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**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES**

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**BEFORE THE DIRECTOR OF THE DEPARTMENT
OF CONSUMER AND BUSINESS SERVICES**

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In the Matter of:

I-12-0039

Western Sky Financial, LLC,

**FINAL ORDER TO CEASE AND
DESIST, FINAL ORDER SUSPENDING
COLLECTION ACTIVITIES, AND
FINAL ORDER ASSESSING CIVIL
PENALTY ENTERED BY DEFAULT**

Respondent.

On April 20, 2012, the Director of the Department of Consumer and Business Services for the State of Oregon (hereinafter “the Director”), acting pursuant to the authority of the Oregon Consumer Finance Act, ORS Chapter 725, issued Administrative Order No. I-12-0039, ORDER TO CEASE AND DESIST, ORDER SUSPENDING COLLECTION ACTIVITIES, PROPOSED ORDER ASSESSING CIVIL PENALTY, AND NOTICE OF OPPORTUNITY FOR AN ADMINISTRATIVE HEARING (the “Proposed Order”) against Respondent Western Sky Financial, LLC (“Western Sky”).

On April 20, 2012, the Proposed Order was sent to Western Sky, by certified United States Mail, postage prepaid to the following two addresses: (1) P.O. Box 370, Timber Lake, SD 57656 (Article No. 7008 1830 0003 3147 4250); and (2) 612 E Street, Timber Lake, SD 57656 (Article No. 7008 1830 0003 3147 4267). The Proposed Order was also sent to Western Sky via regular mail to the addresses noted above, by fax at 1-888-324-4430 and by email at info@westernsky.com.

On May 21, 2012, the Oregon Division of Finance and Corporate Securities (“DFCS”) received a “Special Appearance to Seek Dismissal for Lack of Jurisdiction” (“Special Appearance Request”) from Western Sky’s counsel, Cheryl Laurenz-Bogue of the South Dakota law firm of Bogue & Bogue, LLP. The Special Appearance Request





1 was dated May 18, 2012.

2 On May 24, 2012, DFCS responded to Ms. Laurenz-Bogue informing her that
3 neither the Oregon Administrative Procedures Act nor the Oregon Administrative Rules
4 governing administrative contested cases provide for a Special Appearance Request.
5 Additionally, DFCS requested that Ms. Laurenz-Bogue confirm no later than close of
6 business on June 1, 2012, whether Western Sky intended its Special Appearance Request
7 to serve as a request for a hearing on the issues in the Proposed Order issued against
8 Western Sky on April 20, 2012. Also, DFCS explained to Ms. Laurenz-Bogue that OAR
9 137-003-0550 requires that Western Sky be represented by an Oregon licensed attorney
10 or an attorney granted permission to appear in the matter pursuant to Oregon Uniform
11 Trial Court Rule 3.170, and that if Western Sky intended its Special Appearance Request
12 to serve as its hearing request, such request must be ratified in writing by a person
13 licensed to practice law in Oregon within 28 days of DFCS receiving the hearing request.
14 Otherwise, a default order will be issued.

15 On June 1, 2012, Ms. Laurenz-Bogue responded to DFCS' May 24, 2012
16 correspondence stating that Western Sky "is requesting a hearing for the sole purpose of
17 the Special Appearance to Seek Dismissal for Lack of Jurisdiction." Additionally, Ms.
18 Laurenz-Bogue states that Western Sky will retain local counsel to represent its interest
19 in this matter within the prescribed time line outlined in DFCS' letter.

20 On July 31, 2012, DFCS sent Ms. Laurenz-Bogue a letter informing her that
21 DFCS records do not reflect a written ratification of Western Sky's May 18, 2012 hearing
22 request by a person licensed to practice law in Oregon as required by OAR 137-003-0550
23 and that DFCS intends to issue a final order by default if Western Sky is unable to
24 provide proof of such ratification.

25 On August 24, 2012, DFCS received a letter from Joel A. Mullin an Oregon
26 licensed attorney with Stoel Rives, LLP informing DFCS that he has been retained by



1 Western Sky in this matter. In his letter, Mr. Mullin does not provide any proof that
2 Western Sky's May 18, 2012 hearing request was ratified by an attorney licensed to
3 practice law in Oregon or by an out-of-state attorney who has been granted permission to
4 appear in the matter pursuant to Oregon Uniform Trial Court Rule 3.170, in writing,
5 within 28 days of the date the request was received by DFCS, nor does Mr. Mullin
6 attempt to ratify such previous hearing request or otherwise make a new request for a
7 hearing. Rather Mr. Mullin merely asserts that the Department failed to properly serve its
8 Proposed Order on Western Sky because the Cheyenne River Sioux Tribal Rules of Civil
9 Procedure requires personal service and that the Department lacks the jurisdiction
10 necessary to issue the Proposed Order against Western Sky based on tribal sovereign
11 immunity.

12 Based on DFCS records, Western Sky's May 18, 2012 hearing request was not
13 ratified by an attorney licensed to practice law in Oregon or by an out-of-state attorney
14 who has been granted permission to appear in the matter pursuant to Oregon Uniform
15 Trial Court Rule 3.170, in writing, within 28 days of the date the request was received by
16 DFCS, and the time to make a timely hearing request has now expired.

17 NOW THEREFORE, after consideration of the file in this matter maintained by
18 the Oregon Department of Consumer and Business Services, including any materials that
19 Western Sky may have submitted, the Director hereby issues the following Findings of
20 Fact, Conclusions of Law, and Orders.

21 **I.**

22 **FINDINGS OF FACT**

23 The Director FINDS that:

24 1. Western Sky is organized as a limited liability company under the laws of
25 South Dakota. According to documentation filed with the South Dakota Secretary of
26 State, Western Sky's principal executive office is located at 612 E Street, Timber Lake,



1 South Dakota 57656-0370. Western Sky lists its mailing address as PO Box 370, Timber
2 Lake, South Dakota, 57656-0370. Martin A. Webb (“Webb”) is listed as the registered
3 agent for Western Sky. The addresses listed for Webb are the same as those listed for
4 Western Sky.

5 2. At all times relevant to this matter, Western Sky offered and provided loans of
6 less than \$50,000 to Oregon residents that were unsecured and that had periodic
7 payments and terms longer than 60 days (hereinafter referred to as a “consumer finance
8 loan”).

9 3. Between April 2010 and July 2011, Western Sky made consumer finance
10 loans to at least seven Oregon residents.

11 4. Each of the consumer finance loans made to the seven Oregon residents had
12 an annual percentage rate ranging from 139 percent to 194 percent.

13 5. According to Western Sky’s website, www.westernsky.com, Western Sky
14 offers the following loan options to Oregon residents:

15	Loan Product	Borrower Proceeds	Loan Fee	APR	Number of Payments	Payment Amount
16	\$10,000 Loan	\$9,925	\$75	89.68%	84	\$743.49
17	\$5,075 Loan	\$5,000	\$75	116.73%	84	\$486.58
18	\$2,600 Loan	\$2,525	\$75	139.22%	47	\$294.46
19	\$1,500 Loan	\$1,000	\$500	234.25%	24	\$198.19
20	\$850 Loan	\$500	\$350	342.86%	12	\$150.72

21
22 6. At all times relevant to this matter, Western Sky was not licensed in Oregon
23 with the Director to provide consumer finance loans.

24 **II.**

25 **CONCLUSIONS OF LAW**

26 The Director CONCLUDES that:



1 7. The loans made by Western Sky to the seven Oregon residents are consumer
2 finance loans as defined in ORS 725.010(2) because such loans were unsecured and had
3 periodic payments and terms longer than 60 days.

4 8. Western Sky violated ORS 725.045(1) by conducting a business in which it
5 made consumer finance loans as defined by ORS 725.010(2) to Oregon residents without
6 first obtaining a license under ORS Chapter 725. Each instance Western Sky made a
7 consumer finance loan to an Oregon resident without first obtaining a license is a separate
8 and distinct violation of ORS 725.045(1).

9 9. Western Sky violated ORS 82.010(3)(b) by making loans to Oregon residents
10 at an annual rate of interest exceeding the greater of 12 percent, or five percent in excess
11 of the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in
12 the 9th District, the District that serves South Dakota and where Western Sky is located,
13 on the date the loan or the initial advance of funds under the loan was made. From April
14 1, 2010, to August 1, 2011, the 90-day commercial paper rate reported by the Federal
15 Reserve Bank ranged from a high of .57 percent on June 1, 2010, to a low of .12 percent
16 on June 27, 2011; June 29, 2011; and July 1, 2011.

17 **III.**

18 **ORDERS**

19 NOW, THEREFORE, THE DIRECTOR ISSUES THE FOLLOWING ORDERS:

20 Final Order to Cease and Desist

21 10. Pursuant to the authority of ORS 725.400, the Director hereby ORDERS
22 Western Sky, all entities owned or controlled by Western Sky, their successors and
23 assignees, and all entities or persons that own or control Western Sky, their successors
24 and assignees, to CEASE AND DESIST from violating any provision of the Oregon
25 Consumer Finance Act, ORS Chapter 725, OAR 441-730-0000 through 441-730-0320, or
26 any rule, order, or policy issued by the Director under that chapter or ORS 82.010.



1 Final Order Suspending Collection Activities

2 11. Pursuant to the authority of ORS 82.010(4), the Director ORDERS Western
3 Sky, all entities owned or controlled by Western Sky, their successors and assignees, and
4 all entities or persons that own or control Western Sky, their successors and assignees, to
5 suspend all collection activities for the interest on, or any fees or charges for loans made
6 to any Oregon resident with an annual rate of interest exceeding the greater of 12 percent,
7 or five percent in excess of the discount rate on 90-day commercial paper in effect at the
8 Federal Reserve Bank in the 9th District, the District that serves South Dakota and where
9 Western Sky is located, on the date the loan or the initial advance of funds under the loan
10 was made.

11 12. The requirement to suspend collection activities does not prohibit Western
12 Sky, all entities owned or controlled by Western Sky, their successors and assignees, and
13 all entities or persons that own or control Western Sky, their successors and assignees,
14 from collecting the principal amount borrowed by an Oregon resident.

15 Final Order Assessing Civil Penalty

16 13. Pursuant to the authority of ORS 725.910, the Director may assess a CIVIL
17 PENALTY in an amount determined by the Director of not more than \$2,500 per
18 violation against any person who violates any provision of the Oregon Consumer Finance
19 Act, ORS Chapter 725. Pursuant to this provision, the Director hereby assesses Western
20 Sky a CIVIL PENALTY in the amount of \$17,500 (seventeen thousand five hundred
21 dollars) for seven violations of providing consumer finance loans to Oregon residents
22 without first obtaining a license as required by ORS 725.010(2).

23 14. The entry of this Order in no way limits further remedies which may be
24 available to the Director under Oregon law.

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IT IS SO ORDERED.

Dated this 13th day of December, 2012 at Salem,

Oregon NUNC PRO TUNC April 20, 2012.

PATRICK M. ALLEN, Director
Department of Consumer and Business Services

/s/ David Tatman
David C. Tatman, Administrator
Division of Finance and Corporate Securities

NOTICE OF RIGHT TO APPEAL

Western Sky is entitled to seek judicial review of this order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within sixty (60) days from the service of this final order. Judicial review is pursuant to the provisions of ORS 183.482.

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Division of Finance and Corporate Securities
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