

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

BUREAU OF CONSUMER FINANCIAL PROTECTION,)
)

Plaintiff,)

v.)

PEAKS Trust 2009-1; Deutsche Bank National Trust Company, solely in its capacity as lender trustee of the PEAKS Trust 2009-1;)

Deutsche Bank Trust Company Delaware, solely in its capacity as owner trustee of PEAKS Trust 2009-1; Deutsche Bank Trust Company Americas, solely in its capacity as indenture trustee and collateral agent;)
)
)
)

Defendants.)

Case No. 1:20-CV-2386-JRS-MJD

STIPULATED FINAL JUDGMENT AND ORDER

Plaintiff, the Bureau of Consumer Financial Protection (“Bureau”), commenced this civil action (“Action”) on September 15, 2020 to obtain relief from PEAKS Trust 2009-1 (“PEAKS”), a Delaware statutory trust,

Deutsche Bank National Trust Company (“DBNTC”), solely in its capacity as lender trustee of PEAKS, Deutsche Bank Trust Company Delaware (“DBTCD”), solely in its capacity as owner trustee of PEAKS, and Deutsche Bank Trust Company Americas (“DBTCA”), solely in its capacity as indenture trustee and collateral agent of PEAKS (collectively “Defendants,” as defined below). The Bureau brought its Complaint (“Complaint”) under sections 1031(a), 1036(a), 1054(a), and 1055 of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5531(a), 5536(a), 5564(a), and 5565, alleging violations of section 1036(a)(3) of the CFPA, 12 U.S.C. § 5536(a)(3), which prohibits any person from providing substantial assistance to a covered person or service provider engaging in unfair, deceptive, or abusive acts or practices.

The Bureau and the Defendants (together, the “Parties”) have agreed to settle the Bureau’s claims against Defendants and, by and through their counsel, request that this Court enter this Stipulated Final Judgment and Order (“Order”).

DEFINITIONS

In addition to the definitions set forth in the provisions above, the following definitions apply to this Order:

1. “Affected Consumer” means any student borrower who received a Loan (as defined below) that was not paid in full as of the Effective Date (as defined below).
2. “Consumer Information” means identifying information obtained by Defendants about any individual consumer in connection with the PEAKS Private Student Loan Program (as defined below), including that consumer’s name, address, telephone number, email address, social security number, or any data that enables access to any account of that consumer (including a credit card, bank account, or other financial account). Consumer Information does not include any compilation or summary of Consumer Information if such compilation or summary does not include identifying information of individual consumers.
3. “Consumer Reporting Agency” has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. § 1681a(f).
4. “Defendants” means PEAKS, and each of its successors and assigns,

and DBNTC, DBTCD, and DBTCA, in their respective capacities as lender trustee, owner trustee, and indenture trustee and collateral agent, and each of their successors and assigns.

5. “Effective Date” means the date on which this Order is issued.
6. “Enforcement Director” means the Assistant Director for the Office of Enforcement for the Bureau, or his/her delegee.
7. “ITT” means ITT Educational Services, Inc.
8. “Loan” means one of the private student loans entered into by or originated to students of ITT schools by a third party pursuant to the PEAKS Private Student Loan Program (as defined below) and purchased by PEAKS, including active loans and defaulted loans.
9. “PEAKS Private Student Loan Program” means the private student loan program which provided funding for students attending ITT schools established pursuant to a loan origination and sale agreement between the bank that originated loans to ITT students, ITT, PEAKS, and DBNTC, as lender trustee; a servicing agreement between PEAKS, DBTCA, as indenture trustee and collateral agent, ITT, and the Servicer; as well as an indenture and credit agreement and the PEAKS 2009-1 statutory trust agreement, to which DBTCA, as

- indenture trustee and collateral agent, and DBTCD, as owner trustee, respectively, were parties.
10. “Redress Plan” means the comprehensive written plan for the Defendants’ implementation of this Order.
11. “Servicer” means the third party contracted by PEAKS to perform servicing of the Loans, including performing all collections actions and acceptance of payments related to the Loans.

FINDINGS

12. This Court has jurisdiction over the Parties and the subject matter of the Action.
13. The Complaint alleges claims upon which, if the Bureau were to prevail, relief may be granted under the CFPA. The relief provided in this Order is appropriate and available pursuant to sections 1054 and 1055 of the CFPA, 12 U.S.C. §§ 5564 and 5565.
14. The Parties agree to entry of this Order, without adjudication of any issue of fact or law, to settle and to resolve all matters arising from the conduct alleged in the Complaint.
15. Defendants neither admit nor deny any of the allegations in the Complaint except that, for the purposes of this Order, Defendants

admit the facts necessary to establish this Court's jurisdiction over them and over the subject matter of the Action.

16. PEAKS is an entity that was created for the PEAKS Private Student Loan Program for the purposes of, among other things, purchasing and holding beneficial ownership of the Loans. In connection with the PEAKS Private Student Loan Program, DBNTC, as lender trustee, holds legal title to the Loans on behalf of and for the benefit of PEAKS. Subject to certain conditions and limitations contained in certain PEAKS Private Student Loan Program agreements, servicing of the Loans is performed by the Servicer. PEAKS and the other Defendants will take the actions in this Order with respect to the Loans in accordance with their roles and responsibilities in the program documents, including, where applicable, acting through agents and contractors including the Servicer
17. The current balance of the Loans, including principal, outstanding interest, and outstanding fees, is approximately \$330 million.
18. PEAKS has not acquired, and will not acquire, loans other than the Loans, does not conduct business other than the PEAKS Private Student Loan Program, and intends to cease conducting that business

upon the completion of its obligations as set out in this Order. Given that PEAKS will not conduct any additional business, the Bureau has agreed not to seek injunction, compliance, and reporting requirements beyond those specified in this Order.

19. Defendants waive service under Rule 4(d) of the Federal Rules of Civil Procedure and waive all rights to seek judicial review of or otherwise to challenge or to contest the validity of this Order.

Defendants also waive any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of the Action to the date of this Order.

20. Entry of this Order is in the public interest.

ORDER

I.

ORDER TO CEASE AND DESIST AND TO TAKE OTHER AFFIRMATIVE ACTION

IT IS ORDERED that:

21. As of the Effective Date :
- a. PEAKS will terminate all collections activities and terminate the acceptance of payments from consumers related to any Loan; and

- b. Defendants will take no further action, directly or through any agent or contractor, to enforce or to collect any Loan.
 - c. Notwithstanding the requirements of subparagraphs (a) and (b) of this Paragraph, Defendants will not be regarded as in violation of this Order if they or the Servicer send out routine statements or notices that could be considered collection activity within 20 days after the Effective Date; nor will Defendants be regarded as in violation of this Order in the event that a payment from a consumer related to any Loan is discovered to have been accepted or processed after the Effective Date, provided that Defendants or the Servicer make efforts to return the payment to the consumer as specified in the Redress Plan.
22. Within 30 days of the Effective Date, PEAKS, DBNTC, as lender trustee, and DBTCA, as indenture trustee and collateral agent, will discharge and cancel all outstanding balances of all Affected Consumers' Loan accounts, including associated fees, charges, and interest.
23. Within 30 days of the Effective Date, PEAKS will cause the Servicer

- to submit written requests to all Consumer Reporting Agencies to which Defendants or the Servicer has reported information about the Affected Consumers' Loans, directing those Consumer Reporting Agencies to delete the consumer trade lines associated with the Affected Consumers' Loans by updating those consumer trade lines with the appropriate codes to reflect that each of those consumer trade lines has been deleted and, if an explanation is required, with the codes referencing a negotiated court settlement.
24. Within 30 days of the Effective Date, PEAKS will send notifications to the Affected Consumers, by first class mail to the most recently available postal address contained in the Servicer's system of record for each Affected Consumer, informing them of the new status of their Loans, and the requested updated status of the credit reporting related to their Loans, consistent with this Order.
25. Except as and to the extent provided herein and in the Redress Plan, Defendants will relinquish all dominion, control, and title to all Loan payments made after the Effective Date. No part of those funds may be retained by Defendants.

26. In the event that Loan payments made after the Effective Date are Unreturnable Funds as defined in the Redress Plan, Defendants will pay any such funds to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, according to the Bureau's wiring instructions. The Bureau may make continued attempts to distribute those funds to consumers. If the Bureau determines, in its sole discretion, that such additional distribution is wholly or partially impracticable or otherwise inappropriate, or if funds remain after the additional distribution is completed, the Bureau will deposit the remaining unreturnable funds with the United States Treasury as a miscellaneous receipt. Defendants will have no right to challenge any actions that the Bureau or its representatives may take under this Section.
27. Upon the Effective Date, Defendants will promptly begin implementation of the Redress Plan. The Enforcement Director has reviewed the Redress Plan and has made a determination of non-objection. Defendants will implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Redress Plan.

28. The Redress Plan, among other things:
 - a. Specifies how Defendants or the Servicer will notify Affected Consumers, consistent with this Order, of (i) the new status of their Loans and (ii) the request to the Consumer Reporting Agencies for updated status of the credit reporting related to their Loans.
 - b. Provides an exemplar of written communications to be sent to Affected Consumers regarding their Loans or the redress provided in this Order.
 - c. Identifies a Servicer telephone number that will be active for 150 days after the Effective Date to assist Affected Consumers who have questions about the status of their Loan accounts, and describes the types of questions to which the Servicer will be prepared to respond.
 - d. Specifies the efforts that Defendants and the Servicer will undertake to prevent any payment made on a Loan from being accepted after the Effective Date, and the methods by which Defendants and the Servicer will attempt to return to the payor any payment received after the Effective Date.

29. Defendants may not condition the cancellation or discharge of debt, or the return of any payment made after the Effective Date, on any Affected Consumer or any person who made payments on the Loans waiving any right.

II.

CONSUMER INFORMATION

IT IS FURTHER ORDERED that:

30. Defendants, and their officers, employees, representatives, and agents who receive actual notice of this Order, whether acting directly or indirectly, may not disclose, use, or benefit from Consumer Information, except as follows:
- a. Consumer Information may be disclosed if requested by a government agency or required by law, regulation, or court order; and
 - b. Consumer Information may be used to effectuate and to carry out the obligations set forth in this Order.

III.

REPORTING REQUIREMENTS

IT IS FURTHER ORDERED that:

31. Defendants will notify the Bureau of any development that may affect their compliance with obligations arising under this Order, including but not limited to dissolution, assignment, sale or merger of PEAKS, or other action that would result in the emergence of a successor entity to PEAKS; the creation of a subsidiary, parent, or affiliate of PEAKS that engages in any acts or practices subject to this Order; the filing of any bankruptcy or insolvency proceeding by or against PEAKS; a change in PEAKS's name or address; or any change in the status of DBNTC, DBTCD, or DBTCA in their capacity as lender trustee, owner trustee, or indenture trustee and collateral agent of PEAKS. Defendants will provide this notice, if practicable, at least 30 days before the development, but in any case no later than 14 days after the development.
32. Within 120 days of the Effective Date, Defendants will submit to the Enforcement Director an accurate written compliance progress report that:

- a. Describes in detail the manner and form in which Defendants have complied with this Order; and
- b. Attaches a copy of each Order Acknowledgment obtained under Section IV of this Order, unless previously submitted to the Bureau.

IV.

ORDER DISTRIBUTION AND ACKNOWLEDGEMENT

IT IS FURTHER ORDERED that:

33. Within 30 days of the Effective Date, Defendants will deliver a copy of this Order to the Servicer and to any manager, employee, service provider, or other agent or representative who has responsibilities related to compliance with this Order.
34. Defendants will secure a signed and dated statement acknowledging receipt of a copy of this Order, ensuring that any electronic signatures comply with requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all persons and entities receiving a copy of this Order under Paragraph 33 hereof.

V.

RECORDKEEPING

IT IS FURTHER ORDERED that:

35. For three years from the Effective Date, Defendants will maintain all documents and records necessary to demonstrate full compliance with this Order, including all submissions made to the Bureau pursuant to Paragraph 32(a) hereof.
36. Defendants must make the documents identified in Paragraph 35 hereof available to the Bureau upon the Bureau's request.

VI.

NOTICES

IT IS FURTHER ORDERED that:

37. Unless otherwise directed in writing by the Bureau, Defendants will provide all submissions, requests, communications, or other documents relating to this Order that need to be sent to the Bureau in writing, with the subject line, "Re: PEAKS Trust 2009-1, Case No. 1:20-CV-2386 (S.D. Ind.)," and will send those materials by overnight courier or first class mail to the below address and contemporaneously by email to:

CFPB_Enforcement_Compliance@cfpb.gov

Assistant Director for Enforcement
Bureau of Consumer Financial Protection
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington, D.C. 20552

VII.

COOPERATION WITH THE BUREAU

IT IS FURTHER ORDERED that:

38. Defendants will cooperate fully with the Bureau in this matter and in any Bureau investigation related to or associated with the conduct alleged in the Complaint. Defendants will provide truthful and complete non-privileged, non-work product information, evidence, and testimony. Defendants will appear and will cause their officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that the Bureau reasonably may request upon 10 business days written notice, or other reasonable notice, at such places and times as the Bureau may designate, without the service of compulsory process.
39. Nothing in this Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6, examinations under

Federal Rules of Bankruptcy Procedure 2004, or any other discovery device available under federal statute or the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, subject to Defendants' ability to seek a protective order.

VIII.

RELEASE

IT IS FURTHER ORDERED that:

40. The Bureau releases and discharges PEAKS, DBNTC solely in its capacity as lender trustee of PEAKS, DBTCD solely in its capacity as owner trustee of PEAKS, and DBTCA solely in its capacity as indenture trustee and collateral agent of PEAKS, from all potential liability for violations of law that the Bureau has or might have asserted based on the practices described in the Complaint, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in the Complaint in future enforcement actions against Defendants, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This

release does not preclude or affect any right of the Bureau to determine and ensure compliance with this Order, or to seek penalties for any violations of this Order.

41. This Order will not prejudice or otherwise negatively affect the Bureau's claims against any other party. Nothing in this Order will be deemed to preclude the Bureau from pursuing claims against other parties based on the practices described in the Complaint.

IX.

MISCELLANEOUS

IT IS FURTHER ORDERED that:

42. Each of the Parties is responsible for its own costs and expenses, including, without limitation, attorneys' fees.
43. Notwithstanding the provisions of Section X hereof, any time limit for performance fixed by this Order may be extended by mutual written agreement of the Parties and without further Court approval.

Additionally, details related to the administration of Sections III through VIII of the Order may be modified by written agreement of the Parties and without further Court approval. Any other

modification to this Order may be made only upon approval of the Court, upon motion by either of the Parties.

X.

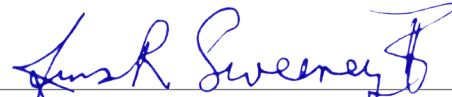
RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that:

44. This Court will retain jurisdiction over matters pertaining to this Order for purposes of its construction, modification, and enforcement.

IT IS SO ORDERED.

Date: 10/1/2020



JAMES R. SWEENEY II, JUDGE
United States District Court
Southern District of Indiana

Roger A.G. Sharpe, Clerk

BY: 
Deputy Clerk, U.S. District Court