BEFORE THE ADMINISTRATOR OF CONSUMER CREDIT
STATE OF OKLAHOMA

FILED
JAN 12 2016
STATE OF OKLAHOMA
DEPARTMENT OF
CONSUMER CREDIT

STATE OF OKLAHOMA, ex rel., DEPARTMENT OF CONSUMER CREDIT,	)	
Petitioner	)	
v.	)	Case No. 13-0180-DIS
CASH CALL, INC.,	)	
Respondent	)	

FINAL AGENCY ORDER

On the 24th day of April, 2015, at approximately 9:30 a.m., the above numbered and entitled cause came on for hearing at the Office of the Oklahoma Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, Oklahoma 73112 before Independent Hearing Examiner, Bryan Neal.

The State of Oklahoma, ex rel. Oklahoma Department of Consumer Credit (the "Department" or "Petitioner"), was represented by the Department's General Counsel Roy John Martin and the Respondent Cash Call, Inc. (the "Respondent" or "Cash Call"), appeared through Michael D. McClintock and Robert T. Luttrell, III, McAfee & Taft, Attorneys at Law, Oklahoma City, Oklahoma.

DEPARTMENT'S EMERGENCY ORDER (SUMMARY)

Pursuant to the requirements of Article II of the Administrative Procedures Act, 75 O.S. §§ 308a-323, the Petitioner filed a copy of the original Emergency Order and Notice of Hearing in this matter on September 23, 2013 (the "Emergency Order"), against the Respondent alleging

certain violations of Oklahoma law as provided in the Uniform Consumer Credit Code, 14A O.S. §1-101 to §9-101 (sometimes hereinafter referred to as the "UCCC" or the "Code"), more specifically certain violations of Article 3 thereof known as the Uniform Consumer Credit Code-Loans, 14A O.S. §3-101 to §3-605 and setting a hearing date in this matter on October 7, 2013. The Emergency Order alleged the following violations of law:

1. The Respondent, either knowingly or without the exercise of due care to prevent the same, has violated 14A O.S. §1-201(5) by collecting charges, as an assignee of lender rights or as a lender, through actions or other proceedings, that are in excess of those permitted by the article on loans (Article 3) of the Uniform Consumer Credit Code, including but not limited to, collecting a fee for the return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal or share draft issued by the debtor in connection with a consumer loan in excess of the amount authorized by 14A O.S. §3-202.1, collecting delinquency charges in excess of those allowed by 14A O.S. §3-203 and collecting loan finance charges in excess of those allowed by 14A O.S. §3-508A for supervised loans.

2. The Respondent, either knowingly or without the exercise of due care to prevent the same, has violated 14A O.S. §3-506 by failing or refusing to let the Administrator or the duly authorized representative of the Administrator examine or make copies of such books, or other relevant documents.

3. A fact or condition exists which, if it had existed or had been known to exist at the time of the Respondent's original application for a supervised lender license, clearly would have justified the Administrator in refusing to issue such supervised lender license to the Respondent in that Respondent is collecting charges as an assignee of a lender's rights and/or as a lender,

through actions or other proceedings, that are in excess of the charges permitted by the article on loans (Article 3) of the Uniform Consumer Credit Code. 14A O.S. §3-505(2)(c).

On October 4, 2013, the Petitioner and the Respondent filed an agreed-upon Continuance in this matter, subject to certain conditions having been placed upon and agreed to by the Respondent therein stated, to continue this mater initially until December 16, 2013.

On November 27, 2013, the Petitioner and the Respondent filed another agreed-upon Continuance herein to continue this matter until January 27, 2014 (the "Second Continuance").

RESPONDENT'S FIRST SUMMARY JUDGMENT MOTION (SUMMARY)

More than three months after the Petitioner filed the Emergency Order and during the period of time continued through the Second Continuance, the Respondent, having filed no written entry of appearance or answer, initially responded to the Emergency Order through a document entitled "CashCall, Inc.'s Motion for Summary Judgment and Brief in Support" that it filed herein on January 9, 2014 (the "Summary Judgment Motion"), to move for summary judgment and to terminate the proceeding brought by the Petitioner, together with an attachment entitled "Affidavit" by Elissa Chavez, Respondent's Director of Fraud Prevention/Dispute Resolution, consisting of two pages and dated January 6, 2014 (the "Chavez Affidavit 1").

The Summary Judgment Motion alleged the existence of only two undisputed material facts, namely; (1) the Respondent had not maintained a legal proceeding in any Oklahoma court to collect excess charges (Respondent's Original Undisputed Fact 1); and (2) the Respondent had produced copies of completed loan agreements for all of its Oklahoma consumer loan transactions with loan effective dates between September 23, 2009, and September 23, 2013, including all open and closed accounts, to the Department (Respondent's Original Undisputed

Fact 2), which undisputed fact the Respondent asserts on page 2 is supported by Respondent's Chavez Affidavit 1.

Summary Judgment Motion Argument 1

The Respondent presented two arguments as part of its Summary Judgment Motion. The first argument the Respondent made was that it was "entitled to summary judgment because the statute [14A O.S.§1-201(5)(a)] only prohibits legal proceedings in Court".

Summary Judgment Motion Argument 2

The second argument the Respondent made was that it was entitled to "Summary Judgment because it produced copies of all documents requested by the Administrator."

On page 1 of the "Introduction" to its Summary Judgment Motion, the Respondent defines 14A O.S.§1-201(5)(a) to be the "Statute". The Respondent asserts on page 2 of the Summary Judgment Motion "Introduction" that:

> [t]he Statute prohibits a lender or an assignee of such lender's rights, with respect to a loan made in another state to an Oklahoma borrower, from collecting charges in excess of those permitted by Oklahoma law through 'actions or other proceedings.' 14A Okla.Stat.§1-201(5)(a). By including the words 'actions or other proceedings,' the Oklahoma Legislature clearly limited the Statute's prohibition to legal proceedings in Oklahoma courts to collect excess charges. It plainly does not apply to other collection actions, as the Department erroneously asserts."

At this point on page 2 of the "Introduction" to its Summary Judgment Motion, the Respondent states that it is undisputed that it "...did not employ any legal proceeding in Oklahoma courts to collect excess charges" or in other words that it has not violated the Statute, and that it has

produced all responsive documents to the Department or in other words, it has not violated 14A O.S.§3-506 through a failure to provide access to its records.

In a footnote on page 2 of the Summary Judgment Motion, the Respondent alleges that the Emergency Order, based on 14A O.S. §3-505(2)(c), was rendered moot due to the Department's reissuance of the Respondent's supervised lender's license on October 29, 2013.

In support of its Summary Judgment Motion, the Respondent cites six (6) legal authorities, namely 12 O.S. §2056(C) of the Oklahoma Pleading Code, 12 O.S. §2001 to §2056 (the "Oklahoma Pleading Code"), Rule 13 of the Rules for District Courts of Oklahoma, T. 12, Ch. 2, App., Rule 13 (the "Rule 13"), of Title 12, Chapter 2, Appendix. Rules for District Courts of Oklahoma (the "District Court Rules"), and four (4) Oklahoma Court of Civil Appeals' cases including the following: *Bennett v. McKibben*, 915 P.2d 400, 403 (Okla. Civ. App. 1996), *Attocknie v. Carpenter Mfg., Inc.*, 901 P.2d 221, 223 (Okla. Civ. App. 1995), *Will v. Jones*, 463 P.2d 702, 703-4 (Okla. Civ. App. 1969), and, *Ferguson Pontiac-GMC, Inc. v. Henson*, 892 P.2d 657, 660 (Okla. Civ. App. 1994).

PETITIONER'S BRIEF (SUMMARY)

The Petitioner filed a document entitled "Legal Brief of the Petitioner" herein on December 1, 2014 (the "Petitioner's Brief"), requesting that the Summary Judgment Motion be denied and that a final agency order be issued against the Respondent on certain grounds listed therein. The Petitioner's Brief asserts that this case is about the Respondent as a licensed supervised lender that collected excessive finance charges and other fees from Oklahoma consumers and basically makes the following arguments: (1) liberal construction and application of the Uniform Consumer Credit Code is required to protect Oklahoma consumers from unfair

credit practices; (2) the UCCC prohibits excessive fees and finance charges; (3) administrative action against the Respondent is authorized by the UCCC; and (4) the Respondent's interpretation would allow licensees to engage in the unfair credit practice of collecting excessive charges against Oklahoma consumers which interpretation is contrary to the provisions of the UCCC.

Petitioner's Brief Argument 1

The first argument or legal theory in the Petitioner's Brief (page 2) that liberal construction and application of the Uniform Consumer Credit Code is required to protect Oklahoma consumers from unfair credit practices notes that the Oklahoma Legislature specified that the UCCC "is to be 'liberally construed and applied to promote its underlying purposes and policies.' 14A O.S. 1-102(1)." Continuing, the Petitioner provides that one of the purposes of the UCCC "to be liberally construed and applied is the protection of Oklahoma consumers from unfair practices of creditors 'with due regard to the interests of legitimate and scrupulous creditors.' 14A O.S. §1-102(2)(d)."

Petitioner's Brief Argument 2

The second argument or legal theory in the Petitioner's Brief (page 3) that the UCCC prohibits excessive fees and finance charges to protect Oklahoma consumers from unfair credit practices is that the UCCC, specifically protects Oklahoma consumers from paying fees and/or finance charges that are in excess of the amounts permitted by the Code. This protection extends to consumer loans made outside of the state to Oklahoma residents. This protection covers lenders and assignees that collect payments from Oklahoma residents. See 14A O.S. §1-201(5), 'a lender or assignee of his rights may not collect charges through actions or other proceedings in

excess of those permitted by the Code.'

The Petitioner states that the loans at issue in this matter "...are supervised consumer loans, whose rate structure is governed by the provisions of 14A O.S. §3-508A", which provisions "...prohibit a supervised lender such as CashCall from contracting for and receiving a loan finance charge in excess of the amount permitted by Section [3-]508A."

The Petitioner notes that prior to August 22, 2014, the supervised consumer loan rate structure in §3-508A provided in pertinent part as follows:

(1) With respect to a supervised loan, including a loan pursuant to a revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) The loan finance charge, calculated according to the actuarial method, my not exceed the equivalent of the greater of the following:

(a) the total of

i. thirty percent (30%) per year on that part of the unpaid balances of the principal which is Three Hundred Dollars ($300.00) or less;

ii. twenty-one percent (21%) per year on that part of the unpaid balances of the principal which is more than Three Hundred ($300.00) but does not exceed One Thousand Dollars ($1,000.00); and

iii. fifteen percent (15%) per year on that part of the unpaid balances of the principal which is more than One Thousand Dollars ($1,000.00); or

(b) twenty-one percent (21%) per year on the unpaid balances of the principal.

Citing 14A O.S. §1-106, the Petitioner states (page 4) that the dollar amounts listed in §3-508A,

were subject to change based on changes to the consumer price index and the dollar amounts were listed in an appendix to the Department's administrative rules at Oklahoma Administrative Code (OAC) Title 160, Chapter 20.

Continuing its second argument, the Petitioner alleges that the Respondent, as a licensed supervised lender, collected excessive fees and finance charges from consumers across Oklahoma, some of which exceeded the authorized finance charge by over Thirty-Thousand Dollars ($30,000.00). The Respondent's collection of these excessive charges from Oklahoma consumers is alleged by the Petitioner (page 5) to be prohibited by 14A O.S. §1-201(5) and §3-508A and is also an unfair credit practice that the UCCC was enacted to prevent. The Petitioner concludes its second argument by asserting that the UCCC in 14A O.S. §3-505(2) further empowers the Administrator to order the refund of any unlawful charges that were collected by the Respondent.

Petitioner's Brief Argument 3

The third argument in the Petitioner's Brief (page 5) that administrative action against the Respondent is authorized by the UCCC to protect Oklahoma consumers from unfair credit practices is that the UCCC at 14A O.S. §3-504(1) requires the Administrator, prior to issuing a supervised lender license, to make a finding that the "character and general fitness of the applicant will warrant the belief that the business will be operated lawfully and fairly within the purpose of the Code." Continuing, the Petitioner notes that the UCCC at 14A O.S. §3-505(2)(c), authorizes the Administrator to take administrative action against a license in the form of a censure, suspension, revocation or denial of the renewal of said license "if any fact or condition exists that would have justified the initial denial of said license." Further, the Petitioner states

that the UCCC at 14A O.S. §6-108 "also permits the issuance of a cease and desist order for violations of the Code."

According to the Petitioner, "[e]ngaging in the unfair credit practice of collecting excessive charges and fees would not have warranted the belief that CashCall's business activities as a supervised lender would be operated lawfully and fairly within the purpose of the Code." In conclusion (page 6), the Petitioner asserts that the fact that the Respondent engaged in the unfair credit practice of collecting excessive charges and fees "...had it existed or had it been known to exist at the time of CashCall's initial application, would have justified the Administrator in denying CashCall's license and authorizes the Administrator to deny renewal of CashCall's supervised lender license and issue a cease and desist order at this time."

Petitioner's Brief Argument 4

The fourth argument in the Petitioner's Brief (page 6) that the Respondent's interpretation in this matter is contrary to the provisions of the UCCC is that the Respondent argues that the Legislature "...did not intend to prohibit a licensee from collecting excessive charges from Oklahoma consumers as long as a licensee does not file a lawsuit in an Oklahoma court regarding any unpaid excessive charges or fees." Continuing, the Petitioner points out that the Respondent's interpretation "...would allow licensees to engage in the unfair credit practice of collecting excessive charges against Oklahoma consumers, which is contrary to the provisions of the Code." The Petitioner notes that the Respondent relies on the commentary to the 1968 Uniform Consumer Credit Code, upon which the Code is based, and the case of *Aldens, Inc. v. Ryan*, 454 F. Supp. 465 (W.D. Okla. 1976), 571 F.2d 1159 (10th Cir. 1978), to support its position. As to the Respondent's reliance on the commentary to section 1.201 of the 1968

Uniform Consumer Credit Code, upon which 14A O.S. §1-201 is based, the Petitioner argues that the commentary "...does not conclude that the protections of this provision only apply if a lawsuit is instituted regarding excessive charges or fees that have not been paid." As to the *Aldens* case, the Petitioner asserts that Aldens filed suit to challenge the extra-territoriality provisions of the Code at 14A O.S. 1-201A on the grounds that it violated the U.S. Constitution's Commerce Clause by imposing an undue burden on interstate commerce. According to the Petitioner (page 8), the constitutionality of 14A O.S. 1-201A was upheld by the Court and affirmed by the 10th Circuit Court of Appeals and the "decision of the Court did not rest on an analysis or interpretation of 14A O.S. §1-201(5)(a)."

In the Petitioner's Brief, the Petitioner requested issuance of a Final Agency Order with the following terms: (a) denial of the supervised lender license renewal of the Respondent; (b) a cease and desist order prohibiting the Respondent from engaging and/or offering to engage as a supervised lender in the State of Oklahoma; (c) a cease and desist order prohibiting the Respondent from collecting any excessive finance charges or fees from Oklahoma consumers involving loan transactions from September 23, 2009, through September 23, 2013; (d) refund of all excessive charges or fees collected by the Respondent from Oklahoma residents involving loan transactions from September 23, 2009, through September 23, 2013; provided that the Respondent may credit the accounts of any Oklahoma residents if an excessive finance charge or fee has not been paid; and, provided further, that the Respondent shall provide documentation to the Department that all applicable refunds have been issued and/or accounts have been credited; and (e) reimbursement of hearing costs to the Department.

JOINT STIPULATION OF UNCONTESTED FACTS

The day before the hearing scheduled on December 5, 2014, the Petitioner and the Respondent jointly filed a document herein entitled "Stipulation of Uncontested Facts" on December 4, 2014 (the "Joint Stipulation"), listing forty-four (44) facts that are agreed-upon by the Petitioner and the Respondent to be common to and included in all causes of action and defenses and require no proof. The Joint Stipulation provides the aforesaid forty-four (44) facts are agreed-upon as follows:

1. The Respondent is a lending and loan services corporation that is currently headquartered in Orange, California and that was previously headquartered in Anaheim, California. (Joint Stipulation No. 1).

2. The Respondent is a California corporation and is a registered foreign for profit business corporation in the State of Oklahoma, Oklahoma Secretary of State filing number 2312014040. (Joint Stipulation No. 2).

3. As part of its business, the Respondent makes unsecured consumer loans. (Joint Stipulation No. 3).

4. As part of its business, the Respondent also purchases and services unsecured consumer installment loans made nationwide by unrelated third parties. (Joint Stipulation No. 4).

5. The Respondent was initially licensed as a supervised lender in the State of Oklahoma on October 17, 2003, supervised lender license number SL005517. (Joint Stipulation No. 5).

6. The supervised lender license of the Respondent was placed in suspended status in accordance with the Emergency Order filed in this matter on September 23, 2013. (Joint Stipulation No. 6).

7. The Petitioner received a license renewal application from the Respondent on October 29, 2013, for supervised lender license number SL005517 for calendar year 2014. (Joint Stipulation No. 7).

8. The Petitioner submitted a letter to the Respondent dated November 21, 2013, indicating that due to a clerical error, the Petitioner was refunding the 2014 renewal and examination fee for the 2014 renewal and examination fee for 2014 in the amount of $790.00. (Joint Stipulation No. 8).

9. The renewal application for supervised lender license number SL005517 is pending the final outcome of this proceeding. (Joint Stipulation No. 9).

10. Non-party WS Funding, LLC. (WS Funding), is a wholly-owned subsidiary of the Respondent. (Joint Stipulation No. 10).

11. WS Funding is a Delaware limited liability company with its principal place of business in Orange, California. (Joint Stipulation No. 11).

12. Non-party J. Paul Reddam is the President, Director and sole shareholder of the Respondent. (Joint Stipulation No. 12).

13. Non-party Western Sky Financial, LLC. ("Western Sky") was until September 3, 2013, a provider of unsecured consumer installment loans. Western Sky conducted its business activities on the Cheyenne River Indian Reservation (Reservation) within the exterior boundaries of the State of South Dakota. Western Sky is not owned or operated by a tribe or tribal entity. (Joint Stipulation No. 13).

14. Western Sky is organized as a South Dakota limited liability company. (Joint Stipulation No. 14).

15. Western Sky is not registered with the Oklahoma Secretary of State and has not been previously been licensed as a supervised lender in the State of Oklahoma. (Joint Stipulation No. 15).

16. Non-party Martin A. Webb is the sole owner and operator of Western Sky. Mr. Webb is an enrolled member of the Cheyenne River Sioux Tribe (CRST). (Joint Stipulation No. 16).

17. The CRST is a sovereign Indian nation recognized by the United States Department of the Interior. (Joint Stipulation No. 17).

18. The Petitioner and the Respondent stipulate to the allegations set forth in paragraph 8 (i) of the Emergency Order, except for the allegation with respect to the authorized maximum finance charge. For clarification, the correct date of the loan agreement is November 9, 2011. (Joint Stipulation No. 18).

19. The Petitioner and the Respondent stipulate to the allegations set forth in paragraph 8 (ii) of the Emergency Order, except for the allegations with respect to the initiation of installment payments and the authorized maximum finance charge. The first payment on the loan was made by credit card, on August 11, 2012. (Joint Stipulation No. 19).

20. The Petitioner and the Respondent stipulate to the allegations set forth in paragraph 8 (iii) of the Emergency Order, except for the allegation with respect to the authorized maximum finance charge. (Joint Stipulation No. 20).

21. The Petitioner and the Respondent stipulate to the allegations set forth in paragraph 8 (iv) of the Emergency Order, except for the allegations with respect to the initiation of installment payments and the authorized maximum finance charge. (Joint Stipulation No. 21).

22. The Petitioner and the Respondent stipulate to the allegations set forth in paragraph 8 (v) of the Emergency Order, except for the allegations with respect to the initiation of installment payments and the authorized maximum finance charge. The first payment on the loan was made by credit card, on March 19, 2012. In addition, for the sake of clarity, the number 7998451 represents the borrower's loan number and not part of the borrower's address. (Joint Stipulation No. 22).

23. The Petitioner and the Respondent stipulate to the allegations set forth in paragraph 8 (vi) of the Emergency Order, except for the allegation with respect to the authorized maximum finance charge. (Joint Stipulation No. 23).

24. The Petitioner and the Respondent stipulate to the allegations set forth in paragraph 8 (vii) of the Emergency Order, except for the allegations with respect to the initiation of installment payments and the authorized maximum finance charge. The first payment on the loan was made by electronic funds transfer on May 4, 2012. (Joint Stipulation No. 24).

25. The Petitioner and the Respondent stipulate to the allegations set forth in paragraph 8 (viii) of the Emergency Order, except for the allegation with respect to the authorized maximum finance charge. (Joint Stipulation No. 25).

26. The Petitioner and the Respondent stipulate to the allegations set forth in paragraph 8 (ix) of the Emergency Order, except for the allegation with respect to the authorized maximum finance charge. (Joint Stipulation No. 26).

27. The Petitioner and the Respondent stipulate to the allegations set forth in paragraph 8 (x) of the Emergency Order, except for the allegation with respect to the authorized maximum finance charge. (Joint Stipulation No. 27).

28. The Petitioner and the Respondent stipulate to the allegations set forth in paragraph 14 (i) of the Emergency Order, except for the allegation with respect to the authorized maximum finance charge. (Joint Stipulation No. 28).

29. The late fee, insufficient funds fee, and finance charges set forth in the loan agreements for the borrowers in paragraph 8(i) – (x) and paragraph 14 (i) of the Emergency Order (collectively, "Borrowers") exceed those allowed by 14A O.S. §§3-202.1, 3-203, and 3-508A. (Joint Stipulation No. 29).

30. The loan agreements set forth the subject loan's terms, including interest rates, repayment schedule, and the right of the Borrower to prepay the loan in part or in full with no penalty. The Loan Agreements also set forth the following:

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

(Joint Stipulation No. 30).

31. WS Funding purchased the Borrowers' loans pursuant to an assignment agreement between WS Funding and Western Sky ("Assignment Agreement"), under which Western Sky assigned its promissory notes in their entirety to WS Funding. (Joint Stipulation No. 31).

32. The Assignment Agreement states that it is governed solely by the laws and jurisdiction of the CRST and subject to the sole jurisdiction of the courts of CRST exclusively. (Joint Stipulation No. 32).

33. After the assignments of Borrowers' loan agreements to WS Funding, the Respondent or another third-party collection entity acted as a servicer. The Respondent acted as the servicer for the loan agreements specified in paragraphs (8) and (14) of the Emergency Order. (Joint Stipulation No. 33).

34. Western Sky ceased lending operations as of September 3, 2013. (Joint Stipulation No. 34).

35. The Petitioner initiated an examination regarding the supervised loan transactions of the Respondent on or about September 19, 2012. (Joint Stipulation No. 35).

36. The Respondent provided initial examination information to the Petitioner on October 1, 2012, which included a list of Oklahoma customer accounts. (Joint Stipulation No. 36).

37. The Petitioner submitted a request to the Respondent on October 22, 2012, requesting that specific loan files regarding Oklahoma customers be submitted to the Petitioner for review. (Joint Stipulation No. 37).

38. The Respondent provided the specific loan files regarding Oklahoma customers requested by the Petitioner on October 22, 2012 to the Petitioner on November 7, 2012. (Joint Stipulation No. 38).

39. The Petitioner submitted an examination request to the Respondent on November 26, 2012, to provide copies of any business agreements between the Respondent and Western Sky. (Joint Stipulation No. 39).

40. The Respondent provided the documents requested by the Petitioner on November 26, 2012, to the Petitioner on December 19, 2012. (Joint Stipulation No. 40).

41. The Petitioner submitted an examination request to the Respondent on May 2, 2013, requesting copies of completed loan agreements for all Oklahoma consumer loan transactions with loan effective dates of January 1, 2008, through May 2, 2013, which includes all open and closed accounts, a complete loan transaction history and notice of assignment, sale or transfer of servicing rights for each account. (Joint Stipulation No. 41).

42. The May 2, 2013 examination request was submitted to the Respondent via certified United States Mail, return receipt requested, and was received at the Respondent's office at 1600 S. Douglas Road, Anaheim, California 92806-5998 on May 6, 2013. (Joint Stipulation No. 42).

43. The Respondent did not respond to the May 2, 2013, examination request prior to the Emergency Order filed September 23, 2013 in this matter. (Joint Stipulation No. 43).

44. Subsequent to the filing of the September 23, 2014, Emergency Order, the Respondent has produced to the Petitioner copies of completed loan agreements for all Oklahoma consumer loan transactions with loan effective dates between September 23, 2009, and September 23, 2013, including all open and closed accounts, as well as a complete loan transaction history and notice of assignment, sale or transfer of servicing rights for each account as agreed by the parties in the Continuance filed in this matter on October 4, 2013. The late fee, insufficient funds fee and finance charges set forth in the loan agreements for borrowers dated between September 23, 2009 and September 23, 2013 exceed those allowed by 14A O.S. §§3-202.1, 3-203, 3-508A. (Joint Stipulation No. 44).

RESPONDENT'S SUPPLEMENTAL SUMMARY JUDGMENT MOTION

(SUMMARY)

The day of the scheduled hearing, December 5, 2014, the Respondent filed a document herein entitled "CashCall, Inc.'s Supplemental Motion for Summary Judgment and Brief in Support" (the "Supplemental Summary Judgment Motion"), to supplement its Summary Judgment Motion and to again move for summary judgment and attempt to terminate the proceeding brought by the Petitioner.

In support of its Supplemental Summary Judgment Motion, the Respondent alleges and asserts the following reasons: (1) the Respondent has not violated the statute (which Respondent identifies as being only 14A O.S. §1-201(5)(a) rather than 14A O.S. §1-201(5) in its entirety as asserted by the Petitioner in the Emergency Order); (2) the Department lacks subject matter jurisdiction to enforce the statute (which Respondent identifies as being only 14A O.S. §1-201(5)(a) rather than 14A O.S. §1-201(5) in its entirety as asserted by the Petitioner in the Emergency Order) against the Respondent; (3) the Department's exercise of regulatory authority would violate the Indian Commerce Clause of the United States Constitution; and (4) the Department's assertion of authority over this matter is a violation of the Dormant Commerce Clause (of the United States Constitution) which forbids state regulation here.

In support of its Supplemental Summary Judgment Motion, the Respondent cites the same six (6) legal authorities it cited previously herein in support of its Summary Judgment Motion, namely 12 O.S. §2056(C) of the Oklahoma Pleading Code (12 O.S. §2001 to §2056), Rule 13 of the District Court Rules, and four (4) Oklahoma Court of Civil Appeals' cases including the following: *Bennett v. McKibben*, 915 P.2d 400, 403 (Okla. Civ. App. 1996), *Attocknie v. Carpenter Mfg., Inc.*, 901 P.2d 221, 223 (Okla. Civ. App. 1995), *Will v. Jones*, 463 P.2d 702, 703-4 (Okla. Civ. App. 1969), and, *Ferguson Pontiac-GMC, Inc. v. Henson*, 892 P.2d

657, 660 (Okla. Civ. App. 1994).

The Supplemental Summary Judgment Motion alleged the existence of eighteen (18) undisputed material facts (with "the Respondent" substituted for "CashCall"), as follows;

1. The Respondent is a California corporation headquartered in Anaheim, California and conducts a lending and loan services business. (Respondent's Undisputed Fact 1).

2. As part of its business, the Respondent makes unsecured consumer loans and the Respondent also purchases and services unsecured consumer installment loans made nationwide by unrelated third parties. (Respondent's Undisputed Fact 2).

3. The Respondent is a licensed supervised lender in the State of Oklahoma, holding supervised lender license number SL005517. (Respondent's Undisputed Fact 3).

4. Non-party Martin A. Webb ("Mr. Webb") is the sole owner and operator of Western Sky Financial, LLC ("Western Sky"). Mr. Webb is an enrolled member of the Cheyenne River Sioux Tribe (CRST). (Respondent's Undisputed Fact 4).

5. Non-party Western Sky was until September 3, 2013, a provider of unsecured consumer installment loans. Western Sky conducted its business activities on the Reservation within the exterior boundaries of South Dakota. The CRST has not established any of the model business formation legislation by which entities owned by tribal members may incorporate under tribal law. Thus, Western Sky is organized as a South Dakota limited liability company. Western Sky is licensed to do business on the Reservation by the CRST, and Western Sky's Articles of Organization are filed with the CRST's Office of the Secretary. As a wholly-tribal member-owned entity, Western Sky is entitled to the privileges of tribal membership. (Respondent's Undisputed Fact 5).

6. The CRST is a sovereign Indian nation recognized by the United States Department of the Interior. (Respondent's Undisputed Fact 6).

7. The Respondent and WS Funding on the one hand, and Western Sky on the other, have entirely separate ownership, management, and employees. (Respondent's Undisputed Fact 7).

8. Western Sky made loans to borrowers who contacted and applied for a Western Sky loan either through Western Sky's website or telephonically. Once completed, the application would be submitted for underwriting pursuant to guidelines formulated by Western Sky. As set forth more fully below, loan agreements entered into by Western Sky with borrowers (the Loan Agreement(s)") are explicitly governed by and subject to the laws of the CRST. (Respondent's Undisputed Fact 8).

9. Western Sky consummated the Loan Agreements within the boundaries of the Reservation. Pursuant to an agreement for services, which was also governed by the laws of the CRST, certain operations functions were outsourced to the Respondent. Whenever the Respondent handled intake, for example, the customer would be informed that they were speaking with a Respondent employee on behalf of western Sky. This arrangement was necessitated, in part, by infrastructure issues on the Reservation. However, in all cases, Western Sky set the underwriting criteria by which potential borrowers were reviewed and made the ultimate decision of whether to extend a loan. The critical final steps to accept the Loan Agreements and fund loans all occurred on the Reservation. This included a final auditing review, performed after the borrower has completed a loan application by electronically signing a loan agreement, to verify that the information provided by the prospective borrower, such as

regarding employment, was accurate and complete. If the information was not accurate or complete, the application would not be accepted, and the loan would not be funded. If the information was satisfactory to Western Sky, a Western Sky employee, located on the Reservation, would notify Western Sky's bank to fund the loan from one of Western Sky's bank accounts, none of which were located in Oklahoma. The borrower would be sent an acceptance notice, informing him or her that the loan proceeds would be electronically disbursed. (Respondent's Undisputed Fact 9).

10. Each Loan Agreement set forth in clear language the subject loan's terms, including interest rates, repayment schedule, and the right of the borrower to prepay the loan in part or in full with no penalty. Each Loan Agreement also set forth the following:

> This Loan Agreement is subject solely to the exclusive laws and jurisdiction of the Cheyenne River Sioux Tribe, Cheyenne River Indian Reservation. By executing this Loan Agreement, you, the borrower, hereby acknowledge and consent to be bound to the terms of this Loan Agreement, consent to the sole subject matter and personal jurisdictional jurisdiction of the Cheyenne River Sioux Tribal Court, and that no other state or federal law or regulation shall apply to this Loan Agreement, its enforcement or interpretation. No Borrower's loan was funded by an account located in Oklahoma.

(Respondent's Undisputed Fact 10).

11. WS Funding purchased borrowers' loans pursuant to an assignment agreement between WS Funding and Western Sky (the "Assignment Agreement"), under which Western Sky assigned its promissory notes in their entirety to WS Funding. (Respondent's Undisputed Fact 11).

12. Like the Loan Agreements, the Assignment Agreement states that it is "governed solely by the laws and jurisdiction of the Cheyenne River Sioux Tribe" and subject to the "sole jurisdiction of the Cheyenne River Sioux Tribe exclusively." (Respondent's Undisputed Fact 12).

13. After the assignments to WS Funding, the Respondent or another third-party collection entity acted as the servicer of the borrowers' loans. (Respondent's Undisputed Fact 13).

14. To date, the Respondent has not initiated or maintained a legal proceeding in any Oklahoma court to enforce any aspect of any borrower's obligations under any Loan Agreement. (Respondent's Undisputed Fact 14).

15. Prior to September 3, 2013, when Western Sky ceased its lending activities, Western Sky employed as many as 100 employees on the Reservation, the majority enrolled members of the CRST. (Respondent's Undisputed Fact 15).

16. Western Sky provided these employees with training, full health insurance, and salaries far exceeding the average salary available on the Reservation and the surrounding areas for any type of work. (Respondent's Undisputed Fact 16).

17. As a result of litigation brought by state regulators, Western Sky was forced to cease operations and lay off nearly all of its employees. (Respondent's Undisputed Fact 17).

18. The CRST is one of the most poverty-stricken Indian tribes in the United States. The Reservation suffers from an unemployment rate of over 80%, and nearly half of its residents subsist below the federal poverty line, relying on federal assistance for support. One of the counties on which the Reservation is located, Ziebach County, is routinely ranked among the poorest counties in the United States. (Respondent's Undisputed Fact 18).

RESPONDENT'S AFFIDAVITS (SUMMARIES)

The day of the scheduled hearing, December 5, 2014, the Respondent filed herein a document entitled "Affidavit of Elissa Chavez" of Orange County, California, notarized on

December 1, 2014 (the "Chavez Affidavit 2"), a document entitled "Affidavit of Gavin Clarkson" of Dona Ana County, New Mexico, notarized on December 2, 2014 (the "Clarkson Affidavit"), and a document entitled "Affidavit of Tawny Lawrence" of Dewey County, South Dakota, notarized on December 2, 2014 (the "Lawrence Affidavit"), none of which filed documents were acted upon or admitted or accepted into evidence at the hearing on December 5, 2014, copies of which were personally handed to me as Independent Hearing Examiner by counsel to the Respondent at the said hearing. It should be noted that none of the three (3) separately supplied affidavits referred to above was attached to or offered as an exhibit(s) to the Respondent's Supplemental Summary Judgment Motion.

The Chavez Affidavit 2, consisting of four pages, basically provides that as Ms. Chavez is the Respondent's Director of Fraud Prevention/Dispute Resolution, with knowledge of the Respondent's Loan Documents (as defined therein) as to its Oklahoma borrowers, that the Respondent has not initiated or maintained a legal proceeding in any Oklahoma court to enforce any aspect of any borrower's obligations under a loan agreement for a consumer loan transaction.

The Clarkson Affidavit, consisting of nine pages, basically provides that as New Mexico State University Associate Professor Clarkson professes to be a Harvard Law School Graduate and an expert in federal Indian law (with no Oklahoma Bar Association licensure information asserted or provided or any other State or Federal Bar licensure asserted or presented), with no copy of a *curriculum vitae* actually attached as an Exhibit A as represented by the Respondent to be so attached (*See* Clarkson Affidavit §7, page 2), proceeds to opine as to the limits of state regulatory authority over Tribal members and on-reservation conduct for seven pages with a few citations of legal authority but concludes in § 35 on page 8 with his opinion that state regulations

do not apply to Western Sky loans (as referred to therein (*See* §21 at page 5) to include all loan agreements for borrowers dated between September 23, 2009 and September 23, 2013) and "...(i) neither the issuance of those loans nor collections on those loans run afoul of state law, and (ii) those activities have been and may continue to be undertaken legally."

The Lawrence Affidavit, consisting of four pages with an Exhibit A attached consisting of two pages, basically provides that as Ms. Lawrence is a Senior Supervisor for Western Sky Financial, LLC., with knowledge of the organization and operations of Western Sky Financial, LLC., which South Dakota limited liability company "...was forced to suspend our lending operations and lay off the vast majority of our workforce as of September 3, 2013" (See §8 at page 3), that the Respondent was a consumer installment lender with certain listed tribal business licenses (in large part illegible as listed and presented), identified in the Exhibit A attached to the Lawrence Affidavit.

DECEMBER 5, 2014, HEARING (INTRODUCTION SUMMARY)

On the 5th day of December, 2014, at approximately 9:30 a.m., the above numbered and entitled cause came on for hearing at the Office of the Oklahoma Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, Oklahoma 73112.

The State of Oklahoma, ex rel. Oklahoma Department of Consumer Credit was represented by the Department's General Counsel Roy John Martin and the Respondent appeared through Michael D. McClintock, Robert T. Luttrell, III, and Matthew K. Brown, McAfee & Taft, Attorneys at Law, Oklahoma City, Oklahoma.

DECEMBER 5, 2014, PRELIMINARY MATTERS (SUMMARY)

As a preliminary matter on December 5, 2014, it was brought to the attention of the

Independent Hearing Examiner in this proceeding, Assistant Attorney General Bryan Neal, that several pleadings, documents and exhibits had been received by the Department from the Respondent as late as December 4, 2014, the day before the hearing in this cause and that the Department accordingly was orally requesting a reasonable period of time in which to review and perhaps respond to said pleadings, documents and exhibits and that it would be appropriate in this matter to establish, and for the Independent Hearing Examiner in this proceeding to issue, a Scheduling Order herein so as to establish dates for filing additional pleadings, documents and exhibits herein as well as establishing a hearing date, to which request the Respondent orally expressed agreement.

DECEMBER 5, 2014, HEARING (SUMMARY)

During the December 5, 2014, hearing, the Petitioner through its General Counsel Roy John Martin presented an oral summary of the Petitioner's issues in this matter and the Respondent likewise, through its Attorney Michael D. McClintock, presented an oral summary of the Respondent's issues in this matter.

The day of the scheduled hearing, December 5, 2014, it was agreed upon by the Petitioner and Respondent during the hearing that a scheduling order was needed whereupon dates for responses to pleadings, documents and exhibits, including affidavits in support, as well as the hearing date of April 24, 2015, were discussed and verbally agreed upon by the Petitioner and the Respondent.

DECEMBER 8, 2014, SCHEDULING ORDER

Subsequently, the Independent Hearing Examiner and Assistant Attorney General Bryan Neal prepared and issued the Independent Hearing Examiner's Scheduling Order on December 8,

2014 (the "Scheduling Order"), memorializing the agreed-upon briefing dates as well as the setting the next hearing date of April 24, 2015.

PETITIONER'S RESPONSE TO SUPPLEMENTAL SUMMARY JUDGMENT MOTION (SUMMARY)

Pursuant to the Scheduling Order, the Petitioner filed a document herein entitled "Response to Supplemental Motion for Summary Judgment of CashCall, Inc." on February 3, 2015 (the "Supplemental Motion Response"), requesting that the Supplemental Summary Judgment Motion be denied and that a final agency order be issued against the Respondent as specified in the Petitioner's Brief together with an attached Exhibit 1 consisting of two pages of Western Sky advertising materials. The Supplemental Motion Response included seven (7) arguments in response to the Supplemental Summary Judgment Motion.

Petitioner's Supplemental Motion Response Argument 1

The first argument alleged by the Petitioner in its Supplemental Motion Response (page 2) is that the Respondent failed to comply with Oklahoma law by collecting excessive finance charges and fees from Oklahoma consumers. Citing 14A O.S. §1-201(5) as authority, the Petitioner asserts that lenders and assignees that collect payments from Oklahoma residents are prohibited from collecting charges through actions or other proceedings in excess of those permitted by the Code and that the Code does not limit the application of §1-201(5) to court proceedings. Continuing, the Petitioner cites 14A O.S. §§ 1-102(1) and 1-102(2)(d) in support of its position that the Legislature specifically provided that the Code is to be liberally construed to promote its purposes, one of which is to protect Oklahoma consumers from the unfair practices of creditors. According to the Petitioner, limiting the application of §1-201(5) to court

proceedings as advocated by the Respondent would conflict with purpose of the Code and neither the Code nor the commentary to the 1968 version of the Uniform Consumer Credit Code specifically limits the provision of §1-201(5) to court proceedings. The Petitioner argues (page 3) that regardless of the meanings of "actions" or "other proceedings" in §1-201(5), Code §3-508(A) prohibits a supervised lender from contracting for or receiving a loan finance charge in excess of that Section in the Code and the Respondent contracted to receive excessive finance charges from Oklahoma consumers in violation of 14A O.S. §3-508(A).

At this point in its Supplemental Motion Response (page 3), the Petitioner notes that the Respondent also argues that the word "state" as utilized in Code §1-201(5), does not include an Indian reservation. While acknowledging that the Code does not define the word "state", the Petitioner asserts that the meaning of the word "state" should be liberally construed to further the purposes of the Code, "...one of which is to protect Oklahoma consumers from the unfair credit practices of creditors whether located inside the State of Oklahoma or outside of its borders." (*Id.* page 3). The Petitioner argues that a determination that the word "state" does not include an Indian reservation located within the boundaries of South Dakota and thus the United States of America is contrary to the general policy of the Oklahoma statutes. Citing 25 O.S. §1 as authority, the Petitioner asserts that Oklahoma law provides that "words used in any statute are to be understood in their ordinary meaning unless a contrary intension applies." According to the Petitioner (page 4), "[a] common definition of the word state is 'one of the constituent units of a nation having a federal government.' *See Merriam-Webster Online Dictionary*". As to its discussion of the meaning of the word "state", the Petitioner concludes that "[e]ven construing a tribal reservation to be separate from the boundaries of South Dakota, the reservation is still a

unit within the United States of America".

The Petitioner next addressed the Respondent's allegation that the loan agreements are subject to the laws of the Cheyenne River Sioux Tribe (page 4). While acknowledging that the U.S. Supreme Court has carved out limited exceptions to the general rule that Indian tribes may not regulate the conduct of nonmembers, the Petitioner, citing *Plains Commerce Bank v. Long Family Land & Cattle Company*, 554 U.S. 316, 332-333 (2008), asserts that "...the Court has stated that any tribal regulation of nonmembers is generally limited to conduct *inside* (emphasis added) the reservation that 'implicates the tribe's sovereign interests'." Continuing, the Petitioner argued that "[e]ven if the conduct of Oklahoma residents that enter into a loan agreement via the Internet from their homes in Oklahoma with a non-Indian company located on the tribe's reservation, such conduct does not implicate the Cheyenne River Sioux Tribe's sovereign interests", noting that Western Sky is not owned or operated by the CRST, it is not formed under tribal law, it is not a subdivision of the CRST, and that Oklahoma residents that entered into the loan agreements were not physically present on the CRST reservation.

Petitioner's Supplemental Motion Response Argument 2

The second argument alleged by the Petitioner in its Supplemental Motion Response (page 5) is that the Emergency Order provided adequate notice of the alleged violations of law as 14A O.S. §3-508A on limitations loan finance charges is specifically referenced as is 14A O.S. §3-505(2)(c) on license renewals, despite the Respondent's assertions to the contrary. According to the Petitioner, the provisions of 14A O.S. §3-505(2)(c), under which the Administrator may deny the renewal of a license if a fact or condition exists that would have justified license denial at the time of initial license application, to be fully understood, must be read in connection with

the requirements for initial licensure, one of which is the Administrator's determination that the applicant will operate "lawfully and fairly within the purpose of the Code" as provided in 14A O.S. §3-504(1). The Petitioner argues that, had the Administrator known at the time of the Respondent's initial application for licensure in 2003 that the Respondent's "...exclusive means of operation with the State of Oklahoma was the collection of excessive finance charges from Oklahoma consumers, the Administrator would have been justified in denying CashCall's license application as such activity would not have led the Administrator to conclude that CashCall's business would be operated lawfully and fairly within the purpose of the Code..." (*Id.* pages 5-6).

Petitioner's Supplemental Motion Response Argument 3

The third argument alleged by the Petitioner in its Supplemental Motion Response (page 6) is that tribal immunity is inapplicable to the Western Sky loans. Citing the U.S. Supreme Court case of *Michigan v. Bay Mills Indian Community, et al.*, 134 S.Ct. 2014, 2030 (2014), the Petitioner re-stated the Court's recent pronouncement that Indian tribes are "domestic dependent nations that exercise sovereign authority subject to plenary control of the United States Congress, which includes immunity from suit traditionally enjoyed by sovereign powers." Continuing, the Petitioner notes that courts have extended the common law doctrine of tribal sovereign immunity to entities considered "arms" of the tribe. Citing as authority the case of *Breakthrough Management Group, Inc. v. Chukchansi Gold Casino & Resort* (BMG), 629 F.3d 1173, 1183 (10th Cir. 2010), the Petitioner points out that tribal sovereign immunity may extend to subdivisions of a tribe, including those engaged in economic activities, "...provided that the relationship between the tribe and the entity is sufficiently close to properly permit the entity to

share in the tribe's immunity." The Court in the BMG case utilized a six part test (referred to as the "subordinate entity test") consisting of an analysis of the method of the entities' creation, structure and control, whether the tribe intended that the entities to have sovereign immunity, the financial relationship among the tribe, an economic development authority created by the tribe and a casino and whether the purposes of tribal sovereign immunity were served by granting said immunity.

At this point, the Petitioner pointed out that tribal sovereign immunity has not been extended to a for profit company established under state law. In fact, the Petitioner cites the case of *Somerlott v. Cherokee Nation Distributors, Inc.*, 686 F.3d 1144, 1149-1150 (10th Cir. 2012), which held that the subordinate entity test utilized in the BMG case is "inapplicable to entities which are legally distinct from their members and which voluntarily subject themselves to the authority of another sovereign which allows them to be sued." The Petitioner states that "[t]he Court noted that under Oklahoma law [18 O.S. §2004(B)(1)], a limited liability company is separate and distinct from its members and that a limited liability company can be sued."

Continuing, the Petitioner noted that the facts in the *Somerlott* case involving an Oklahoma limited liability company, Cherokee Nation Distributors, owned by a corporation, Cherokee Nation Businesses, Inc., owned and regulated by the Cherokee Nation, a federally recognized Indian tribe, are similar to this case. Western Sky, according to the Petitioner, is a limited liability company formed under South Dakota law under the South Dakota Uniform Limited Liability Company Act, SDCL §47-34a-101 et seq. as South Dakota has adopted the Uniform Limited Liability Company Act under which a limited liability company is a legal entity distinct from its members (*See* commentary to the Model Uniform Limited Liability Company

Act, §201) and that under South Dakota law, a limited liability company can be sued as provided in SDCL §47-34a-112(b)(1).

The Petitioner noted that some facts in the *Somerlott* case differ from the facts in this case in that Western Sky is not owned by a tribal entity or a tribe as evidenced in its advertising in the attached Exhibit 1, that Western Sky "is not owned or operated by the Cheyenne River Sioux Tribe or any of its political subdivisions." (*Id.* page 9). The Petitioner concludes that tribal sovereign immunity is not applicable to Western Sky as it is not an Indian tribe, it is not an extension of an Indian tribe and is a South Dakota limited liability company subject to suit in the same way that its assignee, the Respondent, is also subject to suit as a California limited liability company and as a licensee of the Department.

Petitioner's Supplemental Motion Response Argument 4

The fourth argument alleged by the Petitioner in its Supplemental Motion Response (page 9) is that the Indian Commerce Clause does not prohibit the Department's regulation. The Petitioner cites the case of *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142-144 (1980) for its finding of two independent barriers to state regulation of Indian commerce, namely, "[s]tate regulatory authority over tribal reservations and members may be pre-empted by federal law and by the interference of state laws with the right of tribes to make their own laws. *Id.* at 142-143." Continuing, the Petitioner notes from the *Bracker* case that "[s]tate regulation of reservation conduct involving only Indians is generally inapplicable because 'the federal interest in tribal self-governance is at its strongest. *Id.* at 144. However, 'more difficult questions arise when a state attempts to regulate the conduct of non-Indians on the reservation.' *Id.* at 145." (page 10). According to the *Bracker* case as presented by the Petitioner, when a state attempts to

regulate such conduct, "any applicable federal law must be examined regarding the specific issue involved to determine 'the policies that underlie them and the notions that have developed from tribal independence.' *Id.* '[s]uch an inquiry involve an examination of the federal, state and tribal interests at stake in the specific context to determine whether the state law violates federal law.' *Id.*" (page 10).

The Petitioner points to differences in the facts in this case from the facts existing in the *Bracker* case by noting that Western Sky is a non-Indian company based within the reservation of the CRST that was engaged in the for profit business of payday lending whose conduct reached nationwide outside the boundaries of the CRST reservation, including Oklahoma. Continuing, Western Sky solicited customers through extensive television and internet advertising calling itself "the Problem Solver" for consumers needing quick cash, received phone calls nationwide from consumers, transmitted funds to banks nationwide and utilized bank accounts nationwide to debit consumer bank accounts.

The Petitioner stated its position that even though the loan agreements were not conducted entirely on the CRST reservation, application of the *Bracker* standard for "on reservation conduct" results in the Department's regulation being upheld as the Code prevents a creditor and its assignees from contracting for and collecting a finance charge in excess of the amount authorized in the Code. Continuing, the Petitioner notes that federal law does not regulate the amount of finance charges or other fees that may be imposed in connection with the loans at issue in this matter, that there is no comprehensive regulatory scheme established under federal law for payday loans and that there is no federal regulatory scheme for payday lending operations based on an Indian reservation. Rather, the Petitioner points out that the area of

payday lending traditionally has been a matter of state law and regulation. The Petitioner asserts (page 12) that "Oklahoma has an interest in protecting the financial well-being of its citizens and ensuring that Oklahoma citizens are not subjected to paying excessive finance charges in connection with consumer loans regardless of where the creditor is based" and the Code's rate structure is a non-discriminatory law applicable to all creditors. Also noted is that the tribal interest in the regulation of the loans at issue is minimal and that it does not outweigh Oklahoma's interest in this matter. According to the Petitioner, the CRST did not own or operate Western Sky, it did not create Western Sky under the laws of the CRST, it was not a subdivision of the CRST and Western Sky's loans at issue were targeted towards non-tribal members nationwide, including Oklahoma.

The Petitioner asserts in conclusion that the restrictions of the Indian Commerce Clause do not prevent the Department's regulation in this matter, that the loans were initially made by a non-Indian company whose offices were located on a reservation, that such non-Indian company operated extensively outside the reservation, there is minimal federal law involving these loans at issue and Oklahoma has a compelling interest in ensuring that the loan agreements comply with Oklahoma law.

Petitioner's Supplemental Motion Response Argument 5

The fifth argument alleged by the Petitioner in its Supplemental Motion Response (page 13) is that the Dormant Commerce Clause does not prohibit the Department's regulation. The Petitioner recognizes that Congress has the authority through Article I, Section 8, clause 3, of the U.S. Constitution to regulate commerce among the states. In fact, the Petitioner notes that

> [a]lthough the Constitution does not explicitly prohibit states from regulating interstate commerce, courts have determined there is an 'implied prohibition against the states

> enacting laws that discriminate against interstate commerce,' known as the 'Dormant' commerce Clause analysis. *Department of Revenue of Kentucky v. Davis*, 553 U.S. 328, 338 (2008). If a challenged law is non-discriminatory, a state law will be upheld unless it imposes an excessive burden on interstate commerce. *Id.*" (*Id.* at page 13).

The Petitioner asserts that the Code provisions regarding the consumer loan rate and fee structure is a non-discriminatory law that applies to all creditors whether in-state or out-of-state and which prohibits creditors from contracting for and collecting charges or other fees in excess of those authorized by the Code regardless of the location of the creditor.

According to the Petitioner, the Code's finance charge and fee restrictions on consumer loan transactions involving Oklahoma residents furthers Oklahoma's legitimate interest to protect its citizens from paying excessive fees in connection with consumer loan transactions and any burden on an out of state creditor to tailor its finance charges and fees to become compliant with the Code is not excessive in relation to Oklahoma's local interests. At this point, the Petitioner cites a case arising from Oklahoma previously cited by the Respondent, *Aldens v. Ryan*, 571 F.2d 1159 (10th Cir. 1978), that upheld a Code provision that requires out of state creditors to comply with Code finance charge provisions in connection with consumer credit transactions with Oklahoma residents.

Petitioner's Supplemental Motion Response Argument 6

The sixth argument alleged by the Petitioner in its Supplemental Motion Response (page 14) is that the Respondent has waived any claims against the Department's regulation of its loan agreements. The Petitioner's assertion that the Respondent has waived claims against the Petitioner's regulation of its loan agreements is based on the Respondent's voluntary application for licensure in 2003 conditioned on the Respondent's agreement to comply with Oklahoma law

as well as the Respondent's continued renewal of its supervised lender license each year "...even when its loan portfolio consisted entirely of Western Sky loans made to Oklahoma consumers".

Petitioner's Supplemental Motion Response Argument 7

The seventh argument alleged by Petitioner in its Supplemental Motion Response (page 15) is that the allowable finance charge for supervised loans made pursuant to 14A O.S. §3-508A is the greater of a stepped rate or a 21% flat rate. According to the Petitioner, the Respondent admitted in the Supplemental Summary Judgment Motion that the allowable finance charge for supervised loans made pursuant to the rate structure of 14A O.S. §3-508A is the greater of a stepped rate or a 21% flat rate, and as the stepped rate is the greater of the two finance charge options, the Petitioner utilized the stepped rate.

The Petitioner concludes from its analysis as summarized above that the Respondent has violated the Code, that the Department has jurisdiction to regulate the loans at issue in this matter and such jurisdiction is not precluded by tribal sovereign immunity, the Indian Commerce Clause or the Dormant Commerce Clause of the U.S. Constitution.

PETITIONER'S AFFIDAVIT (SUMMARY)

Pursuant to the Scheduling Order, the Petitioner, in conjunction with filing its Motion Response, filed a document herein on February 3, 2015, entitled "Affidavit of Drew S'Renco" dated February 3, 2015 (the "S'Renco Affidavit"). It should be noted that this separately supplied affidavit was neither attached to nor offered as an exhibit(s) to the Petitioner's Motion Response.

The S'Renco Affidavit, consisting of five pages, basically provides that as the Department's Regional Manager, Mr. S'Renco has knowledge of how Departmental examinations of supervised loans are conducted, how finance charges and other fees for

supervised loans are calculated under the UCCC, including but not limited to, the finance charge rate structure for supervised loan transactions under the UCCC and the maximum amount that may be charged in connection with supervised loan transactions under the UCCC, and has knowledge of the Department's examination of the Respondent's supervised loan transactions initiated on or about September 19, 2012, for Oklahoma consumer loan transactions with loan effective dates between September 23, 2009, and September 23, 2013.

As to the Respondent's Oklahoma consumer loan transactions with loan effective dates between September 23, 2009, and September 23, 2013, Mr. S'Renco specifically provides (§9 at page 2) that he has reviewed the completed loan agreements that were provided by the Respondent to the Department, including all open and closed accounts, as well as a complete loan transaction history and notice of assignment, sale or transfer of servicing rights for each account, and that he has calculated the authorized finance charge and other fees for each loan agreement provided by the Respondent.

Continuing, Mr. S'Renco specifically provides (§11 at page 2) that the refund calculated by the Department was not based on the Respondent's collection of payments on the Western Sky loans but rather, the Department's spreadsheet was a comparison of what is authorized by statute and the terms contracted for on the Western Sky loans, which the Department has calculated to equal the aggregate sum of $60,570,310.38, which said aggregate sum is the amount that the Respondent would be over collecting from Oklahoma borrowers and which amount is not authorized by statute. Mr. S'Renco further provides that the aggregated amount of $60,570,310.38 is not authorized by statute and "was utilized to objectify the non-compliance." (§11 at page 2).

The S'Renco Affidavit asserts (§12 at page 2) that payment histories have no bearing when determining whether or not the Western Sky loans are compliant and the information necessary to make this determination would be found in statute and from the terms disclosed on the Western Sky loan contract. Continuing, the S'Renco Affidavit restates that as payments are not utilized for calculations, the calculations are actual and not theoretical. The S'Renco Affidavit later notes (§14 at page 3) that the Department:

> [h]as not cited CashCall to strictly a monetary refund on all Western Sky loans. A credit to the Oklahoma borrower's account for the overcharged portion of the finance charge could be utilized rather than paying monetary relief to an Oklahoma borrower that has not made a payment on their loan. A credit or 'refund' is done for the purpose of showing that CashCall was compliant or attempted to comply with the Department's direction.

RESPONDENT'S REPLY BRIEF (SUMMARY)

In accordance with the requirements of the Scheduling Order, the Respondent filed a document entitled "CashCall, Inc.'s Reply Brief" on March 5, 2015 (the "Respondent's Reply Brief"), in reply to the Supplemental Motion Response alleging, among other things, that; (I) the Respondent has not violated §1-201(5)(a) of the Code, (A) the Department cannot show that the Respondent collected any charges through "actions or other proceedings", (B) the Department cannot show that the loans were made in another "state", and (C) the Department cannot show that the Respondent violated §3-508A of the Code, (1) 14A O.S. §3-508A cannot serve as an independent basis of liability because it does not apply to loans made outside the State of Oklahoma, (2) in any event, the Respondent did not violate 14A O.S. §3-508A because it did not contract with borrowers, and (3) the Department's waiver argument is meritless ; (II) the Department lacks subject matter jurisdiction to enforce §1-201(5)(a) of the Code, (A) the Department's arguments about Tribal sovereign immunity are irrelevant, (B) pursuant to

Montana v. United States, 450 U.S. 544, 564 (1981), the Department may not regulate Western Sky loans, (C) the Indian Commerce Clause preempts application of Oklahoma law, and (D) the Dormant Commerce Clause precludes regulation of Western Sky loans. Attached to the Respondent's Reply Brief was an Exhibit A purporting to consist of numerous citations to Oklahoma statutes utilizing the phrase "actions or other proceedings".

PETITIONER'S RESPONSE TO SUPPLEMENTAL SUMMARY JUDGMENT MOTION REPLY BRIEF (SUMMARY)

Pursuant to the Scheduling Order, the Petitioner filed a document herein in response to the Respondent's Reply Brief on April 6, 2015, entitled "Response to Supplemental Motion for Summary Judgment Reply Brief of CashCall, Inc." (the "Supplemental Motion Response") alleging, among other things, that: (1) the Respondent failed to comply with Oklahoma law by collecting excessive finance charges and fees from Oklahoma consumers; (2) the Emergency Order provided notice of the alleged violations of law; (3) tribal sovereign immunity does not apply to Western Sky loans; (4) neither the Indian Commerce Clause nor the Dormant Commerce Clause prohibits the Department's regulation; (5) the Respondent has waived any claims against the Department's regulation of its loan agreements; and (6) the allowable finance charge for supervised loans made pursuant to 14A O.S. §3-508A is the greater of a stepped rate or 21% flat rate.

ANALYSIS OF FIRST SUMMARY JUDGMENT MOTION

The Summary Judgment Motion was filed as a general appearance by the Respondent on January 9, 2014, as the Summary Judgment Motion was silent as to its appearance in any other capacity and the Respondent's Summary Judgment did not represent that the Respondent was

appearing specially for any limited purpose. The Respondent did not challenge that the Petitioner has personal jurisdiction over the Respondent, a licensee of the Petitioner.

As noted earlier, the Respondent, on page 1 of the "Introduction" to its Summary Judgment Motion, defines 14A O.S.§1-201(5)(a) to be the "Statute". The Respondent asserts on page 2 of the Summary Judgment Motion "Introduction" that:

> [t]he Statute prohibits a lender or an assignee of such lender's rights, with respect to a loan made in another state to an Oklahoma borrower, from collecting charges in excess of those permitted by Oklahoma law through 'actions or other proceedings.' 14A Okla.Stat.§1-201(5)(a). By including the words 'actions or other proceedings,' the Oklahoma Legislature clearly limited the Statute's prohibition to legal proceedings in Oklahoma courts to collect excess charges. It plainly does not apply to other collection actions, as the Department erroneously asserts."

From the outset of these administrative proceedings, the Respondent has asserted that the phrase "actions and other proceedings" as used in 14A O.S.§1-201(5)(a), is strictly limited to mean legal proceedings in Oklahoma courts and cannot possibly have any other meaning. Yet in describing such "clearly limited prohibition" of legal proceedings in Oklahoma courts, the Respondent itself on page 2 of its Summary Judgment Motion states that such prohibition "...plainly does not apply to ***other collection actions***", thus recognizing that the phrase "actions and other proceedings" is not limited to legal proceedings in Oklahoma courts. (emphasis added). The Respondent's statement serves as an upfront admission that even the Respondent in defending its own narrowly-tailored statutory interpretation of 14A O.S.§1-201(5)(a) cannot help but acknowledge the existence of "other collection actions" that are beyond those consisting solely of "legal proceedings in Oklahoma courts". Such an admission by the Respondent is fatal to its own narrowly-tailored statutory interpretation of 14A O.S.§1-201(5)(a) in its Summary Judgment Motion.

In support of its Summary Judgment Motion, the Respondent cites six (6) legal authorities, namely 12 O.S. §2056(C) of the Oklahoma Pleading Code (12 O.S. §2001 to §2056), Rule 13 of the District Court Rules, and four (4) Oklahoma Court of Civil Appeals' cases including the following: *Bennett v. McKibben*, 915 P.2d 400, 403 (Okla. Civ. App. 1996), *Attocknie v. Carpenter Mfg., Inc.*, 901 P.2d 221, 223 (Okla. Civ. App. 1995), *Will v. Jones*, 463 P.2d 702, 703-4 (Okla. Civ. App. 1969), and, *Ferguson Pontiac-GMC, Inc. v. Henson*, 892 P.2d 657, 660 (Okla. Civ. App. 1994). In support of its Supplemental Summary Judgment Motion, the Respondent cites the same six (6) legal authorities it cited previously in support of its Summary Judgment Motion.

The first legal authority cited by the Respondent in both its Summary Judgment Motion and in its Supplemental Summary Judgment Motion is 12 O.S. §2056(C) of the Oklahoma Pleading Code (12 O.S. §2001 to §2056). According to 12 O.S. §2001 of the Oklahoma Pleading Code (12 O.S. §2001 to §2056), in pertinent part, the Oklahoma Pleading Code "...governs the procedure in the district courts of Oklahoma". The Commission on Consumer Credit, as created under §6-501 of the Uniform Consumer Credit Code, 14A O.S. §1-101 to §9-101, is an agency of the State of Oklahoma, and is the policy-making and governing authority of the Department that appoints the Administrator and is responsible for the enforcement of the Uniform Consumer Credit Code (collectively the Commission on Consumer Credit, the Department and the Administrator are hereinafter referred to as the "Commission"). Accordingly, the Commission as an agency of the State of Oklahoma, is not a "district court" and its procedures are not governed by the Oklahoma Pleading Code (12 O.S. §2001 to §2056), including but not limited to, §2056(C) thereof. The Respondent has cited no legal authority to the contrary or cited any legal

authority that the Commission's procedures are governed by the Oklahoma Pleading Code (12 O.S. §2001 to §2056), including but not limited to, §2056(C) thereof.

The second legal authority cited by the Respondent in both its Summary Judgment Motion and in its Supplemental Summary Judgment Motion is Rule 13 of the District Court Rules. As an agency of the State of Oklahoma, the Commission is not a "district court". As the Commission is not a "district court", it is not subject to any of the Rules for District Courts of Oklahoma T. 12, Ch. 2, App., including but not limited to, Rule 13, of Title 12, Chapter 2, Appendix. Rules for District Courts of Oklahoma. The Respondent has cited no legal authority to the contrary or cited any legal authority that the Commission is subject to any of the Rules for District Courts of Oklahoma T. 12, Ch. 2, App., including but not limited to, Rule 13, of Title 12, Chapter 2, Appendix. Rules for District Courts of Oklahoma.

The other legal authorities cited by the Respondent in both its Summary Judgment Motion and in its Supplemental Summary Judgment Motion are the four (4) Oklahoma Court of Civil Appeals' cases identified by the Respondent to be the following: *Bennett v. McKibben*, 915 P.2d 400, 403 (Okla. Civ. App. 1996), *Attocknie v. Carpenter Mfg., Inc.*, 901 P.2d 221, 223 (Okla. Civ. App. 1995), *Will v. Jones*, 463 P.2d 702, 703-4 (Okla. Civ. App. 1969), and, *Ferguson Pontiac-GMC, Inc. v. Henson*, 892 P.2d 657, 660 (Okla. Civ. App. 1994).

The first case cited by the Respondent is *Bennett v. McKibben*, 915 P.2d 400, 403 (Okla. Civ. App. 1996), which involved review of a trial court order which granted summary judgment in an action for slander to title of real property, fraud, conversion and emotional distress. The *Bennett* case did not involve any agency of the State of Oklahoma, any administrative hearing proceeding by or before any agency of the State of Oklahoma, or authorize the filing of any

motions for summary judgment in any administrative hearing proceedings before any agency of the State of Oklahoma.

The second case cited by the Respondent is *Attocknie v. Carpenter Mfg., Inc.*, 901 P.2d 221, 223 (Okla. Civ. App. 1995), which involved review of a trial court order which sustained in part, summary judgment motions on the basis that the action in negligence, manufacturer's liability, and the failure to warn on the ground that a school bus did not have seat belts, was preempted by federal law. The *Attocknie* case did not involve any agency of the State of Oklahoma, any administrative hearing proceeding by or before any agency of the State of Oklahoma, or authorize the filing of any motions for summary judgment in any administrative hearing proceedings before any agency of the State of Oklahoma.

The third case cited by the Respondent is *Will v. Jones*, 463 P.2d 702, 703-4 (Okla. Civ. App. 1969), which involved review of a trial court order granting summary judgment in an action for damages for an alleged breach of a real property sales contract in favor of the purchasers. The *Will* case did not involve any agency of the State of Oklahoma, any administrative hearing proceeding by or before any agency of the State of Oklahoma, or authorize the filing of any motions for summary judgment in any administrative hearing proceedings before any agency of the State of Oklahoma.

The fourth and final case cited by the Respondent is that of *Ferguson Pontiac-GMC, Inc. v. Henson*, 892 P.2d 657, 660 (Okla. Civ. App. 1994), which involved review of a trial court order granting summary judgment for a car dealer in an action to replevin a car it had sold and to collect on a debt evidenced by a $800 down payment and an executed retail installment sales contract and security agreement. The *Ferguson Pontiac-GMC, Inc.* case did not involve any

agency of the State of Oklahoma, any administrative hearing proceeding by or before any agency of the State of Oklahoma, or authorize the filing of any motions for summary judgment in any administrative hearing proceedings before any agency of the State of Oklahoma.

None of the four (4) Oklahoma Court of Civil Appeals' cases cited by the Respondent in both its Summary Judgment Motion and in its Supplemental Summary Judgment Motion involve any agency of the State of Oklahoma, any administrative hearing proceeding by or before any agency of the State of Oklahoma, or authorize the filing of any motions for summary judgment in any administrative hearing proceedings before any agency of the State of Oklahoma.

There is no statutory authority in the Uniform Consumer Credit Code, 14A O.S. §1-101 to §9-101 or in Article II of the Administrative Procedures Act for any party in any administrative proceeding to file any motion for summary judgment and the Respondent has cited no such statutory authority. Further, the Department has not adopted or otherwise promulgated any rule to authorize the filing of any motion for summary judgment by any party in any administrative proceeding. Still further, the Respondent has cited no relevant case law that authorizes any party in any administrative proceeding to file any motion for summary judgment.

Having discussed the absence of legal authority in this administrative proceeding to grant any motion for summary judgment to any party, we move our attention to the other issues raised by the parties through such motions filed herein.

ANALYSIS OF RESPONDENT'S SUPPLEMENTAL SUMMARY JUDGMENT MOTION

The Supplemental Summary Judgment Motion was filed as a general appearance by the Respondent on December 5, 2014, as the Supplemental Summary Judgment Motion was silent as

to being an appearance in any other capacity and the Respondent's Supplemental Summary Judgment Motion did not represent that the Respondent was appearing specially for any limited purpose. The Respondent did not challenge that the Petitioner has personal jurisdiction over the Respondent, a licensee of the Petitioner.

In the "Introduction" to its Supplemental Summary Judgment Motion, the Respondent presented four (4) arguments as its major points. The first was that the Respondent simply had not violated the "Statute" as it defined the language of 14A O.S. §1-201(5)(a). The Respondent's second argument was that the Department lacks subject matter jurisdiction to enforce the "Statute" against the Respondent. The Respondent's third argument was that the Department's exercise of regulatory authority would violate the Indian Commerce Clause of the U.S. Constitution. The Respondent's fourth argument in the "Introduction" to its Supplemental Summary Judgment Motion was that the Department's assertion of authority over this matter also must be rejected because it is a violation of the Dormant Commerce Clause.

It should be noted that in the section entitled "Introduction" in its Supplemental Summary Judgment Motion, the Respondent asserts four (4) arguments or legal theories in support of its position and proceeds to list, without any notice, qualification, or explanation, other alternative or inconsistent facts in support of two (2) of those legal theories which other alternative or inconsistent facts are expressly contrary to certain facts the Respondent stipulated to herein the very day before in the Joint Stipulation it jointly filed together with the Petitioner on December 4, 2014. Following its listing of statements of undisputed material facts, consisting of eighteen (18) allegedly undisputed facts, some of which are contrary to certain facts stipulated to in the Joint Stipulation as aforesaid, the Respondent proceeds to present its arguments and authorities

on four (4) legal theories, three (3) of which it briefly listed in its "Introduction", a fourth legal theory it listed in its "Introduction", being internally inconsistent and somewhat muddled, was incorporated into two of the other three (3) legal theories and a new fourth legal theory it did not identify or disclose until page 26, the next to last page, of the Supplemental Summary Judgment Motion.

Supplemental Summary Judgment Motion Legal Theory 1

The first legal theory asserted by the Respondent in its "Introduction" to its Supplemental Summary Judgment Motion that it has not violated the "Statute" it defines as 14A O.S.§1-201(5)(a), states that the loans to the borrowers at issue here "...were made by a member of the Cheyenne River Sioux Tribe (the "CRST") on the Cheyenne River Indian Reservation." (*See* the sixth sentence of the first full paragraph on page 2 of the Supplemental Summary Judgment Motion). This statement stands in stark contrast to the provisions of Joint Stipulations No. 18 through No. 28 (filed December 4, 2014) in which the Respondent stipulates to the Department's allegations that each loan agreement was entered into between Western Sky Financial, LLC., a limited liability company, and an individual borrower as well as Joint Stipulation No.14 that Western Sky Financial, LLC. "...is organized as a South Dakota limited liability company." According to the representation of the Respondent in Joint Stipulation No. 13, Western Sky is not owned or operated by a tribe or tribal entity. Obviously, Western Sky Financial, LLC., as a South Dakota limited Liability company, is neither a member of the CRST nor is it owned or operated by a tribe or tribal entity. The Respondent, in a rehash of its first theory in its Summary Judgment Motion, has again asserted in its first theory in the Supplemental Summary Judgment Motion, that the phrase "actions and other proceedings" as used in 14A O.S.§1-201(5)(a), is

strictly limited to mean legal proceedings in Oklahoma courts.

The Respondent elaborates on its first theory from its "Introduction" in the Supplemental Summary Judgment Motion, following a listing of its alleged eighteen undisputed material facts beginning on page 6. The Respondent, in again asserting that the phrase "actions and other proceedings" as used in 14A O.S.§1-201(5)(a), is strictly limited to mean legal proceedings in Oklahoma courts, as though such phrase in incapable of having any other meaning, places itself in a bind. In describing such "clearly limited prohibition" of legal proceedings in Oklahoma courts, the Respondent itself on page 2 of its Summary Judgment Motion states that such prohibition "...plainly does not apply to ***other collection actions***", thus recognizing that the phrase "actions and other proceedings" is not limited to legal proceedings in Oklahoma courts. (emphasis added). The Respondent's statement in its Summary Judgment Motion serves as an upfront admission that even the Respondent in defending its own narrowly-tailored statutory interpretation of 14A O.S.§1-201(5)(a) cannot help but acknowledge the existence of "other collection actions" that are beyond those consisting solely of "legal proceedings in Oklahoma courts". Such an admission by the Respondent is fatal to its own narrowly-tailored statutory interpretation of 14A O.S.§1-201(5)(a) in its Summary Judgment Motion as well as in the Supplemental Summary Judgment Motion.

The Respondent through its stipulations to the Emergency Order as stated in the Joint Stipulation, admitted, among other things, that the fees and charges it collects from Oklahoma residents are in excess of that authorized under Oklahoma law as to prepaid finance charge/origination fee of $75.00, a late fee of $29.00 for payments made sixteen or more days after the due date, and a $29.00 fee for returned checks for insufficient funds (Joint Stipulations

No. 18 through and including No. 29). Further, the Respondent stipulated to the allegations in the Emergency Order related to all of the loan agreements referred to in the Emergency Order as to all respective amounts financed, all respective finance charges levied, the respective annual percentage rates charged, and the respective total amounts of payments in all of the loan agreements (Joint Stipulations No. 18 through and including No. 29). Through such admissions as to its collection efforts for late fees and returned checks alone, the Respondent has likewise admitted that it has actively engaged in non-court collection actions in connection with the loan agreements at issue beyond its own narrowly-tailored statutory interpretation of 14A O.S.§1-201(5)(a) thus acknowledging the existence of "other collection actions" that are beyond those consisting solely of "legal proceedings in Oklahoma courts". Such additional admissions by the Respondent by themselves are fatal to its own narrowly-tailored statutory interpretation of 14A O.S.§1-201(5)(a) in its Summary Judgment Motion as well as in the Supplemental Summary Judgment Motion and evidence its violation of 14A O.S.§1-201(5) including 14A O.S.§1-201(5)(a). In other words, the Respondent admits it has collected or has attempted to collect charges related to the loan agreements at issue through non-court collection efforts and in doing so it has violated 14A O.S.§1-201(5)(a).

As a part of its first legal theory in its Supplemental Summary Judgment Motion, the Respondent asserts on page 8 that Western Sky made loans to borrowers on the Reservation, not in another state. As a subpart to this assertion, the Respondent states that the CRST is a sovereign nation and neither the CRST nor the Reservation is a state.

On page 8 of its Supplemental Summary Judgment Motion, the Respondent refers to "loans made by Indians". In this case the loans at issue were made by Western Sky, a South

Dakota limited liability company that is not an Indian. This reference to loans made by Indians in this matter in which the loans at issue were made by Western Sky, a South Dakota limited liability company, is incorrect and misleading.

The next argument raised by the Respondent on page 8 of its Supplemental Summary Judgment Motion as part of its first theory is that the word "state" as used in 14A O.S. §1-201 (5)(a), does not include an Indian reservation. The word "state" is not defined in the Code. As utilized in the Code at 14A O.S.§1-201(5), the word "state" should be liberally construed to further the purposes of the Code, one of which is to protect Oklahoma consumers from unfair credit practices of creditors whether located in Oklahoma or outside its borders. According to 25 O.S.§1, "words used in any statute are to be understood in their ordinary meaning unless a contrary intention applies". The Petitioner in its Supplemental Motion Response points out from the *Merriam Webster Online Dictionary*, that a common definition of the word state is "one of the constituent units of a nation having a federal government" but the *Merriam Webster Online Dictionary*, current edition, actually goes further in defining the word "state" to include the following: "(a) a politically organized body of people usually occupying a definite territory; especially: one that is sovereign, (b) the political organization of such a body of people, (c) a government or politically organized society having a particular character." Accordingly, the usage of the word "state" refers to aspects of both a government or a governmental unit, in this matter the Cheyenne River Sioux Tribe, as well as the physical territory governed by and within that government's jurisdiction, in this matter, the Cheyenne River Indian Reservation located in the State of South Dakota. It has been stipulated by the Respondent and the Petitioner, the non-party Cheyenne River Sioux Tribe is a federally-recognized Indian tribe, that it operates and is

located on the Cheyenne River Indian Reservation in South Dakota, and that as such, it is a sovereign. (*See* Joint Stipulations Nos. 13 and 17). Based upon such stipulations between the parties, the language of 25 O.S. §1 that words are to be understood in their ordinary meaning absent an intended contrary meaning and there being no contrary meaning through the action of the Legislature or even alleged by the Respondent, the Cheyenne River Sioux Tribe constitutes a "state" within the meaning of the Code.

On page 9, the Respondent next argues another subpart to its first legal theory, that Western Sky made loans to borrowers on the Cheyenne River Indian Reservation. The Respondent admits that the borrowers "electronically executed and delivered Loan Agreements via Western Sky's website to Western Sky employees located on the Reservation" and that "[u]ntil the Loan Agreements were accepted by Western Sky employees on the Reservation, Western Sky was under no obligation to fund any loan." *Id.* at 9. The Respondent concludes that the "Reservation was the place of contracting for each of the Loan Agreements." *Id.* at 9. It is interesting to note that while the Respondent denies that the Reservation constitutes a "state" within the meaning of the Code on pages 8 and 9 of its Supplemental Summary Judgment Motion, the Respondent cites the case of *Denison v. Phipps*, 211 P. 83 (Okla. 1922), which it claims provides that in determining the validity of a note, the state law of the state in which the note is payable governs in such determination.

On page 10 of the Supplemental Summary Judgment Motion, the Respondent cites Oklahoma law at 15 O.S. §162 as authority for its position that the Loan Agreements were both performed and formed on the Reservation. According to 15 O.S. §162, "[a] contract is to be interpreted according to the law and usage of the place where it is to be performed, or if it does

not indicate a place of performance, according to the law and usage of the place where it is made." It appears that the place of performance in this matter, is in Oklahoma as this state is the place to which the various loan receipts were disbursed, the place in which the loan proceeds were used, the place from which the loans were to be repaid, and the place from which the Respondent is engaged in its non-court collection efforts with its customers. However, the loan documents which were not produced as part of the record apparently indicate that the place of performance was agreed to have been the Reservation.

Supplemental Summary Judgment Motion Legal Theory 2

The second theory asserted by the Respondent on page 11 of its Supplemental Summary Judgment Motion is that the Department lacks subject matter jurisdiction to enforce 14A O.S.§1-201(5)(a). The Respondent cites the case of *In re A.N.O.*, 91 P.3d 646, 649 (Okla. 2004) as to jurisdiction which case notes "[i]t is fundamental that jurisdiction is the authority by which courts take cognizance of and decide cases, and the three elements necessary to the validity of a court order are jurisdiction of the person, jurisdiction of the subject matter and the power of the court to decide the particular matter and render the particular judgment at issue. *Roth v. Union Nat. Bank of Bartlesville*, 1916 OK 823, 160 P. 505." By not appearing specially in this matter to contest personal jurisdiction, and by securing a supervised lender license from the Petitioner, the Respondent has admitted that the Petitioner has personal jurisdiction over this matter.

According to page 11 of the Supplemental Summary Judgment Motion, the Respondent alleges that:

> [t]he Department lacks legislative and adjudicative authority over collection efforts related to Loan Agreements formed on the Reservation by tribal members. Such agreements are governed solely by CRST law-a conclusion unchanged by the mere fact that the Loan Agreements were made by residents of Oklahoma and assigned to and

> serviced by non-members of the CRST. Any other conclusion would defy nearly two centuries of United States Court precedent, infringe on CRST's right of self-governance, and violate the Indian Commerce Clause. *Id.*

The lengthy quote contains numerous issues. The Respondent asserts as a bare denial that the Petitioner has any "legislative or adjudicative authority over collection efforts related to Loan Agreements formed on the Reservation by tribal members." *Id.* at 11. The loans at issue were not formed by tribal members. The loans were made by Western Sky, a South Dakota limited liability company. (*See* Respondent's Undisputed Fact 5). The Respondent has not adequately shown that an artificial person can be or is a member of a tribe. The Respondent admitted in its Supplemental Summary Judgment Motion Respondent's Undisputed Fact 4 and in Joint Stipulation No. 5 of the Joint Stipulation that it is a supervised lender that has license number SL005517. Under 14A O.S.§3-502 and §3-504, the Administrator issues licenses for supervised lenders. Accordingly, the Administrator is "legislatively" authorized with jurisdiction over supervised lenders, including the Respondent, and over the collection efforts of such supervised lenders, including the Respondent. Under 14A O.S.§3-505, the Administrator is authorized to "appoint an independent hearing examiner to conduct all administrative hearings involving alleged violations of this title." Accordingly, the Respondent being accused of violations of 14A O.S.§1-201(5), §3-202.1, §3-203, §3-508A, §3-506, and §3-505(2)(c), having been accused of alleged violations of this title, being Title 14A, the Administrator and the independent hearing examiner are "legislatively" authorized with, but not limited to, the following: (1) adjudicative jurisdiction over Oklahoma licensed supervised lenders, including the Respondent; (2) adjudicative jurisdiction over the collection efforts of such Oklahoma licensed supervised lenders, including the Respondent; and (3) adjudicative jurisdiction over conducting

administrative hearings related to the licensure and discipline of such Oklahoma licensed supervised lenders.

The Respondent also claims in the lengthy quoted passage above that the Loan Agreements are governed by CRST law but has not produced a copy of such CRST law to verify what such law actually provides. In other words, the Respondent has pled CRST law but has not proved it. *See* the Respondent's Supplement as submitted by the Respondent.

The second theory as asserted by the Respondent (which is an argument repeated from the "Introduction" in its Summary Judgment Motion page 2 that has now become this second theory) on page 2 alleges that the Department "...seeks to ***impede the enforcement of a contract*** entered into by an enrolled member of the CRST tribe, formed and performed on the Cheyenne River Indian Reservation (the "Reservation"), and governed by CRST tribal law." (emphasis added). (*See* the second sentence of second paragraph on page 2 of the Supplemental Summary Judgment Motion). Further, the Respondent asserts that fundamental principles of tribal sovereignty bar the Department "...from exercising any form of jurisdiction over the ***enforcement of a contract*** entered into by an Indian, formed and performed on tribal land, and governed by tribal law." (emphasis added). (*See* the fourth sentence of the second paragraph on page 2 of the Supplemental Summary Judgment Motion). Still further, the Respondent states it is an "assignee of the rights of a member of the CRST", and as such the Respondent "...stands in the shoes of such member and ***is entitled to enforce such contracts***." (emphasis added). (*See* the sixth and last sentence of the carryover paragraph on page 3 of the Supplemental Summary Judgment Motion).

The aforesaid three references to the Respondent enforcing a contract made by Western

Sky and assigned to the Respondent evidence either, at the most, the Respondent's current active non-court enforcement of the loan agreements it purchased from Western Sky by continuing to collect charges associated with the borrowers' loan agreements each month, or at the least, the Respondent's future intention to actively enforce the loan agreements it purchased from Western Sky. Further, these three references to the Respondent enforcing a contract run counter to the Respondent's first legal theory in its Supplemental Summary Judgment Motion that as of the last hearing date, it has not instituted any legal proceedings to collect any charges associated with the borrowers' loan agreements because the Respondent is otherwise actively enforcing such contracts by continuing to collect charges associated with the borrowers' loan agreements each month through its non-court collection efforts.

It should be again noted from page 2 of the Summary Judgment Motion, the Respondent itself has asserted that the phrase "actions and other proceedings" as used in 14A O.S.§1-201(5)(a), is strictly limited to mean legal proceedings in Oklahoma courts and that such alleged prohibition "...plainly does not apply to ***other collection actions***". (emphasis added). The Respondent's own statement from page 2 of the Summary Judgment Motion serves as an admission that in defending its own narrowly-tailored statutory interpretation of 14A O.S.§1-201(5)(a), the Respondent cannot help but acknowledge the existence of "other collection actions" that are beyond those consisting solely of "legal proceedings in Oklahoma courts".

According to the representation of the Respondent in Joint Stipulation No. 31, Western Sky Financial, LLC. assigned its rights in the borrowers' loans to WS Funding, LLC., a Delaware limited liability company, which company is, according to Joint Stipulation No. 10, a wholly-owned subsidiary of the Respondent. Western Sky Financial, LLC., as a South Dakota limited

Liability company, is not an Indian, nor a member of the CRST nor is it owned or operated by a tribe or tribal entity.

These three statements in the Respondent's second legal theory in its Supplemental Summary Judgment Motion are factually contrary to the provisions of Joint Stipulations No. 18 through No. 28 in which the Respondent stipulates to the Department's allegations that each loan agreement was entered into between "Western Sky Financial, LLC." and an individual borrower as well as Joint Stipulation No.14 that Western Sky Financial, LLC. "...is organized as a South Dakota limited liability company." Once again, the representation of the Respondent in Joint Stipulation No. 13, is that Western Sky is not owned or operated by a tribe or tribal entity. Accordingly, Western Sky Financial, LLC., as a South Dakota limited Liability company, is neither an Indian nor a member of the CRST.

The Respondent argues that the Department's exercise of jurisdiction over the Loan Agreements violates "bedrock principles of Indian law" (Supplemental Summary Judgment Motion Sub-part Argument II, A page 12). As a subpart argument of this argument subpart, the Respondent argues that Mr. Webb is a member of the CRST, and Western Sky is entitled to the privileges of tribal membership (Supplemental Summary Judgment Motion Argument II, A (1) page 12). The Respondent cites to a tribal case from the Cheyenne River Sioux Tribe, *Cheyenne River Tele. Co. v. Pearman*, 89-006-A, at 3 (CRST Ct. of Appeals 1989), purportedly in support, but only provides one page in evidence as proof. As such document is not otherwise available herein and was not actually produced by the Respondent, such case is not persuasive.

The Respondent lists two Supreme Court cases in a footnote to Supplemental Summary Judgment Motion on page 12, *Montana v. United States*, 450 U.S. 544, 564 (1981) and *Merrion*

v. Jicarilla Apache Tribe, 455 U.S. 130, 170 (1982), in support of its unsubstantiated case of *Cheyenne River Tele. Co. v. Pearman*, 89-006-A, at 3 (CRST Ct. of Appeals 1989), yet neither case involves a tribal government recognizing or treating an artificial person (such as a limited liability company) as a member of a tribe entitled to the privileges of tribal membership, the rights and benefits of tribal membership, or as a tribal member by extension due to the ownership of a business by a tribal member. Accordingly, the Respondent has not demonstrated that these Supreme Court cases apply in the instant case.

As a second sub-part argument to its second legal theory that the Department lacks subject matter jurisdiction to enforce the statutory language it defines as the "Statute", the Respondent argues that the Department's assertion of jurisdiction is preempted by the Indian Commerce Clause (Supplemental Summary Judgment Motion Sub-part Argument II, B page 18). The Respondent has not adequately shown that the authorities it cites as authority as to the Indian Commerce Clause barring application of Oklahoma law to loan transactions it asserts were "...consummated on the Reservation". (Supplemental Summary Judgment Motion page 20). Accordingly, it has not been shown that the exercise of regulatory authority over this matter by the Petitioner would violate the Indian Commerce Clause of the U.S. Constitution and such argument is not persuasive.

Supplemental Summary Judgment Motion Legal Theory 3

The third legal theory asserted by the Respondent in its Supplemental Summary Judgment Motion is that the Department's assertion of authority over this matter must be rejected because it is a violation of the Dormant Commerce Clause (Supplemental Summary Judgment Motion Sub-part Argument III, page 25). The Supreme Court case cited by the Respondent of *Healy v. Beer*

Inst., Inc., 491 U.S. 324, 332 (1989) for the proposition of the regulation of commerce occurring wholly outside this State's borders does not appear to apply in this matter as the Respondent's collection efforts all are occurring in Oklahoma through the non-court collection efforts or actions of the Respondent as an Oklahoma licensed supervised lender The case cited by the Respondent of *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) is not analogous to the instant case because the Respondent is a licensee of the State of Oklahoma through the Petitioner which holds a license as a supervised lender. The Respondent's third legal theory that the Department's assertion of authority over this matter must be rejected because it is a violation of the Dormant Commerce Clause is not persuasive.

Supplemental Summary Judgment Motion Legal Theory 4

The fourth legal theory asserted by the Respondent in its Supplemental Summary Judgment Motion that the allowable finance charge is the greater of a stepped rate or 21% per annum (Supplemental Summary Judgment Motion Sub-part Argument IV, page 26), matches the position of the Petitioner and is persuasive.

Once again, there is no statutory authority in the Uniform Consumer Credit Code, 14A O.S. §1-101 to §9-101 or in Article II of the Administrative Procedures Act for any party in any administrative proceeding to file any motion for summary judgment and the Respondent has cited no such statutory authority. Further, the Department has not adopted or otherwise promulgated any rule to authorize the filing of any motion for summary judgment by any party in any administrative proceeding. Still further, the Respondent has cited no relevant case law that authorizes any party in any administrative proceeding to file any motion for summary judgment. Accordingly, the Respondent's legal theories asserted in the Supplemental Summary Judgment

Motion collectively, other than that of the fourth legal theory that the allowable finance charge is the greater of a stepped rate or 21% per annum, are not persuasive.

ANALYSIS OF PETITIONER'S BRIEF

In its Introduction to the Petitioner's Brief, the Petitioner notes that "[a] supervised lender license is required to 'make supervised loans' and is also required to 'take assignments of supervised loans and undertake direct collection of payments from or enforcement of rights against debtors arising from supervised loans'." citing 14A O.S. §3-502(1) in support. (Petitioner's Brief, page 1). The loans in this case were all "consumer loans" as defined in the Code at 14A O.S. §3-104. Further, the consumer loans in this case were all "supervised loans" as defined in the Code at 14A O.S. §3-501(1). The Respondent in this case, having never originated any supervised loans to Oklahoma consumers, was nevertheless licensed in the State of Oklahoma as a supervised lender for almost ten years before the Respondent undertook the assignment of any supervised loans from a different lender through its purchase of loans from Western Sky, for which such assignment and purchase of supervised loans the Respondent was also licensed in the State of Oklahoma as a supervised lender.

Petitioner's Brief Legal Theory 1

In the Petitioner's first argument or legal theory in its Petitioner's Brief, the Petitioner notes that the UCCC governs consumer credit transactions involving Oklahoma consumers, that pursuant to 14A O.S. §1-102(1) the UCCC is to be "liberally construed and applied to promote its underlying purposes and policies", and that pursuant to 14A O.S. §1-102(2)(d) one of the purposes of the UCCC to be liberally construed and applied is the protection of Oklahoma consumers from the unfair practices of creditors "with due regard to the interests of legitimate

and scrupulous creditors". (Petitioner's Brief, page 2). The Petitioner's first argument in its Petitioner's Brief is supported by legal authority and is persuasive.

Petitioner's Brief Legal Theory 2

The Petitioner's second argument or legal theory in its Petitioner's Brief, notes that the Code specifically protects Oklahoma consumers from paying fees and/or finance charges that are in excess of the amounts permitted in the Code, that such protection extends to consumer loans made outside of the state to Oklahoma residents, and that such protection also covers lenders and assignees that collect payments from Oklahoma residents. (Petitioner's Brief, page 3).

The Petitioner cites the Code at 14A O.S. §1-201(5) in support, in pertinent part, as a "lender, or assignee of his rights, may not collect charges through actions or other proceedings in excess of those permitted by the article on credit sales (Article 2) or by the article on loans (Article 3)." Further, noting that the loans in this matter were supervised consumer loans whose rate structure is governed by 14A O.S.§3-508A, the Petitioner cites the Code at 14A O.S.§3-508A(1) in support in pertinent part "[w]ith respect to a supervised loan,...a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section."

In the Joint Stipulation, the Respondent and the Petitioner agreed that Western Sky is not registered with the Oklahoma Secretary of State and has not been previously been licensed as a supervised lender in the State of Oklahoma (Joint Stipulation No. 15). Accordingly, at all times Western Sky entered into its loan agreements with Oklahoma residents in this case, it was not lawfully conducting its unlicensed supervised loan business with Oklahoma residents. The Respondent, however, was licensed as an Oklahoma supervised lender at the time(s) it acquired all of the supervised loans at issue in this case from Western Sky through its purchase and

assignment of all of such supervised loans made to Oklahoma residents.

Through its stipulations to the Emergency Order as stated in the Joint Stipulations, the Respondent admitted that the fees and charges it collects from Oklahoma residents are in excess of that authorized under Oklahoma law as to prepaid finance charge/origination fee of $75.00, a late fee of $29.00 for payments made sixteen or more days after the due date, and a $29.00 fee for returned checks for insufficient funds (Joint Stipulations No. 18 through and including No. 29). Further, the Respondent stipulated to the allegations in the Emergency Order related to all of the loan agreements referred to in the Emergency Order as to all respective amounts financed, all respective finance charges levied, the respective annual percentage rates charged, and the respective total amounts of payments in all of the loan agreements (Joint Stipulations No. 18 through and including No. 29). While the Respondent did not stipulate to any of the allegations with respect to the authorized maximum finance charge in Joint Stipulations No. 18 through and including No. 29 and in essence merely denied the amounts calculated and actually provided by the Petitioner, the Respondent did not produce any credible evidence in its Summary Judgment Motion, its Supplemental Summary Judgment Motion, or in the Joint Stipulations as to what the amounts of the authorized maximum finance charges otherwise actually are or should be. Accordingly, the Respondent's bare denial as to the amount of the authorized maximum finance charge in Joint Stipulations No. 18 through and including No. 29, being unsupported by any credible evidence is neither persuasive nor does such bare denial stand.

The Petitioner cites 14A O.S.§3-508A in support of its position noting that prior to August 22, 2014, the rate structure of §3-508A was calculated as therein provided, that the dollar amounts listed in §3-508A were subject to change based on changes to the consumer price index

(*See* 14A O.S.§1-106) and the dollar amounts were listed in an appendix to the Department's rules at OAC 160:20. The amounts calculated and actually provided by the Petitioner as the authorized maximum finance charge, being supported by statutory authority, are found to be correct. The Petitioner's legal theory on this point is well taken and persuasive.

The Petitioner's second argument or legal theory (Petitioner's Brief, page 3) also notes that the collection of such excessive charges is prohibited by UCCC Sections 1-201(5) and 3-508A and is also an unfair credit practice that the Code was enacted to prevent. Further, the Petitioner's second argument notes that the Administrator is empowered under 14A O.S.§3-505(2) to order the refund any unlawful charges that were collected by the Respondent. Collectively, the Petitioner's second legal theory is well taken, supported by legal authority and persuasive.

Petitioner's Brief Legal Theory 3

The Petitioner's third argument or legal theory in its Petitioner's Brief is that administrative action against the Respondent is authorized by the Code. (Petitioner's Brief, page 5). The Petitioner notes that prior to issuing a supervised lender license, the Administrator is required under 14A O.S.§3-504(1) to make a finding, in pertinent part, that the "...character and general fitness of the applicant are such to command the confidence of the public and to warrant belief the business will be operated lawfully and fairly, within the purposes of this title [UCCC]." (Petitioner's Brief, page 5).

Further, the Petitioner notes that pursuant to 14A O.S.§3-505(2)(c), the Administrator is authorized to take administrative action against a license in the form of a censure, suspension, revocation, or denial of the renewal of such a license if, in pertinent part, "[a]ny fact or condition

exists which, if it had existed or had been known to exist at the time of the original application for such license, clearly would have justified the Administrator in refusing to issue such license."

Still further, the Petitioner notes that 14A O.S.§6-108 permits the issuance of an order to a creditor to cease and desist from engaging in violations of the Code. Continuing, the Petitioner asserts that "[e]ngaging in the unfair credit practice of collecting excessive charges and fees would not have warranted the belief that CashCall's business activities as a supervised lender would be operated lawfully and fairly within the purpose of the Code." (Petitioner's Brief, page 5). Had such a fact existed, or had such fact been known to exist at the time of the filing of the Respondent's initial license application, either situation would have justified the Administrator's denial of the issuance of the Respondent's initial supervised lender license as well as now authorizing the Administrator's denial of issuing a renewal of the Respondent's supervised lender license and the issuance of a cease and desist order at this time. The Petitioner's third argument or legal theory is well taken, supported by legal authority and persuasive.

Petitioner's Brief Legal Theory 4

The Petitioner's fourth argument or legal theory stated in its Petitioner's Brief is that the Respondent's interpretation of 14A O.S.§1-201(5) would allow licensees to engage in the unfair credit practice of collecting excessive charges against Oklahoma consumers is contrary to the provisions of the Code. (Petitioner's Brief, page 6). The Petitioner correctly sums up the Respondent's interpretation of 14A O.S.§1-201(5) to be as follows: "...[t]he Legislature did not intend to prohibit a licensee from collecting excessive charges from Oklahoma consumers as long as a licensee does not file a lawsuit in an Oklahoma court regarding any unpaid excessive

charges or fees". The Respondent's interpretation of 14A O.S.§1-201(5) would, in Petitioner's words, "...allow licensees to engage in the unfair credit practice of collecting excessive charges against Oklahoma consumers, which is contrary to the provisions of the Code." The Petitioner's fourth theory in its Petitioner's Brief is well taken, supported by legal authority and persuasive.

Noting that the Respondent cites the commentary to the 1968 Uniform Consumer Credit Code, upon which model code Oklahoma's UCCC is based, as well as the case of *Aldens, Inc. v. Ryan*, 454 F. Supp. 465 (W.D. Okla. 1976), 571 F.2d 1159 (10th Cir. 1978), the Petitioner proceeds to refute the Respondent's interpretation of such authority. According to the Petitioner, the commentary to section 1.201 of the 1968 Uniform Consumer Credit Code, upon which section 1.201 Oklahoma's 14A O.S.§1-201(5) is based, states, in pertinent part, that section 1.201 or "paragraph five (5) 'prohibits the creditor from collecting charges through actions to the extent that the charges exceed those permitted by Part 2 of Articles 2 and 3 of the Code'." Further, according to the Petitioner, the commentary states that section 1.201 or 'paragraph five (5) 'enables the enacting State to apply this Act for the protection of its own consumer residents in multi-state transactions to the extent consistent with the need for workable operating procedures on the part of creditors'." The Petitioner correctly points out that "[t]he commentary does not conclude that the protections of this provision only apply if a lawsuit is instituted regarding excessive charges or fees that have not been paid'."

The case of *Aldens, Inc. v. Ryan*, 454 F. Supp. 465 (W.D. Okla. 1976), 571 F.2d 1159 (10th Cir. 1978), according to the Petitioner, involved an Illinois mail order company that solicited merchandise sales to Oklahoma residents through a catalog, some of which sales, qualifying as consumer credit sales under the Code, were financed by Aldens, Inc., and some of

which sales involved finance charges exceeding the maximum finance charge under the Code. The Petitioner's then-Administrator sought to enforce the Code's maximum finance charge against Aldens, Inc. who filed suit challenging the Code's extra-territoriality provision at 14A O.S.§1-201A on the grounds that it violated the Commerce Clause of the United States Constitution by imposing an undue burden on interstate commerce.

According to Judge Daugherty of the Western District Court in *Aldens, Inc. v. Ryan*, 454 F. Supp. 465, 469 (W.D. Okla. 1976), the Plaintiff Aldens brought: "...this action for Judgment declaring two provisions of the Oklahoma Uniform Consumer Credit Code (UCCC), 14A Oklahoma Statutes, s 1-101 et seq., to be Constitutionally invalid. The two challenged provisions, 14A Oklahoma Statutes, s 1-201(5)(a) and s 1-201A deal with the extraterritorial application of the maximum interest rate permitted in consumer credit sales by the Oklahoma UCCC and the denial of an Oklahoma forum to persons charging interest rates in excess of those permitted by the Oklahoma UCCC."

As to 14A O.S.§1-201(5)(a), Judge Daugherty notes that "Aldens' final Constitutional argument is that the Due Process Clause and the Commerce Clause prohibit Oklahoma's refusal to honor and enforce in its Courts valid Illinois contracts as is attempted by 14A Oklahoma Statutes, s 1-201(5)(a). Aldens' due process argument in this respect is not well taken and the cases cited by Aldens tell the Court to rule against it." *Id.* at 476. It is noted that while Judge Daugherty refers to the argument that 14A O.S.§1-201(5), properly interpreted, means the denial of an Oklahoma forum to persons charging interest rates in excess of those permitted by the Oklahoma UCCC, Judge Daugherty makes it clear that such an argument is that of Aldens, Inc. and that it is not his interpretation of or his position on 14A O.S. §1-201(5). Continuing, the

Western District Court further noted with approval that:

> ...a State may prohibit enjoyment within its borders of rights acquired elsewhere which violate its laws or public policy and, under some circumstances may refuse to aid in the enforcement of such rights. (citations omitted). In this case, Oklahoma has prohibited the enjoyment within its borders of rights technically acquired in Illinois under Illinois law. In view of the degree of Oklahoma's contacts with the subject transactions, Oklahoma may validly take this action without running afoul of the Due Process Clause of the Fourteenth Amendment." *Id.* at 476.

In conclusion, the Court for the Western District of Oklahoma held and stated "...Oklahoma does, as has previously been developed, have a strong interest in preventing its citizens from paying excessive interest. Local interest is strong enough to overcome Aldens' Commerce Clause objections. Therefore, 14A Oklahoma Statutes, s 1-201(5)(a) does not run afoul of the Commerce Clause or the Due Process Clause of the Fourteenth Amendment." *Id.* at 477.

It is important to note this holding from this *Aldens'* case at the trial level, which holding was undisturbed on appeal, that Oklahoma does have a strong interest in preventing its citizens from paying excessive interest and such local interest is strong enough to overcome constitutional Commerce Clause objections. It logically follows that Oklahoma's strong interest in preventing its citizens from paying excessive interest is also strong enough to overcome the Respondent's constitutional Indian Commerce Clause in this case in which a South Dakota limited liability company, Western Sky, that is not an Indian, an Indian tribe or an arm of an Indian tribe, entered into loan agreements with Oklahoma residents because of its extensive nationwide consumer lending operations outside the reservation, and which sold those loan agreements to the Respondent, an Oklahoma-licensed supervised lender. It further logically follows that Oklahoma's strong interest in preventing its citizens from paying excessive interest

is also strong enough to overcome the Respondent's Dormant Commerce Clause objections in this case in which the Code provisions regarding the rate and fee structure for consumer loans is a non-discriminatory law that evenly applies to in-state and out-of-state creditors that is not an undue burden on interstate commerce.

As to the *Aldens* case on appeal, the Tenth Circuit Court of Appeals stated at the beginning of its opinion affirming the decision of the Western District Court, that "[t]his is a challenge to the Oklahoma [Uniform] Consumer Credit Code, 14A Okl.Stats. ss1-201(5)(a) and 1-201A, as it applies the maximum interest rates to credit sales, and which does not permit actions in Oklahoma to collect balances where the interest rates exceed the Code maximum. It is brought by a mail-order house doing business in Illinois." *Id.* at 1160. The 10th Circuit Appeals Court noted that Aldens' place of business was in Illinois, that it had no agents in Oklahoma, that Aldens was not required to qualify to do business in Oklahoma, the credit agreement recites that it is an Illinois contract, that all orders were accepted in Illinois and that "...the interest rates as computed by Aldens exceed the maximum provided in the Oklahoma Code." *Id.* at 1161. In affirming the decision of the Western District Court, the Tenth Circuit Court stated that "[i]t is clear from times prior to International Shoe that the state can regulate the consequences of commercial transactions on its citizens which arise or are directed from outside its borders" and the "[p]hysical presence of Aldens in Oklahoma is not required to subject its credit rates to state regulation in transactions with Oklahoma residents." *Id.* at 1161.

Based upon such authority, Oklahoma can regulate the consequences of commercial transactions on its citizens which arise or are directed from outside its borders such as those arising or directed from the Cheyenne River Indian Reservation in South Dakota by a South

Dakota limited liability company, Western Sky, that is not an Indian, an Indian tribe or an arm of an Indian tribe. Further, the fact that the original lender of the loans at issue, Western Sky, was not physically present in Oklahoma at the time it made the loans is not required to subject Western Sky's credit rates to state regulation in its transactions with Oklahoma residents as well as Western Sky's assignees and successors in interest. The Petitioner's fourth argument or legal theory is well taken, supported by legal authority and persuasive.

ANALYSIS OF PETITIONER'S SUPPLEMENTAL MOTION RESPONSE

In the Petitioner's Supplemental Motion Response, the Petitioner persuasively responds to the Respondent's Supplemental Summary Judgment Motion by restating some of its major arguments and legal theories from its Petitioner's Brief, by refuting the Respondent's arguments and legal theories stated in its Summary Judgment Motion, Supplemental Summary Judgment Motion and its other responsive pleadings, and by presenting several new arguments and legal theories in response to the new arguments presented by the Respondent in its Supplemental Summary Judgment Motion.

Petitioner's Supplemental Motion Response Legal Theory 1 (Analysis)

The Petitioner's first argument or legal theory in the Supplemental Motion Response is that the Respondent failed to comply with Oklahoma law by collecting excessive finance charges and other fees from Oklahoma consumers, which argument essentially restates the Petitioner's second argument in the Petitioner's Brief that the Code prohibits excessive fees and finance charges (as the first argument in the Petitioner's Brief is that liberal construction and application of the Uniform Consumer Credit Code is required to protect Oklahoma consumers from unfair credit practices). (Response, page 2). As correctly noted in the Petitioner's Brief, first argument,

the UCCC governs consumer credit transactions involving Oklahoma consumers, that pursuant to 14A O.S. §1-102(1), the UCCC is to be "liberally construed and applied to promote its underlying purposes and policies", and that pursuant to 14A O.S. §1-102(2)(d) one of the purposes of the UCCC to be liberally construed and applied is the protection of Oklahoma consumers from the unfair practices of creditors "with due regard to the interests of legitimate and scrupulous creditors".

At this point in the Supplemental Motion Response, the Petitioner argues that the Code does not limit the application of 14A O.S.§1-201(5) to court proceedings and that such a limitation would conflict with the purposes of the Code, one of which is to protect Oklahoma consumers from the unfair practices of creditors (See 14A O.S.§§1-102(1) and 1-102(2)(d)). (Response, page 2). The Petitioner correctly notes that neither the Code nor the commentary to the 1968 version of the Uniform Consumer Credit Code specifically limits 14A O.S.§1-201(5) to court proceedings alone as urged by the Respondent.

Petitioner's Supplemental Motion Response Legal Theory 2 (Analysis)

The Respondent's second theory in its Supplemental Summary Judgment Motion alleges that the Department "...seeks to ***impede the enforcement of a contract*** entered into by an enrolled member of the CRST tribe, formed and performed on the Cheyenne River Indian Reservation (the "Reservation"), and governed by CRST tribal law." (emphasis added). (*See* the second sentence of second paragraph on page 2 of the Supplemental Summary Judgment Motion). It is noted that none of the loan agreements at issue were entered into by an enrolled member of the CRST tribe because Western Sky, a South Dakota limited liability company, entered into each of the loan agreements as the lender Western Sky and that Western Sky is not

an enrolled member of any Indian tribe.

The implication of such a legal theory as urged by the Respondent, is that a company privately owned by an enrolled member of any Indian tribe, through such an enrolled tribal member's own, private action of transferring or selling their company's ownership interest to anyone, Indian or not or artificial or not, through such transfer or sale, in essence make that person, natural or artificial, an actual member of their own Indian tribe, without any formal action or review by proper tribal authorities to determine the actual tribal membership of such persons. In other words, the Respondent's legal theory is that an enrolled tribal member of any Indian tribe may make any other person a member of that same Indian tribe through simply selling that person an ownership interest in such individual's company. The implication of such a legal theory as posed by the Respondent makes no sense legally, has not been sufficiently supported by the legal authority presented in this matter by the Respondent, and is not persuasive.

The Respondent is either currently enforcing the loan agreements it purchased from Western Sky by continuing to collect charges associated with the borrowers' loan agreements each month, or the Respondent's future intention is to actively enforce the loan agreements it purchased from Western Sky as contracts, is implied by the Respondent through its asserted limited ability to resort to "actions or other proceedings" only through court proceedings. In light of such implication of current or future collection efforts, how can the Department be said to be seeking *to impede the enforcement of a contract* when the Respondent asserts that it has initiated no "actions or other proceedings" in any Oklahoma court? The Respondent's implication through the choice of such language is that if the Department should prevail in this administrative proceeding, that the Department will in some way impede the Respondent's enforcement of the

loan agreements at issue herein as contracts. It is significant that the Respondent has never denied that it is currently enforcing the loan agreements it purchased from Western Sky by continuing to collect charges associated with the borrowers' loan agreements each month. The Respondent has only denied initiating or pursuing collection actions in Oklahoma courts.

Further, the Respondent asserts that fundamental principles of tribal sovereignty bar the Department "...from exercising any form of jurisdiction over the ***enforcement of a contract*** entered into by an Indian, formed and performed on tribal land, and governed by tribal law." (emphasis added). (*See* the fourth sentence of the second paragraph on page 2 of the Supplemental Motion for Summary Judgment). It is noted from such assertion that no loan agreement at issue herein was entered into by Western Sky as an Indian because Western Sky is a South Dakota limited liability company and not an Indian. As to the contract enforcement issue, it can again be said that if the Respondent has no current intention to enforce the loan agreements at issue as contracts as implied by the Respondent through its asserted limited ability to resort to "actions or other proceedings" only through court proceedings, how can the Department be said to be seeking to exercise any form of jurisdiction over the *enforcement of a contract* when the Respondent asserts that it has initiated no "actions or other proceedings" in any Oklahoma court? While the Department did not challenge the Respondent's allegations supported by an affidavit that as of the last hearing date it had actually filed no "actions or other proceedings" in any Oklahoma court, there was no assertion or promise by the Respondent that no "actions or other proceedings" through non-court collection efforts had ever been conducted or that no "actions or other proceedings" in court or otherwise would ever be filed, initiated or pursued in the future.

Still further, the Respondent states it is an "assignee of the rights of a member of the

CRST", and as such the Respondent "...stands in the shoes of such member and ***is entitled to enforce such contracts***." (emphasis added). (*See* the sixth and last sentence of the carryover paragraph on page 3 of the Supplemental Motion for Summary Judgment). It is noted from such assertion that the Respondent is an assignee of the rights of the owner of Western Sky, a South Dakota limited liability company, not an assignee of the rights of a member of the CRST as such company ownership was independent of any tribal membership. As to the contract enforcement issue, it can yet again be said that if the Respondent has no current or future intention to enforce the loan agreements at issue as contracts as implied by the Respondent through its self-professed limited ability to resort to "actions or other proceedings" only through court proceedings, how can the Respondent state that it is entitled to enforce the loan agreements as contracts mean anything other than what it says? The answer of course is that such language means what it says.

These three references by the Respondent to the enforcement of a contract entered into by Western Sky and assigned to the Respondent evidence the Respondent's stated current and future intention to actively enforce the loan agreements it purchased from Western Sky, whether through court actions or other proceedings. Further, these three references to the Respondent enforcing a contract run counter to the Respondent's first legal theory in its Supplemental Summary Judgment Motion that, as of the last hearing date, it has not instituted any legal court proceedings to collect any charges associated with the borrowers' loan agreements because the Respondent is already actively enforcing such contracts through "other proceedings" by continuing to collect charges associated with the borrowers' loan agreements each month. Once again, it is significant that the Respondent has never denied that it is currently enforcing the loan agreements it purchased from Western Sky by continuing to collect charges associated with the

borrowers' loan agreements each month without going to court. The Respondent has only denied initiating collection actions in Oklahoma courts.

It should be noted yet again from page 2 of the Summary Judgment Motion, the Respondent itself has asserted that the phrase "actions and other proceedings" as used in 14A O.S.§1-201(5)(a), is strictly limited to mean legal proceedings in Oklahoma courts and that such alleged prohibition "...plainly does not apply to ***other collection actions***". (emphasis added). The Respondent's own statement from page 2 of the Summary Judgment Motion serves as an admission that in defending its own narrowly-tailored statutory interpretation of 14A O.S.§1-201(5)(a), the Respondent cannot help but acknowledge the existence of "other collection actions" that are beyond those consisting solely of "legal proceedings in Oklahoma courts".

The Petitioner proceeds to respond in the Supplemental Motion Response to the Respondent's assertions that the word "state" as utilized in the Code at 14A O.S.§1-201(5) does not include an Indian reservation by correctly acknowledging that the Code does not define the word state and asserting that its meaning should be liberally construed to further the purposes of the Code, one of which is to protect Oklahoma consumers from unfair credit practices of creditors whether located in Oklahoma or outside its borders. (Response page 3). Citing the language of 25 O.S.§1 that "words used in any statute are to be understood in their ordinary meaning unless a contrary intention applies", the Petitioner points out from the *Merriam Webster Online Dictionary*, that a common definition of the word state is "one of the constituent units of a nation having a federal government." The *Merriam Webster Online Dictionary* actually goes further in defining the word "state" than does the Petitioner. In addition to the definition of the word "state" cited by the Petitioner, the *Merriam Webster Online Dictionary*, current edition,

also provides that the word "state" is commonly defined as "(a) a politically organized body of people usually occupying a definite territory; especially: one that is sovereign, (b) the political organization of such a body of people, (c) a government or politically organized society having a particular character." Under Oklahoma law at 25 O.S. §1, the word "state" as used in a statute, in this case, 14A O.S.§1-201(5), is to be understood in its ordinary meaning as no contrary intention applies. Accordingly, as used in 14A O.S.§1-201(5), the word "state" means one of the constituent units of the nation having a federal government, a politically organized body of people usually occupying a definite territory especially one that is sovereign, the political organization of such a body of people, a government or politically organized society having a particular character, or in other words, state means a governmental unit of the United States, including, but not limited to, the Cheyenne River Sioux Tribe. From the language used in the *Merriam Webster Online Dictionary*, it can be seen that the usage of the word "state" refers to aspects of both a government, in this matter the Cheyenne River Sioux Tribe, as well as the territory occupied by that government, in this matter, the Cheyenne River Indian Reservation located in South Dakota.

It has been stipulated by the Respondent and the Petitioner in this case that the non-party Cheyenne River Sioux Tribe is a federally-recognized Indian tribe, that it operates and is located on the Cheyenne River Indian Reservation in South Dakota, and that as such, it is a sovereign. (*See* Joint Stipulations Nos. 13 and 17). Based upon such stipulations between the parties, the language of 25 O.S. §1 that words are to be understood in their ordinary meaning absent an intended contrary meaning and there being no contrary meaning through the action of the Legislature, the Cheyenne River Sioux Tribe constitutes a "state" within the meaning of the

Code.

The Petitioner responds to the Respondent's argument in the Supplemental Summary Judgment Motion that the loan agreements at issue in this matter are subject to the laws of the Cheyenne River Sioux Tribe (Response page 4) by noting the general rule that Indian tribes may not regulate the conduct of nonmembers of the Indian tribe and that the U.S. Supreme Court has carved out limited exceptions that any tribal regulation of nonmembers is generally limited to conduct inside the reservation that "implicates the tribe's sovereign interests." (*See Plains Commerce Bank v. Long Family Land & Cattle Company*, 554 U.S. 316, 332-333 (2008)). It has been stipulated by the Respondent and the Petitioner in this case that Western Sky conducted its business activities on the Cheyenne River Indian Reservation within the exterior boundaries of the State of South Dakota, that Western Sky is organized as a South Dakota limited liability company, and that Western Sky is not owned or operated by a tribe or tribal entity. (Joint Stipulations Nos. 13 and 14). There has been no evidence presented that any of the loan agreements at issue in this matter were executed by any members of the Cheyenne River Sioux Tribe. Accordingly, the only conduct capable of tribal regulation in this matter is that conduct of nonmembers of the Cheyenne River Sioux Tribe inside the Cheyenne River Indian Reservation that implicates the tribe's sovereign interests. The originator of the loan agreements at issue in this matter, Western Sky, as jointly stipulated herein, is a South Dakota limited liability company that is not owned or operated by a tribe or a tribal interest. Based upon the jointly stipulated facts in this matter, there exists no implication of tribal sovereign interests in this matter as Western Sky, a South Dakota limited liability company, is not owned or operated by a tribe or a tribal entity.

Petitioner's Supplemental Motion Response Legal Theory 3 (Analysis)

The Petitioner's third argument or legal theory in the Supplemental Motion Response is that tribal sovereign immunity is inapplicable to the Western Sky Loans at issue in this matter and cites three cases in support (Response page 6). The Petitioner first notes that Indian tribes are " 'domestic dependent nations'" that exercise "inherent sovereign authority" and "as dependents, the tribes are subject to plenary control by Congress." *Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024, 2030 (2014). The Petitioner next cites the Tenth Circuit Court of Appeals case of *Breakthrough Management Group, Inc. v. Chukchansi Gold Casino and Resort* (BMG), 629 F. 3d 1173, 1182 (10th Cir. 2010), in which the Court noted that "[b]ecause Indian tribes are sovereign powers, they possess immunity from suit to the extent that Congress has not abrogated that immunity and the tribe has not clearly waived its immunity." According to the Petitioner (page 7), the BMG case held that "[t]ribal sovereign immunity may extend to subdivisions of a tribe, including those engaged in economic activities, provided that the relationship between the tribe and the entity is sufficiently close to properly permit the entity to share in the tribe's immunity." *Id.* at 1183. Analyzing the BMG case, the Petitioner noted (page 7) that the Court therein "utilized a six part test (subordinate entity test) to determine that a casino and an economic development authority, which operated the casino, were subordinate economic entities so closely related to the Chukchansi Indian Tribe that they should share in the tribe's immunity." According to the Court in BMG:

> ...the following factors are helpful in informing our inquiry: (1) the method of creation of the economic entities; (2) their purpose; (3) their structure, ownership, and management, including the amount of control the tribe has over the entities; (4) the tribe's intent with respect to the sharing of its sovereign immunity; and (5) the financial relationship between the tribe and the entities." *Id* at 1187.

Continuing, the Court in BMG further stated: "[f]urthermore, our analysis also is guided by a sixth factor: the policies underlying tribal sovereign immunity and its connection to tribal economic development, and whether those policies are served by granting immunity to the economic entities." *Id* at 1187.

The Petitioner proceeds to note in the Supplemental Motion Response (Response page 8) that "tribal sovereign immunity has not been extended to a for profit company established under state law." In fact, according to the Petitioner "[t]he Tenth Circuit Court of Appeals has ruled that the application of the subordinate entity test utilized in the BMG case is 'inapplicable to entities which are legally distinct from their members and which voluntarily subject themselves to the authority of another sovereign which allows them to be sued'", citing the case of *Somerlott v. Cherokee Nation Distributors, Inc.*, 686 F. 3d 1144, 1149-1150 (10th Cir. 2012). According to the Petitioner "[t]he Court noted that under Oklahoma law, a limited liability company is separate and distinct from its members and that a limited liability company can be sued. *Id.* at 1150." (Response page 8). The *Somerlott* case involved an Oklahoma limited liability company, Cherokee Nation Distributors, owned by a corporation, Cherokee Nation Businesses, Inc., owned and regulated by the Cherokee Nation, a federally recognized Indian tribe.

The Petitioner noted that similar to the facts in the *Somerlott* case, Western Sky is a South Dakota limited liability company formed under the Uniform Limited Liability Company Act, SDCL §47-34a-101, et seq., that under the Uniform Limited Liability Company Act, a limited liability company is a legal entity distinct from its members (*See* commentary to Uniform Limited Liability Act §201), and under South Dakota law, a limited liability company can be sued (See SDCL §47-34A-112(b)(1)), all of which facts and law are correct.

In contrast, the Petitioner noted that "[u]nlike the facts in *Somerlott*, Western Sky is not owned by a tribal entity or a tribe." (Response page 9). Further, the Petitioner noted that "Western Sky advertising states that Western Sky 'is not owned or operated by the Cheyenne River Sioux Tribe or any of its subdivisions.' *See* Exhibit 1." (Response page 9). The Exhibit 1 referred to an attachment to the Supplemental Motion Response consisting of two pages of Western Sky advertising containing the information as represented by the Petitioner. Based on the foregoing, the Petitioner notes that:

> [t]ribal sovereign immunity is not applicable to Western Sky as it is not an Indian tribe and is not an extension of an Indian tribe. Western Sky is a South Dakota limited liability company subject to suit. Likewise, CashCall [Respondent], a California corporation, a licensee of the Department and assignee of Western Sky is also subject to suit. (Response page 10).

The Petitioner's position that tribal sovereign immunity does not apply to the Western Sky loans, being well supported by the facts and the applicable law, is both well-reasoned and persuasive.

Petitioner's Supplemental Motion Response Legal Theory 4 (Analysis)

The Petitioner's fourth argument or legal theory in the Petitioner's Supplemental Motion Response is that the Indian Commerce Clause does not prohibit the Department's regulation (Response page 10).

The Petitioner cites the case of *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142-144 (1980) for its finding of two independent barriers to state regulation of Indian commerce, namely, "[s]tate regulatory authority over tribal reservations and members may be pre-empted by federal law and by the interference of state laws with the right of tribes to make their own laws. *Id.* at 142-143." Continuing, the Petitioner notes from the *Bracker* case that

"[s]tate regulation of reservation conduct involving only Indians is generally inapplicable because 'the federal interest in tribal self-governance is at its strongest. *Id.* at 144. However, 'more difficult questions arise when a state attempts to regulate the conduct of non-Indians on the reservation.' *Id.* at 145." (Response page 10). According to the *Bracker* case, when a state attempts to regulate such conduct, "any applicable federal law must be examined regarding the specific issue involved to determine 'the policies that underlie them and the notions that have developed from tribal independence.' *Id.* '[s]uch an inquiry involve an examination of the federal, state and tribal interests at stake in the specific context to determine whether the state law violates federal law.' *Id.*" (Response page 10).

The Petitioner correctly points to differences in the facts in this case from the facts existing in the *Bracker* case by noting that: (1) Western Sky is a non-Indian company based within the reservation of the CRST that was engaged in the for profit business of payday lending whose conduct reached nationwide outside the boundaries of the CRST reservation, including Oklahoma; and (2) Western Sky solicited customers through extensive television and internet advertising calling itself "the Problem Solver" for consumers needing quick cash, received phone calls nationwide from consumers, transmitted funds to banks nationwide and utilized bank accounts nationwide to debit consumer bank accounts.

Even though the loan agreements were not conducted entirely on the CRST reservation as admitted by the Petitioner, the application of the *Bracker* standard for "on reservation conduct" results in the Department's regulation being upheld as the Code prevents a creditor and its assignees from contracting for and collecting a finance charge in excess of the amount authorized in the Code. Further, the Petitioner correctly notes that federal law does not regulate the amount

of finance charges or other fees that may be imposed in connection with the loans at issue in this matter, that there is no comprehensive regulatory scheme established under federal law for payday loans and that there is no federal regulatory scheme for payday lending operations based on an Indian reservation. Rather, as the Petitioner points out, the area of payday lending traditionally has been a matter of state law and regulation. The Petitioner's assertion (Response page 12) that "Oklahoma has an interest in protecting the financial well-being of its citizens and ensuring that Oklahoma citizens are not subjected to paying excessive finance charges in connection with consumer loans regardless of where the creditor is based" and the Code's rate structure is a non-discriminatory law applicable to all creditors is well-taken. It is noteworthy that the tribal interest in the regulation of the loans at issue is minimal and that it does not outweigh Oklahoma's interest in this matter. The CRST did not own or operate Western Sky, it did not create Western Sky under the laws of the CRST, it was not a subdivision of the CRST and Western Sky's loans at issue were targeted towards non-tribal members nationwide, including Oklahoma.

Petitioner's Supplemental Motion Response Legal Theory 5 (Analysis)

The Petitioner's fifth argument or legal theory in the Petitioner's Supplemental Motion Response is that the Dormant Commerce Clause does not prohibit the Department's regulation (Response page 13). Congress has the authority through Article I, Section 8, clause 3, of the U.S. Constitution to regulate commerce among the states. In fact, the Petitioner correctly notes that

> [a]lthough the Constitution does not explicitly prohibit states from regulating interstate commerce, courts have determined there is an 'implied prohibition against the states enacting laws that discriminate against interstate commerce,' known as the 'Dormant' Commerce Clause analysis. *Department of Revenue of Kentucky v. Davis*, 553 U.S. 328, 338 (2008). If a challenged law is non-discriminatory, a state law will be upheld unless it imposes an excessive burden on interstate commerce. *Id.*" (*Id.* at page 13).

According to the Petitioner, "the Code provisions regarding the rate and fee structure for consumer loans is a non-discriminatory law that evenly applies to in-state and out-of-state creditors." *Id.* at 13. In support the Petitioner notes under the Code that regardless of the creditor's location, creditors are prohibited from contracting for and collecting charges or other fees in excess of the charges or fees authorized by the Code. Respondent has not shown that the state laws that the Petitioner is enforcing impose an excessive burden on interstate commerce. In light of the even application of the Code provisions to both in-state and out-of-state creditors, these Code provisions are indeed non-discriminatory.

The Petitioner also notes in its Supplemental Motion Response, that:

> [t]he Code's finance charge and fee restrictions on consumer loan transactions involving Oklahoma residents furthers a legitimate interest of Oklahoma to protect its citizens from paying excessive fees in connection with consumer loan transactions. Any burden on an out of state creditor to tailor its finance charges and other fees to become compliant with the Code is not excessive in relation to the local interests of Oklahoma. *Id.* at 14.

The Petitioner cites the case of *Aldens v. Ryan*, 571 F. 21d 1159 (10th Cir. 1978), a case cited by the Respondent, that upheld a provision of the Code that required out-of-state creditors to comply with the Code's finance charge provisions in connection with consumer credit transactions with Oklahoma residents.

The Petitioner's position is well-supported and persuasive that the applicable Code provisions are non-discriminatory and do not place an undue burden on interstate commerce.

Petitioner's Supplemental Motion Response Legal Theory 6 (Analysis)

The Petitioner's sixth argument or legal theory in the Petitioner's Supplemental Motion Response is that CashCall [Respondent] has waived any claims against the Department's

regulation of its loan agreements because it is licensed as an Oklahoma supervised lender (Response page 14). The Respondent argues that this fact of its supervised lender licensure should be ignored and urges that its state licensure is unrelated to these supervised loans which it acquired from the originating lender, Western Sky. The Respondent's assertion that its licensure as a supervised lender is unrelated to these supervised loans is illogical and untrue. The very reason the Respondent could legally acquire its Oklahoma supervised loan portfolio to begin with is because the Respondent was licensed to deal in supervised loans by virtue of such Oklahoma licensure.

Petitioner's Supplemental Motion Response Legal Theory 7 (Analysis)

The Petitioner's seventh argument or legal theory in the Petitioner's Supplemental Motion Response is that the allowable finance charge for supervised loans made pursuant to 14A O.S. §3-508A is the greater of a stepped rate or 21% flat rate (Response page 15). The Petitioner noted that the Supplemental Summary Judgment Motion correctly stated that the allowable finance charge for supervised loans made pursuant to 14A O.S. §3-508A is the greater of a stepped rate or 21% flat rate. According to the Petitioner, it utilized the stepped rate in calculating the maximum finance charges for the loans at issue in this matter because the stepped rate was the greater of the two available options. As the stepped rate is the greater of the available options and the Respondent agreed accordingly, use of the stepped rate in calculating the maximum finance charges for the loans at issue in this matter is the appropriate allowable finance charge for supervised loans made pursuant to 14A O.S. §3-508A.

POST APRIL 24, 2015, HEARING MATTERS

Subsequent to the April 24, 2015, Hearing in this matter, at the request of the Independent

Hearing Examiner, the Respondent filed a document entitled "CashCall, Inc.'s Supplement to the Record" herein on May 26, 2015, with numerous attachments including various tribal laws (the "Respondent's Supplement"). The Respondent so noted on page 1 of its "Introduction", that the Respondent's Supplement was filed at the request of the Independent Hearing Examiner to supplement the record in this matter "...with various statutes, rules and proceedings of the Cheyenne River Sioux Tribe which were referred to in the pleadings (the "CRST Documents")". Continuing on page 1 of its "Introduction", the Respondent asserted that "[t]he CRST Documents were not part of the record because the description of the substance of the CRST Documents were not contested. CashCall believes that the CRST Documents are not relevant to the matters at issue." Finally on page 2 of its "Introduction", the Respondent further asserted that "[t]he parties have stipulated that as a matter of Oklahoma law, the loans at issue were made outside the State of Oklahoma. Consequently, the laws of the place of contracting are not relevant."

Subsequent to the April 24, 2015, Hearing in this matter, at the request of the Independent Hearing Examiner, on May 26, 2015, the Petitioner provided three (3) documents from its file in this matter to the Independent Hearing Examiner via e-mail consisting of the following: (1) copy of an executed Consumer Loan Agreement dated April 9, 2012, in the form represented to have been used for all loans involved in this matter; (2) copy of the Agreement for the Assignment and Purchase of Promissory Notes dated October 28, 2010, under which all Western Sky loans to residents of the State of Oklahoma were assigned to WS Funding, LLC, a subsidiary of the Respondent; and (3) copy of the Agreement for Service between Western Sky and the Respondent dated January 9, 2010.

After reviewing the administrative record of this individual proceeding, reviewing the

arguments, testimony and evidence presented at the hearing(s), and reviewing the proposed order filed by Independent Hearing Examiner, Bryan Neal, the Administrator of Consumer Credit issues the following findings, conclusions and orders:

JURISDICTION AND AUTHORITY

1. The Administrator of Consumer Credit is charged with the administration and enforcement of the Uniform Consumer Credit Code, 14A O.S. §1-101 to §9-101, including, but not limited to, Article 3 thereof known as Uniform Consumer Credit Code-Loans, 14A O.S. § 3-101 to § 3-605.

2. As authorized by or pursuant to law, if an agency finds that the public health, safety, or welfare imperatively requires emergency action, has promulgated administrative rules which provide for such action and incorporates a finding regarding the emergency in its order, emergency actions may be ordered pending the final outcome of proceedings instituted pursuant to Article II of the Administrative Procedures Act. 75 O.S. § 314.1.

3. The Administrator of Consumer Credit may issue an emergency order, pending the final outcome of an individual proceeding, that includes the suspension of a license instanter or a cease and desist instanter if the public health, safety, or welfare imperatively requires such action. An emergency order shall include an order for a hearing that is scheduled within twenty (20) days from the date of service of the emergency order. The Administrator of Consumer Credit shall serve an emergency order by certified mail, return receipt requested, or by personal delivery. OAC 160:3-1-4(j).

4. The Administrator may, after notice and hearing, censure, probate, suspend, revoke or refuse to renew any license, or in addition to or in lieu of censure, probation,

suspension or revocation, order refunds for unlawful charges if the Administrator finds that:

(a) The licensee has failed to pay the annual license fee imposed by the UCCC, or an examination fee, investigation fee or other fee or charge imposed by the Administrator under the authority of the UCCC,

(b) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of the UCCC or any regulation or order lawfully made pursuant to and within the authority of the UCCC, or

(c) Any fact or condition exists which, if it had existed or had been known to exist at the time of the original application for such license, clearly would have justified the Administrator in refusing to issue such license. 14A O.S. § 3-503.

5. Any licensee who shall fail or refuse to let the Administrator or the duly authorized representative of the Administrator examine or make copies of such books, or other relevant documents shall thereby be deemed in violation of the Uniform Consumer Credit Code and such failure or refusal shall constitute grounds for the administrative action against such license. 14A O.S.§ 3-506(1).

6. If a consumer credit sale, consumer lease, or consumer loan, or modification thereof, is made in another state to a person who is a resident of this state when the sale, lease, loan, or modification is made, the following provisions apply as though the transaction occurred in this state:

(a) a seller, lessor, lender, or assignee of his rights, may not collect charges

through actions or other proceedings in excess of those permitted by the UCCC article on credit sales (Article 2) or by the UCCC article on loans (Article 3); and

(b) a seller, lessor, lender, or assignee of his rights, may not enforce rights against the buyer, lessee, or debtor, with respect to the provisions of agreements which violate the provisions on limitations on agreements and practices (Part 4) of the UCCC article on credit sales (Article 2) or by the UCCC article on loans (Article 3). 14A O.S. § 1-201(5).

FINDINGS OF FACT

The Administrator of Consumer Credit finds that the following facts were proven by clear and convincing evidence:

1. The proceedings in this matter were conducted in accordance with the provisions of the Uniform Consumer Credit Code, 14A O.S. §1-101 to §9-101 and Article II of the Administrative Procedures Act, 75 O.S. §§ 308a-323.

2. The Administrator of Consumer Credit, through the Commission, has adopted and promulgated rules at OAC 160:1-1-1 to 160:70-11-8, including but not limited to, rules related to supervised lenders at OAC 160:65-1-1 to 160:65-11-1.

3. In this matter, the public health, safety, or welfare did imperatively require emergency action by the Petitioner in the form of the Emergency Order filed herein on September 23, 2013, initiating these emergency proceedings pursuant to the Department's promulgated administrative rules at OAC 160:65-9-3, which provide for such emergency action, and which emergency proceedings were ordered pending the final outcome of proceedings instituted pursuant to Article II of the Administrative Procedures Act. 75 O.S. § 314.1.

4. The Emergency Order filed herein on September 23, 2013, provided adequate

notice to the Respondent of the alleged violations of law in this matter.

5. The Respondent is a lending and loan services corporation that is currently headquartered in Orange, California and that was previously headquartered in Anaheim, California. (Joint Stipulation No. 1).

6. The Respondent is a California corporation and is a registered foreign for profit business corporation in the State of Oklahoma, Oklahoma Secretary of State filing number 2312014040. (Joint Stipulation No. 2).

7. As part of its business, the Respondent makes unsecured consumer loans. (Joint Stipulation No. 3).

8. As part of its business, the Respondent also purchases and services unsecured consumer installment loans made nationwide by unrelated third parties. (Joint Stipulation No. 4).

9. The Respondent was initially licensed as a supervised lender in the State of Oklahoma on October 17, 2003, supervised lender license number SL005517. (Joint Stipulation No. 5).

10. The Respondent was then-currently licensed as an Oklahoma supervised lender with supervised lender license number SL005517 on September 23, 2013, the date the Department filed the Emergency Order in this matter against the Respondent alleging certain violations of Oklahoma law. It was uncontested that the loans in this case were "consumer loans" as defined in the Code at 14A O.S. §3-104 or that all such consumer loans were also "supervised loans" as defined in the Code at 14A O.S.§3-501(1).

11. The supervised lender license of the Respondent was placed in suspended status in accordance with the Emergency Order filed in this matter on September 23, 2013. (Joint

Stipulation No. 6).

12. The Petitioner received a license renewal application from the Respondent on October 29, 2013, for supervised lender license number SL005517 for calendar year 2014. (Joint Stipulation No. 7).

13. The Petitioner submitted a letter to the Respondent dated November 21, 2013, indicating that due to a clerical error, the Petitioner was refunding the 2014 renewal and examination fee for the 2014 renewal and examination fee for 2014 in the amount of $790.00. (Joint Stipulation No. 8).

14. The renewal application for supervised lender license number SL005517 is pending the final outcome of this proceeding. (Joint Stipulation No. 9).

As the Respondent has stipulated that its supervised lender license number SL005517 is now pending the final outcome of this proceeding, the Respondent's allegation in the footnote on page 2 of the Summary Judgment Motion, that the Emergency Order, based on §3-505(2)(c), was rendered moot due to the Department's reissuance of the Respondent's supervised lender's license on October 29, 2013, is hereby found to be abandoned and withdrawn by the Respondent for all purposes in this proceeding through such stipulation.

15. Non-party WS Funding, LLC. (WS Funding), is a wholly-owned subsidiary of the Respondent. (Joint Stipulation No. 10).

16. WS Funding is a Delaware limited liability company with its principal place of business in Orange, California. (Joint Stipulation No. 11).

17. Non-party J. Paul Reddam is the President, Director and sole shareholder of the Respondent. (Joint Stipulation No. 12).

18. Non-party Western Sky Financial, LLC. (Western Sky) was until September 3, 2013, a provider of unsecured consumer installment loans. Western Sky conducted its business activities on the Cheyenne River Indian Reservation (Reservation) within the exterior boundaries of the State of South Dakota. Western Sky is not owned or operated by a tribe or tribal entity. (Joint Stipulation No. 13).

19. Western Sky is organized as a South Dakota limited liability company. (Joint Stipulation No. 14).

20. Western Sky, as a South Dakota limited liability company, is neither a member of the Cheyenne River Sioux Tribe nor is it owned or operated by a tribe or tribal entity.

21. Western Sky, as a South Dakota limited Liability company, is neither an Indian nor is it a member of the Cheyenne River Sioux Tribe.

22. Western Sky, as a South Dakota limited liability company, was not organized under the law of the Cheyenne River Sioux Tribe or under any other tribal law and is not an arm of the Cheyenne River Sioux Tribe.

23. Western Sky is not registered with the Oklahoma Secretary of State and has not been previously been licensed as a supervised lender in the State of Oklahoma. (Joint Stipulation No. 15).

24. Non-party Martin A. Webb is the sole owner and operator of Western Sky. Mr. Webb is an enrolled member of the Cheyenne River Sioux Tribe (CRST). (Joint Stipulation No. 16).

25. The CRST is a sovereign Indian nation recognized by the United States Department of the Interior. (Joint Stipulation No. 17).

26. In the April 24, 2015, Hearing, the Respondent through its legal counsel Michael D. McClintock represented and stated: "So it is not the tribe that made the loans". (April 24, 2015 Hearing Transcript, page 8, line 10).

27. In the April 24, 2015, Hearing, the Respondent through its legal counsel Robert T. Luttrell, III, when addressing the issue of the Respondent having any loans in Oklahoma other than those it purchased from Western Sky, represented and stated: "They have no presence in Oklahoma and they have not made any loans themselves in Oklahoma." (April 24, 2015 Hearing Transcript, page 14, lines 4-6).

28. In the April 24, 2015, Hearing, the Respondent through its legal counsel Michael D. McClintock represented and stated: "...but the alleged statute at issue is what we're dealing with here, 14-201(5)(A) because there just, I don't think, is an issue or dispute that the loans were made in another state. [Mr. Luttrell]: Or at least were not made in this state. [Mr. McClintock]: Or were at least not made in this state. Right. There's a whole issue of they were – goes to the Indian reservation, not a state. But for purposes of this issue, its outside of Oklahoma, it's at least made in another state, if not made on, as we have asserted, related to Indian country". (April 24, 2015 Hearing Transcript, pages 19-20, lines 21-25; lines 1-9).

29. In the April 24, 2015, Hearing, the Respondent through its legal counsel Michael D. McClintock represented and stated: "And so, you know, the key facts that are undisputed and why we moved for summary judgment are loans made in another state, undisputed fact". (April 24, 2015 Hearing Transcript, page 74, lines 22-25).

30. The Summary Judgment Motion was filed as a general appearance by the Respondent on January 9, 2014, as the Summary Judgment Motion was silent as to the

Respondent's appearance in any other capacity and the Respondent's Summary Judgment Motion did not represent that the Respondent was appearing specially for any limited purpose.

31. The Supplemental Summary Judgment Motion was filed as a general appearance by the Respondent on December 5, 2014, as the Supplemental Summary Judgment Motion was silent as to its appearance in any other capacity and the Respondent's Supplemental Summary Judgment Motion did not represent that the Respondent was appearing specially for any limited purpose.

32. The Petitioner and the Respondent stipulated to the allegations set forth in paragraph 8 (i) of the Emergency Order, except for the allegation with respect to the authorized maximum finance charge. For clarification, the correct date of the loan agreement is November 9, 2011. (Joint Stipulation No. 18).

33. The Petitioner and the Respondent stipulated to the allegations set forth in paragraph 8 (ii) of the Emergency Order, except for the allegations with respect to the initiation of installment payments and the authorized maximum finance charge. The first payment on the loan was made by credit card, on August 11, 2012. (Joint Stipulation No. 19).

34. The Petitioner and the Respondent stipulated to the allegations set forth in paragraph 8 (iii) of the Emergency Order, except for the allegation with respect to the authorized maximum finance charge. (Joint Stipulation No. 20).

35. The Petitioner and the Respondent stipulated to the allegations set forth in paragraph 8 (iv) of the Emergency Order, except for the allegations with respect to the initiation of installment payments and the authorized maximum finance charge. (Joint Stipulation No. 21).

36. The Petitioner and the Respondent stipulated to the allegations set forth in

paragraph 8 (v) of the Emergency Order, except for the allegations with respect to the initiation of installment payments and the authorized maximum finance charge. The first payment on the loan was made by credit card, on March 19, 2012. In addition, for the sake of clarity, the number 7998451 represents the borrower's loan number and not part of the borrower's address. (Joint Stipulation No. 22).

37. The Petitioner and the Respondent stipulated to the allegations set forth in paragraph 8 (vi) of the Emergency Order, except for the allegation with respect to the authorized maximum finance charge. (Joint Stipulation No. 23).

38. The Petitioner and the Respondent stipulated to the allegations set forth in paragraph 8 (vii) of the Emergency Order, except for the allegations with respect to the initiation of installment payments and the authorized maximum finance charge. The first payment on the loan was made by electronic funds transfer on May 4, 2012. (Joint Stipulation No. 24).

39. The Petitioner and the Respondent stipulated to the allegations set forth in paragraph 8 (viii) of the Emergency Order, except for the allegation with respect to the authorized maximum finance charge. (Joint Stipulation No. 25).

40. The Petitioner and the Respondent stipulated to the allegations set forth in paragraph 8 (ix) of the Emergency Order, except for the allegation with respect to the authorized maximum finance charge. (Joint Stipulation No. 26).

41. The Petitioner and the Respondent stipulated to the allegations set forth in paragraph 8 (x) of the Emergency Order, except for the allegation with respect to the authorized maximum finance charge. (Joint Stipulation No. 27).

42. The Petitioner and the Respondent stipulated to the allegations set forth in

paragraph 14 (i) of the Emergency Order, except for the allegation with respect to the authorized maximum finance charge. (Joint Stipulation No. 28).

43. The late fee, insufficient funds fee, and finance charges set forth in the loan agreements for the borrowers in paragraph 8(i) – (x) and paragraph 14 (i) of the Emergency Order (collectively, "Borrowers") exceed those allowed by 14A O.S. §§3-202.1, 3-203, and 3-508A. (Joint Stipulation No. 29).

44. The loan agreements set forth the subject loan's terms, including interest rates, repayment schedule, and the right of the Borrower to prepay the loan in part or in full with no penalty. The Loan Agreements also set forth the following:

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

(Joint Stipulation No. 30).

45. WS Funding purchased the Borrowers' loans pursuant to an assignment agreement between WS Funding and Western Sky ("Assignment Agreement"), under which Western Sky assigned its promissory notes in their entirety to WS Funding. (Joint Stipulation No. 31).

46. The Assignment Agreement states that it is governed solely by the laws and jurisdiction of the CRST and subject to the sole jurisdiction of the courts of CRST exclusively. (Joint Stipulation No. 32).

47. After the assignments of Borrowers' loan agreements to WS Funding, the

Respondent or another third-party collection entity acted as a servicer. The Respondent acted as the servicer for the loan agreements specified in paragraphs (8) and (14) of the Emergency Order. (Joint Stipulation No. 33).

48. Western Sky ceased lending operations as of September 3, 2013. (Joint Stipulation No. 34).

49. The Petitioner initiated an examination regarding the supervised loan transactions of the Respondent on or about September 19, 2012. (Joint Stipulation No. 35).

50. The Respondent provided initial examination information to the Petitioner on October 1, 2012, which included a list of Oklahoma customer accounts. (Joint Stipulation No. 36).

51. The Petitioner submitted a request to the Respondent on October 22, 2012, requesting that specific loan files regarding Oklahoma customers be submitted to the Petitioner for review. (Joint Stipulation No. 37).

52. The Respondent provided the specific loan files regarding Oklahoma customers requested by the Petitioner on October 22, 2012, to the Petitioner on November 7, 2012. (Joint Stipulation No. 38).

53. The Petitioner submitted an examination request to the Respondent on November 26, 2012, to provide copies of any business agreements between the Respondent and Western Sky. (Joint Stipulation No. 39).

54. The Respondent provided the documents requested by the Petitioner on November 26, 2012, to the Petitioner on December 19, 2012. (Joint Stipulation No. 40).

55. The Petitioner submitted an examination request to the Respondent on May 2,

2013, requesting copies of completed loan agreements for all Oklahoma consumer loan transactions with loan effective dates of January 1, 2008, through May 2, 2013, which includes all open and closed accounts, a complete loan transaction history and notice of assignment, sale or transfer of servicing rights for each account. (Joint Stipulation No. 41).

56. The May 2, 2013, examination request was submitted to the Respondent via certified United State Mail, return receipt requested, and was received at the Respondent's office at 1600 S. Douglas Road, Anaheim, California 92806-5998 on May 6, 2013. (Joint Stipulation No. 42).

57. The Respondent did not respond to the May 2, 2013 examination request prior to the Emergency Order filed September 23, 2013, in this matter. (Joint Stipulation No. 43).

58. Subsequent to the filing of the September 23, 2014, Emergency Order, the Respondent has produced to the Petitioner copies of completed loan agreements for all Oklahoma consumer loan transactions with loan effective dates between September 23, 2009, and September 23, 2013, including all open and closed accounts, as well as a complete loan transaction history and notice of assignment, sale or transfer of servicing rights for each account as agreed by the parties in the Continuance filed in this matter on October 4, 2013. The late fee, insufficient funds fee and finance charges set forth in the loan agreements for borrowers dated between September 23, 2009, and September 23, 2013, exceed those allowed by 14A O.S. §§3-202.1, 3-203, 3-508A. (Joint Stipulation No. 44).

59. The Respondent's representation in the first paragraph of the Introduction to the Respondent's Supplement that the Independent Hearing Examiner "...requested that Cash Call supplement the record with various statutes, rules and proceedings of the Cheyenne River Sioux

Tribe which were referred to in the pleadings (the 'CRST Documents')" mischaracterizes the Independent Hearing Examiner's request near the conclusion of the hearing in this matter that the Respondent produce copies of the tribal law it had repeatedly referred to in generalities but had not actually cited, quoted, or otherwise provided in its pleadings or otherwise.

60. The Respondent's representation in the second paragraph of the Introduction to the Respondent's Supplement that the CRST Documents "...were not a part of the record because the description of the substance of the CRST Documents in the Pleadings were not contested" is a new argument raised outside the record of the hearing in this matter for the first time.

61. Neither the Respondent's Supplement nor any of the attachments thereto with various statutes, rules and proceedings of the Cheyenne River Sioux Tribe which were referred to in generalities in its pleadings as the "CRST Documents", is a part of the record in this matter. While the Respondent referred to and pled the statutes, rules and proceedings of the Cheyenne River Sioux Tribe only in generalities with no specific citations or quotations, the Respondent did not prove the statutes, rules and proceedings of the Cheyenne River Sioux Tribe as the statutes, rules and proceedings of the Cheyenne River Sioux Tribe are not a part of the record of the hearing in this matter.

62. According to the Respondent's Undisputed Fact 15 in its Supplemental Summary Judgment Motion: "Prior to September 3, 2013, when Western Sky ceased its lending activities, Western Sky employed as many as 100 employees on the Reservation, the majority enrolled members of the CRST. (Respondent's Undisputed Fact 15)."

63. According to the Respondent's Undisputed Fact 17 in its Supplemental Summary

Judgment Motion: "As a result of litigation brought by state regulators, Western Sky was forced to cease operations and lay off nearly all of its employees. (Respondent's Undisputed Fact 17)."

64. The Respondent refers to enforcing a contract no less than three times in its asserted second theory in its Supplemental Summary Judgment Motion that the Department lacks subject matter jurisdiction to enforce 14A O.S. 1-201(5) against the Respondent. The first such reference is that the Department "...seeks to impede the enforcement of a contract" (*See* the second sentence of second paragraph on page 2 of the Supplemental Summary Judgment Motion). The second such reference is that the Department is barred "...from exercising any form of jurisdiction over the enforcement of a contract" (*See* the fourth sentence of the second paragraph on page 2 of the Supplemental Motion for Summary Judgment). The third such reference is that as an assignee the Respondent "...stands in the shoes of such member and is entitled to enforce such contracts." (*See* the sixth and last sentence of the carryover paragraph on page 3 of the Supplemental Motion for Summary Judgment). These three references to enforcing a contract made by the Respondent evidence the Respondent's intention to actively enforce the loan agreements it purchased from Western Sky.

65. Through its stipulations to the Emergency Order in the Joint Stipulations, the Respondent admitted that the fees and charges it collects from Oklahoma residents are in excess of that authorized under Oklahoma law as to prepaid finance charge/origination fee of $75.00, a late fee of $29.00 for payments made sixteen or more days after the due date, and a $29.00 fee for returned checks for insufficient funds (Joint Stipulations No. 18 through and including No. 29).

66. The Respondent stipulated to the allegations in the Emergency Order related to all of

the loan agreements referred to in the Emergency Order as to all respective amounts financed, all respective finance charges levied, the respective annual percentage rates charged, and the respective total amounts of payments (Joint Stipulations No. 18 through and including No. 29).

67. The Respondent, with respect to the allegations as to the authorized maximum finance charge in the Emergency Order's Allegations of Fact No. 8, merely denied the amounts in the Joint Stipulations No. 18 through and including No. 29 as calculated and actually provided by the Petitioner in the Emergency Order's Allegations of Fact No. 8 (*See* Joint Stipulations No. 18 through and including No. 29) and the Respondent did not produce any credible evidence as to what the amounts of the authorized maximum finance charges otherwise actually are or should be.

68. The loans at issue in this case were all "consumer loans" as defined in the Code at 14A O.S. §3-104.

69. The consumer loans at issue in this case were all "supervised loans" as defined in the Code at 14A O.S. §3-501(1).

70. The supervised consumer loans at issue in this case have a rate structure that is governed by the provisions of 14A O.S. §3-508A, which provisions prohibit a supervised lender such as the Respondent from contracting for and receiving a loan finance charge in excess of the amount permitted by 14A O.S.§3-508A.

71. At all times Western Sky entered into its loan agreements with Oklahoma residents in this case, it was not lawfully conducting its unlicensed supervised loan business with Oklahoma residents.

72. Western Sky is a non-Indian company based within the reservation of the CRST that

was engaged in the for profit business of payday lending whose conduct reached nationwide outside the boundaries of the CRST reservation, including Oklahoma.

73. The conduct of Oklahoma residents who enter into a loan agreement via the Internet from their homes in Oklahoma with a non-Indian company located on the tribe's reservation does not implicate the Cheyenne River Sioux Tribe's sovereign interests.

74. Western Sky is a limited liability company formed under South Dakota law under the South Dakota Uniform Limited Liability Company Act, SDCL §47-34a-101 et seq. as South Dakota has adopted the Uniform Limited Liability Company Act under which a limited liability company is a legal entity distinct from its members (*See* commentary to the Model Uniform Limited Liability Company Act, §201).

75. None of the loan agreements at issue herein were entered into by an enrolled member of the CRST tribe because Western Sky, a South Dakota limited liability company, entered into each of the loan agreements as the lender Western Sky and Western Sky is not an enrolled member of any Indian tribe.

76. No loan agreement at issue herein was entered into by Western Sky as an Indian because Western Sky is a South Dakota limited liability company and not an Indian.

77. The Respondent is an assignee of the rights of the owner of Western Sky, a South Dakota limited liability company, not an assignee of the rights of a member of the CRST as such company ownership was independent of any tribal membership.

78. At the April 24, 2015, Hearing, the Petitioner indicated that it would not pursue the second Alleged Violation of Law in the Emergency Order that the Respondent, either knowingly or without the exercise of due care to prevent the same, has violated 14A O.S. §3-506 by failing

or refusing to let the Administrator or the duly authorized representative of the Administrator examine or make copies of such books, or other relevant documents.

CONCLUSIONS OF LAW

The Administrator makes the following conclusions of law:

1. The Administrator is charged with the administration and enforcement of the Uniform Consumer Credit Code, 14A O.S. §1-101 to §9-101, including, but not limited to, Article 3 thereof known as Uniform Consumer Credit Code-Loans, 14A O.S. § 3-101 to § 3-605.

2. The Administrator is authorized to adopt rules, not inconsistent with the provisions of the Uniform Consumer Credit Code, 14A O.S. §1-101 to §9-101, as provided in 14A O.S. §6-104, and the Commission on Consumer Credit created under 14A O.S. §6-501 (the Commission") as the policy-making and governing authority of the Department, is authorized pursuant to 14A O.S. §6-504, to review, repeal, amend or modify any rule or regulation adopted or promulgated by the Administrator.

3. As authorized by or pursuant to law, if an agency finds that the public health, safety, or welfare imperatively requires emergency action, has promulgated administrative rules which provide for such action and incorporates a finding regarding the emergency in its order, emergency actions may be ordered pending the final outcome of proceedings instituted pursuant to Article II of the Administrative Procedures Act (75 O.S. §308a to §323, specifically 75 O.S. § 314.1).

4. The term "consumer loans" is defined in the Code at 14A O.S. §3-104.

5. The term "supervised loans" as defined in the Code at 14A O.S. §3-501(1) are a form of "consumer loans" as that term is defined in the Code at 14A O.S. §3-104.

6. The Uniform Consumer Credit Code, 14A O.S. §3-501(1) defines a "supervised loan" to mean "...a consumer loan in which the rate of the loan finance charge exceeds ten percent (10%) per year as determined according to the provisions on loan finance charge for consumer loans (Section 3-201)" and the Uniform Consumer Credit Code, 14A O.S. §3-501(2) defines a "supervised lender" to mean "...a person authorized to make or take assignments of supervised loans".

7. The standard of proof in matters related to a supervised lender under OAC 160:65-9-2, is clear-and-convincing evidence.

8. "Clear-and-convincing evidence" is defined in matters related to a supervised lender under OAC 160:65-9-2(f) to be "...that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established".

9. The Oklahoma Pleading Code (12 O.S. §2001 to §2056), according to §2001 thereof, in pertinent part, "...governs the procedure in the district courts of Oklahoma".

10. The Commission on Consumer Credit, as created under §6-501 of the Uniform Consumer Credit Code, 14A O.S. §1-101 to §9-101, is an agency of the State of Oklahoma, and is the policy-making and governing authority of the Department that appoints the Administrator and is responsible for the enforcement of the Uniform Consumer Credit Code (collectively the Commission on Consumer Credit, the Department and the Administrator are sometimes referred to as the "Commission").

11. As an agency of the State of Oklahoma, the Commission is required under 75 O.S. §250.4 to comply with the Administrative Procedures Act, 75 O.S. §250 to §323, including but

not limited to, Article II of the Administrative Procedures Act (75 O.S. §308a to §323) which governs the hearing procedures of state agencies.

12. The Uniform Consumer Credit Code, 14A O.S. §1-101 to §9-101, expressly provides in §3-507, that "[e]xcept as otherwise provided, the general act of this state governing administrative procedures (Title 75, Oklahoma Statutes, Chapters 7 and 8 [Title 75, §250 et seq.]) applies to and governs all administrative action taken by the Administrator pursuant to this part."

13. Article II of the Administrative Procedures Act (75 O.S. §308a to §323) which governs the hearing procedures of state agencies, including but not limited to, the Commission, does not authorize the filing of motions for summary judgment in its hearing procedures of state agencies.

14. As an agency of the State of Oklahoma, the Commission is not a "district court" under §2001 of the Oklahoma Pleading Code whose procedures are governed by the Oklahoma Pleading Code (12 O.S. §2001 to §2056).

15. As an agency of the State of Oklahoma, the Commission is not a "district court" subject to any of the Rules for District Courts of Oklahoma T. 12, Ch. 2, App., including but not limited to, Rule 13, of Title 12, Chapter 2, Appendix. Rules for District Courts of Oklahoma.

16. Section 2056 of Title 12 of the Oklahoma Pleading Code (12 O.S. §2001 to §2056) which authorizes the filing of motions for summary judgment in district court, does not apply to the hearing procedures of state agencies governed under Article II of the Administrative Procedures Act (75 O.S. §308a to §323).

17. None of the four (4) Oklahoma Court of Civil Appeals' cases cited by the

Respondent as authorizing the filing of motions for summary judgment, namely *Bennett v. McKibben*, 915 P.2d 400, 403 (Okla. Civ. App. 1996), *Attocknie v. Carpenter Mfg., Inc.*, 901 P.2d 221, 223 (Okla. Civ. App. 1995), *Will v. Jones*, 463 P.2d 702, 703-4 (Okla. Civ. App. 1969), and, *Ferguson Pontiac-GMC, Inc. v. Henson*, 892 P.2d 657, 660 (Okla. Civ. App. 1994), involve agencies of the State of Oklahoma whose hearing procedures are governed by the Administrative Procedures Act, any administrative hearing by or before an agency of the State of Oklahoma, or authorize the filing of motions for summary judgment in any administrative hearing proceedings whose procedures are governed by the Administrative Procedures Act (75 O.S. §308a to §323).

18. The Uniform Consumer Credit Code, 14A O.S. §1-101 to §9-101, does not authorize the filing of motions for summary judgment in any hearing procedure before the Administrator or an independent hearing examiner.

19. The rules adopted and promulgated by the Administrator of Consumer Credit, through the Commission, at OAC 160:1-1-1 to 160:70-11-8, including but not limited to, rules related to supervised lenders at OAC 160:65-1-1 to 160:65-11-1, do not authorize the filing of motions for summary judgment in any hearing procedure before the Administrator or an independent hearing examiner.

20. The Summary Judgment Motion was filed as a general appearance by the Respondent on January 9, 2014, as the Summary Judgment Motion was silent as to the Respondent's appearance in any other capacity and the Respondent's Summary Judgment Motion did not represent that the Respondent was appearing specially for any limited purpose.

21. The Uniform Consumer Credit Code, 14A O.S. §1-101 to §9-101, provides in §1-

102(1), that it "...shall be liberally construed and applied to promote its underlying purposes and policies."

22. According to 14A O.S. §1-102(2)(d), one of the "underlying purposes and policies" identified and adopted by the Oklahoma Legislature as part of the Uniform Consumer Credit Code is "to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors."

23. According to 14A O.S. §1-102(2)(g), one of the "underlying purposes and policies" identified and adopted by the Oklahoma Legislature as part of the Uniform Consumer Credit Code is "to make uniform the law including administrative rules among the various jurisdictions."

24. According to the Uniform Consumer Credit Code at 14A O.S. §1-201(1), entitled "Territorial Application", in pertinent part, "[e]xcept as otherwise provided in this section, this act applies to sales, leases, and loans, made in this state and to modifications, including refinancings, consolidations, and deferrals, made in this state, of sales, leases, and loans, wherever made."

25. The Uniform Consumer Credit Code 1968 Model Act, §1.201(1) entitled "Territorial Application" provides, in pertinent part, "[e]xcept as otherwise provided in this section, this Act applies to sales, leases, and loans made in this State and to modifications, including refinancings, consolidations, and deferrals, made in this State, of sales, leases, and loans, wherever made."

26. According to the Uniform Consumer Credit Code at 14A O.S. §1-201(5), in

pertinent part, "[i]f a consumer credit sale, consumer lease, or consumer loan, or modification thereof, is made in another state to a person who is a resident of this state when the sale, lease, loan, or modification is made, the following provisions apply as though the transaction occurred in this state: (a) a seller, lessor, lender, or assignee of his rights, may not collect charges through actions or other proceedings in excess of those permitted by the article on credit sales (Article 2) or by the article on loans (Article 3)."

27. The Uniform Consumer Credit Code 1968 Model Act, §1.201(5) entitled "Territorial Application" provides, in pertinent part, "[i]f a consumer credit sale, consumer lease, or consumer loan, or modification thereof, is made in another state to a person who is a resident of this State when the sale, lease, loan, or modification is made, the following provisions apply as though the transaction occurred in this State: (a) a seller, lessor, lender, or assignee of his rights, may not collect charges through actions or other proceedings in excess of those permitted by the Article on Credit Sales (Article 2) or by the article on Loans (Article 3)".

28. The Uniform Consumer Credit Code, 14A O.S. §1-101 to §9-101 (the "UCCC" or "Code") , in §1-301 entitled "General Definitions" contains no definition of the word "State" as used in the UCCC and the UCCC §1-303 entitled "Index of Definitions in Act" likewise contains no definition of the word "State" as used in the UCCC.

29. The Uniform Consumer Credit Code 1968 Model Act, §1.301 entitled "General Definitions" contains no definition of the word "State" as used in the Uniform Consumer Credit Code 1968 Act and the Uniform Consumer Credit Code 1968 Act, §1.303 entitled "Index of Definitions in Act" likewise contains no definition of the word "State" as used in the Uniform Consumer Credit Code 1968 Model Act.

30. The Uniform Consumer Credit Code, 14A O.S. §1-101 to §9-101, §1.301 entitled "General Definitions" contains no definition of the phrase "actions or other proceedings" as used in the UCCC and the UCCC §1-303 entitled "Index of Definitions in Act" likewise contains no definition of the phrase "actions or other proceedings" as used in the UCCC.

31. The Uniform Consumer Credit Code 1968 Model Act, §1.301 entitled "General Definitions" contains no definition of the phrase "actions or other proceedings" as used in the Uniform Consumer Credit Code 1968 Act and the Uniform Consumer Credit Code 1968 Model Act, §1.303 entitled "Index of Definitions in Act" likewise contains no definition of the phrase "actions or other proceedings" as used in the Uniform Consumer Credit Code 1968 Act.

32. According to the Uniform Consumer Credit Code at 14A O.S. §3-104 (effective June 1, 1982), a "consumer loan" is "...a loan made by a person regularly engaged in the business of making loans in which:

(1) the debtor is a person other than an organization;

(2) the debt is incurred primarily for a personal, family or household purpose;

(3) either the debt is payable in installments or a loan finance charge is made; and

(4) either the principal does not exceed Forty-five Thousand Dollars ($45,000.00) or the debt is secured by an interest in land."

33. According to the Uniform Consumer Credit Code at 14A O.S. §3-104 (effective July 1, 2012), a "consumer loan" is "...a loan made by a person regularly engaged in the business of making loans in which

(a) the debtor is a person other than an organization;

(b) the debt is incurred primarily for a personal, family or household purpose;

(c) either the debt is payable in installments or a loan finance charge is made; and

(d) either the principal does not exceed Fifty Thousand Dollars ($50,000.00), unless the loan is a private education loan as that term is defined in Federal Consumer Credit Protection Act, or the debt is secured by an interest in land. The dollar amount in this paragraph shall be adjusted annually as indicated by the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of One Hundred Dollars ($100.00) or One Thousand Dollars ($1,000.00) as applicable."

34. According to the Uniform Consumer Credit Code at 14A O.S. §3-104 (effective July 1, 2013), a "consumer loan" is "...a loan made by a person regularly engaged in the business of making loans in which:

(a) the debtor is a person other than an organization;

(b) the debt is incurred primarily for a personal, family or household purpose;

(c) either the debt is payable in installments or a loan finance charge is made;

(d) either the principal does not exceed Fifty Thousand Dollars ($50,000.00), unless the loan is a private education loan as that term is defined in Section 8 of this act, or the debt is secured by an interest in land. The dollar amount in this paragraph shall be adjusted annually as indicated by the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of One Hundred Dollars ($100.00) or One Thousand Dollars ($1,000.00) as applicable."

35. According to the Uniform Consumer Credit Code at 14A O.S.2011, §3-202.1, "[t]he lender of a consumer loan may charge and collect from the debtor a fee for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal or

share draft issued by the debtor in connection with the consumer loan. The amount of the fee shall be limited to the amount which the Oklahoma Tax Commission or a motor license agent may charge and collect pursuant to the provisions of Section 1121 of Title 47 of the Oklahoma Statutes. This fee shall be in addition to all other loan finance charges, fees and additional charges which the lender may charge and collect from the debtor under this Code and shall not be subject to refund or rebate."

36. According to 25 O.S.2011, §1, "[w]ords used in any statute are to be understood in their ordinary sense, except when a contrary intention plainly appears, and except also the words hereinafter explained are to be understood as thus explained."

37. According to 14A O.S.2011, §3-203:

(1) With respect to a precomputed consumer loan, refinancing, or consolidation, the parties may contract for a delinquency charge on any installment not paid in full within ten (10) days after its scheduled due date in an amount not less than Five Dollars ($5.00) nor more than any of the following, whichever is greater: (a) five percent (5%) of the unpaid amount of the installment, (b) the dollar amount provided by rule of the Administrator for this section pursuant to Section 1-106 of this title, or (c) the deferral charge (subsection (1) of Section 3-204) that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

(2) A delinquency charge under paragraph (a) of subsection (1) may be collected only once on an installment however long it remains in default. No delinquency charge may be collected if the installment has been deferred and a deferral charge (Section 3-204) has been paid or incurred. A delinquency charge may be collected at the time it accrues or at any time

thereafter.

(3) No delinquency charge may be collected on an installment which is paid in full within ten (10) days after its scheduled installment due date even though an earlier maturing installment or a delinquency charge on an earlier installment may not have been paid in full. For purposes of this subsection payments are applied first to current installments and then to delinquent installments.

(4) If two installments or parts thereof of a precomputed loan are in default for ten (10) days or more, the lender may elect to convert the loan from a precomputed loan to one in which the loan finance charge is based on unpaid balances. In this event he shall make a rebate pursuant to the provisions on rebate prepayment (Section 3-210) as of the maturity date of the first delinquent installment, and thereafter may make a loan finance charge as authorized by the provisions on loan finance charge for consumer loans (Section 3-201) or the provisions on loan finance charge for supervised loans (Section 3-508A), whichever is appropriate. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge (Section 3-210). If the lender proceeds under this subsection, any delinquency or deferral charges made with respect to installments due at or after the maturity date of the first delinquent installment shall be rebated, and no further delinquency or deferral charges shall be made.

(5) With respect to a consumer loan, refinancing or consolidation, which is not precomputed, including a revolving loan account accessed by lender credit card or similar arrangement, the parties may contract for a delinquency charge on any installment not paid in full within ten (10) days after its scheduled due date in an amount not less than Five Dollars ($5.00) nor more than the greater of five percent (5%) of the unpaid amount of the payment or the dollar

amount provided by the rule of the Administrator in effect for this section pursuant to Section 1-106 of this title. No more than one delinquency charge may be imposed in each billing cycle and it may be collected at any time after it accrues either independently of any payment made on the account or from a payment made if the lender discloses delinquency charges to the debtor as they are imposed and informs the debtor of the full amount that the debtor must pay for the applicable period in order to remain current on the account.

38. Beginning August 22, 2014, 14A O.S.2011, §3-508A, reads as follows:

(1) With respect to a supervised loan, including a loan pursuant to a revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) The loan finance charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

(a) The total of:

(i) twenty-seven percent (27%) per year on that part of the unpaid balances of the principal which is Two Thousand Nine Hundred Ten Dollars ($2,910.00) or less;

(ii) twenty-three percent (23%) per year on that part of the unpaid balances of the principal which is more than Two Thousand Nine Hundred Ten Dollars ($2,910.00) but does not exceed Six Thousand Two Hundred Dollars ($6,200.00); and

(iii) twenty percent (20%) per year on that part of the unpaid

balances of the principal which is more than Six Thousand Two Hundred Dollars ($6,200.00); or

(b) twenty-five percent (25%) per year on the unpaid balances of the principal.

(3) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (Section 3-210).

(4) The term of a loan, for the purposes of this section, commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. A loan made under this section shall not be repayable in fewer than twelve (12) months.

(5) Subject to classifications and differentiations the lender may reasonably establish, he may make the same loan finance charge on all principal amounts within a specified range. A loan finance charge so made does not violate subsection (2) of this section if:

(a) when applied to the median amount within each range, it does not

exceed the maximum permitted in subsection (2) of this section;

(b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) of this subsection by more than eight percent (8%) of the rate calculated according to paragraph (a) of this subsection."

39. Prior to August 22, 2014, the supervised consumer loan rate structure in 14A O.S.2011, §3-508A, provided in pertinent part as follows:

(1) With respect to a supervised loan, including a loan pursuant to a revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) The loan finance charge, calculated according to the actuarial method, my not exceed the equivalent of the greater of the following:

(a) the total of

i. thirty percent (30%) per year on that part of the unpaid balances of the principal which is Three Hundred Dollars ($300.00) or less;

ii. twenty-one percent (21%) per year on that part of the unpaid balances of the principal which is more than Three Hundred ($300.00) but does not exceed One Thousand Dollars ($1,000.00); and

iii. fifteen percent (15%) per year on that part of the unpaid balances of the principal which is more than One Thousand Dollars ($1,000.00); or

iv. twenty-one percent (21%) per year on the unpaid balances of the

principal."

40. Supervised consumer loans have a rate structure that is governed by the provisions of 14A O.S. §3-508A, which provisions prohibit a supervised lender from contracting for and receiving a loan finance charge in excess of the amount permitted by 14A O.S.§3-508A.

41. According to Article II, §6 of the Oklahoma Constitution, "[t]he courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice."

42. "Where a contract, made in a foreign state, is sought to be enforced in another state, it is necessary, in order that the laws of the foreign state may prevail as to the construction of the contract, that the same be pleaded and proved. In the absence of pleading that the contract sued upon was made, and the laws of the foreign state, the laws of the forum must prevail. In other words, the presumption is that laws of the foreign state are the same as those of the state of Oklahoma.", *Marx v. Hefner*, 1915 OK 335, 149 P. 207, 210 (Okla. 1915).

43. Where a contract made in a foreign state is sought to be enforced in another state, the lex loci contractus controls the construction of the contract, except where it provides otherwise, and the laws of the state where the contract was made will be observed, of course being pleaded when necessary, in determining the rights and obligation of the parties, and effect given thereto, unless such foreign laws are irreconcilable with the local laws, or conflict with the established policy of the enforcing state. We observe and give effect to the laws of other states in the construction of notes and other written contracts. Those laws are usually facts to be proven in a given case, and the court, with the foreign contract in hand and the law of its origin in evidence

determines the question of liability and the extent thereof." *Hays v. King*, 1914 OK 517, 143 P. 1142, 1144 (Okla. 1914).

44. "A contract is to be interpreted according to the law and usage of the place where it is to be performed, or, if it does not indicate a place of performance, according to the law and usage of the place where it is made." 15 O.S.2011, §162.

45. "The Plaintiff insists that since the note was executed in Arkansas it is an Arkansas contract, and should be governed by the laws of that state. This is true, but the laws of Arkansas were not pleaded nor proven, and hence they are presumed to be the same as the laws of this state. (citations omitted)." *Palmer v. Noe*, 1915 OK 523, 150 P. 462, 463 (Okla. 1915).

46. According to 25 O.S.§1 "[w]ords used in any statute are to be understood in their ordinary sense, except where a contrary intention plainly appears, and except also that the words hereinafter explained are to be understood as thus explained."

47. According to the *Merriam Webster Online Dictionary*, current edition, the word "state" is commonly defined as "one of the constituent units of a nation having a federal government." (www.Merriam-Webster.com).

48. According to the *Merriam Webster Online Dictionary*, current edition, the word state" is commonly defined as "(a) a politically organized body of people usually occupying a definite territory; especially: one that is sovereign, (b) the political organization of such a body of people, (c) a government or politically organized society having a particular character." (www.Merriam-Webster.com).

49. Western Sky is a limited liability company formed under South Dakota law under the South Dakota Uniform Limited Liability Company Act, SDCL §47-34a-101 et seq. as South

Dakota has adopted the Uniform Limited Liability Company Act under which a limited liability company is a legal entity distinct from its members (*See* commentary to the Model Uniform Limited Liability Company Act, §201) and under South Dakota law, a limited liability company including, but not limited to, Western Sky, can be sued as provided in SDCL §47-34a-112(b)(1).

50. "...the Court has stated that any tribal regulation of nonmembers is generally limited to conduct *inside* (emphasis added) the reservation that 'implicates the tribe's sovereign interests'." *Plains Commerce Bank v. Long Family Land & Cattle Company*, 554 U.S. 316, 332-333 (2008).

51. The phrase "actions and other proceedings" as used in 14A O.S.§1-201(5)(a), is not strictly limited to mean legal proceedings in Oklahoma courts.

52. Prior to issuing a supervised lender license, the Administrator is required under 14A O.S.§3-504(1) to make a finding, in pertinent part, that the "...character and general fitness of the applicant are such to command the confidence of the public and to warrant belief the business will be operated lawfully and fairly, within the purposes of this title [UCCC]."

53. The Administrator is empowered under 14A O.S.§3-505(2) to order the refund any unlawful charges that were collected by a licensed supervised lender, including the Respondent.

54. The UCCC provides in 14A O.S.§6-108(1) as follows: "[a]fter notice and hearing, the Administrator or the independent hearing examiner may order a creditor or a person acting in the creditor's behalf to cease and desist from engaging in violations of this title."

ORDER

Based upon the findings of fact and conclusions of law in this individual proceeding and

based upon the recommendation of the Independent Hearing Examiner, the Administrator of Consumer Credit issues the following orders:

Summary Judgment Motions Not Authorized

There is no statutory authority in the Uniform Consumer Credit Code, 14A O.S. §1-101 to §9-101 or in Article II of the Administrative Procedures Act for any party in any administrative proceeding to file any motion for summary judgment and the Respondent has cited no such statutory authority. Further, the Department has not adopted or otherwise promulgated any rule to authorize the filing of any motion for summary judgment by any party in any administrative proceeding. Still further, the Respondent has cited no relevant case law that authorizes any party in any administrative proceeding to file any motion for summary judgment.

Accordingly, both the Summary Judgment Motion and the Supplemental Summary Judgment Motion filed herein by the Respondent should be and hereby are DENIED.

Case on the Merits

As to this case on the merits, the Petitioner has requested a final order be issued herein. Through the Petitioner's Brief and Petitioner's Supplemental Motion Response, the Petitioner has presented valid and persuasive legal theories and has offered persuasive legal authority in support of its request for a final order in this matter.

Accordingly, the Petitioner's request for relief as provided in its Petitioner's Brief should be and hereby is granted as follows:

1. The Respondent as a supervised lender is hereby found to have violated 14A O.S. §1-201(5) by collecting charges, as an assignee of lender rights of Western Sky, through actions or other proceedings, that are in excess of those permitted by the article on loans (Article 3) of

the Uniform Consumer Credit Code, including but not limited to, collecting a fee for the return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal or share draft issued by the debtor in connection with multiple consumer loan in excess of the amount authorized by 14A O.S. §3-202.1, collecting delinquency charges in excess of those allowed by 14A O.S. §3-203 and collecting loan finance charges in excess of those allowed by 14A O.S. §3-508A for supervised loans.

2. The Respondent having been found to have violated 14A O.S.§1-201(5) by collecting charges that are in excess of those authorized by the article on loans (article 3) of the Uniform Consumer Credit Code, including but not limited to, collecting a fee for the return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal or share draft issued by the debtor in connection with multiple consumer loan in excess of the amount authorized by 14A O.S. §3-202.1, collecting delinquency charges in excess of those allowed by 14A O.S. §3-203 and collecting loan finance charges in excess of those allowed by 14A O.S. §3-508A for supervised loans, constitutes a fact or condition that exists which, if it had existed or had been known to exist at the time of the Respondent's original application for a supervised lender license, clearly would have justified the Administrator in refusing to issue such supervised lender license to the Respondent in that Respondent is collecting charges as an assignee of a lender's rights and/or as a lender, through actions or other proceedings, that are in excess of the charges permitted by the article on loans (Article 3) of the Uniform Consumer Credit Code. 14A O.S. §3-505(2)(c).

3. Based upon the finding of the Respondent's violation of 14A O.S.§1-201(5) by the Respondent collecting charges that are in excess of those authorized by the article on loans

(article 3) of the Uniform Consumer Credit Code, including but not limited to, collecting a fee for the return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal or share draft issued by the debtor in connection with multiple consumer loan in excess of the amount authorized by 14A O.S. §3-202.1, collecting delinquency charges in excess of those allowed by 14A O.S. §3-203 and collecting loan finance charges in excess of those allowed by 14A O.S. §3-508A for supervised loans, the supervised lender license renewal of the Respondent shall be denied.

4. Pursuant to the authority of the Administrator under 14A O.S.§6-108, the Respondent shall cease and desist from engaging and/or offering to engage in any business as a supervised lender in the State of Oklahoma.

5. Pursuant to the authority of the Administrator under 14A O.S.§6-108, the Respondent shall cease and desist from collecting or causing to be collected, any excessive charges or fees from any Oklahoma residents or consumers involving loan transactions dated September 23, 2009, through and including September 23, 2013.

6. Pursuant to the authority of the Administrator under 14A O.S.§3-505(2), the Respondent shall refund all excessive charges or fees collected by or on behalf of the Respondent from Oklahoma residents or consumers involving loan transactions dated September 23, 2009, through and including September 23, 2013, for charges that are in excess of those authorized by the article on loans (article 3) of the Uniform Consumer Credit Code, including but not limited to, collecting a fee for the return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal or share draft issued by the debtor in connection with multiple consumer loan in excess of the amount authorized by 14A O.S. §3-202.1, collecting delinquency

charges in excess of those allowed by 14A O.S. §3-203 and collecting loan finance charges in excess of those allowed by 14A O.S. §3-508A for supervised loans; Provided, that the Respondent may credit the accounts of any Oklahoma residents or consumers if an excessive charge or fee has not been paid; Provided further, that the Respondent shall provide documentation to the Department that all applicable refunds have been issued and/or accounts have been credited.

7. As the Respondent is not the prevailing party in this matter, the Respondent shall pay the costs of the Independent Hearing Examiner incurred in this matter as authorized in 14A O.S., § 3-505(1) in the amount of Sixteen Thousand One Hundred and Fifty-Five Dollars and Ten Cents ($16,155.10), to be paid to the Department.

So ordered this 14th day of January, 2016

Scott Lesher
Administrator of Consumer Credit
State of Oklahoma