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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:

DANA CAPITAL GROUP, INC., and
DANA H. SMITH, President and Owner,

Respondents.

NO. C-05-188-08-CO01

CONSENT ORDER

DANA H. SMITH

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COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Deborah Bortner, Division Director, Division of Consumer Services, and Dana H. Smith (hereinafter Respondent Smith), and finding that the issues raised in the 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 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

The Department of Financial Institutions, Division of Consumer Services (Department) and Respondent Smith have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-05-188-08-SC03 (Statement of Charges), entered August 13, 2007, (copy attached hereto). Pursuant to chapter 31.04 RCW, the Consumer Loan Act (Act), and RCW 34.05.060 of the Administrative Procedure Act, Respondent Smith hereby agrees 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 this Consent Order. The parties intend this Consent Order to fully resolve the Statement of Charges.

CONSENT ORDER
C-05-188-08-CO01
Dana Capital Group, Inc. and
Dana H. Smith

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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

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Based upon the foregoing:

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

B. Findings of Fact and Conclusions of Law. It is AGREED that the Department entered this Consent Order based on the following Findings of Fact and Conclusions of Law:

I. Findings of Fact.

a. Dana Capital Group, Inc. (Dana Capital), was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a Consumer Loan Company on November 12, 1999. Dana Capital was licensed to conduct business as a Consumer Loan Company only at the following two (2) locations:

Main Office: 8001 Irvine Drive, Suite 1200, Irvine, CA 92618

Branch Office: 8044 Camino Montego, Carlsbad, CA 92009

b. Dana H. Smith was president and owner of Dana Capital Group, Inc. at all times material to the allegations set forth in the Statement of Charges.

c. The Department conducted an examination of the books and records of Dana Capital for the period of November 22, 1999, through September 30, 2005, and reviewed forty-two loan files. In fifteen of those loans, Dana Capital had failed to provide a Good Faith Estimate of costs (GFE) and Truth-in-Lending disclosures (TIL) within three business days of receiving the borrower's application. In nine of those loans, Dana Capital failed to maintain sufficient records to establish it had timely provided mandatory initial disclosures for

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Adjustable Rate Mortgages (ARM). In twelve of those loans, Dana Capital charged an underwriting fee when no underwriting services were performed.

d. Beginning in at least May 2002, Respondent Smith and Dana Capital entered into contractual arrangements with at least sixteen individuals and companies to conduct residential mortgage business in the name of Dana Capital from locations that were not licensed by the Department. These arrangements were in the form of a "Salesperson's Employment Contract" or a "Broker Services Agreement." Some of these agreements included provisions through which Dana Capital represented that it had or would obtain the necessary licensure for the contracting individuals and companies to operate lawfully under Dana Capital. Dana Capital, however, did not apply for any Washington branch licenses. Between May 1, 2002, and May 1, 2007, these sixteen companies originated at least 183 residential mortgage loans in Washington on behalf of Dana Capital.

e. On March 9, 2005, the Department sent Respondent Smith and Dana Capital a Directive requiring it to provide copies of the borrower's original application form, all mandatory disclosures, the final HUD 1 or HUD 1A, the note, the appraisal order, the first page of the credit report, the activity log, and any other documentation or explanation that would assist in assessing the borrower's complaint on or before March 24, 2005. Dana Capital failed to respond by that date. As a result, the Department was compelled to issue a subpoena for the above stated documents on April 5, 2005. The Department

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received a response to the subpoena on April 8, 2005, but the response was incomplete.

f. On May 30, 2002, Dana Capital ordered an appraisal from the Sharp Real Estate Appraisal Corporation (Sharp) related to the refinancing of a primary residence in Washington. The appraisal request was submitted by:

Dana Capital Group
24602 Raymond Way #9
Lake Forest, CA 92630

At the time this order was submitted by Dana Capital to Sharp, Dana Capital was not licensed to do business in Washington from that location.

g. On November 24, 2004, Dana Capital ordered an appraisal from the Sharp Real Estate Appraisal Corporation (Sharp) related to the refinancing of a primary residence in Washington. The appraisal request was submitted by:

Dana Capital
745 E. Maryland Ave.
Phoenix, AZ 85014

At the time this order was submitted by Dana Capital to Sharp, Dana Capital was not licensed to do business in Washington from that location.

h. Between September 1 and October 15, 2005, Dana Capital ordered six appraisals from Balderas Appraising Services (Balderas) for residential mortgage loans in Washington from the following location:

Dana Capital Group, Inc.
2525 E. Colorado
Pasadena, CA 91107

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At the time these orders were submitted by Dana Capital to Balderas, Dana Capital was not licensed to do business in Washington from that location.

i. In January 2007, Dana Capital, through a branch office, Global Equity Finance, Inc., located at 575 Anton Blvd., 3rd Floor, Costa Mesa, California, distributed an advertisement for its services to Washington consumers. At the time the advertisements were distributed, Dana Capital was not licensed to do business in Washington from that address and was not licensed to do business in Washington under the name of Global Equity Finance, Inc. Additionally, each advertisement stated an annual percentage rate (APR) in a smaller type size than other rates and terms stated in the advertisement. Each advertisement also stated a monthly payment, but failed to state the terms of repayment.

j. Dana Capital's Consolidated Annual Report and Annual Assessment fee for 2006 was due on or before March 1, 2007, but was not received at the Department until March 9, 2007. As a result of the late filing, the Department imposed a late fee of \$800. On April 2, 2007, the Department notified Respondent Smith of the imposition of the late fee and requested payment, but Respondent Smith did not pay the late fee.

k. On June 11, 2007, Respondent Smith notified the Department that Dana Capital was no longer an operating corporation and was surrendering its consumer loan license. On June 14, 2007, the Department notified Respondent Smith that in order to process the closure, Respondent Smith was

1 required to surrender the original branch license, submit a closure form,
2 submit a Consolidate Annual Report for the period January 1 through May 30,
3 2007, pay the appropriate 2007 annual assessment, and pay an \$800 late fee
4 from Respondent's 2006 annual assessment. On August 7, 2007, the
5 Department received a letter from Respondent Smith accompanied by a check
6 for the 2007 annual assessment fee. The letter stated that the 2007
7 Consolidated Annual Report and the closure forms for the main office and the
8 branch office were also enclosed, but these documents were not in the
9 envelope with the letter and have not been provided by Respondent Smith.
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11 2. Conclusions of Law:

- 12 a. Respondent Smith violated RCW 31.04.027(6) and RCW 31.04.102(2) and
13 (3) by failing to provide GFE and TIL disclosures within three business days
14 of receiving a loan application (17 counts).
- 15 b. Respondent Smith violated RCW 31.04.027(1), (2), and (3) and RCW
16 31.04.105(2) by charging applicants for underwriting fees when no
17 underwriting services were performed (12 counts).
- 18 c. Respondent Smith violated RCW 31.04.155 by failing to maintain sufficient
19 records to enable the Director to determine whether the licensee is complying
20 with the Consumer Loan Act (10 counts).
- 21 d. Respondent Smith violated RCW 31.04.075 by doing business from more than
22 one location without obtaining additional licenses for those locations (19
23 counts).
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- 1 e. Respondent Smith violated RCW 31.04.145 by failing to comply with the
2 Director's investigatory authority by failure to fully and completely comply
3 with the Department's Directives.
- 4 f. Respondent Smith violated RCW 31.04.027(10) and RCW 31.04.135 by
5 advertising a rate of interest without conspicuously disclosing the annual
6 percentage rate implied by that rate of interest and for failing to comply with
7 12 C.F.R. §226.24(c) (2 counts).
- 8 g. Respondent Smith violated WAC 208-620-420 by transacting business under
9 a name other than that on Respondents' license (16 counts).
- 10 h. Respondent Smith violated WAC 208-620-430(2) by failing to pay the late fee
11 imposed for the late filing of Respondent's Consolidated Annual Report and
12 Annual Assessment fee for 2006.
- 13 i. Respondent Smith violated WAC 208-620-460 by failing to file a
14 Consolidated Annual Report and pay the associated Annual Assessment
15 within 30 days of closure.
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17 **C. Waiver of Hearing.** It is AGREED that Respondent Smith has been informed of the right to
18 a hearing before an administrative law judge, and that he has waived the right to a hearing and any and all
19 administrative and judicial review of the issues raised in this matter, or of the resolution reached herein.
20 Accordingly, Respondent Smith agrees to withdraw his appeal and to inform the Office of Administrative
21 Hearings in writing of the withdrawal.
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23 **D. Fine.** It is AGREED that Respondent Smith shall pay to the Department a fine of \$250,000.
24 It is further AGREED that \$240,000 of the fine is stayed on condition that Respondent Smith comply
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1 fully and completely with all provisions of this Consent Order. It is further AGREED that Respondent
2 Smith shall pay \$10,000, in the form of a cashier's check made payable to the "Washington State
3 Treasurer," upon entry of this Consent Order.

4 **E. Prohibition from Industry.** It is AGREED that Respondent Smith is prohibited from
5 participating in the conduct of the affairs of any consumer lender licensed by the Department for twenty
6 years from the date of entry of this Consent Order in any capacity, including but not limited to: (1) any
7 financial capacity whether active or passive or (2) as an officer, director, principal, designated broker,
8 employee, or loan originator or (3) any management, control, oversight or maintenance of any trust
9 account(s) or (4) receiving, disbursing, managing or controlling in any way, consumer trust funds.

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11 **F. Application for License.** It is agreed that Respondent Smith shall not apply for any license
12 issued by the Department for a period of twenty years from the date of entry of this Consent Order.

13 **G. Lifting of Stay and Imposing Fine.** It is AGREED that:

- 14 1. The Administrative Procedures Act, chapter 34.05 of Revised Code of Washington
15 (RCW), shall govern all proceedings related to the lifting of the stay and imposition of
16 the fine.
- 17 2. If the Department determines that Respondent Smith is in violation of any of the
18 terms and conditions of this Consent Order and the Department accordingly seeks to
19 lift the stay and impose the \$240,000 fine, the Department first will notify Respondent
20 Smith in writing of its determination. To facilitate this, Respondent Smith AGREES
21 to provide the Department with an address at which he can be notified. Respondent
22 Smith further AGREES to notify the Department within seven days of any change of
23 address, and AGREES that notification under this section will be complete by mailing
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such notification to the address Respondent Smith has most recently provided.

Respondent Smith AGREES that failure to notify the Department within seven days of any change of address is a violation of this Consent Order.

3. Respondent Smith will be afforded 10 business days from the date of receipt of the Department's notification to request in writing an administrative hearing to be held before an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH).
4. Respondent Smith's request for hearing must be sent to the Department and received by the Department within 10 business days of the date of the receipt of the Department's notice.
5. Respondent Smith, in addition to his request for hearing, may provide a written response to include any information pertaining to the alleged noncompliance.
6. The administrative hearing shall be expedited and follow the timing and processes described in this Consent Order.
7. If Respondent Smith does not request the hearing within the stated time, the Department immediately will impose the \$240,000 fine and pursue whatever action it deems necessary to collect the fine.
8. If requested, the hearing will be held within fifteen business days (or as soon as the schedule of the ALJ permits) from the due date for Respondent Smith's request for hearing or from the date of receipt of Respondent Smith's timely request for hearing, whichever is sooner. The parties will accommodate the prompt scheduling of the hearing.

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9. The scope and issues of the hearing are limited solely to whether or not Respondent Smith is in violation of any of the terms and conditions of this Consent Order.

10. At the conclusion of the hearing, the ALJ will issue an initial decision. Either party may file a Petition for Review with the Director of the Department.

11. The Department's notification will include:

- a. A description of the alleged noncompliance;
- b. A statement that because of the noncompliance, the Department seeks to lift the stay and impose the \$240,000 fine;
- c. The opportunity for Respondent Smith to contest the Department's determination of noncompliance in an administrative hearing before an ALJ of OAH; and
- d. A copy of this Consent Order. The notification and hearing process provided in this Consent Order applies only to this Consent Order. It is solely provided in the event Respondent Smith chooses to contest the Department's determination of noncompliance.

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

I. Voluntarily Entered. It is AGREED that Respondent Smith has voluntarily entered into this Consent Order, which is effective when signed by the Director's designee.

1 J. Completely Read, Understood, and Agreed. It is AGREED that Respondent Smith has
2 read this Consent Order in its entirety and fully understand and agrees to all of the same.

3 **RESPONDENT:**

4 **Dana H. Smith**
5 _____
6 Dana H. Smith
7 Individually

12-12-08
Date

8 _____
9 Kimberley Hanks McGair, WSBA No. 30063
10 Attorney at Law
11 Attorney for Respondent Smith

12-15-08
Date

11 **DO NOT WRITE BELOW THIS LINE**

12 THIS ORDER ENTERED THIS 23rd DAY OF December, 2008.

13 _____
14 **DEBORAH BORTNER**
15 Director
16 Division of Consumer Services
17 Department of Financial Institutions

17 Presented by:
18 _____
19 **STEVEN C. SHERMAN**
20 Financial Legal Examiner



22 Approved by:
23 _____
24 **JAMES R. BRUSSELBACK**
25 Enforcement Chief