

TERMS COMPLETE

ORDER SUMMARY – Case Number: C-12-0917

Name(s): Peak 3 Holdings, LLC

Order Number: C-12-0917-15-CO01

Effective Date: February 18, 2015

License Number: UL

Or NMLS Identifier [U/L]

License Effect: N/A

Not Apply Until: February 18, 2020

Not Eligible Until: February 18, 2020

Prohibition/Ban Until: February 18, 2020

| | | | | |
|--|----------|---|--|-----------------|
| Investigation Costs | \$1,060 | Due | Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N | Date: 2/10/2015 |
| | | | | |
| Fine | \$10,000 | Due | Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N | Date: 2/10/2015 |
| | | | | |
| Assessment(s) | \$ | Due | Paid <input type="checkbox"/> Y <input type="checkbox"/> N | Date |
| | | | | |
| Restitution | \$2,595 | Due: See details of Consent Order | Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N | Date 6/18/2015 |
| | | | | |
| Judgment | \$ | Due | Paid <input type="checkbox"/> Y <input type="checkbox"/> N | Date |
| | | | | |
| Satisfaction of Judgment Filed? | | <input type="checkbox"/> Y <input type="checkbox"/> N | | |
| No. of Victims: | | | | |

Comments: Respondent is banned for five years and ordered to provide proof of restitution within 120 days of entry of CO

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Check Cashers and Sellers Act by:

PEAK 3 HOLDINGS, LLC, and
GARY S. RIXSON, Managing Member,

Respondents.

No.: C-12-0917-^{15 KS}~~14~~CO01

CONSENT ORDER

PEAK 3 HOLDINGS, LLC

COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Charles E. Clark, Division Director, Division of Consumer Services, and Peak 3 Holdings, LLC (Respondent Peak 3), by and through its attorney Nick Hillyard, and finding that the issues raised in the above-captioned matter may be economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter 31.45 of the Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

FINDINGS OF FACT

1.1 Respondent Peak 3 has not previously obtained a check casher license with a small loan endorsement in accordance with chapter 31.45 RCW, the Check Cashers and Sellers Act (Act), from the Department of Financial Institutions of the State of Washington (Department).

1.2 Beginning in at least September 2011, Respondent Peak 3 provided small loans to at least 62 Washington residents without being licensed by the Department as a check casher and seller with a small loan endorsement.

//

//

CONSENT ORDER ^{KS}
C-12-0917-~~14~~CO01
PEAK 3 HOLDINGS, LLC

DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

ORIGINAL

1 **DIRECTOR'S CONCLUSIONS OF LAW**

2 **2.1** Based on the above Findings of Fact, the Director concludes that Respondent Peak 3 violated
3 RCW 31.45.030(1) by engaging in the business of check casher or seller with a small loan
4 endorsement in the state of Washington without first obtaining a license from the Director.

5 **2.2** Based on the above Findings of Fact, the Director concludes that Respondent Peak 3 violated
6 RCW 31.45.070, RCW 31.45.073, and RCW 31.45.105(1)(a)-(d) by engaging in the business of
7 making small loans in the state of Washington without first obtaining a small loan endorsement from
8 the Director.

9 **AGREEMENT AND ORDER**

10 The Department and Respondent Peak 3 have agreed upon a basis for resolution of the
11 Findings of Fact and Conclusions of Law identified in this Consent Order. Pursuant to the Act and
12 RCW 34.05.060 of the Administrative Procedure Act, Respondent Peak 3 and the Department hereby
13 agree to the entry of this Consent Order and further agree that the issues raised in the above-captioned
14 matter may be economically and efficiently settled by entry of this Consent Order.

15 Based upon the foregoing:

16 **A. Jurisdiction.** Respondent Peak 3 consents to the jurisdiction of the Department to enter this
17 Consent Order, as well as the jurisdiction of the Department and Washington State courts to the extent
18 required for the Department to enforce all terms contained in this Consent Order, including but not
19 limited to, this provision.

20 **B. Waiver of Hearing.** It is AGREED that Respondent Peak 3 hereby waives its right to a
21 hearing and any and all administrative and judicial review of the issues raised in this matter, or of the
22 resolution reached herein.

1 **C. No Further Lending or Collection.** It is AGREED that Respondent Peak 3 has ceased
2 and desisted from providing small loans to Washington residents. It is further AGREED that
3 Respondent Peak 3 has voided or forfeited loans that were extended to Washington residents by
4 ceasing collection on outstanding loans and canceling defaulted loans.

5 **D. Prohibition from Industry.** It is AGREED that for a period of five (5) years from the
6 date of entry of this Consent Order, Respondent Peak 3 is prohibited from making small loans to
7 Washington residents and from participating, in any capacity, in the conduct of the affairs of any
8 check casher or seller with a small loan endorsement licensed by the Department or subject to
9 licensure or regulation by the Department.

10 **E. Restitution.** It is AGREED that Respondent Peak 3 shall pay restitution totaling \$2,595
11 to the Washington residents listed in Attachment A. The Washington residents identified on
12 Attachment A shall receive refunds for fees and interest collected by Respondent Peak 3 as identified
13 on Attachment A. Within 30 days from entry of this Consent Order, Respondent Peak 3 shall mail
14 restitution payments to the borrowers identified on Attachment A. Each mailed restitution check
15 must be accompanied by an explanatory letter discussing the restitution payment. A copy of the
16 explanatory language is attached as Attachment B. All expenses associated with the distribution of
17 refunds, including but not limited to the cost of mailings and stop payment fees, shall be borne by
18 Respondent Peak 3. If restitution cannot be made to any particular borrower, Respondent Peak 3
19 shall take the necessary steps to escheat such funds to the state of Washington as unclaimed property
20 in the name of the borrower. It is further agreed that, within 120 days from the entry of this Consent
21 Order, Respondent Peak 3 shall provide the Department with an affidavit attesting that the entire
22 restitution amount has either been received by borrowers or escheated to the state of Washington.

1 **F. Fine.** It is AGREED that Respondent Peak 3 shall pay a fine to the Department in the
2 amount of \$10,000 in the form of a cashier's check made payable to the "Washington State
3 Treasurer" upon entry of this Consent Order.

4 **G. Investigation Fee.** It is AGREED that Respondent Peak 3 shall pay to the Department an
5 investigation fee of \$1,060, in the form of a cashier's check made payable to the "Washington State
6 Treasurer," upon entry of this Consent Order. The Fine and Investigation Fee may be paid together
7 in one cashier's check in the amount of \$11,060 made payable to the "Washington State Treasurer."

8 **H. Change of Address.** It is AGREED that for the duration of the period this Consent Order
9 is in effect (not to exceed five years from entry), unless otherwise agreed to in writing by the
10 Department, Respondent Peak 3 shall provide the Department with a mailing address and telephone
11 number at which Respondent Peak 3 can be contacted, and Respondent Peak 3 shall notify the
12 Department in writing of any changes to their mailing address or telephone number within fifteen
13 days of any such change.

14 **I. Non-Compliance with Order.** It is AGREED that Respondent Peak 3 understands that
15 failure to abide by the terms and conditions of this Consent Order may result in further legal action
16 by the Director. In the event of such legal action, Respondent Peak 3 may be responsible to
17 reimburse the Director for the cost incurred in pursuing such action, including but not limited to,
18 attorney fees.

19 **J. Voluntarily Entered.** It is AGREED that Respondent Peak 3 has voluntarily entered into
20 this Consent Order, which is effective when signed by the Director's designee.

21 **K. Completely Read, Understood, and Agreed.** It is AGREED that Respondent Peak 3 has
22 read this Consent Order in its entirety and fully understands and agrees to all of the same.

23
24 15 KS
CONSENT ORDER
C-12-0917-M-C001
PEAK 3 HOLDINGS, LLC

1 **L. Authority to Execute Order.** It is AGREED that the undersigned have represented and
2 warranted that they have the full power and right to execute this Consent Order on behalf of
3 Respondent Peak 3.

4 **RESPONDENT:**

5 Peak 3 Holdings, LLC

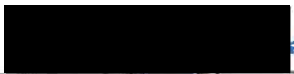
6 By: 

7
8 Gary S. Rixson
9 Managing Member

2/4/15

Date

10 Approved for Entry:

11 
12 Nick Hillyard, Missouri Bar No. 57538
13 Attorney at Law
14 Franke Schultz and Mullen, P.C.
15 Attorney for Respondent Peak 3

2/4/15

Date

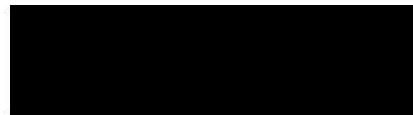
16
17
18
19
20
21
22
23
24 DO NOT WRITE BELOW THIS LINE

15 KS
CONSENT ORDER
C-12-0917-M-CO01
PEAK 3 HOLDINGS, LLC

5

DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

1 THIS ORDER ENTERED THIS 18th DAY OF February, 2015.



5 CHARLES E. CLARK
6 Director
7 Division of Consumer Services
8 Department of Financial Institutions

9 Presented by:



10 KENNETH J. SUGIMOTO
11 Financial Legal Examiner

12 Approved by:



13 STEVEN C. SHERMAN
14 Enforcement Chief

15

16

17

18

19

20

21

22

23

24

15 KJ

CONSENT ORDER
C-12-0917-M-CO01
PEAK 3 HOLDINGS, LLC

ATTACHMENT A
Peak 3 Restitution Payments

| <u>Washington Consumer</u> | <u>Refund Amount</u> |
|----------------------------|----------------------|
| J.C. | \$330 |
| G.U. | \$290 |
| K.L. | \$275 |
| C.K. | \$240 |
| D.D. | \$150 |
| C.F. | \$150 |
| P.F. | \$145 |
| D.M. | \$135 |
| R.P. | \$130 |
| J.J. | \$90 |
| J.M. | \$90 |
| S.B. | \$80 |
| D.G. | \$75 |
| T.H. | \$75 |
| J.B. | \$60 |
| T.M. | \$60 |
| A.M. | \$60 |
| B.P. | \$60 |
| J.C. | \$40 |
| K.H. | \$40 |
| H.Y. | \$20 |
| Total Payments | \$2,595 |

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the Check
Cashers and Sellers Act of Washington by:

PEAK 3 HOLDINGS, LLC, and
GARY S. RIXSON, Managing Member,

Respondents.

No.: C-12-0917-13-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER AN
ORDER TO CEASE AND DESIST,
PROHIBIT FROM INDUSTRY, IMPOSE
FINE, ORDER RESTITUTION, AND
COLLECT INVESTIGATION FEE

INTRODUCTION

Pursuant to RCW 31.45.110 and RCW 31.45.200, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.45 RCW, the Check Cashers and Sellers Act (Act). After having conducted an investigation pursuant to RCW 31.45.100, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents

A. Peak 3 Holdings, LLC (Respondent Peak 3) is a limited liability company formed in the state of Nevada. Respondent Peak 3 has never been licensed by the Department of Financial Institutions of the State of Washington (Department) as a check casher or check seller with small loan endorsement.

B. Gary S. Rixson (Respondent Rixson) is Managing Member of Respondent Peak 3.

1.2 Unlicensed Activity. Between at least September 17, 2011, and the date of this Statement of Charges, Respondent Peak 3 engaged in business requiring licensure by the Department as a check

1 cashier or check seller with small loan endorsement by making a small loan to at least two consumers
2 in the state of Washington.

3 **1.3 Failure to Comply with the Director's Investigation Authority.** On or about October 3,
4 2011, the Department received a complaint against Respondent Peak 3. On or about November 3,
5 2011, the Department issued a subpoena to Respondent Peak 3 requiring it to produce records related
6 to the complainant's account and Respondent Peak 3's business in the state of Washington. As of the
7 date of this Statement of Charges, Respondent Peak 3 has not complied with the Department's
8 subpoena.

9 **1.4 On-going Investigation.** The Department's investigation into the alleged violations of the
10 Act by Respondents Peak 3 and Rixson (Respondents) continues to date.

11 **II. GROUNDS FOR ENTRY OF ORDER**

12 **2.1 Definition of Check Casher.** Pursuant to RCW 31.45.010(5), a "Check Casher" is defined as
13 an individual, partnership, unincorporated association, or corporation that, for compensation,
14 engages, in whole or in part, in the business of cashing checks, drafts, money orders, or other
15 commercial paper serving the same purpose.

16 **2.2 Definition of Licensee.** Pursuant to RCW 31.45.010(13), a "Licensee" is defined as a check
17 cashier or seller licensed by the director to engage in business in accordance with the Act. "Licensee"
18 also means a check cashier or seller, whether located within or outside of the state of Washington,
19 who fails to obtain the license or small loan endorsement required by the Act.

20 **2.3 Definition of Small Loan.** Pursuant to RCW 31.45.010(21), a "Small Loan" is defined as a
21 loan up to the maximum amount and for a period of time up to the maximum term specified in RCW
22 31.45.073.

1 **2.4 Requirement to Obtain a Check Casher or Check Seller License.** Based on the Factual
2 Allegations set forth in Section I above, Respondents are in apparent violation of RCW 31.45.030(1)
3 for engaging in the business of a check casher or check seller without first obtaining a license from
4 the Director.

5 **2.5 Requirement to Obtain a Small Loan Endorsement.** Based on the Factual Allegations set
6 forth in Section I above, Respondents are in apparent violation of RCW 31.45.070 and RCW
7 31.45.073 for engaging in the business of making small loans without first obtaining a small loan
8 endorsement from the Director.

9 **2.6 Requirement to Comply with Director's Authority.** Based on the Factual Allegations set
10 forth in Section I above, Respondents are in apparent violation of RCW 31.45.100 for failing to
11 comply with the Director's investigative authority.

12 **2.7 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondents
13 are in apparent violation of RCW 31.45.110(1)(b), (k) and (m) and RCW 31.45.105(1)(a), (b), (c),
14 and (d) for violating or having violated the Act, for failing, upon demand by the director or the
15 director's designee, to disclose any information within his or her knowledge to, or to produce any
16 document, book, or record in his or her possession for inspection of, the director or director's
17 designee, for committing an act or engaging in conduct that demonstrates incompetence or
18 untrustworthiness, or is a source of injury and loss to the public, for directly or indirectly employing
19 any scheme, device, or artifice to defraud or mislead any borrower, or to defraud or mislead any
20 person, for directly or indirectly engaging in any unfair or deceptive practice toward any person, for
21 directly or indirectly obtaining property by fraud or misrepresentation, and for making any small loan
22 to any person physically located in Washington through use of the internet, facsimile, telephone,
23 kiosk, or other means without first obtaining a small loan endorsement.

III. AUTHORITY TO IMPOSE SANCTIONS

3.1 Authority to Issue Cease and Desist Order. Pursuant to RCW 31.45.110(2)(b), the Director may order a licensee to cease and desist from practices in violation of the Act or practices that constitute unsafe and unsound financial practices.

3.2 Authority to Prohibit from Industry. Pursuant to RCW 31.45.110(2)(e), the Director may remove from office or ban from participation in the conduct of the affairs of any licensee any director, officer, sole proprietor, partner, controlling person, or employee of a licensee that is violating or has violated the Act including rules and orders, or commits any act or engages in conduct that demonstrates incompetence or untrustworthiness, or is a source of injury or loss to the public.

3.3 Authority to Impose Fine. Pursuant to RCW 31.45.110(2)(c), the Director may impose a fine, not to exceed one hundred dollars per day for each day's violation of the Act, on any licensee or applicant, or any director, officer, sole proprietor, partner, controlling person, or employee of a licensee or applicant, that is violating or has violated the Act including rules and orders, or commits any act or engages in conduct that demonstrates incompetence or untrustworthiness, or is a source of injury or loss to the public.

3.4 Authority to Order Restitution and Affirmative Action. Pursuant to RCW 31.45.110(2)(d), the Director may order restitution or refunds to borrowers for violations of the Act. The Department may take other affirmative action as necessary to comply with the Act.

3.5 Authority to Collect Investigation Fee. Pursuant to RCW 31.45.100 and WAC 208-630-380, the Director shall collect from the licensee the actual cost of an examination or investigation of the business, books, accounts, records, files, or other information of a licensee or person who the Director has reason to believe is engaging in the business governed by the Act. The investigation

charge will be calculated at the rate of sixty-nine dollars and one cent (\$69.01) per hour that each staff person devoted to the investigation, plus actual expenses.

IV. NOTICE OF INTENTION TO ENTER ORDER

Respondents' violations of the provisions of chapter 31.45 RCW and chapter 208-630 WAC, as set forth in the above Factual Allegations and Grounds for Entry of Order, constitute a basis for the entry of an Order under RCW 31.45.110 and RCW 31.45.200. Therefore, it is the Director's intention to ORDER that:

- 4.1 Respondent Peak 3 Holdings, LLC and Respondent Gary S. Rixson cease and desist from engaging in the business of a check casher or check seller with small loan endorsement.
- 4.2 Respondent Peak 3 Holdings, LLC and Respondent Gary S. Rixson be prohibited from participation in the conduct of the affairs of any check casher or check seller subject to licensure by the Director, in any manner, for a period of five years.
- 4.3 Respondent Peak 3 Holdings, LLC and Respondent Gary S. Rixson jointly and severally pay a fine. As of the date of this Statement of Charges the fine totals fifteen thousand dollars (\$15,000).
- 4.4 Respondent Peak 3 Holdings, LLC and Respondent Gary S. Rixson jointly and severally pay restitution to each affected Washington borrower in the amount of all interest and fees collected on small loans made by Respondent Peak 3 Holdings, LLC without a license.
- 4.5 Respondent Peak 3 Holdings, LLC and Respondent Gary S. Rixson provide a list of all Washington borrowers to whom restitution is owed, including contact information for each borrower, transaction information for the loan provided, the amount of restitution paid, and proof of payment.
- 4.6 Respondent Peak 3 Holdings, LLC and Respondent Gary S. Rixson jointly and severally pay an investigation fee. As of the date of this Statement of Charges, the investigation fee totals one thousand and sixty dollars (\$1,060).

V. AUTHORITY AND PROCEDURE

This Statement of Charges is entered pursuant to the provisions of RCW 31.45.110 and RCW 31.45.200, and is subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act).

1 Respondents may make a written request for a hearing as set forth in the NOTICE OF
2 OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this
3 Statement of Charges.

4
5 Dated this 19th day of May 2014.



6 [Redacted Signature]
7
8 DEBORAH BORTNER
9 Director
10 Division of Consumer Services
11 Department of Financial Institutions

12 Presented by:

13 [Redacted Signature]
14 KENNETH J. SUGIMOTO
15 Financial Legal Examiner

16 Approved by:

17 [Redacted Signature]
18 CHARLES E. CLARK
19 Enforcement Chief