JAMES C. STURDEVANT*

THE STURDEVANT LAW FIRM
A PROFESSIONAL CORPORATION
4040 Civic Center Drive
Suite 200
SAN RAFAEL, CA 94903

Telephone
(415) 477-2410

Facsimile
(415) 492-2810

email:
jsturdevant@sturdevantlaw.com

January 23, 20119

FEB 6 '19 PM2:47
EXECUTIVE SECRETARY

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th St. NW
Washington, DC 20429

Re: **Small-Dollar Lending, Request for Information, RIN 3064–ZA04**

Dear Executive Secretary Feldman:

I have read the comprehensive letter written to you yesterday jointly by The Center for Responsible Lending (CRL) and the National Consumer Law Center (on behalf of its low income clients) (NCLC), joined by Americans for Financial Reform Education Fund, the Leadership Conference for Civil and Human Rights, and NAACP. Those groups and entities submitted comments in response to the FDIC's request for information (RFI) on small-dollar lending. I adopt those comprehensive comments in full and submit additional ones below.

My law firm, individually and with others, has been engaged in litigating against online lenders and debt buyers in California for more than a decade. We have challenged $2,600 loans made at very high interest rates payable over three and one-half years or longer. Last year, in response to a certified question form the Ninth Circuit Court of Appeals, the California Supreme Court issued a unanimous opinion holding that the interest rate on such loans in isolation may render the loans unconscionable under California law. *De La Torre v. CashCall, Inc.,* 5 Cal. 5th 966, 422 P.3d 1004 (2018). The opinion announced for the first time that borrowers may bring affirmative claims of unconscionability and that courts are statutorily authorized to make determinations of unconscionability and issue appropriate relief

The evidentiary record developed both to oppose summary judgment in 2014 and for trial in *De La Torre* is substantial. It includes profitability by CashCall marketing $2,600 loans for three and one-half years with interest rates of 135% in 2011. That lender's profitability was based on a growing default rate of 40% and higher as of 2011. Those interest rates exceeded 200% in 2018 before CashCall ceased to make the loans shortly before the Court issued its opinion.

During the class period from June, 2004 through July 11, 2011, CashCall made a total of 135,288 loans of$2,600 at 96% or 135% interest, with loan durations of 42 months and 35 months, respectively. CashCall's extremely high interest rates resulted in costs to the borrowers of 3 to 4 times the loan amount. For CashCall's 96% loan, the total loan payments were $9,150, or 3.5 times the amount borrowed. For its 135% loan, the total loan payments were even greater--nearly $11,000, or 4.25 times the amount borrowed.

CashCall persuaded many Class Members to borrow at these rates by targeting subprime borrowers with its advertising -- that is, those with FICO scores below 660. CashCall's advertising pinpointed financially strapped consumers in need of ready cash with promises to them of "cash now" and visual images of floating $100 bills. Advertising costs accounted for more than half of the 25% origination costs input into CashCall's profitability model. Individuals facing financial and other stress all too often make poor financial decisions. The response of Class Members to CashCall's promise of "cash in a hurry" with "no security of any kind ...just your signature" reflected their state of heightened financial stress.

CashCall aggressively advertised to such borrowers, particularly on television, with advertising expenses accounting for nearly 20% of CashCall's total operating costs. CashCall's advertising objective was to get TV viewers to pick up the telephone immediately and call for a loan-encouraging them to "Make the CashCall." CashCall's advertising appealed to the viewer's immediate need for money and the ease of quickly meeting that need, minimizing information provided to the viewer about the cost of the loans, and directing him or her toward appealing information-such as ready cash and a low monthly payment-while deflecting the borrower away from critical information about the loan's real cost and risks. CashCall built a 35-40% "acceptable default rate" into its lending program-knowing that almost half the individuals to whom it lent $2,600 would be unable to make all payments required by the loans' terms.

CashCall's default rate until 2011 was between 35-40%. It has since increased to nearly 45%. Those rates camouflage the very real personal, financial, and family stress and credit turmoil that CashCall and its aggressive collection practices inflicted upon its borrowers:

* CashCall made repeated, continual, and excessive collection telephone calls to borrowers.

* CashCall had a business practice of threatening consumers with fees and charges, visits to home and workplaces, and legal remedies it could not pursue.

* CashCall's adverse credit reporting financially damaged delinquent and defaulting borrowers' credit standing and made it more difficult for them to obtain credit in the future. Borrowers fell for CashCall's promise of "cash in a hurry" as a way to get out of short-term financial stress, only to find themselves trapped in loans with interest of 96% or 135% for three years or more.

In addition to CashCall, there are numerous other predatory, online lenders operating in California. These include LoanMe and LoanMart. There are hundreds of debt buyer entities operating in California alone which purchase charged off loans, file collection actions and routinely obtain default judgments from which the debt buyers obtain garnishment orders and levy orders. When challenged by a borrower, the lender or debt buyer promptly moves to compel individual arbitration to conceal its policies and practices of using the judicial system to collect substantial damages and interest on these loans.

Bank involvement in unaffordable or high-cost lending would create both a consumer protection and safety and soundness concerns. For consumers, it would cause substantial harm. It would also violate the basic safety and soundness principle of lending based on the borrower's ability to repay based on income and obligations/expenses; it would pose severe reputational risk, as evidenced by sweeping negative reaction by consumer groups, consumers and attorneys who represent them. Furthermore, it would create the risk of violating consumer protection laws which have been invoked and enforced for decades. Ultimately, high-cost loans erode the assets of bank customers and, rather than promote savings, make checking accounts unsafe for already financially distressed customers.

High-cost loans made or facilitated by banks will not drive out even higher-cost lending by nonbank lenders. To the contrary, they will serve to fortify existing practices by online lenders and dissuade state regulatory agencies from doing their jobs.

We thus urge the FDIC to reject requests – and demands -- to explicitly authorize high-cost loans and to take every necessary step to prevent them. We encourage the agency to demand that banks promote the responsible products they do offer and to focus on products that help build both credit capacity and sound relationships with their customers.

We appreciate your consideration of our comments and would be available to amplify on them.

Sincerely

[redacted]

James C. Sturdevant