

1 State of New Hampshire Banking Department

)Case No.: 08-228

2 In re the Matter of:)

3 State of New Hampshire Banking)

4 Department,)

5 Petitioner,)

6 and)

7 Magnum Cash Advance (d/b/a)

8 International Cash Advance, d/b/a)

9 magnumcashadvance.com, d/b/a)

10 internationaladvance.com, d/b/a Magnum)

11 Funding, d/b/a Military Financial)

12 Network and d/b/a Call Center Services,)

13 Inc.), DOES INDIVIDUALS 1-100, and DOES)

14 ENTITIES 1-100,)

15 Respondents)

16 NOTICE OF ORDER

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

19 LEGAL AUTHORITY AND JURISDICTION

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

24 Prior to January 1, 2009, pursuant to RSA 399-A:2,IV, any person not
25 exempt under RSA 399-A:III, and the several members, officers, directors,

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

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

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

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

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

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

17 Pursuant to RSA 399-A:7,I, the Commissioner may by order, upon due
18 notice and opportunity for hearing, assess penalties or deny, suspend, or
19 revoke any license or application if it is in the public interest and the
20 applicant, respondent, or licensee, any partner, member, officer or
21 director, any person occupying a similar status or performing similar
22 functions, or any person directly or indirectly controlling the applicant,
23 respondent or licensee has, inter alia, (c) made fraudulent
24 misrepresentations, or has circumvented or concealed, through whatever
25 subterfuge or device, any of the material particulars or the nature thereof

1 required to be stated or furnished to a borrower under the provisions of RSA
2 Chapter 399-A; (h) has engaged in dishonest or unethical practices in the
3 conduct of the business of making small loans...; (i) has violated RSA Chapter
4 399-A or any rule or order thereunder or has violated applicable federal
5 laws or rules thereunder...; and/or (k) should not be licensed for other good
6 cause shown.

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

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

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

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

23 Pursuant to RSA 399-A:11,V, if charges in excess of those permitted by
24 RSA Chapter 399-A shall be charged, contracted for, or received except as a
25 result of an accidental or bona fide error the contract of loan shall be

1 void and the lender shall have no right to collect or receive any principal,
2 charges, or recompense whatsoever.

3 Pursuant to RSA 399-A:16,IV the Commissioner may issue, amend, or
4 rescind such orders as are reasonably necessary to comply with the
5 provisions of RSA Chapter 399-A.

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

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

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

20 Pursuant to RSA 399-A:18,VI, every person who directly or indirectly
21 controls a person liable under this section, every partner, principal
22 executive officer, or director of such person, every person occupying a
23 similar status or performing a similar function, every employee of such
24 person who materially aids in the act constituting the violation, and every
25 licensee or person acting as a common law agent who materially aids in the

1 acts constituting the violation, either knowingly or negligently, may, upon
2 notice and opportunity for hearing, and in addition to any other penalty
3 provided for by law, be subject to suspension, revocation, or denial of any
4 registration or license, including the forfeiture of any application fee, or
5 an administrative fine not to exceed \$2,500.00 or both. Each of the acts
6 specified shall constitute a separate violation, and such administrative
7 action or fine may be imposed in addition to any criminal or civil penalties
8 imposed. No person shall be liable under RSA 399-A:18,VI who shall sustain
9 the burden of proof that such person did not know, and in the exercise of
10 reasonable care could not have known, of the existence of facts by reason of
11 which the liability is alleged to exist.

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

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

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

1 receipt requested, to the Banking Department, State of New Hampshire, 53
2 Regional Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled
3 within 10 days of the Department's receipt of the request. If a Respondent
4 fails to appear at the hearing after being duly notified, such person shall be
5 deemed in default, and the proceeding may be determined against the Respondent
6 upon consideration of the Cease and Desist Order, the allegations of which may
7 be deemed to be true.

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

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

16 The Staff Petition dated December 31, 2009 (a copy of which is
17 attached hereto) is incorporated by reference hereto.

18 **ORDER**

19 WHEREAS, finding it necessary and appropriate and in the public
20 interest, and consistent with the intent and purposes of the New Hampshire
21 banking laws; and

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

24 It is hereby ORDERED, that:

- 25 1. The above named Respondents and any and all principals,

1 affiliates, members, officers, directors, employees,
2 independent contractors, or agents operating on behalf of
3 Respondent Magnum Cash Advance (d/b/a International Cash
4 Advance, d/b/a magnumcashadvance.com, d/b/a
5 internationaladvance.com, d/b/a Magnum Funding, d/b/a
6 Military Financial Network and d/b/a Call Center Services,
7 Inc.) and its successors or assigns (collectively "Magnum
8 Cash Advance") are hereby ordered to cease and desist from
9 violating RSA Chapter 399-A, and any rules and orders
10 thereunder;

11 2. Respondent Magnum Cash Advance and any and all principals,
12 affiliates, members, officers, directors, employees,
13 independent contractors, or agents operating on behalf of
14 Respondent Magnum Cash Advance and its successors or assigns
15 shall immediately cease taking applications from New
16 Hampshire consumers until such time as Respondent Magnum Cash
17 Advance is properly licensed with the Department;

18 3. The above named Respondents and any and all principals,
19 affiliates, members, officers, directors, employees,
20 independent contractors, or agents operating on behalf of
21 Respondent Magnum Cash Advance and its successors or assigns
22 shall immediately cease running any and all advertisements,
23 including print, television, radio and via the internet on
24 its own or affiliate website, geared or directed towards New
25 Hampshire consumers;

1 4. Respondent Magnum Cash Advance shall show cause why penalties
2 in the amount of \$2,500.00 per violation (minimum of
3 \$2,500.00 based on the Staff Petition) should not be imposed
4 against it;

5 5. 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 \$2,500.00 based on the
8 Staff Petition) should not be imposed against each of them
9 individually;

10 6. 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 \$2,500.00 based on the Staff
13 Petition) should not be imposed against each of them
14 individually;

15 7. The above named Respondents shall show cause why, in addition
16 to any penalties listed in Paragraphs 1 through 6,
17 Respondents shall not be able to collect, receive, or retain
18 from each New Hampshire consumer any principal, interest, or
19 charges whatsoever and return such monies to each New
20 Hampshire consumer or forgive such debt;

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

1 consumer, the date of the agreement with Respondents and
2 amounts charged and collected by Respondents for each
3 consumer;

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

7 10. The above named Respondents shall be jointly and severally
8 liable for the above amounts alleged in Paragraphs 1 through
9 9 above.

10 It is hereby further ORDERED that:

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

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

21 SIGNED,

22
23 Dated: 01/08/10

_____/s/
PETER C. HILDRETH
BANK COMMISSIONER

1 State of New Hampshire Banking Department

)Case No.: 08-228

2 In re the Matter of:)

3 State of New Hampshire Banking)

4 Department,)

5 Petitioner,)

6 and)

7 Magnum Cash Advance (d/b/a)

8 International Cash Advance, d/b/a)

9 magnumcashadvance.com, d/b/a)

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11 Funding, d/b/a Military Financial)

12 Network and d/b/a Call Center Services,)

13 Inc.), DOES INDIVIDUALS 1-100, and DOES)

14 ENTITIES 1-100,)

15 Respondents)

16 I. STATEMENT OF ALLEGATIONS

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

19 Facts Common on All Counts:

- 20 1. Respondent Magnum Cash Advance (d/b/a International Cash Advance,
- 21 d/b/a magnumcashadvance.com, d/b/a internationaladvance.com,
- 22 d/b/a Magnum Funding, d/b/a Military Financial Network and d/b/a
- 23 Call Center Services, Inc.) (hereinafter "Respondent Magnum Cash
- 24 Advance") is an unlicensed internet small loan lender and
- 25 internet payday lender located out of possibly both Wilmington,

1 Delaware and the British Virgin Islands. There is a possibility
2 that Respondent Magnum Cash Advance is a shell corporation for
3 either or both Call Center Services, Inc. and International Cash
4 Advance or internationaladvance.com.

5 2. Respondent DOES INDIVIDUALS 1-100 (hereinafter "Respondent DOES
6 INDIVIDUALS") include those natural persons who are principals,
7 affiliates, members, officers, directors, employees, independent
8 contractors, or agents operating on behalf of Respondent Magnum
9 Cash Advance and its successors or assigns.

10 3. Respondent DOES ENTITIES 1-100 (hereinafter "Respondent DOES
11 ENTITIES) include those persons who are principals, affiliates,
12 members, officers, directors, employees, independent contractors,
13 or agents operating on behalf of Respondent Magnum Cash Advance
14 and its successors or assigns.

15 Violation of RSA 399-A:2,I Operating as a Payday Lender and/or Small Loan
16 Lender Without a License in New Hampshire (Minimum 1 Count):

17 Violation of 399-A:7,I(c) Fraudulent Misrepresentations or Concealment of
18 Material Particulars to Borrowers (Minimum 1 Count):

19 Violation of 399-A:7,I(h) Dishonest or Unethical Practices in the Conduct
20 of the Business of Making Small Loans (Minimum 1 Count):

21 Violation of 399-A:7,I(i) Violated RSA Chapter 399-A (Minimum 1 Count):

22 Violation of 399-A:8-a,I(a) Employing Device, Scheme, or Artifice to
23 Defraud (1 Count):

24 Violation of 399-A:8-a,I(b) Make Any Untrue Statement of a Material Fact Or
25 To Omit to State a Material Fact (1 Count):

1 Violation of 399-A:8-a,I(c) Engaging in Any Act or Practice or Course of
2 Business which Operates as a Fraud or Deceit Upon any Person (1 Count):

3 4. Paragraphs 1 through 3 are hereby realleged as fully set forth
4 herein.

5 5. On April 30, 2008, the Department received a consumer complaint
6 from Consumer A, who indicated Consumer A obtained a payday loan
7 from Respondent Magnum Cash Advance.

8 6. Consumer A entered into a payday loan with Respondent Magnum Cash
9 Advance.

10 7. Respondent Magnum Cash Advance attempted to charge Consumer A an
11 additional \$35.00 per week, in addition to the \$246.15 they
12 regularly charged Consumer A. Once Consumer A placed a stop
13 payment on Consumer A's bank account and indicated a complaint
14 was being sent to the Department, Respondent Magnum Cash Advance
15 stopped any additional fees from being added to Consumer A's
16 account.

17 8. Consumer A, however, cannot obtain Consumer A's loan documents,
18 either online or otherwise.

19 9. Respondent Magnum Cash Advance fails to include any disclosure or
20 limiting language that it is not licensed to offer small loans or
21 payday loans in the State of New Hampshire.

22 10. Since the above named Respondents are not licensed in New
23 Hampshire, the above named Respondents shall not be able to
24 collect, receive, or retain from each New Hampshire consumer any
25 principal, interest, or charges whatsoever and must return such

1 monies to each New Hampshire consumer (including Consumer A) or
2 forgive such debt.

3 **II. ISSUES OF LAW**

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

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

7 2. The Department has jurisdiction over the licensing and regulation
8 of persons engaged in small loan lending activities pursuant to NH
9 RSA 399-A:2 and RSA 399-A:11 and RSA 399-A:12.

10 3. The Department has jurisdiction over the licensing and regulation
11 of persons engaged in payday lending activities pursuant to NH RSA
12 399-A:2 and RSA 399-A:13.

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

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

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

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

24 8. RSA 399-A:2,I provides that no person shall engage in the business
25 of making small loans, title loans, or payday loans in New

1 Hampshire or with consumers located in New Hampshire, without
2 first obtaining a license from the Commissioner as provided in RSA
3 Chapter 399-A. Each of the above named Respondents violated this
4 provision on at least one occasion as alleged above.

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

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

25 11. RSA 399-A:2,V provides that any person who willfully violates any

1 provisions of RSA 399-A:8-a,I or II or a cease and desist order
2 or injunction issued pursuant to RSA 399-A:8 shall be guilty of a
3 class B felony. Each of the acts specified shall constitute a
4 separate offense and a prosecution or conviction for any one of
5 such offenses shall not bar prosecution or conviction of any
6 other offense.

7 12. RSA 399-A:2,VI provides that the provisions of RSA Chapter 399-A
8 shall apply to any person who seeks to evade its application by
9 any device, subterfuge, or pretense, including, without
10 limitation:

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

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

15 (c) Having any affiliation or other business arrangement with
16 an entity that is exempt from the provisions of RSA Chapter
17 399-A, the effect of which is to evade the provisions of RSA
18 Chapter 399-A, including, without limitation, making a loan,
19 while purporting to be the agent of such an exempt entity where
20 the purported agent holds, acquires, or maintains a
21 preponderant economic interest in the revenues generated by the
22 loan.

23 13. RSA 399-A:4,VI provides that persons subject to or licensed by
24 RSA Chapter 399-A shall abide by the laws, rules, orders of the
25 State of New Hampshire, as well as federal laws. Any violation of

1 such laws, rules or orders is a violation of RSA Chapter 399-A.

2 14. RSA 399-A:7,I provides that the Commissioner may by order, upon
3 due notice and opportunity for hearing, assess penalties or deny,
4 suspend, or revoke any license or application if it is in the
5 public interest and the applicant, respondent, or licensee, any
6 partner, member, officer or director, any person occupying a
7 similar status or performing similar functions, or any person
8 directly or indirectly controlling the applicant, respondent or
9 licensee has, inter alia, (c) made fraudulent misrepresentations,
10 or has circumvented or concealed, through whatever subterfuge or
11 device, any of the material particulars or the nature thereof
12 required to be stated or furnished to a borrower under the
13 provisions of RSA Chapter 399-A...; (h) has engaged in dishonest or
14 unethical practices in the conduct of the business of making
15 small loans, and/or among other factors; (i) has violated RSA
16 Chapter 399-A or any rule or order thereunder or has violated
17 applicable federal laws or rules thereunder...; and/or (k) should
18 not be licensed for other good cause shown. Each of the above
19 named Respondents violated subparagraphs (c), (h) and (i) on at
20 least one occasion each as alleged above.

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

25 16. RSA 399-A:8-a,I(a) provides it is unlawful for any person, in

1 connection with the solicitation, offer, or closing of a loan,
2 directly or indirectly to employ any device, scheme, or artifice
3 to defraud. Each of the above named Respondents violated this
4 provision on at least one occasion as alleged above.

5 17. RSA 399-A:8-a,I(b) provides it is unlawful for any person, in
6 connection with the solicitation, offer, or closing of a loan,
7 directly or indirectly to make any untrue statement of a material
8 fact or to omit to state a material fact necessary in order to
9 make the statements made, in light of the circumstances under
10 which they are made, not misleading. Each of the above named
11 Respondents violated this provision on at least one occasion as
12 alleged above.

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

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

25 20. RSA 399-A:16,IV provides that the Commissioner may issue, amend,

1 or rescind such orders as are reasonably necessary to comply with
2 the provisions of RSA Chapter 399-A.

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

8 22. RSA 399-A:18,I provides that any person and the several members,
9 officers, directors, agents, and employees thereof who shall
10 knowingly violate any provision of RSA Chapter 399-A, shall be
11 guilty of a misdemeanor if a natural person, or guilty of a
12 felony if any other person.

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

20 24. RSA 399-A:18,VI provides that every person who directly or
21 indirectly controls a person liable under this section, every
22 partner, principal executive officer, or director of such person,
23 every person occupying a similar status or performing a similar
24 function, every employee of such person who materially aids in
25 the act constituting the violation, and every licensee or person

1 acting as a common law agent who materially aids in the acts
2 constituting the violation, either knowingly or negligently, may,
3 upon notice and opportunity for hearing, and in addition to any
4 other penalty provided for by law, be subject to suspension,
5 revocation, or denial of any registration or license, including
6 the forfeiture of any application fee, or an administrative fine
7 not to exceed \$2,500.00 or both. Each of the acts specified
8 shall constitute a separate violation, and such administrative
9 action or fine may be imposed in addition to any criminal or
10 civil penalties imposed. No person shall be liable under RSA
11 399-A:18,VI who shall sustain the burden of proof that such
12 person did not know, and in the exercise of reasonable care could
13 not have known, of the existence of facts by reason of which the
14 liability is alleged to exist.

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

22 **III. RELIEF REQUESTED**

23 The staff of the Department requests the Commissioner take the following
24 action:

- 25 1. Find as fact the allegations contained in section I of this Staff

1 Petition;

2 2. Make conclusions of law relative to the allegations contained in
3 section II of this Staff Petition;

4 3. Pursuant to RSA 399-A:8,I, order the above named Respondents and
5 any and all principals, affiliates, members, officers, directors,
6 employees, independent contractors, or agents operating on behalf
7 of Respondent Magnum Cash Advance and its successors or assigns to
8 cease and desist from violating New Hampshire laws, including
9 those under RSA Chapter 399-A;

10 4. 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 Magnum Cash Advance and its successors or assigns
14 shall immediately cease taking applications from New Hampshire
15 consumers until such time as Respondent Magnum Cash Advance is
16 properly licensed with the Department;

17 5. Pursuant to RSA 399-A:8,I order the above named Respondents and any
18 and all principals, affiliates, members, officers, directors,
19 employees, independent contractors, or agents operating on behalf
20 of Respondent Magnum Cash Advance and its successors or assigns
21 shall immediately cease running any and all advertisements,
22 including print, television, radio and via the internet on its own
23 or affiliate website, geared or directed towards New Hampshire
24 consumers;

25 6. Pursuant to RSA 399-A:2,IV and RSA 399-A:11,V prohibit the above

1 named Respondents from being able to collect, receive, or retain
2 from each New Hampshire consumer any principal, interest, or
3 charges whatsoever and order the above named Respondents to return
4 such monies to each New Hampshire consumer or forgive such debt;

5 7. Pursuant to RSA 399-A:2,IV and RSA 399-A:11,V, order the above
6 named Respondents, within five (5) days of this Cease and Desist
7 Order, to submit a full consumer list of all New Hampshire with
8 whom Respondents have done business in the past three (3) years.
9 Such consumer list shall include the names and latest contact
10 information of each consumer, the date of the agreement with
11 Respondents and amounts charged and collected by Respondents for
12 each consumer;

13 8. Assess fines and administrative penalties in accordance with RSA
14 399-A:18,V and VI for violations of RSA Chapter 399-A, in the
15 number and amount equal to the violations set forth in section II
16 of this Staff Petition; and

17 9. Take such other administrative and legal actions as necessary for
18 enforcement of the New Hampshire Banking Laws, the protection of
19 New Hampshire citizens, and to provide other equitable relief.
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23 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
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