THOMAS J. NOLAN (State Bar No. 66992)
Thomas.Nolan@skadden.com
CAROLINE VAN NESS (State Bar No. 281675)
Caroline.VanNess@skadden.com
KASONNI M. SCALES (State Bar No. 301871)
Kasonni.Scales@skadden.com
JULIA M. NAHIGIAN (State Bar No. 307508)
Julia.Nahigian@skadden.com
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
300 South Grand Avenue, Suite 3400
Los Angeles, California 90071-3144
Telephone: (213) 687-5000
Facsimile: (213) 687-5600

JOSEPH L. BARLOON (Admitted *Pro Hac Vice*)
Joseph.Barloon@skadden.com
AUSTIN K. BROWN (Admitted *Pro Hac Vice*)
Austin.Brown@skadden.com
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 New York Avenue, N.W.
Washington, DC 20005
Telephone: (202) 371-7000
Facsimile: (202) 393-5760

Attorneys for Defendants

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CONSUMER FINANCIAL PROTECTION BUREAU, Plaintiff, v. CASHCALL, INC., WS FUNDING, LLC, DELBERT SERVICES CORPORATION, and J. PAUL REDDAM, Defendants.	CASE NO.: 2:15-cv-07522-JFW (RAOx) DEPOSITION TESTIMONY OF DANIEL BAREN (JUNE 14, 2016) IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT Hearing Date: August 1, 2016 Time: 1:30 p.m. Place: Courtroom 16 Judge: Hon. John F. Walter Pre-Trial Conf.: September 09, 2016 Trial: September 27, 2016

28:6 Q. And how did it change?
28:7 A. It's obtained -- when it started out in
28:8 2003, it had only a California license. It
28:9 obtained several other lending licenses in 2004,
28:10 2005, and subsequent years. And then beginning in
28:11 2006, the company started purchasing paper and
28:12 servicing that paper that it did not originate.
28:13 Q. And from whom would the company purchase
28:14 paper?
28:15 A. Initially, beginning in 2006, it was two
28:16 state chartered federally regulated banks.

32:4 Q. And what do you mean by -- when you say
32:5 "at that point"?
32:6 A. Subsequent to 2009, we had one state,
32:7 state of West Virginia challenge the bank model,
32:8 but that didn't really occur until 2011, 2012. And
32:9 that's the case I told you that I testified in
32:10 before. But up until that point, the bank model
32:11 for us had been a smashing success, and
32:12 Ms. Callaway was the lawyer who brought us that,
32:13 introduced us to the banks, designed the bank
32:14 model, and executed on it. So I trusted her. I
32:15 believed in her. And when she told me that -- that
32:16 she recommended doing a tribal model, I -- I
32:17 believed her. I -- I thought that was the right
32:18 call.

33:10 Q. So I think I understood that CashCall
33:11 stopped purchasing loans from the two state
33:12 chartered banks in November 2008?
33:13 A. Correct.
33:14 Q. And why was that change made in November
33:15 of 2008?
33:16 A. If you recall, we had that financial
33:17 crisis in the 2007, 2008 period. And the banks
33:18 were coming under increasing scrutiny from the
33:19 regulators for safety and soundness concerns. And
33:20 both banks told us that their regulator, the FDIC,
33:21 was putting a lot of pressure on them for them to
33:22 get out of the marketing partnerships, which is
33:23 what these were called. They were very common at
33:24 that period.

35:14 A. The banks didn't want to originate these
35:15 loans anymore, and so if they weren't originating
35:16 the loans, there was nothing to buy from them.

46:13 A. Because if you -- at the time we had, I
46:14 believe, maybe 10 state licenses. We were only
46:15 using five or six of them to make loans. So the
46:16 vast majority of the loans in the servicing

53:16 Q. And we were talking about it in the
53:17 context of this meetings in April 2009 where you
53:18 are deciding to go into business --

53:19 A. Sure.
53:20 Q. -- with Mr. Webb. When you ultimately did
53:21 go into business with Mr. Webb, how were those
53:22 loans funded?
53:23 A. Sure. Over the next 10 months, what --
53:24 what was -- eventually Western Sky was able to open
53:25 a bank account with Wells Fargo. And the loan
54:1 funding process was through that Wells Fargo
54:2 account that was owned and operated by Western Sky.
54:3 There were initially two types of employees. There
54:4 were more than two, but for purposes of this --
54:5 this question, there's two types of employees on
54:6 the reservation employed by Western Sky. There is
54:7 the underwriters and there's the funders. The
54:8 process, at that point, was the underwriter would
54:9 review all of the loans that were set to fund on
54:10 that particular day and provide a final approval
54:11 for those loans. And that would entail moving the
54:12 loans from what was called an underwriting queue
54:13 into the funding account, funding queue.
54:14 And then subsequent to that, another
54:15 Western Sky employee who was the funder, would go
54:16 through and perform a final audit and, like I said,
54:17 press the button to move the -- move the loan from a
54:18 -- the funding queue to a funded queue, which would
54:19 instruct Wells Fargo Bank to wire $2600 to this
54:20 person's bank account.

55:25 Q. What did the employment verification
56:1 entail?
56:2 A. If an applicant said he worked at the
56:3 CFPB, we would call up your human resources
56:4 department and ask: Does this person really work
56:5 at the CFPB? It's your typical employment
56:6 verification for a loan.
56:7 Q. When you say "we," who -- who would
56:8 actually do that employment verification?
56:9 A. There were a group of people in CashCall's
56:10 offices. At least at the start, all of that
56:11 happened in CashCall's offices. By 2013, some of
56:12 that function could have been happening on the
56:13 reservation. I'm not certain. But throughout most
56:14 of the program that happened by a CashCall employee
56:15 at Cash Call's offices.

57:12 Q. You mentioned that a fraud-check would
57:13 also be performed?
57:14 A. Correct.
57:15 Q. And who would perform a fraud check?
57:16 A. Several people could have -- do that. I
57:17 know there were -- at times that the underwriters
57:18 on the reservation were -- were performing that.
57:19 There were also employees at CashCall whose job it
57:20 was to perform that function as well. The loan
57:21 agent himself could be -- or herself could be
57:22 involved in that as well.

57:23 Q. Who is a loan agent?
57:24 A. The loan agent is the person who takes the
57:25 phone call, the initial phone call from the
58:1 borrower and takes the information from the
58:2 borrower.

59:17 Q. Going back to the loan agents, were loan
59:18 agents CashCall employees?
59:19 A. It varied over time. At the beginning of
59:20 the program, all of the loan agents were CashCall
59:21 employees at CashCall. By the end of the program
59:22 in the summer of 2013, there were 75 or so loan
59:23 agents who were on the reservation as Western Sky
59:24 employees, and that number was growing.

60:12 Q. Were there any other steps related to
60:13 underwriting that would proceed the final
60:14 underwriting review?
60:15 A. Sure. Before any human looked at the
60:16 loan, there was an automated underreview -- excuse
60:17 me, automated underwriting review that was done by
60:18 the system. And those loans were underwritten
60:19 pursuant to the guidelines established by Western
60:20 Sky, obviously approved by CashCall. And if the
60:21 loan didn't meet those criteria, the loan
60:22 application would be denied immediately. And those
60:23 were instances primarily FICO scores, minimum --
60:24 insignificant minimum income.

60:25 So that was like the first line of review.
61:1 It was an electronic review. You wouldn't get to a
61:2 human underwriter either at CashCall or
61:3 subsequently on the reservation, if you didn't pass
61:4 the automated underwriting.

70:2 Q. And logistically speaking, do you mean an
70:3 individual sitting on the reservation would run the
70:4 credit of the consumer?
70:5 A. No, it was done in an automated fashion.
70:6 It was the -- there were two ways an applicant
70:7 could submit an application. The first would be to
70:8 call up and give their information to a loan agent.
70:9 Some of whom were at CashCall -- most of whom were
70:10 at CashCall, some of whom were on the reservation.
70:11 And then at the bottom of that, they would
70:12 read, do you authorize me to run credit on behalf
70:13 of Western Sky? And if they said yes, of course
70:14 this is all recorded, then the loan agent,
70:15 regardless of whether they were the CashCall loan
70:16 agent or the Western Sky loan agent, would hit a
70:17 button, which would run the automated credit. It
70:18 was a Western Sky credit -- credit report, meaning
70:19 if the -- if you were to apply, and the next day
70:20 you looked at your credit report, it would show
70:21 that Western Sky ran the credit, not CashCall.

93:13 Q. I want to ask what I think is a bit

93:14 related to that, which is: What communications did
93:15 consumers receive from Western Sky through the loan
93:16 application process? So before they were actually
93:17 approved for a loan?
93:18 A. Sure. There was a whole host of potential
93:19 communications and not all applicants got all of
93:20 these communications. So you would have people who
93:21 got declined, and they would get an e-mail from
93:22 Western Sky stating that unfortunately their
93:23 application had been declined, and what's known an
93:24 adverse action letter would soon follow. And that

99:17 A. No, with the possible exception of adverse
99:18 action letters that were sent out via U.S. mail if
99:19 the application did not list a valid e-mail
99:20 address, then the government requires you to send
99:21 them out, and those would go out via U.S. mail from
99:22 the reservation. But I am not aware of any other

105:2 Q. Once in -- in this scenario that all of
105:3 the steps that you mentioned are completed and the
105:4 loan is funded, what happens next from CashCall's
105:5 perspective?
105:6 A. After we get notification of -- of any
105:7 particular loan that is funded, over the next
105:8 couple of days, and it's usually at least three
105:9 days, the loan would then be sold to CashCall. And

106:12 Q. When would consumers first hear about
106:13 CashCall being involved with their loan?
106:14 A. The first call they made -- assuming that
106:15 they called on the 800 number, which is one of the
106:16 two ways by which you could apply for a loan. The
106:17 first thing you hear when you dial that 800 number
106:18 was a recording, and I'm paraphrasing, "You have
106:19 reached Western Sky. We are a Native
106:20 American-owned business, operating on the Cheyenne
106:21 River Sioux reservation. We have hired a company
106:22 called CashCall to help us take application" --
106:23 "take applications and process information. You
106:24 will be transferred to a CashCall operator. Hit 1,
106:25 and you will be transferred to a CashCall operator,
107:1 who will take your application."
107:2 That changed over time as more of the calls
107:3 went directly to the reservation. Borrower still got
107:4 the same, "Thank you for calling Western Sky. We are
107:5 a Native American-owned corporation or lender. We
107:6 have hired CashCall to process some of our
107:7 application calls. You may be directed to a CashCall
107:8 operator, and you hit 1," because we didn't know, at
107:9 that point, where that call was going to go. So
107:10 anyone who was calling up, that would be their --
107:11 their -- the first communication they had. So they
107:12 were aware of CashCall's involvement from the moment
107:13 they started the transaction.
107:14 Now, if they applied online, you wouldn't

107:15 get that -- that call or that disclaimer, but you
107:16 would be notified via e-mail that CashCall was
107:17 assisting Western Sky. And then throughout the
107:18 process, if the Western Sky -- if the Western Sky
107:19 person handling the application, there would be no
107:20 mention of CashCall until the loan was -- was sold.
107:21 But if CashCall was assisting in the application,
107:22 then you would be notified throughout the process
107:23 that CashCall was involved.

109:22 A. It's -- well, there's always going to be
109:23 CashCall involvement because pursuant to the
109:24 service -- servicing agreement, CashCall is
109:25 performing some tasks on behalf of Western Sky. So

110:11 Q. Uh-huh.
110:12 A. So in those instances, even though
110:13 CashCall is doing some of the work, the borrower is
110:14 not aware of that fact. But it is -- it would be
110:15 very rare for an application to go all the way from
110:16 start to finish without some communication from the
110:17 loan agent, even if you are applying online. In
110:18 some cases, if the online applications get
110:19 directed, they still get a loan agent, because the
110:20 loan agent has to shepherd the application through,
110:21 even though you're not actually talking to them on
110:22 the phone.
110:23 In most of the instances, you still might

110:24 have to talk to them on the phone. Given that
110:25 CashCall is involved in that process, it would be
111:1 very, very rare, in fact, probably impossible, and,
111:2 again, I'm not the right person to know probability
111:3 of this, that the -- an applicant would not know of
111:4 CashCall's involvement in the loan origination
111:5 process, regardless of the channel that they came
111:6 through.
111:7 Q. I think what you told me clarifies what I
111:8 thought you were saying before. So it sounded like
111:9 that there -- it was possible for consumers not to
111:10 know if CashCall's involvement until CashCall
111:11 bought the loan. But am I understanding you
111:12 correctly that that would be a very rare
111:13 occurrence, from your understanding?
111:14 A. High -- very highly unlikely. And, again,
111:15 if you asked someone in the origination side, they
111:16 probably have a much better idea than I would.

119:5 Q. I want to go back in our conversation a
119:6 little bit, again. As we were talking about the
119:7 consumer experience, I think you mentioned that, at
119:8 some point, after the loan had been funded,
119:9 CashCall purchased the loan from Western Sky; is
119:10 that correct?
119:11 A. WS Funding purchased the loan, which -- I
119:12 mean, it's the same, given that CashCall was the
119:13 parent company.

119:14 Q. Okay. Let me -- let me be correct and
119:15 accurate about it, then, though. So at some point
119:16 after Western Sky had funded a loan, at least three
119:17 days would elapse and then WS Funding would
119:18 purchase the loan from Western Sky; is that
119:19 correct?
119:20 A. That's correct.
119:21 Q. And how much would WS Funding pay to
119:22 purchase the loan from Western Sky?
119:23 A. WS Funding paid a premium of approximately
119:24 5 percent on the loans.
119:25 Q. 5 percent of what?
120:1 A. It was 5 percent of, in most cases, the --
120:2 the principal loan amount. In some cases it was
120:3 the amount disbursed to the consumer.
120:4 Q. Was there a difference between the
120:5 principal loan amount and the amount disbursed to
120:6 the consumer?
120:7 A. Sure.
120:8 Q. And what was that difference?
120:9 A. The difference was the delta between the
120:10 amount of the origination fee, the finance charge.
120:11 Q. For any -- for a specific loan, how much
120:12 would WS Funding know to pay?
120:13 A. I'm not sure I understand your question.
120:14 Q. So it sounds like you were saying that
120:15 generally WS Funding paid a premium of 5 percent
120:16 either of the principal loan amount or the amount

120:17 disbursed to the consumer?
120:18 A. Sure.
120:19 Q. What would determine the actual amount
120:20 that WS Funding paid for the loan?
120:21 A. Depending on which loan product it was.
120:22 Like on all $2600 loans, it was based on the note
120:23 amount.
120:24 Q. And in what manner did WS Funding pay
120:25 Western Sky for the loans?
121:1 A. My understanding -- and, again, Del knows
121:2 far more about this than I did -- is that at the
121:3 end of each month, there would be a reconciliation,
121:4 whereby CashCall would pay Western Sky 5 percent --
121:5 approximately 5 percent. It was slightly higher, I
121:6 think, for all the loans purchased during any given
121:7 month, and Western Sky would pay CashCall the 2
121:8 percent that CashCall earned pursuant to the
121:9 servicing agreement.
121:10 Q. For Western Sky's payment to CashCall,
121:11 what was it paying for?
121:12 A. For all of the services that are described
121:13 in the servicing agreement, and some of which we
121:14 have talked about today.
121:15 Q. For -- what of it have we talked about
121:16 today, just so I'm clear?
121:17 A. Employment verification, fraud check,
121:18 marketing assistance, customer service assistance,
121:19 assistance with advertising, assistance with

121:20 processing the loan applications. Probably the
121:21 gist of it.
121:22 Q. And I got the 2 percent part for Western
121:23 Sky's payment to CashCall, but 2 percent of what?
121:24 I think I missed that.
121:25 A. 2 percent of the loan amount.
122:1 Q. Of funded loans?
122:2 A. Yes, that's correct.

125:11 Q. Okay. I'm looking at the very top
125:12 paragraph, and it says that the agreement is
125:13 between Western Sky Financial and WS Financial.
125:14 What is WS Financial?
125:15 A. That was a drafting error. Cheryl Bogue
125:16 drafted this agreement and got the name of the
125:17 entity incorrect.
125:18 Q. And -- so what is the correct name?
125:19 A. WS Funding, LLC.

130:24 Q. Did the WS loan program use marketing
130:25 materials?
131:1 A. Western Sky loan program used marketing
131:2 materials, yes.
131:3 Q. And who drafted the Western Sky loan
131:4 program marketing materials?
131:5 A. It wasn't just one person. There was an
131:6 outside firm that was hired by Western Sky called
131:7 "Kovel-Fuller." It's the same firm that CashCall

131:8 used as well. There were internal people at
131:9 CashCall in the marketing department. Mr. Reddam
131:10 participated in that. There was a head of
131:11 marketing at CashCall. And then Western Sky
131:12 participated in it substantially as well.
131:13 Q. Who paid Kovel-Fuller for their services?
131:14 A. On the Western Sky marketing, Western Sky
131:15 paid.
131:16 Q. Did CashCall pay for any marketing
131:17 for Western's -- for the Western Sky loan program?
131:18 A. Directly, no.
131:19 Q. Did CashCall pay indirectly for any
131:20 marketing for the Western Sky loan program?
131:21 A. CashCall indemnified Western Sky, and
131:22 Western Sky would submit the bills that it paid to
131:23 Kovel-Fuller, and CashCall would reimburse them.
131:24 Q. Was that for all marketing for the Western
131:25 Sky loan program?
132:1 A. I'm not certain. I believe Western Sky
132:2 did some marketing that they did not seek
132:3 reimbursement for.

134:14 Q. I'm going to hand you what's been marked
134:15 as Exhibit 3. And take your time in looking at it,
134:16 but my question will be: Is this the second
134:17 agreement that you were just referring to?
134:18 A. Yes. But I just noticed -- and this is
134:19 not the final agreement because this is between WS

134:20 Funding and -- Western Sky Financial and WS
134:21 Financial. When we noticed the error in both of
134:22 these agreements, they were revised and amended, so
134:23 that this agreement for service, the operative
134:24 agreement, was between Western Sky Financial and
134:25 CashCall.
135:1 And then on Exhibit 9, somewhere after
135:2 December 28th of 2009, the error was caught, the
135:3 Western Sky Financial error, and this agreement was
135:4 amended to reflect the proper name of Western -- WS
135:5 Financial, WS Funding.
135:6 So both Exhibit 9 and Exhibit 10 were
135:7 shortly, after these dates, amended to correct those
135:8 mistakes.

144:6 Q. Aside from the ad hoc participants in an
144:7 executive team meeting, since 2009 have there been
144:8 any other members of the executive team for
144:9 CashCall?
144:10 A. Yes.
144:11 Q. Who is that?
144:12 A. Louis Ochoa would have been on the
144:13 executive team for some period, Hilary Holland,
144:14 Jonathan Williams, I believe.

DATED: July 11, 2016

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: */s/ Thomas J. Nolan*
Thomas J. Nolan
Attorneys for Defendants