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

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

BEST RATE FUNDING CORP., ADAM  
BUTLER (50% Owner) and CHRIS RUSSELL  
(50% Owner),

Respondents.

NO. C-08-005-09-SC01

STATEMENT OF CHARGES and NOTICE OF  
INTENTION TO ENTER AN ORDER TO REVOKE  
LICENSE, IMPOSE FINE, COLLECT ANNUAL  
ASSESSMENT, COLLECT LATE PENALTY, AND  
COLLECT INVESTIGATION FEES

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**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)<sup>1</sup>. The referenced statutes (RCW) and rules (WAC) are attached, in pertinent part. 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 institutes this proceeding and finds as follows:

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**I. FACTUAL ALLEGATIONS**

**1.1 Respondents.**

**A. Best Rate Funding Corp.** (Respondent Best Rate) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a Consumer Loan Company on May 24, 2002, and has continued to be licensed to date.

**B. Adam Butler** (Respondent Butler) is 50% owner of Best Rate Funding Corp.

**C. Chris Russell** (Respondent Russell) is 50% owner of Best Rate Funding Corp.

**1.2 Licensed Location:** Respondent Best Rate is licensed to conduct the business of a Consumer Lender at 2 Macarthur Place Ste. 800 Santa Ana, California 92707. Its mailing address is 17770 Cartwright Rd Ste. 400, Irvine, California 92614.

<sup>1</sup> RCW 31.04 (2001)

1 **1.3 Examination Request.** On July 6, 2007, the Department contacted Respondent Best Rate for the purpose  
2 of conducting a routine examination pursuant to the Act. On July 6, 2007, the Department sent a letter to  
3 Respondent Best Rate requesting a list of all Washington loans originated, brokered, funded, purchased, serviced, or  
4 sold between July 1, 2005 and June 30, 2007, and requesting completion of an enclosed Consumer Loan Manager's  
5 Questionnaire. Both of the requested items were to be provided to the Department by August 5, 2007. At the  
6 request of Respondent Best Rate, the Department agreed to extend the deadline to August 31, 2007. Respondent  
7 Best Rate did not provide the requested items by the deadline. The Department scheduled an examination of  
8 Respondent Best Rate to begin on December 10, 2007 and continue through December 14, 2007. As of the date of  
9 this document, the requested items have not been provided to the Department and all attempts to contact  
10 Respondents Best Rate, Adam Butler and Chris Russell have been unsuccessful. As a result, the Department has  
not conducted the examination of Respondent Best Rate.

11 **1.4 Office Closure.** On August 28, 2007, the Department received a letter from Respondent Best Rate which  
12 indicated it had "closed its operations." Included with the letter was the original license issued by the Department.  
13 On September 6, 2007, the Department mailed Respondents the required forms to properly close the company and  
14 surrender its license. Respondents did not respond to the letter or provide the Department with the proper closure  
15 forms.

16 On December 28, 2007, the Department sent a second letter to Respondents asking it to clarify its intent  
17 regarding its license status. Specifically, the Department inquired if Respondent Best Rate planned on continuing to  
18 operate as a Consumer Lender or if they desired to suspend its operations and surrender its license. Respondent  
19 Best Rate was instructed the surrender forms could be located on the Department's website and a link was provided.  
Respondent Best Rate did not respond to the letter or provide the Department with the proper closure forms.

20 On January 22, 2008, the Department sent a directive to Respondent Best Rate requesting, among other  
21 things, it complete the proper office closure/surrender forms, complete the assessment worksheet, and remit any  
22 assessment due. Respondent Best Rate was to respond by February 5, 2008. As of the date of this document,  
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1 Respondent Best Rate has not provided the requested items to the Department. Other attempts (email and phone)  
2 by the Department to contact the Respondents have been unsuccessful.

3 **1.5 Annual Report:** When a licensee ceases business, a Consolidated Annual Report is due to the  
4 Department, within 30 days of closure or by March 1, concerning the business and operations of each licensed  
5 place of business conducted during the preceding calendar year. The Consolidated Annual Report must be made  
6 under oath and must be in the form prescribed by the Director. To date, Respondents have not provided the  
7 Consolidated Annual Report relating to the 2007 calendar year, due by March 1, 2008.

8 **1.6 Annual Assessment and Late Penalty.** A calculation worksheet and an annual assessment fee are due  
9 to the Department within 30 days of closure, relating to the previous calendar year. To date, Respondents have  
10 not provided the calculation worksheet, or paid the annual assessment fee for the 2007 calendar year. The  
11 Department has calculated the 2007 annual assessment due from Respondents as \$2,332.57<sup>1</sup>, which was due on  
12 March 1, 2008.

13 **1.7 On-Going Investigation:** The Department's investigation into the alleged violations of the Act by  
14 Respondents continues to date.

## 15 II. GROUNDS FOR ENTRY OF ORDER

16 **2.1 Requirement to File Annual Report:** Based on the Factual Allegations set forth in Section I above,  
17 Respondents are in apparent violation of RCW 31.04.155 and WAC 208-620-430 for failing to provide an  
18 annual report to the Director, under oath and in the form prescribed by the Director, on or before the first day of  
19 March, concerning the business and operations of each licensed place of business conducted during the  
20 preceding calendar year.

21 **2.2 Requirement to Calculate and Pay Annual Assessment:** Based on the Factual Allegations set forth  
22 in Section I above, Respondents are in apparent violation of RCW 31.04.085, and WAC 208-620-430 and 460  
23 for failing to provide to the Director a completed annual assessment calculation worksheet and failing to pay to  
24 the Director an annual assessment fee by March 1, 2008.

25 <sup>1</sup> See WAC 208-620-430(3)(b)

1 **2.3 Requirement to File Proper Closure Forms:** Based on the Factual Allegations set forth in Section I  
2 above, Respondents are in apparent violation of WAC 208-620-475 for failing to notify the Department it  
3 closed its business by using the Consumer Loan Office Closure Form along with the annual report and  
4 worksheet, and any fees due.

5 **2.4 Requirement to Respond to Directives.** Based on the Factual Allegations set forth in Section I above,  
6 Respondents are in apparent violation of WAC 208-620-570 for failing to comply with a directive and  
7 requirement of the Department.

8 **2.5 Accounting and Record Retention Requirements:** Based on the Factual Allegations set forth in  
9 Section I above, Respondents are in apparent violation of RCW 31.04.155 for failing to make accurate and  
10 current books and records readily available to the Department until at least twenty-five months have elapsed  
11 following the effective period to which the books and records relate.

### 11 III. AUTHORITY TO IMPOSE SANCTION

12 **3.1 Authority to Revoke License:** Pursuant to RCW 31.04.093(3)(a) and (b), the Director may revoke a  
13 license if a licensee fails to pay any fee due the state of Washington, fails to maintain in effect the required bond  
14 or permitted substitute, or fails to comply with any specific order or demand of the Director, or violates any  
15 provision of the Act or any rule adopted under the Act.

16 **3.2 Authority to Impose Fine:** Pursuant to RCW 31.04.093(4), the Director may impose fines of up to one  
17 hundred dollars per day upon the licensee for any violation of the Act or failure to comply with any order or  
18 subpoena issued by the Director under the Act.

19 **3.3 Authority to Collect Annual Assessments.** Pursuant to WAC 208-620-430 every licensee is required  
20 to pay a fee based upon the amount of business conducted during the prior calendar year.

21 **3.4 Authority to Impose Late Penalties:** Pursuant to RCW 31.04.155 and WAC 208-620-430, a licensee  
22 that fails to file a report required to be filed by the Act within the time required is subject to a penalty of fifty  
23 dollars per day, per report, for each day's delay.

1 **3.5 Authority to Charge Investigation Fees:** Pursuant to RCW 31.04.145(3) and WAC 208-620-590,  
2 every licensee investigated by the Department shall pay for the cost of the examination or investigation,  
3 calculated at the rate of \$69.01 per staff hour.

4 **3.6 Authority to Issue Orders Directing Action:** Pursuant to RCW 31.04.093(5)(b), the Director may issue  
5 an order directing a licensee to take such affirmative action as is necessary to comply with the Act.

#### 6 **IV. NOTICE OF INTENTION TO ENTER ORDER**

7 Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as set forth in  
8 the above Factual Allegations and Grounds for Entry of Order, constitute a basis for the entry of an Order under  
9 RCW 31.04.093, RCW 31.04.165 and RCW 31.04.205. Therefore, it is the Director's intention to ORDER that:

- 10 **4.1** Respondent Best Rate Funding Corp.'s license to conduct the business of a Consumer Loan  
11 Company be revoked;
- 12 **4.2** Respondents Best Rate Funding Corp., Adam Butler, and Chris Russell, jointly and severally pay a  
13 fine, which as of the date of these charges totals \$36,500;
- 14 **4.3** Respondents Best Rate Funding Corp., Adam Butler, and Chris Russell, jointly and severally pay the  
15 delinquent Annual Assessment due for the year ending December 31, 2007, which totals \$2,332.57;
- 16 **4.4** Respondents Best Rate Funding Corp., Adam Butler, and Chris Russell, provide to the Director  
17 completed a Consolidated Annual Report and Annual Assessment Worksheet, including all required  
18 supporting documentation, for the year ending December 31, 2007;
- 19 **4.5** Respondents Best Rate Funding Corp., Adam Butler, and Chris Russell, jointly and severally pay a late  
20 penalty which as of the date of this document totals \$33,900, calculated at \$50 per day per report,  
21 which continues to accrue daily, for failing to timely file Consolidated Annual Reports and Annual  
22 Assessment Worksheets;
- 23 **4.6** Respondents Best Rate Funding Corp., Adam Butler, and Chris Russell, jointly and severally pay an  
24 investigation fee, which as of the date of these charges totals \$1,035.15 calculated at \$69.01 per hour  
25 for 15 staff hours devoted to the investigation; and
- 4.7** Respondents maintain records in compliance with the Act and provide the Director with the location of  
the books, records and other information relating to Respondent Best Rate Funding Corp.'s consumer  
loan company business, and the name, address and telephone number of the individual responsible for  
maintenance of such records in compliance with the Act.

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1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Impose Fine,  
3 Collect Annual Assessment, Collect Late Penalty and Collect Investigation Fees is entered pursuant to the  
4 provisions of RCW 31.04.093, RCW 31.04.165, RCW 31.04.202 and RCW 31.04.205, and is subject to the  
5 provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written  
6 request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY  
7 FOR HEARING accompanying this Statement of Charges.

8 Dated this 24<sup>th</sup> day of February, 2009.

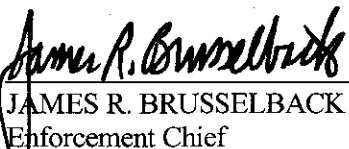
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11 DEBORAH BORTNER  
12 Director and Enforcement Chief  
13 Division of Consumer Services  
14 Department of Financial Institutions

15 Presented by:

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17 WILLIAM HALSTEAD  
18 Financial Legal Examiner



19 Approved by:

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21 JAMES R. BRUSSELBACK  
22 Enforcement Chief