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**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.

1 **III. AUTHORITY TO IMPOSE SANCTIONS**

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

5 **3.2 Authority to Prohibit from Industry.** Pursuant to RCW 31.45.110(2)(e), the Director may
6 remove from office or ban from participation in the conduct of the affairs of any licensee any
7 director, officer, sole proprietor, partner, controlling person, or employee of a licensee that is
8 violating or has violated the Act including rules and orders, or commits any act or engages in conduct
9 that demonstrates incompetence or untrustworthiness, or is a source of injury or loss to the public.

10 **3.3 Authority to Impose Fine.** Pursuant to RCW 31.45.110(2)(c), the Director may impose a
11 fine, not to exceed one hundred dollars per day for each day's violation of the Act, on any licensee or
12 applicant, or any director, officer, sole proprietor, partner, controlling person, or employee of a
13 licensee or applicant, that is violating or has violated the Act including rules and orders, or commits
14 any act or engages in conduct that demonstrates incompetence or untrustworthiness, or is a source of
15 injury or loss to the public.

16 **3.4 Authority to Order Restitution and Affirmative Action.** Pursuant to RCW
17 31.45.110(2)(d), the Director may order restitution or refunds to borrowers for violations of the Act.
18 The Department may take other affirmative action as necessary to comply with the Act.

19 **3.5 Authority to Collect Investigation Fee.** Pursuant to RCW 31.45.100 and WAC 208-630-
20 380, the Director shall collect from the licensee the actual cost of an examination or investigation of
21 the business, books, accounts, records, files, or other information of a licensee or person who the
22 Director has reason to believe is engaging in the business governed by the Act. The investigation
23

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

3 IV. NOTICE OF INTENTION TO ENTER ORDER

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

- 8 4.1 Respondent Peak 3 Holdings, LLC and Respondent Gary S. Rixson cease and desist
9 from engaging in the business of a check casher or check seller with small loan
endorsement.
- 10 4.2 Respondent Peak 3 Holdings, LLC and Respondent Gary S. Rixson be prohibited
11 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.
- 12 4.3 Respondent Peak 3 Holdings, LLC and Respondent Gary S. Rixson jointly and
13 severally pay a fine. As of the date of this Statement of Charges the fine totals fifteen
thousand dollars (\$15,000).
- 14 4.4 Respondent Peak 3 Holdings, LLC and Respondent Gary S. Rixson jointly and
15 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
16 without a license.
- 17 4.5 Respondent Peak 3 Holdings, LLC and Respondent Gary S. Rixson provide a list of
18 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.
- 19 4.6 Respondent Peak 3 Holdings, LLC and Respondent Gary S. Rixson jointly and
20 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).

21 V. AUTHORITY AND PROCEDURE

22 This Statement of Charges is entered pursuant to the provisions of RCW 31.45.110 and RCW
23 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