

ORDER SUMMARY – Case Number: C-12-0943

Name(s): Nest Financial LLC; Brian Heberling

Order Number: C-12-0943-13-CO01

Effective Date: December 6, 2013

License Number: Nest Financial LLC: DFI: 53184 NMLS ID: 148026
Heberling: NMLS ID: 148742

Or NMLS Identifier [U/L] (Revoked, suspended, stayed, application denied or withdrawn)
If applicable, you must specifically note the ending dates of terms.

License Effect: revoke

Not Apply Until: 12/6/2023

Not Eligible Until: 12/6/2023

Prohibition/Ban Until: 12/6/2023

Investigation Costs	\$816	Due: June 6, 2014	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Fine	\$15,000	Due: June 6, 2014	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Assessment(s)/ Exam Fee	\$3,258.50	Due: June 6, 2014	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Restitution	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Confession of Judgment	\$19,074.50	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Satisfaction of Judgment Filed?	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N			
No. of Victims:				

Comments:

All amounts due within six months from December 6, 2013, or within ten days after the release of the collateral held as security for Respondent Nest Financial's surety bond.

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

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

No.: C-12-0943-13-CO01

CONSENT ORDER

NEST FINANCIAL, LLC, and
BRIAN HEBERLING, Owner,

Respondents.

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

AGREEMENT AND ORDER

The Department of Financial Institutions, Division of Consumer Services (Department) and
Respondents have agreed upon a basis for resolution of the matters alleged in Statement of Charges
No. C-12-0943-13-SC01 (Statement of Charges), entered February 13, 2013, (copy attached hereto).
Pursuant to chapter 19.146 RCW, the Mortgage Broker Practices Act (Act) and RCW 34.05.060 of
the Administrative Procedure Act, Respondents hereby agree to the Department's entry of this
Consent Order and further agree that the issues raised in the above-captioned matter may be
economically and efficiently settled by entry of this Consent Order. The parties intend this Consent
Order to fully resolve the Statement of Charges. Respondents are agreeing not to contest the
Statement of Charges in consideration of the terms of this Consent Order.

CONSENT ORDER
C-12-0943-13-CO01
NEST FINANCIAL, LLC, and
BRIAN HEBERLING

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

1 Based upon the foregoing:

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

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

9 C. **License Revocation.** It is AGREED that Respondent Nest Financial's mortgage broker
10 license is revoked.

11 D. **Prohibition from Industry.** It is AGREED that, for a period of ten years from the date of
12 this Consent Order, Respondents are prohibited from participating, in any capacity, in the conduct of
13 the affairs of any mortgage broker or consumer loan company licensed by the Department or subject
14 to licensure or regulation by the Department.

15 E. **Fine.** It is AGREED that Respondents shall pay a fine to the Department in the amount of
16 \$15,000, in the form of a cashier's check made payable to the "Washington State Treasurer," within
17 six months from the date of this Consent Order or within ten days after the release of the collateral
18 held as security for Respondent Nest Financial's surety bond SI2039 with Contractors Bonding and
19 Insurance Company, whichever occurs first.

20 F. **Investigation Fee.** It is AGREED that Respondents shall pay to the Department an
21 investigation fee of \$816, in the form of a cashier's check made payable to the "Washington State
22 Treasurer," within six months from the date of this Consent Order or within ten days after the release
23

1 of the collateral held as security for Respondent Nest Financial's surety bond SI2039 with
2 Contractors Bonding and Insurance Company, whichever occurs first.

3 **G. Examination Fee.** It is AGREED that Respondents shall pay to the Department an
4 examination fee of \$3,258.50, in the form of a cashier's check made payable to the "Washington
5 State Treasurer," within six months from the date of this Consent Order or within ten days after the
6 release of the collateral held as security for Respondent Nest Financial's surety bond SI2039 with
7 Contractors Bonding and Insurance Company, whichever occurs first. The fine, examination fee, and
8 investigation fee may be paid together in one \$19,074.50 cashier's check made payable to the
9 "Washington State Treasurer."

10 **H. Confession of Judgment for Fine, Investigation Fee, and Examination Fee.** It is
11 AGREED that Respondents have satisfactorily demonstrated their inability to presently pay the fine,
12 examination fee, and investigation fee agreed to in this Consent Order. The Department has accepted
13 a Confession of Judgment from Respondent for the fine, examination fee, and investigation fee in the
14 amount of \$19,074.50 owed to the Department. A copy of this Confession of Judgment is attached
15 and incorporated into this Consent Order by this reference. Consistent with RCW 4.60, the
16 Department may immediately seek entry of the judgment upon entry of this Consent Order.
17 Respondents shall, upon the Department's request, fully and promptly cooperate with the Department
18 in its efforts to get the judgment entered by the superior court. Upon payment in full of the fine,
19 investigation fee, and examination fee, as identified in Paragraphs E, F, and G, the Department will
20 file a Satisfaction of Judgment with the superior court.

21 **I. Rights of Non-Parties.** It is AGREED that the Department does not represent or have the
22 consent of any person or entity not a party to this Consent Order to take any action concerning their
23 personal legal rights. It is further AGREED that for any person or entity not a party to this Consent

1 Order, this Consent Order does not limit or create any private rights or remedies against Respondents,
2 limit or create liability of Respondents, or limit or create defenses of Respondents to any claims.

3 **J. Change of Address.** It is AGREED that for the duration of the period this Consent Order
4 is in effect, unless otherwise agreed to in writing by the Department, Respondent Brian Heberling
5 shall provide the Department with a mailing address and telephone number at which Respondents can
6 be contacted and Respondent Heberling shall notify the Department in writing of any changes to his
7 mailing address or telephone number within fifteen days of any such change.

8 **K. Records Retention.** It is AGREED that Respondents shall maintain records in
9 compliance with the Act and provide the Director with the location of the books, records and other
10 information relating to Respondent Nest Financial's mortgage broker business, and the name, address
11 and telephone number of the individual responsible for maintenance of such records in compliance
12 with the Act.

13 **L. Authority to Execute Order.** It is AGREED that the undersigned have represented and
14 warranted that they have the full power and right to execute this Consent Order on behalf of the
15 parties represented.

16 **M. Non-Compliance with Order.** It is AGREED that Respondents understand that failure to
17 abide by the terms and conditions of this Consent Order may result in further legal action by the
18 Director. In the event of such legal action, Respondents may be jointly and severally responsible to
19 reimburse the Director for the cost incurred in pursuing such action, including but not limited to,
20 attorney fees.

21 **N. Voluntarily Entered.** It is AGREED that Respondents have voluntarily entered into this
22 Consent Order, which is effective when signed by the Director's designee.

1 O. Completely Read, Understood, and Agreed. It is AGREED that Respondents have read
2 this Consent Order in its entirety and fully understand and agree to all of the same.

3 **RESPONDENTS:**

4 Nest Financial, LLC

5 BY [Redacted Signature]

6 Brian Heberling
7 Owner

11-12-13
Date

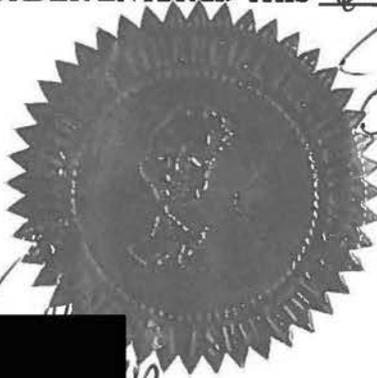
8 [Redacted Signature]

9 Brian Heberling
10 Individually

11-12-13
Date

12 DO NOT WRITE BELOW THIS LINE

13 THIS ORDER ENTERED THIS 6th DAY OF December, 2013



14 [Redacted Signature]

15 DEBORAH BORTNER
16 Director
17 Division of Consumer Services
18 Department of Financial Institutions

19 Presented by: [Redacted Signature]

20 Deborah Taellious
21 Financial Legal Examiner

22 Approved by: [Redacted Signature]

23 Charles E. Clark
24 Enforcement Chief

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7 **STATE OF WASHINGTON**
KING COUNTY SUPERIOR COURT

8 STATE OF WASHINGTON,
9 DEPARTMENT OF FINANCIAL
10 INSTITUTIONS,

11 Plaintiff,

12 v.

13 NEST FINANCIAL, LLC, and
14 BRIAN HEBERLING

15 Defendants.

NO.

DFI CASE NO. C-12-0943-13-CO01

CONFESSION OF JUDGMENT

(Clerk's Action Required)

16 **Judgment Summary**

17 Judgment Creditor: State of Washington, Department of Financial
Institutions

18 Attorneys for Department of Financial Institutions: Robert W. Ferguson, Washington Attorney General
Jeffrey Rupert, Assistant Attorney General

19 Judgment Debtors: Nest Financial, LLC, and
20 Brian Heberling

21 Principal Judgment Amount: \$19,074.50 owed to the Department of Financial
22 Institutions

23 Total Judgment Amount: \$19,074.50

24 Post-Judgment Interest (per annum): 12%

25
26

1 Pursuant to Chapter 4.60 of the Revised Code of Washington, Judgment by Confession,
2 defendants Nest Financial, LLC, and Brian Heberling hereby authorize entry of a judgment
3 under the following terms:

4 **Factual Basis for Judgment**

5 The State of Washington, Department of Financial Institutions, and Nest Financial,
6 LLC, and Brian Heberling have agreed upon a basis for resolution of the matters alleged in
7 Statement of Charges No. C-12-0943-13-SC01 (Statement of Charges), entered February 13,
8 2013. Nest Financial, LLC and Brian Heberling have agreed to enter into a Confession of
9 Judgment, pursuant to chapter 4.60 RCW, in the amount of \$19,074.50 of which they shall be
10 jointly and severally liable for paying the entire \$19,074.50, comprised of a \$15,000 fine,
11 \$3,258.50 examination fee, and \$816 investigation fee, which shall be paid to the State of
12 Washington, Department of Financial Institutions.

13 **Authorization for Entry of Judgment**

14 I, Brian Heberling, being duly sworn upon oath, acknowledge my debt and the debt of
15 Nest Financial, LLC, of \$19,074.50 to the State of Washington, Department of Financial
16 Institutions and I authorize entry of judgment against Nest Financial, LLC and Brian Heberling
17 and for the amount set forth in the judgment summary above.

18 DATED this 12th day of November, 2013.

19 [Redacted Signature]
20 Brian Heberling

21 SUBSCRIBED AND SWORN TO before me in BELLEVUE, Washington this
22 12 day of NOV, 2013.



23 [Redacted Signature]
24 Notary Public in and for the State of
25 Washington, residing at Sammamish,
26 Washington
My Commission expires: JAN-9-2014

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Order for Entry

The above Confession of Judgment having been presented to this Court for entry in accordance with RCW 4.60.070, the Court having found said Confession of Judgment to be sufficient, now, therefore, it is hereby

ORDERED that the Clerk of this Court shall forthwith enter Judgment against Nest Financial, LLC and Brian Heberling in accordance with the terms of the Confession of Judgment.

DONE IN OPEN COURT this ____ day of _____, 2013.

JUDGE/COURT COMMISSIONER

1 **B. Respondent Brian Heberling (Heberling)** is the President and Owner of Respondent
2 Nest Financial. Respondent Heberling has never been licensed by the Department to conduct
3 business as a loan originator in Washington.

4 **1.2 Unlicensed Activity.** On or about December 22, 2011, Respondent submitted via the
5 Nationwide Mortgage Licensing System (NMLS) a sponsorship removal for its designated broker
6 and sole licensed loan originator, Michael Stuart. The Department provided Respondent until
7 February 1, 2012, to obtain a designated broker. On or about January 23, 2012, the Department sent
8 a reminder email to Respondent Heberling stating “you only have until February 1st to obtain a
9 designated broker.” The email further stated that if Respondents did not obtain a designated broker
10 by February 1, 2012, that the license would be suspended. On February 2, 2012, the Department
11 issued a Resolution and Request for Action stating that Respondents were required to obtain a loan
12 originator and designated broker not later than February 17, 2012. Respondents did not obtain a loan
13 originator or designated broker by February 17, 2012. In a Declaration and Voluntary Agreement to
14 Cease and Desist signed by Respondent Heberling dated February 23, 2012, Respondent Heberling
15 agreed to accept no new clients and acknowledged that he understood that Nest Financial must have a
16 designated broker and licensed, sponsored loan originator to engage in short sale negotiations.
17 Respondents did not obtain a designated broker or loan originator.

18 **A.** Respondents accepted at least twelve new short sale clients after the Department
19 issued its February 2, 2012, Resolution and Request for action. Respondents accepted at least ten of
20 those twelve new short sale clients after Respondents signed the Declaration and Voluntary
21 Agreement to Cease and Desist dated February 23, 2012.

22 **B.** Respondents continued to maintain an active website advertising as able to assist
23 homeowners by offering short sale negotiations until at least October 5, 2012.

1 **1.3 Unlicensed Locations.** Respondent's sole licensed office location was 2018 156th Ave NE,
2 Suite 100, Bldg F, Bellevue, Washington 98007. Respondents operated from the unlicensed location
3 of 1090 W Lake Sammamish Pkwy NE, Bellevue, Washington 98008.

4 **1.4 Unauthorized Records Location.** Respondent's records location on record with the
5 Department was 16655 Redmond Way, Redmond, Washington, 98052. In response to the
6 Department's Designated Broker Questionnaire that is signed by Respondent Heberling and dated
7 June 3, 2012, Respondents reported that "residential mortgage books and records" and "accounting
8 records" are maintained at 1090 W Lake Sammamish Pkwy NE, Bellevue, Washington 98008.

9 **1.5 Prohibited Acts.** Michael Stuart was designated broker and the sole licensed loan originator
10 for Respondent Nest Financial from on or about March 29, 2010, through December 23, 2011.
11 Through at least July 2012, Respondents continued to use a Letter of Authorization form, which is
12 submitted to lenders authorizing the lender to release information to Respondents, that identified
13 Michael Stuart as an employee, agent, or subagent of Respondent Nest Financial.

14 **1.6 Failure to Submit Mortgage Broker Reports.** Respondents have not submitted a quarterly
15 report since the third quarter report for 2011, which was submitted on or about November 6, 2011.
16 Respondents ceased doing business in the state of Washington sometime in 2012. Respondents have
17 not submitted a Mortgage Broker Closure Form as required within twenty days after a licensed
18 mortgage broker ceases doing business in the state of Washington.

19 **1.7 On-Going Investigation.** The Department's investigation into the alleged violations of the
20 Act by Respondents continues to date.

21 II. GROUNDS FOR ENTRY OF ORDER

22 **2.1 Definition of Mortgage Broker.** Pursuant to RCW 19.146.010(14) and WAC 208-660-006,
23 "Mortgage broker" means any person who, for compensation or gain, or in the expectation of

1 compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage
2 loan or (b) holds himself or herself out as being able to assist a person in obtaining or applying to
3 obtain a residential mortgage loan.

4 **2.2 Definition of Loan Originator.** Pursuant to RCW 19.146.010(11) and WAC 208-660-006,
5 “Loan originator” means a natural person who for direct or indirect compensation or gain, or in the
6 expectation of direct or indirect compensation or gain takes a residential mortgage loan application
7 for a mortgage broker, offers or negotiates terms of a mortgage loan, performs residential mortgage
8 loan modification services, or holds themselves out to the public as able to perform any of these
9 activities.

10 **2.3 Definition of Residential Mortgage Loan Modification.** Pursuant to RCW 19.146.010(20)
11 and WAC 208-660-006, “Residential mortgage loan modification” means a change in one or more of
12 a residential mortgage loan’s terms or conditions. Changes to a residential mortgage loan’s terms or
13 conditions include but are not limited to forbearances, repayment plans, changes in interest rates, loan
14 terms, or loan types, capitalization of arrearages, or principal reductions.

15 **2.4 Definition of Residential Mortgage Loan Modification Services.** Pursuant to RCW
16 19.146.010(21) and WAC 208-660-006, “Residential mortgage loan modification services” includes
17 negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to
18 perform a residential mortgage loan modification. “Residential mortgage loan modification services”
19 also includes the collection of data for submission to any entity performing mortgage loan
20 modification services.

21 **2.5 Requirement to Obtain and Maintain Loan Originator License.** Based on the Factual
22 Allegations set forth in Section I above, Respondent Heberling is in apparent violation of RCW
23

1 19.146.200(1) and WAC 208-660-155 for engaging in the business of a loan originator without first
2 obtaining and maintaining a license under the Act.

3 **2.6 Requirement to Obtain and Maintain Loan Originator License.** Based on the Factual
4 Allegations set forth in Section I above, Respondent Nest Financial is in apparent violation of RCW
5 19.146.200(1) and WAC 208-660-155 for utilizing the services of unlicensed loan originators to
6 assist consumers with residential mortgage loan modification and short sale services.

7 **2.7 Requirement to Obtain and Maintain Branch License.** Based on the Factual Allegations
8 set forth in Section I above, Respondents are in apparent violation of RCW 19.146.265 for engaging
9 in the business of a mortgage broker from a fixed physical location without first obtaining and
10 maintaining a branch license for that fixed physical location under the Act.

11 **2.8 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondents
12 are in apparent violation of RCW 19.146.0201(1) and (2) for directly or indirectly employing a
13 scheme, device or artifice to defraud or mislead borrowers or lenders or any person and for engaging
14 in an unfair or deceptive practice toward any person.

15 **2.9 Requirement to Notify Department of Significant Developments.** Based on the Factual
16 Allegations set forth in Section I above, Respondents are in apparent violation of WAC 208-660-
17 400(2)(a) for failing to notify the Director to a change of principal place of business or any branch
18 offices.

19 **2.10 Requirement to Maintain Records Location on File with the Department.** Based on the
20 Factual Allegations set forth in Section I above, Respondents are in apparent violation of WAC 208-
21 660-400(4) for failing to notify the Department through the NMLS with the new physical address of
22 the mortgage broker books and records within five business days of the change.

1 **2.11 Requirement to Submit a Mortgage Broker Closure Form and Annual Report.** Based on
2 the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW
3 19.146.290 and WAC 208-660-400 for failing to update its record through the NMLS and submit a
4 mortgage broker closure form and annual report directly with the Department within twenty days
5 after ceasing operations in Washington.

6 **III. AUTHORITY TO IMPOSE SANCTIONS**

7 **3.1 Authority to Revoke License.** Pursuant to RCW 19.146.220(2), the Director may revoke
8 licenses for any violation of the Act.

9 **3.2 Authority to Prohibit from Industry.** Pursuant to RCW 19.146.220(5), the Director may
10 issue orders removing from office or prohibiting from participation in the conduct of the affairs of a
11 licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed
12 mortgage broker or any person subject to licensing under the Act for any violation of RCW
13 19.146.0201(1) through (9), RCW 19.146.200, or failure to comply with any directive or order of the
14 Director.

15 **3.3 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2), the Director may impose fines
16 against an employee, loan originator, independent contractor, or agent of the licensee, or other person
17 subject to this Act for any violations of the Act.

18 **3.4 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2), the Director may order
19 restitution against any person subject to the Act for any violation of the Act.

20 **3.5 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-
21 520(9) & (11), and WAC 208-660-550(4)(a), the Department will charge forty-eight dollars per hour
22 for an examiner's time devoted to an investigation of a licensee or other person subject to the Act.
23

1 **3.6 Authority to Collection Examination Fee.** Pursuant to RCW 19.146.228, WAC 208-660-
2 550(3), and WAC 208-660-510, the Department may charge forty-eight dollars per hour for an
3 examiner's time devoted to an examination that is a referral from Enforcement of a licensee or other
4 person subject to the Act.

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

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

- 10 **4.1** Respondent Nest Financial, LLC's, license to conduct the business of a mortgage
11 broker be revoked.
- 12 **4.2** Respondent Nest Financial, LLC, be prohibited from participation in the conduct of
13 the affairs of any mortgage broker subject to licensure by the Director, in any manner,
14 for a period of five years.
- 15 **4.3** Respondent Brian Heberling be prohibited from participation in the conduct of the
16 affairs of any mortgage broker and loan originator subject to licensure by the Director,
17 in any manner, for a period of five years.
- 18 **4.4** Respondents Nest Financial, LLC, and Brian Heberling jointly and severally pay a
19 fine of \$30,000.
- 20 **4.5** Respondents Nest Financial, LLC, and Brian Heberling jointly and severally pay an
21 investigation fee. As of the date of this Statement of Charges, the investigation fee
22 totals \$816.
- 23 **4.6** Respondents Nest Financial, LLC, and Brian Heberling jointly and severally pay an
24 examination fee. As of the date of this Statement of Charges, the examination fee
totals \$3,258.50.
- 4.7** Respondents Nest Financial, LLC, and Brian Heberling jointly and severally pay
restitution to the consumers referenced in paragraph 1.2 in an amount proven at
hearing.
- 4.8** Respondents Nest Financial, LLC, and Brian Heberling maintain records in
compliance with the Act and provide the Department with the location of the books,

1 records and other information relating to Respondent Nest Financial's mortgage
2 broker business, and the name, address and telephone number of the individual
responsible for maintenance of such records in compliance with the Act.

3 **V. AUTHORITY AND PROCEDURE**

4 This Statement of Charges is entered pursuant to the provisions of RCW 19.146.220, RCW
5 19.146.221, RCW 19.146.223, and RCW 19.146.230, and is subject to the provisions of chapter
6 34.05 RCW (The Administrative Procedure Act). Respondents may make a written request for a
7 hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR
8 HEARING accompanying this Statement of Charges.

9
10 Dated this 13th day of February, 2013



11 [Redacted Signature]

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

15 Presented by:
16 [Redacted Signature]

17 DEBORAH TAELLIUS
18 Financial Legal Examiner

19 Approved by:
20 [Redacted Signature]

21 CHARLES CLARK
22 Enforcement Chief