

Terms Completed

ORDER SUMMARY – Case Number: C-09-178

Name(s): Vertex Financial Group, Inc.
Michael T. Waitt

Order Number: C-09-178-10-CO01

Effective Date: March 9, 2011

License Number: DFI: 20772 [NMLS: 3051] DFI: 22185 [NMLS: MLO-5041]
Or NMLS Identifier [U/L] (Revoked, suspended, stayed, application denied or withdrawn)
If applicable, you must specifically note the ending dates of terms.

License Effect: n/a

Not Apply Until: n/a

Not Eligible Until:

Prohibition/Ban Until: n/a

Investigation Costs	\$1,440	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date
Fine	\$60,000	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$11,436.23	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date
Judgment	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Satisfaction of Judgment Filed?		<input type="checkbox"/> Y <input type="checkbox"/> N		
No. of Victims:				

Comments:

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FEB 23 2011

ENFORCEMENT UNIT
DIVISION OF CONSUMER SERVICES
DEPT OF FINANCIAL INSTITUTIONS

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES

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

NO. C-09-178-10-CO01

VERTEX FINANCIAL GROUP, INC., and
MICHAEL T. WAITT, President, Owner, and
Designated Broker,

CONSENT ORDER

Respondents.

COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Deborah Bortner, Division Director, Division of Consumer Services, and Vertex Financial Group, Inc. (Respondent Vertex), and Michael T. Waitt, President, Owner, and Designated Broker (Respondent Waitt), and finding that the issues raised in the above-captioned matter may be economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter 19.146 of the Revised Code of Washington (RCW) and RCW 34.05.060 of the Administrative Procedure Act based on the following:

AGREEMENT AND ORDER

The Department of Financial Institutions, Division of Consumer Services (Department) and Respondents have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-09-178-09-SC01 (Statement of Charges), entered October 30, 2009, (copy attached hereto). Pursuant to chapter 19.146 RCW, the Mortgage Broker Practices Act (Act) and RCW 34.05.060 of the Administrative Procedure Act, Respondents hereby agree to the Department's entry of this Consent Order and further agree that the issues raised in the above-captioned matter may be economically and efficiently settled by entry of

CONSENT ORDER
C-09-178-10-CO01
Vertex Financial Group, Inc. and
Michael T. Waitt

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

1 this Consent Order. The parties intend this Consent Order to fully resolve the Statement of Charges.

2 Respondents are agreeing not to contest the Statement of Charges in consideration of the terms of this
3 Consent Order.

4 Based upon the foregoing:

5 A. **Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter of the
6 activities discussed herein.

7 B. **Waiver of Hearing.** It is AGREED that Respondents have been informed of the right to a
8 hearing before an administrative law judge, and that they hereby waive their right to a hearing and any and all
9 administrative and judicial review of the issues raised in this matter, or of the resolution reached herein.
10 Accordingly, Respondents, by the authorized signatures below, hereby withdraw their appeal.

11 C. **No Admission of Liability.** It is AGREED that Respondents do not admit to any wrongdoing by
12 entry of this Consent Order.

13 D. **Fines.** It is AGREED that Respondent Vertex shall pay to the Department a fine of \$50,000 in
14 the form of a cashier's check made payable to the "Washington State Treasurer" upon entry of this Consent
15 Order. It is further AGREED that Respondent Waitt shall pay to the Department a fine of \$10,000 in the
16 form of a cashier's check made payable to the "Washington State Treasurer" upon entry of this Consent
17 Order.
18

19 E. **Investigation Fee.** It is AGREED that Respondents shall pay to the Department an investigation
20 fee of \$1,440 in the form of a cashier's check made payable to the "Washington State Treasurer" upon entry
21 of this Consent Order. Respondents may pay the fines and investigation fee in the form of a single cashier's
22 check made payable to the "Washington State Treasurer."

23 F. **Restitution.** It is AGREED that Respondents have paid restitution in the aggregate amount of
24 \$11,436.23 to those borrowers more specifically set forth in Appendix A of the Statement of Charges, and
25

1 have provided the Department with proof of all payments in the form of copies of the front and back of
2 cancelled restitution checks. In the event that a borrower could not be found or a restitution check was not
3 cashed within 60 days of issuance, Respondents have submitted the relevant funds to the Department of
4 Revenue as unclaimed property and have provided the Department with a copy of any checks to the
5 Department of Revenue and a copy of any unclaimed property forms submitted to the Department of
6 Revenue.

7 **G. Authority to Execute Order.** It is AGREED that the undersigned Respondents have represented
8 and warranted that they have the full power and right to execute this Consent Order on behalf of the parties
9 represented.

10 **H. Non-Compliance with Order.** It is AGREED that Respondents understand that failure to
11 abide by the terms and conditions of this Consent Order may result in further legal action by the Director.
12 In the event of such legal action, Respondents may be responsible to reimburse the Director for the cost
13 incurred in pursuing such action, including but not limited to, attorney fees.

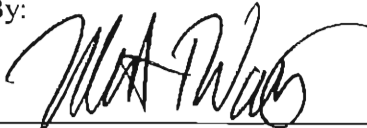
14 **I. Voluntarily Entered.** It is AGREED that the undersigned Respondents have voluntarily entered
15 into this Consent Order, which is effective when signed by the Director's designee.

16 **J. Completely Read, Understood, and Agreed.** It is AGREED that Respondents have read this
17 Consent Order in its entirety and fully understand and agree to all of the same.
18

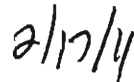
19 **RESPONDENTS:**

20 **Vertex Financial Group, Inc.**

21 By:

22 

23 Michael T. Waitt
24 President

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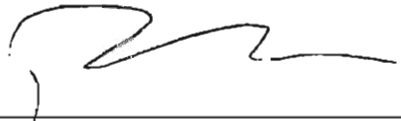
Date

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Michael T. Waitt
Individually

2/17/11
Date



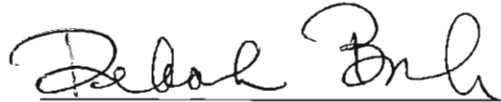
Douglas L. Davies, WSBA #16750
Attorney at Law
Attorney for Respondents

2/22/11
Date

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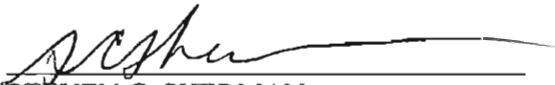
THIS ORDER ENTERED THIS 9th DAY OF March, 2011. ^{ps}





DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:



STEVEN C. SHERMAN
Financial Legal Examiner

Approved by:



JAMES R. BRUSSELBACK
Enforcement Chief

1 **RESTITUTION**

2

3 Borrower	Loan Number	Amount
4 R.A.	07-13311-WA	\$425.00
5 B.A.	07-13254-WA	\$425.00
6 J.M.B.	07-12268-WA	\$500.00
7 J.T.B.	07-13872-WA	\$425.00
8 J.B.	07-13831-WA	\$490.90
9 W.B.	07-12879-WA	\$500.00
10 W.B.	07-12880-WA	\$150.00
11 I.C.	06-11540-WA	\$440.00
12 K.D.	07-13768-WA	\$425.00
13 K.F.	08-14158-WA	\$425.00
14 E.H.	07-13595-WA	\$440.00
15 E.J.	07-13922-WA	\$425.00
16 T.J.	07-12584-WA	\$425.00
17 S.K.	08-14834-WA	\$880.00
18 M.M.	08-13996-WA	\$425.00
19 K.N.	08-14942-WA	\$500.00
20 M.O.	07-12985-WA	\$425.33
21 G.S.	08-13948-WA	\$425.00
22 D.S.	08-13993-WA	\$425.00
23 A.T.	08-14453-WA	\$425.00

1	H.P.W.	08-14007-WA	\$425.00
2	H.P.W.	08-15015-WA	\$525.00
3	M.W.	08-14833-WA	\$425.00
4	B.Z.	08-15218-WA	\$650.00
5	A.Z.	07-13642-WA	\$425.00
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7		TOTAL	\$11,436.23

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

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

VERTEX FINANCIAL GROUP, INC., and
MICHAEL T. WAITT, President, Owner, and
Designated Broker,

Respondents.

NO. C-09-178-09-SC01

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

INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act)¹. After having conducted an investigation pursuant to RCW 19.146.235, and based upon the facts available as of the date of these charges, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents.

A. Vertex Financial Group, Inc., (Respondent Vertex) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a mortgage

¹ RCW 19.146 (2006)

1 broker on June 2, 2000, and has continued to be licensed to date. Respondent Vertex is licensed to
2 conduct the business of a mortgage broker at its main office located at 640 Plaza Drive, Suite 120,
3 Highlands Ranch, Colorado, and at four branches located in Arizona, Idaho, Illinois, and Oregon.

4 **B. Michael T. Waitt (Respondent Waitt)** is known to be President, part owner, and
5 Designated Broker of Respondent Vertex. Respondent Waitt was licensed as designated broker by the
6 Department on or about June 2, 2000, and has continued as designated broker to date.

7 **1.2 Examination.** From May 11, 2009, through May 15, 2009, the Department examined
8 Respondents' books and records. The Department reviewed 40 residential loan files and Respondent
9 Vertex's advertising for the 25 month period ending March 31, 2009.

10
11 **1.3 Occupancy Misrepresentation.**

12 **A.** On or about March 31, 2007, Respondent Waitt prepared a residential mortgage loan
13 application for borrower J.C. to refinance the borrower's primary residence in Bothell, Washington.
14 On or about April 6, 2007, Respondent Waitt prepared another residential mortgage loan application
15 for the same borrower to purchase a primary residence in Redmond, Washington.² The purchase loan
16 application was submitted to a lender on or about April 26, 2007, and closed as an owner-occupied
17 loan on or about May 1, 2007.

18 Accompanying the loan submission for the purchase loan was a rental agreement for the
19 borrower's Bothell residence which stated that the rental period began May 5, 2007. In spite of this,
20 on or about May 9, 2007, the loan for the Bothell property was submitted as an owner-occupied
21 refinance to a different lender than for the purchase loan. The refinance loan was approved as an
22 owner-occupied loan and closed on or about May 23, 2007.

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² Borrower J.C. was a co-borrower on this loan.

1 **B.** On or about May 30, 2008, Respondents' Loan Originator Dan O'Neill prepared a
2 residential mortgage loan application for borrower K.V. to purchase a primary residence located in
3 Tacoma, Washington. The application was submitted to a lender, which subsequently approved the
4 loan on or about June 13, 2008, based in part upon the representation that the property would be the
5 borrower's primary residence. The loan closed as an owner-occupied loan on or about June 24, 2008.

6 On or about June 3, 2008, Loan Originator O'Neill prepared a residential mortgage loan
7 application for borrower K.V. to refinance the borrower's residence in Olympia, Washington, as the
8 borrower's primary residence. On June 5, 2008, however, the borrower entered into a Residential
9 Lease/Rental Agreement to lease the property to a third party beginning July 1, 2008. A copy of this
10 agreement was provided to Respondent Vertex on or about June 6, 2008. In spite of this, Respondent
11 Vertex continued to process the loan as owner-occupied and subsequently obtained a loan from a
12 different lender than for the Tacoma property lender based in part upon Respondent Vertex's
13 representation that the Olympia property would be owner-occupied.
14

15 **1.4 Failure to Disclose Source of Current Loan Information in Advertisements.** Respondent
16 Vertex used at least 25 different versions of a mailed flyer advertising its refinance services. Each
17 flyer contained specific information about the borrowers existing loan, however, Respondent Vertex
18 did not state in the flyer the source of the borrower's information. Additionally, Respondent Vertex
19 did not include a statement in the flyers that Respondent Vertex was not affiliated with the borrower's
20 current lender.
21

22 **1.5 Failure to Disclose Changes to Terms and Conditions of the Loan.** In two loans,
23 Respondent Vertex did not deliver to the borrower at least three business days prior to closing a
24 subsequent disclosure identifying changes to the loan's terms and conditions. In the alternative,
25 Respondent Vertex did not maintain in the two loan files any evidence that it had delivered to the

1 borrower at least three business days prior to closing a subsequent disclosure identifying changes to
2 the loan's terms and conditions.

3 **1.6 Failure to Deliver Variable Rate Program Disclosure.** In nine loans, Respondent Vertex did
4 not provide to the borrower a disclosure containing the circumstances under which the rate may
5 increase, any limitations on the increase, the effects of the increase, and an example of the payment
6 terms resulting from an increase. In the alternative, Respondent Vertex did not maintain in the nine
7 loan files any evidence that the Variable Rate Program Disclosure had been provided to the borrower.

8 **1.7 Failure to Maintain Funds from Borrower for Payment of Third-Party Providers in**
9 **Trust.** In 20 loans, Respondent Vertex received payment at closing for third-party services but did not
10 deposit those funds into Respondent Vertex's trust account.

11 **1.8 Failure to Specify Fees Inuring to Respondent Vertex's Benefit.** In 31 loans, Respondent
12 Vertex did not specify on the initial Good Faith Estimate, within three business days of receiving a
13 borrower's application, all fees which would be paid to Respondent Vertex's benefit.

14 **1.9 Failure to Properly Disclose a Yield Spread Premium.** In 13 loans, Respondent Vertex
15 disclosed the Yield Spread Premium as a percentage range instead of a dollar amount or a dollar
16 amount range.

17 **1.10 Failure to Include Loan Originator License Number on Residential Mortgage Loan**
18 **Applications.** In 21 loans, Respondent Vertex did not include the loan originator's license number
19 immediately following the loan originator's name on the residential mortgage loan application.

20 **1.11 On-Going Investigation.** The Department's investigation into the alleged violations of the
21 Act by Respondents continues to date.
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II. GROUNDS FOR ENTRY OF ORDER

2.1 Occupancy Misrepresentation. Based on the Factual Allegations set forth in Section I above, Respondents Vertex and Waitt are in apparent violation of RCW 19.146.0201(1), (2), and (3) and WAC 208-660-500(3)(a), (b), and (c) for misstating occupancy information on loan applications.

2.2 Requirement to Disclose Source of Current Loan Information in Advertisements. Based on the Factual Allegations set forth in Section I above, Respondent Vertex is in apparent violation of RCW 19.146.0201(2), WAC 208-660-440(10), and WAC 208-660-500(3)(b) for failing to disclose the source of borrower's current loan information in advertisements.

2.3 Requirement to Disclose Changes to the Terms and Conditions of the Loan. Based on the Factual Allegations set forth in Section I above, Respondent Vertex is in apparent violation of RCW 19.146.0201(2) and (7), WAC 208-660-430(19), and WAC 208-660-500(3)(b) for failing to disclose to the borrower within three business days prior to closing any changes to the terms and conditions of the loan.

2.4 Requirement to Deliver Variable Rate Program Disclosure. Based on the Factual Allegations set forth in Section I above, Respondent Vertex is in apparent violation of RCW 19.146.0201(2), RCW 19.146.030(2)(a), and WAC 208-660-500(3)(b) for failing to deliver to the borrower a variable rate program disclosure.

2.5 Requirement to Maintain Funds for Payment of Third-Party Providers in Trust. Based on the Factual Allegations set forth in Section I above, Respondent Vertex is in apparent violation of RCW 19.146.0201(2), RCW 19.146.050, WAC 208-660-410(3), and WAC 208-660-500(3)(b) for failing to deposit trust funds into Respondent's trust account.

2.6 Requirement to Specify Fees Inuring to Respondent Vertex's Benefit. Based on the Factual Allegations set forth in Section I above, Respondent Vertex is in apparent violation of RCW

1 19.146.0201(2), (6), (11), (13), and (15), RCW 19.146.030(1), WAC 208-660-430(1) and (2), and
2 WAC 208-660-500(3)(b), (s), and (w) for failing to disclose all fees which inure to the benefit of the
3 mortgage broker within three business days of receiving a borrower's application.

4 **2.7 Requirement to Properly Disclose the Yield Spread Premium.** Based on the Factual
5 Allegations set forth in Section I above, Respondent Vertex is in apparent violation of RCW
6 19.146.0201(2), WAC 208-660-430(5)(a), and WAC 208-660-500(3)(b) for not properly disclosing
7 the Yield Spread Premium.

8 **2.8 Requirement to Include Loan Originator License Number on Residential Mortgage Loan**
9 **Applications.** Based on the Factual Allegations set forth in Section I above, Respondent Vertex is in
10 apparent violation of RCW 19.146.0201(2) and WAC 208-660-350(26), and WAC 208-660-500(3)(b)
11 for failing to ensure that loan originator's license numbers are included on loan applications.

12 **III. AUTHORITY TO IMPOSE SANCTIONS**

13 **3.1 Responsibility for Conduct of Loan Originators.** Pursuant to RCW 19.146.245 and WAC
14 208-660-155(3), a licensed mortgage broker is liable for any conduct violating the Act by the
15 designated broker or a loan originator employed or engaged by the licensed mortgage broker.
16 Pursuant to RCW 19.146.200(4)(a) and (b), a designated broker or principal of a licensed mortgage
17 broker is liable for an employee's violations of the Act committed after January 1, 2007, if the
18 designated broker or principal directs or instructs the conduct, or with knowledge of the specific
19 conduct approves or allows the conduct, or knows or by the exercise of reasonable care and inquiry
20 should have known of the conduct at a time when its consequences can be avoided or mitigated and
21 fails to take reasonable remedial action.

22 **3.2 Authority to Revoke or Suspend License.** Pursuant to RCW 19.146.220(2)(e), the Director
23 may revoke or suspend a license for any violation of the Act committed on or after January 1, 2007.
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1 **3.3 Authority to Prohibit from the Industry.** Pursuant to RCW 19.146.220(5), the Director may
2 issue orders removing from office or prohibiting from participation in the conduct of the affairs of a
3 licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed
4 mortgage broker or any person subject to licensing under the Act for any violation of RCW
5 19.146.0201(1) through (9) or (13) or RCW 19.146.030 through RCW 19.146.080 committed on or
6 after January 1, 2007.

7 **3.4 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2)(e), the Director may impose a fine
8 for any violation of the Act committed on or after January 1, 2007.

9 **3.5 Authority to Order Restitution.** Pursuant to RCW 19.146.220(e), the Director may issue orders
10 directing a licensee or other person subject to the Act to pay restitution for any violation of the Act
11 committed on or after January 1, 2007.

12 **3.6 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2) and WAC 208-660-
13 550, the Department may collect the costs of investigation. The investigation charge will be calculated at
14 the rate of \$48 per hour that each examiner devoted to the investigation.

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IV. NOTICE OF INTENTION TO ENTER ORDER

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

- 4.1 Respondent Vertex Financial Group, Inc.'s license to conduct the business of a mortgage broker be revoked or suspended;
- 4.2 Respondent Michael T. Waitt's license to conduct business as a loan originator and designated broker be revoked or suspended;
- 4.3 Respondents Vertex Financial Group, Inc., and Michael T. Waitt be prohibited from participation in the conduct of the affairs of any mortgage broker subject to licensure by the Director, in any manner, for a period of five years; and
- 4.4 Respondent Vertex Financial Group, Inc., pay a fine which as of the date of these charges totals \$100,000;
- 4.5 Respondent Michael T. Waitt pay a fine which as of the date of these charges totals \$10,000;
- 4.6 Respondent Vertex Financial Group, Inc., pay restitution in the amount of \$11,436.23 to those borrowers more specifically set forth in the attached Restitution Schedule, incorporated herein by reference;
- 4.7 Respondent Vertex Financial Group, Inc., pay an investigation fee which as of the date of these charges totals \$1,440, calculated at \$48 per hour for the 30 examiner hours devoted to the investigation to date; and
- 4.8 Respondent Vertex Financial Group, Inc., maintain records in compliance with the Act and provide the Department with the location of the books, records and other information relating to Respondent Vertex Financial Group, Inc.'s mortgage broker business, and the name, address, and telephone number of the individual responsible for maintenance of such records in compliance with the Act.

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1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intention to Enter an Order to Revoke or Suspend
3 Licenses, Prohibit from Industry, Impose Fines, Order Restitution, and Collect Investigation Fee
4 (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221,
5 RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The
6 Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in
7 the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING
8 accompanying this Statement of Charges.
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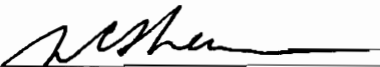
10 Dated this 30th day of October, 2009.
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14 DEBORAH BORTNER
15 Director
16 Division of Consumer Services
17 Department of Financial Institutions

18 Presented by:

19 

20 STEVEN C. SHERMAN
21 Financial Legal Examiner

22 Approved by:

23 

24 JAMES R. BRUSSELBACK
25 Enforcement Chief

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Amount

\$425.00

\$425.00

\$500.00

\$425.00

\$490.90

\$500.00

\$150.00

\$440.00

\$425.00

\$425.00

\$440.00

\$425.00

\$425.00

\$880.00

\$425.00

\$500.00

\$425.33

\$425.00

\$425.00

\$425.00

DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8795

Appendix A—Restitution

1	H.P.W.	08-14007-WA	\$425.00
2	H.P.W.	08-15015-WA	\$525.00
3	M.W.	08-14833-WA	\$425.00
4	B.Z.	08-15218-WA	\$650.00
5	A.Z.	07-13642-WA	\$425.00
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7		TOTAL	\$11,436.23
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