

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

WESTERN SKY FINANCIAL, LLC;

PAYDAY FINANCIAL, LLC,
d/b/a BIG SKY CASH,
d/b/a LAKOTA CASH;

GREAT SKY FINANCE, LLC,
d/b/a GREAT SKY CASH;

GREEN BILLOW, LLC,
d/b/a FOUR SEASONS CASH;

RED STONE FINANCIAL, LLC,
d/b/a RED STONE CASH; and

MARTIN A. WEBB,

Respondents.

NO. C-11-0810-12-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO CEASE AND DESIST,
MAKE RESTITUTION, AND IMPOSE FINE.

INTRODUCTION

Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to RCW 31.04.145, 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:

1 **I. FACTUAL ALLEGATIONS**

2 **1.1 Respondents.**

3 A. **Western Sky Financial, LLC (Respondent Western Sky)** is a South Dakota Limited
4 Liability Company with its principal executive office at 612 E Street, Timber Lake, South Dakota.
5 Respondent Western Sky has never obtained a license in accordance with the Act from the Department
6 of Financial Institutions of the State of Washington (Department) to make loans.

7 B. **Payday Financial, LLC, d/b/a Big Sky Cash, d/b/a Lakota Cash (Respondent**
8 **Payday Financial)** is a South Dakota Limited Liability Company with its principal executive office at
9 612 E Street, Timber Lake, South Dakota. Respondent Payday Financial has never obtained a license
10 in accordance with the Act from the Department to make loans.

11 C. **Great Sky Finance, LLC, d/b/a Great Sky Cash (Respondent Great Sky)** is a South
12 Dakota Limited Liability Company with its principal executive office at 612 E Street, Timber Lake,
13 South Dakota. Respondent Great Sky has never obtained a license in accordance with the Act from
14 the Department to make loans.

15 D. **Green Billow, LLC, d/b/a Four Seasons Cash (Respondent Green Billow)** is a
16 South Dakota Limited Liability Company with its principal executive office at 612 E Street, Timber
17 Lake, South Dakota. Respondent Green Billow has never obtained a license in accordance with the
18 Act from the Department to make loans.

19 E. **Red Stone Financial, LLC, d/b/a Red Stone Cash (Respondent Red Stone)** is a
20 South Dakota Limited Liability Company with its principal executive office at 612 E Street, Timber
21 Lake, South Dakota. Respondent Red Stone has never obtained a license in accordance with the Act
22 from the Department to make loans.
23
24
25

1 F. **Martin A. Webb (Respondent Webb)** has never obtained a license in accordance with
2 the Act from the Department to make loans. According to Respondent Webb, each of Respondents
3 Western Sky, Payday Financial, Great Sky, Green Billow, and Red Stone (Respondent Entities) is
4 owned wholly by Respondent Webb, an individual tribal member of the Cheyenne River Sioux Tribe,
5 and not owned or operated by the Cheyenne River Sioux Tribe or any of its political subdivisions.

6 **1.2 Unlicensed Activity.** Beginning in at least 2010, Respondent Entities have each advertised
7 loans, offered loans, and made loans to Washington state residents. These loans were made without a
8 Consumer Loan license and at rates of interest that would be illegal even if each Respondent Entity
9 held a Consumer Loan license.¹ Respondent Entities' web sites and loan agreements state that, by
10 utilizing Respondent Entities' web sites, borrowers are conducting business on the Cheyenne River
11 Indian Reservation and subjecting themselves exclusively to the laws and jurisdiction of the Cheyenne
12 River Sioux Tribe. In fact, Respondent Entities make loans to Washington state residents in
13 Washington. Respondent Entities deposit and withdraw funds directly into and out of Washington
14 state residents' bank accounts. Washington state residents who borrow money from any of the
15 Respondent Entities are not required to visit the Cheyenne River Indian Reservation at any time during
16 the loan transaction, including from solicitation to application to funding to repayment of the loan.
17 During the loan transaction, communication between Respondent Entities and Washington state
18 residents occurs via mail, the telephone, or the internet.

19 **A. Respondent Western Sky** has advertised and offered loans to Washington state
20 residents through television advertisements and via the internet through at least one web site.²
21 According to Respondent Western Sky's web site, it offers loans ranging from \$850 to \$10,000 with
22

23
24
25 ¹ The maximum rate of interest allowed under RCW 19.52, the state of Washington's usury statute, is 12%. The maximum rate of interest allowed for licensees under the Act is 25%.

² www.westernsky.com

1 interest rates ranging from 89.68% to 342.86%. These interest rates significantly increase the cost to
2 consumers when compared to loans made at the maximum interest rates allowed under RCW 19.52
3 (12%) or the Act (25%), as demonstrated by the following:

- 4 • According to the “rates” page of the web site, a \$2,600 loan nets the borrower \$2,525
5 (after a \$75 loan fee) and the borrower pays nearly \$14,000 over the term of the loan
6 (47 monthly payments of \$294.46).
- 7 • A borrower obtaining a \$2,600 loan for the same term (47 months) would only have to
8 pay about \$3,300 or \$4,100 if the interest rate was 12% or 25%, respectively.
- 9 • A borrower obtaining a \$2,600 loan with the same payment amount (\$294.46) would
10 only have to pay about \$2,700 or \$2,900 if the interest rate was 12% or 25%,
11 respectively, over 10 months in either scenario.

12 The Department has received complaints from at least 17 Washington state residents alleging each
13 received a loan from Respondent Western Sky. In addition, the Department obtained records from
14 CashCall, Inc., a Consumer Loan licensee that purchases and/or services loans made by Respondent
15 Western Sky, indicating that from at least March 2010 through at least January 2012, Respondent
16 Western Sky made at least 2,226 loans to Washington state residents, ranging from \$700 to \$5,075 and
17 totaling over \$4,400,000.

18 **B. Respondent Payday Financial** has advertised and offered loans to Washington state
19 residents via the internet through at least two web sites.³ According to Respondent Payday Financial’s
20 web sites, it offers loans ranging from \$50 to \$1,500. The Department has received complaints from
21 at least two Washington state residents alleging each received a loan from Respondent Payday
22 Financial.

23 **C. Respondent Great Sky** has advertised and offered loans to Washington state residents
24 via the internet through at least one web site.⁴ According to Respondent Great Sky’s web site, it has

25 ³ www.bigskycash.com and www.lakotacash.com

⁴ www.greatskycash.com As of the date of this Statement of Charges, this web site is not active.

1 offered loans up to \$500. The Department has received a complaint from at least one Washington
2 state resident alleging a loan was received from Respondent Great Sky.

3 **D. Respondent Green Billow** has advertised and offered loans to Washington state
4 residents via the internet through at least one web site.⁵ According to Respondent Green Billow’s web
5 site, it has offered loans ranging from \$100 to \$1,500 at an interest rate of 518.29%. The Department
6 has received a complaint from at least one Washington state resident alleging a loan was received from
7 Respondent Green Billow.

8 **E. Respondent Red Stone** has advertised and offered loans to Washington state residents
9 via the internet through at least one web site.⁶ According to Respondent Red Stone’s web site, it
10 offers loans ranging from \$200 to \$500, with interest rates ranging from 425.83% to 1,825%. The
11 Department has received a complaint from at least one Washington state resident alleging a loan was
12 received from Respondent Red Stone.

13 **1.3 Requests for Information.** While investigating complaints filed against Respondent Entities
14 by Washington state residents, the Department requested information from Respondents regarding
15 their apparent unlicensed lending activities with Washington state residents. Respondents refused to
16 provide the requested information, claiming the Department lacked jurisdiction because Respondent
17 Entities were owned by an enrolled tribal member (Respondent Webb) operating his businesses within
18 the exterior boundaries of the Cheyenne River Indian Reservation. Respondents did not claim to
19 qualify for any of the exemptions from licensure delineated in the Act.
20
21

22 //

23 //

24 ⁵ www.fourseasonscash.com As of the date of this Statement of Charges, this web site states “Four
25 Seasons Cash is not processing new loan applications at this time. If you currently have an open Four
Seasons Cash loan, you can log in to your account to manage your loan until its completion.”

⁶ www.redstonecash.com

1 **1.4 Attempt to Waive Provisions of the Act.** Respondent Entities’ loan agreements include the
2 following provision, or some derivation thereof:

3 “By executing this Loan Agreement, you, the borrower, hereby acknowledge and consent
4 to be bound to the terms of this Loan Agreement, consent to the sole subject matter and
5 personal jurisdiction of the Cheyenne River Sioux Tribal Court, and further agree that no
6 other state or federal law or regulation shall apply to this Loan Agreement, its
7 enforcement or interpretation.”

8 **1.5 On-Going Investigation.** The Department’s investigation into the alleged violations of the
9 Act by Respondents continues to date.

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

11 **2.1 Requirement to Obtain and Maintain License in Accordance with the Act.** Based on the
12 Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW
13 31.04.035 and WAC 208-620-230 for engaging in the business of making secured or unsecured loans
14 of money, credit, or things in action, without first obtaining and maintaining a license in accordance
15 with the Act, or meeting an exemption from the Act under RCW 31.04.025. Pursuant to RCW
16 31.04.025(1), each loan made to a resident of the state of Washington by a licensee, or persons subject
17 to the Act, is subject to the authority and restrictions of the Act, unless such loan is made under the
18 authority of chapter 63.14 RCW. Pursuant to WAC 208-620-245, the Act does not provide an
19 exemption for a de minimis number of loans. Pursuant to WAC 208-620-250, an out-of-state
20 company is not required to maintain a physical presence in Washington to hold a license but any
21 location doing business under the Act, wherever located, must be licensed. Pursuant to WAC 208-
22 620-251(1), any person that conducts business under the Act with Washington residents must obtain a
23 license for all locations from which such business is conducted, including out-of-state locations.
24 Pursuant to WAC 208-620-252, any person that conducts business under the Act with Washington
25 residents must obtain a license for all locations including those that offer loans by mail or internet.

1 **2.2 Prohibited Practices.** Based on the Factual Allegations set forth in Section I above,
2 Respondents are in apparent violation of RCW 31.04.027(2), (11), & (13) for engaging in an unfair or
3 deceptive practice toward any person, and for obtaining at the time of closing a release of future
4 damages for usury or other damages or penalties provided by law or a waiver of the provisions of the
5 Act, and for making loans from an unlicensed location.

6 **III. AUTHORITY TO IMPOSE SANCTIONS**

7 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 31.04.093(5)(a), the
8 Director may issue an order directing a licensee, its employee or loan originator, or other person
9 subject to the Act to cease and desist from conducting business in a manner that is injurious to the
10 public or violates any provision of the Act.

11 **3.2 Authority to Issue Order to Make Restitution.** Pursuant to RCW 31.04.093(5)(c), the
12 Director may issue an order directing a licensee, its employee or loan originator, or other person subject
13 to the Act to make restitution to a borrower or other person who is damaged as a result of a violation of
14 the Act.

15 **3.3 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of
16 up to one hundred dollars per day upon a licensee, its employee or loan originator, or other person
17 subject to the Act for any violation of the Act.
18

19 //
20 //
21 //
22 //
23 //
24 //
25 //

1 **IV. NOTICE OF INTENTION TO ENTER ORDER**

2 Respondents’ violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as
3 set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose
4 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, and RCW
5 31.04.205. Therefore, it is the Director’s intention to ORDER that:

6 **4.1** Respondents Western Sky Financial, LLC and Martin A. Webb:

- 7 • cease and desist making loans to Washington state residents until such time as Respondent
- 8 Western Sky Financial, LLC obtains a license in accordance with the Act from the
- 9 Department or qualifies for an exemption from licensing as delineated in the Act;
- 10 • cease and desist collecting any and all interest and fees on any and all loans made to
- 11 Washington state residents at any time that Respondent Western Sky Financial, LLC did
- 12 not hold a license in accordance with the Act from the Department and did not qualify for
- 13 an exemption from licensing as delineated in the Act;
- 14 • jointly and severally make restitution of any and all interest and fees collected from
- 15 Washington state residents on loans made at any time that Respondent Western Sky
- 16 Financial, LLC did not hold a license in accordance with the Act from the Department and
- did not qualify for an exemption from licensing as delineated in the Act; and
- jointly and severally pay a fine. As of the date of this Statement of Charges, the fine totals
- \$667,800.

17 //
18 //
19 //
20 //
21 //
22 //
23 //
24 //
25 //

1 **4.2** Respondents Payday Financial, LLC, d/b/a Big Sky Cash, d/b/a Lakota Cash and Martin A.
2 Webb:

- 3 • cease and desist making loans to Washington state residents until such time as
4 Respondent Payday Financial, LLC, d/b/a Big Sky Cash, d/b/a Lakota Cash obtains a
5 license in accordance with the Act from the Department or qualifies for an exemption
6 from licensing as delineated in the Act;
- 7 • cease and desist collecting any and all interest and fees on any and all loans made to
8 Washington state residents at any time that Respondent Payday Financial, LLC, d/b/a
9 Big Sky Cash, d/b/a Lakota Cash did not hold a license in accordance with the Act
10 from the Department and did not qualify for an exemption from licensing as
11 delineated in the Act;
- 12 • jointly and severally make restitution of any and all interest and fees collected from
13 Washington state residents on loans made at any time that Respondent Payday
14 Financial, LLC, d/b/a Big Sky Cash, d/b/a Lakota Cash did not hold a license in
15 accordance with the Act from the Department and did not qualify for an exemption
16 from licensing as delineated in the Act; and
- 17 • jointly and severally pay a fine. As of the date of this Statement of Charges, the fine
18 totals \$600.

19 **4.3** Respondents Great Sky Finance, LLC, d/b/a Great Sky Cash and Martin A. Webb:

- 20 • cease and desist making loans to Washington state residents until such time as
21 Respondent Great Sky Finance, LLC, d/b/a Great Sky Cash obtains a license in
22 accordance with the Act from the Department or qualifies for an exemption from
23 licensing as delineated in the Act;
- 24 • cease and desist collecting any and all interest and fees on any and all loans made to
25 Washington state residents at any time that Respondent Great Sky Finance, LLC,
26 d/b/a Great Sky Cash did not hold a license in accordance with the Act from the
27 Department and did not qualify for an exemption from licensing as delineated in the
28 Act;
- 29 • jointly and severally make restitution of any and all interest and fees collected from
30 Washington state residents on loans made at any time that Respondent Great Sky
31 Finance, LLC, d/b/a Great Sky Cash did not hold a license in accordance with the Act
32 from the Department and did not qualify for an exemption from licensing as
33 delineated in the Act; and
- 34 • jointly and severally pay a fine. As of the date of this Statement of Charges, the fine
35 totals \$300.

1 **4.4** Respondents Green Billow, LLC, d/b/a Four Seasons Cash and Martin A. Webb:

- 2 • cease and desist making loans to Washington state residents until such time as
3 Respondent Green Billow, LLC, d/b/a Four Seasons Cash obtains a license in
4 accordance with the Act from the Department or qualifies for an exemption from
5 licensing as delineated in the Act;
- 6 • cease and desist collecting any and all interest and fees on any and all loans made to
7 Washington state residents at any time that Respondent Green Billow, LLC, d/b/a
8 Four Seasons Cash did not hold a license in accordance with the Act from the
9 Department and did not qualify for an exemption from licensing as delineated in the
10 Act;
- 11 • jointly and severally make restitution of any and all interest and fees collected from
12 Washington state residents on loans made at any time that Respondent Green Billow,
13 LLC, d/b/a Four Seasons Cash did not hold a license in accordance with the Act from
14 the Department and did not qualify for an exemption from licensing as delineated in
15 the Act; and
- 16 • jointly and severally pay a fine. As of the date of this Statement of Charges, the fine
17 totals \$300.

18 **4.5** Respondents Red Stone Financial, LLC, d/b/a Red Stone Cash and Martin A. Webb:

- 19 • cease and desist making loans to Washington state residents until such time as
20 Respondent Red Stone Financial, LLC, d/b/a Red Stone Cash obtains a license in
21 accordance with the Act from the Department or qualifies for an exemption from
22 licensing as delineated in the Act;
- 23 • cease and desist collecting any and all interest and fees on any and all loans made to
24 Washington state residents at any time that Respondent Red Stone Financial, LLC,
25 d/b/a Red Stone Cash did not hold a license in accordance with the Act from the
26 Department and did not qualify for an exemption from licensing as delineated in the
27 Act;
- 28 • jointly and severally make restitution of any and all interest and fees collected from
29 Washington state residents on loans made at any time that Respondent Red Stone
30 Financial, LLC, d/b/a Red Stone Cash did not hold a license in accordance with the
31 Act from the Department and did not qualify for an exemption from licensing as
32 delineated in the Act; and
- 33 • jointly and severally pay a fine. As of the date of this Statement of Charges, the fine
34 totals \$300.

1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges is entered pursuant to the provisions of RCW 31.04.093, RCW
3 31.04.165, RCW 31.04.202 and RCW 31.04.205, and is subject to the provisions of chapter 34.05
4 RCW (The Administrative Procedure Act). Respondents may make a written request for a hearing as
5 set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING
6 accompanying this Statement of Charges.
7

8 Dated this 18th day of October, 2012.
9

10 /s/
DEBORAH BORTNER
11 Director
12 Division of Consumer Services
Department of Financial Institutions

13 Presented by:

14 /s/
MARK T. OLSON
15 Financial Legal Examiner

16 Approved by:

17
18 /s/
19 CHARLES E. CLARK
20 Enforcement Chief