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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

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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.

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:

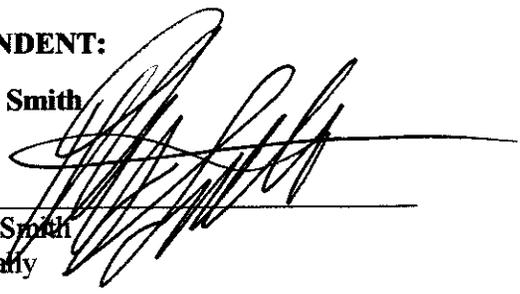
- a. A description of the alleged noncompliance;
- b. A statement that because of the noncompliance, the Department seeks to lift the stay and impose the \$240,000 fine;
- c. The opportunity for Respondent Smith to contest the Department's determination of noncompliance in an administrative hearing before 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

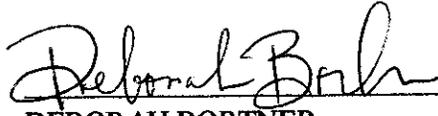
12-12-08
Date

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

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



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

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

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-05-188-07-SC03

AMENDED STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO REVOKE LICENSE,
IMPOSE FINE, ORDER RESTITUTION, PROHIBIT
FROM INDUSTRY, AND COLLECT
EXAMINATION AND INVESTIGATION FEES
(AMENDED)

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INTRODUCTION

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

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I. FACTUAL ALLEGATIONS

1.1 Respondents:

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, and has continued to be licensed to date. Dana Capital is licensed to conduct business as a Consumer Loan Company at the following two (2) locations:

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

Branch Office: 8044 Camino Montego, Carlsbad, CA 92009

Dana Capital is not licensed to use any name other than "Dana Capital Group, Inc."

B. Dana H. Smith (Respondent Smith) is known to be the President and owner of Dana Capital.

1 **1.2 Report of Examination:** From September 30, 2005, through October 26, 2005, the Department
2 conducted an examination of the books and records of Dana Capital for the period of November 22, 1999,
3 through September 30, 2005.

4 A. The Department incurred fees and expenses in the amount of \$21,370.93 related to this
5 examination, consisting of \$17,321.51 for examiner related services and \$4,049.42 for travel expenses.

6 B. The Department reviewed forty two (42) loan files as part of its examination. The Department
7 determined that in fifteen (15) of these loans Dana Capital had failed to provide a Good Faith Estimate
8 of costs (GFE) and Truth-in-Lending disclosures (TIL) within three business days of receiving the
9 borrower's application. The Department determined that in nine (9) of these loans Dana Capital failed
10 to maintain sufficient records to establish it had timely provided mandatory initial disclosures for
11 Adjustable Rate Mortgages (ARM). The Department determined that in twelve (12) of these loans
Dana Capital charged an underwriting fee when no underwriting services were performed.

12 **1.3 Unlicensed Loan Activity:** During the 2005 examination, the Department identified forty two (42)
13 unlicensed companies which had originated loans for property located in Washington on behalf of Dana
14 Capital. The Department sent subpoenas to each of these companies and obtained evidence that beginning in at
15 least May 2002, Dana Capital entered into contractual arrangements with at least sixteen (16) individuals and
16 companies to conduct residential mortgage business in the name of Dana Capital from locations that were not
17 licensed by the Department. These arrangements were predominately in the form of a "Salesperson's
18 Employment Contract" or a "Broker Services Agreement." Some of these agreements included provisions
19 through which Dana Capital represented that it had or would obtain the necessary licensure for the contracting
20 individuals and companies to operate lawfully under Dana Capital. Dana Capital, however, did not apply for
21 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.

22 **1.4 Consumer Complaints:** Between August 1, 2004, and May 1, 2007, the Department received several
23 consumer complaints by Washington residents against Dana Capital, which included the following:

1 **A. 16091-** Between November 2003 and January 2004, borrowers J.B. and M.B. contacted Dana
2 Capital seeking to refinance a mortgage on their primary residence located in Washington. Dana
3 Capital eventually obtained a loan for the borrowers through Encore Credit Corp. On March 9, 2005,
4 the Department sent Dana Capital a Directive requiring it to provide copies of the borrower's original
5 application form, all mandatory disclosures, the final HUD 1 or HUD 1A, the note, the appraisal order,
6 the first page of the credit report, the activity log, and any other documentation or explanation that
7 would assist in assessing the borrower's complaint. A copy of the complaint was provided, and Dana
8 Capital's response was due on or before March 24, 2005. Dana Capital, however, failed to respond. As
9 a result, the Department was compelled to issue a subpoena for the above stated documents on April 5,
10 2005. The Department received Dana Capital's response to the subpoena on April 8, 2005. Dana
11 Capital's response consisted of a cover letter containing a brief response to the complaint, a payoff
12 document from Ameriquest, a Final HUD 1, and a letter Respondent had written to Encore Lending
13 dated December 11, 2003, which had been part of the original loan process. None of the other required
14 documents were provided.

15 The Final HUD 1 shows that Dana Capital did not actually make the loan in question, but
16 instead brokered it to Encore Credit Corp. This, however, did not relieve Dana Capital from the
17 requirement to provide several mandatory disclosures, including a GFE and TIL, within three business
18 days of taking the borrower's application. Because Dana Capital failed to provide copies of these
19 documents in response to the Department's Directive, the Department finds that Dana Capital did not
20 provide these disclosures in a timely manner.

21 **B. 18564-** On September 27, 2005, the Sharp Real Estate Appraisal Corporation (Sharp) reported to
22 the Department that it had completed two (2) appraisals for Dana Capital related to the refinancing of
23 two primary residences in Washington. Sharp provided two documents entitled "Request for
24 Appraisal" it had received from Dana Capital. The first Request, dated May 30, 2002, indicated it had
25 been submitted by:

1 Dana Capital Group
2 24602 Raymond Way #9
3 Lake Forest, CA 92630

4 The second Request, dated November 24, 2004, indicated it had been submitted by:

5 Dana Capital
6 745 E. Maryland Ave.
7 Phoenix, AZ 85014

8 At the time these Requests were submitted by Dana Capital to Sharp, Dana Capital was not licensed to
9 do business in Washington from either of those locations.

10 C. 21448- On December 12, 2006, the Balderas Appraising Services (Balderas) reported to the
11 Department that it had completed six (6) appraisals for Dana Capital related to the refinancing of six
12 primary residences in Washington. Balderas provided six documents entitled "Appraisal Order" it had
13 received from Dana Capital. Each request was dated between September 1 and October 15, 2005, and
14 indicated it had been submitted by:

15 Dana Capital Group, Inc.
16 2525 E. Colorado
17 Pasadena, CA 91107

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

20 D. 21677, 21696- On January 22 and 24, 2007, respectively, two Washington consumers notified the
21 Department they had received an advertisement in the mail indicating it came from Dana Capital. Upon
22 review, the Department determined that the advertisements were identical, except for specific
23 information relevant to the recipient. On February 5, 2007, the Department requested an explanation for
24 the advertisements from Dana Capital. Dana Capital promptly responded that the advertisements had
25 been distributed by one of its "employees" at Global Equity Finance, Inc., located at 575 Anton Blvd.,
3rd Floor, Costa Mesa, California 92626. At the time the Washington consumers received the
advertisements, 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.

1 Additionally, each advertisement stated an annual percentage rate (APR) in a smaller type size
2 than other rates and terms stated in the advertisement. Each advertisement also stated a monthly
3 payment, but failed to state the terms of repayment.

4 **1.5 2006 Annual Assessment Late Fee:** Dana Capital's Consolidated Annual Report and Annual
5 Assessment fee for 2006 was due on or before March 1, 2007, but was not received at the Department by that
6 date. On March 9, 2007, the Department received the Report via overnight mail. The Report was accompanied
7 by a cover letter dated March 8, 2007, and a check for the annual assessment dated March 8, 2007. As a result
8 of the late filing, the Department imposed a late fee of \$800, calculated at \$100 per day for eight (8) days. On
9 April 2, 2007, the Department notified Dana Capital of the imposition of the late fee and requested payment.
10 Dana Capital has not paid the late fee.

11 **1.6 2007 Consolidated Annual Report and Annual Assessment:** On June 11, 2007, the Department
12 received a letter from Respondent Smith (dated May 30, 2007) notifying the Department that Dana Capital was
13 no longer an operating corporation and was surrendering its consumer loan license. Respondents' original
14 license for its main office was enclosed with the letter, but Respondents' license for its branch located in
15 Carlsbad, CA, was not surrendered. Respondent Smith also notified the Department that all licensing issues
16 should be referred to Respondents' attorney. On June 14, 2007, the Department sent a letter to Respondents via
17 Respondents' attorney, notifying Respondents that in order to process Respondents' closure, Respondents
18 needed to surrender the original branch license, submit a closure form, submit a Consolidate Annual Report for
19 the period January 1 through May 30, 2007, pay the appropriate 2007 annual assessment, and pay an \$800 late
20 fee from Respondents' 2006 annual assessment. On August 7, 2007, the Department received a letter from
21 Respondent Smith (dated July 3, 2007) accompanied by a check for the 2007 annual assessment. The letter
22 stated that the 2007 Consolidated Annual Report and the closure forms for the main office and the branch office
23 were also enclosed, but these documents were not in the envelope with the letter.

24 **1.7 On-Going Investigation:** The Department's investigation into the alleged violations of the Act by
25 Respondents continues to date.

1
2 **II. GROUNDS FOR ENTRY OF ORDER**

3 **2.1 Advertising:** Based on the Factual Allegations set forth in Section I above, Respondents are in
4 apparent violation of RCW 31.04.027(10) and RCW 31.04.135 for advertising a rate of interest without
5 conspicuously disclosing the annual percentage rate implied by that rate of interest and for failing to comply
6 with 12 C.F.R. §226.24(c) (2 counts).

7 **2.2 Disclosures:** Based on the Factual Allegations set forth in Section I above, Respondents are in
8 apparent violation of RCW 31.04.027(6) and RCW 31.04.102(2) and (3) for failure to provide GFE and TIL
9 disclosures within three business days of receiving a loan application (17 counts).

10 **2.3 Record Keeping:** Based on the Factual Allegations set forth in Section I above, Respondents are in
11 apparent violation of RCW 31.04.155 for failing to maintain sufficient records to enable the Director to
12 determine whether the licensee is complying with the Consumer Loan Act (10 counts).

13 **2.4 Unearned Fees:** Based on the Factual Allegations set forth in Section I above, Respondents are in
14 apparent violation of RCW 31.04.027(1), (2), and (3) and RCW 31.04.105(2) for charging applicants for
15 underwriting fees when no underwriting services were performed (12 counts).

16 **2.5 Unlicensed Activity:** Based on the Factual Allegations set forth in Section I above, Respondents are in
17 apparent violation of RCW 31.04.075 for doing business from more than one location without obtaining
18 additional licenses for those locations (19 counts).

19 **2.6 Unlicensed DBAs:** Based on the Factual Allegations set forth in Section I above, Respondents are in
20 apparent violation of WAC 208-620-420 for transacting business under a name other than that on Respondents'
21 license (16 counts).

22 **2.7 Failure to Comply with Director's Authority:** Based on the Factual Allegations set forth in Section I
23 above, Respondents are in apparent violation of RCW 31.04.145 for failure to comply with the Director's
24 investigatory authority by failure to fully and completely comply with the Department's Directives.

1 **2.8 Failure to Pay Late Fee:** Based on the Factual Allegations set forth in Section I above, Respondents
2 are in apparent violation of WAC 208-620-430(2) for failing to pay the late fee imposed for the late filing of
3 Respondents' Consolidated Annual Report and Annual Assessment fee for 2006.

4 **2.9 Failure to file 2007 Consolidated Annual Report and Pay Annual Assessment.** Based upon the
5 Factual Allegations set forth in Section I above, Respondents are in apparent violation of WAC 208-620-460 for
6 failure to file a Consolidated Annual Report and pay the associated Annual Assessment within 30 days of
7 closure.

8 **III. AUTHORITY TO IMPOSE SANCTIONS**

9 **3.1 Authority to Revoke License:** Pursuant to RCW 31.04.093(3)(a) and (b), the Director may revoke a
10 license if a licensee fails to pay any fee due the state of Washington, or fails to comply with any specific order
11 or demand of the Director lawfully made and directed to the licensee in accordance with the Act, or violates any
12 provision of the Act or any rule adopted under the Act either knowingly or without exercise of due care.

13 **3.2 Authority to Impose Fine:** Pursuant to RCW 31.04.093(4), the Director may impose fines of up to one
14 hundred dollars per day upon the licensee, its employee, or any other person subject to the Act for any violation
15 of the Act or failure to comply with any order or subpoena issued by the Director under the Act.

16 **3.3 Authority to Issue Orders to Pay Restitution:** Pursuant to RCW 31.04.093(5), the Director may issue
17 an order directing a licensee, its employee, or any other person subject to the Act to make restitution to a borrower
18 or other person who is damaged as a result of a violation of the Act.

19 **3.4 Authority to Prohibit from the Industry:** Pursuant to RCW 31.04.093(6)(d) and (e), the Director
20 may issue an order prohibiting from participation in the affairs of any licensee, any officer, principal, employee,
21 or any other person subject to the Act for failure to comply with any order or subpoena issued under the Act or
22 for a violation of RCW 31.04.027.

23 **3.5 Authority to Charge Examination Fee and Investigation Fee:** Pursuant to RCW 31.04.145(3) and
24 WAC 208-620-590, every licensee examined or investigated by the Director or the Director's designee shall
25 pay for the cost of the examination or investigation, calculated at the rate of sixty-nine dollars and one cent

1 (\$69.01) per staff hour devoted to the examination or investigation, and shall pay travel costs if the licensee
2 maintains its records outside the state.

3 **3.6 Accounting Requirements:** Pursuant to RCW 31.04.155, a licensee shall maintain accurate and
4 current books and records and shall make such books and records readily available to the Director until at least
5 twenty-five months have elapsed following the effective period to which the books and records relate.

6 **IV. NOTICE OF INTENTION TO ENTER ORDER**

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

- 10 4.1 Respondent Dana Capital Group, Inc.'s licenses to conduct the business of a Consumer Loan
11 Company be revoked;
- 12 4.2 Respondents Dana Capital Group, Inc., and Dana H. Smith jointly and severally pay a fine of \$500,000
for the violations set forth above,
- 13 4.3 Respondents Dana Capital Group, Inc., and Dana H. Smith jointly and severally pay restitution to the
14 borrowers injured by Respondents' violation of the Act in the aggregate amount of \$15,780.75 as set
forth in Appendix A and incorporated herein by reference;
- 15 4.4 Respondent Dana H. Smith be prohibited from participation in the conduct of the affairs of any
licensed consumer loan company, in any manner, for a period of five (5) years;
- 16 4.5 Respondents Dana Capital Group, Inc., and Dana H. Smith jointly and severally pay an investigation
17 fee in the amount of \$13,802 calculated at \$69.01 per hour for two hundred (200) staff hours devoted
to the investigation;
- 18 4.6 Respondents Dana Capital Group, Inc., and Dana H. Smith jointly and severally pay the costs of
19 examination in the amount of \$21,370.93, consisting of an examination fee of \$17,321.51, calculated at
\$69.01 per hour for two hundred fifty one (251) staff hours devoted to the examination, and \$4,049.42
for travel expenses;
- 20 4.7 Respondents Dana Capital Group, Inc., and Dana H. Smith jointly and severally pay \$800 for the late
21 fee imposed for the late filing of Respondents' Consolidated Annual Report and Annual Assessment
fee for 2006; and
- 22 4.8 Respondent Dana Capital Group, Inc., and Dana H. Smith maintain records in compliance with the Act
23 and provide the Director with the location of the books, records, and other information relating to
Respondent Dana Capital Group, Inc.'s consumer loan company business, and the name, address, and

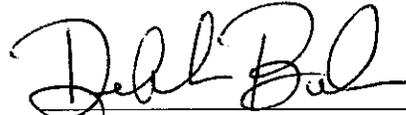
1 telephone number of the individual responsible for maintenance of such records in compliance with the
2 Act.

3 **V. AUTHORITY AND PROCEDURE**

4 This Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Impose Fine,
5 Order Restitution, Prohibit from Industry, and Collect Examination and Investigation Fees (Statement of
6 Charges) is entered pursuant to the provisions of RCW 31.04.093, RCW 31.04.165, RCW 31.04.202 and RCW
7 31.04.205, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act).

8 Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO
9 DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

10 Dated this 13th day of August, 2007.

11 

12 DEBORAH BORTNER
13 Director
14 Division of Consumer Services
15 Department of Financial Institutions

16 Presented by:

17 

18 Steven C. Sherman
19 Financial Legal Examiner

20 Approved by:

21 

22 James R. Brusselback
23 Program Manager and Enforcement Chief



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RESTITUTION SCHEDULE

| Borrower Name | Reference Number | Amount Due |
|----------------------|-------------------------|--------------------|
| J.B. and M.B. | BW 020402016 | \$3,425.75 |
| M.S.C. | 11225441 | \$1,345.00 |
| Z.H. | BW 228214 | \$ 300.00 |
| S.K.R. | 05030807 | \$ 995.00 |
| M.G. | 1002266577 | \$ 995.00 |
| M.K. | 11176428 | \$1,345.00 |
| L.G. | 100098901 | \$ 995.00 |
| J.H. | 11256314 | \$ 995.00 |
| E.C. | 1002631450 | \$1,890.00 |
| J.F. | 921000240857 | \$ 995.00 |
| J.M. | 11092636 | \$ 995.00 |
| T.K. | 1001425586 | \$1,515.00 |
| TOTAL | | \$15,780.75 |