

ORDER SUMMARY – Case Number: C-20-2977

Name(s): Sterling Capital Inc; Jay Sterling Nelson

Order Number: C-20-2977-22-FO01

Effective Date: August 17, 2022

License Number: 90766; 92989
Or NMLS Identifier [U/L]

License Effect: Sterling Capital's Mortgage Broker license is revoked
Jay Sterling Nelson's loan originator license is revoked

Not Apply Until:

Not Eligible Until:

Prohibition/Ban Until: Jay Sterling Nelson banned until August 17, 2027

Investigation Costs	\$496.80	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Fine	\$12,000.00	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Restitution	\$	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Financial Literacy and Education	\$	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
Cost of Prosecution	\$11,687.40	Due	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date
	No. of Victims:			

Comments:



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:

STERLING CAPITAL INC. and JAY
STERLING NELSON President, Owner, and
Designated Broker, NMLS # 92989

Respondents.

DFI Order No. C-20-2977-22-FO01

OAH No. 09-2021-DFI-00135

FINAL DECISION AND ORDER

THIS MATTER comes now before CHARLES E. CLARK, Director ("Director") of the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS ("Department"), on Petition for Review of Initial Order Granting Department's Motion for Summary Judgment ("Petition for Review") by Respondents, STERLING CAPITAL, INC. and JAY STERLING NELSON, President, Owner, and Designated Broker, NMLS # 92989 dated March 22, 2022, seeking review of the Initial Order Granting Summary Judgment ("Initial Order") issued by Administrative Law Judge TJ Martin ("ALJ Martin"), dated March 2, 2022.

1.0 PROCEDURAL HISTORY

On June 1, 2021, the Department's Division of Consumer Services issued a Statement of Charges and Notice of Intent to Enter an Order to Revoke License, Prohibit From Industry, Impose Fine, Collect Investigation Fee, and Recover Costs and Expenses ("Statement of Charges") to Respondents. On or around June 23, 2021, attorney for Respondents, Stephen C. Smith of Holmes, Weddle & Barcott, P.C., made a Request for Administrative Hearing, and the Statement of Charges was referred to the Office of Administrative Hearings ("OAH") for adjudication.

On or around December 8, 2021, the Department filed a Motion for Summary Judgment with ALJ Martin, and response and reply briefs were filed.¹ The Motion for Summary Judgment was decided without oral argument.² Respondents were represented by Stephen C. Smith, and the Department was represented by Assistant Attorney General Stephen Manning (“AAG Manning”).³

The Initial Order Granting the Department’s Motion for Summary Judgment (“Initial Order”) was issued and served by mail on Wednesday, March 2, 2022.⁴ In the Initial Order, ALJ Martin granted summary judgment in favor of the Department finding that there was no genuine dispute of material fact that Respondents: provided false information to the Department in violation of RCW 19.146.0201(1) & (2); failed to maintain records, in violation of RCW 19.146.060 and WAC 208-660-450; and, submitted untimely reports to the Department in violation of RCW 19.146.390 and WAC 208-660-400.⁵ As such, the penalties set forth in the Statement of Charges were affirmed.⁶

On March 22, 2022, Respondents filed a Petition for Review. On March 30, 2022, the Department filed its Response to the Petition for Review.

2.0 RECORD ON REVIEW

The record on review (“Record on Review”) before the Director includes the entire OAH Record in the above-captioned matter consisting, without limitation, the Statement of Charges, the Respondents’ Application for Adjudicative Hearing, the Department’s Motion for Summary Judgment and supporting exhibits, the Respondents’ Response in Opposition to the Motion for

¹ Initial Order, Findings of Fact Nos. 4.3 – 4.6, Pages 3-4.

² Initial Order, Findings of Fact Nos. 3.1, at Page 2.

³ Initial Order, Findings of Fact Nos. 3.2 – 3.3, at Page 2.

⁴ Initial Order, Certificate of Service, at Page 14.

⁵ Initial Order, Initial Order Nos. 6.1 – 6.4, at Page 11.

⁶ Initial Order, Initial Order No. 6.5, at Page 12.

Summary Judgment, the Department's Reply to the Motion for Summary Judgment, the Initial Order together with the Respondents' Petition for Review, and the Department's Response to the Petition for Review.

3.0 FINDINGS OF FACT

The Petition for Review does not dispute the findings of fact in the Initial Order, but does generally assert that it is "missing several mandatory findings."⁷ This assertion is addressed under Section 5.0, herein. As such, the Director having considered the Record on Review, together with the Respondents' Petition for Review and the Department's Response to the Petition, the Director hereby affirms Findings of Fact 4.1 - 4.35, inclusive, at pages 3-6, subject to the considerations set forth in Section 5.0, below.

4.0 CONCLUSIONS OF LAW

The Director having considered the Record on Review, including the Petition for Review and the Response to Petition, and applying the Findings of Fact contained in Section 3.0 above, the Director hereby affirms the Conclusions of Law 5.1-5.35, inclusive, at pages 7-11 of the Initial Order, subject to the considerations set forth in the Section 5.0, below.

5.0 DIRECTOR'S CONSIDERATIONS ON REVIEW

5.1 Standard of Review

Under WAC 10-08-135, a motion for summary judgment may be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The Director has reviewed the Record on Review. While Respondents contend that the Initial Order fails to include several mandatory findings and conclusions, they do not specifically

⁷ Respondents' Petition for Review of Initial Order, at Page 1.

challenge the findings in the Initial Order. It appears as though there is no genuine dispute of the material facts set forth in the Initial Order.

5.2 Analysis

While there are no disputed facts, several claims are made in the Petition for Review, and Respondents specifically plead that:

[T]he Initial Order (1) fails to adequately explain the legal standard applied and factual findings regarding “falsification,” (2) fails to state how the Department qualifies as a “person” within the meaning of RCW 19.146.0201(1) and (2), and (3) fails to address ethical implications of the Department accepting an “admission” from an unrepresented party without evidence of adequate explanation of the Department’s role.⁸

As a preliminary matter, the Director agrees with the Respondent that RCW 34.05.461(3) applies in this case, which provides in relevant part:

Initial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefor, on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction and, if applicable, the action taken on a petition for a stay of effectiveness Findings set forth in language that is essentially a repetition or paraphrase of the relevant provision of law shall be accompanied by a concise and explicit statement of the underlying evidence of record to support the findings.

5.2.1 Legal Standard and Factual Findings Regarding Falsification

The matter at issue appears to be ALJ Martin’s Findings of Fact 4.10-4.15 stating that that there was a “Falsification of Two 2019 Rate Lock Agreements.”⁹ Specifically, Respondents argue that the Initial Order does not explain how RCW 19.146.0201(1) & (2)¹⁰ supports a finding of fact that there was a “falsification” of documentation when Mr. Nelson re-created rate-lock agreements after such documentation was requested by the examiner.

⁸ Respondents’ Petition for Review of Initial Order, Pages 2-3.

⁹ Initial Order, Findings of Fact 4.10-4.15, at Page 4.

¹⁰ Respondents’ Petition for Review of Initial Order, Pages 3-4.

The relevant law is RCW 19.146.0201(1) & (2), which states:

It is a violation of this chapter for loan originators, mortgage brokers, officers, directors, employees, independent contractors, or any other person subject to this chapter to:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (2) Directly or indirectly engage in any unfair or deceptive practice toward any person;

The Director takes a plain language reading approach to analyzing this statute, similar to a criminal forgery case where the court stated “Absent ambiguity or a statutory definition, we give words in a statute their common and ordinary meaning.” *State v. Simmons*, 113 Wn. App. 29, 32, 51 P.3d 828 (2002).

With regard to RCW 19.146.0201(1) of the relevant statute, the term to “defraud” is defined as to “misrepresent some fact knowing it to be false and intending that another person be deceived as a consequence.” (citing Barron’s Law Dictionary, 136 (5th Ed. 2003)). In the Record on Review, the Respondents state:

When I was requested by the Examiner to provide copies of the RLA’s [Rate Lock Agreements] and failed to find them in the file I re-created them for the examiner to review. I thought it was my responsibility to provide the documents since they were missing, and I didn’t quite understand that this constitutes a ‘false document’ or ‘false statement’ to the Department. I can see now how this was inappropriate and that I was attempting to convince the examiners that I was in compliance with the laws, when I was clearly not.¹¹

Although Respondents contend they did not know that they were submitting a ‘false document,’ they did know that they were submitting a document that was not an original and that the purpose was to evade a potential citation of a violation of law. The Respondents’ own admissions, as well as the Findings of Fact located at 4.10-4.15, inclusive, describe specific activities that include defrauding and misleading examiners. Thus, the use of the heading in the Initial Order,

¹¹ Declaration of Amanda Herndon in Support of Department’s Motion for Summary Judgment, Exhibit 7.

“Falsification of Two 2019 Rate Lock Agreements,” is neither unwarranted nor untrue. Such admitted activities support the Conclusions of Law 5.8-5.25, which includes a cited violation of law (RCW 19.146.0201(1)).

With regard to RCW 19.146.0201(2), which states that it is a violation to “engage in any unfair or deceptive practice toward any person,” the Respondents indicate that the Initial Order neglected to apply a standard for application of the legal concept “unfair or deceptive.”

“Unfair” is defined as, “marked by injustice, partiality, or deception.” Merriam-Webster.com/dictionary/unfair (last viewed on 7/31/2022).

“Deceptive” is defined as “tending or having power to cause someone to accept as true or valid what is false or invalid.” Merriam-Webster.com/dictionary/deceptive (last viewed on 7/31/2022).

In this case, based on the Findings of Fact 4.10 - 4.15, the Respondents were attempting to cause the examiner to believe that the Rate Lock Agreements were true and correct copies, and thus were acting in a definitionally “deceptive” manner. Such “deceptive” manner is linked to “deception,” which is used in the “unfair” definition. Thus, the actions set forth in the Findings of Fact 4.10-4.15 support conclusion of law 5.8-5.25, that the Respondents were acting in an unfair and deceptive manner in violation of RCW 19.146.0201 (2).

While we do agree that “unfair and deceptive” may also be used in a consumer protection context, based on the plain reading of the words “unfair and deceptive,” we also conclude that providing admittedly recreated documents to the Department was definitionally unfair and deceptive.

In summation, we disagree with the petitioner that the Initial Order fails to adequately explain the legal standard applied and factual findings regarding “falsification” under RCW

34.05.461(3). As stated above, the Findings of Fact 4.10-4.15, which describe activities that include defrauding (falsification of documents), misleading examiners, as well as unfair and deceptive practices, are specifically linked to the Conclusions of Law Section 5.8-5.25, which state that such activities were in violation of the law. Therefore, we find that the Initial Order adequately complies with RCW 34.05.461(3).

5.2.2 How the Department qualifies as a “person” within the meaning of RCW 19.146.0201(1) & (2)

The second question under RCW 19.146.0201(1) & (2) is whether the Department is considered a “person.” Under RCW 19.146.010(17), a “person” is defined as, “an individual, corporation, company, limited liability company, partnership, association, and all other legal entities.” An “entity” is defined as, “An organization (such as a business or governmental unit) that has a legal identity apart from its members or owners.” *Entity, Black’s Law Dictionary* (11th ed. 2019). The Department is a governmental unit, and thus definitionally considered an “entity.” Based on the plain reading of the statute, because the Department is considered an “entity,” it is thereby considered a “person” for purposes of the statute. Last, there is no indication that the RCW 19.146.0201(1) & (2) specifically excludes the Department as a “person.”

5.2.3 Ethical implications of the Department accepting an “admission” from an unrepresented party without evidence of adequate explanation of the Department’s role

Last, with regard to unrepresented parties, the Respondents state that the Department should not have accepted an admission without explaining the Department’s role. This is the first time such argument has been made, and therefore cannot be an error by the ALJ because it was not brought up during the hearing process.

In summation, there are no issues of material fact and therefore the Department's motion for summary judgment was properly granted. Furthermore, it appears that there were no errors made by ALJ Martin, and therefore, the Initial Order including all its findings and conclusions are affirmed.

6.0 FINAL DECISION AND ORDER

For all of the reasons set forth above, IT IS HEREBY ORDERED THAT:

- 6.1 The Motion for Summary Judgment filed by the Department is GRANTED.
- 6.2 The Findings of Fact set forth in Section 3.0 above and in the Initial Order are AFFIRMED.
- 6.3 The Conclusions of Law set forth in Section 4.0 above and in the Initial Order are AFFIRMED.
- 6.4 Respondent, STERLING CAPITAL INC.'s license to conduct the business of a mortgage broker is revoked.
- 6.5 Respondent, JAY STERLING NELSON's license to conduct the business of a loan originator is revoked.
- 6.6 Respondent, JAY STERLING NELSON is prohibited from participation in the conduct of the affairs of any mortgage broker subject to licensure by the Director, in any manner, for a period of five years.
- 6.7 Respondents, STERLING CAPITAL INC. and JAY STERLING NELSON jointly and severally pay a fine of \$12,000.00.
- 6.8 Respondents, STERLING CAPITAL INC. and JAY STERLING NELSON shall jointly and severally pay an investigation fee of \$496.80.

6.9 Respondents, STERLING CAPITAL INC. and JAY STERLING NELSON shall jointly and severally pay the Department's costs and expenses for prosecuting violations of the Act in the amount of \$11,687.40.

6.10 Reconsideration. Pursuant To RCW 34.05.470, Respondent has the right to file a Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition must be filed in the Office of the Director of the Department of Financial Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of this Final Order upon Respondent. The Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in this matter. A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on a petition.

6.11 Stay of Order. The Director has determined not to consider a Petition to Stay the effectiveness of this order. Any such requests should be made in connection with a Petition for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

6.12 Judicial Review. Respondent has the right to petition the superior court for judicial review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

6.13 Service. For purposes of filing a Petition for Reconsideration or a Petition for Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service attached hereto.

6.14 Effectiveness and Enforcement of Final Order. Pursuant to the Administrative Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective immediately upon deposit in the United States Mail.

Dated at Tumwater, Washington, on August 17, 2022.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By:


Charles E. Clark, Director

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

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

STERLING CAPITAL, INC. and
JAY STERLING NELSON, President, Owner,
and Designated Broker, NMLS # 92989,

Respondents.

No. C-20-2977-21-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENT TO ENTER AN
ORDER TO REVOKE LICENSE, PROHIBIT
FROM INDUSTRY, IMPOSE FINE,
COLLECT INVESTIGATION FEE, and
RECOVER COSTS AND EXPENSES

INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act). After having conducted an investigation pursuant to RCW 19.146.235, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Lucinda Fazio, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents.

A. Sterling Capital, Inc. (Respondent Sterling) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a mortgage broker on or about July 29, 2004, and continues to be licensed to date.

B. Jay Sterling Nelson (Respondent Nelson) is president, owner, and Designated Broker of Respondent Sterling. Respondent Nelson was named Respondent Sterling's Designated Broker on or about July 29, 2004, and continues to be the Designated Broker to date. Respondent Nelson was licensed by the Department to conduct business as a loan originator on or about January 1, 2010, and continues to be licensed to date.

1 **1.2 2020 Examination.** Between approximately May 18, 2020, and June 2, 2020, the
2 Department conducted a compliance examination of Respondent Sterling. During the examination,
3 the Department reviewed a sample of Respondent Sterling's loan files and other business records to
4 determine Respondent Sterling's compliance with the Act and chapter 208-660 WAC. The
5 Department identified the violations described in paragraphs 1.3 and 1.5 below in connection with the
6 2020 examination.

7 **1.3 Provided False Information to the Department.** On or about May 18, 2020, the
8 Department notified Respondents Sterling and Nelson (collectively Respondents) that a loan file for
9 consumer E.T. was missing two rate lock agreements from February 2019. The Department asked
10 Respondents to provide the missing agreements to the Department or, in the alternative, notify the
11 Department if Respondents did not have the agreements or did not provide them to the consumer.
12 Respondents then created two rate lock agreements in order to provide them to the Department.
13 Respondents delivered these falsely created rate lock agreements to the Department on or about May
14 29, 2019, thereby misrepresenting to the Department that Respondents had provided the falsely
15 created agreements to consumer E.T.

16 **1.4 Failed to Maintain Records.** Respondents did not maintain copies of the rate lock
17 agreements that Respondents provided to consumer E.T. in February 2019.

18 **1.5 Untimely Reports Submitted to Department.** The annual mortgage call report is due ninety
19 days after the end of a company's fiscal year. Respondents submitted the mortgage call report for the
20 fiscal year ending December 31, 2017, on November 21, 2018—more than seven months late. In
21 2015, the Department also cited Respondent Sterling for submitting late mortgage call reports.

22 **1.6 On-Going Investigation.** The Department's investigation into the alleged violations of the
23 Act by Respondents continues to date.

II. GROUNDS FOR ENTRY OF ORDER

2.1 Responsibility of Designated Broker. Pursuant to RCW 19.146.200(3), every licensed mortgage broker must at all times have a designate broker responsible for all activities of the mortgage broker in conducting the business of a mortgage broker. A designated broker is responsible for a licensee's, violations of the Act if the designated broker directs or instructs the conduct or, with knowledge of the specific conduct, approves or allows the conduct; or the designated broker, who has supervisory authority over the licensed mortgage broker knows or by the exercise of reasonable care and inquiry should have known of the conduct, at a time when its consequences can be avoided or mitigated and fails to take reasonable remedial action.

2.2 Prohibited Practices. Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.0201(1) and (2) for directly or indirectly employing any scheme, device, or artifice to mislead the Department and engaging in an unfair or deceptive practice toward the Department.

2.3 Requirement to Maintain Books and Records. Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.060 and WAC 208-660-450 for failing to keep all books and records in a location that is on file with and readily available to the Department until at least three years have elapsed following the effective period to which the books and records relate.

2.4 Requirement to Submit Call Reports. Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 19.146.390 and WAC 208-660-400 for failing to submit complete call reports through the Nationwide Multistate Licensing System on the dates and in a form prescribed by the Director or the Nationwide Multistate Licensing System.

III. AUTHORITY TO IMPOSE SANCTIONS

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

3.2 Authority to Prohibit from Industry. Pursuant to RCW 19.146.220(4), the Director may issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under the Act for any violation of the Act.

3.3 Authority to Impose Fine. Pursuant to RCW 19.146.220(2), the Director may impose fines against a licensee, employees, independent contractors, agents of licensees, or other persons subject to the Act for any violation of the Act.

3.4 Authority to Collect Investigation Fee. Pursuant to RCW 19.146.228(2), WAC 208-660-520(9) and (11), and WAC 208-660-550(4)(a), the Department will charge forty-eight dollars per hour for an examiner's time devoted to an investigation.

3.5 Authority to Recover Costs and Expenses. Pursuant to RCW 19.146.221(2), the Director may recover the state's costs and expenses for prosecuting violations of the Act.

IV. NOTICE OF INTENT TO ENTER ORDER

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

4.1 Respondent Sterling Capital, Inc.'s license to conduct the business of a mortgage broker be revoked.

4.2 Respondent Jay Sterling Nelson's license to conduct the business of a loan originator be revoked.

- 1 **4.3** Respondent Jay Sterling Nelson be prohibited from participation in the conduct of the
2 affairs of any mortgage broker subject to licensure by the Director, in any manner, for
 a period of five years.
- 3 **4.4** Respondents Sterling Capital, Inc. and Jay Sterling Nelson jointly and severally pay a
4 fine. As of the date of this Statement of Charges, the fine totals \$12,000.00.
- 5 **4.5** Respondents Sterling Capital, Inc. and Jay Sterling Nelson pay an investigation fee.
6 As of the date of this Statement of Charges, the investigation fee totals \$496.80.
- 7 **4.6** Respondent Sterling Capital, Inc. maintain records in compliance with the Act and
8 provide the Department with the location of the books, records and other information
 relating to Respondent Sterling Capital Inc.'s mortgage broker business, and the name,
 address and telephone number of the individual responsible for maintenance of such
 records in compliance with the Act.
- 9 **4.7** Respondents Sterling Capital, Inc. and Jay Sterling Nelson pay the Department's costs
10 and expenses for prosecuting violations of the Act in an amount to be determined at
11 hearing or by declaration with supporting documentation in event of default by
 Respondents Sterling Capital, Inc. or Jay Sterling Nelson.

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1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges is entered pursuant to the provisions of RCW 19.146.220, RCW
3 19.146.221, RCW 19.146.223, and RCW 19.146.230, and is subject to the provisions of chapter
4 34.05 RCW (the Administrative Procedure Act). Respondents may make a written request for a
5 hearing as set forth in the NOTICE OF OPPORTUNITY FOR ADJUDICATIVE HEARING AND
6 TO DEFEND accompanying this Statement of Charges.

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8 Dated this 1st day of June, 2021.

9
10 /s/
11 Lucinda Fazio, Director
12 Division of Consumer Services
Department of Financial Institutions

13 Presented by:

14 /s/
15 AMANDA J. HERNDON
16 Financial Legal Examiner

17 Approved by:

18 /s/
19 STEVEN C. SHERMAN
Enforcement Chief