State of Washington

Department OF FINANCIAL INSTITUTIONS

IN THE MATTER OF: ZIPPY CASH, LLC, d/b/a/ ZIPPY CASH and d/b/a ADVANCE TIL PAYDAY, and DANIEL M. VAN GASKEN, Managing Member and Executive Trustee, Respondents.	DOCKET NO. 2007-DEPARTMENT-0001 DEPARTMENT NO. C-06-186-07 DEPARTMENT'S *FINAL DECISION AND ORDER* MODIFYING INITIAL FINDINGS OF FACT, INITIAL CONCLUSIONS OF LAW, AND INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE

THIS MATTER was commenced on January 3, 2007, when the Division of Consumer Services (hereinafter, the "Division") of the Washington State Department of Financial Institutions (hereinafter, "Department") issued under Division Docket No. C-06-186-06 a Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist, and Notice of Intent to Enter Order to Revoke License, Impose Fine, Order Restitution, Ban from Industry, and Collect Investigative Fee (hereinafter, "Statement of Charges") to Respondents ZIPPY CASH, LLC, d/b/a/ ZIPPY CASH and d/b/a ADVANCE TIL PAYDAY (hereinafter, "Zippy Cash") and DANIEL M. VAN GASKEN, Managing Member and Executive Trustee (hereinafter, "Van Gasken"), alleging that Zippy Cash and Van Gaskin violated the Washington Check Cashers and Check Sellers Act, Chapter 31.45 RCW (hereinafter, "Act"). Subsequently, on May 15, 2007, the Division amended its Statement of Charges in Division Docket No. C-06-186-07 (hereinafter, "Amended Statement of Charges) against Zippy Cash and Van Gaskin, for violation of the Act. It is the Amended Statement of Charges which is the basis for the present proceeding.

Zippy Cash and Van Gasken timely requested an Administrative Hearing to contest the Amended Statement of Charges, and this matter was assigned to the Office of Administrative Hearings (hereinafter, "OAH"), which assigned Administrative Law Judge Brian O. Watkins (hereinafter, "Administrative Law Judge") to hear this matter. A hearing with live testimony and the presentation and admission of exhibits was held on December 12-13, 2007. The parties each submitted post-hearing briefs, and the OAH Record was closed as of February 12, 2008. Then, on April 4, 2008, the Administrative Law Judge issued Findings of Fact, Conclusions of Law and Initial Order (Hereinafter, collectively, "Initial Order").

Subsequently, each party submitted a Petition for Review, and Zippy Cash and Van Gasken, by and through their counsel, Matthew Reiber, submitted a Response to the Division's Petition for Review.

This matter now comes before the Director of the Department for consideration and entry of a Final Decision and Order based upon the OAH Record, Zippy Cash's and Van Gasken's Petition for Review, the Division's Petition for Review, and Zippy Cash's and Van Gasken's Response to the Division's Petition for Review.

1.0 Preliminary Considerations

1.1 Request for Another Reviewing Officer. Mr. Matthew Reiber, counsel for Respondent, has "requested" that the Director recuse himself from review of this matter and appoint another reviewing officer.[1] The Director is obliged to make a decision concerning this

[1] This was by way of a footnote in Mr. Reiber's Response to Petition for Review of Initial Order. See *Footnote 1*, Response to Petition for Review of Initial Order, at p.2.

"request" and specify his or her reasons for doing so.[2] The Director denies this "request" based upon the following reasons.

The Director has the discretion to appoint himself as reviewing officer.[3] Typically, the Director does not involve himself in the specific factual allegations of a case being prosecuted by the Division of Consumer Services, nor does the Director usually participate in even a "probable cause" determination to bring a statement of charges. That function has been delegated by statute[4] and agency policy, in the first instance, to the Director of Consumer Services, and secondarily, to her enforcement attorneys. The Director has not served as investigator, prosecutor, or advocate in this case, in either its pre-adjudicative or adjudicative stage.[5] Deborah Bortner, the Director of the Division of Consumer Services, was the charging officer who signed the Statement of Charges and Amended Statement of Charges, and her staff attorneys were the investigators and prosecutors, in conjunction with Mr. Charles Clark of the Attorney General's Office. The Director did not even participate in an initial, "probable cause determination" in connection with the decision to charge Zippy Cash and Van Gasken; but even if the Director had done so, he would still have been able to act as a reviewing officer absent a showing of specific grounds for disqualification.[6] Mr. Reiber's argument is based upon nothing more than an argumentative assertion *without* any supporting facts which could demonstrate an actual conflict of interest. No one from the Division of Consumer Services or its statutory counsel of record, the Attorney General's Office, has been involved in advising the Director in this matter. No ex

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[2] RCW 34.05.425(5).

[3] RCW 34.05.425(1)(a).

[4] RCW 43.320.050 and RCW 43.320.060.

[5] RCW 34.05.458(1).

[6] RCW 34.05.458(2).

parte communication has taken place between the Director and the Division of Consumer Services or the Attorney General's Office concerning this matter.[7] The Director has no personal knowledge of or a relationship, past or present, with Zippy Cash, Van Gasken or any of the named borrowers in the case, including Johnny Felix, Joycene Noland, Chris Johnson, Jimmie Williams, Vertis Williams, and Gregory Roberson. The Director has no interest in a competitor of Zippy Cash or Van Gasken. Indeed, there are no facts or even allegations which would rise to the level of a conflict of interest.[8]

If the Director recused himself each time counsel for a respondent made an assertion like Mr. Reiber has made, the Director would have to remove himself from considering any petition for review from an administrative law judge's initial order. That is neither called for by the Administrative Procedures Act[9] nor dictated by the issues present in this case. As part of his reviewing function, the Director has the authority and the duty to fairly apply the statutes which the Department administers to the facts of a given case and, in so doing, when necessary, to be the final *administrative* arbiter of the legislative intent and application of a statute regulated and enforced by the Department.[10]

1.2 Request for Oral Argument. Oral argument upon a petition for review of an administrative law judge's order is not mandated by the Administrative Procedures Act or the Department's rules.[11] The Director has before him an extensive record, including a pre-hearing

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[7] RCW 34.05.455.

[8] RCW 34.05.425(3).

[9] *See again*, RCW 34.05.425(1)(a) and RCW 34.05.458.

[10] RCW 34.05.464(8); RCW 34.05.461(3);

[11] *See* RCW 34.05.464(6). There is nothing in the Department's rules, Chapter 208-08 WAC, or the Model Rules, Chapter 10-08 WAC, which were adopted by the Department at WAC-208-08-020(1), which requires that the Department grant oral argument on review.

stipulation of facts, a detailed initial order, pre-hearing and post-hearing briefs from both parties, a complete transcript and set of hearing exhibits, petitions for review by both the Division of Consumer Services and Zippy Cash and Van Gasken, and a detailed response to the Division's petition for review by Mr. Reiber on behalf of Zippy Cash and Van Gasken. Oral argument would not be any more probative of a right result in this matter than the record already before the Director. Accordingly, Zippy Cash's and Van Gasken's request for oral argument before the Director is denied.

1.3 Issue of Constitutionality. Zippy Cash and Van Gasken have attempted to raise a contingent issue as to the constitutionality of the Department's interpretation and resulting enforcement of RCW 31.45.110(2)(c), asserting a violation of the Eighth and Fourteenth Amendments of the U.S. Constitution. The Department and the Director are without authority to adjudicate constitutional issues, including those raised in Zippy Cash's and Van Gasken's Response to Division's Petition for Review.[12] An administrative body, including the Department, does not have authority to determine the constitutionality of the law it administers; only the courts have that power.[13] Moreover, the Department cannot delegate to the Director authority which it lacks.[14] Therefore, the Director cannot and will not consider the arguments of unconstitutionality raised by Zippy Cash and Van Gasken. In reviewing this matter, the Director will treat all relevant statutes as if they are constitutional.

1.4 Citations and References to the Record. In regard to citing and referencing the Record on Review as set forth in *Sections 2.0 and 3.0* below, the following terms and/or abbreviations mean:

1.4.1 *"COL"* means Conclusions of Law.

1.4.2 *"EX"* means Hearing Exhibit.

1.4.3 *"FOF"* meanings Finding of Fact.

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[12] *See* Zippy Cash's and Van Gasken's Response to Division's Petition for Review of Initial Order, *Footnote 6* at pp. 16-17, and pp. 26-27.

[13] *See Bare v. Gorton*, 84 Wn.2d 380, 383 (1974), citing *United States v. Kissinger*, 250 F.2d 940 (3d Cir. 1958); *cert. denied*, 356 U.S. 958 (1958). 3 K. Davis, *Administrative Law Treatise*, § 20.04, at p. 74 (1958); see also *Johnson v. Robison*, 415 U.S. 361, 368 (1974), quoting *Oestereich v. Selective Serv. System Local Bd. No. 11*, 393 U.S. 233, 242 (1968); accord, *Califano v. Sanders*, 430 U.S. 99, 109 (1977).

[14] *McGuire v. State*, 58 Wash. App. 195, 198 (1991).

1.4.4 *"RP"* means Report of Proceedings or Hearing Transcript.

1.4.5 *"STIP"* means pre-trial Stipulation of Facts.

1.4.5 *"Respondents"* means Zippy Cash and Van Gasken.

2.0 Modified Findings of Fact

Except as set forth in *Section 2.0* below, the initial Findings of Fact of the Administrative Law Judge shall remain unmodified and are hereby affirmed by the Director. In modifying and re-affirming contested Findings of Fact, the Director provides his reasoning as set forth in *Section 2.0* below.

2.1 Modified FOF 3. The Director does not support modification of any of the Findings of Fact when language in question is technically proper usage. However, the term "endorsee" is not a statutory definition under the Act, at RCW 31.45.010, and, indeed, does not appear anywhere as a term within the language of the Act or the Division's Rules (Chapter 208-630 WAC). Rather, persons holding a small loan endorsement from the Division are always referred by statute and rule as being "licensees."[15] So the Administrative Law Judge was actually the one who committed error (albeit, harmless) when he chose "endorsee" to identify the status of Zippy Cash. Accordingly, FOF 3 is hereby modified, as follows:

> "Small loan licensees are also called 'payday lenders' because the small loan licensee usually obtains a security interest in a check drafted by the borrowers for each small loan. 'Payday lender' and 'small loan licensee' are used interchangeably in this order."

2.2 Modified FOF 10, 11 and 26. The use of the term "audit" in FOF 10, 11 and 26 is inappropriate because it refers in each instance to the "2006 *examination*" described in FOF 9. For this same reason, the Division's suggestion that "audit" be changed to "investigation," though harmless error, is also wrong. The Director finds that the term "audit," as used in FOF

[15] See, for example, RCW 31.45.073 and RCW 31.45.077.

10, 11 and 26, be changed to "examination." All other language in FOF 10, 11 and 26 shall remain unmodified.

2.3 FOF 15. Provided that the language of FOF 15 is supported by substantial evidence or at least an inference may be drawn from substantial evidence, the Director is loathe to alter the language of FOF 15 unless its continued inclusion would result in substantial error. The phrase "*hunger* for multiple loans" is a characterization which may, at the very least, be inferred from evidence in the record that the six borrowers in question sought numerous multiple loans. By itself, this characterization is innocuous, and the Director feels it has no bearing, one way or the other, on the legal conclusions to be drawn in this case. However, of more important consideration is whether this "hunger for multiple loans" can be said to have partially "caused the excess loans to occur." The Director finds that this "hunger for multiple loans" partially "caused the excess loans to occur" in the strictly literal and logical sense that, without a volitional act by the borrowers to seek and obtain numerous multiple loans, extensions of credit totaling in excess of the maximum amount permitted by the Act would not have been made.[16] Therefore, FOF 15 shall remain unmodified and is hereby re-affirmed.

2.4 Modified FOF 17. The parties vehemently contest the language of FOF 17. Reviewing the comparative merits of these arguments, the Director makes the following observations.

While a phone-calling control procedure appears to have been used in 4 or more other states with no independent, impeaching evidence of excess concurrent loans,[17] this is hardly conclusive that this same method employed in Washington State was fool-proof, since it proved

[16] However, the Director also finds that this partial causation is ultimately of no consequence in deciding whether Zippy Cash and Van Gasken violated the Act.

[17] *RP at 267-270*.

not to be. Mr. Reiber has gone to great lengths to argue that there was no legitimate basis for his clients to believe that borrowers would "hop scotch from county to county to obtain additional loans from multiple Zippy Cash locations" in the presence of competing payday lending operations throughout Pierce and Thurston Counties. Much is made by Mr. Reiber of the notion that borrowers would be unlikely to drive 15 to 20 miles to remote Zippy Cash locations to get an excess loan. On the other hand, Mr. Clark, while correct, merely argues that 15 or 20 miles is not a long distance. Through all of these competing arguments on this point, the parties appear to have lost sight of one other plausible inference that may be deduced from the evidence – that the borrowers in question who received excess loans were demonstrating *customer loyalty.*[18] Indeed, the Director finds it very curious why Zippy Cash and Van Gasken do not appear from the evidence to have considered customer loyalty as a risk factor in making an operational decision as to what control procedures to employ to avoid excess loans.

The Director finds the testimony cited by Mr. Reiber related to the 2002 and 2004 examinations[19] of no compelling significance or probative of whether a violation of the Act occurred based upon the findings of the later 2006 examination. The absence of evidence of earlier violations is not proof of anything with respect to the 2006 Zippy Cash examination,[20] particularly since the Division substantially modernized its enforcement in a protracted regulatory exercise that began with 2003 legislative amendments, was made clear in input from industry which culminated in 2005 rulemaking, and was only then fully implemented beginning

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[18] "Customer loyalty" is used here in the broadest sense to include simply reticence to transact with a new provider because of transactional familiarity with the existing one. This is as legitimate an inference to be drawn from the evidence as the "hunger for multiple loans" expressed in FOF 15.

[19] *See* Zippy Cash's and Van Gasken's Response to Department's Review of Initial Order, at pp. 6-7.

[20] Washington Rule of Evidence 404(b); see also, for example, Franco v. Zingarelli, 72 A.D.2d 211, 216, 424 N.Y.S.2d 185 (1980) [". . . (A)s proof of arrest may not serve as the basis for an inference of negligence, the absence of arrest may not serve as the basis for an inference of no negligence."]

with 2006 examinations. It was permissible for the Division, charged with assuring compliance with the Act, to have a more rigorous examination of Zippy Cash in 2006 than it did in 2002 and 2004,[21] particularly where the 2002 examination preceded the 2003 legislative amendments[22] and rulemaking on these 2003 amendments was not made effective until November 21, 2005.[23]

It was established at the hearing that Van Gasken is the only managing member of Zippy Cash[24] and is, therefore, the final decision-maker for Zippy Cash. Van Gasken agreed that it was more likely than not that had Zippy Cash had a networked computer system during years 2004 to 2006, the Zippy Cash branches would not have exceeded the $700 aggregate loan limit.[25] Accordingly, the Director agrees that Van Gasken made the operational decision to deal with the risk of excess loan amounts per borrower by implementing a calling procedure versus a

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[21] Indeed, an administrative agency's acquiescence at an earlier time does not estop it from enforcing the law at a later date. See *Northlake Marine Works v. Dept. of Natural Resources*, 134 Wn. App. 272, 293-294, 138 P.3d 626 (2006); *Longview Fibre Co. v. Dept. of Ecology*, 89 Wn. App. 627, 636-37, 949 P.2d 851 (1998).

[22] Laws of 2003 c 86. The intent of the Legislature in 2003 could not have been any clearer in the joint House and Senate Final Bill Report on SSB 5452 (C 86 L 03), which reads in part: ". . . Concern exists that some individuals who make use of 'pay day loans' may find themselves in a cycle of debt and financial distress. It is believed by some that consumer protection would be enhanced by increased regulation of check cashers and sellers. . . . Loan amounts and terms are increased, ***but no more than $700 may be loaned to a borrower at any one time.***" [Emphasis added.] Significantly, Section 16 of Laws of 2003 c 86 (SSB 5452) also greatly expanded the Division's examination authority.

[23] The 2003 legislation was not reflected in new rulemaking until 2005. The Division's 2005 rulemaking provided clear notice to members of the Washington payday lending industry, including Zippy Cash, of what would be required of it in the future, notwithstanding the earlier 2003 legislation. After the Department's customary informal dialogue with industry, formal rulemaking began with a CR-102 form filed with the Code Reviser and published on May 18, 2005 (WSR 05-18-095), coupled with a public hearing on October 17, 2005, in which the industry had an opportunity to formally comment on the proposed rules both orally and in writing prior to their adoption. There was even a published Small Business Economic Impact Statement (SBEIS) made in conjunction with this rulemaking as required by the Regulatory Fairness Act, Chapter 19.85 RCW, and for the benefit of the payday lending industry, because of the new, anticipated examination requirements. The final rules were filed October 21, 2005, and made effective November 21, 2005. As partially noted by the Code Reviser in WSR 05-22-009 (announcing final adoption of the rules):

> "The proposed rules modernize and clarify existing rules, and add many changes required by the new law passed in 2003 (SSB 5452, chapter 86, Laws of 2003), and 2005 (ESSB 5415, chapter 256, Laws of 2005). In summary the proposed rule:
> - Incorporates the statutory definitions, including the amendments and additions from the 2003 act;
> - Provides a more detailed description of the director's authority to conduct examinations and investigations;
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> . . . .
> - Establishes minimum requirements for small loan applications;
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> . . . .
> - Makes additions to record-keeping requirements.
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> These changes will assist licensees in operating their businesses in compliance with the new law. . . . The new rule also clarifies exactly what the director's authorities are in examinations and investigations. . . ."

The Director is permitted to take notice of all these official, published acts of the Division in consideration of a Final Decision and Order.

[24] *RP at 169, ll. 21-25*.

[25] *RP at 185, ll. 5-9*.

networked computer system.[26] There is substantial, important testimonial evidence in the record to support the Division's contention regarding FOF 17.[27] This evidence is material to whether Zippy Cash and Van Gasken violated the Act. Therefore, FOF 17 is modified as follows:

> "The technology to network computers to access one database existed in 2004. Zippy Cash, however, used an independent computer at each Zippy Cash branch to open accounts, create files, and process paperwork for each borrower. Zippy Cash and Daniel Van Gasken made an operational decision to open multiple branches without networking the branches' computers to one database. Zippy Cash and Daniel Van Gasken perceived this calling procedure to be a reasonable measure to address the requirements of RCW 31.45.073. Networking the branches' computers could have been a reasonable measure to address compliance with the maximum loan amount and maximum fee requirements of RCW 31.45.073."

2.5 Modified FOF 18. The unwritten calling procedure implemented by Zippy Cash in 2001-2006 did not involve all of Zippy Cash's branches and was, in the view of the Administrative Law Judge (see *FOF 23*), more likely than not "sporadic" in its application. Also, the procedure applied only to new applications, not existing borrowers. After reviewing the arguments by both parties concerning FOF 18, the Director modifies FOF 18 to be consistent with the evidence, as follows:

> "Instead of networked computers, during 2001-2006 Zippy Cash had an *unwritten* calling procedure for the Pierce County locations – Tillicum, Lakewood, and Tacoma. When a borrower attempted to borrow money at the Tillicum, Lakewood, or Tacoma branches, the Zippy Cash worker opening the account for the borrower was supposed to call the other two Pierce County branches to ensure the borrower did not already have a loan outstanding with Zippy Cash. The purpose of the calling procedure was to avoid multiple loans at Zippy Cash branches that would aggregate more than $700 in simultaneous loans. However, this calling procedure was not implemented at a particular branch if the borrower had previously obtained a loan from that branch. The Tillicum, Lakewood, and Tacoma branches only implemented the calling procedure for new applications at their respective branches."

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[26] *RP at 174-177*.

[27] *See* Division's Petition for Review of Initial Order, pp. 2-3.

2.6 Modified FOF 23. By Mr. Van Gasken's own admission on examination by Mr. Clark (*RP at 183*): (1) Most loans were made at the Tillicum and Lakewood branches; (2) these branches were part of the unwritten calling procedure; and (3) the calling procedure failed at these branches with respect to the 120 loan transactions that are the subject of the violations in question. So Mr. Clark's proposed addition to FOF 23 is essentially true: There is no evidence that the calling procedure was actually utilized in any of the 120 loan transactions at issue in this case. Therefore, FOF 23 is modified, as follows:

> "The record also establishes that the customer service representatives who served customers and made the loans were often short-term employees. Employee turnover at Zippy Cash was frequent during the period at issue. It is more likely than not that employee compliance with the calling procedure was sporadic. There is no credible evidence that the calling procedure was utilized in any of the 120 loan transactions at issue in this case."

2.7 Modified FOF 26. According to examination of Mr. Van Gasken, the computer system in question, which was finally put in place in 2006 to eliminate making excess loans, cost only $10,000.[28] On examination of Mr. Van Gasken, Assistant Attorney General Clark and Mr. Van Gasken had this exchange:

> "Q: Is it fair to say that it would not have been cost prohibitive for Zippy Cash to have implemented a software program earlier?
> A: I don't think we can call that cost prohibitive."[29]

Thus, while there was no specific testimony as to what appropriate computer software would have actually cost prior to 2006, Mr. Van Gasken admitted that, whatever the price, it would not have been cost prohibitive. Therefore, the Director is not persuaded with Mr. Reiber's

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[28] *RP at 185, ll. 15-17*.

[29] *RP at 185, ll. 18-21*.

arguments relative to FOF 26. Accordingly, FOF 26 is modified, consistent with Mr. Van Gasken's own testimony, as follows:

> "The technology to network computers to access one database existed in 2004. Zippy Cash, however, used an independent computer at each Zippy Cash branch to open accounts, create files, and process paperwork for reach borrower. It would not have been cost prohibitive for Zippy Cash to have networked its computers earlier."

2.8 FOF 27. It is hardly prejudicial to either party's case that the parties had to clarify at hearing stipulated facts which were in error, or even that the Amended Statement of Charges contained 86 technical errors. The point is that these errors were corrected at hearing or in post-hearing briefs prior to the Initial Order. A review of the record, including *RP at 50*, supports the Director's finding that Footnote 3 of FOF 27 should remain unmodified. FOF 27, as written by the Administrative Law Judge, is re-affirmed.

2.9 Modified FOF 30. There appears to be no disagreement that the reference to "$503" was a typographical error, whether harmless or not. Accordingly, the Director modifies this reference to read "$500."

2.10 Modified FOF 90. Notwithstanding the testimony of Mr. Will Halstead,[30] there is other, dispositive evidence in the record which establishes that the cumulative number of days Zippy Cash had a loan outstanding with an excess fee charged on each loan was "1,642" rather than "1,657."[31] Accordingly, reference to "1,657" in FOF 90 is modified to read "1,642."

2.11 Modified FOF 91. Mr. Reiber states that the modifications to FOF 91 proposed by the Division are harmless. FOF 91 and FOF 92 are styled in the manner of discussing the Amended Statement of Charges. Mr. Clark, on behalf of the Division, seeks to reflect that

[30] *RP at 57-62*.

[31] Division's Post-Hearing Brief at pp. 17-19 [Division's Methodology for Calculating Fines], including EX 1-PH, 2-PH; STIP at pp. 2-14 [Description of Specific Loan Transactions]; EX 7, 7A [Calendars Summarizing Loans].

amounts ultimately sought by the Division[32] are at variance with the Amended Statement of Charges. A modification of FOF 91 appears to be the most logical place to insert what amounts to $3,200 less in fines and the correction of an apparent typographical error with regard to restitution (substituting "$11,510" for $11,150"). Accordingly, the Director modifies FOF 91, as follows:

> "On May 15, 2007, the Department issued to the Respondents an Amended Statement of Charges, Order to Cease and Desist, and Notice of Intention to Impose Fine, Order Restitution and Collect Investigative Fee. In its Amended Statement of Charges, sought to order Zippy Cash, LLC, and Daniel Van Gasken to pay a fine of $331,600, restitution of $11,150, and investigative fees in the amount of $13,800 for alleged violations of the Check Cashers and Sellers Act. Ultimately, however, at hearing and/or in its post-hearing brief, the Division amended the relief sought to conform to its position as to the evidence at hearing, seeking for the Department to order that Zippy Cash, LLC, and Daniel Van Gasken, jointly and severally, pay a lesser fine of $328,400 and restitution of $11,510."

2.12 Modified FOF 92. Mr. Clark, on behalf of the Division, requests that FOF 92 reflect amounts ultimately sought by the Division which are at variance with the Amended Statement of Charges recited by the Administrative Law Judge. The amounts sought by the Division are the most conservative for each of the borrowers in question and conform to the amounts articulated in the Division's Post-Hearing Brief and Exhibits.[33] The Director accepts these more conservative figures as consistent with the record. Accordingly, FOF 92 is modified to reflect that the number of days of actual violations for each of the borrowers named below is as follows:

2.12.1 Johnny Felix. 122 days (instead of 126 days);

2.12.2 Joycene Noland. 195 days (instead of 207 days);

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[32] *See* Division's Post-Hearing Brief, at p. 25.

[33] *See again,* Division's Post-Hearing Brief at pp. 17-19 [Division's Methodology for Calculating Fines]; EX 1-PH, 2-PH; STIP at pp. 2-14 [Description of Specific Loan Transactions]; EX 7, 7A [Calendars Summarizing Loans].

2.12.3 Chris Johnson. 33 days (instead of 34 days);

2.12.4 Jimmie Williams. 560 days (instead of 562 days);

2.12.5 Vertis Williams. 499 days (instead of 508 days); and

2.12.6 Gregory Roberson. 267 days (instead of 272 days).

3.0 Modified Conclusions of Law

Based upon the Modified Findings of Fact, the Director now considers the Administrative Law Judge's Conclusions of Law and the arguments by each of the parties in their respective petitions for review, and hereby makes the following Modified Conclusions of Law. Except as set forth below in this *Section 3.0*, the Administrative Law Judge's Conclusions of Law are re-affirmed.

3.1 Modified COL 3. The inclusion of the word "and" after "operations" would clarify the meaning intended by the Administrative Law Judge in COL 3. Even Mr. Reiber admits that its inclusion is harmless. Accordingly, COL 3 is modified, as follows:

> "Daniel Van Gasken ('Mr. Van Gasken') is the Managing Member of Zippy Cash. Mr. Van Gasken controls Zippy Cash and is responsible for managing its operations *and* ensuring it complies with the Washington State Check Cashes and Sellers Act, Chapter 31.45 RCW. Mr. Van Gasken and two trusts owned by Mr. Van Gasken own Zippy Cash. Mr. Van Gasken is a 'controlling person' of Zippy Cash as that term is used in RCW 31.45.110(2)."

3.2 Modified COL 6. Considering the Division's request on Petition for Review for modification of COL 6:

3.2.1 "Act's" vs. "Acts". The Administrative Law Judge appears to have made a typographical error in failing to write "Act's" instead of "Acts" in the first sentence of COL 6. Not only would correction of this typographical error be harmless, it is also permitted by reason that this Final Decision and Order contains conclusions of law which are the *Director's*, not

those of the Administrative Law Judge. Accordingly, "Act's" shall replace "Acts" in the first sentence of COL 6.

3.2.2 "Endorsee" vs. "Licensee". For the same reasons set forth in *Subsection 2.1* above related to Modified FOF 3, the terms "licensee" is substituted in place of the Administrative Law Judge's incorrect usage of "endorsee."

3.2.3 The Issue of "Strict Liability". As the Director states above in *Subsection 3.2.1*, this Final Decision and Order contains *final* conclusions of law which are the *Director's*, not those of the Administrative Law Judge.[34] While consideration should be given to an administrative law judge's weighing the credibility of a witness' live testimony, an administrative law judge is merely a delegated, *initial* hearing officer acting on behalf of this Director. The administrative law judge is not the final arbiter as to either fact or law in a contested matter under the Administrative Procedures Act. This Director, sitting in review of the Initial Order, has the authority to make *final conclusions of law* at variance from those of the initial hearing officer.

Mr. Reiber appears to take the position in his Response to the Division's Petition for Review[35] that the Director must accept the Administrative Law Judge's theory that RCW 31.45.073 makes excess loans a "strict liability violation" because an alternative theory or interpretation of the statute was not argued or otherwise articulated on or prior to closing of the OAH Record on February 12, 2008. Even if this issue were not previously argued or otherwise articulated, it does not matter. The Division had the privilege of assigning error to COL 6 in its

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[34] Throughout Zippy Cash's and Van Gasken's Response to the Division Petition for Review, there appears to be underlying several of Mr. Reiber's arguments the notion that the language of the Initial Order is somehow inviolate. The Director, acting under his statutory authority, is permitted to modify the initial Findings of Fact and Conclusions of Law in his Final Decision and Order to reflect the Department's final administrative decision. This does not alter the record of the Administrative Law Judge's Initial Order. The *record* of the Initial Order is still preserved.

[35] Zippy Cash's and Van Gasken's Response to Division's Petition for Review, at pp. 13-14.

Petition for Review and to raise arguments previously unaddressed in contesting the Administrative Law Judge's legal conclusions contained in COL 6 or the remainder of the initial Conclusions of Law.

After thorough review of both parties' arguments on review concerning this issue of "strict liability" in the context of COL 6, the Director is of the decided view that RCW 31.45.073 is not a strict liability provision and that the Administrative Law Judge, in so ruling, made a fundamental error. The Director agrees with the Division that examples in which a small loan licensee may not be in violation of RCW 31.45.073 would include: (1) An instance where a $700 loan is made without knowledge that the borrower has other loans outstanding with *other licensees* under the Act; and (2) an instance where a borrower obtains a loan using a false identity, causing the aggregate amount in outstanding loans to that borrower by a *single licensee* to exceed $700. Such examples defeat the notion that RCW 31.45.073 is a strict liability provision. See further discussion, at *Subsection 3.3* below.

3.2.4 Modification of COL 6. For all of the reasons set forth in *Subsections 3.2.1 through 3.2.3* above, the Director, for purposes of making a Final Decision and Order, modifies COL 6, as follows:

> "The first question in this matter involves the meaning of the Act's maximum loan amount provisions in RCW 31.45.073(2) and (3). The Department argues that RCW 31.45.073(2) and (3) mean that it is a violation of the Act if a small loan licensee loans more than $700 in the aggregate to any borrower at any one time. The Respondents argue that, in passing RCW 31.45.073(3), the Legislature meant that it is a violation of the statute only if a small loan licensee *knowingly* loans more than $700 to any single borrower at any one time whether in one transaction or in the aggregate of multiple transactions. The Respondents argue that the statutory section is clear and unambiguous in this regard."

3.3 Rejection and Modification of "Second" COL 5[36] and COL 7 through COL 16. After reviewing the extensive arguments of both parties in the light of the Administrative Law Judge's Initial Order and the remainder of the record, this Director rejects those aspects of "Second" COL 5 and COL 7 through COL 16 which are contrary to this *Subsection 3.3* based upon the following conclusions of law:

3.3.1 Fundamental Error of Administrative Law Judge. For the reasons set forth below in *Subsections 3.3.2 and 3.3.6*, the Administrative Law Judge committed an error of law by interpreting RCW 31.45.073 to require that each customer service representative making a loan have subjective knowledge of outstanding loans already issued to the same borrower at other branches of the small loan licensee.

3.3.2 Unambiguous Requirement of RCW 31.45.073(2). RCW 31.45.073(2) unambiguously states that "[t]he maximum loan, or the outstanding principal balances ***of all small loans made by a licensee*** to a single borrower at any one time, may not exceed seven hundred dollars." [Emphasis added] The loans at issue in this case involved six borrowers over a time period of October 2004 through October 2006.[37] In each instance where Zippy Cash exceeded the aggregate $700 limitation, the violation was because Zippy Cash branches had made a small loan to a customer that already had an existing, outstanding small loan with another Zippy Cash branch. This is a clear violation of RCW 31.45.073 and of the Division's Rules, at WAC 208-630-790.

3.3.3 Purpose and Meaning of "Knowledge" Requirement in RCW 31.45.073(3). RCW 31.45.073(3) declares: "It is a violation of this chapter for ***any licensee to***

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[36] The Administrative Law Judge mistakenly numbered two conclusions of law with the designation of "5." The "second" number "5" is at pp. 22 of the Initial Order.

[37] STIP at 2-14; EX 7, 7A.

knowingly loan to a single borrower at any one time, in a single loan or in the aggregate, more than the maximum principal amount described in this section." [Emphasis added.]

This language of RCW 31.45.073(3) imposes a knowledge requirement for purposes of finding a violation for aggregated loans among *two or more distinct licensees*[38] by declaring that it applies to "any licensee," instead of using the term "a licensee" as the Legislature chose to use elsewhere in RCW 31.45.073. The Legislature added this knowledge requirement in 2003,[39] and the Division clarified the Legislature's intent by rule in 2005[40] for purposes of giving the industry notice of future examination standards.

The term "knowingly" in RCW 31.45.073(3) also relieves a small loan licensee from liability for a violation if a borrower changes or conceals his or her identity so that the small loan licensee does not know it is the same person seeking an additional loan.

This is the only reasonable understanding of RCW 31.45.073(3) that does not render RCW 31.45.073(2) meaningless and that is consistent with the consumer protection goal of the Legislature as declared in RCW 31.45.190. As the Washington Supreme Court has declared:

> "Under the rules of statutory construction, each provision of a statute should be read together with related provisions to determine the legislative intent underlying the entire statutory scheme. Reading the provisions as a unified whole maintains the integrity of the respective statutes. A more specific statute supersedes a general statute only if the two statutes pertain to the same subject matter ***and conflict to the extent they cannot be harmonized.*** The maxim of express mention and implicit exclusion should not be used to defeat legislative intent."[41]

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[38] The language of RCW 31.45.073(3) addresses a situation in which Licensee A, knowing that a customer already has an outstanding small loan with Licensee B, issues another small loan to the same customer, resulting in two loans that in the aggregate exceed $700. Conversely, if Licensee A had no knowledge of loans made by its competitor, Licensee B, there would be no violation. Note that we do not not mean separate endorsements for each branch which a single small loan licensee has, such as Zippy Cash. Rather, we mean two distinct small loan licensees, such as Zippy Cash and any one of its competitors in Washington State.

[39] Laws of 2003 c 86 s 8.

[40] See Modified FOF 17 (especially *Footnote 22*), *Subsection 2.4* above, at p. 9.

[41] *In re Estate of Kerr*, 134 Wn.2d 328, 343, 949 P.2d 810 (1998).

[Emphasis added.]

The interpretation of RCW 31.45.073(3) made above harmonizes both provisions of RCW 31.45.073. The Administrative Law Judge made no attempt to harmonize the provisions of RCW 31.45.073 and made no mention of the consumer protection goals of the Act. For all of the reasons set forth above in this *Subsection 3.3.3*, the Director concludes that the Administrative Law Judge committed an error of law and that Zippy Cash and Van Gasken violated RCW 31.45.073 by making small loans to six borrowers, the aggregate amount of which, as to each of them and outstanding at one time, exceeded $700.

3.3.4 Knowledge by Employees of Separate Branches of Same Licensee Imputed to Employer. Assuming *arguendo* that the Director did not agree with this interpretation of RCW 31.45.073(3), the Director would still conclude, in that event, that Zippy Cash and Van Gasken violated the maximum loan amount requirement of RCW 31.45.073.[42] Zippy Cash is a limited liability company organized under the Limited Liability Company Act, Chapter 25.15. RCW (hereinafter, "LLC Act"). A limited liability company is closely akin to a partnership in its internal governance, and, in the absence of relevant provisions in the LLC Act, it is therefore appropriate to look to the general principles of knowledge and notice related to "persons" covered under the Revised Uniform Partnership Act (hereinafter, "RUPA"), Chapter 25.05 RCW. A limited liability company is also included within the definition of persons set forth in RUPA, at RCW 25.05.005(10), so Zippy Cash is a "person" for purposes of the general provision governing knowledge and notice contained in RUPA, at RCW 25.05.010, which declares in part that ". . . [a] person has notice of a fact if the person . . . has received a

[42] The Director reiterates that Zippy Cash and Van Gasken have admitted that the loans at issue were made. STP at 2-12. When these loans were issued, an employee (agent) of Zippy Cash received knowledge of the information on the loan applications and had knowledge of each specific loan transaction. See EX 1-6.

notification of it . . . [or] . . . a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence." Based upon RCW 25.05.010, which the Director concludes is applicable to Washington State limited liability companies, Zippy Cash is deemed to have received notice of the facts of each specific loan transaction when a Zippy Cash employee handled each specific loan transaction. As a result, Zippy Cash knowingly violated the Act by permitting branches to issue multiple loans to customers that in the aggregate exceeded $700.

An application of RCW 25.05.010 to Zippy Cash is consistent with the common law. It is well-settled that knowledge of an agent is imputed to the principal if the agent has actual or apparent authority[43] in connection with the subject matter.[44] "[A] corporation [or limited liability company] is chargeable with constructive notice of facts acquired by an agent while acting within the scope of his [or her] authority;"[45] and "[b]ecause [it] operates through individuals, the privity and knowledge of individuals must be deemed privity and knowledge of the organization else it could always limit its liability."[46] Accordingly, because the employees at Zippy Cash branches were authorized to issue new loans, their knowledge of the specific facts concerning each loan transaction that they made on behalf of Zippy Cash is imputed to Zippy Cash.

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[43] "Apparent authority" exists where, for example, an employee holds himself or herself out to the public as having authority from his or her employer to enter into a transaction. "Apparent authority" would cover the case in which an employee exceeded the authority granted by his or her employer as contained in unwritten or written policy.

[44] See, for example, *Denaxas v. Sandstone Court of Bellevue*, LLC, 148 Wn.2d 654, 666, 63 P.2d 125 (2003).

[45] *State ex rel. Hayes Oyster Co. v. Keypoint Oyster Co.*, 64 Wn.2d 375, 386, 391 P.2d 979 (1964).

[46] *J.M.S. Farms, Inc. v. Department of Wildlife*, 68 Wash. App. 150, 158, 842 P.2d 489 (1992).

The Administrative Law Judge committed error by disregarding the concept of imputed knowledge in favor of focusing on the subjective knowledge of Zippy Cash's customer service representatives. RCW 31.45.073(3), however, states that "it is a violation for any ***licensee*** to knowingly . . . ." [Emphasis added.] It does not say it is a violation for any *employee* of a licensee to knowingly . . . ." In COL 11, 12 and 13, the Administrative Law Judge requires subjective knowledge of the employees of the licensee, rather than focusing on the imputed knowledge of the licensee. Accordingly, COL 11, 12 and 13 disregard the principles of agency law and imputed knowledge and constitute error. The Director further concludes that such legal error, if the rule, would encourage willful blindness on the part of employees concerning loans at different branches of the licensee – one of the kinds of behavior the Legislature intended to eradicate by enacting the 2003 amendments to the Act.

3.3.5 Standard of Reasonable Care. The Director also concludes that Zippy Cash is deemed to have knowledge because the evidence at the hearing demonstrated that such information could have been obtained through reasonable care.[47] For this reason, COL 15 constitutes error because the Administrative Law Judge should have concluded that Zippy Cash and Van Gasken did not exercise reasonable care and accordingly also concluded that information about excess loans was imputed to Zippy Cash and Van Gasken. The evidence showed that Zippy Cash did not exercise reasonable care to obtain information about outstanding

[47] The Administrative Law Judge conceded, in COL 15, that "[t]he Department points to Zippy Cash's ineffective, non-networked computer system as inadequate for a payday lender, and I agree. However, that fact shows only that the Respondents negligently made excess loans. . . ." It was error for the Administrative Law Judge to fail to conclude that Zippy Cash should have known of the violations based on a duty to exercise reasonable care, which it breached.

loans at its branches before issuing new loans.[48] However, if a person exercising reasonable care could have known a fact, he or she is deemed to have had knowledge of that fact.[49] Zippy Cash and Van Gasken failed to exercise reasonable care. If they had done so, they could have had knowledge of all pending loans at any given time. Where, as here, they failed to exercise reasonable care, they are deemed to have such knowledge.[50]

3.3.6 Burden on Small Loan Licensee. The Director concurs with the Division that the Act places the burden on a small loan licensee to not violate its provisions. Each licensee must ensure that any employee or person who engages in the payday loan business on behalf of the licensee have a sufficient understanding of the statutes and rules applicable to the payday loan business so as to assure compliance with them.[51]

3.4 Modified COL 19. Consistent with the Director's modified COL 6 based upon the views expressed in *Subsections 3.2* above, The Director must also reject the continued

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[48] Through the entire application process, Zippy Cash did not ask customers whether they had an outstanding loan at another Zippy Cash location. *RP at 137, ll. 8-11; FOF 19*. Michael Gocke, Zippy Cash's expert, acknowledged that it would have been reasonable to ask customer s this direct question. *RP at 384, ll. 1-3*. The Lacey location was excluded from the calling procedure due to its geographic location. RP *at 141, ll. 16-21*. Van Gasken admitted he made a calculated risk when he excluded the Lacey branch from the calling procedure. *RP at 176-177*. Van Gasken admitted that the Lacey branch was only 20 minutes from the Lakewood store, which is hardly a great distance with modern transportation along Interstate 5. *RP at 263-264*. Zippy Cash never put the calling procedure in writing, and it was not part of Zippy Cash's written instructions or training manual. *RP at 144, 181, 204; FOF 22*. It was not the policy of Zippy Cash to require its employees to document in each customer's file that phone calls were made to locations to verify no outstanding loans existed. *RP at 141, 181; FOF 22*. Cheryl Ellwein believed that the phone calls were made, but she based her testimony on having made and received phone calls and on having observed other employees making calls. *RP at 145*. She never performed any type of audit of Zippy Cash customer files to determine whether there were aggregate loans at multiple branches in excess of the $700 statutory limit. *RP at 145-146*. Ms. Ellwein was not aware of Zippy Cash ever having conducted any audit or having hired a private firm to audit to make sure that Zippy Cash was in compliance with the $700 statutory limit. *RP at 164, ll. 11-15; FOF 20*. The calling procedure was clearly not performed with reasonable care because almost all of the loans at issue in this case were from the 3 branches that were supposedly using the calling procedure. *STIP at 2-12*. Zippy Cash did not implement a software program that linked its branches to allow employees to verify whether a customer had an outstanding loan at another branch until after the Division issued its Statement of Charges in this matter. *RP at 183, ll. 18-23*. Van Gasken estimated that the software cost only $10,000 (RP at 185) and that such a software system would not have been cost prohibitive and could have been implemented sooner. *RP at 184-185*. Jason Petteway (former Regional Manager for CSI) described Zippy Cash's calling procedure as "old school" (*RP at 201*) and expressed concerns that it would not prevent a customer from obtaining multiple loans at Zippy Cash branches because every branch was not called. *RP at 102*. He expressed his concerns to Ms. Ellwein and Van Gasken soon after he started employment with CSI in 2001. *RP at 202-203*. Petteway's current employer, Ace Cash Express, has a computer system that networks its branches to ensure compliance with the statutory limit in RCW 31.45.073. *RP at 209, ll. 20-25*.

[49] *Denaxas, supra* at p. 667, citing *Noves v. Parsons*, 104 Wn. 594, 599-600, 177 P. 651 (1919).

[50] *Ibid*.

[51] WAC 208-630-740.

characterization of RCW 31.45.073 as a "strict liability violation" in COL 19. Based upon the Director's modified conclusions of law with respect to imputed knowledge,[52] the Director must reject the language in COL 19 that "[t]he evidence establishes that Zippy Cash's management and its owner were unaware that Zippy Cash charged excess fees" and further reject the use of the term "unwittingly." This would be anathema to the concept that the knowledge of its employees is imputed to Zippy Cash and to Van Gasken. Accordingly, the Director modifies COL 19, as follows:

> "The Department has proved by the preponderance of the evidence that when Zippy Cash branches made small loans to the six borrowers who already had existing small loans with Zippy Cash of $500 or more, the Respondents violated RCW 31.45.073 when they loaned a new amount and charged a 15% fee in situations where the multiple, aggregate loan amounts to the borrower exceeded $500 after the new loan was made. The evidence shows the Respondents charged excess fees 120 times because the borrowers borrowed amounts lower than the statutory maximum in one Zippy Cash branch and then borrowed additional money from one or more other Zippy Cash branches, causing the total to surpass the statutory maximum."

3.5 Modified Last Sentence of COL 22. The Director rejects the contentions of Zippy Cash and Van Gasken that restitution is unjustified and finds that restitution is altogether appropriate, as the Administrative Law Judge so concluded. However, with regard to the last sentence of COL 22, RCW 31.45.110(2)(d) provides for restitution to the borrowers, while the Division does not have a trust account or other mechanism to accept a payment on behalf of borrowers. Therefore, restitution needs to be paid directly to the borrowers. Therefore, the last sentence of COL 22 is modified as follows:

> "Respondents are liable to pay directly to the six borrowers restitution of all the fees charges to the six borrowers or indicated in the following chart." [Chart omitted.]

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[52] See *Subsections 3.3.3 through 3.3.5* above, at pp. 17-22.

3.6 Rejection and Modification of COL 23 through COL 28. After considering the record and the arguments of both parties in regard to COL 23 through COL 28, the Director rejects the general position of Zippy Cash and Van Gasken and concludes that the Administrative Law Judge should have found violations of RCW 31.45.073 as to both the excess loan requirement *and* excess fee requirement.

However, the Director has the authority and discretion to draw his own conclusions of law – by way of a final expression of policy in this case – as to what *amount* of fines are fitting and appropriate for these two separate violations of RCW 31.45.073, provided that the Director does not exceed his authority under RCW 31.45.110.[53]

The Director has considered the testimony of the Division's Enforcement Chief and understands that the violatons of Zippy Cash and Van Gasken are "very serious" and "top-tier," and, indeed, a fine of $100 per day per violation would be consistent with the evidence if the Director were inclined to so order.[54] But, while Zippy Cash did not institute a networked computer system until 2006 (after the Statement of Charges were filed), there is no indication that Zippy Cash remained defiant in terms of prospective compliance, even though Zippy Cash and Van Gasken vigorously defended against the Amended Statement of Charges. Moreover, the Director is of the view that, while Zippy Cash's and Van Gasken's violations are very serious, there is also room for some circumspection in weighing the relative seriousness of Zippy

[53] The Director clearly has the discretion under the statute – and as a final arbiter of the Department's administrative policy – to impose fines of *less than* $100 per day. RCW 31.45.110(2)(c) declares that "[t]he director . . . ***may*** impose the following sanctions against any licensee or . . . controlling person . . . : . . . (c) ***Impose a fine not to exceed one hundred dollars per day for each day's violation of this chapter***; . . . ." [Emphasis added.] The Director may consider a variety of discretionary factors in making a final decision and order, the latter of which may be at variance with the relief sought by the Division under the Amended Statement of Charges.

[54] As stated by James Brusselback (*RP at 109-110*), the violations were of a recurring nature – 120 loans transactions covering the span of 3 years. *FOF 12*. The annual percentage rates (APRs) on the examples of the loans in question demonstrate why the Legislature, in its 2003 amendments (see *Footnote 19* above), was serious about curtailing the amount of money that could be lent to payday borrowers – 391.07% APR on loan to Johnny Felix (*EX 2 at 2*); 365% APR on loan to Joycene Noland (*EX 2 at 2*), 391.07% on loan to Christopher Johnson (*EX 3 at 2*), 118.79% APR on loan to Jimmie Williams (*EX 4 at 2*), 391.07% on loan to Vertis Williams (*EX 5 at 2*), and 159.79% APR on loan to Gregory Roberson (*EX 6 at 3*).

Cash's and Van Gasken's offenses when compared with the prospect of worse offenders in the industry yet to be prosecuted. In short, though this is indeed a "top-tier" case for the Division,[55] the Director concludes[56] that the maximum of $100 per day per violation, while permissible as a matter of law, would be unwarranted as a matter of discretion. The Director therefore imposes a lesser fine of $80 per day per violation of the excess loan amount requirement of RCW 31.45.073, coupled with a lesser fine of $80 per day per violation of the excess fee requirement of RCW 31.45.073.[57]

Turning attention to the number of violations in question, the Director now considers the appropriate formula for arriving at the number of days of violation. In this regard, the Director concludes that, of the 120 loans in violation, 1,642 days of violations are appropriate both as a matter of law[58] and discretion in deciding upon fines to be imposed.

Accordingly, the Director concludes that the following fines are appropriate:

3.6.1 Fine for Excess Loan Amount Requirement. The Director concludes that the calculation for violation of the excess loan amount requirement under RCW 31.45.073 is $80 multiplied by 1,642 days, or $131,360.

3.6.2 Fine for Excess Fee Requirement. The Director concludes that the calculation for violation of the excess fee requirement under RCW 31.45.073 is $80 multiplied by 1,642 days, or $131,360.

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[55] Pursuant to RCW 31.45.190, any violation of the Act substantially affects the public interest and is an unfair and deceptive act and practice and an unfair method of competition in the conduct of trade or commerce under the Consumer Protection Act. Under RCW 31.45.200 the Director has the power and broad administrative discretion to administer and interpret the Act to ensure the protection of the public.

[56] This conclusion is without prejudice to any future exercise of the Director's discretion.

[57] This is within the "top-tier" or first quartile in serious of offenses, albeit, a lesser fine.

[58] See again, Modified FOF 90 at *Subsection 2.10* (p. 12 hereof) above, citing Division's Post Hearing Brief at pp. 17-19 and EX 1-PH and 2-PH.

3.7 Modified COL 32. In order to properly reflect the excess loan amount violation, the Director concurs with the Division that COL 32 should be and is hereby modified, as follows:

> "Because the record establishes the Respondents violated the maximum loan amount provision and the maximum fee provision of RCW 31.45.073, and because if such conduct is continued. It would constitute 'unsound financial practices' and would likely cause substantial injury to the public, the Department's Director has the authority to order the Respondent's to cease and desist from making excess loans and charging excess fees under RCW 31.45.110. Accordingly, the Respondents shall immediately cease and desist from the making of small loans in excess of the statutory maximum loan amount and statutory fee amount at any one location or multiple locations. The Respondents shall also retain all records of any small loan or loan activity and make these records immediately available for the Department's inspection upon request."

4.0 Final Order

Based upon the Modified Findings of Fact (*Section 2.0* above) and Modified Conclusions of Law (*Section 3.0* above), the Initial Order is hereby substantially modified by this Final Decision and Order. By way of the Department's Final Decision and Order, NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

4.1 Paragraphs 1 through 5 of Initial Order. Paragraphs 1 through 4 at p. 28 of the Initial Order are hereby deleted and replaced with *Subsections 4.2 through 4.6* below. Based upon *Subsection 3.6* above, Paragraph 5 at p. 28 of the Initial Order is deleted.

4.2 Violation of Maximum Loan Amount Provision. Zippy Cash, LLC, d/b/a Zippy Cash and d/b/a Advance Til Payday and Daniel M. Gasken, Managing Member and Executive Trustee, violated the maximum loan amount provision of the Washington Check Cashers and Check Sellers Act, at RCW 31.45.073(2), and therefore shall be jointly and severally liable to pay the Department a fine of One Hundred Thirty-One Thousand Three Hundred Sixty Dollars ($131,360.00) for this violation.

4.3 Violation of Maximum Fees Provision. Zippy Cash, LLC, d/b/a Zippy Cash and d/b/a Advance Til Payday and Daniel M. Gasken, Managing Member and Executive Trustee, violated the maximum fees provision of the Washington Check Cashers and Check Sellers Act, at RCW 31.45.073(3), and therefore shall be jointly and severally liable to pay the Department a fine of One Hundred Thirty-One Thousand Three Hundred Sixty Dollars ($131,360.00) for this violation.

4.4 Immediate Cease and Desist. Injunctive relief is hereby ordered as follows:

4.4.1 Maximum Loan Amount. Zippy Cash, LLC, d/b/a Zippy Cash and d/b/a Advance Til Payday and Daniel M. Gasken, Managing Member and Executive Trustee, shall immediately cease and desist from the making of small loans at any one location or at multiple locations in excess of the statutory maximum loan amount as set forth in RCW 31.45.073(2) as that provision has been interpreted by the Modified Conclusions of Law in *Section 3.0* above.

4.4.2 Maximum Fees. Zippy Cash, LLC, d/b/a Zippy Cash and d/b/a Advance Til Payday and Daniel M. Gasken, Managing Member and Executive Trustee, shall immediately cease and desist from charging fees on small loans at any one location or at multiple locations in excess of the statutory maximum fees set forth in RCW 31.45.073(3) as that provision has been interpreted by the Modified Conclusions of Law in *Section 3.0* above.

4.5 Retention and Availability of Records. Zippy Cash, LLC, shall retain all records of any small loan or loan activity and make these records immediately available to the Department's inspection upon request by the Department.

4.6 Restitution. Zippy Cash, LLC, d/b/a Zippy Cash and d/b/a Advance Til Payday and Daniel M. Gasken, Managing Member and Executive Trustee, are jointly and severally liable

to pay certain borrowers a total mount of Eleven Thousand Five Hundred Ten Dollars ($11,510.00), payable specifically as follows:

4.6.1 Johnny Felix. To Johnny Felix, in the amount of One Thousand One Hundred Twelve Dollars and Fifty Cents ($1,112.50);

4.6.2 Joycene Noland. To Joycene Noland, in the amount of One Thousand Nine Hundred Fifty Dollars ($1,950.00);

4.6.3 Chris Johnson. To Chris Johnson, in the amount of Three Hundred Twenty Two Dollars and Fifty Cents ($322.50);

4.6.4 Jimmie Williams. To Jimmie Williams, in the amount of Three Thousand Seven Hundred Ninety Dollars ($3,790.00);

4.6.5 Vertis Williams. To Vertis Williams, in the amount of Two Thousand Eight Hundred Fifty Dollars ($2,850.00);

4.6.6 Gregory Roberson. To Gregory Roberson, in the amount of One Thousand Four Hundred Eighty Five Dollars ($1,485.00); and

4.6.7 Unclaimed Property. If Zippy Cash, LLC, d/b/a Zippy Cash and d/b/a Advance Til Payday and Daniel M. Gasken, Managing Member and Executive Trustee, are unable to locate any borrower entitled to restitution as set forth above in *Subsections 4.6.1 through 4.6.6*, inclusive, such restitution, as applicable, shall be escheated to the Department of Revenue as unclaimed property.

4.7 Effectiveness and Enforcement of Final Order. Pursuant to the Administrative Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective immediately upon deposit in the United States Mail; *provided, however,* that all fines and restitution imposed herein shall be fully paid not more than thirty days from the date of this Final Decision and

Order, and, to the extent left unpaid, shall be thereafter subject to immediate execution as provided in *Subsection 4.11* below.

4.8 Reconsideration. A petition for reconsideration shall not stay the effectiveness of this order nor is a petition for reconsideration a prerequisite for seeking judicial review in this matter.

4.9 Stay of Order. The Director has determined not to consider a petition to stay the effectiveness of this Final Decision and Order. Any such requests should be made in connection with a petition for judicial review made under the Administrative Procedures Act, Chapter 34.05 RCW, including RCW 34.05.550.

4.10 Judicial Review. Zippy Cash and Van Gasken each have the right to petition the superior court for judicial review of the Department's action under the provisions of the Administrative Procedures Act, Chapter 34.05 RCW.

4.11 Non-Compliance with Final Decision and Order. If Zippy Cash and/or Van Gasken do not comply with the terms of this order, the Department may seek enforcement by the Office of Attorney General to include the collection of the fines, fees and restitution imposed herein. Failure to comply with this Final Decision and Order may also prompt action against Zippy Cash by the Department, as permitted by the Check Casher's and Check Seller's Act, Chapter 31.45 RCW, for failure to comply with a lawful order of the Department.

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4.12 Service. For purposes of filing a petition for reconsideration or a petition for judicial review, service of this Final Decision and Order is effective upon its having been deposited in the United States Mail with a declaration of service attached hereto.

Dated at Tumwater, Washington, on this 1st day of July, 2008.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By: _____

Scott Jarvis, Director

NOTICE TO THE PARTIES AND DECLARATION OF SERVICE

In accordance with RCW 34.05.470 and WAC 10-08-215, any Petition for Reconsideration of such Final Decision and Order must be filed with the Director within ten (10) days of service of the Final Decision and Order. It should be noted that Petitions for Reconsideration do not stay the effectiveness of the Final Decision and Order. Judicial Review of the Final Decision and Order is available to a party according to provisions set out in the Washington Administrative Procedure Act, RCW 34.05.570.

This is to certify that the above ORDER has been served upon the following parties on July 1, 2008, 2008, by depositing a copy of same in the United States mail, postage prepaid.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By: Susan Putzier
Susan Putzier
Executive Assistant

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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 Check Cashers and Sellers Act of Washington by: ZIPPY CASH, LLC, d/b/a ZIPPY CASH and d/b/a ADVANCE TIL PAYDAY and DANIEL M. VAN GASKEN, Managing Member and Executive Trustee, Respondents.	NO. C-06-186-07-SC02 AMENDED STATEMENT OF CHARGES, ORDER TO CEASE AND DESIST, and NOTICE OF INTENTION TO IMPOSE FINE, ORDER RESTITUTION AND COLLECT INVESTIGATION FEE

INTRODUCTION

Pursuant to RCW 31.45.110 and RCW 31.45.200, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.45 RCW, the Check Cashers and Sellers Act (Act). After having conducted an investigation pursuant to RCW 31.45.100, and based upon the facts available as of January 2, 2007, the Director issued Statement of Charges, Order to Cease and Desist, and Notice of Intention to Enter an Order to Revoke License, Impose Fine, Order Restitution, Ban from Industry, and Collect Investigation Fee C-06-186-06-SC01 (Statement of Charges SC01) on January 3, 2007. Respondents Zippy Cash, LLC and Daniel M. VanGasken were served with Statement of Charges SC01 on January 3, 2007. Respondents filed timely requests for an adjudicative hearing. Since the issuance of Statement of Charges SC01, information came to the attention of the Director that necessitated the amendment of Statement of Charges SC01. Based upon the facts available as of May 15, 2007, the Director now proceeds to amend Statement of Charges SC01 by issuing Amended Statement of Charges, Order to Cease and Desist, and Notice of Intention to Enter an Order to Impose Fine, Order Restitution, and Collect Investigation Fee C-06-186-07-SC02 (Amended Statement of Charges), which includes the following modifications: adding Factual Allegations in Paragraphs 1.3 and modifying the Grounds for Entry of Order (Section II) and Notice of Intention to Enter Order (Section V) pursuant to the modifications to the Factual Allegations in Section I. The Director institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents.

A. **Zippy Cash, LLC, d/b/a Zippy Cash and d/b/a Advance Til Payday (Zippy Cash)** was licensed by the Department on May 17, 2001, and continues to be licensed to date. Respondent Zippy Cash is currently licensed to conduct business at six (6) locations in the State of Washington. Respondent's main branch is located at 5214 100th St. SW, Tacoma, WA 98499.

B. **Daniel M. Van Gasken (Van Gasken)** is the Managing Member and Executive Trustee of Respondent Zippy Cash.

1.2 Examination. On October 16, 2006, the Department conducted an on-site examination at the following four branch locations:

14705 Union Ave. SW, Lakewood, WA 98499 (Branch One)

5214 100th St. SW, Tacoma, WA 98499 (Branch Two)

4239 Pacific Ave. SE, Lacey, WA 98503 (Branch Three)

602 N. Pearl St., Tacoma, WA 98407 (Branch Four)

1.3 Making Small Loans in Excess of Statutory Maximum Loan Amount and in Excess of Statutory Maximum Interest Rates and Fees at Multiple Zippy Cash Locations. Based on information produced by Respondent during the onsite examination discussed in paragraph 1.2, Respondents have provided borrowers with small loans with total aggregated principals exceeding the statutory maximum of seven hundred dollars ($700) at any one time. In addition, the Respondents have provided borrowers with small loans and charged interest rates and fees in excess of the statutory maximum rate of 15% for the first $500 loaned and 10% for any loan amount exceeding $500. Respondents' business plan or system does not monitor who is borrowing at any particular branch and how much is being loaned to borrowers. The following represents some of the instances discovered by the Department at four (4) of Respondents' six (6) branch locations.

A. **Borrower A**

On September 9, 2005, Borrower A obtained a $500 loan for a 15% fee from Branch Two. On September 12, 2005, with the $500 loan from Branch Two still outstanding, Borrower A obtained a $250 loan for a 15% fee from Branch One for a total aggregated principal of $750.

On September 23, 2005, Borrower A repaid the September 9th loan and obtained another $500 loan for a 15% fee from Branch Two. That same day, Borrower A repaid the September 12th loan and obtained another $250 loan for a 15% fee from Branch One for a total aggregated principal of $750.

On October 7, 2005, with the $500 loan from Branch Two still outstanding, Borrower A repaid the September 23rd loan and obtained another $250 loan for a 15% fee from Branch One. On October 8, 2005, with the $250 loan from Branch One still outstanding, Borrower A repaid the September 23rd loan and obtained another $500 loan for a 15% fee from Branch Two for a total aggregated principal of $750.

On December 2, 2005, Borrower A obtained a $400 loan for a 15% fee from Branch One. On December 16, 2005, with the $400 loan from Branch One still outstanding, Borrower A obtained a $500 loan for a 15% fee from Branch Two for a total aggregated principal of $900.

On January 31, 2006, Borrower A obtained a $500 loan for a 15% fee from Branch One. That same day, Borrower A obtained a $500 loan for a 15% fee from Branch Two for a total aggregated principal of $1,000.

On February 11, 2006, Borrower A repaid the January 31st loan and obtained another $500 loan for a 15% fee from Branch One. That same day, Borrower A repaid the January 31st loan and obtained another $500 loan for a 15% fee from Branch Two for a total aggregated principal of $1,000.

On February 24, 2006, Borrower A repaid the February 11th loan and obtained another $500 loan for a 15% fee from Branch One. That same day, Borrower A repaid the February 11th loan and obtained another $500 loan for a 15% fee from Branch Two for a total aggregated principal of $1,000.

On May 22, 2006, Borrower A obtained a $700 loan for a 15% fee from Branch One. That same day, Borrower A obtained a $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

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B. Borrower B

On October 13, 2005, Borrower B obtained a $500 loan for a 15% fee from Branch One. On October 14, 2005, with the $500 loan from Branch One still outstanding, Borrower B obtained a $400 loan for a 15% fee from Branch Two for a total aggregated principal of $900.

On October 28, 2005, Borrower B repaid the October 13th loan and obtained another $500 loan for a 15% fee from Branch One. That same day, Borrower B repaid the October 14th loan and obtained another $400 loan for a 15% fee from Branch Two for a total aggregated principal of $900.

On November 10, 2005, with the $400 loan from Branch Two still outstanding, Borrower B repaid the October 28th loan and obtained another $500 loan for a 15% fee from Branch One. On November 11, 2005, with the $500 loan from Branch One still outstanding, Borrower B repaid the October 28th loan and obtained a $400 loan for a 15% fee from Branch Two for a total aggregated principal of $900.

On November 25, 2005, Borrower B repaid the November 10th loan and obtained another $500 loan for a 15% fee from Branch One. That same day, Borrower B repaid the November 11th loan and obtained another $400 loan for a 15% fee from Branch Two for a total aggregated principal of $900.

On December 9, 2005, Borrower B repaid the November 25th loan and obtained another $500 loan for a 15% fee from Branch One. That same day, Borrower B repaid the November 25th loan and obtained another $400 loan for a 15% fee from Branch Two for a total aggregated principal of $900.

On March 17, 2006, Borrower B obtained a $500 loan for a 15% fee from Branch One. On March 23, 2006, with the $500 loan from Branch One still outstanding, Borrower B obtained a $500 loan for a 15% fee from Branch Two for a total aggregated principal of $1,000.

On March 30, 2006, Borrower B repaid the March 17th loan and obtained another $500 loan for a 15% fee from Branch One. At that time, the $500 loan obtained from Branch Two on March 23rd was still outstanding, resulting in a total aggregated principal of $1,000.

On April 7, 2006, Borrower B repaid the March 30th loan and obtained another $500 loan for a 15% fee from Branch One. At that time, the $500 loan obtained from Branch Two on March 23rd was still outstanding,

resulting in a total aggregated principal of $1,000.

On April 14, 2006, Borrower B repaid the March 23rd loan and obtained another $500 loan for a 15% fee from Branch Two. At that time, the $500 loan obtained from Branch One on April 7th was still outstanding, resulting in a total aggregated principal of $1,000.

On April 20, 2006, Borrower B repaid the April 7th loan and obtained another $500 loan for a 15% fee from Branch One. At that time, the $500 loan obtained from Branch Two on April 14th was still outstanding, resulting in a total aggregated principal of $1,000.

On April 28, 2006, Borrower B repaid the April 14th loan and obtained another $500 loan for a 15% fee from Branch Two. At that time, the $500 loan obtained from Branch One on April 20th was still outstanding, resulting in a total aggregated principal of $1,000.

On May 12, 2006, Borrower B repaid the April 20th loan and obtained another $500 loan for a 15% fee from Branch One. That same day, Borrower B repaid the April 28th loan and obtained another $500 loan for a 15% fee from Branch Two for a total aggregated principal of $1,000.

On May 26, 2006, Borrower B repaid the May 12th loan and obtained another $500 loan for a 15% fee from Branch One. That same day, Borrower B repaid the May 12th loan and obtained another $500 loan for a 15% fee from Branch Two for a total aggregated principal of $1,000.

On August 4, 2006, Borrower B obtained a $600 loan for a 15% fee from Branch One. That same day, Borrower B obtained a $500 loan for a 15% fee from Branch Two for a total aggregated principal of $1,100.

On August 18, 2006, Borrower B repaid the August 4th loan and obtained another $600 loan for a 15% fee from Branch One. That same day, Borrower B repaid the August 4th loan and obtained another $500 loan for a 15% fee from Branch Two for a total aggregated principal of $1,100.

On October 13, 2006, Borrower B obtained a $300 loan for a 15% fee from Branch One. That same day, Borrower B obtained a $600 loan for a 15% fee from Branch Two for a total aggregated principal of $900.

C. **Borrower C**

On November 11, 2005, Borrower C obtained a $550 loan for a 15% fee from Branch One. That same day, Borrower C obtained a $550 loan for a 15% fee from Branch Two for a total aggregated principal of $1,100.

On November 26, 2005, with the $550 loan from Branch One still outstanding, Borrower C repaid the November 11th loan and obtained a $550 loan for a 15% fee from Branch Two. On November 28, 2005, with the $550 loan from Branch Two still outstanding, Borrower C repaid the November 11th loan and obtained another $550 loan for a 15% fee from Branch One for a total aggregated principal of $1,100.

D. **Borrower D**

On January 3, 2005, Borrower D obtained a $500 loan for a 15% fee from Branch Two. That same day, Borrower D obtained a $500 loan for a 15% fee from Branch Three. On January 4, 2005, Borrower D obtained a $700 loan from Branch One for a total aggregated principal of $1,700.

On February 1, 2005, with the $700 loan from Branch One still outstanding, Borrower D repaid the January 3rd loan and obtained another $500 loan for a 15% fee from Branch Two. That same day, Borrower D repaid the January 3rd loan and obtained another $700 loan for a 15% fee from Branch Three. On February 2, 2005, with the $500 loan from Branch Two and the $700 loan from Branch Three still outstanding, Borrower D repaid the January 4th loan and obtained another $700 loan for a 15% fee from Branch One for a total aggregated principal of $1,900.

On March 1, 2005, with the $700 loan from Branch One still outstanding, Borrower D repaid the February 1st loan and obtained another $500 loan for a 15% fee from Branch Two. That same day, Borrower D repaid the February 1st loan and obtained another $700 loan for a 15% fee from Branch Three. On March 2, 2005, with the $500 loan from Branch Two and the $700 loan from Branch Three still outstanding, Borrower D repaid the February 2nd loan and obtained another $700 loan for a 15% fee from Branch One for a total aggregated principal of $1,900.

On April 1, 2005, with the $700 loan from Branch One still outstanding, Borrower D repaid the March 1st loan and obtained another $500 loan for a 15% fee from Branch Two. That same day, Borrower D repaid the March 1st loan and obtained another $700 loan for a 15% fee from Branch Three. On April 2, 2005, with the $500 loan from Branch Two and the $700 loan from Branch Three still outstanding, Borrower D repaid the March 2nd loan and obtained another $700 loan for a 15% fee from Branch One for a total aggregated principal of $1,900.

On May 2, 2005, with the $700 loan from Branch One still outstanding, Borrower D repaid the April 1st loan and obtained another $500 loan for a 15% fee from Branch Two. That same day, Borrower D repaid the April 1st loan and obtained another $700 loan for a 15% fee from Branch Three. On May 3, 2005, with the $500 loan from Branch Two and the $700 loan from Branch Three still outstanding, Borrower D repaid the April 2nd loan and obtained another $700 loan for a 15% fee from Branch One for a total aggregated principal of $1,900.

On June 1, 2005, with the $700 loan from Branch One still outstanding, Borrower D repaid the May 2nd loan and obtained another $700 loan for a 15% fee from Branch Three. On June 2, 2005, with the $700 loan from Branch Three still outstanding, Borrower D repaid the May 2nd loan and obtained another $500 loan for a 15% fee from Branch Two. That same day, Borrower D repaid the May 3rd loan and obtained another $700 loan for a 15% fee from Branch One for a total aggregated principal of $1,900.

On July 5, 2005, with the $700 loan from Branch One still outstanding, Borrower D repaid the June 2nd loan and obtained another $500 loan for a 15% fee from Branch Two. That same day, Borrower D repaid the June 1st loan and obtained another $700 loan for a 15% fee from Branch Three. On July 6, 2005, with the $500 loan from Branch Two and the $700 loan from Branch Three still outstanding, Borrower D repaid the June 2nd loan and obtained another $700 loan for a 15% fee from Branch One for a total aggregated principal of $1,900.

On September 1, 2005, Borrower D obtained a $700 loan for a 15% fee from Branch One. That same day, Borrower D obtained a $700 loan for a 15% fee from Branch Three. On September 2, 2005, with the $700 loan from Branch One and the $700 loan from Branch Three still outstanding, Borrower D obtained a $500 loan

for a 15% fee from Branch Two for a total aggregated principal of $1,900.

On October 3, 2005, with the $500 loan from Branch Two still outstanding, Borrower D repaid the September 1st loan and obtained another $700 loan for a 15% fee from Branch One. That same day, Borrower D repaid the September 1st loan and obtained another $700 loan for a 15% fee from Branch Three. On October 4, 2005, with the $700 loan from Branch One and the $700 loan from Branch Three still outstanding, Borrower D repaid the September 2nd loan and obtained another $500 loan for a 15% fee from Branch Two for a total aggregated principal of $1,900.

On November 1, 2005, with the $500 loan from Branch Two still outstanding, Borrower D repaid the October 3rd loan and obtained another $700 loan for a 15% fee from Branch One. That same day, Borrower D repaid the October 3rd loan and obtained another $700 loan for a 15% fee from Branch Three. On November 2, 2005, with the $700 loan from Branch One and the $700 loan from Branch Three still outstanding, Borrower D repaid the October 4th loan and obtained another $500 loan for a 15% fee from Branch Two for a total aggregated principal of $1,900.

On December 2, 2005, Borrower D repaid the November 1st loan and obtained another $700 loan for a 15% fee from Branch One. That same day, Borrower D repaid the November 2nd loan and obtained another $700 loan for a 15% fee from Branch Two, and repaid the November 1st loan and obtained another $700 loan for a 15% fee from Branch Three for a total aggregated principal of $2,100.

On January 3, 2006, Borrower D repaid the December 2nd loan and obtained another $700 loan for a 15% fee from Branch One. That same day, Borrower D repaid the December 2nd loan and obtained another $700 loan for a 15% fee from Branch Two, and repaid the December 2nd loan and obtained another $700 loan for a 15% fee from Branch Three for a total aggregated principal of $2,100.

On February 2, 2006, with the $700 loans from Branches One and Three still outstanding, Borrower D repaid the January 3rd loan and obtained another $700 loan for a 15% fee from Branch Two. On February 3, 2006, with the $700 loan from Branch Two still outstanding, Borrower D repaid the January 3rd loan and obtained another $700 loan for a 15% fee from Branch Three. On February 4, 2006, with the $700 loan from

Branch Two and the $700 loan from Branch Three still outstanding, Borrower D repaid the January 3rd loan and obtained another $700 loan for a 15% fee from Branch One, for a total aggregated principal of $2,100.

On March 1, 2006, with the $700 loan from Branch Two still outstanding, Borrower D repaid the February 4th loan and obtained another $700 loan for a 15% fee from Branch One. That same day, Borrower D repaid the February 3rd loan and obtained another $700 loan for a 15% fee from Branch Three. On March 2, 2006, with the $700 loan from Branch One and the $700 loan from Branch Three outstanding, Borrower D repaid the February 2nd loan and obtained another $700 loan for a 15% fee from Branch Two for a total aggregated principal of $2,100.

E. Borrower E

On October 25, 2004, Borrower E obtained a $700 loan for a 15% fee from Branch One. That same day, Borrower E obtained a $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

On November 24, 2004, Borrower E repaid the October 25th loan and obtained another $700 loan for a 15% fee from Branch One. That same day, Borrower E repaid the October 25th loan and obtained another $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

On December 23, 2004, Borrower E repaid the November 24th loan and obtained another $700 loan for a 15% fee from Branch One. That same day, Borrower E repaid the November 24th loan and obtained another $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

On January 25, 2005, Borrower E repaid the December 23rd loan and obtained another $700 loan for a 15% fee from Branch One. That same day, Borrower E repaid the December 23rd loan and obtained another $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

On February 25, 2005, Borrower E repaid the January 25th loan and obtained another $700 loan for a 15% fee from Branch One. That same day, Borrower E repaid the January 25th loan and obtained another $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

On March 25, 2005, Borrower E repaid the February 25th loan and obtained another $700 loan for a 15% fee from Branch One. That same day, Borrower E repaid the February 25th loan and obtained another $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

On May 27, 2005, Borrower E obtained a $700 loan for a 15% fee from Branch One. That same day, Borrower E obtained a $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

On August 23, 2005, Borrower E obtained a $700 loan for a 15% fee from Branch Two. On August 27, 2005, with the $700 loan from Branch Two still outstanding, Borrower E obtained a $700 loan for a 15% fee from Branch One for a total aggregated principal of $1,400.

On September 26, 2005, Borrower E repaid the August 27th loan and obtained another $700 loan for a 15% fee from Branch One. That same day, Borrower E repaid the August 23rd loan and obtained another $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

On October 25, 2005, with the $700 loan from Branch Two still outstanding, Borrower E repaid the September 26th loan and obtained another $700 loan for a 15% fee from Branch One. On October 26, 2005, with the $700 loan from Branch One still outstanding, Borrower E repaid the September 26th loan and obtained another $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

On November 25, 2005, with the $700 loan from Branch One still outstanding, Borrower E repaid the October 26th loan and obtained another $700 loan for a 15% fee from Branch Two. On November 26, 2005, with the $700 loan from Branch Two still outstanding, Borrower E repaid the October 25th loan and obtained another $700 loan for a 15% fee from Branch One for a total aggregated principal of $1,400.

On December 23, 2005, with the $700 loan from Branch Two still outstanding, Borrower E repaid the November 26th loan and obtained another $700 loan for a 15% fee from Branch One. On December 24, 2005, with the $700 loan from Branch One still outstanding, Borrower E repaid the November 25th loan and obtained another $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

On January 25, 2006, with the $700 loan from Branch Two still outstanding, Borrower E repaid the December 23rd loan and obtained another $700 loan for a 15% fee from Branch One. On January 26, 2006,

with the $700 loan from Branch One still outstanding, Borrower E repaid the December 24th loan and obtained another $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

On February 24, 2006, with the $700 loan from Branch One still outstanding, Borrower E repaid the January 26th loan and obtained another $700 loan for a 15% fee from Branch Two. On February 25, 2006, with the $700 loan from Branch Two still outstanding, Borrower E repaid the January 25th loan and obtained another $700 loan for a 15% fee from Branch One for a total aggregated principal of $1,400.

On March 27, 2006, Borrower E repaid the February 25th loan and obtained another $700 loan for a 15% fee from Branch One. That same day, Borrower E repaid the February 24th loan and obtained another $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

F. Borrower F

On May 3, 2005, Borrower F obtained a $700 loan for a 15% fee from Branch Two. On May 5, 2005, with the $700 loan from Branch Two still outstanding, Borrower F obtained a $700 loan for a 15% fee from Branch One for an aggregated principal of $1,400.

On June 1, 2005, with the $700 loan from Branch Two still outstanding, Borrower F repaid the May 5th loan and obtained another $700 loan for a 15% fee from Branch One. On June 2, 2005, with the $700 loan from Branch One still outstanding, Borrower F repaid the May 3rd loan and obtained another $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

On July 1, 2005, with the $700 loan from Branch Two still outstanding, Borrower F repaid the June 1st loan and obtained another $700 loan for a 15% fee from Branch One. On July 5, 2005, with the $700 loan from Branch One still outstanding, Borrower F repaid the June 2nd loan and obtained a $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

On July 30, 2005, Borrower F repaid the July 1st loan and obtained another $700 loan for a 15% fee from Branch One. That same day, Borrower F repaid the July 5th loan and obtained another $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

On September 2, 2005, Borrower F repaid the July 30th loan and obtained another $700 loan for a 15% fee from Branch One. That same day, Borrower F repaid the July 30th loan and obtained another $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

On September 30, 2005, with the $700 loan from Branch Two still outstanding, Borrower F repaid the September 2nd loan and obtained another $700 loan for a 15% fee from Branch One. On October 1, 2005, with the $700 loan from Branch One still outstanding, Borrower F repaid the September 2nd loan and obtained another $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

On November 7, 2005, Borrower F repaid the September 30th loan and obtained another $700 loan for a 15% fee from Branch One. That same day, Borrower F repaid the October 1st loan and obtained another $700 loan for a 15% fee from Branch Two for a total aggregated principal of $1,400.

On December 5, 2005, with the $700 loan from Branch One still outstanding, Borrower F repaid the November 7th loan and obtained another $700 loan for a 15% fee from Branch Two. On December 6, 2005, with the $700 loan from Branch Two still outstanding, Borrower F repaid the November 7th loan and obtained another $700 loan for a 15% fee from Branch One for a total aggregated principal of $1,400.

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

II. GROUNDS FOR ENTRY OF ORDER

2.1 Statutory Maximum Principal Amount of Small Loan. Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 31.45.073(2)(3) for making small loans to any single borrower with aggregated principal loan amounts exceeding seven hundred dollars ($700.00) at any one time.

2.2 Statutory Maximum Interest Charges and Fees. Based upon Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 31.45.073(3) for charging interest and/or fees in excess of the permissible statutory amount.

III. AUTHORITY TO IMPOSE SANCTIONS

3.1 Authority to Issue Cease and Desist Order. Pursuant to RCW 31.45.110, the Director is authorized to issue a cease and desist order if a licensee is violating or has violated the Act including rules and orders; commits any act or engages in conduct that demonstrates incompetence or untrustworthiness or is a source of injury or loss to the public; or knowingly commits or is a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person relying upon the word, representation, or conduct acts to his or her injury or damage.

3.2 Authority to Impose Fine. Pursuant to RCW 31.45.110, the Director may impose a fine, not to exceed one hundred dollars per day for each day's violation of the Act, on any licensee or applicant, or any director, officer, sole proprietor, partner, controlling person, or employee of a licensee or applicant, that is violating or has violated the Act including rules and orders; commits any act or engages in conduct that demonstrates incompetence or untrustworthiness or is a source of injury or loss to the public; or knowingly commits or is a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person relying upon the word, representation, or conduct acts to his or her injury or damage.

3.3 Authority to Order Restitution. Pursuant to RCW 31.45.110(2)(d), the Director may order restitution to borrowers damaged by the licensee's violation of this chapter.

3.4 Authority to Collect Investigation Fee. Pursuant to RCW 31.45.050(1), RCW 31.45.100, WAC 208-630-015, WAC 208-630-020, WAC 208-630-023 and WAC 208-630-02303, the Director shall collect from the licensee the actual cost of an examination or investigation of the business, books, accounts, records, files, or other information of a licensee or person who the Director has reason to believe is engaging in the business governed by the Act. The investigation charge will be calculated at the rate of sixty-nine dollars and one cent ($69.01) per hour that each staff person devoted to the investigation, plus actual expenses.

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IV. ORDER TO CEASE AND DESIST

Based on the above Factual Findings and Grounds for Entry of Order and pursuant to RCW 31.45.110(1)(b), RCW 31.45.110(1)(c), and RCW 31.45.110(2)(b), the Director determines the acts and conduct of Respondents Zippy Cash, LLC, d/b/a Zippy Cash and d/b/a Advance Til Payday, and Daniel M. Van Gasken, and the continuation of such conduct, is likely to cause substantial injury to the public. Therefore, the Director ORDERS that:

4.1 Respondents Zippy Cash, LLC, d/b/a Zippy Cash and d/b/a Advance Til Payday, and Daniel M. Van Gasken are to immediately cease and desist from the making of small loans in excess of the statutory maximum at any one location or from multiple locations.

4.2 Zippy Cash, LLC, d/b/a Zippy Cash and d/b/a Advance Til Payday, and Daniel M. Van Gasken are to retain all records of any small loan or loan activity and make these records immediately available for the Department's inspection.

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V. NOTICE OF INTENTION TO ENTER ORDER

Respondents' violations of the provisions of chapter 31.45 RCW and chapter 208-630 WAC, as set forth in the above Factual Allegations and Grounds for Entry of Order, constitute a basis for the entry of an Order under RCW 31.45.110 and RCW 31.45.200. Therefore, it is the Director's intention to ORDER that:

5.1 Respondents Zippy Cash, LLC, d/b/a Zippy Cash and d/b/a Advance Til Payday and Daniel M. Van Gasken jointly and severally pay a fine of $399,600.00 for the following:

A. $199,800.00 for making small loans in excess of the statutory maximum in violation of RCW 31.45.073(2) calculated at $100 per day per violation as follows:

a. Making nine (9) small loans to Borrower A in excess of the statutory maximum in violation of RCW 31.45.073(2), calculated at $100 per day for 114 days ($11,400).
b. Making seventeen (17) small loans to Borrower B in excess of the statutory maximum in violation of RCW 31.45.073(2), calculated at $100 per day for 216 days ($21,600).
c. Making three (3) small loans to Borrower C in excess of the statutory maximum in violation of RCW 31.45.073(2), calculated at $100 per day for 34 days ($3,400).
d. Making thirty-eight (38) small loans to Borrower D in excess of the statutory maximum in violation of RCW 31.45.073(2), calculated at $100 per day for 894 days ($89,400).
e. Making twenty (20) small loans to Borrower E in excess of the statutory maximum in violation of RCW 31.45.073(2), calculated at $100 per day for 479 days ($47,900).
f. Making twelve (12) small loans to Borrower F in excess of the statutory maximum in violation of RCW 31.45.073(2), calculated at $100 per day for 261 days ($26,100).

B. $199,800.00 for charging interest or fees in excess of the statutory maximum in violation of RCW 31.45.073(3) calculated at $100 per day per violation as follows:

a. Making nine (9) small loans to Borrower A in excess of the statutory maximum in violation of RCW 31.45.073(2), calculated at $100 per day for 114 days ($11,400).
b. Making seventeen (17) small loans to Borrower B in excess of the statutory maximum in violation of RCW 31.45.073(2), calculated at $100 per day for 216 days ($21,600).
c. Making three (3) small loans to Borrower C in excess of the statutory maximum in violation of RCW 31.45.073(2), calculated at $100 per day for 34 days ($3,400).
d. Making thirty-eight (38) small loans to Borrower D in excess of the statutory maximum in violation of RCW 31.45.073(2), calculated at $100 per day for 894 days ($89,400).
e. Making twenty (20) small loans to Borrower E in excess of the statutory maximum in violation of RCW 31.45.073(2), calculated at $100 per day for 479 days ($47,900).
f. Making twelve (12) small loans to Borrower F in excess of the statutory maximum in violation of RCW 31.45.073(2), calculated at $100 per day for 261 days ($26,100).

5.2 Respondents Zippy Cash, LLC, d/b/a Zippy Cash and d/b/a Advance Til Payday and Daniel M. Van Gasken shall jointly and severally pay restitution to all affected borrowers in an amount to be determined at hearing (whether or not such borrowers are specifically referred to in the Statement of Charges) for any interest or fees collected on any small loans made in excess of the statutory maximum loan amount or the maximum statutory interest amount from September 2004 through the date of this order. At a minimum, the Respondents shall jointly

and severally pay restitution to all affected borrowers specifically referred to within this Statement of Charges, including but not limited to, at least $327.50 collected from Borrower A, at least $675 collected from Borrower B, at least $120 collected from Borrower C, at least $2,630 collected from Borrower D, at least $1,520 collected from Borrower E, and at least $747.50 collected from Borrower F, as discussed in paragraph 1.3.

5.3 Respondent Zippy Cash, LLC, d/b/a Zippy Cash and d/b/a Advance Til Payday pay an investigation fee in the amount of $13,802.00, calculated at $69.01 per hour for the one hundred twenty five and one quarter (200.00) staff hours devoted to the investigation.

VI. AUTHORITY AND PROCEDURE

This Statement of Charges, Order to Cease and Desist, and Notice of Intention to Enter an Order to Impose Fine, Order Restitution and Collect Investigation Fee (Statement of Charges) is entered pursuant to the provisions of RCW 31.45.110 and RCW 31.45.200, 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 15th day of May, 2007.

Deborah Bortner

DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

WILLIAM J. HALSTEAD
Financial Legal Examiner

Approved by:

Jana R. Brusselback

JAMES R. BRUSSELBACK
Enforcement Chief

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES

IN THE MATTER OF DETERMINING: Whether there has been a violation of the Check Cashers and Sellers Act of Washington by:	C-06-186-07-SC02
ZIPPY CASH, LLC, d/b/a ZIPPY CASH and d/b/a ADVANCE TIL PAYDAY and DANIEL M. VAN GASKEN, Managing Member and Executive Trustee, Respondents.	NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING

THE STATE OF WASHINGTON TO:

Zippy Cash, LLC, d/b/a Zippy Cash and
d/b/a Advance Til Payday
Daniel M. Van Gasken

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.

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

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

Department of Financial Institutions, Division of Consumer Services
Attn: James R. Brusselback
PO Box 41200
Olympia, Washington 98504-1200

Dated this 15th day of May, 2007.

Deborah Bortner

DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions