

## ORDER SUMMARY – Case Number: C-04-188

**Name(s):** America One Finance Inc  
Matthew Steven Simmons

**Order Number:** C-04-188-11-FO01

**Effective Date:** September 13, 2011

**License Number:** DFI: 18948 [NMLS: 3202] -America One

**Or NMLS Identifier [U/L]** DFI: 27551 [NMLS: 4533] -Simmons

(Revoked, suspended, stayed, application denied or withdrawn)  
If applicable, you must specifically note the ending dates of terms.

**License Effect:** Revoked

**Not Apply Until:** \_\_\_\_\_

**Not Eligible Until:** \_\_\_\_\_

**Prohibition/Ban Until:** September 14, 2021

<b>Investigation Costs</b>	\$36,816	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
<b>Fine</b>	\$500,000	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
<b>Assessment(s)</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Restitution</b>	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
<b>Judgment</b>	\$537,315.50	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
<b>Satisfaction of Judgment Filed?</b>	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N			
	No. of Victims:			

**Comments:** \_\_\_\_\_

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State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

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IN THE MATTER OF DETERMINING  
Whether there has been a violation of the  
Mortgage Broker Practices Act of Washington by:

NO. C-04-188-11-FO01

AMERICA ONE FINANCE, INC., and MATTHEW  
STEVEN SIMMONS, Owner, CEO and Former  
Designated Broker,

FINAL DECISION & ORDER

Respondents.

COMES NOW, the Director ("Director") of the Department of Financial Institutions ("Department"), SCOTT JARVIS, and makes the following FINAL DECISION & ORDER ("Final Decision & Order"), including Findings of Fact and Conclusions of Law as set forth below.

A. PROCEDURAL HISTORY. Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act)<sup>1</sup>. After having conducted an investigation pursuant to RCW 19.146.235, the Director, through his designee, Director of the Division of Consumer Services, Deborah Bortner, instituted this proceeding against Respondents AMERICA ONE FINANCE, INC. ("America One") and MATTHEW STEVEN SIMMONS, Owner, CEO and Former Designated Broker ("Simmons"). The Department served Respondents with a STATEMENT OF CHARGES AND NOTICE OF INTENTION TO ENTER AN ORDER TO REVOKE LICENSES, PROHIBIT FROM INDUSTRY, IMPOSE FINE, AND COLLECT INVESTIGATIVE FEE ("Statement of Charges") on or about October 23, 2009, by Federal Express overnight delivery. On or about November 2 and 3, 2009, respectively, Respondents submitted a request for a hearing, and the

<sup>1</sup> Chapter 19.146 RCW as it existed prior to 2006.

1 matter was referred to the Office of Administrative Hearings (“OAH”) and assigned to Administrative  
2 Law Judge Anita Davidson (“ALJ Davidson”). In the application for adjudicative hearing,  
3 Respondents identified Douglas L. Davies, WSBA No. 16750, as their legal representative. Kate  
4 Reynolds, WSBA No. 34498, then an Assistant Attorney General for the State of Washington, filed a  
5 Notice of Appearance on behalf of the Department. ALJ Davidson issued a Notice of Prehearing  
6 Conference dated March 9, 2010, for a Prehearing Conference to be held on April 20, 2010 at 10:00  
7 A.M. Due to notice to Douglas L. Davies being sent to an old address, an Amended Notice of  
8 Prehearing Conference by Telephone was issued on March 11, 2010, setting a new date for the *First*  
9 Prehearing Conference of April 29, 2010, at 2:45 P.M. Thereafter, a new Notice of Prehearing  
10 Conference was sent to the parties and their respective counsel on May 7, 2010, setting a *Second*  
11 Prehearing Conference for May 27, 2010, at 10:00 AM. On June 23, 2010, ALJ Davidson issued and  
12 caused to be served by mail on the parties and their respective legal representatives of record a  
13 Prehearing Order and Notice of Hearing: (1) Setting forth the issues to be adjudicated; (2) assigning  
14 the dates, times, and place for the hearing; (3) fixing the date for cutoff of discovery; (4) detailing the  
15 protocols and deadlines; and (5) declaring that “. . . [p]arties who fail to attend or participate in the  
16 hearing or other stage of the adjudicative proceeding may be held in default. RCW 34.05.440(2).”  
17 Then, on February 2, 2011, ALJ Davidson issued an Amended Prehearing Order and Notice of  
18 Hearing re-affirming the same dates, time and place for hearing but setting forth revised deadlines for  
19 exchange of witness lists, exhibit indices, and proposed exhibits, together with new deadlines for  
20 submission of optional prehearing briefs. Thereafter, the Department filed and served its Witness List  
21 and Exhibit List, respectively, on February 17, 2011. Then, on February 22, 2011, Douglas L. Davies  
22 filed with ALJ Davidson, and served upon Respondents and Assistant Attorney General Charles E.  
23 Clark (who had succeeded Ms. Reynolds as legal representative of the Department in this matter), a  
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1 Notice of Intent to Withdraw as legal representative of Respondents. Apparently based upon the  
2 Notice of Intent to Withdraw by Douglas L. Davies, Mr. Clark then made a request on February 24,  
3 2011, to ALJ Davidson, asking that the hearing dates be stricken and that a status conference be held  
4 on one of the scheduled hearing dates or another convenient time, in order to determine whether  
5 “Respondent America One and Matthew Simmons [now absent legal representation] intend[ed] to be  
6 held in default.” This letter by Mr. Clark also represents to the ALJ Davidson that “Mr. Davies [had]  
7 also sent [to Mr. Clark] an email followed by a telephone call in which [Mr. Davies] indicated that [the  
8 Department] would need to ‘just get a default judgment.’” In this letter, Mr. Clark also represented to  
9 ALJ Davidson that he had “received verbal permission from Mr. Davies to provide [ALJ Davidson]  
10 with a copy of [Mr. Davies’] email.” Mr. Davies above-referenced email was attached to and made a  
11 part of this letter, and was served by mail on Douglas L. Davies and Respondents. Then, based upon  
12 the representations in this letter, ALJ Davidson issued on March 8, 2011, and caused to be served upon  
13 Respondents, a *Third* Notice of Prehearing Conference by Telephone, calling for a prehearing  
14 conference by telephone on Wednesday, March 16, 2011, at 3:20 PM. This *Third* Notice of  
15 Prehearing Conference (served on Respondents, now representing themselves) declared: “If you fail  
16 to appear or participate in the pre-hearing conference, hearing, or any other scheduled stage of these  
17 proceedings, you may lose your right to a hearing as described in RCW 34.05.440.” Respondents,  
18 either personally or through a representative, did not appear by telephone on March 16, 2011, at 3:30  
19 PM, as specified in the *Third* Notice of Prehearing Conference. Thereafter, on March 22, 2011, on  
20 account of the non-appearance of Respondents at the Prehearing Conference on March 16, 2011, at  
21 3:30 PM, ALJ Davidson issued and caused to be served upon the parties, including Respondents, an  
22 Initial Order of Default (“Initial Order”), declaring that “IT IS ORDERED that the Respondent failed  
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1 to appear or participate in the prehearing conference in this matter. The pending appeal [of  
2 Respondents] is hereby DISMISSED in accordance with RCW 34.05.440.”

3 Pursuant to RCW 34.05.440(3), Respondents had seven (7) days from the date the Initial Order  
4 was served to file a Petition to Vacate Order of Default. Under RCW 34.05.464 and WAC 10-08-211,  
5 Respondents then had twenty (20) days from the date the Initial Order was served to file a Petition for  
6 Review of the Initial Order. Respondents did not file with ALJ Davidson a Petition to Vacate Order of  
7 Default and did not file a Petition for Review with the Director.

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9 B. RECORD PRESENTED. The record presented to the Director for his review and for  
10 entry of a Final Decision & Order contains the entire administrative record of the OAH, including,  
11 without limitation, the Statement of Charges and Initial Order and other afore-mentioned documents.

12 C. FINDINGS OF FACT. The Director makes the following Findings of Fact based upon  
13 the good faith, uncontested allegations of the Department’s Division of Consumer Services, as set forth  
14 in the Statement of Charges, and based upon the remainder of the OAH record:

- 15 1. Respondents never filed a Petition to Vacate Order of Default.
- 16 2. Respondents never filed a Petition for Review from the Initial Order.
- 17 3. More than twenty (20) days has expired since the issuance of the Initial Order.
- 18 4. America One was licensed by the Department to conduct business as a mortgage broker

19 on April 26, 1999, and continues to be licensed to date. On or about October 19, 2009, Respondent  
20 America One submitted a License Surrender Request to the Department on-line through the NMLSR<sup>1</sup>.

21  
22 5. Respondent is the Owner and CEO of Respondent America One. Respondent Simmons  
23 was the Designated Broker of America One from initial licensure by the Department until in or around  
24 April 2009. Respondent Simmons holds an inactive Loan Originator License.

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<sup>1</sup> National Mortgage Licensing System and Registry.

1           6.       While investigating complaints against Respondent America One alleging violations of  
2 the Act, the Department identified one or more of the following violations of the Act in at least one  
3 hundred thirty-four residential mortgage loans originated under Respondent America One's mortgage  
4 broker license between in or around January 2004 and in or around August 2007<sup>1</sup>:

- 5           a.       Failure to comply with State loan disclosure requirements;
- 6           b.       Failure to comply with Federal loan disclosure requirements;
- 7           c.       Charging unearned discount points;
- 8           d.       Misrepresentation of information to borrowers and lenders;
- 9           e.       Failure to maintain funds in trust;
- 10          f.       Overcharging borrowers for third-party provider services;
- 11          g.       Failure to comply with an Order;
- 12          h.       Operating from unlicensed locations; and
- 13          i.       Operating under unapproved names.

14 Respondent America One received over \$930,000 in mortgage broker fees at the closing of these  
15 transactions, and the loan originators involved in these transactions directly collected at least \$36,000  
16 in additional mortgage broker fees.

17           7.       In or around September 2008, the Department conducted an examination of Respondent  
18 America One and identified one or more of the following violations of the Act in at least one hundred  
19 thirty-five residential mortgage loans originated under Respondent America One's mortgage broker  
20 license between in or around January 2007 and in or around August 2008<sup>2</sup>:

- 21          j.       Failure to comply with State loan disclosure requirements;
- 22          k.       Failure to comply with Federal loan disclosure requirements;
- 23          l.       Charging unearned discount points; and
- 24          m.       Failure to display license numbers.

25 Respondent America One received over \$950,000 in mortgage broker fees at the closing of these  
26 transactions.

<sup>1</sup> The Department issued Statements of Charges against at least ten of the loan originators involved in these transactions.

<sup>2</sup> The Department issued a Report of Examination to Respondents on or about August 28, 2009.

1           8.       Respondent America One did not, within three business days following receipt of a  
2 loan application or any moneys from borrowers, provide borrowers in at least one hundred thirty-two  
3 transactions with full written disclosures containing an itemization and explanation of all fees and  
4 costs the borrowers were required to pay in connection with obtaining the residential mortgage loans,  
5 specifying the fees inuring to the benefit of Respondent America One, and containing: the annual  
6 percentage rate, finance charge, amount financed, total amount of all payments, amount of each  
7 payment, amount of points or prepaid interest and the conditions and terms under which any loan  
8 terms might change between the time of disclosure and closing of the loan; and if a variable rate, the  
9 circumstances under which the rate might increase, any limitation on the increase, the effect of an  
10 increase, and an example of the payment terms resulting from an increase.  
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12           9.       Respondent America One charged borrowers fees inuring to the benefit of Respondent  
13 America One in excess of the fees disclosed on the initial written disclosures in at least thirty-seven  
14 transactions. Respondent America One did not provide these borrowers, no less than three business  
15 days prior to the signing of the loan closing documents, a clear written explanation of the fees and the  
16 reason for charging fees exceeding those which were previously disclosed.  
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18           10.       Respondent America One did not, within three business days following receipt of a  
19 loan application or receipt of any moneys from the borrowers or entry of a lock-in agreement with the  
20 borrowers subsequent to initial disclosures or representation to the borrowers that the borrowers had  
21 entered into a lock-in agreement subsequent to initial disclosures, provide borrowers in at least eighty-  
22 four transactions with full written disclosures containing the cost, terms, duration, and conditions of a  
23 lock-in agreement and whether a lock-in agreement had been entered, and whether the lock-in  
24 agreement was guaranteed by the mortgage broker or lender, and if a lock-in agreement had not been  
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1 entered, disclosure in a form acceptable to the Director that the disclosed interest rate and terms were  
2 subject to change.

3 11. Respondent America One did not provide borrowers in at least one hundred seven  
4 transactions with Truth-in-Lending disclosures completed in compliance with the Truth in Lending  
5 Act (15 U.S.C. §1601 et seq.) and Federal Reserve Regulation Z (12 C.F.R. Part 226).

6 12. Respondent America One did not provide borrowers in at least forty-four transactions  
7 with Good Faith Estimate disclosures completed in compliance with the Real Estate Settlement  
8 Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (24 C.F.R. Part 3500).

9 13. Respondent America One received over \$12,500 in “discount points” at the closing of  
10 at least eight transactions in which Respondent America One was acting as a mortgage broker.

11 14. Loan originators operating under Respondent America One’s mortgage broker license  
12 misrepresented borrowers’ information, including employment history, income, assets, liabilities, and  
13 intent to occupy subject properties as their primary residences, to lenders in at least twenty-four  
14 transactions. At least four of the subject properties were ultimately foreclosed and sold by the lenders,  
15 resulting in over \$690,000 in losses to the lenders. At least three more of the subject properties are  
16 currently in some stage of foreclosure.

17 15. Loan originators operating under Respondent America One’s mortgage broker license  
18 directed closing agents to disburse over \$505,000 of seller proceeds to entities owned or controlled by  
19 the loan originators at the closing of at least five transactions, without disclosure to the lenders and in  
20 violation of the lenders’ loan conditions.<sup>1</sup>  
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<sup>1</sup> At least two of the loan originators involved in these transactions have been criminally indicted for this activity.



1           16.     A loan originator operating under Respondent America One's mortgage broker license  
2 attempted to obtain over \$23,000 of the borrower's proceeds at the closing of at least one transaction  
3 without the borrower's knowledge or permission.<sup>1</sup>

4           17.     At the time of initial licensure, Respondents America One and Simmons provided the  
5 Department with a notarized "Mortgage Broker Trust Monies Alternative Certificate of Compliance"  
6 containing the following language:

7                   "I, the undersigned, designated broker of the above listed entity, an applicant for licensing  
8 under chapter 19.146 RCW, The Mortgage Broker Practices Act (the "Act"), certify that I have  
9 read and understand RCW 19.146.050 and WAC 208-660-08010 through -08040, containing  
10 the requirements for the management of borrowers' funds. I realize that any violation of this  
section of the Act is a Class C Felony.

11                   I further warrant that the above company and its principals, mortgage brokers, employees, loan  
12 originators, and independent contractors will not, at any time, up to and including the closing  
of a loan and disbursement of any monies associated with the loan, accept monies from a  
13 borrower, or from a third-party (e.g., an escrow agent) on behalf of a borrower, for the  
purposes of payment for services (e.g., an appraisal or credit report) provided by third parties."

14 In or around October 2006, Respondent America One<sup>2</sup> provided the Department with a notarized  
15 "Washington Mortgage Broker Certificate of Compliance and Authorization to Examine Trust"  
16 certifying that Respondent America One had established a trust account in compliance with the Act.  
17 From initial licensure until Respondent America One set up a trust account in or around October 2006,  
18 Respondent America One received trust funds from or on behalf of borrowers for the payment of  
19 third-party provider services, usually from the closing agent at the closing of the related residential  
20 mortgage loans, in at least twenty-two transactions. Respondent America One deposited these trust  
21 funds into operating accounts under its control, thereby commingling trust funds with operating funds.  
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23 In addition, various individual employees, loan originators, and independent contractors operating  
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25 <sup>1</sup> The loan originator pled guilty to one felony count of Attempted Theft in the First Degree related to this loan.

<sup>2</sup> The certificate was signed by Autumn Van Rooy as President of Respondent America One.

1 under Respondent America One's mortgage broker license also received trust funds from or on behalf  
2 of borrowers for the payment of third-party provider services in at least fifty-five transactions and  
3 deposited these trust funds into operating accounts under their own control.

4 18. Loan originators operating under Respondent America One's mortgage broker license  
5 charged fees to borrowers for third-party provider services in excess of the fees actually paid for those  
6 services in at least fifty-seven transactions.

7 19. On September 23, 2003, the Department entered Final Order C-03-050-03-FO01  
8 prohibiting Mitchell Sweeten ("Sweeten") from participating in the conduct of the affairs of any  
9 licensed mortgage broker, in any manner, for a period of five years. Respondent America One  
10 allowed Sweeten to operate as a loan originator under Respondent America One's mortgage broker  
11 license from at least January 2005 through at least in or around July 2006, in violation of the  
12 Department's prohibition. During this period, Sweeten originated at least thirteen residential mortgage  
13 loans under America One's mortgage broker license and Respondent America One received over  
14 \$110,000 in mortgage broker fees at the closing of these transactions.  
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16 20. Loan originators operated under Respondent America One's mortgage broker license at  
17 various times from at least 2004 through at least 2007 from at least the following sixteen locations in  
18 the State of Washington:

19 108 S. Government Way, Spokane	555 116 <sup>th</sup> Ave NE, Ste 222, Bellevue
20 11818 64 <sup>th</sup> Ave Ct NW, Gig Harbor	2815 Harborview Dr, Gig Harbor
21 1720 S 72 <sup>nd</sup> St Ste 103, Tacoma	1019 Pacific Ave Ste 1111, Tacoma
22 10900 NE 4 <sup>th</sup> St Ste 2300, Bellevue	PO Box 159, Olalla
23 2472 Bethel Rd, Ste B, Port Orchard	16851 Sylvester Road SW, Normandy Park
24 26711 218 <sup>th</sup> Ave SE, Maple Valley	4227 S Meridian, Ste 287, Puyallup
25 33320 9 <sup>th</sup> Ave S, Ste 120, Federal Way	20827 80 <sup>th</sup> St Ct E, Bonney Lake
7100t Dent Parkway Ste 200, Tukwila	3206 50 <sup>th</sup> St Ct NW, Ste A-107, Gig Harbor

1 Respondent America One did not hold a license to conduct the business of a mortgage broker from  
2 these locations at any time during this period.

3 21. Loan originators operated under Respondent America One's mortgage broker license at  
4 various times from at least 2005 through at least 2007 using at least the following three names:

5 Van Hook Brokerage  
6 Sweetenezloans  
7 Countrywide Financing

8 Respondent America One did not have the written consent of the Director to use these names at any  
9 time during this period.

10 22. Loan originators associated with Respondent America One did not display loan  
11 originator license numbers and Respondent America One's mortgage broker license number on  
12 residential mortgage loan applications in at least one hundred seventy-eight residential mortgage loans  
13 originated under Respondent America One's mortgage broker license from in or around January 2007  
14 through in or around August 2008.

15 23. In or around February 2009, Respondent America One notified the Department,  
16 through the NMLSR, that its main office and all of its books and records would be located at 3150  
17 Richards Road, Ste 201, Bellevue, Washington (Richards Road Address). On or about May 20, 2009,  
18 a fire caused extensive damage to the office building located at the Richards Road Address, including  
19 the suite occupied by Respondent America One. In late May 2009, Respondent America One<sup>1</sup> notified  
20 the Department via a voicemail message that its main office operations had been temporarily moved to  
21 one of its branch offices<sup>2</sup> due to the fire. On or about October 19, 2009, Respondent America One<sup>3</sup>  
22 notified the Department under oath, in the "Books and Records Information" section of the Form MU1  
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24 \_\_\_\_\_  
25 <sup>1</sup> The voicemail was left by Autumn Van Rooy, President of Respondent America One.

<sup>2</sup> Branch Office 510-MB-18948-27615, located at 800 Bellevue Way NE, Ste 325, Bellevue, Washington.

<sup>3</sup> The MU1 was completed under oath by Susan Gray on behalf of Respondent America One.

1 filed through the NMLSR in conjunction with the License Surrender Request, that its books and  
2 records were still located at the Richards Road Address. As of the date of this Statement of Charges,  
3 the office building located at the Richards Road Address remains vacant while it is being remodeled.  
4 As of the date of this Statement of Charges, Respondent America One has not notified the Department,  
5 through the NMLSR, of the new location of its books and records.

6           24. In the above-referenced February 24, 2011, of Mr. Clark, addressed to ALJ Davidson  
7 on behalf of the Department, Mr. Clark states in Footnote 1 thereof, as follows: "Please note that the  
8 Statement of Charges requests that borrowers be paid restitution but did not plead a sum certain. In  
9 the event of default, the Department will likely request an opportunity to prove up restitution, possibly  
10 by supporting documents." Notwithstanding this statement by Mr. Clark and the Department having  
11 made such a showing in other cases involving a default by Respondent, there does not appear to be in  
12 the OAH record any proof of restitution or any finding by ALJ Davidson of an entitlement to  
13 restitution by borrowers. Indeed, while the Department's Witness List contains the names of persons  
14 who were likely borrowers and victims of Respondents' violations as set forth in this Final Decision &  
15 Order, there is no identification of them as such and no accounting made of restitution in relation to  
16 any of these persons.

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18           D. CONCLUSIONS OF LAW. Based upon the Findings of Fact set forth above, the  
19 Director makes the following Conclusions of Law:

20           1. Pursuant to RCW 34.05.440(3), Respondents had seven (7) days from the date the Initial  
21 Order was served to file a Petition to Vacate Order of Default.

22           2. Under RCW 34.05.464 and WAC 10-08-211, Respondents had twenty (20) days from  
23 the date the Initial Order was served to file a Petition for Review of the Initial Order.  
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1           3. Pursuant to RCW 19.146.245, a licensed mortgage broker is liable for any conduct  
2 violating the Act by the designated broker or a loan originator while employed or engaged by the  
3 licensed mortgage broker.

4           4. Pursuant to RCW 19.146.200(1) [1994 Act], a person who independently contracts  
5 with a licensed mortgage broker need not be licensed if the licensed mortgage broker and the  
6 independent contractor have on file with the Director a binding written agreement under which the  
7 licensed mortgage broker assumes responsibility for the independent contractor's violations of any  
8 provision of the Act.

9           5. Pursuant to RCW 19.146.200(4) [2007 Act], every licensed mortgage broker must at  
10 all times have a designated broker responsible for all activities of the mortgage broker in conducting  
11 the business of a mortgage broker. A designated broker, principal, or owner who has supervisory  
12 authority over a mortgage broker is responsible for a licensee's, employee's, or independent  
13 contractor's violations of the Act if: the designated broker, principal, or owner directs or instructs  
14 the conduct, or, with knowledge of the specific conduct, approves or allows the conduct; or the  
15 designated broker, principal, or owner who has supervisory authority over the licensed mortgage  
16 broker knows or by the exercise of reasonable care and inquiry should have known of the conduct,  
17 at a time when its consequences can be avoided or mitigated and fails to take reasonable remedial  
18 action.

19           6. The Director concludes as a matter of law that, since a mortgage broker under the  
20 Act does not have the ability to discount rates of interest, a mortgage broker cannot charge  
21 "discount points." As set forth in the Statement of Charges, only a lender can charge rate discount  
22 points to buy down an interest rate.  
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1           7.       Respondents are in violation of RCW 19.146.0201 under the 1994 Act and 2007 Act,  
2 as applicable, as follows:

- 3                   a. For directly or indirectly employing a scheme, device or artifice to  
4                   defraud or mislead borrowers or lenders or any person;
- 5                   b. For engaging in an unfair or deceptive practice toward any person;
- 6                   c. For obtaining property by fraud or misrepresentation;
- 7                   d. For failing to make disclosures to loan applicants and non-institutional  
8                   investors as required by RCW 19.146.030 and any other applicable state  
9                   or federal law;
- 10                  e. For making, in any manner, any false or deceptive statement or  
11                  representation with regard to the rates, points, or other financing terms or  
12                  conditions for a residential mortgage loan or engaging in bait and switch  
13                  advertising;
- 14                  f. For advertising any rate of interest without conspicuously disclosing the  
15                  annual percentage rate implied by such rate of interest;
- 16                  g. For failing to comply with any requirements of the Truth-in-Lending Act,  
17                  15 U.S.C. §1601 et seq., and Regulation Z, 12 C.F.R. Part 226, and for  
18                  failing to comply with any requirements of the Real Estate Settlement  
19                  Procedures Act, 12 U.S.C. § 2601 et seq., and Regulation X, 24 C.F.R.  
20                  Part 3500;
- 21                  h. For collecting, charging, attempting to collect or charge or using or  
22                  proposing any agreement purporting to collect or charge any fee  
23                  prohibited by RCW 19.146.030 or RCW 19.146.070; and  
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1 i. For failing to comply with any provision of RCW 19.146.030 through  
2 19.146.080.

3 8. Respondents are in violation of RCW 19.146.030(1) & (2)(a) for failing, within three  
4 business days following receipt of a loan application or any moneys from the borrowers, to provide  
5 borrowers with full written disclosures containing an itemization and explanation of all fees and  
6 costs the borrowers were required to pay in connection with obtaining residential mortgage loans,  
7 specifying the fees inuring to the benefit of Respondent America One, and containing: the annual  
8 percentage rate, finance charge, amount financed, total amount of all payments, amount of each  
9 payment, amount of points or prepaid interest and the conditions under which any loan terms might  
10 change between the time of disclosure and closing of the loan; and if a variable rate, the  
11 circumstances under which the rate might increase, any limitation on the increase, the effect of an  
12 increase, and an example of the payment terms resulting from an increase.

14 9. Respondents are in violation of RCW 19.146.030(1), (2)(c), & (3) for failing, within  
15 three business days following receipt of a loan application or receipt of any moneys from the  
16 borrowers or entry of a lock-in agreement with the borrowers subsequent to initial disclosures or  
17 representation to the borrowers that the borrowers had entered into a lock-in agreement subsequent  
18 to initial disclosures, to provide borrowers with full written disclosures containing the cost, terms,  
19 duration, and conditions of a lock-in agreement and whether a lock-in agreement had been entered,  
20 and whether the lock-in agreement was guaranteed by the mortgage broker or lender, and if a lock-  
21 in agreement had not been entered, disclosure in a form acceptable to the Director that the disclosed  
22 interest rate and terms were subject to change.

24 10. Respondents are in violation of RCW 19.146.030(4) for charging fees inuring to the  
25 benefit of a mortgage broker in excess of the fees disclosed on the initial written disclosures: where



1 the fees were reasonably foreseeable at the time the initial written disclosures were provided to  
2 borrowers; or where the mortgage broker failed to provide the borrowers, no less than three  
3 business days prior to the signing of the loan closing documents, a clear written explanation of the  
4 fees and the reason for charging fees exceeding those which were previously disclosed, or both.

5 11. Respondents are in violation of RCW 19.146.050 for failing to deposit funds  
6 received from a borrower or on behalf of a borrower for payment of third-party provider services in  
7 a trust account of a federally insured financial institution located in this state, prior to the end of the  
8 third business day following receipt of such monies, and for commingling operating funds with trust  
9 account funds.

10 12. Respondents are in violation of RCW 19.146.060(2), WAC 208-660-400(8), and  
11 WAC 208-660-450(4) for failing to keep Respondent America One's books and records in a  
12 location that is on file with and readily available to the Department, and for failing to notify the  
13 Department, through the NMLSR, with the new physical address of Respondent America One's  
14 mortgage broker books and records within five business days of a change in such location.

15 13. Respondents are in violation of RCW 19.146.070(2)(b) [1994 Act] for charging  
16 borrowers more for goods and services than the actual costs of the goods and services charged by a  
17 third-party provider.

18 14. Respondents are in violation of RCW 19.146.265 for engaging in the business of a  
19 mortgage broker from a fixed physical location without first obtaining and maintaining a branch  
20 license for that fixed physical location under the Act.

21 15. Respondents are in violation of RCW 19.146.250 for failing to obtain the written  
22 consent of the Director prior to operating or advertising under a name other than the one under  
23 which the license is issued.  
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1           16.     Respondents are in violation of WAC 208-660-350(25) & (26) for failing to display  
2 the loan originator license number and the name and license number of the mortgage broker the  
3 loan originator is associated with when taking residential mortgage loan applications.

4           17.     Pursuant to RCW 19.146.220(2)(b)(iii) & (iv) [1994 Act], the Director may revoke a  
5 license for: failure to comply with any directive or order of the Director, or any violation of RCW  
6 19.146.050, RCW 19.146.0201(1) through (9) or (12), or RCW 19.146.265.

7           18.     Pursuant to RCW 19.146.220(2)(d) & (e) [2007 Act], the Director may revoke  
8 licenses for: failure to comply with any directive, order, or subpoena of the Director, or any  
9 violation of the Act.

10           19.     Pursuant to RCW 19.146.220(2)(c) [1994 Act], the Director may impose fines on a  
11 licensee, employee or loan originator of the licensee, or other person subject to the Act for: any  
12 violation of RCW 19.146.0201(1) through (9) or (12), RCW 19.146.030 through RCW 19.146.080,  
13 or RCW 19.146.265, or failure to comply with any directive or order of the Director.

14           20.     Pursuant to RCW 19.146.220(2)(d) & (e) [2007 Act], the Director may impose fines  
15 against licensees or other persons subject to the Act for: failure to comply with any directive, order,  
16 or subpoena of the Director; or any violation of the Act.

17           21.     Pursuant to RCW 19.146.220(3) [2007 Act], the Director may impose fines on an  
18 employee, loan originator, independent contractor, or agent of the licensee, or other person subject  
19 to the Act for: any violation of RCW 19.146.0201(1) through (9) or (13), RCW 19.146.030 through  
20 RCW 19.146.080, or RCW 19.146.265, or failure to comply with a directive or order of the  
21 Director.

22           22.     Pursuant to RCW 19.146.220(2)(d)(ii) [1994 Act], the Director may issue orders  
23 directing a licensee, its employees or loan originator, or other person subject to the Act to pay  
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1 restitution to an injured borrower. Pursuant to RCW 19.146.220(2)(d) & (e) [2007 Act], the Director  
2 may order restitution against licensees or any other persons subject to the Act for: failure to comply  
3 with any directive, order, or subpoena of the Director; or any violation of the Act. However, in the  
4 absence of any evidence of record supporting an entitlement to restitution, the Director cannot award  
5 restitution to borrowers as a matter of law.

6         23. Pursuant to RCW 19.146.220(2)(e)(i) & (iv) [1994 Act] and RCW 19.146.220(5)(a)  
7 & (d) [2007 Act], the Director may issue orders removing from office or prohibiting from  
8 participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer,  
9 principal, employee, or loan originator of any licensed mortgage broker or any person subject to  
10 licensing under the Act for: any violation of RCW 19.146.0201(1) through (9), RCW  
11 19.146.0201(12) [1994 Act], RCW 19.146.0201(13) [2007 Act], RCW 19.146.030 through RCW  
12 19.146.080, or RCW 19.146.265; or failure to comply with a directive or order of the Director.

13         24. Pursuant to RCW 19.146.228(2) and WAC 208-660-550(4)(a), the Department will  
14 charge forty-eight dollars per hour for an examiner's time devoted to an investigation of the books and  
15 records of a licensee or other person subject to the Act.

16         25. There are sufficient grounds for entry of a Final Decision & Order under RCW  
17 19.146.220, RCW 19.146.221 and RCW 19.146.223.

18         26. The Director finds that a fine of Five Hundred Thousand Dollars (\$500,000.00) is  
19 reasonable in relation to the egregious and uncontested Findings of Fact set forth above.

20         27. Pursuant to WAC 208-660-550, the Department has authority to impose investigative  
21 fees calculated at Forty-Eight Dollars (\$48.00) per hour. There appears to have been at least seven  
22 hundred sixty-seven (767) staff hours devoted to investigation of this matter, which appears to the  
23 Director to have been reasonable in relation to the egregious nature of this case. Accordingly, the  
24  
25

1 imposition against Respondents of investigative fees of Thirty Six Thousand Eight Hundred Sixteen  
2 Dollars (\$36, 816.00) appears to the Director to be reasonable.

3 E. FINAL DECISION & ORDER.

4 NOW, THEREFORE, the Director makes the following Final Decision & Order:

- 5 1. The license of Respondent AMERICA ONE FINANCE, INC. to conduct the business of a  
6 Mortgage Broker is hereby REVOKED.
- 7 2. The license of Respondent MATTHEW STEVEN SIMMONS to conduct the business of a  
8 Loan Originator is hereby REVOKED.
- 9 3. Respondent AMERICA ONE FINANCE, INC. is PROHIBITED from participation in the  
10 conduct of the affairs of any Mortgage Broker subject to licensure by the Director, in any  
11 manner, for a period of TEN (10) YEARS.
- 12 4. Respondent MATTHEW STEVEN SIMMONS is PROHIBITED from participation in the  
13 conduct of the affairs of any Mortgage Broker subject to licensure by the Director, in any  
14 manner, for a period of TEN (10) YEARS.
- 15 5. Respondents AMERICA ONE FINANCE, INC. and MATTHEW STEVEN SIMMONS,  
16 jointly and severally, owe and shall pay to the WASHINGTON STATE DEPARTMENT  
17 OF FINANCIAL INSTITUTIONS a fine in the sum of FIVE HUNDRED THOUSAND  
18 DOLLARS (\$500,000.00).
- 19 6. Respondents AMERICA ONE FINANCE, INC. and MATTHEW STEVEN SIMMONS,  
20 jointly and severally, owe and shall pay to the WASHINGTON STATE DEPARTMENT  
21 OF FINANCIAL INSTITUTIONS, as and for investigation fees, the sum of THIRTY SIX  
22 THOUSAND EIGHT HUNDRED SIXTEEN DOLLARS (\$36,816.00).  
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1 7. Respondents AMERICA ONE FINANCE, INC. and MATTHEW STEVEN SIMMONS  
2 shall maintain records in compliance with the Act and provide the Department with the  
3 location of the books, records and other information relating to Respondent America One  
4 Finance, Inc's mortgage broker business, and the name, address and telephone number of  
5 the individual responsible for maintenance of such records in compliance with the Act.

6 F. RECONSIDERATION. Pursuant to RCW 34.05.470, Respondents have the right to  
7 file a Petition for Reconsideration stating the specific grounds upon which relief is requested. The  
8 Petition must be filed in the Office of the Director of the Department of Financial Institutions by courier  
9 at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia,  
10 Washington 98504-1200, within ten (10) days of service of the Final Order upon Respondents. The  
11 Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for  
12 Reconsideration a prerequisite for seeking judicial review in this matter.

13  
14 A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the date  
15 the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written  
16 notice specifying the date by which it will act on a petition.

17 G. STAY OF ORDER. The Director has determined not to consider a Petition to Stay the  
18 effectiveness of this order. Any such requests should be made in connection with a Petition for Judicial  
19 Review made under chapter 34.05 RCW and RCW 34.05.550.

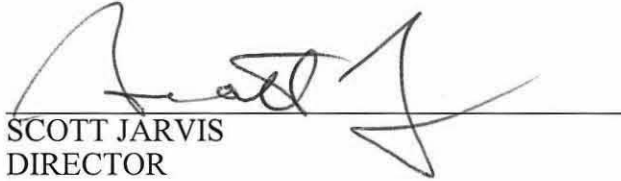
20 H. JUDICIAL REVIEW. Respondents have the right to petition the superior court for  
21 judicial review of this agency action under the provisions of chapter 34.05 RCW. For the requirements  
22 for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.  
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1 I. NON-COMPLIANCE WITH ORDER. If you do not comply with the terms of this order,  
2 the Department may seek its enforcement by the Office of Attorney General to include the collection of  
3 the fines, fees and restitution imposed herein.

4 J. SERVICE. For purposes of filing a Petition for Reconsideration or a Petition for  
5 Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service  
6 attached hereto.

7  
8 DATED this 13<sup>th</sup> day of September 2011.

9 STATE OF WASHINGTON  
10 DEPARTMENT OF FINANCIAL INSTITUTIONS

11   
12 SCOTT JARVIS  
13 DIRECTOR

1 NOTICE TO THE PARTIES

2 In accordance with RCW 34.05.470 and WAC 10-08-215, any Petition for Reconsideration  
3 of this FINAL DECISION & ORDER must be filed with the Director within ten (10) days of service  
4 of this FINAL DECISION & ORDER. It should be noted that Petitions for Reconsideration do not  
5 stay the effectiveness of said FINAL DECISION & ORDER. Judicial Review of this FINAL  
6 DECISION & ORDER is available to a party according to provisions set out in the Washington  
7 Administrative Procedure Act, RCW 34.05.570.

8 This is to certify that this FINAL DECISION & ORDER has been served upon the following  
9 parties on 13<sup>th</sup> of September, 2011, by depositing a copy of same in the United  
10 States mail, postage prepaid.

11 WASHINGTON STATE DEPARTMENT  
12 OF FINANCIAL INSTITUTIONS

13 By: 

14 Susan Putzier

15 Executive Assistant to the Director

16 **Mailed to the following:**

17 America One Finance, Inc.  
18 c/o Matthew S. Simmons  
19 3150 Richards Road, Suite 201  
20 Bellevue, WA 98005

21 Charles E. Clark, Assistant Attorney General  
22 Government Compliance & Enforcement Division  
23 1125 Washington Street S.E.  
24 P.O. Box 41200  
25 Olympia, WA 98504-0100

26 Matthew S. Simmons  
27 3150 Richards Road, Suite 201  
28 Bellevue, WA 98005

29 America One Finance, Inc.  
30 9235 NE 14<sup>th</sup> Street  
31 Bellevue, WA 98004

32 Matthew S. Simmons  
33 9235 NE 14<sup>th</sup> Street  
34 Bellevue, WA 98004

35 America One Finance, Inc.  
36 5380 Secret Canyon  
37 Ellensburg, WA 98926

38 Matthew S. Simmons  
39 5380 Secret Canyon  
40 Ellensburg, WA 98926



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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  
Mortgage Broker Practices Act of Washington by:

AMERICA ONE FINANCE, INC., and  
MATTHEW STEVEN SIMMONS, Owner, CEO,  
and Former Designated Broker,

Respondents.

NO. C-04-188-08-SC01

STATEMENT OF CHARGES and  
NOTICE OF INTENTION TO ENTER  
AN ORDER TO REVOKE LICENSES,  
PROHIBIT FROM INDUSTRY,  
IMPOSE FINE, ORDER RESTITUTION,  
AND COLLECT INVESTIGATION FEE

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**INTRODUCTION**

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act)<sup>1</sup>. After having conducted an investigation pursuant to RCW 19.146.235, 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:

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**I. FACTUAL ALLEGATIONS**

**1.1 Respondents.**

**A. America One Finance, Inc. (America One)** was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a mortgage broker on April 26, 1999, and continues to be licensed to date. On or about October 19, 2009, Respondent America One submitted a License Surrender Request to the Department on-line through the NMLSR<sup>2</sup>.

**B. Matthew Steven Simmons (Simmons)** is Owner and CEO of Respondent America One. Respondent Simmons was the Designated Broker of Respondent America One from initial licensure by the Department until in or around April 2009. Respondent Simmons holds an inactive loan originator license.

<sup>1</sup> The Act, effective in 1994, was amended in 2006, with the changes effective January 1, 2007. Alleged violations referenced in this Statement of Charges that occurred in 2006 or before are cited as violating the 1994 Act; those that occurred in 2007 or later are cited as violating the 2007 Act.

<sup>2</sup> National Mortgage Licensing System and Registry

1 **1.2 Investigation of Complaints.** While investigating complaints against Respondent America One  
2 alleging violations of the Act, the Department identified one or more of the following violations of the Act in at  
3 least one hundred thirty-four residential mortgage loans originated under Respondent America One's mortgage  
4 broker license between in or around January 2004 and in or around August 2007<sup>3</sup>:

- 5 • Failure to comply with State loan disclosure requirements
- 6 • Failure to comply with Federal loan disclosure requirements
- 7 • Charging unearned discount points
- 8 • Misrepresentation of information to borrowers and lenders
- 9 • Failure to maintain funds in trust
- Overcharging borrowers for third-party provider services
- Failure to comply with an Order
- Operating from unlicensed locations
- Operating under unapproved names

10 Respondent America One received over \$930,000 in mortgage broker fees at the closing of these transactions,  
11 and the loan originators involved in these transactions directly collected at least \$36,000 in additional mortgage  
12 broker fees.

13 **1.3 Examination.** In or around September 2008, the Department conducted an examination of Respondent  
14 America One and identified one or more of the following violations of the Act in at least one hundred thirty-five  
15 residential mortgage loans originated under Respondent America One's mortgage broker license between in or  
16 around January 2007 and in or around August 2008<sup>4</sup>:

- 17 • Failure to comply with State loan disclosure requirements
- 18 • Failure to comply with Federal loan disclosure requirements
- 19 • Charging unearned discount points
- Failure to display license numbers

20 Respondent America One received over \$950,000 in mortgage broker fees at the closing of these transactions.

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25 <sup>3</sup> The Department issued Statements of Charges against at least ten of the loan originators involved in these transactions.

<sup>4</sup> The Department issued a Report of Examination to Respondents on or about August 28, 2009.

1 **1.4 Failure to Comply with State Loan Disclosure Requirements.**

2 **A. Loan Fees and Terms.** Respondent America One did not, within three business days  
3 following receipt of a loan application or any moneys from the borrowers, provide borrowers in at least one  
4 hundred thirty-two transactions with full written disclosures containing an itemization and explanation of all  
5 fees and costs the borrowers were required to pay in connection with obtaining the residential mortgage loans,  
6 specifying the fees inuring to the benefit of Respondent America One, and containing: the annual percentage  
7 rate, finance charge, amount financed, total amount of all payments, amount of each payment, amount of points  
8 or prepaid interest and the conditions and terms under which any loan terms might change between the time of  
9 disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate might increase,  
10 any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an  
11 increase.

12 **B. Increased Fees.** Respondent America One charged borrowers fees inuring to the benefit of  
13 Respondent America One in excess of the fees disclosed on the initial written disclosures in at least thirty-seven  
14 transactions. Respondent America One did not provide these borrowers, no less than three business days prior  
15 to the signing of the loan closing documents, a clear written explanation of the fees and the reason for charging  
16 fees exceeding those which were previously disclosed.

17 **C. Rate Lock Disclosure.** Respondent America One did not, within three business days following  
18 receipt of a loan application or receipt of any moneys from the borrowers or entry of a lock-in agreement with  
19 the borrowers subsequent to initial disclosures or representation to the borrowers that the borrowers had entered  
20 into a lock-in agreement subsequent to initial disclosures, provide borrowers in at least eighty-four transactions  
21 with full written disclosures containing the cost, terms, duration, and conditions of a lock-in agreement and  
22 whether a lock-in agreement had been entered, and whether the lock-in agreement was guaranteed by the  
23 mortgage broker or lender, and if a lock-in agreement had not been entered, disclosure in a form acceptable to  
24 the Director that the disclosed interest rate and terms were subject to change.

25

1 **1.5 Failure to Comply with Federal Loan Disclosure Requirements.**

2 **A. Truth-in-Lending Act.** Respondent America One did not provide borrowers in at least one  
3 hundred seven transactions with Truth-in-Lending disclosures completed in compliance with the Truth-in-  
4 Lending Act and Regulation Z.

5 **B. Real Estate Settlement Procedures Act.** Respondent America One did not provide borrowers  
6 in at least forty-four transactions with Good Faith Estimate disclosures completed in compliance with the Real  
7 Estate Settlement Procedures Act and Regulation X.

8 **1.6 Unearned Discount Points.** Respondent America One received over \$12,500 in "discount points" at  
9 the closing of at least eight transactions in which Respondent America One was acting as a mortgage broker. A  
10 mortgage broker does not have the ability to discount rates of interest, therefore a mortgage broker cannot  
11 charge "discount points." Only a lender can charge rate discount points to buy down an interest rate.

12 **1.7 Misrepresentations of Information to Borrowers and Lenders.**

13 **A.** Loan originators operating under Respondent America One's mortgage broker license  
14 misrepresented borrowers' information, including employment history, income, assets, liabilities, and intent to  
15 occupy subject properties as their primary residences, to lenders in at least twenty-four transactions. At least  
16 four of the subject properties were ultimately foreclosed and sold by the lenders, resulting in over \$690,000 in  
17 losses to the lenders. At least three more of the subject properties are currently in some stage of foreclosure.

18 **B.** Loan originators operating under Respondent America One's mortgage broker license directed  
19 closing agents to disburse over \$505,000 of seller proceeds to entities owned or controlled by the loan  
20 originators at the closing of at least five transactions, without disclosure to the lenders and in violation of the  
21 lenders' loan conditions.<sup>5</sup>

22 **C.** A loan originator operating under Respondent America One's mortgage broker license  
23 attempted to obtain over \$23,000 of the borrower's proceeds at the closing of at least one transaction without  
24 the borrower's knowledge or permission.<sup>6</sup>

25 <sup>5</sup> At least two of the loan originators involved in these transactions have been criminally indicted for this activity.

<sup>6</sup> The loan originator pled guilty to one felony count of Attempted Theft in the First Degree related to this loan.

1 **1.8 Failure to Maintain Funds in Trust.** At the time of initial licensure, Respondents America One and  
2 Simmons provided the Department with a notarized "Mortgage Broker Trust Monies Alternative Certificate of  
3 Compliance" containing the following language:

4 "I, the undersigned, designated broker of the above listed entity, an applicant for licensing under  
5 chapter 19.146 RCW, The Mortgage Broker Practices Act ( the "Act"), certify that I have read and  
6 understand RCW 19.146.050 and WAC 208-660-08010 through -08040, containing the requirements  
7 for the management of borrowers' funds. I realize that any violation of this section of the Act is a Class  
8 C Felony.

9 I further warrant that the above company and its principals, mortgage brokers, employees, loan  
10 originators, and independent contractors will not, at any time, up to and including the closing of a loan  
11 and disbursement of any monies associated with the loan, accept monies from a borrower, or from a  
12 third-party (e.g., an escrow agent) on behalf of a borrower, for the purposes of payment for services  
13 (e.g., an appraisal or credit report) provided by third parties."

14 In or around October 2006, Respondent America One<sup>7</sup> provided the Department with a notarized "Washington  
15 Mortgage Broker Certificate of Compliance and Authorization to Examine Trust" certifying that Respondent  
16 America One had established a trust account in compliance with the Act. From initial licensure until  
17 Respondent America One set up a trust account in or around October 2006, Respondent America One received  
18 trust funds from or on behalf of borrowers for the payment of third-party provider services, usually from the  
19 closing agent at the closing of the related residential mortgage loans, in at least twenty-two transactions.  
20 Respondent America One deposited these trust funds into operating accounts under its control, thereby  
21 commingling trust funds with operating funds. In addition, various individual employees, loan originators, and  
22 independent contractors operating under Respondent America One's mortgage broker license also received trust  
23 funds from or on behalf of borrowers for the payment of third-party provider services in at least fifty-five  
24 transactions and deposited these trust funds into operating accounts under their own control.

25 **1.9 Overcharging Borrowers for Third-Party Provider Services.** Loan originators operating under  
Respondent America One's mortgage broker license charged borrowers fees for third-party provider services in  
excess of the fees actually paid for those services in at least fifty-seven transactions.

<sup>7</sup> The certificate was signed by Autumn Van Rooy as President of Respondent America One.

1 **1.10 Failure to Comply with an Order of the Department.** On September 23, 2003, the Department  
2 entered Final Order C-03-050-03-FO01 prohibiting Mitchell Sweeten (Sweeten) from participating in the  
3 conduct of the affairs of any licensed mortgage broker, in any manner, for a period of five years. Respondent  
4 America One allowed Sweeten to operate as a loan originator under Respondent America One's mortgage  
5 broker license from at least January 2005 through at least in or around July 2006, in violation of the  
6 Department's prohibition. During this period, Sweeten originated at least thirteen residential mortgage loans  
7 under America One's mortgage broker license and Respondent America One received over \$110,000 in  
8 mortgage broker fees at the closing of these transactions.

9 **1.11 Unlicensed Locations.** Loan originators operated under Respondent America One's mortgage broker  
10 license at various times from at least 2004 through at least 2007 from at least the following sixteen locations in  
11 the State of Washington:

12	108 S. Government Way, Spokane	555 116 <sup>th</sup> Ave NE, Ste 222, Bellevue
13	11818 64 <sup>th</sup> Ave Ct NW, Gig Harbor	2815 Harborview Dr, Gig Harbor
14	1720 S 72 <sup>nd</sup> St Ste 103, Tacoma	1019 Pacific Ave Ste 1111, Tacoma
15	10900 NE 4 <sup>th</sup> St Ste 2300, Bellevue	PO Box 159, Olalla
16	2472 Bethel Rd, Ste B, Port Orchard	16851 Sylvester Road SW, Normandy Park
17	26711 218 <sup>th</sup> Ave SE, Maple Valley	4227 S Meridian, Ste 287, Puyallup
18	33320 9 <sup>th</sup> Ave S, Ste 120, Federal Way	20827 80 <sup>th</sup> St Ct E, Bonney Lake
19	7100 Fort Dent Parkway Ste 200, Tukwila	3206 50 <sup>th</sup> St Ct NW, Ste A-107, Gig Harbor

20 Respondent America One did not hold a license to conduct the business of a mortgage broker from these  
21 locations at any time during this period.

22 **1.12 Unapproved Names.** Loan originators operated under Respondent America One's mortgage broker  
23 license at various times from at least 2005 through at least 2007 using at least the following three names:

24 Van Hook Brokerage  
25 Sweetenezloans  
Countrywide Financing

Respondent America One did not have the written consent of the Director to use these names at any time during  
this period.

1 **1.13 Failure to Display License Numbers.** Loan originators associated with Respondent America One did  
2 not display loan originator license numbers and Respondent America One's mortgage broker license number on  
3 residential mortgage loan applications in at least one hundred seventy-eight residential mortgage loans  
4 originated under Respondent America One's mortgage broker license from in or around January 2007 through  
5 in or around August 2008.

6 **1.14 Location of Books and Records.** In or around February 2009, Respondent America One notified the  
7 Department, through the NMLSR, that its main office and all of its books and records would be located at 3150  
8 Richards Road, Ste 201, Bellevue, Washington (Richards Road Address). On or about May 20, 2009, a fire  
9 caused extensive damage to the office building located at the Richards Road Address, including the suite  
10 occupied by Respondent America One. In late May 2009, Respondent America One<sup>8</sup> notified the Department  
11 via a voicemail message that its main office operations had been temporarily moved to one of its branch offices<sup>9</sup>  
12 due to the fire. On or about October 19, 2009, Respondent America One<sup>10</sup> notified the Department under oath,  
13 in the "Books and Records Information" section of the Form MU1 filed through the NMLSR in conjunction  
14 with the License Surrender Request, that its books and records were still located at the Richards Road Address.  
15 As of the date of this Statement of Charges, the office building located at the Richards Road Address remains  
16 vacant while it is being remodeled. As of the date of this Statement of Charges, Respondent America One has  
17 not notified the Department, through the NMLSR, of the new location of its books and records.

18 **1.15 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by  
19 Respondents continues to date.

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25 <sup>8</sup> The voicemail was left by Autumn Van Rooy, President of Respondent America One.  
<sup>9</sup> Branch Office 510-MB-18948-27615, located at 800 Bellevue Way NE, Ste 325, Bellevue, Washington.  
<sup>10</sup> The MU1 was completed under oath by Susan Gray on behalf of Respondent America One.



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

2 **2.1 Responsibility for Conduct of Loan Originators.** Pursuant to RCW 19.146.245, a licensed mortgage  
3 broker is liable for any conduct violating the Act by the designated broker or a loan originator while employed  
4 or engaged by the licensed mortgage broker. Pursuant to RCW 19.146.200(1) [1994 Act], a person who  
5 independently contracts with a licensed mortgage broker need not be licensed if the licensed mortgage broker  
6 and the independent contractor have on file with the Director a binding written agreement under which the  
7 licensed mortgage broker assumes responsibility for the independent contractor's violations of any provision of  
8 the Act. Pursuant to RCW 19.146.200(4) [2007 Act], every licensed mortgage broker must at all times have a  
9 designated broker responsible for all activities of the mortgage broker in conducting the business of a mortgage  
10 broker. A designated broker, principal, or owner who has supervisory authority over a mortgage broker is  
11 responsible for a licensee's, employee's, or independent contractor's violations of the Act if: the designated  
12 broker, principal, or owner directs or instructs the conduct or, with knowledge of the specific conduct, approves  
13 or allows the conduct; or the designated broker, principal, or owner who has supervisory authority over the  
14 licensed mortgage broker knows or by the exercise of reasonable care and inquiry should have known of the  
15 conduct, at a time when its consequences can be avoided or mitigated and fails to take reasonable remedial  
16 action.

17 **2.2 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondents are in  
18 apparent violation of RCW 19.146.0201:

- 19 • (1) for directly or indirectly employing a scheme, device or artifice to defraud or mislead borrowers or  
20 lenders or any person;
- 21 • (2) for engaging in an unfair or deceptive practice toward any person;
- 22 • (3) for obtaining property by fraud or misrepresentation;
- 23 • (6) for failing to make disclosures to loan applicants and noninstitutional investors as required by RCW  
24 19.146.030 and any other applicable state or federal law;
- 25

- 1 • (7) for making, in any manner, any false or deceptive statement or representation with regard to the
- 2 rates, points, or other financing terms or conditions for a residential mortgage loan or engaging in bait
- 3 and switch advertising;
- 4 • (10) for advertising any rate of interest without conspicuously disclosing the annual percentage rate
- 5 implied by such rate of interest;
- 6 • (10) [1994 Act] & (11) [2007 Act] for failing to comply with any requirements of the Truth-in-Lending
- 7 Act, 15 U.S.C. Sec. 1601, and Regulation Z, 12 C.F.R. Sec. 226 and for failing to comply with any
- 8 requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601, and Regulation X, 24
- 9 C.F.R. Sec. 3500;
- 10 • (12) [1994 Act] & (13) [2007 Act] for collecting, charging, attempting to collect or charge or using or
- 11 proposing any agreement purporting to collect or charge any fee prohibited by RCW 19.146.030 or
- 12 RCW 19.146.070;
- 13 • (14) [1994 Act] & (15) [2007 Act] for failing to comply with any provision of RCW 19.146.030
- 14 through 19.146.080.

15 **2.3 Requirement to Disclose Residential Mortgage Loan Fees and Terms.** Based on the Factual  
16 Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.030(1) & (2)(a)  
17 for failing, within three business days following receipt of a loan application or any moneys from the borrowers,  
18 to provide borrowers with full written disclosures containing an itemization and explanation of all fees and  
19 costs the borrowers were required to pay in connection with obtaining residential mortgage loans, specifying the  
20 fees inuring to the benefit of Respondent America One, and containing: the annual percentage rate, finance  
21 charge, amount financed, total amount of all payments, amount of each payment, amount of points or prepaid  
22 interest and the conditions under which any loan terms might change between the time of disclosure and closing  
23 of the loan; and if a variable rate, the circumstances under which the rate might increase, any limitation on the  
24 increase, the effect of an increase, and an example of the payment terms resulting from an increase.

25

1 **2.4 Requirement to Disclose Rate Lock Information.** Based on the Factual Allegations set forth in  
2 Section I above, Respondents are in apparent violation of RCW 19.146.030(1), (2)(c), & (3) for failing, within  
3 three business days following receipt of a loan application or receipt of any moneys from the borrowers or entry  
4 of a lock-in agreement with the borrowers subsequent to initial disclosures or representation to the borrowers  
5 that the borrowers had entered into a lock-in agreement subsequent to initial disclosures, to provide borrowers  
6 with full written disclosures containing the cost, terms, duration, and conditions of a lock-in agreement and  
7 whether a lock-in agreement had been entered, and whether the lock-in agreement was guaranteed by the  
8 mortgage broker or lender, and if a lock-in agreement had not been entered, disclosure in a form acceptable to  
9 the Director that the disclosed interest rate and terms were subject to change.

10 **2.5 Prohibited Fee, Commission, or Compensation.** Based on the Factual Allegations set forth in  
11 Section I above, Respondents are in apparent violation of RCW 19.146.030(4) for charging fees inuring to the  
12 benefit of a mortgage broker in excess of the fees disclosed on the initial written disclosures: where the fees  
13 were reasonably foreseeable at the time the initial written disclosures were provided to borrowers; or where the  
14 mortgage broker failed to provide the borrowers, no less than three business days prior to the signing of the loan  
15 closing documents, a clear written explanation of the fees and the reason for charging fees exceeding those  
16 which were previously disclosed; or both.

17 **2.6 Requirement to Maintain Funds From Borrower for Payment of Third-Party Providers in Trust.**  
18 Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW  
19 19.146.050 for failing to deposit funds received from a borrower or on behalf of a borrower for payment of  
20 third-party provider services in a trust account of a federally insured financial institution located in this state,  
21 prior to the end of the third business day following receipt of such monies, and for commingling operating  
22 funds with trust account funds.

23 **2.7 Requirement to Maintain Books and Records.** Based on the Factual Allegations set forth in Section  
24 I above, Respondents are in apparent violation of RCW 19.146.060(2), WAC 208-660-400(8), and WAC 208-  
25 660-450(4) for failing to keep Respondent America One's books and records in a location that is on file with

1 and readily available to the Department, and for failing to notify the Department, through the NMLSR, with the  
2 new physical address of Respondent America One's mortgage broker books and records within five business  
3 days of a change in such location.

4 **2.8 Overcharging Borrowers for Third-Party Provider Services.** Based on the Factual Allegations set  
5 forth in Section I above, Respondents are in apparent violation of RCW 19.146.070(2)(b) [1994 Act] for  
6 charging borrowers more for goods and services than the actual costs of the goods and services charged by a  
7 third-party provider.

8 **2.9 Requirement to Obtain and Maintain Branch License.** Based on the Factual Allegations set forth in  
9 Section I above, Respondents are in apparent violation of RCW 19.146.265 for engaging in the business of a  
10 mortgage broker from a fixed physical location without first obtaining and maintaining a branch license for that  
11 fixed physical location under the Act.

12 **2.10 Requirement to Obtain Consent for Use of Name.** Based on the Factual Allegations set forth in  
13 Section I above, Respondents are in apparent violation of RCW 19.146.250 for failing to obtain the written  
14 consent of the Director prior to operating or advertising under a name other than the one under which the  
15 license is issued.

16 **2.11 Requirement to Display License Number.** Based on the Factual Allegations set forth in Section I  
17 above, Respondents are in apparent violation of WAC 208-660-350(25) & (26) for failing to display the loan  
18 originator license number and the name and license number of the mortgage broker the loan originator is  
19 associated with when taking residential mortgage loan applications.

### 20 III. AUTHORITY TO IMPOSE SANCTIONS

21 **3.1 Authority to Revoke License.** Pursuant to RCW 19.146.220(2)(b)(iii) & (iv) [1994 Act], the Director  
22 may revoke a license for: failure to comply with any directive or order of the Director; or any violation of RCW  
23 19.146.050, RCW 19.146.0201(1) through (9) or (12), or RCW 19.146.265. Pursuant to RCW  
24 19.146.220(2)(d) & (e) [2007 Act], the Director may revoke licenses for: failure to comply with any directive,  
25 order, or subpoena of the Director; or any violation of the Act.

1 **3.2 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2)(c) [1994 Act], the Director may impose fines  
2 on a licensee, employee or loan originator of the licensee, or other person subject to the Act for: any violation of  
3 RCW 19.146.0201(1) through (9) or (12), RCW 19.146.030 through RCW 19.146.080, or RCW 19.146.265; or  
4 failure to comply with any directive or order of the Director. Pursuant to RCW 19.146.220(2)(d) & (e) [2007  
5 Act], the Director may impose fines against licensees or other persons subject to the Act for: failure to comply  
6 with any directive, order, or subpoena of the Director; or any violation of the Act. Pursuant to RCW  
7 19.146.220(3) [2007 Act], the Director may impose fines on an employee, loan originator, independent  
8 contractor, or agent of the licensee, or other person subject to the Act for: any violation of RCW 19.146.0201(1)  
9 through (9) or (13), RCW 19.146.030 through RCW 19.146.080, or RCW 19.146.265; or failure to comply with  
10 a directive or order of the Director.

11 **3.3 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2)(d)(ii) [1994 Act], the Director may  
12 issue orders directing a licensee, its employees or loan originator, or other person subject to the Act to pay  
13 restitution to an injured borrower. Pursuant to RCW 19.146.220(2)(d) & (e) [2007 Act], the Director may order  
14 restitution against licensees or any other persons subject to the Act for: failure to comply with any directive, order,  
15 or subpoena of the Director; or any violation of the Act.

16 **3.4 Authority to Prohibit from the Industry.** Pursuant to RCW 19.146.220(2)(e)(i) & (iv) [1994 Act]  
17 and RCW 19.146.220(5)(a) & (d) [2007 Act], the Director may issue orders removing from office or prohibiting  
18 from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal,  
19 employee, or loan originator of any licensed mortgage broker or any person subject to licensing under the Act  
20 for: any violation of RCW 19.146.0201(1) through (9), RCW 19.146.0201(12) [1994 Act], RCW  
21 19.146.0201(13) [2007 Act], RCW 19.146.030 through RCW 19.146.080, or RCW 19.146.265; or failure to  
22 comply with a directive or order of the Director.

23 **3.5 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2) and WAC 208-660-550(4)(a),  
24 the Department will charge forty-eight dollars per hour for an examiner's time devoted to an investigation of the  
25 books and records of a licensee or other person subject to the Act.

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

Respondents' violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis for the entry of an Order under RCW 19.146.220, RCW 19.146.221 and RCW 19.146.223. Therefore, it is the Director's intention to ORDER that:

- 4.1 Respondent America One Finance, Inc.'s license to conduct the business of a mortgage broker be revoked.
- 4.2 Respondent Matthew Steven Simmons's license to conduct the business of a loan originator be revoked.
- 4.3 Respondent America One Finance, Inc. be prohibited from participation in the conduct of the affairs of any mortgage broker subject to licensure by the Director, in any manner, for a period of ten years.
- 4.4 Respondent Matthew Steven Simmons be prohibited from participation in the conduct of the affairs of any mortgage broker subject to licensure by the Director, in any manner, for a period of ten years.
- 4.5 Respondents America One Finance, Inc. and Matthew Steven Simmons jointly and severally pay a fine. As of the date of this Statement of Charges, the fine totals \$500,000.
- 4.6 Respondents America One Finance, Inc. and Matthew Steven Simmons jointly and severally pay restitution to all borrowers injured by Respondents prior to January 1, 2007, and to all borrowers for any violation of the Act by Respondents on or after January 1, 2007, in an amount to be determined at hearing.
- 4.7 Respondents America One Finance, Inc. and Matthew Steven Simmons jointly and severally pay an investigation fee. As of the date of this Statement of Charges, the investigation fee totals \$36,816.
- 4.8 Respondents maintain records in compliance with the Act and provide the Department with the location of the books, records and other information relating to Respondent America One Finance, Inc.'s mortgage broker 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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**V. AUTHORITY AND PROCEDURE**

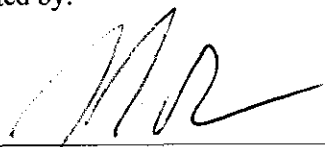
This Statement of Charges and Notice of Intention to Enter an Order to Revoke Licenses, Prohibit from Industry, Impose Fine, Order Restitution, and Collect Investigation Fee (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

Dated this 23<sup>rd</sup> day of October, 2009.



DEBORAH BORTNER  
Director  
Division of Consumer Services  
Department of Financial Institutions

Presented by:



MARK T. OLSON  
Financial Examiner



Approved by:



JAMES R. BRUSSELBACK  
Enforcement Chief



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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  
Mortgage Broker Practices Act of Washington by:

C-04-188-08-SC01

AMERICA ONE FINANCE, INC., and  
MATTHEW STEVEN SIMMONS, Owner, CEO,  
and Former Designated Broker, President,  
Respondents.

NOTICE OF OPPORTUNITY TO DEFEND  
AND OPPORTUNITY FOR HEARING

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THE STATE OF WASHINGTON TO:

America One Finance, Inc., and  
Matthew Steven Simmons

YOU ARE HEREBY NOTIFIED that a STATEMENT OF CHARGES has been filed by the Department of Financial Institutions, a true and correct copy of which is attached and made a part hereof.

YOU ARE HEREBY NOTIFIED that you may file an application for an adjudicative hearing before the Washington State Department of Financial Institutions on the Statement of Charges. Service of this notice is deemed complete upon deposit in the United States mail. YOUR APPLICATION MUST BE RECEIVED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS WITHIN TWENTY (20) DAYS FROM THE DATE YOU RECEIVED THIS NOTICE. If you demand a hearing, you will be notified of the time and place for the hearing at least seven (7) days in advance of the hearing date.

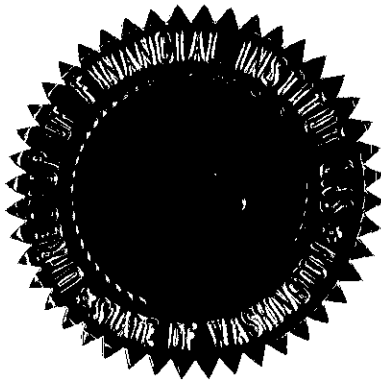
At the hearing, you may appear personally, and by counsel, if you desire. The hearing will be as informal as is practical within the requirements of the Administrative Procedure Act (see chapter 34.05 RCW). The hearing will be recorded. The primary concern will be getting to the truth of the matter insofar as the Statement of Charges is concerned. Technical rules of evidence will not be binding at the hearing except for the rules of privilege recognized by law. You have the right to present evidence and witnesses in your own behalf, and to cross-examine those witnesses presented in support of the Statement of Charges. You may require the attendance of witnesses by subpoena. If you are limited English-speaking or hearing impaired, you have the right to have an interpreter appointed at no cost to you, as discussed below.

1            INTERPRETER AVAILABILITY. If you or a witness for you is a person who, because of non-English-  
2 speaking cultural background, cannot readily speak or understand the English language, or if you or a witness for  
3 you is a person who, because of a hearing impairment or speech defect, cannot readily understand or communicate  
4 in spoken language, including persons who are deaf, deaf and blind, or hard of hearing, AND YOU NEED AN  
5 INTERPRETER, then a qualified interpreter will be appointed at no cost to you or to the witness. You may request  
6 the appointment of a qualified interpreter by indicating your request on the attached Application for Adjudicative  
7 Hearing form.

8            YOU ARE FURTHER NOTIFIED that if the Department of Financial Institutions does not RECEIVE the  
9 Application for Adjudicative Hearing form within twenty (20) days from the date you received this notice, this will  
10 constitute a waiver of your right to a hearing and the Director will find that you do not contest the allegations of the  
11 Statement of Charges. Upon such a finding by the Director a final order will be immediately entered disposing of  
12 this matter as described in the Statement of Charges. If you desire a hearing in this matter, please return the  
13 attached Application for Adjudicative Hearing to:

14                            Department of Financial Institutions  
15                            Division of Consumer Services  
16                            Attn: Fatima Batie  
17                            PO Box 41200  
18                            Olympia, Washington 98504-1200

19                            Dated this 23<sup>RD</sup> day of October, 2009.



25

*Deborah Bortner*  
DEBORAH BORTNER  
Director  
Division of Consumer Services  
Department of Financial Institutions