiffs trusted Katten and Callaway because of their stated expertise in consumer lending, their legal expertise, their expressions of confidence in the Tribal Model and in Webb as the appropriate partner for CashCall, their issuance of opinion letters in support of the model, and their development, formulation and implementation of the business relationship and lending structure among CashCall, Reddam, WS Funding, Webb, and Webb's company, Western Sky.

53. Consistent with the advice that Katten and Callaway provided to Plaintiffs, Callaway and Katten prepared and provided to Plaintiffs and their sources of financing written opinions attesting to the legality of the Tribal Model and the terms, enforceability, and assignment of consumer loans made by Western Sky and assigned to CashCall and WS Funding

pursuant to advance agreement. These opinions contained material errors of fact and law, and failed to disclose material risks, including the risk that CashCall would be considered by the courts and regulators – due to the structure of the lending program that Katten and Callaway designed and endorsed – to be the "true lender" of consumer loans made by Western Sky, and, as a consequence, the loans would not fall within the scope of tribal sovereign immunity or be governed by tribal law.

54. From late 2009 until mid-2013, Katten and Callaway prepared and provided oral and written legal opinions to Plaintiffs and their lenders that consumer installment loans made by Western Sky and assigned by Western Sky to CashCall and WS Funding pursuant to advance agreement were not subject to state licensing and usury laws in the states where borrowers resided, and were compliant with federal law as well. Katten and Callaway also spoke regularly with Plaintiffs' lenders, and repeatedly assured them that the Western Sky lending program was immune from state and federal law, and that the terms of the Western Sky consumer loan agreements were enforceable after their assignment to Plaintiffs.

55. Specifically, Defendants informed Plaintiffs and their lenders that (a) the consumer loans made by Western Sky were valid when made, (b) the consumer loans could be lawfully assigned by Western Sky to CashCall pursuant to advance agreement, and (c) CashCall would succeed to all rights under the consumer loan agreements made by Western Sky, including the choice-of-law provision and the arbitration provision. Katten and Callaway provided to Plaintiffs and their lenders a professional opinion that the loans would be subject to tribal immunity, the states where borrowers lived would enforce tribal law, and the Western Sky loans assigned to CashCall would "not be subject to United States federal consumer protection or state law limiting interest rates."

56. Katten and Callaway made these statements even though they understood at the time that, among other things, borrowers did not physically visit the Cheyenne River Sioux Indian Reservation to make the loans, Western Sky was not a tribal entity, CashCall provided Western Sky with funding and acquired all interests in all loans that were written by Western Sky pursuant to advance agreement, and CashCall bore all of the risks of the loans once it

purchased them from Western Sky.

57. Katten and Callaway had no reasonable basis for advising and representing to Plaintiffs and others that the Western Sky loans were valid, could be enforced after assignment, and that CashCall would succeed to all of Western Sky's contractual rights with borrowers, including the choice of law, given the knowledge that Katten and Callaway had at the time.

58. Katten and Callaway failed to use due care in advising Plaintiffs and in researching, preparing, and distributing the opinion letters by, among other things, failing to identify, disclose and address whether Western Sky or CashCall might be the "true lender" in a consumer loan made and then assigned by Western Sky to CashCall and WS Funding pursuant to advance agreement. Katten and Callaway failed to exercise due care by failing to identify, disclose and address the lending structure's substantial risk and the possible approaches to reducing or eliminating that risk, including the sale of partial interests in the consumer loans to a non-tribal entity such as CashCall and the retention by the tribal lender of some interest in the loans. If CashCall was the "true lender," rather than Western Sky, tribal immunity would not apply to the loan under any circumstances, and the loan from the moment of its initiation would be subject to federal or state licensing and lending laws.

59. In failing to address the possibility that CashCall would be considered the "true lender," Katten and Callaway did not disclose a material risk. Katten and Callaway had actual knowledge of the facts that raised the risk that CashCall was the "true lender" under the law, as described below, but negligently disregarded those facts.

60. Further, Katten and Callaway failed to use due care in advising Plaintiffs and in researching, preparing, and distributing the opinion letters by, among other things, failing to identify, disclose, and address:

a. The risk that tribal immunity did not extend to individual tribe members who engaged in lending to non-tribe members;

b. The risk that tribal jurisdiction does not extend to Western Sky borrowers who do not physically enter the Cheyenne River Sioux Indian Reservation;

c. The risk that courts would hold that Western Sky loans were formed in the

borrowers' states rather than on the Cheyenne River Sioux Indian Reservation;

d. The risk that courts would find that states could regulate Western Sky lending activity because its extraterritorial, off-reservation negative impact on non-tribal consumers was greater than any benefit received by the CRST or its members;

e. The risk that CashCall would not succeed to the terms of the consumer loan agreements as an assignee of the Western Sky loans;

f. The risk that courts would deem the choice-of-law clause in the Western Sky loan agreements invalid;

g. The risk that courts would deem arbitration provisions in the Western Sky loan agreements to be unenforceable; and

h. The risk that courts would find that the Western Sky loan agreements were unlawful, deceptive, or abusive.

61. Katten and Callaway also failed to use due care in advising Plaintiffs to engage in a consumer lending partnership with Webb and Western Sky, when Katten and Callaway knew that Western Sky was not owned or controlled by the CRST, but merely had a business license issued by CRST, and Western Sky was owned and controlled solely by Webb and the CRST never had or retained any interests in any consumer loans written by Western Sky.

62. Katten and Callaway also failed to use due care in failing to research and provide competent advice to Plaintiffs regarding CRST laws and their possible application to lending on the Cheyenne River Sioux Indian Reservation. As a consequence, Katten and Callaway failed to advise Plaintiffs regarding the possible effect of CRST laws regulating interest rates. Specifically, Katten and Callaway failed to research, identify and notify Plaintiffs of the existence of a CRST statute prohibiting loans that carry interest rates over 18 percent. Had Katten and Callaway exercised due care and disclosed the existence of this statute to Plaintiffs, Plaintiffs would not have partnered with Webb and Western Sky.

63. Katten and Callaway also failed to use due care in advising Plaintiffs and in researching, preparing, and distributing the opinion letters by, among other things, relying on the opinion of Cheryl Bogue, an attorney in Dupree, South Dakota, representing Webb, that

consumer loans by Western Sky were subject only to tribal law, and not subject to federal or state law. Katten and Callaway relied on and incorporated the opinions of Bogue, who did not have a duty of care to Plaintiffs. Katten and Callaway did this with the knowledge that Plaintiffs would, in turn, rely on and defer to Defendants' expertise regarding the Bogue opinions. Defendants failed to advise Plaintiffs that they had not conducted a proper review of Bogue's opinions before relying on them and distributing them to Plaintiffs' lenders. By failing to perform an independent analysis of the facts and the law, Katten and Callaway acted negligently.

64. Notwithstanding their representations that they had expertise in consumer lending and had fully researched and analyzed the critical legal issues of choice-of-law, sovereign immunity, and tribal law, Katten and Callaway lacked competency in these areas, and should have disclosed this to Plaintiffs and declined to provide advice to Plaintiffs on these critical issues, or obtained the assistance of competent counsel with the necessary expertise and with a duty of care to Plaintiffs.

65. Katten and Callaway advised Plaintiffs and prepared and provided to Plaintiffs and Plaintiffs' lenders the opinion letters knowing that the Plaintiffs and their lenders would reasonably rely on these opinions.

e. <u>Katten and Callaway Were Fully Aware of the Structure of the Western Sky Program.</u>

66. Relying on the advice of Katten and Callaway, CashCall and Western Sky entered into two agreements in January and February 2010: (1) February 1, 2010 Agreement for the Assignment and Purchase of Promissory Notes (the "Assignment Agreement"); and (2) January 9, 2010 Agreement for Service (the "Service Agreement"). Katten and Callaway were fully aware of the existence and terms of these agreements and the parties' performance throughout the period of time when Katten and Callaway represented and advised Plaintiffs.

67. In the Assignment Agreement, CashCall, through its subsidiary WS Funding, agreed to purchase from Western Sky loans made through its website, www.westernsky.com.

68. CashCall agreed to purchase all of Western Sky's loans after waiting a minimum of three days after the funding of each loan. CashCall paid Western Sky the full amount

disbursed to the borrower under the loan agreement plus a small premium. CashCall guaranteed Western Sky a minimum payment of $100,000 per month, as well as a $10,000 monthly administrative fee.

69. The loans were assigned to CashCall before any payments were made by the borrowers. Once Western Sky sold a loan to CashCall, all economic risks and benefits of the transaction passed to CashCall.

70. CashCall agreed to reimburse Western Sky for costs associated with Western Sky's computer server. CashCall also reimbursed Western Sky for marketing expenses and bank fees, and some office and personnel costs. In addition, CashCall agreed to "fully indemnify Western Sky Financial for all costs arising or resulting from any and all civil, criminal or administrative claims or actions, including but not limited to fines, costs, assessments and/or penalties . . . [and] all reasonable attorneys fees and legal costs associated with a defense of such claim or action."

71. Pursuant to the Service Agreement, Western Sky granted CashCall a "non-exclusive license, to reproduce the name, trade name, trademarks, and logos of Western Sky Financial." CashCall agreed to provide Western Sky with customer support, marketing, website hosting and support, assignment of a toll-free phone number, and to handle electronic communications with customers. In exchange for these services, Western Sky paid CashCall a small percentage of the face value of each loan that it sold to CashCall.

72. When Western Sky commenced operations, all telephone calls from prospective borrowers were routed to CashCall agents in California. The information collected by CashCall agents was then provided to Western Sky. As the business developed, a growing number of Western Sky loan agents on the Cheyenne River Sioux Indian Reservation handled calls from prospective borrowers, and CashCall agents handled only overflow calls.

73. Western Sky drafted and approved the underwriting criteria for its loans, and decided whether to approve the loans. A borrower approved for a Western Sky loan would electronically sign the loan agreement on Western Sky's website. The loan proceeds would be transferred from Western Sky's bank account to the borrower's account. After a minimum of

three days had passed, the borrower would receive a notice that the loan had been assigned to WS Funding, and that all payments on the loan should be made to CashCall as servicer.

74. The Western Sky consumer loan agreement identified Western Sky Funding, LLC as the lender, and informed the borrower, in bold type, that it was "subject solely to the exclusive laws and jurisdiction of the Cheyenne River Sioux Tribe, Cheyenne River Indian Reservation." In the "Governing Law" section of the agreement, the borrower was informed that the agreement "is governed by the Indian Commerce Provision 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."

75. The Western Sky consumer loan agreement also contained a provision, approved and later revised by Katten and Callaway, that "any dispute . . . will be resolved by binding arbitration." The agreement stated that arbitration would be conducted by the CRST "by an authorized representative" in accordance with its consumer dispute rules and the terms of this Agreement." A revision provided that the borrower had the right to select the American Arbitration Association, Judicial Arbitration and Mediation Services, or another organization to administer the arbitration.

76. The borrower also was informed in the loan agreement that Western Sky "may assign or transfer this Loan Agreement or any of our rights under it at any time to any party." The interest rate on the Western Sky loans was clearly and prominently disclosed on the first page of the loan agreement.

77. The structure of the Western Sky lending program described above was designed, reviewed and endorsed by Katten and Callaway. At all times Defendants knew, or should have known, that the agreements they had devised, reviewed and endorsed exposed Plaintiffs to the risk that courts and regulators would likely determine that CashCall was, under the law, the "true lender" and Western Sky was not entitled to tribal immunity, and CashCall might not succeed to that immunity or the choice of CRST law in the consumer loan agreements upon assignment by Western Sky to CashCall. In the opinion letters prepared and distributed by Katten and

Callaway, Katten and Callaway referenced the Assignment Agreement and the Service Agreement, and described the Western Sky lending program in detail. Katten and Callaway knew at the time that Plaintiffs relied upon such opinion letters. On February 15, 2011, Callaway sent to Baren and his colleague Jordana Gilden an email stating: "We really appreciate the opportunity to represent you. It is exciting to design the framework, and then to successfully execute."

f. <u>The Negligent Assurances of Tribal Immunity by Katten and Callaway.</u>

78. Throughout the relevant time, Western Sky was owned solely by Webb. Katten and Callaway repeatedly told Plaintiffs, informed their sources of financing, and stated publicly that it was not necessary for Western Sky to be an "arm of the tribe," *i.e.*, an entity owned or controlled by the tribe itself, for Western Sky to fall within the scope of tribal immunity. According to Katten and Callaway, tribal immunity would allow Western Sky to make consumer loans nationwide without violating federal and state usury and licensing laws and then assign those loans to Plaintiffs.

79. In fact, Katten and Callaway's conduct was below the standard of care exercised by competent counsel, in that the Defendants never truly researched nor understood the doctrine of tribal immunity, including its limitations, despite their assurances to Plaintiffs.

80. Callaway was aware from at least the beginning of 2009 that Webb's lending companies were not owned or controlled by the CRST. Nevertheless, Katten and Callaway mischaracterized Webb and Western Sky to Plaintiffs, to their lenders, and to others, and misstated the controlling law, thereby causing Plaintiffs in reliance on those representations to enter into the Assignment Agreement and the Service Agreement with Western Sky, to take on hundreds of millions of dollars in debt for the Western Sky program, and to acquire $870 million in consumer loans from Western Sky.

81. In retaining Katten and Callaway to prepare the transactional documents to fund the Western Sky lending program, Baren informed Callaway by email and orally in August 2009 that CashCall would proceed with the program only if it was approved by regulatory counsel and

supported by a legal opinion confirming that the loans and their assignment to CashCall would be enforceable and lawful. Katten and Callaway agreed to render these legal services requested by CashCall, but failed to perform them with due care.

82. Throughout the relevant period, Plaintiffs depended on Katten, as a major law firm with claimed expertise in the matters for which it was retained, to perform in the manner and with the care generally and reasonably expected of a major law firm, including attention to detail in its analysis, opinions, and work product. Instead, despite the importance of the lending structure and the applicability of tribal law to the consumer loan contracts that would be written by Western Sky and assigned to Plaintiffs, Katten and Callaway treated the critical facts and the issue of tribal immunity cavalierly.

83. On September 11, 2009, Callaway provided Baren with a draft opinion letter stating that "WESTERN SKY was organized by the CRSN [Cheyenne River Sioux Nation] to engage in the business of lending for the benefit of the CRSN. One or more CRSN tribal officers is an owner or director of WESTERN SKY, and the CRSN has the ability to remove directors." None of this was true, which Katten and Callaway should have known it was not true. Baren pointed out this error to Callaway at the time.

84. On November 4, 2009, Callaway provided Baren with another draft opinion letter stating that "WESTERN SKY was organized under the laws of the CRSN to engage in the business of lending." This was not true, and Katten and Callaway knew at the time that that it was not true. Western Sky was organized as a limited liability company under the laws of the South Dakota, and merely held a license to do business on the Cheyenne River Sioux Indian Reservation. (In an email dated March 9, 2010, Callaway told Baren that Bogue had stated in September 2009 (prior to the November 4, 2009, draft) that the tribe "did not yet have a mechanism" for companies to organize under tribal law.)

85. The November 4, 2009, draft opinion letter went on to state that Western Sky "is owned exclusively by Butch Webb, and [*sic*] an enrolled CRSN member. All of its offices, officers and employees are located on CRSN tribal lands, and it has no physical or other presence off of the CRSN reservation."

86. On December 10, 2009, Callaway provided Baren with another draft opinion letter removing the reference to "the laws of the CRSN," stating instead that "WESTERN SKY was organized to engage in the business of lending."

87. Katten and Callaway's incompetence is cast in stark relief by Callaway's March 9, 2010 email to Baren, about a month after Plaintiffs had begun purchasing Western Sky loans. In response to an inquiry about whether Western Sky was subject to tribal immunity, Callaway told Baren that Western Sky, by incorporating under CRST law (a legal status that did not exist), "would remove 'arm-of-the-tribe' questions." But Katten and Callaway knew, or should have known, that an entity is subject to immunity as an "arm of the tribe" only if the entity is owned or controlled by the tribe itself, was created for and operates for the benefit of the tribe or serves a tribal function, or can bind the tribe or endanger the tribe's assets. Merely incorporating an enterprise owned and controlled by an individual, even if a member of a tribe, does not make that enterprise an "arm of the tribe."

88. The false premise by Katten and Callaway that Western Sky's mere presence on the Cheyenne River Sioux Indian Reservation and Western Sky's ownership by a tribal member made it an "arm of the tribe" infected Defendants' representations to Plaintiffs and to Plaintiffs' lenders. Katten and Callaway disregarded the possibility that the loans might be found by the courts to violate usury and other laws from the moment of their initiation because of the lending structure. The adoption of this false premise resulted in errors demonstrating Katten and Callaway's lack of professional care for the quality and accuracy of their work and for their clients' interests. In an opinion letter addressed to Centurion Credit Resources LLC dated April 12, 2010, Katten and Callaway stated that Western Sky was "owned exclusively by an enrolled [CRSN] member, and is registered with the tribe," but then went on to state: "[W]e have assumed, without any independent investigation or analysis[,] that [] WESTERN SKY is recognized as an Indian Tribe by the United States of America."

89. When Katten and Callaway squarely addressed the law of tribal sovereign immunity with CashCall, it assumed, again without any factual basis, that Western Sky was a tribal entity and had the rights of a Native American tribe. In a May 2010 draft opinion letter,

Katten and Callaway stated that "WESTERN SKY was organized by the CRST to engage in the business of lending for the benefit of the CRST. One or more CRST tribal officers is an owner or director of WESTERN SKY, and the CRST has the ability to remove directors." This was not true, and Katten and Callaway knew this. Katten and Callaway then went on to state the basics of the doctrine of tribal immunity, without disclosing or analyzing the ample case law establishing the actual scope of the doctrine as applied to commercial entities, and concluded: "In light of the established case law, and based upon the assumptions and limitations set forth herein, we are of the opinion that, because WESTERN SKY is chartered by the CRST the Loan Agreements will not be subject to United States federal consumer protection law, or state law limiting interest rates."

90. Another May 2010 draft opinion letter described Western Sky differently, but also incorrectly: "Western Sky was created, and is licensed, by the CRST to engage in the business of lending." It went on to state that "CRST is recognized as an Indian tribe by the United States." This second May 2010 draft letter retained the same cursory, incompetent analysis of tribal sovereign immunity as the earlier letter, and then concluded: "In light of the established case law, and based upon the assumptions and limitations set forth herein, we are of the opinion that, because WESTERN SKY is chartered by the CRST, and the Loan Agreements designate CRST law as the applicable law, the Loan Agreements will not be subject to United States federal consumer protection law, or state law limiting interest rates both before and after the Loan Agreements are assigned to CashCall."

91. Throughout, Katten and Callaway represented to Plaintiffs that Western Sky was an entity entitled to tribal immunity and adopted that premise in opining that Western Sky loans would not be subject to state and federal laws, and CashCall could then simply step into Western Sky's shoes. That "true lender" risk was ignored was particularly egregious in light of Callaway's prior handling of litigation involving "true lender" liability under the state-chartered bank programs.

92. On May 20, 2010, Callaway sent to Baren an email that stated, in its entirety:

The analysis flows as follows: the loan transaction is subject to foreign immunity,

and the initial choice of tribal law is enforceable. Because an assignee stands in the shoes of the assignor, CashCall takes subject to all rights that the tribe has at the time the loan is made. Assignment does not invalidate choice of law.

93. On June 23, 2010, Katten and Callaway provided to CashCall and to Centurion Credit Resources, LLC ("Centurion"), which provided funding to CashCall for the Western Sky lending program, an opinion letter that was signed by partner Virginia A. Davis and approved by Claudia Callaway, knowing that Centurion and Plaintiffs would reasonably rely on it. Notwithstanding Katten and Callaway's knowledge of the true facts, and notwithstanding Katten and Callaway's duty of care, which required them to provide competent legal counsel by researching the law and disclosing all material risks, Katten and Callaway stated the following:

a. That Western Sky is "a tribal company incorporated under the laws of the Cheyenne River Sioux Nation";

b. That "Western Sky and the Loan Agreements will be subject to tribal sovereign immunity";

c. That "the states set forth below will enforce the choice of CRST law set forth in the Loan Agreements";

d. That "upon assignment, CashCall, as assignee, will be entitled to sovereign immunity rights and choice of law rights held by Western Sky";

e. That "Western Sky was organized by the CRST to engage in the business of lending for the benefit of the CRST"; and

f. That "One or more CRST tribal officers is an owner or director of Western Sky, and the CRST has the ability to remove directors."

94. Katten and Callaway also failed to use due care in advising Plaintiffs and in researching, preparing, and distributing the June 23, 2010, letter by, among other things, failing to identify, disclose, and address:

a. The risk that CashCall might be the "true lender" in a consumer loan made and then assigned by Western Sky to CashCall and WS Funding pursuant to advance agreement;

b. The risk that tribal immunity did not extend to individual tribe members who engaged in lending to non-tribe members;

c. The risk that tribal jurisdiction does not extend to Western Sky borrowers who do not physically enter the Cheyenne River Sioux Indian Reservation;

d. The risk that courts would hold that Western Sky loans were formed in the borrowers' states rather than on the Cheyenne River Sioux Indian Reservation;

e. The risk that courts would find that states could regulate Western Sky lending activity because its extraterritorial, off-reservation negative impact on non-tribal consumers was greater than any benefit received by the CRST or its members;

f. The risk that CashCall would not succeed to the terms of the consumer loan agreements as an assignee of the Western Sky loans;

g. The risk that courts would deem the choice-of-law clause in the Western Sky loan agreements invalid;

h. The risk that courts would deem arbitration provisions in the Western Sky loan agreements to be unenforceable;

i. The risk that courts would find that the Western Sky loan agreements were unlawful, deceptive, or abusive; and

j. The risk that Western Sky loans might be subject to and violate CRST laws regulating interest rates.

95. Katten and Callaway proceeded in the June 23, 2010, letter to conclude and represent that, "In light of the established case law, and based upon the assumptions and limitations set forth herein, we are of the opinion that, because Western Sky is chartered by the CRST, the Loan Agreements designate CRST law as the applicable law, and there is no express waiver of sovereign immunity in the Loan Agreements, the Loan Agreements will not be subject to United States federal consumer protection law or state law limiting interest rates."

96. On November 16, 2010, Katten and Callaway issued another formal opinion letter, this time addressed to Bayberry Consumer Finance Fund, LLC ("Bayberry"), which also provided funding to CashCall for the Western Sky lending program, knowing that Bayberry and

Plaintiffs would reasonably rely on it. Notwithstanding Katten and Callaway's knowledge of the true facts, and notwithstanding Katten and Callaway's duty of care, which required them to provide competent legal counsel by researching the law and disclosing all material risks, Katten and Callaway stated the following:

a. That Western Sky is "a tribal company incorporated under the laws of the Cheyenne River Sioux Nation";

b. That "Western Sky and the Loan Agreements will be subject to tribal sovereign immunity";

c. That "the states set forth below will enforce the choice of CRST law set forth in the Loan Agreements";

d. That "upon assignment, CashCall, as assignee, will be entitled to sovereign immunity rights and choice of law rights held by Western Sky";

e. That "Western Sky was organized by the CRST to engage in the business of lending for the benefit of the CRST"; and

f. That "[o]ne or more CRST tribal officers is an owner or director of Western Sky, and the CRST has the ability to remove directors."

97. Katten and Callaway also failed to use due care in advising Plaintiffs and in researching, preparing, and distributing the November 16, 2010 letter by, among other things, failing to identify, disclose, and address:

a. The risk that CashCall might be the "true lender" in a consumer loan made and then assigned by Western Sky to CashCall and WS Funding pursuant to advance agreement;

b. The risk that tribal immunity did not extend to individual tribe members who engaged in lending to non-tribe members;

c. The risk that tribal jurisdiction does not extend to Western Sky borrowers who do not physically enter the Cheyenne River Sioux Indian Reservation;

d. The risk that courts would hold that Western Sky loans were formed in the borrowers' states rather than on the Cheyenne River Sioux Indian Reservation;

e. The risk that courts would find that states could regulate Western Sky lending activity because its extraterritorial, off-reservation negative impact on non-tribal consumers was greater than any benefit received by the CRST or its members;

f. The risk that CashCall would not succeed to the terms of the consumer loan agreements as an assignee of the Western Sky loans;

g. The risk that courts would deem the choice-of-law clause in the Western Sky loan agreements invalid;

h. The risk that courts would deem arbitration provisions in the Western Sky loan agreements to be unenforceable;

i. The risk that courts would find that the Western Sky loan agreements were unlawful, deceptive, or abusive; and

j. The risk that Western Sky loans might be subject to and violate CRST laws regulating interest rates.

98. Katten and Callaway again concluded and represented that: "In light of the established case law, and based upon the assumptions and limitations set forth herein, we are of the opinion that, because Western Sky is chartered by the CRST, the Loan Agreements designate CRST law as the applicable law, and there is no express waiver of sovereign immunity in the Loan Agreements, the Loan Agreements will not be subject to United States federal consumer protection law or state law limiting interest rates."

99. Katten and Callaway insisted that the Tribal Model, including its implementation with a tribal member rather than a tribal entity, was sound even as the model came under serious legal challenge by the states and drew attention from the media. In March 2011, Katten and Callaway prepared and provided to CashCall a "white paper" regarding consumer loans made on tribal lands to non-tribal consumers. The white paper concluded that tribal law, not state law, would govern loans made on tribal lands. The white paper also asserted that tribal immunity applied to businesses owned by tribe members, and was not limited to tribes or entities controlled by tribes. It also concluded that non-tribal assignees of tribal lending contracts "stand in the shoes" of the tribal lender and possess all of that tribal lender's rights and obligations.

100. Plaintiffs and their lenders relied on the white paper, which reinforced Defendants' previous statements and opinions that the Western Sky loan program was legal and would accomplish the intended goal of allowing CashCall to become the assignee of the Western Sky loans without violating federal or state licensing or lending laws.

101. In fact, the analysis of the law, on which CashCall and its lenders relied, failed to account for the realities of the Western Sky lending program of which Defendants had knowledge. As with Defendants' prior advice to Plaintiffs and their opinion letters, the white paper failed to identify, disclose or address:

a. The risk that CashCall might be the "true lender" in a consumer loan made and then assigned by Western Sky to CashCall and WS Funding pursuant to advance agreement;

b. The risk that a court would find that tribal immunity did not extend to individual tribe members who engaged in lending to non-tribe members;

c. The risk that tribal jurisdiction does not extend to Western Sky borrowers who do not physically enter the Cheyenne River Sioux Indian Reservation;

d. The risk that courts would hold that Western Sky loans were formed in the borrowers' states rather than on the Cheyenne River Sioux Indian Reservation;

e. The risk that courts would find that states could regulate Western Sky lending activity because its extraterritorial, off-reservation negative impact on non-tribal consumers was greater than any benefit received by the CRST or its members;

f. The risk that CashCall would not succeed to the terms of the consumer loan agreements as an assignee of the Western Sky loans;

g. The risk that courts would deem the choice-of-law clause in the Western Sky loan agreements invalid;

h. The risk that courts would deem arbitration provisions in the Western Sky loan agreements to be unenforceable;

i. The risk that courts would find that the Western Sky loan agreements were unlawful, deceptive, or abusive; and

j. The risk that Western Sky loans might be subject to and violate CRST laws regulating interest rates.

102. In reasonable reliance on Katten and Callaway's advice, opinion letters and white paper, Plaintiffs took on nearly $600 million in debt from their lenders.

g. Katten and Callaway Reassure Plaintiffs and Their Lenders.

103. Continuing until 2013, Callaway and Katten vigorously defended the wisdom of the Tribal Model, and they reassured Plaintiffs and Plaintiffs' lenders that the program was lawful and the loans written by Western Sky and assigned to Plaintiffs were valid and enforceable by their terms.

104. When the State of Washington brought an enforcement action against CashCall alleging violations of Washington law over CashCall's collection of Western Sky loans in August 2011, Callaway insisted to Baren that the case was an anomaly, and resulted from CashCall's possession of a Washington state mortgage license. This was incorrect: The Washington state action was just the first of many enforcement actions and civil lawsuits filed throughout the country against Plaintiffs relating to Western Sky loans.

105. Despite the legal challenges, Katten and Callaway consistently encouraged Plaintiffs and their sources of financing to continue with the Western Sky program. For example, on April 28, 2011, Callaway met with representatives of various hedge funds and tribal lenders, during which she described and promoted the Tribal Model. At the conclusion of the meeting, Ben Radinsky ("Radinsky"), a principal of Bayberry, one of CashCall's lenders, asked Callaway why she had focused during the meeting on the form of the Tribal Model involving entities owned or controlled by tribes, rather than the use of a lender owned by a tribal member. Callaway responded that all of her clients in attendance were "arm of the tribe" lenders, and she was trying to solicit funds for them. Radinsky asked whether she thought that use of an "arm of the tribe" lender was better than use of a tribal member, as with Western Sky. Callaway responded that "both models work" and that she believed that use of an entity such as Western Sky had "significant advantages over the arm-of-the-tribe model," including the fact that Webb

could be trusted, and she could not say the same about some of the tribes. She also said that "as long as Butch is an enrolled member working on the reservation, the model is as good or better as the arm-of-the-tribe model." Radinsky later recounted this conversation to Baren.

106. Also, before closing a $35 million Bayberry facility with CashCall in March 2012, Radinsky called Callaway to discuss the Tribal Model and challenges being raised by some states. Callaway told Radinsky that the model was sound and the states did not have jurisdiction over the loans. This conversation was shared with Baren by Radinsky, who continued providing financing to CashCall for the Western Sky program.

107. Similarly, in May 2012, Callaway told Luke Myers and John Katzenmeyer of UBS, during a conference call in which Baren participated, that the Western Sky lending program was very sound, that Western Sky enjoyed tribal immunity from state regulation, and CashCall, as assignee, could enforce the loans it purchased from Western Sky. Callaway encouraged UBS to provide financing to CashCall to purchase Western Sky loans.

108. On May 21, 2012, Callaway spoke on a panel, which Baren attended, at a conference of attorneys general in Washington D.C. Callaway strongly defended both the "arm-of-the-tribe" and tribal member lending programs, stating that states do not have jurisdiction over the loans under both forms of the Tribal Model.

109. The next day, Callaway sent a legal memorandum to CashCall's local Kansas counsel and to Baren, explaining in detail the tribal member immunity model and concluding that individual tribe members enjoyed the same immunity from state lending regulation as did tribes themselves.

110. Also, when CashCall acquired financing from GA Capital in May 2012, Callaway prepared an opinion for the closing and a certificate for Western Sky to execute. The certificate and opinion both clearly stated that CashCall handled all solicitation and took Western Sky loan applications from consumers. The opinion stated that Western Sky was owned solely by a member of the CRST and was licensed by the CRST to engage in the business of lending.

111. In August 2012, Callaway held a regulatory call with Base Point, as part of another financing transaction. On the call, Callaway once again vouched for the soundness of

the Western Sky program and told the principals and the attorney at Base Point that state actions challenging the Tribal Model would fail.

112. As CashCall prepared in January 2013 to close a new $100 million facility with Bayberry, Callaway again held a call with the Bayberry principals to discuss the model and legal challenges that had been made. Callaway stated that the model worked, with no reservations, and encouraged Bayberry to close the facility.

h. CashCall's Tentative Sale of its Mortgage Business to Nationstar Mortgage.

113. In mid-2012, CashCall and Reddam enlisted brokers to find a potential buyer of CashCall's mortgage assets. Due to the low-interest rate environment and CashCall's innovative and effective origination and processing tools and techniques, the value of CashCall's mortgage assets had grown to in excess of $500 million.

114. The efforts to market CashCall's mortgage assets bore fruit. By November 2012, Nationstar Mortgage had tentatively agreed to pay CashCall $350 million in cash, potential additional cash based on servicing rights, and a performance earn-out, making the total potential consideration for CashCall's mortgage assets approximately $750 million.

115. In December 2012, Nationstar Mortgage circulated execution pages of a purchase agreement with a scheduled closing date of December 31, 2012. Shortly thereafter, however, Nationstar Mortgage abruptly discontinued communications with CashCall and Reddam.

116. Plaintiffs are informed and believe, and thereon allege, that Nationstar Mortgage decided not to complete the purchase of CashCall's mortgage assets because it was concerned about Plaintiffs' dealings with Western Sky and the regulatory actions relating to CashCall's use of the Tribal Model for consumer loans.

117. Plaintiffs further are informed and believe, and thereon allege, that Nationstar Mortgage learned that additional enforcement actions relating to Western Sky loans were forthcoming. Indeed, in or around January 2013, CashCall received a subpoena from the New York State Attorney General for information on the Western Sky loans. In the following months, the states of Pennsylvania, New Hampshire, Connecticut, Massachusetts, and Vermont

initiated inquiries or actions against CashCall regarding the Western Sky loans and the propriety of the Tribal Model devised and endorsed by Katten and Callaway.

118. Thus, as a consequence of Katten and Callaway's malpractice, the value of CashCall's mortgage assets was diminished and they were ultimately sold for far less than they would have obtained in the Northstar transaction, resulting in damages to Plaintiffs of at least $350 million.

i. Callaway and Katten Abandon CashCall and Disavow the Tribal Model.

119. On March 6, 2013, Callaway and two other Katten lawyers visited CashCall's headquarters in Orange County and met with Reddam and Baren. Reddam and Baren sought assurances from their trusted counsel regarding Katten and Callaway's prior advice and representations about the Tribal Model, and the Western Sky program in particular, given the onslaught of regulatory investigations and litigation.

120. Callaway reassured Reddam and Baren at the meeting that she and Katten still believed the Tribal Model remained legally sound, and she blamed the situation on a shift in "public opinion."

121. Plaintiffs continued to rely on Callaway and Katten's assessment that the Tribal Model was proper. In an abundance of caution, however, Plaintiffs reduced their purchases of Western Sky loans, and ultimately stopped such purchases in September 2013.

122. On the heels of the March 2013 meeting, Katten and Callaway abruptly reversed course, and disclaimed their earlier advice to Plaintiffs regarding the Tribal Model and the Western Sky lending program. Callaway falsely asserted that she and Katten had never supported the Western Sky lending program and falsely claimed that she and Katten never knew how Western Sky loans were made and administered. In fact, Katten and Callaway had a complete understanding of the Western Sky lending program from the outset, as shown by their opinion letters and their communications with Plaintiffs, with Plaintiffs' lenders, and with others. Katten and Callaway were intimately familiar with the agreements between Western Sky and Plaintiffs and the implementation of the Western Sky lending program. Katten and Callaway

also understood all details of the program during the course of their representation of Plaintiffs in regulatory proceedings and civil litigation.

123. Rather than acknowledging that they had erred in urging Plaintiffs to use the Tribal Model to engage in nationwide consumer lending, and in recommending that Plaintiffs enter into agreements with Webb and Western Sky, Katten and Callaway claimed that the program failed because Webb was a tribal member, not a tribal entity, and that they had misunderstood Webb's status.

124. In reality, the program failed because regulators concluded that Western Sky was not entitled to tribal immunity as the loan program was structured and implemented, and Katten and Callaway knew all of the relevant facts and failed to use the skill and care that a reasonably careful attorney would have used in forming advice about the Western Sky loan program, given those facts: that CashCall took phone calls from loan applicants; that CashCall provided funding through a reserve bank account that enabled Western Sky to fund the consumer loans after they were approved; that consumer loans written by Western Sky were invariably assigned to Plaintiffs by agreement, before any payments became due; that CashCall reimbursed Western Sky for many of its expenses; and that CashCall indemnified Western Sky. Katten and Callaway refused to acknowledge that they had failed to identify, disclose, and competently assess the lending structure and implementation in light of these facts – of which they were fully aware from the outset and throughout the life of the program.

125. By the time Defendants reversed course, Plaintiffs had acquired hundreds of millions of dollars in consumer loans in reliance on Katten and Callaway's advice and other legal services, had undertaken hundreds of millions of dollars in indebtedness, and exposed themselves to possible civil liability and regulatory investigations and enforcement.

126. By the time Defendants reversed course and denied knowledge of facts of which they had been aware since the outset of the representation, Katten and Callaway had billed Plaintiffs more than $5 million for legal services, most of which related to the Western Sky lending program, including the legal opinions provided to Plaintiffs and their lenders.

127. Faced with these acts of abandonment and disloyalty by trusted counsel, Plaintiffs terminated Katten's representation at the end of September 2013.

j. <u>The State of New York and the Federal Consumer Financial Protection Bureau Sue Plaintiffs for Using Katten and Callaway's Tribal Model.</u>

128. In August 2013, the New York State Attorney General brought an enforcement action against Plaintiffs for penalties and restitution of all payments made by residents of New York State who had taken consumer loans from Western Sky. The enforcement action was based upon Plaintiffs' alleged violations of New York State's usury and licensing laws. Several other states followed New York's lead in the summer and fall of 2013, making the same allegations.

129. In December 2013, after 16 states had initiated actions against Plaintiffs alleging violation of state laws, the federal Consumer Financial Protection Bureau ("CFPB") filed a civil action in U.S. District Court for the District of Massachusetts, which was subsequently transferred to the Central District of California, *Consumer Financial Protection Bureau v. CashCall, Inc.*, No. 2:15-cv-7522-JFW ("Federal Action"), naming as defendants CashCall, Reddam, WS Funding and Delbert Services Corp., alleging violation of the Consumer Financial Protection Act of 2010 ("CFPA"), which prohibits "unfair, deceptive, or abusive" acts or practices. 12 U.S.C. § 5536(a)(1)(B).

130. The CFPB alleged in the Federal Action that the Western Sky loans were void or uncollectable *ab initio* under state laws where the borrowers lived, and attempts by Plaintiffs to collect on the loans pursuant to their terms was an abusive, unfair and deceptive practice under the CFPA. The CFPB sought restitution of all interest and fees paid by borrowers, along with penalties and costs.

131. Plaintiffs filed a motion for summary judgment against the CFPB, contending that:

a. The CFPB's discovery responses demonstrated that it was predicating its claims under the CFPA by relying on purported violations of state law, which is not

permitted because Congress did not incorporate state law into the CFPA;

b. The Western Sky loans are not void, because the loan agreements compelled application of CRST law;

c. The CFPB's discovery responses made clear it was using the litigation to establish a federal usury limit, contravening the express language of the CFPA;

d. Plaintiffs' actions were not unfair, deceptive, or abusive given that the disclosures in the Western Sky loan agreements and that a borrower could avoid harm by not proceeding with the loan;

e. Plaintiffs' actions were not unfair, deceptive, or abusive because the CFPB cannot allege a violation of the CFPA based on purported violations of state usury laws;

f. Plaintiffs' actions were not unfair, deceptive, or abusive because they reasonably believed the choice-of-law provisions in the Western Sky loan agreements were enforceable and governed by CRST law;

g. The CFPB was violating Plaintiffs' due process rights by seeking to penalize them for violations of the CFPA without fair notice of what constitutes "abusive" conduct;

h. Reddam could not be held personally liable because the CFPB could not establish corporate liability, or that Reddam had knowledge of, or was recklessly indifferent to, the alleged misrepresentations; and

i. The CFPB's underlying structure raised constitutional issues.

132. The CFPB also moved for partial summary judgment against Plaintiffs for violations of the CFPA, and to find their tribal immunity defense unavailable as a matter of law. The CFPB contended that: (a) CashCall was the "true lender" of the Western Sky loans; (b) Plaintiffs could not enjoy tribal immunity because CRST law did not apply; (c) the choice-of-law clause in the Western Sky loans was invalid, making the loans subject to the various states' usury and licensing laws; (d) the Western Sky loans were invalid under the various states' laws; and (e) Reddam was personally liable for violating the CFPA.

133. On August 31, 2016, the District Court granted the CFPB's motion for partial

summary judgment against Plaintiffs, and denied Plaintiffs' motion for summary judgment. As discussed below, the District Court found CashCall was the "true lender" for the Western Sky loans. As such, the Court concluded that the laws of the states where borrowers reside, rather than CRST law, governed the Western Sky loans. Further, the Court found that the Western Sky loans were void under the various states' usury and licensing laws. Lastly, the Court concluded that Reddam was individually liable under the CFPA.

134. On January 3, 2017, the District Court entered an order granting Plaintiffs' motion for certification of interlocutory appeal to the Ninth Circuit and for a stay pending resolution of the appeal. Plaintiffs' petition for permission to appeal has been briefed in the Ninth Circuit, and is awaiting decision.

135. Meanwhile, two circuits of the U.S. Court of Appeals have found that the arbitration provisions in the Western Sky loan agreements, which were approved and later revised by Katten and Callaway, were unenforceable. The Seventh Circuit held that the original version of the provision, providing only for CRST arbitration, was a "sham from stem to stern" because the tribe did not have a proper forum for arbitration. *Jackson v. PayDay Fin., LLC*, 764 F.3d 765 (7th Cir. 2014). The revised version, allowing for private arbitration, was also rejected; the Fourth Circuit held that the provision was invalid because it represented a waiver of substantive federal civil rights. *Hayes v. Delbert Servs. Corp*., 811 F.3d 666 (4th Cir. 2016).

k. <u>The Undisclosed "True Lender" Material Risk.</u>

136. The Federal Action, which is pending in the Ninth Circuit on an interlocutory appeal by Plaintiffs, exposed a material risk of which Katten and Callaway were aware or would have known through the exercise of reasonable care and should have been disclosed to Plaintiffs: That the predominant economic interest "true lender" test, if applied by the courts, would defeat the choice-of-law provision in the Western Sky loan agreements and make Plaintiffs subject to state licensing and usury laws, rather than tribal law.

137. The District Court held in the Federal Action that application of the choice-of-law principles of Restatement (Second) of Conflict of Laws required the identification of the true

parties to the loan agreement. The court held that it "should look to the substance, not the form, of the transaction to identify the true lender," and, in doing so, it should "consider the totality of the circumstances and . . . examine[] which party or entity has the predominant economic interest in the transaction." The structure of the Western Sky lending program – of which Katten and Callaway were fully aware, developed, and approved – made CashCall the "true lender," the District Court held. "The key and most determinative factor is whether Western Sky placed its own money at risk at any time during the transactions, or whether the entire monetary burden and risk of the loan program was borne by CashCall."

138. The District Court held that because CashCall acquired all loans written by Western Sky before any payment by the borrower, pursuant to advance agreement between CashCall and Western Sky, and because CashCall took on all risk of nonpayment and indemnified Western Sky, "CashCall, and not Western Sky, had the predominant interest in the loans and was the 'true lender' and real party in interest."

139. Given that CashCall was determined to be the "true lender" of the consumer loans at issue, the District Court also found that the CRST lacked a substantial relationship to the parties or the transactions. The court also held that applying CRST law would be contrary to a fundamental policy of the states where the borrowers resided, since the states had adopted usury and licensing laws. Since the loan agreements' choice of CRST law was invalid, the court held, the law of the borrowers' home states controlled, and those laws made the Western Sky loans void or uncollectable in at least some of the states. The District Court held that this, in turn, made the loan agreements deceptive.

140. The "true lender" doctrine and the risk it posed for Plaintiffs should have been disclosed to Plaintiffs and addressed by Katten and Callaway prior to the launch of the Western Sky lending program. The doctrine and its possible application to the Western Sky lending program should have been disclosed and addressed in the opinion letters and white paper prepared by Katten and Callaway pursuant to their engagement by Plaintiffs, and when Katten and Callaway made representations about the program to Plaintiffs' lenders.

141. With the exercise of reasonable care by Katten and Callaway, Plaintiffs would

have been advised by their trusted counsel of the risks presented by the "true lender" doctrine, thereby allowing Plaintiffs to develop and implement a consumer lending program not vulnerable to challenge under that doctrine.

142. In addition to the CFPB suit, there are or have been pending approximately 20 state enforcement and private civil actions including putative class actions, individual lawsuits, and arbitrations. These actions, and the damages resulting from them, are a direct result of Defendants' malpractice, breach of contract, and breach of fiduciary duty in their representations to Plaintiffs and in their failure to disclose material risks to Plaintiffs regarding the Western Sky lending program. Many of the actions named Reddam individually, personally exposing him to claims for millions of dollars in damages.

143. The exact amount of damages Plaintiffs have incurred or will incur as a result of Defendants' malpractice is currently unknown, but is estimated to be in the hundreds of millions of dollars. To date, Plaintiffs' out-of-pocket damages based on their reliance on Defendants advice and other legal services exceed $100 million, not including the multiple unresolved actions by attorneys general, private civil actions, and the CFPB lawsuit, in which the CFPB seeks restitution in excess of $250 million. Plaintiffs paid to Defendants more than $5 million in legal fees. Plaintiffs continue to incur, to this day, legal fees to other counsel relating to the Tribal Model devised by Defendants. As a direct result of Defendants' malpractice, Plaintiffs have also sustained damage to their personal and professional reputations, restrictions on their right to engage in consumer and other lending, and tarnishment of their brand. Additional consequential damages exceed $300 million, including the diminution of value of CashCall's mortgage assets.

FIRST CAUSE OF ACTION

LEGAL MALPRACTICE

144. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 143, inclusive, as if fully set forth herein.

145. An attorney-client relationship existed between, on the one hand, Katten and

Callaway, and on the other hand, CashCall, Reddam, and WS Funding.

146. At all times that Defendants provided professional legal services to Plaintiffs, Defendants owed Plaintiffs a duty to use such skill, prudence, and diligence as commonly possessed by other attorneys in performing the tasks they undertake on behalf of their clients. Defendants held themselves out as having special skills in consumer lending and consumer finance regulation and litigation. Defendants held themselves out as competent attorneys with knowledge of critical doctrines, statutes, regulations and court decisions controlling the choice of law, tribal law, the doctrine of sovereign immunity, and deceptive lending practices. Defendants knew with reasonable certainty that if Defendants failed to render their legal services to Plaintiffs in a manner befitting of a specialist in this field, or at least using ordinary skill, prudence, and diligence, that Plaintiffs would suffer injury.

147. Moreover, throughout the representation, Defendants owed duties of honesty and loyalty to Plaintiffs. The attorney-client relationship is built on trust and founded on the notion that attorneys cannot put their own interests ahead of the interests of their client.

148. Plaintiffs trusted Defendants. Had Defendants provided competent, non-negligent legal advice and disclosed all material risks, Plaintiffs would not have used the Tribal Model, would not have entered into the Agreements with Webb and Western Sky, would not have acquired consumer loans from Western Sky, and would not have taken on debt to finance the Western Sky lending program.

149. Defendants gave negligent legal advice to Plaintiffs recommending use of the Tribal Model and they devised and endorsed the Western Sky lending program based thereon, including the Agreements with Webb and Western Sky, the acquisition of consumer loans from Western Sky, and Plaintiffs' borrowing to finance the program. Defendants had full knowledge of the relevant facts at the time that Defendants provided advice and times that it maintained that advice.

150. In providing advice to Plaintiffs, Defendants failed to identify, disclose, and address material risks, and made misstatements of fact and law. In providing legal advice and other legal services to Plaintiffs, including the preparation of formal opinion letters endorsing a

lending model without adequate investigation and analysis, and without an adequate basis in fact and law, Defendants failed to exercise the reasonable skill, care, and diligence required by legal professionals, and the skill, care and diligence expected of those attorneys who hold themselves out as having specialized knowledge in the field, and thereby breached their duties owed to Plaintiffs.

151. Defendants failed to exercise due care in representing to Plaintiffs that the loans made by Western Sky were valid when made, the loans could be lawfully assigned by Western Sky to CashCall, and CashCall would succeed to all rights under the loan agreements made by Western Sky.

152. Defendants failed to exercise due care in representing to Plaintiffs that loans made by Western Sky would be subject to tribal immunity (even though Western Sky was not a tribal entity), the states where borrowers lived would enforce tribal law, and Western Sky loans assigned to CashCall would "not be subject to United States federal consumer protection or state law limiting interest rates."

153. Defendants also failed to exercise due care in advising Plaintiffs by, among other things, failing to identify, disclose, and address:

a. The risk that CashCall might be the "true lender" in a consumer loan made and then assigned by Western Sky to CashCall and WS Funding pursuant to advance agreement;

b. The risk that tribal immunity did not extend to individual tribe members who engaged in lending to non-tribe members;

c. The risk that tribal jurisdiction does not extend to Western Sky borrowers who do not physically enter the Cheyenne River Sioux Indian Reservation;

d. The risk that courts would hold that Western Sky loans were formed in the borrowers' states rather than on the Cheyenne River Sioux Indian Reservation;

e. The risk that courts would find that states could regulate Western Sky lending activity because its extraterritorial, off-reservation negative impact on non-tribal consumers was greater than any benefit received by the CRST or its members;

f. The risk that CashCall would not succeed to the terms of the consumer loan agreements as an assignee of the Western Sky loans;

g. The risk that courts would deem the choice-of-law clause in the Western Sky loan agreements invalid;

h. The risk that courts would deem arbitration provisions in the Western Sky loan agreements to be unenforceable;

i. The risk that courts would find that the Western Sky loan agreements were unlawful, deceptive, or abusive; and

j. The risk that Western Sky loans might be subject to and violate CRST laws regulating interest rates.

154. Defendants also failed to use due care to Plaintiffs by relying on the opinion of Cheryl Bogue, an attorney representing Webb with no legal duty to Plaintiffs, and in failing to perform an independent, competent analysis of the facts and the law.

155. Defendants also understood at the time they were made that the representations they made to Plaintiffs and their lenders would directly cause Plaintiffs to incur nearly $600 million in indebtedness, thereby placing at risk Plaintiffs entire direct lending business and other businesses.

156. Defendants knew at the time they rendered their advice and performed other legal services, including the preparation and issuance of their opinion letters, that Plaintiffs would reasonably rely on that advice and those services. Defendants knew at all relevant times that the foregoing representations and failures to disclose were material.

157. But for Defendants' acts of professional negligence, Plaintiffs would not have adopted the Tribal Model or entered into the Western Sky lending program.

158. As an actual and a proximate result of Defendants' malpractice, Plaintiffs have been damaged in an amount subject to proof at trial.

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SECOND CAUSE OF ACTION

BREACH OF CONTRACT

159. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 158, inclusive, as if fully set forth herein.

160. Defendants and CashCall, including upon its creation its subsidiary WS Funding, entered into a written contract in July 2009, pursuant to which Defendants were obligated to provide to CashCall and WS Funding competent legal advice. Reddam, the sole owner, chief executive officer and president of CashCall, was an intended beneficiary of that written contract.

161. Further, Defendants and Reddam entered into an implied contract in July 2009, pursuant to which Defendants, by their conduct, agreed to provide to Reddam competent legal advice. Defendants understood that their advice would be relied upon by Reddam as sole owner, chief executive officer and president of CashCall and as an individual. In providing advice to Reddam, Defendants acted intentionally and with knowledge or reason to believe that Reddam would interpret Defendants' conduct as an agreement to enter into a contract.

162. Plaintiffs fully performed under the written and implied contracts.

163. Defendants breached the written and implied contracts by failing to render competent legal services to Plaintiffs.

164. As a proximate result of this breach, Plaintiffs have been damaged in an amount subject to proof at trial.

THIRD CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

165. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 164, inclusive, as if fully set forth herein.

166. Defendants, through the attorney-client relationship, had a fiduciary duty to render legal advice to Plaintiffs in an honest and competent manner and to stand by that advice. Defendants owed Plaintiffs an unwavering commitment to loyalty, candor, and full disclosure to

Plaintiffs. Defendants were bound to act in the highest good faith and with the highest regard for Plaintiffs' best interests within the scope of the representation, placing Plaintiffs' interests above their own.

167. Defendants breached these duties to Plaintiffs. Throughout the representation, as hereinabove alleged, Defendants failed to identify, disclose, and address material risks, and made misstatements of fact and law. Defendants failed to exercise the reasonable skill, care, and diligence required by legal professionals, and the skill, care and diligence expected of those attorneys who hold themselves out as having specialized knowledge in the field, and thereby breached their duties owed to Plaintiffs.

168. Further, rather than vigorously defending the Tribal Model they designed, implemented, and advocated, Defendants abandoned Plaintiffs by falsely asserting that they were unaware of facts and by disavowing their prior advocacy of Webb and their approval of the Western Sky lending program.

169. Defendants' breaches of their duties of care and loyalty undermined Plaintiffs' defense of the regulatory actions and civil litigation and increased potential damages.

As an actual and proximate result of Defendants' abandonment of Plaintiffs, which constituted a breach of fiduciary duty, Plaintiffs have been damaged in an amount subject to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment against Defendants, as follows:

1. For damages suffered by Plaintiffs, including punitive damages, according to proof;
2. For disgorgement of attorneys' fees and costs paid by Plaintiffs;
3. For Plaintiffs' costs incurred herein;
4. For Plaintiffs' reasonable attorneys' fees, as permitted by law;

5. For pre-judgment and post-judgment interest at the maximum allowable rate on any amounts awarded; and

6. For such other and further relief that this Court deems just and proper.

Dated: April 14, 2017

KELLER/ANDERLE LLP

ALGER LAW APC

By: 

Jennifer L. Keller
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all claims and causes of action so triable in this lawsuit.

Dated: April 14, 2017

KELLER/ANDERLE LLP

ALGER LAW APC

By: 

Jennifer L. Keller
Attorneys for Plaintiffs