

Terms Completed

ORDER SUMMARY – Case Number: C-18-2584

Name(s): First Direct Lending, LLC
David Curtis Brown

Order Number: C-18-2584-19-CO01

Effective Date: 11/27/19

License Number: First Direct Lending, LLC NMLS #1110278
David Curtis Brown NMLS #804132

Or NMLS Identifier [U/L]

License Effect: First Direct Lending, LLC License Surrender

Not Apply Until: N/A

Not Eligible Until: N/A

Prohibition/Ban Until: N/A

Investigation Costs	\$ 2,173.82		Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date
Fine	\$ 4,500.00	Due: Upon entry of CO	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	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Financial Literacy and Education	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Cost of Prosecution	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
No. of Victims:				

Comments: Issue of Restitution is reserved for a period of time not to exceed three years.

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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
Consumer Loan Act of Washington by:

FIRST DIRECT LENDING, LLC,
NMLS #1110278,
DAVID CURTIS BROWN, NMLS #804132,
President, and
ANNELEE ANDRES MENDOZA,
NMLS #1538595,
Mortgage Loan Originator,

Respondents.

No.: C-18-2584-19-CO01

CONSENT ORDER AS TO:

FIRST DIRECT LENDING, LLC and
DAVID CURTIS BROWN in his capacity as
President

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COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Richard St. Onge, Acting Division Director, Division of Consumer Services, and First Direct Lending, LLC (Respondent First Direct) and David Curtis Brown (Respondent Brown), by and through their attorney, Michelle L. Rogers, 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 31.04 of the Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

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AGREEMENT AND ORDER

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The Department of Financial Institutions, Division of Consumer Services (Department) and Respondents First Direct and Brown have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-18-2584-19-SC01 (Statement of Charges), entered May 14, 2019, (copy attached hereto) solely as related to Respondents First Direct and Brown. Pursuant to chapter 31.04 RCW, the Consumer Loan Act (Act), and RCW 34.05.060 of the Administrative Procedure Act,

1 Respondents First Direct and Brown hereby agree to the Department's entry of this Consent Order
2 and further agree that the issues raised in the above-captioned matter may be economically and
3 efficiently settled by entry of this Consent Order, solely as related to Respondents First Direct and
4 Brown. Respondents First Direct and Brown are agreeing not to contest the Statement of Charges in
5 consideration of the terms of this Consent Order.

6 Based upon the foregoing:

7 **A. Jurisdiction.** It is AGREED that the Department has jurisdiction over the parties and
8 subject matter of the activities discussed herein. It is further AGREED that the Department's
9 exercise of its authority over Respondent Brown is based solely upon his capacity as control person
10 for Respondent First Direct and not upon any direct statements or acts by Respondent Brown.

11 **B. Waiver of Hearing.** It is AGREED that Respondents First Direct and Brown have been
12 informed of the right to a hearing before an administrative law judge, and hereby waive their right to
13 a hearing and any and all administrative and judicial review of the issues raised in this matter, or of
14 the resolution reached herein. Accordingly, Respondents First Direct and Brown, by the signatures
15 below, withdraw their appeal to the Office of Administrative Hearings.

16 **C. No Admission of Violations.** It is AGREED that the parties intend this Consent Order to
17 fully resolve the Statement of Charges as to Respondents First Direct and Brown and that
18 Respondents First Direct and Brown do not admit any wrongdoing by its entry.

19 **D. Applicability of Final Order C-18-2584-19-FO01.** It is AGREED that the sanctions set
20 forth in Final Order C-18-2584-19-FO01 do not apply to Respondents First Direct and Brown.

21 **E. Consumer Loan Company License Surrender.** It is AGREED that Respondent First
22 Direct requested to surrender its consumer loan company license on or around August 27, 2018, and
23 that Respondent First Direct's consumer loan company license will be surrendered upon entry of this
24 Consent Order.

1 F. **Fine.** It is AGREED that Respondent First Direct shall pay a fine to the Department in
2 the amount of \$4,500.

3 G. **Investigation Fee.** It is AGREED that Respondent First Direct shall pay to the
4 Department an investigation fee of \$2,173.82. The Fine and Investigation Fee shall be paid together
5 in one \$6,673.82 cashier's check made payable to the "Washington State Treasurer" upon return of
6 this Consent Order to the Department, properly signed and dated.

7 H. **Restitution.** It is AGREED that the issue of restitution is reserved for a period of time not
8 to exceed three years. It is further AGREED that if the Department determines to seek restitution
9 from Respondents First Direct and Brown related to the facts set forth in the Statement of Charges,
10 the Department will first make such request to Respondents First Direct and Brown and provide 30
11 days in which to respond to the request.

12 I. **Rights of Non-Parties.** It is AGREED that the Department does not represent or have the
13 consent of any person or entity not a party to this Consent Order to take any action concerning their
14 personal legal rights. It is further AGREED that for any person or entity not a party to this Consent
15 Order, this Consent Order does not limit or create any private rights or remedies against, limit or
16 create liability of, or limit or create defenses of Respondents First Direct and Brown to any claims.

17 J. **Records Retention.** It is AGREED that Respondent First Direct, its officers, employees,
18 and agents shall maintain records in compliance with the Act and shall provide the Director with the
19 location of the books, records, and other information relating to Respondent First Direct's consumer
20 loan company business; and the name, address, and telephone number of the individual responsible
21 for maintenance of such records in compliance with the Act.

1 **K. Authority to Execute Order.** It is AGREED that the undersigned have represented and
2 warranted that they have the full power and right to execute this Consent Order on behalf of the
3 parties represented.

4 **L. Non-Compliance with Order.** It is AGREED that Respondents First Direct and Brown
5 understand that failure to abide by the terms and conditions of this Consent Order may result in
6 further legal action by the Director. In the event of such legal action, Respondents First Direct and
7 Brown may be responsible to reimburse the Director for the cost incurred in pursuing such action,
8 including but not limited to, attorney fees.

9 **M. Voluntarily Entered.** It is AGREED that Respondents First Direct and Brown have
10 voluntarily entered into this Consent Order, which is effective when signed by the Director's
11 designee.

12 **N. Completely Read, Understood, and Agreed.** It is AGREED that Respondents First
13 Direct and Brown have read this Consent Order in its entirety and fully understand and agree to all of
14 the same.

15 **O. Counterparts.** This Consent Order may be executed by the Respondents First Direct and
16 Brown in any number of counterparts, including by facsimile or e-mail of a .pdf or similar file, each
17 of which shall be deemed to be an original, but all of which, taken together, shall constitute one and
18 the same Consent Order.

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1 **RESPONDENTS:**

2 First Direct Lending, LLC
3 David Curtis Brown, in his capacity as President

4 By:

5 /s/
6 David Curtis Brown
7 President, First Direct Lending, LLC

11/15/2019
Date

8 Approved for Entry:

9 /s/
10 Michelle L. Rogers
11 Buckley LLP
Attorney for Respondents

11/15/2019
Date

12 **DO NOT WRITE BELOW THIS LINE**

13 THIS ORDER ENTERED THIS 27th DAY OF November, 2019.

14 /s/
15 RICHARD ST. ONGE
16 Acting Director
17 Division of Consumer Services
Department of Financial Institutions

18 Presented by:

19 /s/
20 KRISTINA M. SHENEFELT
21 Financial Legal Examiner

22 Approved by:

23 /s/
24 STEVEN C. SHERMAN
Enforcement Chief

1 STATE OF WASHINGTON
2 DEPARTMENT OF FINANCIAL INSTITUTIONS
3 DIVISION OF CONSUMER SERVICES

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

5 FIRST DIRECT LENDING, LLC,
6 NMLS #1110278,
7 DAVID CURTIS BROWN, NMLS #804132,
President, and
8 ANNELEE ANDRES MENDOZA,
NMLS #1538595,
Mortgage Loan Originator,

9 Respondents.

No. C-18-2584-19-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENT TO ENTER AN
ORDER TO REVOKE LICENSE, PROHIBIT
FROM INDUSTRY, ORDER RESTITUTION,
IMPOSE FINE, COLLECT INVESTIGATION
FEE and RECOVER COSTS AND
EXPENSES

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11 INTRODUCTION

12 Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial
13 Institutions of the State of Washington (Director) is responsible for the administration of chapter
14 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to
15 RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the
16 Director, through his designee, Division of Consumer Services Acting Director Richard St. Onge,
17 institutes this proceeding and finds as follows:

18 I. FACTUAL ALLEGATIONS

19 1.1 Respondents.

20 A. **First Direct Lending, LLC (Respondent First Direct Lending)** was licensed by the
21 Department of Financial Institutions of the State of Washington (Department) to conduct business as
22 a consumer loan company on or about March 27, 2017, and continued to be licensed until its license
23 expired on January 1, 2019.

1 **B. David Curtis Brown (Respondent Brown)** was President of Respondent First Direct
2 Lending at all times relevant to this Statement of Charges. Respondent Brown was also licensed by
3 the Department to conduct business as a Mortgage Loan Originator for Respondent First Direct
4 Lending at all times relevant to this Statement of Charges. Respondent Brown continues to be
5 licensed to date as a Washington Mortgage Loan Originator.

6 **C. Annelee Andres Mendoza (Respondent Mendoza)** was licensed by the Department
7 to conduct business as a Mortgage Loan Originator for Respondent First Direct Lending at all times
8 relevant to this Statement of Charges. Respondent Mendoza continues to be licensed to date as a
9 Washington Mortgage Loan Originator.

10 **1.2 Engaged in an Unfair or Deceptive Practice.** On or around October 27, 2017, Respondents
11 accepted an application for a cash-out refinance. The loan Respondents intended to refinance was a
12 zero interest loan from Habitat for Humanity (Habitat loan). The Habitat loan contained a right of
13 first refusal, and it required the borrowers to pay a percentage of the appreciation in value if the
14 borrowers refinanced within 20 years, which at the time was 67.7%. Respondents had access to and
15 knew or should have known of these terms because Respondents were in possession of the title
16 search that included the 2008 Habitat for Humanity of Clallam County Statutory Warranty Deed
17 (Deed). The Deed contained the right of first refusal and recapture of appreciation in value.
18 Additionally, Respondents obtained a final title policy that included an exemption to not insure
19 against loss or damage that arise by reason of the “agreement and terms and conditions thereof”
20 regarding the “right of first refusal.”

21 Respondents refinanced the Habitat loan that included the shared appreciation payment of
22 \$33,850 immediately due upon the refinance, but failed to include that debt in the ability to repay
23 calculations. The borrowers had insufficient income to allow them to pay the shared appreciation
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1 debt, and there was no analysis or documentation of any other future increase in income that would
2 mitigate the shared appreciation debt.

3 **1.3 On-Going Investigation.** The Department’s investigation into the alleged violations of the
4 Act by Respondents continues to date.

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

6 **2.1 Unfair or Deceptive Practice.** Based on the Factual Allegations set forth in Section I above,
7 Respondents are in apparent violation of RCW 31.04.027(2)¹ for directly or indirectly engaging in
8 any unfair or deceptive practice toward any person.

9 **2.2 Failure to Ensure Underwriting Standards Consistent with Prudent Lending Practices.**
10 Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation
11 of WAC 208-620-506 for failing to ensure its underwriting standards are consistent with prudent
12 lending practices by failing to include all debts in the analysis of the borrowers’ ability to repay their
13 loan.

14 **2.3 Failure to Include an Accurate Ability to Repay Analysis.** Based on the Factual
15 Allegations set forth in Section I above, Respondents are in apparent violation of WAC 208-620-
16 507(1) by failing to maintain an underwriting policy that includes standards used to evaluate the
17 borrower’s ability to repay by demonstrating that the debt to income ratio includes all of the
18 borrowers’ contractual obligations.

19 **2.4 Failure to Ensure Minimum Standards for Transactions Secured by a Dwelling.** Based
20 on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW
21 31.04.027(13) for failing to make a reasonable and good faith determination at or before
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24 ¹ Please note that this citation is for the Consumer Loan Act in effect prior to June 7, 2018, as the alleged violation occurred prior to
the current version of the Consumer Loan Act.

1 consummation that the consumers would have had a reasonable ability to repay the loan according to
2 its terms as required by 12 C.F.R. §1026.43(c)(1).

3 **III. AUTHORITY TO IMPOSE SANCTIONS**

4 **3.1 Revoke License.** Pursuant to RCW 31.04.093(3) the Director may revoke a license if the
5 Director finds that the licensee, either knowingly or without the exercise of due care, has violated any
6 provision of Act or any rule adopted under the Act.

7 **3.2 Authority to Prohibit from the Industry.** Pursuant to RCW 31.04.093(6)(e), the Director
8 may issue an order prohibiting from participation in the affairs of any licensee, any officer, principal,
9 employee, mortgage loan originator, or any other person subject to the Act for a violation of RCW
10 31.04.027.

11 **3.3 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of
12 up to one hundred dollars per day, per violation, upon the licensee, its employee or loan originator, or
13 any other person subject to the Act for any violation of the Act.

14 **3.4 Authority to Order Restitution.** Pursuant to RCW 31.04.093(5)(c), the Director may issue an
15 order directing a licensee, its employee or loan originator, or any other person subject to the Act to
16 make a refund or restitution to a borrower or other person who is damaged as a result of a violation of
17 the Act.

18 **3.5 Authority to Charge Investigation Fee.** Pursuant to RCW 31.04.145(3) and WAC 208-620-
19 610(7), every licensee investigated by the Director or the Director's designee shall pay for the cost of
20 the investigation, calculated at the rate of \$69.01 per staff hour devoted to the investigation, and shall
21 pay travel costs if the licensee maintains its records outside the state.

22 **3.6 Authority to Recover Costs and Expenses.** Pursuant to RCW 31.04.205(2), the Director
23 may recover the state's costs and expenses for prosecuting violations of the Act.

1 **IV. NOTICE OF INTENT TO ENTER ORDER**

2 Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC,
3 as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose
4 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, RCW
5 34.04.202, and RCW 31.04.205. Therefore, it is the Director's intent to ORDER that:

- 6 **4.1** Respondent First Direct Lending, LLC's license to conduct the business of a
7 consumer loan company be revoked.
- 8 **4.2** Respondent David Curtis Brown and Respondent Annelee Andres Mendoza's licenses
9 to conduct the business of a loan originator be revoked.
- 10 **4.3** Respondent First Direct Lending, LLC, Respondent David Curtis Brown, and
11 Respondent Annelee Andres Mendoza be prohibited from participation in the
12 conduct of the affairs of any consumer loan company subject to licensure by the
13 Director, in any manner, for a period of 5 years.
- 14 **4.4** Respondent First Direct Lending, LLC, Respondent David Curtis Brown, and
15 Respondent Annelee Andres Mendoza jointly and severally pay a
16 fine. As of the date of this Statement of Charges, the fine totals \$9,000.00.
- 17 **4.5** Respondent First Direct Lending, LLC, Respondent David Curtis Brown, and
18 Respondent Annelee Andres Mendoza jointly and severally pay restitution totaling
19 \$33,850.00 to the borrowers identified in paragraph 1.2 of this Statement of Charges.
- 20 **4.6** Respondent First Direct Lending, LLC, Respondent David Curtis Brown, and
21 Respondent Annelee Andres Mendoza jointly and severally pay
22 an investigation fee. As of the date of this Statement of Charges, the investigation fee
23 totals \$2,173.82.
- 24 **4.7** Respondent First Direct Lending, LLC and Respondent David Curtis Brown maintain
records in compliance with the Act and provide the Department with the location of
the books, records and other information relating to Respondent First Direct Lending,
LLC's consumer loan business, and the name, address and telephone number of the
individual responsible for maintenance of such records in compliance with the Act.
- 4.8** Respondent First Direct Lending, LLC, Respondent David Curtis Brown, and
Respondent Annelee Andres Mendoza pay the Department's costs and expenses
for prosecuting violations of the Act in an amount to be determined at hearing or by
declaration with supporting documentation in event of default by Respondents.

1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intent to Enter an Order to Revoke License, Prohibit
3 From Industry, Order Restitution, Impose Fine, Collect Investigation Fee and Recover Costs and
4 Expenses (Statement of Charges) is entered pursuant to the provisions of RCW 31.04.093, RCW
5 31.04.165, RCW 31.04.202, and RCW 31.04.205, and is subject to the provisions of chapter 34.05
6 RCW (The Administrative Procedure Act). Respondents may make a written request for a hearing as
7 set forth in the NOTICE OF OPPORTUNITY FOR ADJUDICATIVE HEARING AND TO
8 DEFEND accompanying this Statement of Charges.

9 Dated this 14th day of May, 2019.

10 /s/
11 RICHARD ST. ONGE
12 Acting Director
13 Division of Consumer Services
14 Department of Financial Institutions

15 Presented by:

16 /s/
17 KRISTINA M. SHENEFELT
18 Financial Legal Examiner

19 Approved by:

20 /s/
21 STEVEN C. SHERMAN
22 Enforcement Chief