

1 State of New Hampshire Banking Department

2 In re the Matter of:)Case No.: 08-354
)
 3 State of New Hampshire Banking)
)
 4 Department,)Cease and Desist Order
)
 5 Petitioner,)
)
 6 and)
)
 7 Mycashnow.com, Carey Brown, Credit)
)
 8 Payment Services, Inc., DOES)
)
 9 INDIVIDUALS 1-100, and DOES ENTITIES 1-)
)
 10 100,)
)
 11 Respondents)

12 NOTICE OF ORDER

13 This Cease and Desist Order commences an adjudicative proceeding under
14 the provisions of RSA Chapter 399-A and RSA Chapter 541-A.

15 LEGAL AUTHORITY AND JURISDICTION

16 Pursuant to RSA 399-A:2,I, no person shall engage in the business of
17 making small loans, title loans, or payday loans in New Hampshire or with
18 consumers located in New Hampshire, without first obtaining a license from
19 the Commissioner as provided in RSA Chapter 399-A.

20 Prior to January 1, 2009, pursuant to RSA 399-A:2,IV, any person not
21 exempt under RSA 399-A:III, and the several members, officers, directors,
22 agents and employees thereof, who shall willfully violate or participate in
23 the violation of any provisions of Paragraph I shall be guilty of a
24 misdemeanor if a natural person, or guilty of a felony if any other person.
25 If the in making or collection of a loan the licensee violates Paragraph I

1 of this section, the loan contract shall be void and the lender shall have
2 no right to collect, receive, or retain any principal, interest, or charges
3 whatsoever.

4 Post January 1, 2009, pursuant to RSA 399-A:2,IV, any person not
5 exempt under RSA 399-A:III, and the several members, officers, directors,
6 agents and employees thereof, who shall willfully violate or participate in
7 the violation of any provisions of Paragraph I shall be guilty of a
8 misdemeanor if a natural person, or guilty of a felony if any other person.
9 If the in making or collection of a loan the person violates Paragraph I of
10 this section, the loan contract shall be void and the lender shall have no
11 right to collect, receive, or retain any principal, interest, or charges
12 whatsoever.

13 Pursuant to RSA 399-A:2,V, any person who willfully violates any
14 provisions of RSA 399-A:8-a,I or II or a cease and desist order or
15 injunction issued pursuant to RSA 399-A:8 shall be guilty of a class B
16 felony. Each of the acts specified shall constitute a separate offense and
17 a prosecution or conviction for any one of such offenses shall not bar
18 prosecution or conviction of any other offense.

19 Pursuant to RSA 399-A:2,VI, the provisions of RSA Chapter 399-A shall
20 apply to any person who seeks to evade its application by any device,
21 subterfuge, or pretense, including, without limitation:

22 (a) Calling a loan by any other name;

23 (b) Using any agents, affiliates, or subsidiaries in an attempt
24 to avoid the application of the provisions of RSA Chapter
25 399-A; or

1 (c) Having any affiliation or other business arrangement with an
2 entity that is exempt from the provisions of RSA Chapter
3 399-A, the effect of which is to evade the provisions of RSA
4 Chapter 399-A, including, without limitation, making a loan,
5 while purporting to be the agent of such an exempt entity
6 where the purported agent holds, acquires, or maintains a
7 preponderant economic interest in the revenues generated by
8 the loan.

9 Pursuant to RSA 399-A:4,VI, persons subject to or licensed by RSA
10 Chapter 399-A shall abide by the laws, rules, orders of the State of New
11 Hampshire, as well as federal laws. Any violation of such laws, rules or
12 orders is a violation of RSA Chapter 399-A.

13 Pursuant to RSA 399-A:7,I, the Commissioner may by order, upon due
14 notice and opportunity for hearing, assess penalties or deny, suspend, or
15 revoke any license or application if it is in the public interest and the
16 applicant, respondent, or licensee, any partner, member, officer or
17 director, any person occupying a similar status or performing similar
18 functions, or any person directly or indirectly controlling the applicant,
19 respondent or licensee has, inter alia, (c) made fraudulent
20 misrepresentations, or has circumvented or concealed, through whatever
21 subterfuge or device, any of the material particulars or the nature thereof
22 required to be stated or furnished to a borrower under the provisions of RSA
23 Chapter 399-A; (h) has engaged in dishonest or unethical practices in the
24 conduct of the business of making small loans...; (i) has violated RSA Chapter
25 399-A or any rule or order thereunder or has violated applicable federal

1 laws or rules thereunder...; and/or (k) should not be licensed for other good
2 cause shown.

3 Pursuant to RSA 399-A:8,I the New Hampshire Banking Department
4 ("Department") has the authority to order or direct persons subject to RSA
5 Chapter 399-A to cease and desist from violating RSA Chapter 399-A,
6 including any rule or order thereunder.

7 Pursuant to RSA 399-A:8-a,I(a), it is unlawful for any person, in
8 connection with the solicitation, offer, or closing of a loan, directly or
9 indirectly to employ any device, scheme, or artifice to defraud.

10 Pursuant to RSA 399-A:8-a,I(b), it is unlawful for any person, in
11 connection with the solicitation, offer, or closing of a loan, directly or
12 indirectly to make any untrue statement of a material fact or to omit to
13 state a material fact necessary in order to make the statements made, in
14 light of the circumstances under which they are made, not misleading.

15 Pursuant to RSA 399-A:8-a,I(c), it is unlawful for any person, in
16 connection with the solicitation, offer, or closing of a loan, directly or
17 indirectly to engage in any act, practice, or course of business which
18 operates or would operate as a fraud or deceit upon any person.

19 Pursuant to RSA 399-A:11,V, if charges in excess of those permitted by
20 RSA Chapter 399-A shall be charged, contracted for, or received except as a
21 result of an accidental or bona fide error the contract of loan shall be
22 void and the lender shall have no right to collect or receive any principal,
23 charges, or recompense whatsoever.

24 Pursuant to RSA 399-A:16,IV the Commissioner may issue, amend, or
25 rescind such orders as are reasonably necessary to comply with the

1 provisions of RSA Chapter 399-A.

2 Pursuant to RSA 399-A:16,VI, the Commissioner may act when the
3 Commissioner finds that such action is necessary or appropriate to the
4 public interest or for the protection of consumers and consistent with the
5 purposes fairly intended by the policy and provisions of Title XXXVI.

6 Pursuant to RSA 399-A:18,I, any person and the several members,
7 officers, directors, agents, and employees thereof who shall knowingly
8 violate any provision of RSA Chapter 399-A, shall be guilty of a misdemeanor
9 if a natural person, or guilty of a felony if any other person.

10 Pursuant to RSA 399-A:18,V, the Commissioner has the authority to
11 suspend, revoke or deny any license and to impose administrative penalties
12 of up to \$2,500.00 for each violation of the provisions of RSA Chapter 399-
13 A. Each of the acts specified shall constitute a separate violation, and
14 each such administrative action or fine may be imposed in addition to any
15 criminal or civil penalties imposed.

16 Pursuant to RSA 399-A:18,VI, every person who directly or indirectly
17 controls a person liable under this section, every partner, principal
18 executive officer, or director of such person, every person occupying a
19 similar status or performing a similar function, every employee of such
20 person who materially aids in the act constituting the violation, and every
21 licensee or person acting as a common law agent who materially aids in the
22 acts constituting the violation, either knowingly or negligently, may, upon
23 notice and opportunity for hearing, and in addition to any other penalty
24 provided for by law, be subject to suspension, revocation, or denial of any
25 registration or license, including the forfeiture of any application fee, or

1 an administrative fine not to exceed \$2,500.00 or both. Each of the acts
2 specified shall constitute a separate violation, and such administrative
3 action or fine may be imposed in addition to any criminal or civil penalties
4 imposed. No person shall be liable under RSA 399-A:18,VI who shall sustain
5 the burden of proof that such person did not know, and in the exercise of
6 reasonable care could not have known, of the existence of facts by reason of
7 which the liability is alleged to exist.

8 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
9 that is or may be an unfair or deceptive act or practice under RSA Chapter
10 358-A and exempt under RSA 358-A:3,I or that may violate any of the
11 provisions of Titles XXXV and XXXVI and administrative rules adopted
12 thereunder. The Commissioner may hold hearings relative to such conduct and
13 may order restitution for a person or persons adversely affected by such
14 conduct.

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

16 The above named Respondents have the right to request a hearing on
17 this Cease and Desist Order, as well as the right to be represented by
18 counsel at each Respondent's own expense. All hearings shall comply with RSA
19 Chapter 541-A. Any such request for a hearing shall be in writing, and signed
20 by the Respondent or the duly authorized agent of the above named
21 Respondent, and shall be delivered either by hand or certified mail, return
22 receipt requested, to the Banking Department, State of New Hampshire, 53
23 Regional Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled
24 within 10 days of the Department's receipt of the request. If the Respondent
25 fails to appear at the hearing after being duly notified, such person shall be

1 deemed in default, and the proceeding may be determined against the Respondent
2 upon consideration of the Cease and Desist Order, the allegations of which may
3 be deemed to be true.

4 If any of the above named Respondents fails to request a hearing within
5 30 calendar days of receipt of such order or reach a formal written and
6 executed settlement with the Department within that time frame, then such
7 person shall likewise be deemed in default, and the orders shall, on the
8 thirty-first day, become permanent, and shall remain in full force and effect
9 until and unless later modified or vacated by the Commissioner, for good cause
10 shown.

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

12 The Staff Petition dated December 30, 2009 (a copy of which is
13 attached hereto) is incorporated by reference hereto.

14 **ORDER**

15 WHEREAS, finding it necessary and appropriate and in the public
16 interest, and consistent with the intent and purposes of the New Hampshire
17 banking laws; and

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

20 It is hereby ORDERED, that:

- 21 1. The above named Respondents and any and all principals,
22 affiliates, members, officers, directors, employees,
23 independent contractors, or agents operating on behalf of
24 Respondent Mycashnow.com and its successors or assigns
25 (collectively "Mycashnow.com") are hereby ordered to cease

1 and desist from violating New Hampshire laws, including
2 those under RSA Chapter 399-A;

3 2. Respondent Mycashnow.com and any and all principals,
4 affiliates, members, officers, directors, employees,
5 independent contractors, or agents operating on behalf of
6 Respondent Mycashnow.com and its successors or assigns shall
7 immediately cease taking applications from New Hampshire
8 consumers until such time as Mycashnow.com is properly
9 licensed with the Department;

10 3. The above named Respondents and any and all principals,
11 affiliates, members, officers, directors, employees,
12 independent contractors, or agents operating on behalf of
13 Respondent Mycashnow.com and its successors or assigns shall
14 immediately cease running any and all advertisements,
15 including print, television, radio and via the internet on
16 its own or affiliate website, geared or directed towards New
17 Hampshire consumers;

18 4. Respondent MyCashNow.com shall show cause why penalties in
19 the amount of \$2,500.00 per violation (minimum of \$35,000.00
20 based on the Staff Petition) should not be imposed against
21 it;

22 5. Respondent Carey Brown ("Respondent Brown") shall show cause
23 why penalties in the amount of \$2,500.00 per violation
24 (minimum of \$35,000.00 based on the Staff Petition) should
25 not be imposed against him;

1 6. Respondent Credit Payment Services, Inc. ("Respondent CPS")
2 shall show cause why penalties in the amount of \$2,500.00 per
3 violation (minimum of \$35,000.00 based on the Staff Petition)
4 should not be imposed against it;

5 7. Respondent DOES INDIVIDUALS 1-100 ("Respondent DOES
6 INDIVIDUALS") shall show cause why penalties in the amount of
7 \$2,500.00 per violation (minimum of \$35,000.00 based on the
8 Staff Petition) should not be imposed against each of them
9 individually;

10 8. Respondent DOES ENTITIES 1-100 ("Respondent DOES ENTITIES")
11 shall show cause why penalties in the amount of \$2,500.00 per
12 violation (minimum of \$35,000.00 based on the Staff Petition)
13 should not be imposed against each of them individually;

14 9. The above named Respondents shall show cause why, in addition
15 to any penalties listed in Paragraphs 1 through 8,
16 Respondents shall not be able to collect, receive, or retain
17 from each New Hampshire consumer any principal, interest, or
18 charges whatsoever and return such monies to each New
19 Hampshire consumer or forgive such debt;

20 10. Within five (5) days of this Cease and Desist Order,
21 Respondents are hereby ordered to submit a full consumer list
22 of all New Hampshire with whom Respondents have done business
23 in the past three (3) years. Such consumer list shall
24 include the names and latest contact information of each
25 consumer, the date of the agreement with Respondents and

1 amounts charged and collected by Respondents for each
2 consumer;

3 11. Nothing in this Cease and Desist Order shall prevent the
4 Department from taking any further administrative action
5 under New Hampshire law; and

6 12. The above named Respondents shall be jointly and severally
7 liable for the above amounts alleged in Paragraphs 1 through
8 11 above.

9 It is hereby further ORDERED that:

10 13. Along with the administrative penalties listed for the above
11 named Respondents, any rescission, restitution or
12 disgorgement of profits shall be immediately paid to each New
13 Hampshire consumer who entered into a contractual agreement
14 with Respondents; and

15 14. Failure to request a hearing within 30 days of the date of
16 receipt or valid delivery of this Cease and Desist Order
17 shall result in a default judgment being rendered and
18 administrative penalties imposed upon the defaulting
19 Respondent(s).

20 SIGNED,

21
22 Dated: 12/31/09

23 /s/
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 08-354
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3 State of New Hampshire Banking)
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4 Department,) Staff Petition
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5 Petitioner,) December 30, 2009
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6 and)
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7 Mycashnow.com, Carey Brown, Credit)
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8 Payment Services, Inc., DOES)
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9 INDIVIDUALS 1-100, and DOES ENTITIES 1-)
))
10 100,)
))
11 Respondents)

12 I. STATEMENT OF ALLEGATIONS

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

15 Facts Common on All Counts:

- 16 1. Respondent Mycashnow.com (hereinafter "Respondent Mycashnow.com")
17 is an unlicensed internet small loan lender and internet payday
18 lender located out of possibly both West Vancouver, British
19 Columbia, Canada and St. George's Grenada, West Indies. There is
20 a possibility it is also a shell corporation, serving as the
21 alter ego of both Respondent Carey Brown and Respondent Credit
22 Payment Services, Inc.
- 23 2. Respondent Carey Brown (hereinafter "Respondent Brown") is
24 allegedly the owner of Respondent Mycashnow.com and/or Respondent
25 Mycashnow.com operates as Respondent Brown's corporate alter-ego.

1 3. Respondent Credit Payment Services, Inc. (hereinafter "Respondent
2 CPS") appears to be the alter-ego for Respondent Mycashnow.com.

3 4. Respondent DOES INDIVIDUALS 1-100 (hereinafter "Respondent DOES
4 INDIVIDUALS") include those principals, affiliates, members,
5 officers, directors, employees, independent contractors, or
6 agents operating on behalf of Respondent Mycashnow.com and its
7 successors or assigns.

8 Violation of RSA 399-A:2, I Operating as a Payday Lender and/or Small Loan

9 Lender Without a License in New Hampshire (Minimum 2 Counts):

10 Violation of 399-A:7, I(c) Fraudulent Misrepresentations or Concealment of

11 Material Particulars to Borrowers (Minimum 2 Counts):

12 Violation of 399-A:7, I(h) Dishonest or Unethical Practices in the Conduct

13 of the Business of Making Small Loans (Minimum 2 Counts):

14 Violation of 399-A:7, I(i) Violated RSA Chapter 399-A (Minimum 2 Counts):

15 Violation of 399-A:8-a, I(a) Employing Device, Scheme, or Artifice to

16 Defraud (2 Counts):

17 Violation of 399-A:8-a, I(b) Make Any Untrue Statement of a Material Fact Or

18 To Omit to State a Material Fact (2 Counts):

19 Violation of 399-A:8-a, I(c) Engaging in Any Act or Practice or Course of

20 Business which Operates as a Fraud or Deceit Upon any Person (2 Counts):

21 5. Paragraphs 1 through 4 are hereby realleged as fully set forth
22 herein.

23 6. On August 7, 2008, the Department received a consumer complaint
24 from Consumer A, who indicated Consumer A obtained a payday loan
25 from Respondent Mycashnow.com.

1 7. Consumer A, in entering into the payday loan, relied on
2 Respondent Mucashnow.com's website, which states in small font
3 that "MyCashNow and its affiliates do not provide payday loan
4 services to those who live in the following states: California,
5 Nevada, Colorado, Georgia, Kansas, Montana, Ohio, Tennessee,
6 Arkansas, Virginia, and West Virginia.

7 8. The above named Respondents failed to include New Hampshire,
8 where the prohibition also applies since Respondent Mycashnow.com
9 is not licensed in New Hampshire as a payday lender.

10 9. The above named Respondents' website, mycashnow.com also
11 advertises and offers short term loans, which include loans for
12 amounts under \$10,000.00. Loans under \$10,000.00 are considered
13 small loans under RSA Chapter 399-A:1,XIV in New Hampshire.

14 10. Since the above named Respondents are not licensed in New
15 Hampshire, the above named Respondents shall not be able to
16 collect, receive, or retain from each New Hampshire consumer any
17 principal, interest, or charges whatsoever and return such monies
18 to each New Hampshire consumer (including Consumer A) or forgive
19 such debt.

20 **II. ISSUES OF LAW**

21 The staff of the Department alleges the following issues of law:

22 1. The Department realleges the above stated facts in Paragraphs 1
23 through 10 as fully set forth herein.

24 2. The Department has jurisdiction over the licensing and regulation
25 of persons engaged in small loan lending activities pursuant to NH

1 RSA 399-A:2 and RSA 399-A:11 and RSA 399-A:12.

2 3. The Department has jurisdiction over the licensing and regulation
3 of persons engaged in payday lending activities pursuant to NH RSA
4 399-A:2 and RSA 399-A:13.

5 4. Prior to January 1, 2009, RSA 399-A:1,X defines "payday loan" as a
6 small, short-maturity loan on security, regardless of
7 cancelability under Regulation E and regardless of any other law
8 that may govern the transaction, in form of: (a) a check; (b) any
9 form of assignment of an interest in the account of an individual
10 or individuals at a depository institution; (c) any form of
11 assignment of income payable to an individual or individuals; or
12 (d) any payment authorization that allows a person to debit the
13 account of an individual or individuals at a depository
14 institution.

15 5. Post January 1, 2009, RSA 399-A:1,X defines "payday loan" as a
16 short-maturity, secured or unsecured loan, other than a title
17 loan.

18 6. Prior to January 1, 2009, RSA 399-A:1,XIV defines "small loan" as
19 a closed-end loan in the amount of \$10,000.00 or less or an open-
20 end loan with a line of credit of \$10,000.00 or less, and where
21 the lender contracts for, exacts or receives, directly or
22 indirectly, in connection with any such loan any charges, whether
23 for interest, compensation, brokerage, endorsement fees,
24 consideration, expense or otherwise, which in the aggregate are
25 greater than 10 percent per annum.

1 7. Post January 1, 2009, RSA 399-A:1,XIV defines "small loan" as a
2 closed-end loan in the amount of \$10,000.00 or less or an open-end
3 loan with a line of credit of \$10,000.00 or less, and where the
4 lender contracts for, exacts or receives, directly or indirectly,
5 or where the borrower pays for, directly or indirectly in
6 connection with any such loan any charges, whether for interest,
7 examination, commission, compensation, service, brokerage,
8 endorsement fees, other fees, consideration, expense or otherwise,
9 which in the aggregate are greater than 10 percent per annum
10 except for the lawful fees, if any, actually and necessarily paid
11 out by the lender to any public officer, for filing or recording
12 in any public office any instrument securing such loan and except
13 for the reasonable costs, charges, and expenses, including court
14 costs actually incurred in connection with a repossession of the
15 security or an actual sale of the security.

16 8. RSA 399-A:2,I provides that no person shall engage in the business
17 of making small loans, title loans, or payday loans in New
18 Hampshire or with consumers located in New Hampshire, without
19 first obtaining a license from the Commissioner as provided in RSA
20 Chapter 399-A. Each of the above named Respondents violated this
21 provision on at least two occasions as alleged above.

22 9. RSA 399-A:2,IV (prior to January 1, 2009) provides that any person
23 not exempt under RSA 399-A:III, and the several members, officers,
24 directors, agents and employees thereof, who shall willfully
25 violate or participate in the violation of any provisions of

1 Paragraph I shall be guilty of a misdemeanor if a natural person,
2 or guilty of a felony if any other person. If the in making or
3 collection of a loan the licensee violates Paragraph I of this
4 section, the loan contract shall be void and the lender shall have
5 no right to collect, receive, or retain any principal, interest,
6 or charges whatsoever.

7 10. RSA 399-A:2,IV (post January 1, 2009) provides that any person
8 not exempt under RSA 399-A:III, and the several members,
9 officers, directors, agents and employees thereof, who shall
10 willfully violate or participate in the violation of any
11 provisions of Paragraph I shall be guilty of a misdemeanor if a
12 natural person, or guilty of a felony if any other person. If
13 the in making or collection of a loan the person violates
14 Paragraph I of this section, the loan contract shall be void and
15 the lender shall have no right to collect, receive, or retain any
16 principal, interest, or charges whatsoever.

17 11. RSA 399-A:2,V provides that any person who willfully violates any
18 provisions of RSA 399-A:8-a,I or II or a cease and desist order
19 or injunction issued pursuant to RSA 399-A:8 shall be guilty of a
20 class B felony. Each of the acts specified shall constitute a
21 separate offense and a prosecution or conviction for any one of
22 such offenses shall not bar prosecution or conviction of any
23 other offense.

24 12. RSA 399-A:2,VI provides that the provisions of RSA Chapter 399-A
25 shall apply to any person who seeks to evade its application by

1 any device, subterfuge, or pretense, including, without
2 limitation:

3 (a) Calling a loan by any other name;

4 (b) Using any agents, affiliates, or subsidiaries in an
5 attempt to avoid the application of the provisions of RSA
6 Chapter 399-A; or

7 (c) Having any affiliation or other business arrangement with
8 an entity that is exempt from the provisions of RSA Chapter
9 399-A, the effect of which is to evade the provisions of RSA
10 Chapter 399-A, including, without limitation, making a loan,
11 while purporting to be the agent of such an exempt entity
12 where the purported agent holds, acquires, or maintains a
13 preponderant economic interest in the revenues generated by
14 the loan.

15 13. RSA 399-A:4,VI provides that persons subject to or licensed by
16 RSA Chapter 399-A shall abide by the laws, rules, orders of the
17 State of New Hampshire, as well as federal laws. Any violation of
18 such laws, rules or orders is a violation of RSA Chapter 399-A.

19 14. RSA 399-A:7,I provides that the Commissioner may by order, upon
20 due notice and opportunity for hearing, assess penalties or deny,
21 suspend, or revoke any license or application if it is in the
22 public interest and the applicant, respondent, or licensee, any
23 partner, member, officer or director, any person occupying a
24 similar status or performing similar functions, or any person
25 directly or indirectly controlling the applicant, respondent or

1 licensee has, inter alia, (c) made fraudulent misrepresentations,
2 or has circumvented or concealed, through whatever subterfuge or
3 device, any of the material particulars or the nature thereof
4 required to be stated or furnished to a borrower under the
5 provisions of RSA Chapter 399-A...; (h) has engaged in dishonest or
6 unethical practices in the conduct of the business of making
7 small loans, and/or among other factors; (i) has violated RSA
8 Chapter 399-A or any rule or order thereunder or has violated
9 applicable federal laws or rules thereunder...; and/or (k) should
10 not be licensed for other good cause shown. Each of the above
11 named Respondents violated subparagraphs (c), (h) and (i) on at
12 least two occasions each as alleged above.

13 15. RSA 399-A:8,I provides that the Department has the authority to
14 order or direct persons subject to RSA Chapter 399-A to cease and
15 desist from violating of RSA Chapter 399-A, including any rule or
16 order thereunder.

17 16. RSA 399-A:8-a,I(a) provides it is unlawful for any person, in
18 connection with the solicitation, offer, or closing of a loan,
19 directly or indirectly to employ any device, scheme, or artifice
20 to defraud. Each of the above named Respondents violated this
21 provision on at least two occasions as alleged above.

22 17. RSA 399-A:8-a,I(b) provides it is unlawful for any person, in
23 connection with the solicitation, offer, or closing of a loan,
24 directly or indirectly to make any untrue statement of a material
25 fact or to omit to state a material fact necessary in order to

1 make the statements made, in light of the circumstances under
2 which they are made, not misleading. Each of the above named
3 Respondents violated this provision on at least two occasions as
4 alleged above.

5 18. RSA 399-A:8-a,I(c) provides it is unlawful for any person, in
6 connection with the solicitation, offer, or closing of a loan,
7 directly or indirectly to engage in any act, practice, or course
8 of business which operates or would operate as a fraud or deceit
9 upon any person. Each of the above named Respondents violated
10 this provision on at least two occasions as alleged above.

11 19. RSA 399-A:11,V provides that if charges in excess of those
12 permitted by RSA Chapter 399-A shall be charged, contracted for,
13 or received except as a result of an accidental or bona fide
14 error the contract of loan shall be void and the lender shall
15 have no right to collect or receive any principal, charges, or
16 recompense whatsoever.

17 20. RSA 399-A:16,IV provides that the Commissioner may issue, amend,
18 or rescind such orders as are reasonably necessary to comply with
19 the provisions of RSA Chapter 399-A.

20 21. RSA 399-A:16,VI provides that the Commissioner may act when the
21 Commissioner finds that such action is necessary or appropriate
22 to the public interest or for the protection of consumers and
23 consistent with the purposes fairly intended by the policy and
24 provisions of Title XXXVI.

25 22. RSA 399-A:18,I provides that any person and the several members,

1 officers, directors, agents, and employees thereof who shall
2 knowingly violate any provision of RSA Chapter 399-A, shall be
3 guilty of a misdemeanor if a natural person, or guilty of a
4 felony if any other person.

5 23. RSA 399-A:18,V provides that the Commissioner has the authority
6 to suspend, revoke or deny any license and to impose
7 administrative penalties of up to \$2,500.00 for each violation of
8 the provisions of RSA Chapter 399-A. Each of the acts specified
9 shall constitute a separate violation, and each such
10 administrative action or fine may be imposed in addition to any
11 criminal or civil penalties imposed.

12 24. RSA 399-A:18,VI provides that every person who directly or
13 indirectly controls a person liable under this section, every
14 partner, principal executive officer, or director of such person,
15 every person occupying a similar status or performing a similar
16 function, every employee of such person who materially aids in
17 the act constituting the violation, and every licensee or person
18 acting as a common law agent who materially aids in the acts
19 constituting the violation, either knowingly or negligently, may,
20 upon notice and opportunity for hearing, and in addition to any
21 other penalty provided for by law, be subject to suspension,
22 revocation, or denial of any registration or license, including
23 the forfeiture of any application fee, or an administrative fine
24 not to exceed \$2,500.00 or both. Each of the acts specified
25 shall constitute a separate violation, and such administrative

1 action or fine may be imposed in addition to any criminal or
2 civil penalties imposed. No person shall be liable under RSA
3 399-A:18,VI who shall sustain the burden of proof that such
4 person did not know, and in the exercise of reasonable care could
5 not have known, of the existence of facts by reason of which the
6 liability is alleged to exist.

7 25. RSA 383:10-d provides that the Commissioner shall investigate
8 conduct that is or may be an unfair or deceptive act or practice
9 under RSA Chapter 358-A and exempt under RSA 358-A:3,I or that
10 may violate any of the provisions of Titles XXXV and XXXVI and
11 administrative rules adopted thereunder. The Commissioner may
12 hold hearings relative to such conduct and may order restitution
13 for a person or persons adversely affected by such conduct.

14 **III. RELIEF REQUESTED**

15 The staff of the Department requests the Commissioner take the following
16 action:

- 17 1. Find as fact the allegations contained in section I of this Staff
18 Petition;
- 19 2. Make conclusions of law relative to the allegations contained in
20 section II of this Staff Petition;
- 21 3. Pursuant to RSA 399-A:8,I, order the above named Respondents and
22 any and all principals, affiliates, members, officers, directors,
23 employees, independent contractors, or agents operating on behalf
24 of Respondent Mycashnow.com and its successors or assigns to cease
25

1 and desist from violating New Hampshire laws, including those
2 under RSA Chapter 399-A;

3 4. Pursuant to RSA 399-A:8,I order the above named Respondents and any
4 and all principals, affiliates, members, officers, directors,
5 employees, independent contractors, or agents operating on behalf
6 of Respondent Mycashnow.com and its successors or assigns shall
7 immediately cease taking applications from New Hampshire consumers
8 until such time as Mycashnow.com is properly licensed with the
9 Department;

10 5. Pursuant to RSA 399-A:8,I order the above named Respondents and any
11 and all principals, affiliates, members, officers, directors,
12 employees, independent contractors, or agents operating on behalf
13 of Respondent Mycashnow.com and its successors or assigns shall
14 immediately cease running any and all advertisements, including
15 print, television, radio and via the internet on its own or
16 affiliate website, geared or directed towards New Hampshire
17 consumers;

18 6. Pursuant to RSA 399-A:2,IV and RSA 399-A:11,V prohibit the above
19 named Respondents from being able to collect, receive, or retain
20 from each New Hampshire consumer any principal, interest, or
21 charges whatsoever and order the above named Respondents to return
22 such monies to each New Hampshire consumer or forgive such debt;

23 7. Pursuant to RSA 399-A:2,IV and RSA 399-A:11, V, order the above
24 named Respondents, within five (5) days of this Cease and Desist
25 Order, to submit a full consumer list of all New Hampshire with

1 whom Respondents have done business in the past three (3) years.
2 Such consumer list shall include the names and latest contact
3 information of each consumer, the date of the agreement with
4 Respondents and amounts charged and collected by Respondents for
5 each consumer;
6 8. Assess fines and administrative penalties in accordance with RSA
7 399-A:18,V and VI for violations of RSA Chapter 399-A, in the
8 number and amount equal to the violations set forth in section II
9 of this Staff Petition; and
10 9. Take such other administrative and legal actions as necessary for
11 enforcement of the New Hampshire Banking Laws, the protection of
12 New Hampshire citizens, and to provide other equitable relief.

13 **IV. RIGHT TO AMEND**

14 The Department reserves the right to amend this Staff Petition and to
15 request that the Commissioner take additional administrative action.
16 Nothing herein shall preclude the Department from bringing additional
17 enforcement action under RSA Chapter 399-A or the regulations thereunder.

18
19 Respectfully submitted by:

20 /s/
21 Maryam Torben Desfosses
 Hearings Examiner

12/30/09
 Date