

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-378
)
 3 State of New Hampshire Banking)
)
 4 Department,) Order to Show Cause
)
 5 Petitioner,) and
)
 6 and) Cease and Desist Order
)
 7 First Call Mortgage Company, Inc.,)
)
 8 Kathleen L. Donovan, Carl D. McFadden,)
)
 9 George Vanderheiden, Peter S. Lynch and)
)
 10 Carolyn A. Lynch as Joint Tenants,)
)
 11 James Arthur Lesmerises, David Allen)
)
 12 Kesler, Dennis Wright,)
)
 13 Respondents)
)
 14)
)
 15)
)

17 NOTICE OF ORDER

18 This Order commences an adjudicative proceeding under the provisions of
19 RSA 397-A, RSA 541-A, BAN 200 and JUS 800.

20 LEGAL AUTHORITY AND JURISDICTION

21 Pursuant to RSA 397-A:17, the Banking Department of the State of New
22 Hampshire (hereinafter the "Department") has the authority to issue an order
23 to show cause why license revocation and penalties for violations of New
24 Hampshire Banking laws should not be imposed.

25 Pursuant to RSA 397-A:18, the Banking Department of the State of New
Hampshire (hereinafter the "Department") has the authority to issue a

1 complaint setting forth charges whenever the Department is of the opinion
2 that the licensee or person over whom the Department has jurisdiction is
3 violating or has violated any provision of RSA Chapter 397-A, rule or order
4 thereunder.

5 Pursuant to RSA 397-A:18 II, the Banking Department of the State of New
6 Hampshire (hereinafter the "Department") has the authority to issue and cause
7 to be served an order requiring any person engaged in any act or practice
8 constituting a violation of RSA 397-A or any rule or order thereunder, to
9 cease and desist from violations of RSA 397-A.

10 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or rescind
11 such orders as are reasonably necessary to comply with the provisions of the
12 Chapter.

13 Pursuant to RSA 397-A:21, the Commissioner has the authority to
14 suspend, revoke or deny any license and to impose administrative penalties of
15 up to \$2,500.00 for each violation of New Hampshire banking law and rules.

16 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
17 that is or may be an unfair or deceptive act or practice under RSA 358-A and
18 exempt under RSA 358-A:3, I or that may violate any of the provisions of
19 Titles XXXV and XXXVI and administrative rules adopted thereunder. The
20 Commissioner may hold hearings relative to such conduct and may order
21 restitution for a person or persons adversely affected by such conduct. The
22 Commissioner may utilize all remedies available under the Act.

23 **NOTICE OF RIGHT TO REQUEST A HEARING**

24 The above named Respondents have the right to request a hearing on this
25 Order to Show Cause and Cease and Desist Order, as well as the right to be
represented by counsel at each Respondent's own expense. All hearings shall
comply with RSA 541-A. Any such request for a hearing shall be in writing, and
signed by the Respondent or the duly authorized agent of the above named

1 Respondent, and shall be delivered either by hand or certified mail, return
2 receipt requested, to the Banking Department, State of New Hampshire, 53
3 Regional Drive, Suite 200, Concord, NH 03301.

4 Such hearings will be scheduled within 10 days of the request. Within 20
5 days of the date of any such hearing, the Commissioner shall issue a further
6 order either vacating this Order or making it permanent as the facts require.
7 All hearings shall comply with RSA 541-A. If the Respondent fails to appear at
8 the hearing after being duly notified, such person shall be deemed in default,
9 and the proceeding may be determined against the Respondents upon consideration
10 of the Order to Show Cause and Cease and Desist Order, the allegations of which
11 may be deemed to be true.

12 If any of the above named Respondents fails to request a hearing within
13 30 calendar days of receipt of such order or reach formal settlement with the
14 Department within that time frame, then such person shall likewise be deemed in
15 default, and the orders shall, on the thirty-first day, become permanent, and
16 shall remain in full force and effect until and unless later modified or
17 vacated by the commissioner, for good cause shown.

18 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

19 The Staff Petition dated September 24, 2008 (a copy of which is
20 attached hereto) is incorporated by reference hereto.

21 **ORDER**

22 WHEREAS, finding it necessary and appropriate and in the public
23 interest, and consistent with the intent and purposes of the New Hampshire
24 banking laws, and

25 WHEREAS, finding that the allegations contained in the Staff Petition,
if proved true and correct, form the legal basis of the relief requested,

1 It is hereby ORDERED, that:

- 2 1. Respondent First Call Mortgage Company, Inc. ("Respondent
3 First Call Mortgage") shall show cause why penalties in the
4 amount of \$767,500.00 should not be imposed against it
5 individually and therefore, jointly and severally for each of
6 the individual penalties for each remaining Respondent;
- 7 2. Respondent Kathleen L. Donovan ("Respondent Donovan") shall
8 show cause why penalties in the amount of \$767,500.00 should
9 not be imposed against her personally and therefore, jointly
10 and severally for each of the individual penalties for each
11 remaining Respondent;
- 12 3. Respondent Carl D. McFadden ("Respondent McFadden") shall
13 show cause why penalties in the amount of \$767,500.00 should
14 not be imposed against him personally and therefore, jointly
15 and severally for each of the individual penalties for each
16 remaining Respondent;
- 17 4. Respondent George Vanderheiden ("Respondent Vanderheiden")
18 show cause why penalties in the amount of \$85,000.00 should
19 not be imposed against him personally and therefore, jointly
20 and severally for each of the individual penalties for each
21 remaining Respondent;
- 22 5. Respondent Peter S. Lynch and Carolyn A. Lynch as joint
23 tenants ("Respondent Mr. and Mrs. Lynch") shall show cause why
24 penalties in the amount of \$85,000.00 should not be imposed
25 against them personally and therefore, jointly and severally
for each of the individual penalties for each remaining
Respondent;
6. Respondent James Arthur Lesmerises ("Respondent Lesmerises")
shall show cause why penalties in the amount of \$47,500.00

1 should not be imposed against him personally and therefore,
2 jointly and severally for each of the individual penalties
3 for each remaining Respondent;

4 7. Respondent David Allen Kesler ("Respondent Kesler") shall
5 show cause why penalties in the amount of \$70,000.00 should
6 not be imposed against him personally and therefore, jointly
7 and severally for each of the individual penalties for each
8 remaining Respondent;

9 8. Respondent Dennis Wright ("Respondent Wright") shall show
10 cause why penalties in the amount of \$85,000.00 should not be
11 imposed against him personally and therefore, jointly and
12 severally for each of the individual penalties for each
13 remaining Respondent;

14 9. The above named Respondents shall show cause why, in addition
15 to the penalties listed in paragraphs 1 through 8 above,
16 Respondents shall show cause why a refund should not be given
17 of any and all commissions and application fees received or
18 charged from consumers from loans processed through the
19 Portsmouth, NH branch office when it was unlicensed;

20 10. The above named Respondents shall show cause why, in addition
21 to the penalties listed in paragraphs 1 through 9 above,
22 Respondent First Call Mortgage should not refund the yield
23 spread premium of \$7,297.50 charged to Consumer A but not
24 disclosed;

25 11. The above named Respondents shall show cause why, in addition
26 to the penalties listed in paragraphs 1 through 10 above,
27 Respondent First Call Mortgage should not refund the \$89.00
28 duplicate recording fee charged to Consumer F; and

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-378
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 3 State of New Hampshire Banking) Staff Petition
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 4 Department,)
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 5 Petitioner,) September 24, 2008
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 6 and)
)
 7 First Call Mortgage Company, Inc.,)
)
 8 Kathleen L. Donovan, Carl D. McFadden,)
)
 9 George Vanderheiden, Peter S. Lynch and)
)
 10 Carolyn Lynch as Joint Tenants, James)
)
 11 Arthur Lesmerises, David Allen Kesler,)
)
 12 and Dennis Wright,)
)
 13 Respondents)
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 14)
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 15)
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16
17 I. STATEMENT OF ALLEGATIONS

18 The Staff of the Banking Department, State of New Hampshire (hereinafter
19 "Department") alleges the following facts:

20 Facts Common on All Counts:

- 21 1. Respondent First Call Mortgage Company, Inc. (hereinafter
22 "Respondent First Call Mortgage") has been licensed as a Mortgage
23 Banker since December 10, 2003.
- 24 2. Respondent Kathleen L. Donovan (hereinafter "Respondent Donovan")
25 is, or was at all relevant times, Chief Operating Officer of

1 Respondent First Call Mortgage.

2 3. Respondent Donovan was, until on or about August 24, 2007, a 5%
3 owner of Respondent First Call Mortgage.

4 4. Respondent Carl D. McFadden (hereinafter "Respondent McFadden")
5 is, or was at all relevant times, President and Chief Executive
6 Officer of Respondent First Call Mortgage.

7 5. Respondent McFadden was, until on or about August 24, 2007, a 95%
8 owner of Respondent First Call Mortgage.

9 6. Respondent McFadden, as of August 24, 2007, is a 50% owner of
10 Respondent First Call Mortgage.

11 7. Respondent George Vanderheiden (hereinafter "Respondent
12 Vanderheiden"), as of August 24, 2007, is a 25% owner of
13 Respondent First Call Mortgage.

14 8. Respondent Peter S. Lynch and Carolyn A. Lynch, as joint tenants
15 (hereinafter "Respondent Mr. and Mrs. Lynch), as of August 24,
16 2007, is a 13% owner of Respondent First Call Mortgage.

17 9. The remaining owners are minority owners and do not fall within
18 the definition of Principal Owner as defined in RSA Chapter 397-
19 A.

20 10. On or about March 26, 2007, the Department approved Respondent
21 James Arthur Lesmerises (hereinafter "Respondent Lesmerises") as
22 Branch Manager for Respondent First Call Mortgage located at 264
23 South River Road in Bedford, NH 03110.

24 11. Respondent Lesmerises allegedly ceased operating in his capacity
25 as Branch Manager in July 2007 and was no longer employed by

1 Respondent First Call Mortgage in any capacity since January 6,
2 2008.

3 12. Respondent Dennis Wright (hereinafter "Respondent Wright") is
4 allegedly the acting Branch Manager for the 264 South River Road,
5 Bedford, NH 03110 branch office for Respondent First Call
6 Mortgage.

7 13. Since on or about March 7, 2007, Respondent David Kesler
8 (hereinafter "Respondent Kesler") has been the Branch Manager for
9 the 155 Fleet Street, Suite 307, Portsmouth, NH 03801 branch
10 office for Respondent First Call Mortgage.

11 14. References to Respondents are made throughout the Staff Petition
12 for ease of reference; however:

13 a. Respondent Vanderheiden and Respondent Mr. and Mrs. Lynch are
14 only included in violations occurring after August 24, 2007;

15 b. Respondent Kesler is only included in violations occurring after
16 March 7, 2007;

17 c. Respondent Wright is only included in violations occurring after
18 January 6, 2008; and

19 d. Respondent Lesmerises is only included in violations occurring
20 between March 26, 2007 and January 6, 2008.

21 Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for

22 Safeguarding Customer Information, 16 C.F.R. Section 314.3 via RSA 397-

23 A:2,III (1 Count):

24 Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for

1 Safeguarding Customer Information, 16 C.F.R. Section 314.4(a) via RSA 397-

2 A:2,III (1 Count):

3 Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for

4 Safeguarding Customer Information, 16 C.F.R. Section 314.4(b) via RSA 397-

5 A:2,III (1 Count):

6 Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for

7 Safeguarding Customer Information, 16 C.F.R. Section 314.4(c) via RSA 397-

8 A:2,III (1 Count):

9 Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for

10 Safeguarding Customer Information, 16 C.F.R. Section 314.4(d) via RSA 397-

11 A:2,III (1 Count):

12 Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for

13 Safeguarding Customer Information, 16 C.F.R. Section 314.4(e) via RSA 397-

14 A:2,III (1 Count):

15 Violation of RSA 397-A:17,I(1) Violation of Federal Laws and Rules (6

16 Counts):

17 Violation of RSA 397-A:12, VIII Failure to Correct Reported Deficiencies (2

18 Count):

19 15. Paragraphs 1 through 14 are hereby realleged as fully set forth
20 herein.

21 16. The above named Respondents have failed to maintain a comprehensive
22 information security program.

23 17. The above named Respondents are required to develop, implement, and
24 maintain a comprehensive information security program (hereinafter
25 "Information Security Program" that is written in one or more
readily accessible parts and contains administrative, technical,

1 and physical safeguards.

2 18. This Information Security Program was required to be implemented by
3 May 23, 2003 and was to contain the following:

4 A. a designated employee to:

5 (1). coordinate the program;

6 (2). perform a risk assessment;

7 (3). design, implement and regularly test safeguard
8 controls;

9 (4). monitor service providers and enter into contracts
10 that require service providers to implement and
11 maintain appropriate safeguards; and

12 (5). evaluate and adjust the program as necessary.

13 19. In 2007, the above named Respondents had a two page policy entitled
14 "Information Security". This policy briefly described technical
15 safeguards in place, but provided no other specific administrative
16 or physical safeguards in place, nor did it contain any of the
17 required elements as described above.

18 20. The above named Respondents also do not have safeguards in place to
19 secure consumers' non-public personal information.

20 21. During the February 12, 2007 examination, there was no one at the
21 front desk or immediate area in Respondent First Call Mortgage's
22 principal office. After waiting a few minutes, the Examiner
23 proceeded to walk throughout the principal office undetected.

1 22. The Examiner located two small offices labeled "closing rooms".
2 Neither "closing room" contained any locks but contained numerous
3 boxes of old closed and denied/withdrawn files, some of which were
4 labeled as New Hampshire borrowers.

5 23. As the Examiner continued undetected through the principal office,
6 the Examiner noted that all offices and cubicles contained non-
7 public personal information such as borrower social security
8 numbers and bank account numbers in plain view on and around the
9 desks. Some offices contained borrower information scattered on the
10 floor and under desks.

11 24. Since Respondent First Call Mortgage's employees failed to shut off
12 or log off their individual computers, the Examiner was able to
13 gain access to the individual computer of three employees (labeled
14 herein as Employee A, B, and C).

15 25. Employee C's computer contained an excel spreadsheet on the
16 computer's desktop labeled "Patty's Passwords", which contained
17 passwords for all commonly used programs, including Respondent
18 First Call Mortgage's loan software. As a result, the Examiner was
19 able to gain access to multiple amounts of confidential
20 information.

21 26. The above named Respondents utilized shred bins situated near
22 common areas containing copiers and facsimile machines. Documents
23 that are to be shredded are put in the bin and are disposed of by a
24 third party data destruction service. Both bins were observed as
25 half full and the bins did not have padlocks securing them, thus

1 allowing anyone the ability to access the documents therein.

2 27. The above mentioned observations and concerns were addressed and
3 discussed with Respondent Donovan and Respondent McFadden, in
4 separate meetings on February 12, 2007.

5 28. The examination continued the next day (February 13, 2007).

6 29. When the Examiner arrived in the morning, the front doors to the
7 office were unlocked and once again there was no one present at the
8 front desk. The Examiner again had free access to the building and
9 was able to freely roam in and out of the office and cubicles.

10 30. The Examiner was able to locate two additional file rooms. Both of
11 these offices had key locks but were not secured at the time of
12 inspection and presumably left unlocked overnight.

13 31. Additionally, there was an open cubicle area that had approximately
14 a dozen boxes of consumer loan files that were left unattended and
15 unsecured.

16 32. Respondent Donovan responded to the 2007 Report of Examination.

17 33. The above named Respondents (in a letter from Respondent Donovan
18 dated May 18, 2007) indicated Respondent Donovan has reviewed all
19 of the Department's "comments and observations and has implemented
20 corrective action, as well as amendments".

21 34. On or about July 16, 2008, Respondent Donovan verbally indicated
22 to the Department's Examiner who conducted the 2007 examination and
23 July 14, 2008 Department examination about certain safeguarding
24 procedures.

25

1 35. However, Respondent Donovan went on to verbally indicate that there
2 is no written information security program in place, other than the
3 technical safeguards provided during the examination.

4 36. Respondent First Call Mortgage's program does not identify an
5 employee or employees to coordinate the program.

6 37. Respondent First Call Mortgage failed to provide any documentation
7 evidencing a company-wide risk assessment.

8 38. Respondent First Call Mortgage utilizes an over-simplified
9 safeguarding policy and could not provide any documentation of
10 internal audits that had been performed.

11 39. Respondent First Call Mortgage failed to provide any contracts for
12 third party providers.

13 40. Respondent First Call Mortgage does not appear to have evaluated or
14 adjusted the program since its inception but has admitted to the
15 Department's observations herein.

16 41. The lack of formal written policies concerning safeguarding and
17 security were also identified in the September 12, 2005
18 examination, which Respondents have since failed to create and
19 implement.

20 Violation of RSA 397-A:13, I Failure to File Accurate Annual Report (1
21 Count):

22 Violation of RSA 397-A:12, VIII Failure to Correct Reported Deficiencies (1
23 Count):

24 42. Paragraphs 1 through 41 are hereby realleged as fully set forth
25 herein.

1 43. The annual report the above named Respondents filed for calendar
2 year 2006 was inaccurate.

3 44. The annual report in question disclosed the number of brokered
4 first mortgage loans and the number of subordinate lien loans.
5 However, a review of the Annual Report work papers for calendar
6 year 2006 revealed that the reported figures were table funded
7 loans and did not include any of the total brokered loans in 2006.

8 45. The above named Respondents have admitted to the Department's
9 observations herein. The above named Respondents (in a letter from
10 Respondent Donovan dated May 18, 2007) indicated Respondent Donovan
11 has reviewed all of the Department's "comments and observations and
12 has implemented corrective action, as well as amendments".

13 46. Inaccurate filing of an annual report was the subject of the
14 previous Department examination dated September 12, 2005, as well.

15 47. Based on the September 12, 2005 Department, the 2004 Annual Report
16 included investment properties when they are to be excluded from
17 such report.

18 48. Further, Respondent Donovan was omitted from the list of senior
19 officers on the 2004 Annual Report.

20 49. The above named Respondents have admitted to the Department's
21 observations herein. The above named Respondents (in a letter from
22 Respondent Donovan dated January 26, 2006) indicated Respondent
23 Donovan would be "within 21 days, [Respondent Donovan] would be
24 refilling [sic] 2004 annual report with corrected information".
25

1 Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

2 C.F.R. Section 3500.14(b) via RSA 397-A:2,III (41 Counts):

3 Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

4 C.F.R. Section 3500.14(d) via RSA 397-A:2,III (41 Counts):

5 Violation of RSA 397-A:17,I(1) Violation of Federal Laws and Rules (41
6 Counts):

7 Violation of RSA 397-A:12, VIII Failure to Correct Reported Deficiencies (30
8 Counts):

9 50. Paragraphs 1 through 49 are hereby realleged as fully set forth
10 herein.

11 51. The above named Respondents published an advertisement in *Homes and*
12 *Land of Greater New Hampshire*, a real estate booklet, for which
13 Respondents share an advertisement with a real estate broker named
14 NH Home Team H.B.N. Realty.

15 52. NH Home Team H.B.N. Realty received an invoice for two pages in the
16 magazine, for which Respondents reimbursed NH Home Team H.B.N.
17 Realty for one page.

18 53. On February 12, 2007, Respondent Donovan made representations to
19 the Department's Examiner that the content of Respondents' portion
20 of the advertisement is the same as demonstrated in Volume 10,
21 Number 5 of *Homes and Land of Greater New Hampshire*.

22 54. Although Respondents utilized space on two pages (that combined is
23 less than one page), Respondents reimbursed NH Home Team H.B.N.
24 Realty for the full cost of a one page advertisement.

25

1 55. Providing "things of value" to a realtor was an observation and
2 concern of a previous examinations of Respondent First Call
3 Mortgage.

4 56. Providing "things of value" is prohibited by the Real Estate
5 Settlement Procedures Act.

6 57. The above named Respondents have admitted to the Department's
7 observations herein. The above named Respondents (in a letter from
8 Respondent Donovan dated May 18, 2007) indicated Respondent Donovan
9 has reviewed all of the Department's "comments and observations and
10 has implemented corrective action, as well as amendments".

11 58. Providing a "thing of value" was the subject of the previous
12 Department examination dated September 12, 2005, as well.

13 59. In the September 12, 2005 examinations, Respondents published an
14 advertisement several times in *Home and Land*, a real estate
15 booklet, for which it shared an advertisement with a real estate
16 broker, NH Home Team, H.B.N Realty, which appears to be the same
17 realtor as mentioned from the 2007 examination.

18 60. Although Respondent First Call Mortgage utilized one half of one
19 page, it reimbursed NH Home Team. H.S.N. Realty for the full cost
20 of a two page advertisement.

21 61. On September 13, 2005, Respondent Donovan represented to the
22 Department's Examiner that this is a long-standing practice with
23 her company, and it occurs with another real estate broker in
24 Massachusetts. Respondent Donovan subsequently provided the
25 Department with a check register and six months of advertisement

1 invoices that further document the practice. Together, there appear
2 to be at least thirty violations of this illegal practice.

3 62. The above named Respondents have admitted to the Department's
4 observations herein. The above named Respondents (in a letter from
5 Respondent Donovan dated January 26, 2006) simply stated "all
6 advertising invoices now are approved by senior management with a
7 copy of [sic] ad attached. No payments for third parties are
8 approved. Then invoice is submitted to a/p for payment." Yet, as
9 alleged above, Respondents violated these provisions once again
10 based on evidence discovered from the February 2007 examination.

11 Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

12 C.F.R. Section 3500.7, Appendix B, Illustration 13 and Appendix C via RSA

13 397-A:2,III (8 Counts):

14 Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

15 C.F.R. Section 3500.7, Appendix B, Illustration 13 and Appendix C via RSA

16 397-A:16, I (8 Counts):

17 Violation of RSA 397-A:17,I(1) Violation of Federal Laws and Rules (8

18 Counts):

19 Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (3 Counts):

20 Violation of RSA 397-A:6, I Failure to Supervise (8 Counts):

21 Violation of RSA 397-A:12, VIII Failure to Correct Reported Deficiencies (3

22 Counts):

23 63. Paragraphs 1 through 62 are hereby realleged as fully set forth
24 herein.

1 64. A consumer's file from April 2006 contained a HUD Settlement
2 Statement that disclosed a yield spread premium was collected from
3 the lender in the amount of \$7,297.50.

4 65. A review of the consumer's signed Good Faith Estimate revealed that
5 no yield spread premium was disclosed, therefore, the Respondents
6 are not entitled to the \$7,297.50.

7 66. Failing to disclose the yield spread premium was a concern in the
8 past two Department examinations.

9 67. The above named Respondents have admitted to the Department's
10 observations herein. The above named Respondents (in a letter from
11 Respondent Donovan dated May 18, 2007) indicated Respondent Donovan
12 has reviewed all of the Department's "comments and observations and
13 has implemented corrective action, as well as amendments".

14 68. These are violations that were previously observed in the September
15 12, 2005 Department Examination.

16 69. Four loan files from the September 12, 2005 examination revealed
17 that the yield spread premium was not disclosed on the Good Faith
18 Estimate.

19 70. The above named Respondents have admitted to the Department's
20 observations herein. The above named Respondents (in a letter from
21 Respondent Donovan dated January 26, 2006) simply stated "In-house
22 quality assurance checklist has been implemented and audits are
23 being conducted of [on] a monthly basis to ensure that is being
24 completed on all loans."

25

1 71. The March 17, 2004 Department examination of Respondent First Call
2 Mortgage also revealed the same observation: failure to disclose
3 yield spread premiums on the Good Faith Estimate.

4 72. Respondent Donovan's June 1, 2004 response to the March 17, 2004
5 Department examination was Respondent First Call Mortgage "has
6 changed to disclose a range i.e. \$1,000 - \$3,000 if not locked on
7 the GFE at time of application but if locked we have implemented a
8 certain line items to disclosure [sic] proper YSP being made."

9 73. The July 14, 2008 Department examination revealed that two files
10 contained Good Faith Estimates that disclosed "YSP to FCMC", but
11 with no dollar amount or ranges. The HUD Settlement Statements
12 subsequently disclosed the actual amount in yield spread premiums
13 collected at closing.

14 74. A third file found during the July 14, 2008 Department examination
15 revealed the yield spread premium as "0-2%", with no corresponding
16 dollar amount.

17 Violation of RSA 397-A:5, III(a) (1 Count):

18 Violation of RSA 397-A:16, IV Unauthorized Retention of Commissions for
19 Services Rendered (Respondents must forfeit fees and commissions received for
20 loans processed and closed as related to this Portsmouth Branch Office) (1
21 Count):

22 75. Paragraphs 1 through 74 are hereby realleged as fully set forth
23 herein.

24 76. Respondent Donovan made representations throughout the February 12,
25 2007 Department examination that it was Respondents' intentions to

1 open an additional branch in New Hampshire, specifically on Fleet
2 Street in Portsmouth, New Hampshire.

3 77. Respondent Donovan further indicated that she was waiting for
4 fingerprint cards for the branch manager before submitting the
5 branch application.

6 78. Review of the Respondents' organizational chart in 2007 showed that
7 Respondent Kesler was the Portsmouth branch's Branch Manager and
8 there were three loan officers associated with this Portsmouth
9 branch.

10 79. On February 22, 2007, two of the Department's Examiners went to the
11 155 Fleet Street, Portsmouth, NH location, which contained
12 individual offices with a "shared receptionist".

13 80. The Department's Examiners asked this "shared receptionist" for
14 First Call Mortgage Company, Inc. and were told he was with a
15 client. The Department's Examiners subsequently left the premises
16 with a business card for IOS Business Centers.

17 81. At approximately 2:00 p.m. on the same day, the Department's
18 Examiner-In-Charge contacted IOS Business Centers, spoke with a
19 woman who identified herself as Emily and asked for First Call
20 Mortgage Company, Inc. Emily told the Department's Examiner-In-
21 Charge that the gentleman was away from his desk and transferred
22 the call to Respondent Kesler's voicemail.

23 82. The Department's records show that the Department received a branch
24 application on or about February 26, 2007, which is four days after
25 the Department's discussions with Respondent Donovan.

1 83. The above named Respondents have admitted to the Department's
2 observations herein. The above named Respondents (in a letter from
3 Respondent Donovan dated May 18, 2007) indicated Respondent Donovan
4 has reviewed all of the Department's "comments and observations and
5 has implemented corrective action, as well as amendments".

6 84. Respondents cannot, pursuant to RSA Chapter 397-A, retain any
7 commissions or application fees stemming from loans derived from
8 the Portsmouth, NH branch office when it was unlicensed.

9 Violation of RSA 397-A:10, II Failure to Update Information on File with

10 Commissioner (3 Counts):

11 Violation of RSA 397-A:10, IV Failure to Update Information on File with

12 Commissioner (2 Counts):

13 85. Paragraphs 1 through 84 are hereby realleged as fully set forth
14 herein.

15 86. Respondent First Call Mortgage was formerly owned by both
16 Respondent McFadden (as 95% owner) and Respondent Donovan (as 5%
17 owner).

18 87. However, the July 14, 2008 Department examination revealed that the
19 current principal owners (10% or more ownership), as of August 24,
20 2007, are as follow:

- 21 a. Respondent McFadden (50% owner);
- 22 b. Respondent Vanderheiden (25% owner); and
- 23 c. Respondent Mr. and Mrs. Lynch (13%).

24 88. The remaining are all minority owners and Respondent Donovan is no
25 longer an owner of Respondent First Call Mortgage.

1 89. On or about August 19, 2008, the Department received notice of the
2 new owners.

3 **Violation of RSA 397-A:10, IV Failure to Update Information on File with**

4 **Commissioner (2 Counts):**

5 90. Paragraphs 1 through 89 are hereby realleged as fully set forth
6 herein.

7 91. The above named Respondents failed to notify the Department that
8 Renee Keefe, Branch Manager of the Bedford, NH office, was no
9 longer employed with the company effective August 31, 2006.

10 92. In a discussion with Respondent Donovan at the February 12, 2007
11 examination, the Department's Examiner was informed that Respondent
12 Lesmerises has been recently hired to replace Ms. Keefe.

13 93. Respondents failed to notify the Department of Respondent
14 Lesmerises's hiring nor provide the required documentation needed
15 for Respondent Lesmerises.

16 94. The above named Respondents have admitted to the Department's
17 observations herein. The above named Respondents (in a letter from
18 Respondent Donovan dated May 18, 2007) indicated Respondent Donovan
19 has reviewed all of the Department's "comments and observations and
20 has implemented corrective action, as well as amendments".

21 **Violation of RSA 397-A:12, IV Violation of Standard Business Practice (3**

22 **Counts):**

23 95. Paragraphs 1 through 94 are hereby realleged as fully set forth
24 herein.

25

1 96. In instances wherein a consumer has a balloon note, the licensee is
2 required to provide a balloon note disclosure to all borrowers who
3 apply for loan with a balloon note provision.

4 97. There are three such loan files (Consumer B, Consumer C, and
5 Consumer D) that are missing this required balloon note disclosure.

6 98. The above named Respondents have admitted to the Department's
7 observations herein. The above named Respondents (in a letter from
8 Respondent Donovan dated May 18, 2007) indicated Respondent Donovan
9 has reviewed all of the Department's "comments and observations and
10 has implemented corrective action, as well as amendments".

11 **Violation of RSA 397-A:6, I Failure to Supervise (1 Counts):**

12 **Violation of RSA 397-A:17, I(g) Failure to Supervise (1 Count):**

13 **Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (1 Count):**

14 99. Paragraphs 1 through 98 are hereby realleged as fully set forth
15 herein.

16 100. On the morning of February 13, 2007, the Examiner inspected the
17 office of Jeff Sarkisian, a loan officer with Respondent First
18 Call Mortgage. Mr. Sarkisian's office contained numerous
19 documents, including two boxes of loan applications, from Drew
20 Mortgage Associates located in Shrewsbury, Massachusetts.

21 101. Mr. Sarkisian made representations to the Examiner that he
22 previously worked for Drew Mortgage Associates.

23 102. Mr. Sarkisian stated he was in the process of contacting his
24 former clients.

25

1 103.The taking of proprietary information from another company,
2 especially non-public personal information such as loan
3 applications containing social security numbers and account
4 numbers, constitutes an unethical business practice.

5 104.The above named Respondents have admitted to the Department's
6 observations herein. The above named Respondents (in a letter
7 from Respondent Donovan dated May 18, 2007) indicated Respondent
8 Donovan has reviewed all of the Department's "comments and
9 observations and has implemented corrective action, as well as
10 amendments".

11 Violation of RSA 397-A:6, I Failure to Supervise (2 Counts):

12 Violation of RSA 397-A:17, I(g) Failure to Supervise (2 Counts):

13 Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (2 Counts):

14 Violation of RSA 397-A:14-a, I Misleading or Deceptive Advertisements (2
15 Counts):

16 105.Paragraphs 1 through 104 are hereby realleged as fully set forth
17 herein.

18 106.William Blanchard, a Senior Loan Officer employed by Respondent
19 First Call Mortgage, sends out direct advertisements to potential
20 borrowers.

21 107.These advertisements are sent out in plain white envelopes, with
22 no return address or reference to the company on the envelope. In
23 addition to the advertisement, a copy of Respondent First Call
24 Mortgage's license is included.

25

1 108.The Department is in receipt of two such envelopes in which the
2 United States Post Office was unable to deliver, and as a result,
3 were returned to the Department for lack of a better return
4 address.

5 109.These advertisements are of poor quality, making the advertising
6 disclosure unreadable and thus, misleading or deceptive.

7 110.The above named Respondents have admitted to the Department's
8 observations herein. The above named Respondents (in a letter
9 from Respondent Donovan dated May 18, 2007) indicated Respondent
10 Donovan has reviewed all of the Department's "comments and
11 observations and has implemented corrective action, as well as
12 amendments".

13 **Violation of RSA 397-A:14-a, III Failure to Proper and Required Disclosure**

14 **(1 Count):**

15 111.Paragraphs 1 through 110 are hereby realleged as fully set forth
16 herein.

17 112.Respondent First Call Mortgage's website, www.ftmc.net, failed to
18 include the required disclosure "Licensed by the New Hampshire
19 banking department."

20 113.The above named Respondents have admitted to the Department's
21 observations herein. The above named Respondents (in a letter
22 from Respondent Donovan dated May 18, 2007) indicated Respondent
23 Donovan has reviewed all of the Department's "comments and
24 observations and has implemented corrective action, as well as
25 amendments".

1 Violation of RSA 397-A:14-a,I via RSA 397-A:2, II Mortgage Loans Brokered Do

2 Not Comply with Other New Hampshire State Law (1 Count):

3 Violation of RSA 397-A:14-a,I via RSA 397-A:2, III Persons Subject to or

4 Licensed by RSA Chapter 397-A Must Comply with Other New Hampshire State Law

5 (1 Count):

6 114.Paragraphs 1 through 113 are hereby realleged as fully set forth
7 herein.

8 115.The above named Respondents engaged in the brokering and lending
9 of mortgage loans secured by New Hampshire property and therefore
10 must comply with the rules and regulations of the State of New
11 Hampshire.

12 116.Consumer E's file contained a "Disclosure Required by
13 Massachusetts General Laws Chapter 184, Section 17B" and
14 Respondent First Call Mortgage's "Mortgage Lender Disclosures
15 Required by the Attorney General's Consumer Protection
16 Regulations."

17 117.The above named Respondents should have excluded these provisions
18 in any disclosures that refer to laws and regulations that do not
19 apply to New Hampshire borrowers.

20 118.The above named Respondents have admitted to the Department's
21 observations herein. The above named Respondents (in a letter
22 from Respondent Donovan dated May 18, 2007) indicated Respondent
23 Donovan has reviewed all of the Department's "comments and
24 observations and has implemented corrective action, as well as
25 amendments".

1 Violation of RSA 397-A:6, I Failure to Supervise (1 Count):

2 Violation of RSA 397-A:17, I(g) Failure to Supervise (1 Count):

3 Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (1 Count):

4 Violation of RSA 397-A:14-a, I Misleading or Deceptive Advertisements (2
5 Counts):

6 Violation of RSA 397-A:12, VIII Failure to Correct Reported Deficiencies (1
7 Count):

8 119.Paragraphs 1 through 118 are hereby realleged as fully set forth
9 herein.

10 120.Respondent First Call Mortgage's employees, Tami and Derrick
11 Heins, operate a website entitled www.heinsmortgage.com .

12 121.In conversations with Respondent Donovan on February 21, 2007, the
13 Department's Examiner discovered that the website has no
14 affiliation with the company and Respondent Donovan does not
15 review the content on the website, although it specifically states
16 that the individuals are employees of First Call Mortgage Company.

17 122.The above named Respondents are responsible for the supervision of
18 Respondent First Call Mortgage's employees and agents but do not
19 appear to have the appropriate controls in place in reference to
20 the above mentioned website.

21 123.The above named Respondents have admitted to the Department's
22 observations herein. The above named Respondents (in a letter
23 from Respondent Donovan dated May 18, 2007) indicated Respondent
24 Donovan has reviewed all of the Department's "comments and
25 observations and has implemented corrective action, as well as

1 amendments".

2 124. The advertisement with www.heinsmortgage.com had still not been
3 corrected as of the July 14, 2008 Department examination;
4 therefore, this is a repeat violation.

5 **Violation of RSA 397-A:5, II(d) Failure to Notify Department of Loan**

6 **Originators (5 Counts):**

7 **Violation of RSA 397-A:10, IV Failure to Update Information on File with**

8 **Commissioner (5 Counts):**

9 125. Paragraphs 1 through 124 are hereby realleged as fully set forth
10 herein.

11 126. The findings herein are as a result of the September 12, 2005
12 Department examination.

13 127. Neither the Department nor the Commissioner was notified of the
14 employment dates of five mortgage loan originators.

15 128. The above named Respondents have admitted to the Department's
16 observations herein. The above named Respondents (in a letter
17 from Respondent Donovan dated January 26, 2006) indicated that
18 enclosed are the "missing dates for employees".

19 **Violation of RSA 397-A:10, I Conducting Business under an Unauthorized Trade**

20 **Name or Name (2 Counts):**

21 129. Paragraphs 1 through 128 are hereby realleged as fully set forth
22 herein.

23 130. The Department's Examiners discovered (in the September 12, 2005
24 Examination) that the Respondents were conducting business under
25 the unlicensed trade names of "First Call Mortgage" and "First

1 Call Mortgage, Inc.".

2 131.The above named Respondents have admitted to the Department's
3 observations herein. The above named Respondents (in a letter
4 from Respondent Donovan dated January 26, 2006) indicated that the
5 "company logo has been revised to read First Call Mortgage Company
6 Inc.".

7 **Violation of NH Administrative Rule Ban 2505.01, which implements RSA 397-**

8 **A:16 Failure to Disclose Rate Lock Investor (6 Counts):**

9 132.Paragraphs 1 through 131 are hereby realleged as fully set forth
10 herein.

11 133.In the September 12, 2005 Department examination, Respondent First
12 Call Mortgage appeared to lock interest rates with investors but
13 did not disclose this relationship to the borrowers on the rate
14 lock agreement forms.

15 134.There were six such files that did not disclose the investor which
16 locked the interest rate.

17 135.The above named Respondents have admitted to the Department's
18 observations herein. The above named Respondents (in a letter
19 from Respondent Donovan dated January 26, 2006) indicated that the
20 "rate lock form now discloses the investor name funding the loan."
21
22

23 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
24
25

1 Violation of NH Administrative Rule Ban 2408.03, which implements RSA 397-

2 A:14, III Wrong Loans Contain Daily Simple Interest (7 Counts):

3 Violation of RSA 397-A:6, I Failure to Supervise (7 Counts):

4 Violation of RSA 397-A:12, VIII Failure to Correct Reported Deficiencies (1
5 Count):

6 136.Paragraphs 1 through 135 are hereby realleged as fully set forth
7 herein.

8 137.Licensees must give consumers a daily simple interest disclosure
9 at the time of application for a loan containing a daily simple
10 interest.

11 138.Borrowers applying for loans that do not contain daily simple
12 interest provisions should not be given the disclosures.

13 139.At the September 12, 2005 examination, no files were reviewed that
14 contained daily simple interest provisions; however, Respondents
15 appeared to have given the disclosure to all borrowers, evidenced
16 in six files.

17 140.The above named Respondents have admitted to the Department's
18 observations herein. The above named Respondents (in a letter
19 from Respondent Donovan dated January 26, 2006) indicated that the
20 "Daily Simple Interest form removed in template. Has only been
21 added to Equity loan templates."

22 141.The Department observed the same violation (including the Daily
23 Simple Interest Disclosures in loan files that did not require
24 them) during the July 14, 2008 Department examination.

1 Violation of the Equal Credit Opportunity Act and Regulation B, 12 C.F.R.

2 Section 202.9(a)(2) via RSA 397-A:2,III (4 Counts):

3 Violation of the Equal Credit Opportunity Act and Regulation B, 12 C.F.R.

4 Section 202.9(b)(1) via RSA 397-A:2,III (4 Counts):

5 Violation of RSA 397-A:17,I(1) Violation of Federal Laws and Rules (4
6 Counts):

7 142.Paragraphs 1 through 141 are hereby realleged as fully set forth
8 herein.

9 143.In the September 12, 2005 examination, review of the
10 denied/cancelled files indicated that the adverse action notices
11 failed to identify the federal agency that administers compliance
12 with the law concerning this creditor (Respondent First Call
13 Mortgage) in four files.

14 144.The above named Respondents have admitted to the Department's
15 observations herein. The above named Respondents (in a letter
16 from Respondent Donovan dated January 26, 2006) simply supplied
17 the address "for the Federal Agency on the Credit Denial Form".

18 Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

19 C.F.R. Section 3500.14(c) via RSA 397-A:2,III (1 Count):

20 Violation of RSA 397-A:17,I(1) Violation of Federal Laws and Rules (1 Count):

21 145.Paragraphs 1 through 144 are hereby realleged as fully set forth
22 herein.

23 146.In the September 12, 2005 examination, the Department's examiners
24 discovered that the HUD-1 Settlement Statement for the Consumer F
25 file contained and \$89.00 fee to "Record 2nd Mortgage".

1 147. Review of this "piggy back" second mortgage Home Equity Line Of
2 Credit Agreement and Disclosure revealed that the \$89.00 recording
3 fee, along with all the other closing costs, was paid by Citibank,
4 F.S.B. This fee charged Consumer must therefore be refunded to
5 Consumer F.

6 148. The above named Respondents have admitted to the Department's
7 observations herein. The above named Respondents (in a letter
8 from Respondent Donovan dated January 26, 2006) simply asked if
9 the fee needs to be refunded.

10 Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

11 C.F.R. Section 3500.2 via RSA 397-A:2,III (6 Counts):

12 Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

13 C.F.R. Section 3500.8 via RSA 397-A:2,III (6 Counts):

14 Violation of RSA 397-A:17,I(1) Violation of Federal Laws and Rules (6
15 Counts):

16 149. Paragraphs 1 through 148 are hereby realleged as fully set forth
17 herein.

18 150. For loans originated by mortgage brokers (which mortgage bankers
19 are referred to in the federal laws when not funding the loan
20 themselves) in a table funding transaction, the Lender is the
21 person to whom the obligation is initially assigned at or after
22 settlement.

23 151. Based on the September 12, 2005 examination, the majority of
24 Respondent First Call Mortgage's loans appear to be table-funding
25 transactions, which fail to disclose the investor providing funds

1 as the Lender in Section F of the HUD Settlement Statement.

2 152. Six such files failed to include these required disclosures.

3 153. The above named Respondents have admitted to the Department's
4 observations herein. The above named Respondents (in a letter
5 from Respondent Donovan dated January 26, 2006) simply stated that
6 as of "September 22, 2005, the disclosure on the HUD-1 page has
7 disclosed the investor funding the loan."

8 Violation of Title 18 U.S.C. Section 1001, et seq. via RSA 397-A:2, III (1
9 Count):

10 Violation of RSA 397-A:17, I(1) Violation of Federal Laws and Rules (1 Count):

11 Violation of RSA 397-A:17, I(f) Violation of Federal Laws and Rules (1 Count):

12 154. Paragraphs 1 through 153 are hereby realleged as fully set forth
13 herein.

14 155. On June 14, 2007, Respondents took an application for Consumer G
15 to refinance Consumer G's home. The location (Location A) was
16 disclosed as the borrower's primary residence. The loan
17 ultimately closed on or about July 24, 2007 as a primary
18 residence.

19 156. Also on June 14, 2007, Respondents took another application for
20 Consumer G to purchase a property in Location B. The occupancy
21 status on this file was also disclosed as a primary residence.
22 The loan ultimately closed on July 16, 2007 as a primary
23 residence.

1 157. Respondent Donovan provided the Department's Examiner a copy of a
2 November 13, 2007 email from a John Harding to Respondent Donovan,
3 which indicated that Consumer G's two loans both were considered
4 primary residences and "`legit' when they were done".

5 158. Despite Mr. Harding's response, Respondents were aware that two
6 loans were originated at the same time for two different
7 properties, one of which was erroneously disclosed as a primary
8 residence.

9 159. During the July 14, 2008 Department examination, Respondent
10 Donovan provided the Department's Examiner information relative to
11 a civil suit filed against Respondent First Call Mortgage for
12 breach of contract. The legal suit was brought forth relative to
13 the early payment default and the misrepresentation of occupancy
14 for the Consumer G loan that closed on July 24, 2007.

15 **II. ISSUES OF LAW**

16 The staff of the Department, alleges the following issues of law:

- 17 1. The Department realleges the above stated facts in paragraphs 1
18 through 159 as fully set forth herein.
- 19 2. The Department has jurisdiction over the licensing and regulation
20 of persons engaged in mortgage banker or broker activities pursuant
21 to NH RSA 397-A:2 and RSA 397-A:3.
- 22 3. RSA 397-A:3 requires those in the business of making or brokering
23 mortgage loans secured by real property located in this state, and
24 not exempt from licensure, to obtain a license from the Department.

- 1 4. RSA 397-A:2, II requires any mortgage loans made or brokered under
2 RSA Chapter 397-A to be further governed by any other applicable
3 laws of the State of New Hampshire.
- 4 5. In 2005, Ban Rule 2408.03 (which implements RSA 397-A:14-a, III)
5 provided that licensees are to provide daily simple interest
6 disclosures only on loans containing daily simple interest
7 provisions. Each of the above named Respondents violated this
8 provision on at least seven occasions as alleged above.
- 9 6. Licensees are required to provide a balloon note disclosure to all
10 borrowers who apply for loan with a balloon note provision. See Ban
11 Rule 2504.01.
- 12 7. In 2005, Ban Rule 2505.01 (which implements RSA 397-A:16) required
13 disclosure of investors to the borrowers on rate lock commitments
14 by the licensees. Each of the above named Respondents violated
15 this provision on at least six occasions as alleged above.
- 16 8. RSA 397-A:2, III requires persons subject to or licensed under RSA
17 Chapter 397-A to abide by applicable federal laws and regulations,
18 the laws and rules of the State of New Hampshire, and the orders of
19 the Commissioner. Any violation of such law, regulation, order, or
20 rule is a violation of RSA Chapter 397-A. Each of the above named
21 Respondents violated this statute on at least 160 occasions as
22 alleged above.
- 23 9. RSA 397-A:5, II(d) provided in 2005 and currently provides that
24 each applicant shall provide a list of all individuals, and the
25 address of the work location of each such individual, who will act

1 as originators for the licensee. Each of the above named
2 Respondents violated this statute on at least five occasions as
3 alleged above.

4 10. RSA 397-A:5, III provides that licenses must be issued for mortgage
5 lending or mortgage brokering activity occurring in a location in
6 this state that is separate from the licensee's principal place of
7 business and shall be referred to as a "branch office". Each of the
8 above named Respondents violated this provision on at least one
9 occasion as alleged above. Additionally, pursuant to RSA 397-A:16,
10 IV and RSA 397-A:21, Respondents must forfeit all application fees
11 and commissions stemming from loans processed and closed as related
12 to those from the Portsmouth, NH branch office when not properly
13 licensed.

14 11. RSA 397-A:6, I mandates that licensees supervise their employees,
15 agents, loan originators, and branch offices. Each of the above
16 named Respondents failed to adequately supervise and therefore
17 violated this statute on at least nineteen occasions as alleged
18 above.

19 12. RSA 397-A:10, I provides that no licensee shall conduct the
20 business of a mortgage banker or mortgage broker under a trade name
21 or any other name different from the name stated in its principal
22 office license or branch office license without immediately
23 notifying the Commissioner, who shall then amend the license
24 accordingly. Each of the above named Respondents violated this
25 statute on at least two occasions as alleged above.

1 13. RSA 397-A:10, II provides that licensees shall submit written
2 notification to the Department of the addition or deletion of a
3 principal and shall provide the name and address of each new
4 principal no later than 30 days after such change. Each of the
5 above named Respondents violated this statute on at least three
6 occasions as alleged above.

7 14. RSA 397-A:10, IV provides that persons licensed under RSA Chapter
8 397 are under a continuing obligation to update information on file
9 with the Commissioner. Each of the above named Respondents failed
10 to update the Commissioner on at least nine occasions as alleged
11 above.

12 15. RSA 397-A:12, IV provides that any agent of the Department may make
13 a thorough examination into the business affairs of each licensee
14 and shall report any violations of law, rule, or standard business
15 practice to the Department. The above named Respondents violated
16 this provision on at least three occasions as alleged above.

17 16. RSA 397-A:12, VIII provides that upon receipt of a written report
18 of examination, the licensee shall have 30 days or such additional
19 reasonable period as the Commissioner for good cause may allow.,
20 within which to review the report, recommend any changes and set
21 forth in writing the remedial course of action the licensee will
22 pursue to correct any reported deficiencies outlined in the report.
23 The above named Respondents violation this provision on at least 38
24 occasions as alleged above.

25

1 17. RSA 397-A:13, I provides that a licensee shall file its annual
2 report on or before February 1 each year concerning operations for
3 the preceding year or license period ending December 31. Each of
4 the above named Respondents violated this provision on at least one
5 occasion as alleged above.

6 18. RSA 397-A:14-a, I provides that no licensee or other person shall
7 advertise, print, display, publish, distribute or broadcast or
8 permit to be advertised, printed, displayed, published,
9 distributed, or broadcast in any manner whatsoever any statement or
10 representation with regard to the rates, terms, or conditions for
11 the lending of money under the provisions of this chapter, which is
12 false, misleading, or deceptive. Each of the above named
13 Respondents violated this statute on at least three occasions as
14 alleged above.

15 19. RSA 397-A:14-a, III provides that any advertisement, printing,
16 display, publication, distribution, or broadcast offering loans
17 governed by this chapter shall clearly and conspicuously contain
18 the disclosure, "Licensed by the New Hampshire banking department".
19 Failure to comply with the provisions of this paragraph shall
20 constitute sufficient cause for license revocation, suspension, or
21 denial. Each of the above named Respondents violated this statute
22 on at least one occasion as alleged above.

23 20. RSA 397-A:16, I provides that licensees may charge fees and points
24 for services rendered in conjunction with the origination, closing,
25 and servicing of loans; provided, however, that the licensee issues

1 a written disclosure to the borrower stating the estimated amount
2 and purpose of all fees and expenses within three business days of
3 the receipt of a loan application. Each of the above named
4 Respondents violated this provision on at least eight occasions as
5 alleged above.

6 21. RSA 397-A:16, IV provides that only mortgage brokers and mortgage
7 bankers licensed under the provisions of RSA Chapter 397 shall be
8 entitled to retain commissions for services rendered. Respondents
9 must refund any and all such commissions and application fees (per
10 RSA 397-A:21) received or charged from loans processed relating to
11 the Portsmouth, NH branch office when the branch office was
12 unlicensed. Each of the above named Respondents violated this
13 provision on at least one occasion as alleged above.

14 22. RSA 397-A:17, I(f) provides that licensees are prohibited from
15 making fraudulent misrepresentations, circumvent or conceal,
16 through whatever subterfuge or device, any of the material
17 particulars or the nature thereof required to be stated or
18 furnished to a borrower under the provisions of this chapter. Each
19 of the above named Respondents violated this provision on at least
20 one occasion as alleged above.

21 23. RSA 397-A:17, I(g) provides that licensees engaging in business in
22 New Hampshire must supervise their agents, originators, managers or
23 employees. Each of the above named Respondents violated this
24 statute on at least four occasions as alleged above.
25

1 24. Pursuant to RSA 397-A:17,I(k), licensees engaging in business in
2 New Hampshire are prohibited from engaging in unethical business
3 practices. Each of the above named Respondents violated this
4 statute on at least seven occasions as alleged above.

5 25. RSA 397-A:17,I(1) provides that licensees must abide by all federal
6 laws or rules thereunder. The Gramm-Leach-Bliley Act, Title V,
7 Sec. 501(a) states that it is the policy of the Congress that each
8 financial institution has an affirmative and continuing obligation
9 to respect the privacy of its customers and to protect the security
10 and confidentiality of those customers' nonpublic personal
11 information. The Gramm-Leach-Bliley Act, Title V, requires
12 financial institutions to maintain the integrity of nonpublic
13 personal information. Each of the above named Respondents violated
14 this federal law on at least twenty-six occasions as alleged above.

15 26. 18 U.S.C. Section 1001, et seq., provides that except as otherwise
16 provided in this section, whoever, in any matter within the
17 jurisdiction of the executive, legislative, or judicial branch of
18 the Government of the United States, knowingly and willfully (1)
19 falsifies, conceals, or covers up by any trick, scheme, or device a
20 material fact; (2) makes any materially false, fictitious, or
21 fraudulent statement or representation; or (3) makes or uses any
22 false writing or document knowing the same to contain any
23 materially false, fictitious, or fraudulent or entry; shall be
24 fined under this title, imprisoned not more than 5 years... Each of
25 the above named Respondents violated this provision on at least

1 one occasion as alleged above.

2 27. The Equal Credit Opportunity Act and Regulation B, 12 C.F.R.
3 Section 202.9(a)(2) requires a creditor (here Respondent First Call
4 Mortgage) to notify the consumer in writing when an adverse action
5 is taken against a loan applicant. The notification, among other
6 information, shall include the name and address of the federal
7 agency that administers compliance with respect to the creditor
8 (here First Call Mortgage). Each of the above named Respondents
9 violated this federal law on at least four occasions as alleged
10 above.

11 28. The Equal Credit Opportunity Act and Regulation B, 12 C.F.R.
12 Section 202.9(b)(1) requires a creditor (here Respondent First Call
13 Mortgage) to give an ECOA Notice to the consumer when an adverse
14 action is taken and must comply with The Equal Credit Opportunity
15 Act and Regulation B, 12 C.F.R. Section 202.9(a)(2), as mentioned
16 above. The notification, among other information, shall include
17 the name and address of the federal agency that administers
18 compliance with respect to the creditor (here First Call Mortgage).
19 Each of the above named Respondents violated this federal law on at
20 least four occasions as alleged above.

21 29. 16 C.F.R. Section 314.3 Standards for Safeguarding Customer
22 Information, states that the licensee must develop, implement and
23 maintain a comprehensive information security program that is
24 written in or more readily accessible parts and contains
25 administrative, technical and physical safeguards. Each of the

1 above named Respondents violated this federal law on at least one
2 occasion as alleged above.

3 30.16 C.F.R. Section 314.4(a), Standards for Safeguarding Customer
4 Information, states that the licensee's information security
5 program is required to designate an employee or employees to
6 coordinate the program. Each of the above named Respondents
7 violated this provision on at least one occasion as alleged above.

8 31.16 C.F.R. Section 314.4(b), Standards for Safeguarding Customer
9 Information, states that the licensee is required to perform and
10 document a risk assessment. Each of the above named Respondents
11 violated this provision on at least one occasion as alleged above.

12 32.16 C.F.R. Section 314.4(c), Standards for Safeguarding Customer
13 Information, states that the licensee is required to design,
14 implement and regularly test safeguards in place. The Respondents
15 have violated this provision on one occasion as alleged above.

16 33.16 C.F.R. Section 314.4(d), Standards for Safeguarding Customer
17 Information, states that the licensee is required to enter into
18 contracts with third party providers to ensure those parties
19 implement and maintain safeguards. Each of the above named
20 Respondents violated this provision on at least one occasion as
21 alleged above.

22 34.16 C.F.R. Section 314.4(e), Standards for Safeguarding Customer
23 Information, states that the licensee is required to evaluate and
24 adjust the information security program. Each of the above named
25 Respondents violated this provision on at least one occasion as

1 alleged above.

2 35. 24 C.F.R. Sections 3500.2 and 3500.8, Regulation X, Real Estate
3 Settlement Procedures Act, provides that for loans originated by a
4 mortgage broker that closes a federally related mortgage loan in
5 its own name in a table funding transaction, the lender is the
6 person to whom the obligation is initially assigned at or after
7 settlement. Each of the above named Respondents violated this
8 provision on at least six occasions by failing to provide the name
9 of the Lender in Section F of the HUD Settlement Statement.

10 36. 24 C.F.R. Section 3500.14(b) and (d), Regulation X, Real Estate
11 Settlement Procedures Act, provides that no person or entity shall
12 give or accept any fee or "thing of value" for the referral of
13 business. A "thing of value" includes, but is not limited to,
14 monies, discounts and payments for another person's expenses. Each
15 of the above named Respondents violated this provision on at least
16 forty-one occasions as alleged above.

17 37. 24 C.F.R. Section 3500.14(c), Regulation X, Real Estate Settlement
18 Procedures Act, provides that a charge by a person for which no or
19 nominal services are performed or for which duplicative fees are
20 charged is unearned fee and violates this section. Each of the
21 above named Respondents has violated this provision on at least one
22 occasion as alleged above.

23 38. RSA 397-A:18, I provides that the Department may issue a complaint
24 setting forth charges whenever the Department is of the opinion
25 that the licensee or person over whom the Department has

1 jurisdiction, has violated any provision of RSA 397-A or orders
2 thereunder.

3 39. RSA 397-A:21,IV provides that any person who, either knowingly or
4 negligently, violates any provision of Chapter 397-A, may upon
5 hearing, and in addition to any other penalty provided for by law,
6 be subject to an administrative fine not to exceed \$2,500, or both.
7 Each of the acts specified shall constitute a separate violation,
8 and such administrative action or fine may be imposed in addition
9 to any criminal penalties or civil liabilities imposed by New
10 Hampshire Banking laws.

11 40. RSA 397-A:21,V provides that every person who directly or
12 indirectly controls a person liable under this section, every
13 partner, principal executive officer or director of such person,
14 every person occupying a similar status or performing a similar
15 function, every employee of such person who materially aids in the
16 act constituting the violation, and every licensee or person acting
17 as a common law agent who materially aids in the acts constituting
18 the violation, either knowingly or negligently, may, upon notice and
19 opportunity for hearing, and in addition to any other penalty
20 provided for by law, be subject to suspension, revocation, or denial
21 of any registration or license, including the forfeiture of any
22 application fee, or the imposition of an administrative fine not to
23 exceed \$2,500, or both. Each of the acts specified shall constitute
24 a separate violation, and such administrative action or fine may be
25 imposed in addition to any criminal or civil penalties imposed.

1 III. RELIEF REQUESTED

2 The staff of the Department requests the Commissioner take the following

3 Action:

- 4 1. Find as fact the allegations contained in section I of this Staff
5 Petition;
- 6 2. Make conclusions of law relative to the allegations contained in
7 section II of the this petition;
- 8 3. Pursuant to RSA 397-A:17, order each of the above named Respondents
9 to show cause why their license should not be revoked;
- 10 4. Pursuant to RSA 397-A:18, order each of the above named Respondents
11 to immediately **Cease and Desist** from violations of this chapter;
- 12 5. Assess fines and administrative penalties in accordance with RSA 397-
13 A:21, for violations of Chapter 397-A, in the number and amount equal
14 to the violations set forth in section II of this Staff Petition;
- 15 6. Pursuant to RSA 397-A:16, IV and RSA 397-A:21, order the Respondents
16 to refund any and all commissions and application fees received or
17 charged from consumers from loans processed through the Portsmouth,
18 NH branch office when it was unlicensed;
- 19 7. Pursuant to the Real Estate Settlement Procedures Act, order the
20 Respondents to refund the yield spread premium of \$7,297.50 charged
21 to Consumer A but not disclosed to Consumer A;
- 22 8. Pursuant to the Real Estate Settlement Procedures Act, order the
23 Respondents to refund the \$89.00 duplicate recording fee charged to
24 Consumer F; and

1 9. Take such other administrative and legal actions as necessary for
2 enforcement of the New Hampshire Banking Laws, the protection of New
3 Hampshire citizens, and to provide other equitable relief.

4 **IV. RIGHT TO AMEND**

5 The Department reserves the right to amend this Staff Petition and to
6 request that the Commissioner take additional administrative action. Nothing
7 herein shall preclude the Department from bringing additional enforcement
8 action under RSA 397-A or the regulations thereunder.

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10
11 Respectfully submitted by:

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13 / S /
14 Maryam Torben Desfosses
15 Staff Attorney

16
17 9/24/08
18 Date