

1 State of New Hampshire Banking Department

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|----|---|---------------------------|
| 2 | In re the Matter of: |) Case No.: 09-129 |
| | |) |
| 3 | State of New Hampshire Banking |) |
| 4 | Department, |) Order to Show Cause and |
| | |) |
| 5 | Petitioner, |) Cease and Desist Order |
| | |) |
| 6 | and |) |
| | |) |
| 7 | Proficio Mortgage Ventures, LLC, Alan |) |
| | |) |
| 8 | H. Verch, Patricia A. Freeman, Proficio |) |
| | |) |
| 9 | Bank, NHB Holdings, Andrew Verhovec, |) |
| | |) |
| 10 | Sr., Donald Wayne LaPlume, Brian David |) |
| | |) |
| 11 | Battersby, Stephen Craig Whitney, and |) |
| | |) |
| 12 | Steven Lee Hurd, |) |
| | |) |
| 13 | Respondents |) |

14 NOTICE OF ORDER

15 This Order to Show Cause and Cease and Desist Order commences an
16 adjudicative proceeding under the provisions of RSA Chapter 397-A and RSA
17 Chapter 541-A.

18 LEGAL AUTHORITY AND JURISDICTION

19 Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire
20 Banking Department (hereinafter "Department") has the authority to issue an
21 order to show cause why license revocation and penalties for violations of
22 New Hampshire Banking laws should not be imposed.

23 Pursuant to RSA 397-A:17,II(a), the Commissioner has the authority to
24 order or direct persons subject to RSA Chapter 397-A to cease and desist
25 from conducting business, including immediate temporary orders to cease and

1 desist.

2 Pursuant to RSA 397-A:17,II(b), the Commissioner has the authority to
3 order or direct persons subject to RSA Chapter 397-A to cease any harmful
4 activities or violations of RSA Chapter 397-A, including immediate
5 temporary orders to cease and desist.

6 Pursuant to RSA 397-A:17,II(c), the Commissioner has the authority to
7 enter immediate temporary orders to cease business under a license if the
8 Commissioner has determined that such license was erroneously granted or
9 the licensee is currently in violation of RSA Chapter 397-A, or rules or
10 order thereunder.

11 Pursuant to RSA 397-A:17,II(e)(1) the Commissioner has the authority
12 to remove or ban from office or employment, including license revocation,
13 any person conducting business under RSA Chapter 397-A who violates RSA
14 Chapter 397-A.

15 Pursuant to RSA 397-A:17,II(e)(4) the Commissioner has the authority
16 to remove or ban from office or employment, including license revocation,
17 any person conducting business under RSA Chapter 397-A if by a
18 preponderance of evidence the Commissioner determines that the person no
19 longer demonstrates the financial responsibility, character, and general
20 fitness such as to command the confidence of the community and to warrant a
21 determination that the person subject to RSA Chapter 397-A will operate
22 honestly, fairly, and efficiently within the purposes of RSA Chapter 397-A.

23 Pursuant to RSA 397-A:17,II(f) the Commissioner has the authority to
24 deny, suspend, revoke, condition, or decline to renew a license if an
25 applicant or licensee fails at any time to meet the requirements of RSA

1 397-A:5,IV-c or RSA 397-A:5,IV-d, or withholds information or makes a
2 material misstatement in an application for a license or renewal of a
3 license. RSA 397-A:5,IV-c, (a) (5) states the Commissioner shall not issue a
4 mortgage loan originator license unless the Commissioner makes at a
5 minimum, inter alia, a finding that the applicant has demonstrated
6 financial responsibility, character, and general fitness such as to command
7 the confidence of the community and to warrant a determination that the
8 mortgage loan originator will operate honestly, fairly, and efficiently
9 within the purposes of RSA Chapter 397-A. RSA 397-A:5,IV-d(a)(1) states
10 that, in addition to other provisions of New Hampshire law and rules, in
11 order to be eligible to renew a license, a mortgage originator shall, inter
12 alia, meet and continue to meet the minimum standards for license issuance
13 under RSA 397-A:5,IV-c.

14 Pursuant to RSA 397-A:17,VIII, in addition to any other penalty
15 provided for under RSA Chapter 397-A or RSA 383:10-d, after notice and
16 opportunity for hearing, the Commissioner may enter an order of rescission,
17 restitution, or disgorgement of profits directed to a person who has
18 violated RSA Chapter 397-A, or a rule or order thereunder.

19 Pursuant to RSA 397-A:17,IX, in addition to any other penalty
20 provided for under RSA Chapter 397-A, after notice and opportunity for
21 hearing, the Commissioner may assess fines and penalties against a mortgage
22 loan originator in an amount not to exceed \$25,000.00 (for each violation)
23 if the Commissioner finds the mortgage loan originator has violated or
24 failed to comply with the S.A.F.E. Mortgage Licensing Act of 2008, Public
25 Law 110-289, Title V or any regulation or order issued thereunder. Each of

1 the acts specified shall constitute a separate violation.

2 Pursuant to RSA 397-A:17,X, an action to enforce any provision of RSA
3 Chapter 397-A shall be commenced within 6 years after the date on which the
4 violation occurred.

5 Pursuant to RSA 397-A:18,I the Department has the authority to issue a
6 complaint setting forth charges whenever the Department is of the opinion
7 that the licensee or person over whom the Department has jurisdiction is
8 violating or has violated any provision of RSA Chapter 397-A, or any rule or
9 order thereunder.

10 Pursuant to RSA 397-A:18,II, the Department has the authority to issue
11 and cause to be served an order requiring any person engaged in any act or
12 practice constituting a violation of RSA Chapter 397-A or any rule or order
13 thereunder, to cease and desist from violations of RSA Chapter 397-A.

14 Pursuant to RSA 397-A:20,IV the Commissioner may issue, amend, or
15 rescind such orders as are reasonably necessary to comply with the
16 provisions of RSA Chapter 397-A.

17 Pursuant to RSA 397-A:21, the Commissioner has the authority to
18 suspend, revoke or deny any license and to impose administrative penalties
19 of up to \$2,500.00 for each violation of New Hampshire banking law and
20 rules.

21 Pursuant to RSA 397-A:21,I-a, any person who willfully violates any
22 provisions of RSA 397-A:2,VI or VII or a cease and desist order or
23 injunction issued pursuant to RSA 397-A:18,II shall be guilty of a class B
24 felony. Each of the acts specified shall constitute a separate offense and
25 a prosecution or conviction for any one of such offenses shall not bar

1 prosecution or conviction of any other offense.

2 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
3 that is or may be an unfair or deceptive act or practice under RSA Chapter
4 358-A and exempt under RSA 358-A:3,I or that may violate any of the
5 provisions of Titles XXXV and XXXVI and administrative rules adopted
6 thereunder. The Commissioner may hold hearings relative to such conduct and
7 may order restitution for a person or persons adversely affected by such
8 conduct.

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

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

23 If any of the above named Respondents fails to request a hearing within
24 30 calendar days of receipt of such order or reach a formal written and
25 executed settlement with the Department within that time frame, then such

1 person shall likewise be deemed in default, and the orders shall, on the
2 thirty-first day, become permanent, and shall remain in full force and effect
3 until and unless later modified or vacated by the Commissioner, for good cause
4 shown.

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

6 The Staff Petition dated March 30, 2010 (a copy of which is attached
7 hereto) is incorporated by reference hereto.

8 **ORDER**

9 WHEREAS, finding it necessary and appropriate and in the public
10 interest, and consistent with the intent and purposes of the New Hampshire
11 banking laws;

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

15 WHEREAS, finding that the allegations contained in the Staff Petition,
16 if proved by a preponderance of the evidence that the above named persons no
17 longer demonstrate the financial responsibility, character, and general
18 fitness such as to command the confidence of the community and to warrant a
19 determination that the persons subject to RSA Chapter 397-A will operate
20 honestly, fairly, and efficiently within the purposes of RSA Chapter 397-A,
21 form the legal basis of the relief requested;

22 It is hereby ORDERED, that:

- 23 1. Respondent Proficio Mortgage Ventures, LLC ("Respondent
24 Proficio Mortgage"), Respondent Alan H. Verch ("Respondent
25 Verch"), Respondent Patricia A. Freeman ("Respondent

1 Freeman"), Respondent Proficio Bank ("Respondent Proficio
2 Bank"), Respondent NHB Holdings ("Respondent NHB") and
3 Respondent Andrew Verhovec, Sr. ("Respondent Verhovec")
4 (hereinafter collectively known as "Respondents PMV") are
5 hereby ordered to cease and desist from conducting
6 business regulated by RSA Chapter 397-A in New Hampshire;

7 2. Respondents PMV is hereby ordered to cease and desist from
8 violating New Hampshire state law and federal law and any
9 rules or orders thereunder;

10 3. Respondent Donald Wayne LaPlume ("Respondent LaPlume") is
11 hereby ordered to cease and desist from conducting
12 business regulated by RSA Chapter 397-A in New Hampshire;

13 4. Respondent LaPlume is hereby ordered to cease and desist
14 from violating New Hampshire state law and federal law and
15 any rules or orders thereunder;

16 5. Respondent Brian David Battersby ("Respondent Battersby")
17 is hereby ordered to cease and desist from conducting
18 business regulated by RSA Chapter 397-A in New Hampshire;

19 6. Respondent Battersby is hereby ordered to cease and desist
20 from violating New Hampshire state law and federal law and
21 any rules or orders thereunder;

22 7. Respondent Stephen Craig Whitney ("Respondent Whitney") is
23 hereby ordered to cease and desist from conducting
24 business regulated by RSA Chapter 397-A in New Hampshire;

25 8. Respondent Whitney is hereby ordered to cease and desist

1 from violating New Hampshire state law and federal law and
2 any rules or orders thereunder;

3 9. Respondent Steven Lee Hurd ("Respondent Hurd") is hereby
4 ordered to cease and desist from conducting business
5 regulated by RSA Chapter 397-A in New Hampshire;

6 10. Respondent Hurd is hereby ordered to cease and desist from
7 violating New Hampshire state law and federal law and any
8 rules or orders thereunder;

9 11. Respondent Proficio Mortgage shall show cause why
10 penalties in the amount of \$472,500.00 should not be
11 imposed against it;

12 12. Respondent Verch shall show cause why penalties in the
13 amount of \$62,500.00. should not be imposed against him;

14 13. Respondent Freeman shall show cause why penalties in the
15 amount of \$472,500.00 should not be imposed against her;

16 14. Respondent Proficio Bank shall show cause why penalties in
17 the amount of \$472,500.00 should not be imposed against
18 it;

19 15. Respondent NHB shall show cause why penalties in the
20 amount of \$472,500.00 should not be imposed against it;

21 16. Respondent Verhovec shall show cause why penalties in the
22 amount of \$472,500.00 should not be imposed against him;

23 17. Respondent LaPlume shall show cause why penalties in the
24 amount of \$475,000.00 should not be imposed against him
25 plus any additional penalty not to exceed \$25,000.00 for

1 each violation (\$4,775,000.00) pursuant to RSA 397-
2 A:17,IX;

3 18. Respondent Battersby shall show cause why penalties in the
4 amount of \$70,000.00 should not be imposed against him
5 plus any additional penalty not to exceed \$25,000.00 for
6 each violation (\$725,000.00) pursuant to RSA 397-A:17,IX;

7 19. Respondent Whitney shall show cause why penalties in the
8 amount of \$70,000.00 should not be imposed against him
9 plus any additional penalty not to exceed \$25,000.00 for
10 each violation (\$725,000.00) pursuant to RSA 397-A:17,IX;

11 20. Respondent Hurd shall show cause why penalties in the
12 amount of \$385,000.00 Should not be imposed against him
13 plus any additional penalty not to exceed \$25,000.00 for
14 each violation (\$3,875,000.00) pursuant to RSA 397-
15 A:17,IX;

16 21. The above named Respondents shall show cause why, in
17 addition to the penalties listed in Paragraphs 1 through
18 20 above, Respondents PMV, Respondent LaPlume, Respondent
19 Battersby and Respondent Whitney shall not reimburse each
20 consumer the amounts listed in Attachment A to this Order
21 to Show Cause and Cease and Desist Order, for a minimum
22 total restitution of \$65,467.11 plus the six (6) "in
23 process" loans;

24 22. The above named Respondents shall show cause why, in
25 addition to the penalties listed in Paragraphs 1 through

1 21 above, Respondents PMV shall not disgorge the net
2 profits obtained through unlicensed activity, which totals
3 \$56,181.75;

4 23. The above named Respondents shall show cause why, in
5 addition to the penalties listed in Paragraphs 1 through
6 22 above, the \$21,653.90 examination fee should not be
7 paid to the Department;

8 24. Nothing in this Order to Show Cause and Cease and Desist
9 Order shall prevent the Department from taking any further
10 administrative action under New Hampshire law;

11 25. The above named Respondents shall be jointly and severally
12 liable for the above amounts alleged in Paragraphs 1
13 through 24 above;

14 26. The above named Respondents shall show cause why, in
15 addition to the penalties listed in Paragraphs 1 through
16 25 above, Respondent Proficio Mortgage's license should
17 not be revoked;

18 27. The above named Respondents shall show cause why, in
19 addition to the penalties listed in Paragraphs 1 through
20 26 above, Respondent LaPlume's mortgage loan originator
21 license under Premier Mortgage Capital, Inc (d/b/a Premier
22 Mortgage Capital of Virginia) should not be revoked, and
23 Respondent LaPlume should not be banned or removed from
24 office or employment;

25 28. The above named Respondents shall show cause why, in

1 addition to the penalties listed in Paragraphs 1 through
2 27 above, Respondent Battersby's mortgage loan originator
3 license under Premier Mortgage Capital, Inc (d/b/a Premier
4 Mortgage Capital of Virginia) should not be revoked, and
5 Respondent Battersby should not be banned or removed from
6 office or employment;

7 29. The above named Respondents shall show cause why, in
8 addition to the penalties listed in Paragraphs 1 through
9 28 above, Respondent Whitney's mortgage loan originator
10 license under Premier Mortgage Capital, Inc (d/b/a Premier
11 Mortgage Capital of Virginia) should not be revoked, and
12 Respondent Whitney should not be banned or removed from
13 office or employment;

14 30. The above named Respondents shall show cause why, in
15 addition to the penalties listed in Paragraphs 1 through
16 29 above, Respondent Hurd's mortgage loan originator
17 license under Premier Mortgage Capital, Inc (d/b/a Premier
18 Mortgage Capital of Virginia) should not be revoked, and
19 Respondent Hurd should not be banned or removed from
20 office or employment;

21 It is hereby further ORDERED that:

22 31. Along with the administrative penalties listed for the
23 above named Respondents, consumer restitution listed in
24 Attachment A totaling \$65,467.11 plus the six (6) "in
25 process" loans, the disgorgement of net profits totaling

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-129
)
 3 State of New Hampshire Banking)
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 4 Department,) Staff Petition
)
 5 Petitioner,) March 30, 2010
)
 6 and)
)
 7 Proficio Mortgage Ventures, LLC, Alan)
)
 8 H. Verch, Patricia A. Freeman, Proficio)
)
 9 Bank, NHB Holdings, Andrew Verhovec,)
)
 10 Sr., Donald Wayne LaPlume, Brian David)
)
 11 Battersby, Stephen Craig Whitney, and)
)
 12 Steven Lee Hurd,)
)
 13 Respondents)

14 I. STATEMENT OF ALLEGATIONS

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

17 Facts Common on All Counts:

- 18 1. Respondent Proficio Mortgage Ventures, LLC (hereinafter
19 "Respondent Proficio Mortgage") has been licensed as a Mortgage
20 Banker since at least July 19, 2007 for its principal office
21 located in Jacksonville, Florida.
- 22 2. Respondent Proficio Mortgage's Claremont, New Hampshire branch has
23 never been licensed with the Department and has a pending
24 application as of August 25, 2009 with the Department to operate
25 as a Mortgage Banker.

- 1 3. Respondent Proficio Mortgage currently has no licensed or
2 registered mortgage loan originators in New Hampshire.
- 3 4. Respondent Proficio Mortgage's Claremont, New Hampshire branch
4 office operated previously as Premier Mortgage Capital, Inc. The
5 Department revoked Premier Mortgage Capital, Inc's license on July
6 28, 2009 as a result of a default judgment. As a result, any and
7 all mortgage loan originators employed by Premier Mortgage
8 Capital, Inc. no longer had sponsors and therefore, their mortgage
9 loan originator licenses were automatically cancelled or
10 terminated. These mortgage loan originators include Respondent
11 Donald Wayne LaPlume, Respondent Brian David Battersby and
12 Respondent Stephen Craig Whitney.
- 13 5. The filings for Respondent Proficio Mortgage indicate Alan H.
14 Verch (hereinafter "Respondent Verch"), as of November 1, 2009, is
15 currently the President of Respondent Proficio Mortgage.
- 16 6. The filings for Respondent Proficio Mortgage indicate Respondent
17 Patricia A. Freeman (hereinafter "Respondent Freeman"), as of
18 December of 2007, was the Senior Vice President and now the Vice
19 President of Respondent Proficio Mortgage.
- 20 7. The filings for Respondent Proficio Mortgage indicate Respondent
21 Proficio Bank (hereinafter "Respondent Proficio Bank"), as of
22 January 5, 2007, is the 100% direct owner of Respondent Proficio
23 Mortgage.
- 24 8. Respondent NHB Holdings (hereinafter "Respondent NHB") as of
25 January 5, 2007 is the 100% direct owner of Respondent Proficio

1 Bank, and therefore, a 100% indirect owner of Respondent Proficio
2 Mortgage.

3 9. Respondent Andrew Verhovec, Sr. (hereinafter "Respondent
4 Verhovec") was the Vice President of Respondent Proficio Mortgage
5 between June 1, 2007 and December 7, 2009.

6 10. Respondent Donald Wayne LaPlume (hereinafter "Respondent
7 LaPlume") was a licensed mortgage loan originator for Premier
8 Mortgage Capital, Inc. and its Claremont, New Hampshire branch
9 office Branch Manager until Premier Mortgage Capital, Inc.'s
10 license was revoked on July 28, 2009. As a result, Respondent
11 LaPlume's mortgage loan originator license was automatically
12 terminated (surrendered/cancelled) since he no longer had
13 sponsorship by an active licensee and therefore could no longer
14 originate loans in New Hampshire for New Hampshire consumers.
15 Respondent LaPlume subsequently submitted an application to the
16 Department (which is still pending) to be sponsored as a mortgage
17 loan originator for Respondent Proficio Mortgage (either as a
18 registrant or licensee). He is also listed as a Branch Manager
19 for Respondent Proficio Mortgage's Claremont, New Hampshire branch
20 office, which is the same address as Premier Mortgage Capital,
21 Inc.'s Claremont, New Hampshire branch office. Respondent LaPlume
22 has never held a New Hampshire mortgage loan originator license
23 with Respondent Proficio Mortgage or Premier Mortgage Capital,
24 Inc..

25 11. Respondent Brian David Battersby (hereinafter "Respondent

1 Battersby") was a licensed mortgage loan originator for Premier
2 Mortgage Capital, Inc. in its Claremont, New Hampshire branch
3 office until Premier Mortgage Capital, Inc.'s license was revoked
4 on July 28, 2009. As a result, Respondent Battersby's mortgage
5 loan originator license was automatically terminated (surrendered
6 / cancelled) (effective August 28, 2009) since he no longer had
7 sponsorship by an active licensee and therefore could no longer
8 originate loans in New Hampshire for New Hampshire consumers.
9 Respondent Battersby never submitted an application to the
10 Department to be sponsored as a mortgage loan originator (either
11 as a registrant or licensee) for Respondent Proficio Mortgage.
12 Respondent Battersby has never held a New Hampshire mortgage loan
13 originator license or registration with Respondent Proficio
14 Mortgage. Respondent Battersby apparently left Respondent Proficio
15 Mortgage on or about September 22, 2009.

16 12. Respondent Stephen Craig Whitney (hereinafter "Respondent
17 Whitney") was a licensed mortgage loan originator for Premier
18 Mortgage Capital, Inc. in its Claremont, New Hampshire branch
19 office until Premier Mortgage Capital, Inc.'s license was revoked
20 on July 28, 2009. As a result, Respondent Whitney's mortgage loan
21 originator license was automatically terminated (surrendered
22 /cancelled) (effective August 28, 2009) since he no longer had
23 sponsorship by an active licensee and therefore could no longer
24 originate loans in New Hampshire for New Hampshire consumers.
25 Respondent Whitney never submitted an application to the

1 Department to be sponsored as a mortgage loan originator (either
2 as a registrant or licensee) for Respondent Proficio Mortgage.
3 Respondent Whitney has never held a New Hampshire mortgage loan
4 originator license or registration with Respondent Proficio
5 Mortgage.

6 13. Respondent Steven Lee Hurd (hereinafter "Respondent Hurd") was an
7 unlicensed mortgage loan originator for Premier Mortgage Capital,
8 Inc. in its Claremont, New Hampshire branch office until Premier
9 Mortgage Capital, Inc.'s license was revoked on July 28, 2009. As
10 a result, Respondent Hurd effectively ended working for Premier
11 Mortgage Capital, Inc. on August 1, 2009 even though the NMLS
12 employment history indicates he began working for Respondent
13 Proficio Mortgage on July 1, 2009, 27 days before Premier Mortgage
14 Capital, Inc.'s license was revoked. Respondent Hurd never
15 submitted a completed application to the Department to be
16 sponsored as a mortgage loan originator (either as a registrant or
17 licensee) for Respondent Proficio Mortgage. Respondent Hurd has
18 never held a New Hampshire mortgage loan originator license or
19 registration with Respondent Proficio Mortgage.

20 TIME PERIOD JUNE 30, 2009 to AUGUST 25, 2009 (BEFORE RESPONDENTS APPLIED

21 FOR A CLAREMONT, NEW HAMPSHIRE BRANCH LICENSE WITH THE DEPARTMENT)

22 Violation of RSA 397-A:3,I via RSA 397-A:2,III Engaging in Mortgage

23 Banking/Brokering at an Unlicensed New Hampshire Branch Office (4 Counts

24 Applies to Each Respondent Except Verch, Whitney and Hurd and 3 Counts for

25 Respondent Battersby):

1 Violation of RSA 397-A:3,II Unlicensed Mortgage Loan Originator Activity in
2 Claremont, New Hampshire (3 Counts for Respondent Battersby, 1 Count for
3 Respondent LaPlume):

4 Violation of RSA 397-A:3,III Employment, Retention or Engagement of
5 Unlicensed Mortgage Loan Originators (2 Counts Each by Respondents Proficio
6 Mortgage, Freeman, Proficio Bank, NHB and Verhovec):

7 Violation of RSA 397-A:3,III Respondents Battersby and LaPlume Were
8 Mortgage Loan Originators for Two Companies Simultaneously (1 Count Each):

9 Violation of RSA 397-A:6,I Failure to Supervise (4 Counts by Respondents
10 Proficio Mortgage, Freeman, Proficio Bank, NHB and Verhovec):

11 Violation of RSA 397-A:14,IV(d) Conducting Business or Assisting/ Aiding/
12 Abetting Any Person in the Conduct of Business Without a Valid License (2
13 Counts Applies to Each Respondent Except Verch, Whitney and Hurd and 1
14 Count only for Respondent Battersby):

15 Violation of RSA 397-A:17,I(a) Violation of RSA 397-A:3,I by Respondents
16 Proficio Mortgage, Freeman, Proficio Bank, NHB and Verhovec (4 Counts):

17 Violation of RSA 397-A:17,I(a) Violation of RSA 397-A:3,III by Respondents
18 Proficio Mortgage, Freeman, Proficio Bank, NHB and Verhovec (2 Counts):

19 14. Paragraphs 1 through 13 are hereby realleged as fully set forth
20 herein.

21 15. The Claremont, New Hampshire branch office location was not a
22 licensed location of Respondent Proficio Mortgage with the
23 Department to conduct mortgage banking or brokering activity
24 during the time period of June 30, 2009 through August 25, 2009.

25 16. The above named Respondents did not file an application to license

1 the Claremont, New Hampshire branch office location of Respondent
2 Proficio Mortgage until August 26, 2009.

3 17. During the time period between June 30, 2009 and August 25, 2009,
4 the above named Respondents (with the exception of Respondent
5 Verch and Respondent Whitney) were involved in the origination of
6 four (4) New Hampshire mortgage loans in the Claremont, New
7 Hampshire unlicensed branch office location. Three of the mortgage
8 loans were originated by Respondent Battersby and one by
9 Respondent LaPlume, who was also later listed as the Claremont,
10 New Hampshire branch office Branch Manager.

11 18. In addition to the loan origination fees collected by Respondent
12 Proficio Mortgage for Consumers 1 through 4 below, the above named
13 Respondents should disgorge the net profit of \$18,363.75 for the
14 time period between June 30, 2009 to August 25, 2009.

15 **CONSUMER 1 LOAN:**

16 19. Consumer 1 purchased a property in New Hampshire. According to the
17 loan history, the loan was initially entered into the computer
18 system on April 10, 2009, most likely when the Claremont, New
19 Hampshire branch office was a licensed branch office for Premier
20 Mortgage Capital, Inc and Respondent Battersby was a licensed
21 mortgage loan originator with Premier Mortgage Capital, Inc.
22 However, no origination documentation had been imaged for review.

23 20. The Consumer 1 loan closed on July 24, 2009 as Proficio Mortgage,
24 even though Premier Mortgage Capital, Inc's active license was not
25 revoked for that location until July 28, 2009, four days after

1 this loan closed and no application had been received by the
2 Department to license the Claremont, New Hampshire branch office
3 location as a branch office for Respondent Proficio Mortgage.

4 21. Documents in the Consumer 1 loan file list the loan as a joint
5 venture with Premier Mortgage Capital, Inc.

6 22. Respondent Proficio Mortgage collected \$3,636.56 at closing, which
7 should be refunded to Consumer 1.

8 23. The above named Respondents failed to supervise their branch
9 office to ensure it was properly licensed prior to originating any
10 loans and to ensure Respondent Battersby was not only sponsored by
11 Respondent Proficio Mortgage, but also properly licensed or
12 registered with the Department as a mortgage loan originator.

13 24. Based on the Consumer 1 mortgage loan documentation obtained from
14 Respondent Proficio Mortgage, Respondent Battersby worked
15 simultaneously as a mortgage loan originator for both Premier
16 Mortgage Capital, Inc. and Respondent Proficio Mortgage.

17 **CONSUMER 2 LOAN:**

18 25. Consumer 2 purchased a property in New Hampshire. According to the
19 loan history, the loan was initially entered into the computer
20 system on April 6, 2009, most likely when the Claremont, New
21 Hampshire branch office was a licensed branch office for Premier
22 Mortgage Capital, Inc and Respondent Battersby was a licensed
23 mortgage loan originator with Premier Mortgage Capital, Inc.
24 However, no origination documentation had been imaged for review.

25 26. The Consumer 2 loan closed on July 31, 2009 as Proficio Mortgage,

1 three days after Premier Mortgage Capital, Inc's active license
2 was revoked for that location (July 28, 2009) and no application
3 had been received by the Department to license the Claremont, New
4 Hampshire branch office location as a branch office for Respondent
5 Proficio Mortgage.

6 27. Documents in the Consumer 2 loan file list the loan as a joint
7 venture with Premier Mortgage Capital, Inc.

8 28. Respondent Proficio Mortgage collected \$2,982.70 at closing, which
9 should be refunded to Consumer 2.

10 29. The above named Respondents failed to supervise their branch
11 office to ensure it was properly licensed prior to originating any
12 loans and to ensure Respondent Battersby was not only sponsored by
13 Respondent Proficio Mortgage, but also properly licensed or
14 registered with the Department as a mortgage loan originator.

15 30. Based on the Consumer 2 mortgage loan documentation obtained from
16 Respondent Proficio Mortgage, Respondent Battersby worked
17 simultaneously as a mortgage loan originator for both Premier
18 Mortgage Capital, Inc. and Respondent Proficio Mortgage.

19 **CONSUMER 3 LOAN:**

20 31. Consumer 3 purchased a property in New Hampshire. According to the
21 loan history, the loan was initially entered into the computer
22 system on May 27, 2009, most likely when the Claremont, New
23 Hampshire branch office was a licensed branch office for Premier
24 Mortgage Capital, Inc and Respondent Battersby was a licensed
25 mortgage loan originator with Premier Mortgage Capital, Inc.

1 Mortgage Capital, Inc and Respondent LaPlume was a licensed
2 mortgage loan originator with Premier Mortgage Capital, Inc. and
3 its branch office Branch Manager. However, no origination
4 documentation had been imaged for review.

5 38. The Consumer 4 loan closed on August 7, 2009 as Proficio Mortgage,
6 ten days after Premier Mortgage Capital, Inc's active license was
7 revoked for that location (July 28, 2009) and no application had
8 been received by the Department to license the Claremont, New
9 Hampshire branch office location as a branch office for Respondent
10 Proficio Mortgage.

11 39. Documents in the Consumer 4 loan file list the loan as a joint
12 venture with Premier Mortgage Capital, Inc.

13 40. Respondent Proficio Mortgage collected \$1,626.11 at closing, which
14 should be refunded to Consumer 4.

15 41. The above named Respondents failed to supervise their branch
16 office to ensure it was properly licensed prior to originating any
17 loans and to ensure Respondent LaPlume was not only sponsored by
18 Respondent Proficio Mortgage, but also properly licensed or
19 registered with the Department as a mortgage loan originator and
20 properly listed as the branch office Branch Manager.

21 42. Based on the Consumer 4 mortgage loan documentation obtained from
22 Respondent Proficio Mortgage, Respondent LaPlume worked
23 simultaneously as a mortgage loan originator and branch office
24 Branch Manager for both Premier Mortgage Capital, Inc. and
25 Respondent Proficio Mortgage.

1
2 TIME PERIOD AUGUST 26, 2009 to the PRESENT (AFTER RESPONDENTS APPLIED FOR A
3 CLAREMONT, NEW HAMPSHIRE BRANCH LICENSE WITH THE DEPARTMENT)

4 Violation of RSA 397-A:3,I via RSA 397-A:2,III Engaging in Mortgage
5 Banking/Brokering at an Unlicensed New Hampshire Branch Office (21 Counts
6 Applies to Each Respondent Except 17 Counts for Respondent Hurd, 4 Counts
7 for Respondent Verch, 2 Counts for Respondent Battersby and 3 Counts for
8 Respondent Whitney):

9 Violation of RSA 397-A:3,II Unlicensed Mortgage Loan Originator Activity in
10 Claremont, New Hampshire (17 Counts for Respondent Hurd, 16 Counts for
11 Respondent LaPlume, 2 Counts for Respondent Battersby, 3 Counts for
12 Respondent Whitney):

13 Violation of RSA 397-A:3,III Employment, Retention or Engagement of
14 Unlicensed Mortgage Loan Originators (4 Counts by Respondents Proficio
15 Mortgage, Verch, Freeman, Proficio Bank, NHB and Verhovec):

16 Violation of RSA 397-A:3,III Respondents Battersby, LaPlume, Whitney and
17 Hurd Were Mortgage Loan Originators for Two Companies Simultaneously (1
18 Count):

19 Violation of RSA 397-A:6,I Failure to Supervise (21 Counts by Respondents
20 Proficio Mortgage, Freeman, Proficio Bank, NHB, Verhovec and LaPlume):

21 Violation of RSA 397-A:14,IV(d) Conducting Business or Assisting/ Aiding/
22 Abetting Any Person in the Conduct of Business Without a Valid License (21
23 Counts Applies to Each Respondent Except 17 Counts for Respondent Hurd, 4
24 Counts for Respondent Verch 2 Counts for Respondent Battersby and 3 Counts
25 for Respondent Whitney):

1 Violation of RSA 397-A:14,IV(n) Engaging in Unfair, Deceptive, Unethical or
2 Fraudulent Business Practices (17 Counts Applies to Each Respondent Except
3 2 Counts for Respondent Verch, 2 Counts for Respondent Battersby and 3
4 Counts for Respondent Whitney):

5 Violation of RSA 397-A:2,VI(a) Employ Any Device, Scheme, or Artifice to
6 Defraud (17 Counts Against Each Respondent Except 2 Counts for Respondents
7 Battersby and Verch and 3 Counts for Respondent Whitney):

8 Violation of RSA 397-A:2,VI(b) Make Any Untrue Statement of a Material Fact
9 Appear Not Misleading (17 Counts Against Each Respondent Except 2 Counts
10 for Respondents Battersby and Verch and 3 Counts for Respondent Whitney):

11 Violation of RSA 397-A:2,VI(c) Engage in Any Act, Practice or Course of
12 Business Which Operates or Would Operate as a Fraud or Deceit Upon Any
13 Person (17 Counts Against Each Respondent Except 2 Counts for Respondents
14 Battersby and Verch and 3 Counts for Respondent Whitney):

15 Violation of RSA 397-A:17,I(f) Fraudulent Misrepresentations or Concealment
16 of Material Particulars to the Consumer (17 Counts Against Each Respondent
17 Except 2 Counts for Respondents Battersby and Verch and 3 Counts for
18 Respondent Whitney):

19 Violation of RSA 397-A:17,I(k) Dishonest or Unethical Practices (17 Counts
20 Against Each Respondent Except 2 Counts for Respondents Battersby and Verch
21 and 3 Counts for Respondent Whitney):

22 43. Paragraphs 1 through 42 are hereby realleged as fully set forth
23 herein.

24 44. The Claremont, New Hampshire branch office location was not a
25 licensed location with the Department to conduct mortgage banking

1 or brokering activity during the time period of August 26, 2009 to
2 the present.

3 45. On August 26, 2009, the above named Respondents filed an
4 application to license the Claremont, New Hampshire branch office
5 location of Respondent Proficio Mortgage.

6 46. During the time period between August 26, 2009 to the present, the
7 above named Respondents were involved in some or all of the
8 origination of twenty-one (21) New Hampshire mortgage loans in the
9 Claremont, New Hampshire unlicensed branch office location (15 of
10 which the Department has evidence closed). Respondent LaPlume was
11 listed as not only a mortgage loan originator for the Claremont,
12 New Hampshire branch office, but also the branch office Branch
13 Manager. Respondent Hurd was listed on seventeen (17) of those
14 loans, Respondent Battersby was listed on two (2) loans and
15 Respondent Whitney was listed on three (3) loans.

16 47. The above named Respondents realized that the Claremont, New
17 Hampshire branch office location had been operating without a
18 license. At this time, the above named Respondents allowed the
19 Claremont, New Hampshire to conduct business under Respondent
20 Proficio Mortgage's "Loan Referral Policy".

21 48. The "Loan Referral Policy" supported hiding unlicensed activity by
22 stating "[i]n cases where the branch or originator is not
23 appropriately licensed, the loan may be referred to PMV's National
24 Origination Center (PMV-NOC)". Under this policy, the unlicensed
25 branch "will not be permitted to originate or process the loan";

1 National Origination Center ("NOC").

2 52. According to the loan history, the loan was initially entered into
3 the computer system on July 14, 2009 by Respondent LaPlume and
4 Consumer 5 signed the original loan application on July 15, 2009
5 with Respondent LaPlume listed as the loan originator for
6 Respondent Proficio Mortgage. Again, this is the same branch
7 office location that was the branch office for Premier Mortgage
8 Capital, Inc. until its license was revoked by the Department
9 pursuant to a default judgment on July 28, 2009.

10 53. Respondent LaPlume remained on the loan as the mortgage loan
11 originator until August 26, 2009. The new application Consumer 5
12 signed at closing now lists the mortgage loan originator as
13 Respondent Hurd at the Florida principal office location, with a
14 July 14, 2009 date for the original application.

15 54. The Consumer 5 loan closed on August 28, 2009 as Proficio
16 Mortgage.

17 55. Documents in the Consumer 5 loan file list the loan as a joint
18 venture with Premier Mortgage Capital, Inc., even though Premier
19 Mortgage Capital, Inc.'s mortgage banker license with the
20 Department was revoked on July 28, 2009.

21 56. Respondent Proficio Mortgage collected \$2,554.98 at closing, which
22 should be refunded to Consumer 5.

23 57. The above named Respondents failed to supervise their branch
24 office to ensure it was properly licensed prior to originating any
25 loans and to ensure Respondent LaPlume and Respondent Hurd were

1 not only sponsored by Respondent Proficio Mortgage, but also
2 properly licensed or registered with the Department as a mortgage
3 loan originator.

4 58. Based on the Consumer 5 mortgage loan documentation obtained from
5 Respondent Proficio Mortgage, Respondent Hurd and Respondent
6 LaPlume worked simultaneously as mortgage loan originators for
7 both Premier Mortgage Capital, Inc. and Respondent Proficio
8 Mortgage.

9 59. Based on the mortgage loan documentation obtained from Respondent
10 Proficio Mortgage, the above named Respondents fraudulently
11 processed and profited from the Consumer 5 mortgage loan and
12 concealed those material particulars from both Consumer 5 and the
13 Department.

14 **CONSUMER 6 LOAN:**

15 60. Consumer 6 purchased a property in New Hampshire. The above named
16 Respondents labeled the loan originator as Respondent Hurd at the
17 NOC.

18 61. According to the loan history, the loan was initially entered into
19 the computer system on July 24, 2009 by Respondent Battersby and
20 Consumer 6 signed the original loan application on July 27, 2009
21 with Respondent Battersby listed as the loan originator for
22 Respondent Proficio Mortgage. Again, this is the same branch
23 office location that was the branch office for Premier Mortgage
24 Capital, Inc. until its license was revoked by the Department
25 pursuant to a default judgment on July 28, 2009.

1 62. Respondent Battersby remained on the loan as the mortgage loan
2 originator until August 26, 2009. The new application Consumer 6
3 signed at closing now lists the mortgage loan originator as
4 Respondent Hurd at the Florida principal office location, with a
5 July 24, 2009 date for the original application.

6 63. The Consumer 6 loan closed on August 28, 2009 as Proficio
7 Mortgage.

8 64. Documents in the Consumer 6 loan file list the loan as a joint
9 venture with Premier Mortgage Capital, Inc., even though Premier
10 Mortgage Capital, Inc.'s mortgage banker license with the
11 Department was revoked on July 28, 2009. Respondent LaPlume
12 signed as branch manager and lender's authorized representative in
13 the lender's certification.

14 65. Respondent Proficio Mortgage collected \$3,054.98 at closing, which
15 should be refunded to Consumer 6.

16 66. The above named Respondents failed to supervise their branch
17 office to ensure it was properly licensed prior to originating any
18 loans and to ensure Respondent LaPlume and Respondent Hurd were
19 not only sponsored by Respondent Proficio Mortgage, but also
20 properly licensed or registered with the Department as a mortgage
21 loan originator.

22 67. Based on the Consumer 6 mortgage loan documentation obtained from
23 Respondent Proficio Mortgage, Respondent Hurd and Respondent
24 LaPlume worked simultaneously as mortgage loan originators for
25 both Premier Mortgage Capital, Inc. and Respondent Proficio

1 Mortgage.

2 68. Based on the mortgage loan documentation obtained from Respondent
3 Proficio Mortgage, the above named Respondents fraudulently
4 processed and profited from the Consumer 6 mortgage loan and
5 concealed those material particulars from both Consumer 6 and the
6 Department.

7 **CONSUMER 7 LOAN:**

8 69. Consumer 7 purchased a property in New Hampshire. The above named
9 Respondents labeled the loan originator as Respondent Hurd at the
10 NOC.

11 70. According to the loan history, the loan was initially entered into
12 the computer system on May 29, 2009 by Respondent LaPlume and
13 Consumer 7 signed the original loan application on August 5, 2009
14 with Respondent LaPlume listed as the loan originator for
15 Respondent Proficio Mortgage. Again, this is the same branch
16 office location that was the branch office for Premier Mortgage
17 Capital, Inc. until its mortgage banker license was revoked by the
18 Department pursuant to a default judgment on July 28, 2009.

19 71. Respondent LaPlume remained on the loan as the mortgage loan
20 originator until August 26, 2009. The new application Consumer 7
21 signed at closing now lists the mortgage loan originator as
22 Respondent Hurd at the Florida principal office location, with a
23 August 4, 2009 date for the original application.

24 72. The Consumer 7 loan closed on September 11, 2009 as Proficio
25 Mortgage.

1 73. Documents in the Consumer 7 loan file list the loan as a joint
2 venture with Premier Mortgage Capital, Inc., even though Premier
3 Mortgage Capital, Inc.'s mortgage banker license with the
4 Department had been revoked on July 28, 2009.

5 74. Respondent LaPlume as branch manager wrote a letter to Consumer 7
6 explaining the loan needed to be transferred from Premier to
7 Proficio.

8 75. Respondent Proficio Mortgage collected \$2,623.15 at closing, which
9 should be refunded to Consumer 7.

10 76. The above named Respondents failed to supervise their branch
11 office to ensure it was properly licensed prior to originating any
12 loans and to ensure Respondent LaPlume and Respondent Hurd were
13 not only sponsored by Respondent Proficio Mortgage, but also
14 properly licensed or registered with the Department as a mortgage
15 loan originator.

16 77. Based on the Consumer 7 mortgage loan documentation obtained from
17 Respondent Proficio Mortgage, Respondent Hurd and Respondent
18 LaPlume worked simultaneously as mortgage loan originators for
19 both Premier Mortgage Capital, Inc. and Respondent Proficio
20 Mortgage.

21 78. Based on the mortgage loan documentation obtained from Respondent
22 Proficio Mortgage, the above named Respondents fraudulently
23 processed and profited from the Consumer 7 mortgage loan and
24 concealed those material particulars from both Consumer 7 and the
25 Department.

1 not only sponsored by Respondent Proficio Mortgage, but also
2 properly licensed or registered with the Department as a mortgage
3 loan originator.

4 86. Based on the Consumer 8 mortgage loan documentation obtained from
5 Respondent Proficio Mortgage, Respondent Hurd and Respondent
6 LaPlume worked simultaneously as mortgage loan originators for
7 both Premier Mortgage Capital, Inc. and Respondent Proficio
8 Mortgage.

9 87. Based on the mortgage loan documentation obtained from Respondent
10 Proficio Mortgage, the above named Respondents fraudulently
11 processed and profited from the Consumer 8 mortgage loan and
12 concealed those material particulars from both Consumer 8 and the
13 Department.

14 **CONSUMER 9 LOAN:**

15 88. Consumer 9 purchased a property in New Hampshire. The above named
16 Respondents labeled the loan originator as Respondent Hurd at the
17 NOC.

18 89. According to the loan history, the loan was initially entered into
19 the computer system on August 7, 2009 by Respondent LaPlume.

20 90. Respondent LaPlume remained on the loan as the mortgage loan
21 originator until August 26, 2009. The application Consumer 9
22 signed at closing now lists the mortgage loan originator as
23 Respondent Hurd at the Florida principal office location, with a
24 August 7, 2009 date for the original application.

25 91. The Consumer 9 loan closed on September 14, 2009 as Proficio

1 Mortgage.

2 92. Documents in the Consumer 9 loan file list the loan as a joint
3 venture with Premier Mortgage Capital, Inc., even though Premier
4 Mortgage Capital, Inc.'s mortgage banker license with the
5 Department had been revoked on July 28, 2009.

6 93. Respondent Proficio Mortgage collected \$3,216.12 at closing, which
7 should be refunded to Consumer 9.

8 94. The above named Respondents failed to supervise their branch
9 office to ensure it was properly licensed prior to originating any
10 loans and to ensure Respondent LaPlume and Respondent Hurd were
11 not only sponsored by Respondent Proficio Mortgage, but also
12 properly licensed or registered with the Department as a mortgage
13 loan originator.

14 95. Based on the Consumer 9 mortgage loan documentation obtained from
15 Respondent Proficio Mortgage, Respondent Hurd and Respondent
16 LaPlume worked simultaneously as mortgage loan originators for
17 both Premier Mortgage Capital, Inc. and Respondent Proficio
18 Mortgage.

19 96. Based on the mortgage loan documentation obtained from Respondent
20 Proficio Mortgage, the above named Respondents fraudulently
21 processed and profited from the Consumer 9 mortgage loan and
22 concealed those material particulars from both Consumer 9 and the
23 Department.

24 **CONSUMER 10 LOAN:**

25 97. Consumer 10 purchased a property in New Hampshire. The above named

1 Respondents labeled the loan originator as Respondent Hurd at the
2 NOC.

3 98. According to the loan history, the loan was initially entered into
4 the computer system on July 30, 2009 by Respondent Whitney.
5 Original documents reveal that Consumer 10 signed documents on
6 July 31, 2009 with Respondent Whitney as the mortgage loan
7 originator in the unlicensed Claremont, New Hampshire branch
8 office.

9 99. Respondent Whitney remained on the loan as the mortgage loan
10 originator until August 28, 2009. The application Consumer 10
11 signed at closing now lists the mortgage loan originator as
12 Respondent Hurd at the Florida principal office location, with a
13 July 30, 2009 date for the original application by a face-to-face
14 application, which is impossible. Either Consumer 10 flew to
15 Florida to sign the documentation or if it was indeed Respondent
16 Hurd who was the actual mortgage loan originator, Respondent Hurd
17 flew to Claremont, New Hampshire, where he is also unlicensed as a
18 mortgage loan originator.

19 100. The Consumer 10 loan closed on September 18, 2009 as Proficio
20 Mortgage.

21 101. The partially filled in HUD did not include any fees for
22 Respondent Proficio Mortgage but the Closing Coordination Form
23 lists that the Claremont, New Hampshire branch received either
24 \$3,205.10 or \$3,455.10 (either \$1,975.31 or \$2,225.31 from the HUD
25 plus the Service Release Premium ("SRP") of \$1,229.79). The

1 Service Release Premium is a fee a mortgage banker receives after
2 selling the loan on the secondary market. Respondent Proficio
3 Mortgage lists the SRP as "Amount Due to Branch from Locked
4 Price".

5 102. Respondent Proficio Mortgage most likely collected \$3,455.10 at
6 closing, which should be refunded to Consumer 10.

7 103. The above named Respondents failed to supervise their branch
8 office to ensure it was properly licensed prior to originating any
9 loans and to ensure Respondent Whitney and Respondent Hurd were
10 not only sponsored by Respondent Proficio Mortgage, but also
11 properly licensed or registered with the Department as a mortgage
12 loan originator.

13 104. Based on the Consumer 10 mortgage loan documentation obtained from
14 Respondent Proficio Mortgage, Respondent Whitney worked
15 simultaneously as a mortgage loan originator for both Premier
16 Mortgage Capital, Inc. and Respondent Proficio Mortgage.

17 105. Based on the mortgage loan documentation obtained from Respondent
18 Proficio Mortgage, the above named Respondents fraudulently
19 processed and profited from the Consumer 10 mortgage loan and
20 concealed those material particulars from both Consumer 10 and the
21 Department.

22 **CONSUMER 11 LOAN:**

23 106. Consumer 11 purchased a property in New Hampshire. The above named
24 Respondents labeled the loan originator as Respondent Hurd at the
25 NOC.

1 107. According to the loan history, the loan was initially entered into
2 the computer system on August 19, 2009 by Respondent LaPlume.
3 Original documents reveal that Consumer 11 signed documents on
4 August 24, 2009 with Respondent LaPlume as the mortgage loan
5 originator in the unlicensed Claremont, New Hampshire branch
6 office.

7 108. Respondent LaPlume remained on the loan as the mortgage loan
8 originator until September 10, 2009. The application Consumer 11
9 signed at closing now lists the mortgage loan originator as
10 Respondent Hurd at the Florida principal office location.

11 109. The Consumer 11 loan closed on November 2, 2009 as Proficio
12 Mortgage.

13 110. Documents in the Consumer 11 loan file indicate the loan was
14 underwritten by Premier Mortgage Capital, Inc., even though
15 Premier Mortgage Capital, Inc.'s mortgage banker license with the
16 Department had been revoked on July 28, 2009.

17 111. Respondent Proficio Mortgage collected \$1,956.83 at closing, which
18 should be refunded to Consumer 11.

19 112. The Closing Coordination Form lists the Claremont, New Hampshire
20 branch received \$1,477.91 (\$739.88 from the HUD plus the SRP of
21 \$738.03). Respondent Proficio Mortgage lists the SRP as "Amount
22 Due to Branch from Locked Price".

23 113. Respondent Proficio Mortgage most likely collected \$1,477.91 at
24 closing, which should be refunded to Consumer 11.

25 114. The above named Respondents failed to supervise their branch

1 office to ensure it was properly licensed prior to originating any
2 loans and to ensure Respondent LaPlume and Respondent Hurd were
3 not only sponsored by Respondent Proficio Mortgage, but also
4 properly licensed or registered with the Department as a mortgage
5 loan originator.

6 115. Based on the mortgage loan documentation obtained from Respondent
7 Proficio Mortgage, the above named Respondents fraudulently
8 processed and profited from the Consumer 11 mortgage loan and
9 concealed those material particulars from both Consumer 11 and the
10 Department.

11 **CONSUMER 12 LOAN:**

12 116. Consumer 12 purchased a property in New Hampshire. The above named
13 Respondents labeled the loan originator as Respondent Hurd at the
14 NOC.

15 117. According to the loan history, the loan was initially entered into
16 the computer system on July 27, 2009 by Respondent LaPlume and
17 Consumer 12 signed the original loan application on July 28, 2009
18 with Respondent LaPlume listed as the loan originator for
19 Respondent Proficio Mortgage. Again, this is the same branch
20 office location that was the branch office for Premier Mortgage
21 Capital, Inc. until its license was revoked by the Department
22 pursuant to a default judgment on July 28, 2009.

23 118. Respondent LaPlume remained on the loan as the mortgage loan
24 originator until August 26, 2009. The application Consumer 12
25 signed at closing now lists the mortgage loan originator as

1 Respondent Hurd at the Florida principal office location, with a
2 July 27, 2009 date for the original application. This is two days
3 before Premier Mortgage Capital, Inc.'s mortgage banker license
4 was revoked by the Department.

5 119. The Consumer 12 loan closed on October 8, 2009 as Proficio
6 Mortgage.

7 120. Respondent Proficio Mortgage collected \$5,751.25 at closing, which
8 should be refunded to Consumer 10. The unsigned HUD agreement
9 indicated Respondent Proficio Mortgage collected \$3,033.04 but the
10 Closing Coordination Form lists that the Claremont, New Hampshire
11 unlicensed branch received \$5,751.25 (\$2,085.09 from the HUD and
12 the SRP of \$3,666.16).

13 121. Documents in the Consumer 12 loan file indicate the loan was
14 underwritten by Premier Mortgage Capital, Inc., even though
15 Premier Mortgage Capital, Inc.'s mortgage banker license with the
16 Department had been revoked on July 28, 2009.

17 122. The above named Respondents failed to supervise their branch
18 office to ensure it was properly licensed prior to originating any
19 loans and to ensure Respondent LaPlume and Respondent Hurd were
20 not only sponsored by Respondent Proficio Mortgage, but also
21 properly licensed or registered with the Department as a mortgage
22 loan originator.

23 123. Based on the Consumer 12 mortgage loan documentation obtained from
24 Respondent Proficio Mortgage, Respondent LaPlume and Respondent
25 Hurd worked simultaneously as mortgage loan originators for both

1 Premier Mortgage Capital, Inc. and Respondent Proficio Mortgage.

2 124. Based on the mortgage loan documentation obtained from Respondent
3 Proficio Mortgage, the above named Respondents fraudulently
4 processed and profited from the Consumer 12 mortgage loan and
5 concealed those material particulars from both Consumer 12 and the
6 Department.

7 **CONSUMER 13 LOAN:**

8 125. Consumer 13 purchased a property in New Hampshire. The above named
9 Respondents labeled the loan originator as Respondent Hurd at the
10 NOC.

11 126. According to the loan history, the loan was initially entered into
12 the computer system on September 11, 2009 by Respondent Hurd,
13 through Respondent LaPlume had initially saved the Good Faith
14 Estimate. This Consumer 13 loan had been reopened after another
15 Consumer 13 loan file, entered into the system on June 26, 2009 by
16 Respondent LaPlume, had been withdrawn on September 10, 2009.
17 Again, this is the same branch office location that was the branch
18 office for Premier Mortgage Capital, Inc. until its license was
19 revoked by the Department pursuant to a default judgment on July
20 28, 2009.

21 127. Original documents in the Consumer 13 file indicate Consumer 13
22 signed the documents on September 14, 2009 with Respondent LaPlume
23 listed as the mortgage loan originator.

24 128. Respondent LaPlume remained on the loan as the mortgage loan
25 originator until September 16, 2009. The new application Consumer

1 13 signed at closing now lists the mortgage loan originator as
2 Respondent Hurd at the Florida principal office location, with a
3 September 11, 2009 date for the original application. A new
4 Borrower Signature Authorization formed was signed by Consumer 13
5 on October 8, 2009.

6 129. The Consumer 13 loan closed on October 8, 2009 as Proficio
7 Mortgage.

8 130. Respondent Proficio Mortgage collected \$4,983.24 at closing, which
9 should be refunded to Consumer 13. The partially completed HUD
10 agreement indicated Respondent Proficio Mortgage did not collect
11 any fees but the Closing Coordination Form lists that the
12 Claremont, New Hampshire unlicensed branch received \$4,983.24
13 (\$2,243.89 from the HUD and the SRP of \$2,739.35).

14 131. The above named Respondents failed to supervise their branch
15 office to ensure it was properly licensed prior to originating any
16 loans and to ensure Respondent LaPlume and Respondent Hurd were
17 not only sponsored by Respondent Proficio Mortgage, but also
18 properly licensed or registered with the Department as a mortgage
19 loan originator.

20 132. Based on the Consumer 13 mortgage loan documentation obtained from
21 Respondent Proficio Mortgage, Respondent LaPlume worked
22 simultaneously as a mortgage loan originator for both Premier
23 Mortgage Capital, Inc. and Respondent Proficio Mortgage.

24 133. Based on the mortgage loan documentation obtained from Respondent
25 Proficio Mortgage, the above named Respondents fraudulently

1 processed and profited from the Consumer 13 mortgage loan and
2 concealed those material particulars from both Consumer 13 and the
3 Department.

4 **CONSUMER 14 LOAN:**

5 134. Consumer 14 purchased a property in New Hampshire. The above named
6 Respondents labeled the loan originator as Respondent Hurd at the
7 NOC.

8 135. According to the loan history, the loan was initially entered into
9 the computer system on July 31, 2009 by Respondent LaPlume and
10 Consumer 14 signed the original loan application on July 31, 2009
11 with Respondent LaPlume listed as the loan originator for
12 Respondent Proficio Mortgage. Again, this is the same branch
13 office location that was the branch office for Premier Mortgage
14 Capital, Inc. until its license was revoked by the Department
15 pursuant to a default judgment on July 28, 2009.

16 136. Respondent LaPlume remained on the loan as the mortgage loan
17 originator until September 17, 2009. The application Consumer 14
18 signed at closing now lists the mortgage loan originator as
19 Respondent Hurd at the Florida principal office location, with a
20 July 31, 2009 date for the original application.

21 137. The Consumer 14 loan closed on September 29, 2009 as Proficio
22 Mortgage.

23 138. Documents in the Consumer 14 loan file list the loan as a joint
24 venture with Premier Mortgage Capital, Inc., even though Premier
25 Mortgage Capital, Inc.'s mortgage banker license with the

1 Department was revoked on July 28, 2009.

2 139. Respondent Proficio Mortgage collected \$4,819.47 at closing, which
3 should be refunded to Consumer 14. The unsigned HUD agreement
4 indicated Respondent Proficio Mortgage collected \$2,929.39 but the
5 Closing Coordination Form lists that the Claremont, New Hampshire
6 unlicensed branch received \$4,819.47 (\$1,390.39 from the HUD and
7 the SRP of \$2,819.47).

8 140. The above named Respondents failed to supervise their branch
9 office to ensure it was properly licensed prior to originating any
10 loans and to ensure Respondent LaPlume and Respondent Hurd were
11 not only sponsored by Respondent Proficio Mortgage, but also
12 properly licensed or registered with the Department as a mortgage
13 loan originator.

14 141. Based on the Consumer 14 mortgage loan documentation obtained from
15 Respondent Proficio Mortgage, Respondent Hurd worked
16 simultaneously as a mortgage loan originator for both Premier
17 Mortgage Capital, Inc. and Respondent Proficio Mortgage.

18 142. Based on the mortgage loan documentation obtained from Respondent
19 Proficio Mortgage, the above named Respondents fraudulently
20 processed and profited from the Consumer 14 mortgage loan and
21 concealed those material particulars from both Consumer 14 and the
22 Department.

23 **CONSUMER 15 LOAN:**

24 143. Consumer 15 purchased a property in New Hampshire. The above named
25 Respondents labeled the loan originator as Respondent Hurd at the

1 NOC.

2 144. According to the loan history, the loan was initially entered into
3 the computer system on August 12, 2009 by Respondent LaPlume and
4 Consumer 15 signed the original loan application on August 12,
5 2009 with Respondent LaPlume listed as the loan originator for
6 Respondent Proficio Mortgage.

7 145. Respondent LaPlume remained on the loan as the mortgage loan
8 originator until September 24, 2009. The application Consumer 15
9 signed at closing now lists the mortgage loan originator as
10 Respondent Hurd.

11 146. The Consumer 15 loan closed on October 30, 2009 as Proficio
12 Mortgage.

13 147. Respondent Proficio Mortgage collected \$2,750.29 at closing, which
14 should be refunded to Consumer 15. The unsigned HUD agreement
15 indicated Respondent Proficio Mortgage collected \$2,750.29. The
16 Closing Coordination Form lists that the Claremont, New Hampshire
17 unlicensed branch received \$2,420.68 (\$1,153.26 from the HUD and
18 the SRP of \$867.42).

19 148. The above named Respondents failed to supervise their branch
20 office to ensure it was properly licensed prior to originating any
21 loans and to ensure Respondent LaPlume and Respondent Hurd were
22 not only sponsored by Respondent Proficio Mortgage, but also
23 properly licensed or registered with the Department as a mortgage
24 loan originator.

25 149. Based on the mortgage loan documentation obtained from Respondent

1 Proficio Mortgage, the above named Respondents fraudulently
2 processed and profited from the Consumer 15 mortgage loan and
3 concealed those material particulars from both Consumer 15 and the
4 Department.

5 **CONSUMER 16 LOAN:**

6 150. Consumer 16 purchased a property in New Hampshire. The above named
7 Respondents labeled the loan originator as Respondent Hurd at the
8 NOC.

9 151. According to the loan history, the loan was initially entered into
10 the computer system on August 24, 2009 by Respondent Whitney and
11 Consumer 15 signed the original loan application on August 26,
12 2009 with Respondent Whitney listed as the loan originator for
13 Respondent Proficio Mortgage. Again, this is the same branch
14 office location that was the branch office for Premier Mortgage
15 Capital, Inc. until its license was revoked by the Department
16 pursuant to a default judgment on July 28, 2009.

17 152. Respondent Whitney remained on the loan as the mortgage loan
18 originator until September 24, 2009. The application Consumer 16
19 signed at closing now lists the mortgage loan originator as
20 Respondent Hurd at the Florida principal office location.

21 153. The Consumer 16 loan closed on October 26, 2009 as Proficio
22 Mortgage.

23 154. Respondent Proficio Mortgage collected \$3,350.47 at closing, which
24 should be refunded to Consumer 16. The partially prepared HUD
25 agreement indicated Respondent Proficio Mortgage did not collect

1 any fees but the Closing Coordination Form lists that the
2 Claremont, New Hampshire unlicensed branch received \$3,350.47
3 (\$1,670.47 from the HUD and the SRP of \$1,680.00).

4 155. The above named Respondents failed to supervise their branch
5 office to ensure it was properly licensed prior to originating any
6 loans and to ensure Respondent Whitney and Respondent Hurd were
7 not only sponsored by Respondent Proficio Mortgage, but also
8 properly licensed or registered with the Department as a mortgage
9 loan originator.

10 156. Based on the Consumer 16 mortgage loan documentation obtained from
11 Respondent Proficio Mortgage, Respondent Whitney worked
12 simultaneously as a mortgage loan originator for both Premier
13 Mortgage Capital, Inc. and Respondent Proficio Mortgage.

14 157. Based on the mortgage loan documentation obtained from Respondent
15 Proficio Mortgage, the above named Respondents fraudulently
16 processed and profited from the Consumer 16 mortgage loan and
17 concealed those material particulars from both Consumer 16 and the
18 Department.

19 **CONSUMER 17 LOAN:**

20 158. Consumer 17 purchased a property in New Hampshire. The above named
21 Respondents labeled the loan originator as Respondent Hurd at the
22 NOC.

23 159. According to the loan history, the loan was initially entered into
24 the computer system on July 16, 2009 by Respondent LaPlume and
25 Consumer 17 signed the original loan documents on July 16, 2009

1 and September 30, 2009 with Respondent LaPlume listed as the loan
2 originator for Respondent Proficio Mortgage. Again, this is the
3 same branch office location that was the branch office for Premier
4 Mortgage Capital, Inc. until its license was revoked by the
5 Department pursuant to a default judgment on July 28, 2009.

6 160. Respondent LaPlume remained on the loan as the mortgage loan
7 originator until October 2, 2009. The application Consumer 17
8 signed at closing now lists the mortgage loan originator as
9 Respondent Hurd at the Florida principal office location, with a
10 July 16, 2009 date for the original application. This is twelve
11 days before Premier Mortgage Capital, Inc.'s mortgage banker
12 license was revoked by the Department.

13 161. The Consumer 17 loan closed on October 15, 2009 as Proficio
14 Mortgage.

15 162. Respondent Proficio Mortgage collected \$6,143.64 at closing, which
16 should be refunded to Consumer 17. The unsigned HUD agreement
17 indicated Respondent Proficio Mortgage collected \$1,646.09 but the
18 Closing Coordination Form lists that the Claremont, New Hampshire
19 unlicensed branch received \$6,143.64 (\$698.14 from the HUD and the
20 SRP of \$5,445.50).

21 163. The above named Respondents failed to supervise their branch
22 office to ensure it was properly licensed prior to originating any
23 loans and to ensure Respondent LaPlume and Respondent Hurd were
24 not only sponsored by Respondent Proficio Mortgage, but also
25 properly licensed or registered with the Department as a mortgage

1 loan originator.

2 164. Based on the Consumer 17 mortgage loan documentation obtained from
3 Respondent Proficio Mortgage, Respondent LaPlume and Respondent
4 Hurd worked simultaneously as mortgage loan originators for both
5 Premier Mortgage Capital, Inc. and Respondent Proficio Mortgage.

6 165. Based on the mortgage loan documentation obtained from Respondent
7 Proficio Mortgage, the above named Respondents fraudulently
8 processed and profited from the Consumer 17 mortgage loan and
9 concealed those material particulars from both Consumer 17 and the
10 Department.

11 **CONSUMER 18 LOAN:**

12 166. Consumer 18 purchased a property in New Hampshire. The above named
13 Respondents labeled the loan originator as Respondent Hurd at the
14 NOC.

15 167. According to the loan history, the loan was initially entered into
16 the computer system on September 5, 2009 by Respondent Battersby
17 and Consumer 18 signed the original loan documents on September 5,
18 2009 with Respondent Battersby listed as the loan originator for
19 Respondent Proficio Mortgage.

20 168. Respondent Battersby remained on the loan as the mortgage loan
21 originator until September 24, 2009. The application Consumer 18
22 signed at closing now lists the mortgage loan originator as
23 Respondent Hurd at the Florida principal office location.

24 169. The Consumer 18 loan may have closed on November 2, 2009 as
25 Proficio Mortgage.

1 170. Respondent Proficio Mortgage collected \$3,048.99 at closing, which
2 should be refunded to Consumer 18. The partially prepared HUD
3 agreement indicated Respondent Proficio Mortgage did not collect
4 any fees but the Closing Coordination Form lists that the
5 Claremont, New Hampshire unlicensed branch received \$3,048.99
6 (\$1,354.35 from the HUD and the SRP of \$1,694.64).

7 171. The above named Respondents failed to supervise their branch
8 office to ensure it was properly licensed prior to originating any
9 loans and to ensure Respondent Battersby and Respondent Hurd were
10 not only sponsored by Respondent Proficio Mortgage, but also
11 properly licensed or registered with the Department as a mortgage
12 loan originator.

13 172. Based on the mortgage loan documentation obtained from Respondent
14 Proficio Mortgage, the above named Respondents fraudulently
15 processed and profited from the Consumer 18 mortgage loan and
16 concealed those material particulars from both Consumer 18 and the
17 Department.

18 **CONSUMER 19 LOAN:**

19 173. Consumer 19 purchased a property in New Hampshire. The above named
20 Respondents labeled the loan originator as Respondent Hurd at the
21 NOC.

22 174. According to the loan history, the loan was initially entered into
23 the computer system on September 14, 2009 by Respondent Whitney
24 and Consumer 19 signed the original loan documents on September
25 16, 2009 with Respondent Whitney listed as the loan originator for

1 Respondent Proficio Mortgage.

2 175. Respondent Whitney remained on the loan as the mortgage loan
3 originator until October 7, 2009. The application Consumer 19
4 signed at closing now lists the mortgage loan originator as
5 Respondent Hurd at the Florida principal office location.

6 176. The Consumer 19 loan closed on October 26, 2009 as Proficio
7 Mortgage.

8 177. Respondent Proficio Mortgage collected \$2,617.25 at closing, which
9 should be refunded to Consumer 19. The partially prepared HUD
10 agreement indicated Respondent Proficio Mortgage did not collect
11 any fees but the Closing Coordination Form lists that the
12 Claremont, New Hampshire unlicensed branch received \$2,617.25
13 (\$1,923.21 from the HUD and the SRP of \$694.04).

14 178. The above named Respondents failed to supervise their branch
15 office to ensure it was properly licensed prior to originating any
16 loans and to ensure Respondent Whitney and Respondent Hurd were
17 not only sponsored by Respondent Proficio Mortgage, but also
18 properly licensed or registered with the Department as a mortgage
19 loan originator.

20 179. Based on the mortgage loan documentation obtained from Respondent
21 Proficio Mortgage, the above named Respondents fraudulently
22 processed and profited from the Consumer 19 mortgage loan and
23 concealed those material particulars from both Consumer 19 and the
24 Department.

25 **CONSUMER 20 LOAN (unknown if closed):**

1 180. Consumer 20 has applied to purchase a property in New Hampshire.

2 The above named Respondents labeled the loan originator as
3 Respondent Hurd at the NOC.

4 181. According to the loan history, the loan was initially entered into
5 the computer system on September 9, 2009 by Respondent LaPlume and
6 Consumer 20 signed the original loan documents on September 9,
7 2009 with Respondent LaPlume listed as the loan originator for
8 Respondent Proficio Mortgage. However, documents in the file
9 indicate September 9, 2009 may not be the correct date.

10 182. Respondent LaPlume remained on the loan as the mortgage loan
11 originator until October 27, 2009. The new application Consumer 20
12 signed now lists the mortgage loan originator as Respondent Hurd
13 at the Florida principal office location with a September 9, 2009
14 date.

15 183. The above named Respondents failed to supervise their branch
16 office to ensure it was properly licensed prior to begin the
17 origination of any loans and to ensure Respondent LaPlume and
18 Respondent Hurd were not only sponsored by Respondent Proficio
19 Mortgage, but also properly licensed or registered with the
20 Department as a mortgage loan originator.

21 184. Based on the mortgage loan documentation obtained from Respondent
22 Proficio Mortgage, the above named Respondents fraudulently
23 processed and possibly profited from the Consumer 20 mortgage loan
24 if they collected any fees and concealed those material
25 particulars from both Consumer 20 and the Department.

1
2 **CONSUMER 21 LOAN (unknown if closed):**

3 185. Consumer 21 has applied to purchase a property in New Hampshire.

4 The above named Respondents labeled the loan originator as
5 Respondent Hurd at the NOC.

6 186. According to the loan history, the loan was initially entered into
7 the computer system on September 23, 2009 by Respondent LaPlume
8 and Consumer 21 signed the original loan documents on September
9 23, 2009 with Respondent LaPlume listed as the loan originator for
10 Respondent Proficio Mortgage.

11 187. Respondent LaPlume remained on the loan as the mortgage loan
12 originator until October 22, 2009. No new "initial" loan documents
13 with Respondent Hurd's name have been scanned into Respondent
14 Proficio Mortgage's system as of November 2, 2009; yet, Respondent
15 Hurd is listed as the loan originator on the Consumer 21 loan.

16 188. The above named Respondents failed to supervise their branch
17 office to ensure it was properly licensed prior to begin the
18 origination of any loans and to ensure Respondent LaPlume and
19 Respondent Hurd were not only sponsored by Respondent Proficio
20 Mortgage, but also properly licensed or registered with the
21 Department as a mortgage loan originator.

22 189. Based on the mortgage loan documentation obtained from Respondent
23 Proficio Mortgage, the above named Respondents fraudulently
24 processed and possibly profited from the Consumer 21 mortgage loan
25 if they collected any fees and concealed those material

1 particulars from both Consumer 21 and the Department.

2 **CONSUMER 22 LOAN (unknown if closed):**

3 190. Consumer 22 has applied to purchase a property in New Hampshire.

4 The above named Respondents labeled the loan originator as
5 Respondent LaPlume at the Claremont, New Hampshire branch office.

6 191. It is unclear when the loan process began with Respondent Proficio
7 Mortgage. According to the loan history, the loan was initially
8 entered into the computer system on May 9, 2009 by Respondent
9 Battersby, most likely when the Claremont, New Hampshire branch
10 office was still a part of Premier Mortgage Capital, Inc. No
11 documentation was scanned into Respondent Proficio Mortgage's
12 computer system. The Consumer 22 loan application changed to
13 being originated by Respondent LaPlume on November 3, 2009, most
14 likely because Respondent Battersby left Respondent Proficio
15 Mortgage on or about September 22, 2009.

16 192. As of November 3, 2009, Respondent LaPlume had the loan submitted
17 to the Desktop Originator.

18 193. The above named Respondents failed to supervise their branch
19 office to ensure it was properly licensed prior to begin the
20 origination of any loans and to ensure Respondent LaPlume and
21 Respondent Battersby were not only sponsored by Respondent
22 Proficio Mortgage, but also properly licensed or registered with
23 the Department as a mortgage loan originator.

24 194. Based on the Consumer 22 mortgage loan documentation obtained from
25 Respondent Proficio Mortgage, Respondent LaPlume and Respondent

1 Battersby worked simultaneously as mortgage loan originators for
2 both Premier Mortgage Capital, Inc. and Respondent Proficio
3 Mortgage.

4 195. Based on the mortgage loan documentation obtained from Respondent
5 Proficio Mortgage, the above named Respondents fraudulently
6 processed and possibly profited from the Consumer 22 mortgage loan
7 if they collected any fees and concealed those material
8 particulars from both Consumer 22 and the Department.

9 **CONSUMER 23 LOAN (unknown if closed):**

10 196. Consumer 23 has applied to purchase a property in New Hampshire.

11 The above named Respondents labeled the loan originator as
12 Respondent LaPlume at the Claremont, New Hampshire branch office.

13 197. According to the loan history, the loan was initially entered into
14 the computer system on July 20, 2009 by Respondent LaPlume, most
15 likely when the Claremont, New Hampshire branch office was still a
16 part of Premier Mortgage Capital, Inc. No documentation was
17 scanned into Respondent Proficio Mortgage's computer system.

18 198. As of November 2, 2009, Respondent LaPlume had the loan submitted
19 to the Desktop Originator.

20 199. The above named Respondents failed to supervise their branch
21 office to ensure it was properly licensed prior to beginning the
22 origination of any loans and to ensure Respondent LaPlume was not
23 only sponsored by Respondent Proficio Mortgage, but also properly
24 licensed or registered with the Department as a mortgage loan
25 originator.

1 200. Based on the Consumer 23 mortgage loan documentation obtained from
2 Respondent Proficio Mortgage, Respondent LaPlume worked
3 simultaneously as a mortgage loan originator for both Premier
4 Mortgage Capital, Inc. and Respondent Proficio Mortgage.

5 201. Based on the mortgage loan documentation obtained from Respondent
6 Proficio Mortgage, the above named Respondents fraudulently
7 processed and possibly profited from the Consumer 23 mortgage loan
8 if they collected any fees and concealed those material
9 particulars from both Consumer 23 and the Department.

10 **CONSUMER 24 LOAN (unknown if closed):**

11 202. Consumer 24 has applied to purchase a property in New Hampshire.
12 The above named Respondents labeled the loan originator as
13 Respondent LaPlume at the Claremont, New Hampshire branch office.

14 203. According to the loan history, the loan was initially entered into
15 the computer system on July 8, 2009 by Respondent LaPlume, most
16 likely when the Claremont, New Hampshire branch office was still a
17 part of Premier Mortgage Capital, Inc. No documentation was
18 scanned into Respondent Proficio Mortgage's computer system.

19 204. As of October 7, 2009, a Respondent Proficio Mortgage employee
20 updated the loan status as underwriting approved with conditions.

21 205. The above named Respondents failed to supervise their branch
22 office to ensure it was properly licensed prior to beginning the
23 origination of any loans and to ensure Respondent LaPlume was not
24 only sponsored by Respondent Proficio Mortgage, but also properly
25 licensed or registered with the Department as a mortgage loan

1 originator.

2 212. Based on the Consumer 25 mortgage loan documentation obtained from
3 Respondent Proficio Mortgage, Respondent LaPlume worked
4 simultaneously as a mortgage loan originator for both Premier
5 Mortgage Capital, Inc. and Respondent Proficio Mortgage.

6 213. Based on the mortgage loan documentation obtained from Respondent
7 Proficio Mortgage, the above named Respondents fraudulently
8 processed and possibly profited from the Consumer 25 mortgage loan
9 if they collected any fees and concealed those material
10 particulars from both Consumer 25 and the Department.

11 **Violation of RSA 397-A:12,V Failure to Pay Examination Fee (1 Count):**

12 214. Paragraphs 1 through 210 are hereby realleged as fully set forth
13 herein.

14 215. The Department conducted an examination of Proficio Mortgage on
15 October 26, 2009.

16 216. The Department sent Respondents the report of examination and
17 examination invoice for \$21,653.90 via U.S. Certified Mail Return
18 Receipt requested on January 12, 2010, which Respondents received
19 January 15, 2010.

20 217. The above named Respondents failed to respond to the January 12,
21 2010 correspondence from the Department.

22 218. The Department, via U.S. mail, mailed Respondents a second notice
23 on February 1, 2010 and a third notice on February 3, 2010.

24 219. On February 10, 2010, the Department spoke with Chief Executive
25 Officer of Respondent Proficio Mortgage's holding company, who

1 questioned the amount of the examination invoice. The Department
2 explained the source of the examination fees and that payment is
3 due within fourteen (14) days of receipt of the invoice. The
4 invoice would have been due January 29, 2010.

5 220. To date, the above named Respondents still owe the \$21,653.90
6 examination fee for the 23.52 day examination.

7 **Violation of RSA 397-A:14,IV(d) Assisting or Aiding and Abetting A Business**

8 **Subject to RSA 397-A:3,II-a Without a Valid Mortgage Broker License (1**

9 **Count) :**

10 221. Paragraphs 1 through 217 are hereby realleged as fully set forth
11 herein.

12 222. The above named Respondents conducted business with Headstrong
13 Business Services, Inc. (formerly known as Lydian Data Services,
14 LLC) post-July 31, 2009, when third party loan processors were
15 required to be licensed as mortgage brokers by the Department.

16 223. Respondent Proficio Mortgage had a contractual agreement with
17 Headstrong Business Services, Inc. since March 17, 2008 (when it
18 was Lydian Data Services, LLC).

19 224. On or about January 28, 2009, Headstrong Business Services, Inc.
20 acquired Lydian Data Services, LLC ("Headstrong").

21 225. Headstrong has never applied to be a mortgage broker with the
22 Department.

23 226. Pursuant to the examination the Department conducted of Respondent
24 Proficio Mortgage, the latter has terminated its contractual
25 relationship with Headstrong stating it agrees with the

1 Department's finding regarding Headstrong's licensure
2 requirements.

3 227. Respondent Proficio Mortgage has indicated it is currently
4 publishing new process flows that illustrate its contract
5 termination with Headstrong.

6 228. Respondent Proficio Mortgage's Fulfillment Process Flow list
7 multiple activities conducted by Headstrong for Respondent
8 Proficio Mortgage, including but not limited to receiving
9 documents for accuracy/completeness, underwriting for conventional
10 loans, ordering flood, title, Verifications of Deposit and
11 Verifications of Employment, and collecting additional documents
12 related to underwriter decisions.

13 **II. ISSUES OF LAW**

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

- 15 1. The Department realleges the above stated facts in Paragraphs 1
16 through 228 as fully set forth herein.
- 17 2. The Department has jurisdiction over the licensing and regulation
18 of persons engaged in mortgage banker or broker activities
19 pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 20 3. RSA 397-A:1,I provides that "agent" means any individual, other
21 than a mortgage banker or mortgage broker, who is employed or
22 retained by a mortgage banker or mortgage broker required to be
23 licensed under RSA Chapter 397-A, and who represents a mortgage
24 banker or mortgage broker in soliciting, finding, negotiating,
25 arranging, or processing mortgage loans.

1 4. RSA 397-A:1,X provides that "licensee" means a person, whether
2 mortgage banker, mortgage broker, or mortgage originator, duly
3 licensed by the Commissioner pursuant to the provisions of RSA
4 Chapter 397-A.

5 5. RSA 397-A:2,III requires persons subject to or licensed under RSA
6 Chapter 397-A to abide by applicable federal laws and regulations,
7 the laws and rules of the State of New Hampshire, and the orders
8 of the Commissioner. Any violation of such law, regulation, order,
9 or rule is a violation of RSA Chapter 397-A. Each of the above
10 named Respondents (except Respondents Verch, Whitney and Hurd)
11 violated this provision on at least twenty-five (25) occasions,
12 Respondent Battersby violated this provision on at least five (5)
13 occasions, Respondent Hurd violated this provision on at least
14 seventeen (17) occasions, Respondent Verch violated this provision
15 on at least four (4) occasions and Respondent Whitney on at least
16 three (3) occasions as alleged above.

17 6. RSA 397-A:2,VI(a) provides that it is unlawful for any person, in
18 connection with the solicitation, offer, closing, or servicing of
19 a mortgage loan, directly or indirectly, to employ any device,
20 scheme, or artifice to defraud. Respondents Proficio Mortgage,
21 Freeman, Proficio Bank, NHB, Verhovec, LaPlume and Hurd each
22 violated this provision on at least seventeen (17) occasions,
23 Respondents Battersby and Verch each violated this provision on at
24 least two (2) occasions and Respondent Whitney violated this
25 provision on at least three (3) occasions as alleged above.

1 7. RSA 397-A:2,VI(b) provides that it is unlawful for any person, in
2 connection with the solicitation, offer, closing, or servicing of
3 a mortgage loan, directly or indirectly, to make any untrue
4 statement of a material fact or to omit to state a material fact
5 necessary in order to make the statements made, in light of the
6 circumstances under which they are made, not misleading.
7 Respondents Proficio Mortgage, Freeman, Proficio Bank, NHB,
8 Verhovec, LaPlume and Hurd each violated this provision on at
9 least seventeen (17) occasions, Respondents Battersby and Verch
10 each violated this provision on at least two (2) occasions and
11 Respondent Whitney violated this provision on at least three (3)
12 occasions as alleged above.

13 8. RSA 397-A:2,VI(c) provides that it is unlawful for any person, in
14 connection with the solicitation, offer, closing, or servicing of
15 a mortgage loan, directly or indirectly, to engage in any act,
16 practice, or course of business which operates or would operate as
17 a fraud or deceit upon any person. Respondents Proficio Mortgage,
18 Freeman, Proficio Bank, NHB, Verhovec, LaPlume and Hurd each
19 violated this provision on at least seventeen (17) occasions,
20 Respondents Battersby and Verch each violated this provision on at
21 least two (2) occasions and Respondent Whitney violated this
22 provision on at least three (3) occasions as alleged above.

23 9. RSA 397-A:3,I provides that any person not exempt under RSA 397-
24 A:4 that, in its own name or on behalf of other persons, engages
25 in the business of making or brokering mortgage loans secured by

1 real property located in the State of New Hampshire shall be
2 required to obtain a license from the Department. Persons
3 licensed as mortgage bankers may engage in the mortgage broker
4 business without obtaining a separate license.

5 10. RSA 397-A:3,II provides that it is unlawful for any individual to
6 transact business in this state as an originator unless such
7 individual is licensed under RSA Chapter 397-A. An individual
8 shall not engage in the business of a mortgage loan originator
9 with respect to any dwelling without first obtaining and
10 maintaining annually a license under RSA Chapter 397-A and each
11 license mortgage loan originator shall register with and obtain
12 and maintain a valid unique identifier issued by the Nationwide
13 Mortgage Licensing System and Registry. Further, the originator's
14 license is only in effect when such originator is associated with
15 a particular licensed mortgage banker or mortgage broker.
16 Respondent Battersby violated this provision on at least five (5)
17 occasions, Respondent LaPlume violated this provision on at least
18 seventeen (17) occasions, Respondent Hurd violated this provision
19 on at least seventeen (17) occasions, and Respondent Whitney
20 violated this provision on at least three (3) occasions as
21 alleged above.

22 11. RSA 397-A:3,II-a provides that a loan processor or underwriter
23 who is an independent contractor may not engage in the activities
24 of a loan processor or underwriter unless such independent
25

1 contractor loan processor or underwriter obtains and maintains a
2 license.

3 12. RSA 397-A:3,III provides that it is unlawful for any mortgage
4 banker or mortgage broker to employ, retain, or otherwise engage
5 an originator unless the originator is licensed. No originator
6 shall at any time represent more than one mortgage banker or
7 mortgage broker. Respondents Proficio Mortgage, Freeman,
8 Proficio Bank, NHB and Verhovec each violated this provision on
9 at least six (6) occasions and Respondent Verch violated this
10 provision on at least four (4) occasions as alleged above.
11 Respondents Battersby and LaPlume each violated this provision on
12 at least two (2) occasions and Respondents Whitney and Hurd each
13 violated this provision on at least one (1) occasion as alleged
14 above.

15 13. RSA 397-A:6,I mandates that licensees supervise their employees,
16 agents, loan originators, and branch offices. Respondents
17 Proficio Mortgage, Freeman, Proficio Bank, NHB and Verhovec each
18 violated this provision by failing to adequately supervise and
19 therefore violated this provision on at least twenty-five (25)
20 occasions and Respondent LaPlume violated this provision on at
21 least twenty-one (21) occasions as alleged above.

22 14. RSA 397-A:12,V provides that the expense of such examination
23 shall be chargeable to and paid by the licensee. Respondents
24 Proficio Mortgage, Freeman, Proficio Bank, NHB and Verhovec each
25 violated this provision on at least one occasion as alleged

1 above. To date, the above named Respondents have failed to pay
2 the \$21,653.90 examination invoice.

3 15. RSA 397-A:14,IV(d) provides that no person subject to RSA Chapter
4 397-A shall conduct any business covered by RSA Chapter 397-A
5 without holding a valid license as required under RSA Chapter
6 397-A, or assist or aid and abet any person in the conduct of
7 business under RSA Chapter 397-A as required under RSA Chapter
8 397-A. Respondents Proficio Mortgage, Freeman, Proficio Bank,
9 NHB each violated this provision on at least twenty-three (23)
10 occasions, Respondent LaPlume violated this provision on at least
11 twenty-two (22) occasions, Respondent Hurd violated this
12 provision on at least seventeen (18) occasions, Respondent Verch
13 on at least five (5) occasions and Respondents Whitney and
14 Respondent each violated this provision on at least four (4)
15 occasions as alleged above.

16 16. RSA 397-A:14,IV(n) provides that no person subject to RSA Chapter
17 397-A shall engage in unfair, deceptive, unethical, or fraudulent
18 business practices. Respondents Proficio Mortgage, Freeman,
19 Proficio Bank, NHB, Verhovec, LaPlume and Hurd each violated this
20 provision on at least seventeen (17) occasions, Respondents
21 Battersby and Verch each violated this provision on at least two
22 (2) occasions and Respondent Whitney violated this provision on
23 at least three (3) occasions as alleged above.

24 17. Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire
25 Banking Department (hereinafter "Department") has the authority to

1 issue an order to show cause why license revocation and penalties
2 for violations of New Hampshire Banking laws should not be
3 imposed.

4 18. RSA 397-A:17, I provides in part that the Commissioner may by
5 order, upon due notice and opportunity for hearing, assess
6 penalties or deny, suspend, or revoke a license or application if
7 it is in the public interest and the applicant, respondent, or
8 licensee, any partner, officer, member, or director, any person
9 occupying a similar status or performing similar functions, or any
10 person directly or indirectly controlling the applicant,
11 respondent, or licensee has, inter alia, : (a) violated any
12 provision of RSA Chapter 397-A or any rules or orders thereunder...,
13 (f) made fraudulent misrepresentations, has circumvented or
14 concealed, through whatever subterfuge or device, any of the
15 material particulars or the nature thereof required to be stated
16 or furnished to a borrower under the provisions of RSA Chapter
17 397-A..., or (k) engaged in dishonest or unethical practices in the
18 conduct of the business of making or collecting mortgage loans.
19 Respondents Proficio Mortgage, Freeman, Proficio Bank, NHB and
20 Verhovec each violated subparagraph (a) on at least six (6)
21 occasions alleged above. Respondents Proficio Mortgage, Freeman,
22 Proficio Bank, NHB, Verhovec and LaPlume each violated
23 subparagraph (f) on at least seventeen (17) occasions, Respondents
24 Battersby and Verch each violated subparagraph (f) on at least two
25 (2) occasions and Respondent Whitney violated subparagraph (f) on

1 least three (3) occasions as alleged above. Respondents Proficio
2 Mortgage, Freeman, Proficio Bank, NHB, Verhovec and LaPlume each
3 violated subparagraph (k) on at least seventeen (17) occasions,
4 Respondents Battersby and Verch each violated subparagraph (k) on
5 least two (2) occasions and Respondent Whitney violated
6 subparagraph (k) on at least three (3) occasions as alleged above.

7 19. RSA 397-A:17,II(a) provides the Commissioner has the authority to
8 order or direct persons subject to RSA Chapter 397-A to cease and
9 desist from conducting business, including immediate temporary
10 orders to cease and desist.

11 20. RSA 397-A:17,II(b) provides the Commissioner has the authority to
12 order or direct persons subject to RSA Chapter 397-A to cease any
13 harmful activities or violations of RSA Chapter 397-A, including
14 immediate temporary orders to cease and desist.

15 21. RSA 397-A:17,II(c) provides the Commissioner has the authority to
16 enter immediate temporary orders to cease business under a
17 license if the Commissioner has determined that such license was
18 erroneously granted or the licensee is currently in violation of
19 RSA Chapter 397-A, or any rules or orders thereunder.

20 22. RSA 397-A:17,II(e) (1) provides that the Commissioner may issue an
21 order or directive to remove or ban from office or employment,
22 including license revocation, any person conducting business
23 under RSA Chapter 397-A who violates RSA Chapter 397-A.

24 23. RSA 397-A:17,II(e) (4) provides that the Commissioner has the
25 authority to remove or ban from office or employment, including

1 license revocation, any person conducting business under RSA
2 Chapter 397-A if by a preponderance of evidence the Commissioner
3 determines that the person no longer demonstrates the financial
4 responsibility, character, and general fitness such as to command
5 the confidence of the community and to warrant a determination
6 that the person subject to RSA Chapter 397-A will operate
7 honestly, fairly, and efficiently within the purposes of RSA
8 Chapter 397-A.

9 24. RSA 397-A:17,II(f) provides that the Commissioner has the
10 authority to deny, suspend, revoke, condition, or decline to
11 renew a license if an applicant or licensee fails at any time to
12 meet the requirements of RSA 397-A:5,IV-c or RSA 397-A:5,IV-d, or
13 withholds information or makes a material misstatement in an
14 application for a license or renewal of a license. RSA 397-
15 A:5,IV-c, (a) (5) states the Commissioner shall not issue a
16 mortgage loan originator license unless the Commissioner makes at
17 a minimum, inter alia, a finding that the applicant has
18 demonstrated financial responsibility, character, and general
19 fitness such as to command the confidence of the community and to
20 warrant a determination that the mortgage loan originator will
21 operate honestly, fairly, and efficiently within the purposes of
22 RSA Chapter 397-A. RSA 397-A:5,IV-d(a) (1) states that in addition
23 to other provisions of in New Hampshire law and rules in order to
24 be eligible to renew a license, a mortgage originator shall,
25 inter alia, meet and continue to meet the minimum standards for

1 license issuance under RSA 397-A:5,IV-c.

2 25. RSA 397-A:17,VIII provides that in addition to any other penalty
3 provided for under RSA Chapter 397-A or RSA 383:10-d, after
4 notice and opportunity for hearing, the Commissioner may enter an
5 order of rescission, restitution, or disgorgement of profits
6 directed to a person who has violated RSA Chapter 397-A, or any
7 rule or order thereunder.

8 26. RSA 397-A:17,IX provides that in addition to any other penalty
9 provided for under RSA Chapter 397-A, after notice and
10 opportunity for hearing, the Commissioner may assess fines and
11 penalties against a mortgage loan originator in an amount not to
12 exceed \$25,000.00 if the Commissioner finds the mortgage loan
13 originator has violated or failed to comply with the S.A.F.E.
14 Mortgage Licensing Act of 2008, Public Law 110-289, Title V or
15 any regulation or order issued thereunder. Each of the acts
16 specified shall constitute a separate violation. Respondent
17 LaPlume violated this provision on at least 191 occasions
18 (\$4,775,000.00), Respondent Battersby violated this provision on
19 at least 29 occasions (\$725,000.00), Respondent Whitney violated
20 this provision on at least 29 occasions (\$725,000.00) and
21 Respondent Hurd violated this provision on at least 155 occasions
22 (\$3,875,000.00) as alleged above.

23 27. RSA 397-A:17,X provides an action to enforce any provision of RSA
24 Chapter 397-A shall be commenced within 6 years after the date on
25 which the violation occurred.

1 28. RSA 397-A:18,I provides that the Department may issue a complaint
2 setting forth charges whenever the Department is of the opinion
3 that the licensee or person over whom the Department has
4 jurisdiction, has violated any provision of RSA Chapter 397-A or
5 any rule or order thereunder.

6 29. Pursuant to RSA 397-A:18,II, the Department has the authority to
7 issue and cause to be served an order requiring any person
8 engaged in any act or practice constituting a violation of RSA
9 Chapter 397-A or any rule or order thereunder, to cease and
10 desist from violations of RSA Chapter 397-A.

11 30. RSA 397-A:20,IV provides that the Commissioner may issue, amend,
12 or rescind such orders as are reasonably necessary to comply with
13 the provisions of RSA Chapter 397-A.

14 31. Pursuant to RSA 397-A:21, the Commissioner has the authority to
15 suspend, revoke or deny any license and to impose administrative
16 penalties of up to \$2,500.00 for each violation of New Hampshire
17 banking law and rules.

18 32. Pursuant to RSA 397-A:21,I-a, any person who willfully violates
19 any provisions of RSA 397-A:2,VI or VII or a cease and desist
20 order or injunction issued pursuant to RSA 397-A:18,II shall be
21 guilty of a class B felony. Each of the acts specified shall
22 constitute a separate offense and a prosecution or conviction for
23 any one of such offenses shall not bar prosecution or conviction
24 of any other offense.

25

1 33. RSA 397-A:21,IV provides that any person who, either knowingly or
2 negligently, violates any provision of RSA Chapter 397-A, may
3 upon hearing, and in addition to any other penalty provided for
4 by law, be subject to an administrative fine not to exceed
5 \$2,500.00, or both. Each of the acts specified shall constitute
6 a separate violation, and such administrative action or fine may
7 be imposed in addition to any criminal penalties or civil
8 liabilities imposed by New Hampshire Banking laws.

9 34. RSA 397-A:21,V provides that every person who directly or
10 indirectly controls a person liable under this section, every
11 partner, principal executive officer or director of such person,
12 every person occupying a similar status or performing a similar
13 function, every employee of such person who materially aids in the
14 act constituting the violation, and every licensee or person acting
15 as a common law agent who materially aids in the acts constituting
16 the violation, either knowingly or negligently, may, upon notice
17 and opportunity for hearing, and in addition to any other penalty
18 provided for by law, be subject to suspension, revocation, or
19 denial of any registration or license, including the forfeiture of
20 any application fee, or the imposition of an administrative fine
21 not to exceed \$2,500, or both. Each of the acts specified shall
22 constitute a separate violation, and such administrative action or
23 fine may be imposed in addition to any criminal or civil penalties
24 imposed.

25 35. Pursuant to RSA 383:10-d, the Commissioner shall investigate

1 desist from conducting business regulated by RSA Chapter 397-A in
2 New Hampshire;

3 6. Pursuant to RSA 397-A:17,II (a),(b) and (c) and RSA 397-A:18,II,
4 order Respondents LaPlume, Battersby, Whitney and Hurd to cease
5 and desist from violating New Hampshire state law and federal law
6 and any rules or orders thereunder;

7 7. Pursuant to RSA 397-A:17, order Respondents to show cause why
8 Proficio Mortgage's mortgage banker license should not be
9 revoked;

10 8. Pursuant to RSA 397-A:17, order Respondent LaPlume to show cause
11 why his mortgage loan originator license should not be revoked;

12 9. Pursuant to RSA 397-A:17,II(e)(1), order Respondent LaPlume to
13 show cause why he should not be banned or removed from office;

14 10. Pursuant to RSA 397-A:17, order Respondent Battersby to show
15 cause why his mortgage loan originator license should not be
16 revoked;

17 11. Pursuant to RSA 397-A:17,II(e)(1), order Respondent Battersby to
18 show cause why he should not be banned or removed from office;

19 12. Pursuant to RSA 397-A:17, order Respondent Whitney to show cause
20 why his mortgage loan originator license should not be revoked;

21 13. Pursuant to RSA 397-A:17,II(e)(1), order Respondent Whitney to
22 show cause why he should not be banned or removed from office;

23 14. Pursuant to RSA 397-A:17, order Respondent Hurd to show cause why
24 his mortgage loan originator license should not be revoked;

25 15. Pursuant to RSA 397-A:17,II(e)(1), order Respondent Hurd to show

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ATTACHMENT A TO THE STAFF PETITION AND ORDER TO SHOW CAUSE:

Proficio Mortgage Ventures, LLC, et al.

DOCKET #09-129

The Department hereby presents the following list of Consumers who are entitled to restitution in the form of fees charged and collected when Respondent Proficio Mortgage Ventures, LLC conducted mortgage banker activity in the State of New Hampshire without a mortgage banker license from 2009 to the present:

| CONSUMER NUMBER | TOTAL RESTITUTION |
|-----------------|-------------------|
| 1 | \$3,636.56 |
| 2 | \$2,982.70 |
| 3 | \$3,497.26 |
| 4 | \$1,626.11 |
| 5 | \$2,554.98 |
| 6 | \$3,054.98 |
| 7 | \$2,623.15 |
| 8 | \$3,398.72 |
| 9 | \$3,216.12 |
| 10 | \$3,455.10 |
| 11 | \$1,956.83 |

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| 12 | \$5,751.25 |
| 13 | \$4,983.24 |
| 14 | \$4,819.47 |
| 15 | \$2,750.29 |
| 16 | \$3,350.47 |
| 17 | \$6,143.64 |
| 18 | \$3,048.99 |
| 19 | \$2,617.25 |
| 20 | TO BE DETERMINED |
| 21 | TO BE DETERMINED |
| 22 | TO BE DETERMINED |
| 23 | TO BE DETERMINED |
| 24 | TO BE DETERMINED |
| 25 | TO BE DETERMINED |