

# Current Status Report of CashCall Class Action Litigation

*November 17, 2015*

The pending class action lawsuit against CashCall involves two separate claims:

(1) the Unconscionability Claim, which challenges the combination of terms that CashCall imposes on its \$2,600+ loans – the requirement that a borrower borrow at least \$2,600, interest rates of 90% or above, and a loan term of three-and-a-half years;

(2) the Conditioning Claim, under which CashCall requires, as a condition of the loan, that a borrower must check the box to “authorize” CashCall to open an electronic funds transfer (EFT) account through which CashCall may debit loan payments and NSF fees if payments are not made in full or are made delinquent.

The district court certified classes of borrowers as follows:

1. **The Loan Unconscionability Class:** All individuals who, while residing in California, borrowed from \$2,500 to \$2,600 at an interest rate of 90% or higher from CashCall, Inc. for personal, family or household use on or after **June 30, 2004 through July 10, 2011**.

2. **The Conditioning Class:** All individuals who, while residing in California, borrowed money from CashCall, Inc. for personal, family, or household use on or after **March 13, 2006 through July 10, 2011**, and were charged an NSF Fee.

Thus, anyone who borrowed money from CashCall after July 10, 2011, is not a member of the certified classes.

## **The Unconscionability Claim**

In October, 2014, the district court reversed itself and granted CashCall’s motion for summary judgment of the Unconscionability Claim as a matter of law. The district court concluded that it was powerless to award any relief because it would be required to determine an interest rate that would not be unconscionable. Making such a determination, it believed, would require that it engage in economic policy. Plaintiffs believe that the district court order was plainly erroneous and have appealed to the Ninth Circuit. They filed their opening brief on May 8, 2015. Briefing will conclude this fall, but no argument is likely until late 2016 at the earliest. In the meantime, CashCall continues to collect on those loans and to adversely report negative credit information on class member accounts to credit reporting agencies.

## What Class Members Can Do to Protect Themselves

Class members have a right under and state law to communicate with the major credit reporting services – Experian, Trans Union, and Equifax – and send in a statement not exceeding 125 words to explain that they do not believe the loan was legal or the collection proceedings were justified. The following language is a sample of what you may use:

I am a member of the statewide class certified in *De La Torre v. CashCall*, Case No. 08-cv-03174-MEJ (N.D. Cal.), which alleges that CashCall's combination of loan terms – \$2,600 or greater at interest rates of 90% or greater for 3½ years – is unconscionable under California law. The introductory rate on my loan was \_\_\_\_%. CashCall charged off my loan and sold it to \_\_\_\_\_. I believe the terms of the loan are unconscionable and violate California law.

## The Conditioning Claim

In July, 2014, the district court granted Plaintiffs' motion for summary judgment and denied CashCall's motion for summary judgment on liability that CashCall's loans violate the Electronic Funds Transfer Act (EFTA). There was a two-day non-jury bench trial Sept. 8-9, 2015, in San Francisco. Plaintiffs put on evidence of the money CashCall collected from class members – \$15 NSF fees on delinquent loan accounts from EFTA deposit accounts. Following the trial, the parties submitted post-trial briefing and a decision is expected before the end of March, 2016. There will almost certainly be one or more appeals from the resulting judgment again taking at least two additional years

## CashCall Borrowers Who Are Not Members of the Certified Classes

If you borrowed money from CashCall **after July 10, 2011**, you are **not** a member of the classes in the lawsuit. Your loan documents contain an arbitration clause requiring that you arbitrate, not litigate in court, any claim you have against CashCall. The arbitration clause also prohibits you from arbitrating with any other CashCall borrower. In other words, you would have to file an individual arbitration claim against CashCall. The firm is communicating with individuals who are not members of the class and sending information to public officials, including the California Attorney General, district attorneys in large cities in California, and the Consumer Financial Protection Bureau (CFPB) in Washington, urging all of them to take action against CashCall for loans made on or after July 11, 2011, because those entities are not subject to any of the arbitration agreements in CashCall's loans.

We will continue to update the information on the firm's website concerning the status of the various phases of the lawsuit and what other steps any public official may take. If anyone has questions, you may email Mr. Sturdevant at [jisturdevant@sturdevantlaw.com](mailto:jisturdevant@sturdevantlaw.com).