

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS

Robert E. Hood, Fifth Judicial Circuit

Appellate Case No. 2017-002639

South Carolina Department of
Consumer Affairs,

Appellant,

v.

Cash Central of South
Carolina, LLC,

Respondent.

APPELLANT'S MOTION FOR LEAVE TO FILE AN AMENDED INITIAL BRIEF
AND AMENDED DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON
APPEAL

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Attorneys for Appellant

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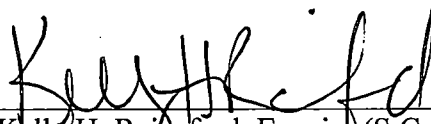
Appellant, the South Carolina Department of Consumer Affairs (“Department”), moves for leave to file an Amended Initial Brief and Amended Designation of Matter to be Included in the Record on Appeal, and in support thereof states:

1. Appellant timely served and filed its Initial Brief and Designation of Matter to be Included in the Record on Appeal on March 30, 2018.
2. Upon subsequent review of that brief, the undersigned discovered several scrivener’s errors. They are noted in the attached redlined pages and are as follows:
 - a. Footnote # 2 on page 4 should have read: This website feature for South Carolina loans was removed and replaced with the maximum rate certificate after the Department filed this action. Actual interest rates were provided only after a consumer filled out an application, which included source of income, information to establish creditworthiness, and valid checking account information. (9/6-7 Tr. pp. 383-4, lines 17-4; p. 469, lines 17-21).
 - b. Item # 11 on the Designation of Matter to be Included in the Record on Appeal, Trial Transcript for September 6 and 7, 2017, should have included pages 383-384 and page 469.
 - c. As the Second Amended Answer, filed June 2, 2017, incorporated all prior versions of Cash Central’s Answer, Items # 6 and # 7 on the Designation of Matter to be Included in the Record on Appeal, Answer, filed July 20, 2016, and Amended Answer, filed August 18, 2016, should have been deleted.
 - d. As it was not cited to in any place except for the Statement of the Case as an indication of prior procedural history, Item # 13, Cash Central’s Motion for

Partial Summary Judgment, filed May 5, 2017, should have been deleted from the Designation of Matter to be Included in the Record on Appeal.

3. These errors were a result of merging changes from prior drafts of the documents.
4. These errors have been corrected and an Amended Initial Brief of Appellant and an Amended Designation of Matter to be Included in the Record on Appeal are being filed simultaneously with this Motion.
5. No other changes were made in the Initial Brief or Designation of Matter except to designate each document as “Amended.”
6. Counsel for Appellant has conferred with counsel for Respondent and they have no objections to the foregoing revisions. Accordingly, Appellant respectfully moves this Court to accept its Amended Initial Brief and Amended Designation of Matter to be Included in the Record on Appeal as filed.

Respectfully submitted this 4th day of April, 2018.



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STATEMENT OF FACTS

Cash Central of South Carolina, LLC (“Cash Central”) is a consumer lender that makes triple-digit interest loans to South Carolinians via its website. (Def. Exh 16). Originally, its website allowed users to pick loan amounts, maturity terms and payment due dates, and view potential interest rates.¹ Id. Cash Central does not have any employees, but instead utilizes those of its parent company Direct Financial Solutions, LLC (“DFS”) and grandparent company Community Choice Financial, Inc. (“CCFI”). (9/6-7 Tr. p. 330, lines 16-25; pp. 211-2, lines 21-1; Pl. Exh. 6). CCFI was established in 2011, purchased DFS as its subsidiary in 2012 and launched Cash Central in 2013.² (9/6-7 Tr. p. 289, lines 16-25; p. 290, lines 1-6; p. 211, lines 21-25, p. 213, line 25). Cash Central is one of approximately 100 subsidiaries and South Carolina was one of at least 12 states DFS entered in a three year timeframe using a self-described “sprint schedule.” (9/6-7 Tr. pp. 285-6 lines 24-1; p. 290, line 1-3; pp. 203-4, lines 23-3; p. 256, line 9). Between October 24, 2013, and April 10, 2015, thousands of South Carolina consumers borrowed money from Cash Central at Annual Percentage Rates (“APR”) between 146% and 246.6%. (9/6-7 Tr. p. 401, lines 5-23). During this period of time, however, Cash Central failed to file its maximum rate schedule with the South Carolina Department of Consumer Affairs (“the Department”), a requirement for creditors intending to charge more than 18% APR in consumer transactions. (9/6-7 Tr. p. 109, lines 17-23; p. 110, lines 1-17; p. 111, lines 2-6; Pl. Exh. 9). To illustrate the impact on South Carolina consumers, for a twelve-month loan of \$1,000.00 from Cash Central at a rate of 239.99% APR, a

¹ This website feature for South Carolina loans was removed and replaced with the maximum rate certificate after the Department filed this action. ~~Prior to removal of this feature, a~~Actual interest rates were provided only after a consumer filled out an application, which included source of income, information to establish creditworthiness, and valid checking account information, two phone numbers, and social security number. ~~[Todd’s Test.]~~ (9/6-7 Tr. pp. 383-4, lines 17-4; p. 469, lines 17-21).

² Cash Central originally was headquartered in North Logan, Utah while its parent company DFS and grandparent company CCFI were headquartered in Dublin, Ohio. In early 2017, Cash Central’s headquarters moved from Utah to the Dublin, Ohio address. (9/6-7 Tr. pp. 453-4, lines 1-9).

PLEADINGS

5. Complaint, filed May 6, 2016;
- ~~6. Answer, filed July 20, 2016;~~
- ~~7. Amended Answer, filed August 18, 2016;~~
- ~~8.6.~~ Second Amended Answer, filed June 2, 2017;

TRANSCRIPTS

- ~~9.7.~~ Motions Hearing Transcript for May 18, 2017;
 - a. pp. 29, 56-57
- ~~10.8.~~ Motions Hearing Transcript for July 19, 2017;
 - a. p. 52
- ~~11.9.~~ Trial Transcript for September 6 and 7, 2017;
 - a. pp. 16, 23-24, 31-32, 38, 45-46, 51-53, 87, 96-97, 109-111, 113-116, 122-123, 127, 133, 135, 150-151, 184-185, 187, 201, 203-205, 207-208, 211-216, 219, 221-225, 227-228, 230-232, 234-237, 241-242, 244-245, 247, 250, 255, 256, 259, 260, 269, 271-273, 282-286, 288-290, 293-294, 298, 301-302, 316, 322, 330, 335, 339-340, 383-384, 401, 433, 459-464, 469, 486-488.

MISCELLANEOUS AND OTHER MOTIONS

- ~~12.10.~~ Plaintiff's Motion for Partial Summary Judgment, filed April 7, 2017;
- ~~13. Defendant's Motion for Partial Summary Judgment, filed May 5, 2017;~~
- ~~14.11.~~ Plaintiff's Memorandum of Law In Opposition to Defendant's Motion for Leave to Amend Its Answer, filed May 17, 2017;
- ~~15.12.~~ Plaintiff's Motion to Alter or Amend, filed June 9, 2017;
- ~~16.13.~~ Plaintiff's Motion to Alter or Amend, filed October 12, 2017;

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Robert E. Hood, Fifth Judicial Circuit

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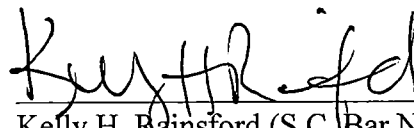
Cash Central of South
Carolina, LLC,

Respondent.

PROOF OF SERVICE

I certify that I have served the Appellant's Motion for Leave to File an Amended Initial Brief and Amended Designation of Matter to be Included in the Record on Appeal on Respondent, Cash Central of South Carolina, LLC, by depositing a copy of it in the United States Mail, postage prepaid, on April 4, 2018, addressed to its attorneys of record, James Y. Becker and Mary M. Caskey, Haynsworth Sinkler Boyd, P.A., P.O. Box 11889, Columbia, SC 29211.

April 4, 2018



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Commissioners
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Carri Grube Lybarker
Administrator/
Consumer Advocate

Celebrating Over 40 Years of Public Service

April 4, 2018

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

RE: South Carolina Department of Consumer Affairs v. Cash Central of South Carolina, LLC
Appellate Case No. 2017-002639

Dear Madam Clerk:

Enclosed please find the original and one (1) copy each of the following in regard to the above-referenced matter:

1. Appellant's Motion for Leave to File an Amended Initial Brief and Amended Designation of Matter to be Included in the Record on Appeal;
2. Amended Initial Brief of Appellant;
3. Amended Designation of Matter to be Included in the Record on Appeal;
4. Proof of Service of Appellant's Motion; and
5. Proof of Service of Appellant's Amended Initial Brief and Amended Designation of Matter.

We ask that you please file the originals and return the clocked-in copies to us via our courier.

Respectfully,

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SC Court of Appeals

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Enclosures

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