IN THE MATTER OF:	*	
LEGAL FUNDING, LLC d/b/a CRASH ADVANCE	*	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

I. INTRODUCTION

This decision resolves allegations that Legal Funding, LLC d/b/a Crash Advance ("Respondent") violated Connecticut law by, among other things, offering and entering into two Funding and Sale Agreements with a Connecticut borrower (collectively "Agreements") to provide advances for personal expenses on future potential monetary judgments or settlements in connection with pending personal injury lawsuits or legal claims without the required license. Based on the record and the plain and unambiguous meaning of the relevant statutory provisions, Respondent's advances on such future potential sources of money violated Connecticut law.

II. PROCEDURAL HISTORY

The Banking Commissioner ("Commissioner") is charged with the administration of Part III of Chapter 668, Sections 36a-555 to 36a-573, inclusive, of the Connecticut General Statutes, "Small Loan Lending and Related Activities Act," (the "Act") and the regulations promulgated thereunder, Sections 36a-570-1 to 36a-570-17, inclusive, of the Regulations of Connecticut State Agencies ("Regulations"). The above referenced matter was initiated after an investigation conducted by the Consumer Credit Division of the Connecticut Department of Banking (the "Department") and upon charges brought by the Commissioner against Respondent. On September 16, 2022, the Commissioner issued a Temporary

Order to Cease and Desist, Order to Make Restitution, Notice of Intent to Issue Order to Cease and Desist, Notice of Intent to Impose Civil Penalty and Notice of Right to Hearing ("Notice") against Respondent, which Notice is incorporated by reference and attached herein as HO Ex. 1.

The Notice alleged that:

1. Respondent violated subdivision (1) of Section 36a-556(a), subdivision (1) of Section 36a-558(c) and Section 36a-17(e) of the Connecticut General Statutes in effect at such time;
2. The public welfare requires immediate action to issue an order to cease and desist from violating subdivision (1) of Section 36a-556(a), subdivision (1) of 36a-558(c) and Section 36a-17(e) of the Connecticut General Statutes, pursuant to Section 36a-52(b) of the Connecticut General Statutes;
3. A basis exists to issue an order to make restitution against Respondent pursuant to Section 36a-570(b), subdivision (1) of Section 36a-558(c) and Section 36a-50(c) of the Connecticut General Statutes;
4. A basis exists to issue an order to cease and desist against Respondent pursuant to Section 36a-570(b), subdivision (1) of section 36a-558(c) and Section 36a-52(a) of the Connecticut General Statutes;
5. A basis exists to impose a civil penalty upon Respondent pursuant to section 36a-570(b), subdivision (1) of Section 36a-558(c) and Section 36a-50(a) of the Connecticut General Statutes.[1]

On September 16, 2022, the Department sent the Notice by certified mail, return receipt requested to Respondent at 64 Thompson Street, Suite A101, East Haven, Connecticut 06513. On September 28, 2022, Respondent timely filed an Appearance and Request for Hearing. On December 16, 2022, the Commissioner issued a Notification of Hearing and Designation of Hearing Officer, electronically sent to Eric Beckenstein, Esq., Hearing Officer, Jeffrey T. Schuyler, Esq., prosecuting staff attorney for the

[1] Section 36a-50(a) authorizes the Commissioner to impose a civil penalty up to $100,000 per violation.

Department, and Robert M. Taylor III, Esq., counsel for Respondent.

A remote hearing was conducted by video conference on April 26, 2023, using the Microsoft Teams platform, held in accordance with Chapter 54 of the Connecticut General Statutes, the Uniform Administrative Procedures Act ("UAPA"), and the Department of Banking Remote Hearing Guidelines available on the Department's website https://portal.ct.gov/dob. Aslam ("Ozzi") Lodi, Associate Financial Examiner, appeared as a witness for the Department. Court Reporter, Lisa Warner, BCT Reporters, participated and furnished a certified hearing transcript to the parties. As provided by the Regulations of Connecticut State Agencies, Section 36a-1-49, the Department and Respondent each filed post-hearing briefs on May 9, 2023.

III. FINDINGS OF FACT

1. On April 21, 2023, the parties submitted a Joint Stipulation of Facts ("Stipulation"), which stated that, "[t]he parties hereby agree that the following facts are without dispute and shall be made part of the record in this matter. Respondent further agrees that all exhibits referenced herein shall be entered on the record as full exhibits." The Stipulation is attached hereto as HO Exhibit 2. The Department's exhibits 1 through 19 and Respondent's exhibits A and B were admitted as full exhibits. The parties stipulated to the following facts, which are adopted as factual findings herein:
    a. Respondent is a Connecticut limited liability company with an address of 64 Thompson Street, Suite A101, East Haven, Connecticut.
    b. Respondent is owned and managed by an individual, Benedict Frosceno, Jr. ("Frosceno"). Frosceno is the President and CEO of Respondent.
    c. Relevant portions of Conn. Gen. Stat. Title 36a, Ch. 668, Pt. III; more specifically Section 36a-555 of the Connecticut General Statutes as evidenced by Public Act 16-65. (DOB Ex 1). This is the law today and at all times relevant herein.
    d. Relevant portions of Conn. Gen. Stat. Title 36a, Ch. 668, Pt. III; more specifically Section 36a- 556 of the Connecticut General Statutes as evidenced by Public Act 16-65. (DOB Ex. 2).

This is the law today and at all times relevant herein.

e. Respondent is currently registered to do business in Connecticut with the Secretary of the State (DOB Ex. 3), maintains a Facebook page (DOB Ex. 4), and maintained an active website, www.crashadvancellc.com (DOB Ex. 5).

f. On various dates after July 1, 2016, Respondent directly offered Connecticut individuals money for personal use in the form of monetary advances in connection with pending lawsuits in varying amounts, sometimes below $15,000.

g. On September 16, 2022, the Department issued a Temporary Order to Cease and Desist, Order to Make Restitution, Notice of Intent to Issue Order to Cease and Desist, Notice of Intent to Impose Civil Penalty and Notice of Right to Hearing ("Notice") against Respondent, which is hereby incorporated by reference herein.

h. On September 28, 2022, Respondent filed an appearance and requested a hearing on the Notice.

i. Respondent disagrees with the position of the Department of Banking that Respondent is engaged in activity that is governed by the Connecticut Banking Statutes or that the Respondent is subject to the jurisdiction of the Department of Banking. Legal support for Respondent's position is detailed in Memoranda provided by Respondent's counsel to the Department of Banking dated November 28, 2022 (Respondent Ex. A) and February 23, 2023 (Respondent Ex. B).

j. On October 28, 2022, Respondent's counsel e-mailed the Consumer Credit Division of the Department of Banking ("Division") (DOB Ex. 6). Attached to this e-mail were two versions of Respondent's contracts. (DOB Ex. 7, 8).

k. In the contract represented in DOB Ex. 7, the advance amount is $500. It contains specific language that the individual is "granting a lien and security interest in the proceeds" of the pending lawsuit. Further terms include that "the amount you must repay to CrashAdvance for the right to receive the Funded Amount is set forth on the Disclosure Statement." "You will

not receive any proceeds of the Legal Claim until CrashAdvance has been paid in full." "CrashAdvance may make a significant profit that is representative of the risk." "This is non-recourse funding. CrashAdvance will get paid only from the proceeds of the Legal Claim…. This is not a loan. If there is no recovery under the Legal Claim, then you do not have to pay CrashAdvance anything."

l. The contract represented in Exhibit 8, the advance amount is $15,000. All other terms in the contract are identical to that in DOB Ex. 7. The sole difference is the amounts represented in the Disclosure Statement.

m. Respondent was a plaintiff in two civil actions filed in Connecticut Superior Court Small Claims Session on or about May 24, 2019, bearing Docket Nos. NNH-CV19-6092587-S and NNH- CV19-6092588-S. (DOB Ex. 9, 10).

n. The Defendant in the above-referenced actions was a Connecticut individual.

o. According to the court filings, on July 7, 2017, Respondent entered into a Funding and Sale Agreement ("Agreement 1") with the Connecticut individual in which Respondent advanced funds in the amount of $5,000 to the Connecticut individual and in exchange, the Connecticut individual agreed that he was "unconditionally and irrevocably selling to CrashAdvance, and CrashAdvance is purchasing, a financial interest in the proceeds of the Legal Claim equal to the amounts set forth on the Disclosure Statement attached to, and made part of, this Agreement. You are granting a lien and security interest in the proceeds of the Legal Claim to CrashAdvance." (DOB Ex. 9).

p. On August 28, 2017, Respondent entered into a second Funding and Sale Agreement ("Agreement 2") with the same Connecticut individual, in which Respondent advanced an additional $5,000 under identical terms and conditions as stated in Agreement 1 and as stated in the previous paragraph. (DOB Ex. 10).

q. The explicit language of Agreements 1 and 2 represent an obligation by a Connecticut individual to pay Respondent from the proceeds of any award or settlement of the Legal Claim.

r. Respondent was awarded judgments in both lawsuits filed against the Connecticut individual in the amount of $5,000 each, the amount advanced by Respondent to the Connecticut individual without any interest. In the first case, Docket No. NNH-CV19-6092587-S, on October 31, 2019, a wage execution was ordered by the Court commanding the marshal to execute $35 per week from the Connecticut individual's wages payable to Respondent starting at the next available payroll. The Court further ordered that, upon that wage execution being paid in full, the same will be ordered to attach to the companion case bearing Docket No. NNH-CV19-6092588-S.

s. The Disclosure Statement attached to both Agreements 1 & 2 states the amount of money needed to repay the original $5,000 advance in the Agreement if paid within certain timeframes as follows: less than 6 months ($6,300), between 6 and 12 months ($8,800), between 12 and 18 months ($10,800), between 18 and 36 months ($12,800), and more than 36 months ($20,000). As stated in Paragraph 18 above, the amount the court ordered the individual to repay was limited to $5,000 per Agreement, the amount advanced by Respondent without interest.

t. The annual percentage rate ("APR") means the annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act, 15 USC 1601 et seq., as amended from time to time, and the regulations promulgated thereunder, and the "disclosed APR" shall mean the APR disclosed, as applicable, pursuant to 12 CFR Section 1026.6 or 12 CFR Section 1026.18. If more than one APR is disclosed pursuant to 12 CFR Section 1026.6, the "disclosed APR" shall be the highest APR disclosed pursuant to said section. (DOB Ex. 1).

u. On October 26, 2021, the Division contacted an individual attorney, Joseph Fournier ("Fournier") regarding Respondent's unlicensed small loan activity. (DOB Ex. 11).

v. On November 9, 2021, Fournier sent an e-mail to the Division. (DOB Ex. 12).

w. On November 10, 2021, the Division sent an e-mail to Fournier. (DOB Ex. 13).

x. On December 7, 2021, the Division sent an e-mail to Fournier. (DOB Ex. 14).

y. On January 11, 2022, the Division sent an e-mail to Frosceno. (DOB Ex. 15).

z. On January 12, 2022, Frosceno sent an e-mail to the Division, which was then forwarded to Fournier. (DOB Ex. 16).

aa. On January 20, 2022, Fournier sent the Division an e-mail, which was circulated in the Division. (DOB Ex. 17).

bb. At no time relevant hereto was Respondent licensed as a small loan company in Connecticut, nor is Respondent exempt from such licensure requirements.

cc. Respondent refused and failed to provide information requested by the Division during the investigation of this matter alleging that Respondent's activities are not covered by Section 36a-556 of the Connecticut Statutes.

2. In 2008, the Connecticut General Assembly considered legislation to regulate the cash advance business, namely File No. 138, Substitute Bill No. 534, An Act Concerning Cash Advance Contracts and plaintiffs in Personal Injury and Wrongful death Cases (the "Bill"). The proposed Bill included protections for consumers, including a window of five (5) business-days to cancel a contract and a provision that any violation of the Bill's requirements constitutes an unfair trade practice. The Bill would have required firms engaged in the cash advance business to register with the Department of Consumer Protection. (Respondent Ex. A, at 2.) However, the Bill did not receive a vote in either chamber of the General Assembly.

3. On July 1, 2016, the General Assembly passed a bill that became Public Act 16-65 (the "2016 Public Act"), repealing and replacing Section 36a-555. (DOB Ex. 1, Transcript at 19-20). Prior to the 2016 Public Act, Section 36a-555 functioned as a "general licensure requirement" for small

loan lending, limited to lenders in "the business of making loans of money or credit." (Respondent's Ex. A at 5, Transcript at 20). However, the 2016 Public Act expanded the definition of "small loan" to include "the purchase of, or advance of money on, a borrower's future income. . . ." The Public Act defined "future income" to mean "*any* future potential source of money, and expressly includes, but is not limited to, a future pay or salary, pension or tax refund." (Emphasis added). The 2016 Public Act thereby significantly broadened the Small Loan Lending and Related Activities Act and the scope of activities requiring licensure for "small loan" lending. (Transcript at 21-22). Notably, although certain types of transactions – including commercial, agricultural, and residential mortgage loans – are expressly excluded from the definition of "small loan", advances of money for personal expenses on potential future judgments and settlements in connection with pending personal injury lawsuits were not excluded by the 2016 Public Act.

4. In connection with a consumer complaint from a Connecticut borrower, the Department obtained documentary evidence of two transactions between Respondent and the borrower, who received a $5,000 advance from Respondent for each transaction. (DOB Ex. 9, 10). Principal Examiner Anne Cappelli ("Cappelli") informed Respondent by letter of the complaint, expressing concern that Respondent's activities fall under the small loan provisions, and therefore under the jurisdiction of the Department. (Transcript at 56-57). Respondent voiced disagreement but provided no further response. (DOB Ex. 11, Transcript at 57).
5. In an email dated October 14, 2022, the Department requested multiple records from Respondent's counsel for the period of October 1, 2016 until Respondent ceased advancing funds upon receipt of the Notice. The items requested included: a record of the number of advances issued to consumers in this state, the financial sum of the monetary advances, copies of the contracts used between the consumer and Respondent, a record of payments from consumers in repayment of advanced funds, an accounting of revenue from the sums received, the percentage of advances that are repaid, versus those not repaid. (DOB Ex. 6).

6. With the exception of two blank sample contracts, one for $500, the other for $15,000 (DOB Ex. 7-8; Transcript at 55-56), Respondent disregarded these requests.

7. On October 26, 2021, Cappelli notified Respondent by email that its transactions with a Connecticut borrower constituted "small loans" that fall under the jurisdiction of the Department. (DOB Ex. 11).

8. Cappelli followed up by email on November 9, 2021. Respondent reiterated disapproval of the inquiry altogether and its belief that it need not respond. (DOB Exhibit 12, Transcript at 58). Cappelli followed up again on November 10, 2021. (DOB Ex. 13, Transcript at 59). The Department also unsuccessfully requested information from Respondent by email on January 11, 2022, (DOB Ex. 15, Transcript at 60).

9. Respondent was dismissive of Department requests for records. Examiner Lodi understood that Respondent was "telling us that they do not believe that they need to provide any documentation . . . . [T]hey are telling us that we should be asking the biggest players, not them." (Transcript at 59). Respondent acknowledged failing to furnish the Department with any information requested by the Commissioner, including accounting information and transactional records. (Transcript at 63-64; DOB Ex. 11-18; Stipulation 21-29). Respondent failed to cooperate with the Department on more than one occasion. An email dated January 12, 2022, from Legal Funding, LLC owner Benedict Frosceno Jr., was sent to the Department and counsel for Respondent. This email reads:

> I have no idea why you are requesting, or think your entitled to any of my confidential files. My settlement funding has nothing to do with the banking commission. We evaluate lawsuits and based on our findings, decide if we want to purchase an interest in the outcome. Needless to say it's a gamble and I have lost thousands of unrecoverable dollars. am curious however, as to why you are looking into a tiny business such as mine. . . . I can't help but feel this is a personal attack on me and someone put you up to it. In closing, I will not be providing you with any of my records. If you have any further requests, please address them to Atty Joseph Fournier. (Stipulated Finding 29; DOB Exhibit 15; Transcript at 46, 61-62).

10. In an email dated March 1, 2023, the Department confirmed to Respondent's counsel that the Department would claim Respondent refused to produce records. (DOB Ex. 18, Transcript at 62).

11. Respondent's standard contract Agreement includes the following language:

> This Funding and Sale Agreement is made as of ____, by and between ____ , of ____ (hereinafter referred to as **"you"** or **"Seller"**), and Legal Funding , LLC d/b/a CrashAdvance, located in East Haven, CT, 06512 **("Buyer")**.
>
> You are currently involved in a pending legal action and/ or lawsuit as a result of injuries arising out of a personal injury claim for an incident that occurred on or about ____, and/or any other related actions (collectively, the "**Legal Claim**"). (DOB Ex 7, 8).

12. Money that is collected beyond what is given to a consumer is considered a "finance charge" and finance charges are converted to APR on an annual basis. As recognized by the Department, "APR" is the compounding of interest rate on an annual basis, determined by the "APRWIN" calculation method, widely used and accepted by the FDIC and SEC. "APR is, as it said, annual cost of money that is loaned. . . . So, APR basically tells you what it's costing someone to borrow [money]." (Transcript at 22).

13. In both transactions involving the Connecticut borrower, reflected in the Agreements (DOB Ex. 9, 10), the APR calculations based on the transaction came out to more than 12%. (Transcript at 54, 65). Both transactions included advances of less than $15,000 and both were based on potential future income from underlying lawsuits or legal claims. (Transcript at 54, 55).

14. As prescribed in the Agreement of July 7, 2017, signed by the Connecticut borrower and Respondent, the advance funding amount was $5,000. The longer the period before repayment, the larger the sum due. The amount to be repaid within six months was $6,300; within twelve months was $8,800, between twelve and eighteen months was $10,800, up through thirty-six months was $12,800, and for a period more than thirty-six months, the sum due and owing from the Connecticut borrower to Respondent was $20,000. (DOB Ex. 9, 19; Transcript at 43). Further, the first increase of $1,300 – or $1,300 of finance charges over the course of six-months - constitutes a 52% APR. (DOB Ex. 19, Transcript 22-24). In the second example, an increase of $3,800 to $8,800 translated to an APR of 76%. (DOB Ex. 19, Transcript at 24).

IV. CONCLUSIONS OF LAW

A. Jurisdiction and Procedure

1. The Commissioner has jurisdiction over the licensing and regulation of small loan lenders pursuant to Part III of Chapter 668, Sections 36a-555 to 36a-573, inclusive, of the Connecticut General Statutes. The Commissioner also is charged with administering Sections 36a-570-1 to 36a-570-17, inclusive, of the Regulations of Connecticut State Agencies.
2. The Commissioner, through the September 16, 2022 Notice, provided Respondent with an opportunity for a hearing in accordance with Section 36a-50(a) of the Connecticut General Statutes.
3. The Notice issued by the Commissioner against Respondent comported with the requirements of Section 4-177(b) of Chapter 54 of the Connecticut General Statutes
4. Respondent appeared through an attorney at the April 26, 2023 hearing, and had the opportunity to present evidence, rebuttal evidence and argument on all issues of fact and law to be considered by the Commissioner. The Respondent and the Department both submitted post-hearing briefs to provide supplemental evidence and argument and/or resolve the pending matter with the Department.
5. The Commissioner's broad regulatory authority includes the power to impose civil penalties pursuant to Section 36a-50(a) of the Connecticut General Statutes, and to issue orders to cease and desist pursuant to Section 36a-52(a) of the Connecticut General Statutes.

Section 36a-50(a) of the Connecticut General Statutes provides, in pertinent part, that:

> (1) Whenever the commissioner finds as the result of an investigation that any person has violated any provision of the general statutes within the jurisdiction of the commissioner . . . the commissioner may send a notice to such person by . . . certified mail, return receipt requested . . . . The notice shall be deemed received by the person on the earlier of the date of actual receipt or seven days after mailing or sending . . . . (2) If a hearing is requested . . . the commissioner shall hold a hearing upon the matters asserted in the notice . . . . After the hearing, if the commissioner finds that the person has violated any such provision . . . the

> commissioner may . . . order that a civil penalty not exceeding one hundred thousand dollars per violation be imposed upon such person.

Section 36a-52(a) of the Connecticut General Statutes provides, in pertinent part, that:

> Whenever it appears to the commissioner that any person has violated, is violating or is about to violate any provision of the general statutes within the jurisdiction of the commissioner . . . the commissioner may send a notice to such person by . . . certified mail, return receipt requested . . . . If a hearing is requested within the time specified in the notice, the commissioner shall hold a hearing upon the matters asserted in the notice . . . . After the hearing, the commissioner shall determine whether an order to cease and desist should be issued against the person named in the notice . . . . No such order shall be issued except in accordance with the provisions of chapter 54.

B. Standard of Evidence – Burden of Proof

"The substantial evidence rule governs judicial review of administrative fact-finding under the UAPA. [See] General Statutes § 4-183 (j) (5) and (6). "An administrative finding is supported by substantial evidence if the record affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . The substantial evidence rule imposes an important limitation on the power of the courts to overturn a decision of an administrative agency . . ." (Citations omitted; internal quotation marks omitted.) *Dolgner v. Alander,* supra, 237 Conn. 281 (1996). The applicable standard of proof in Connecticut administrative cases, including those involving fraud and severe sanctions, is the preponderance of the evidence standard. *Goldstar Medical Services v. Department of Social Services*, 288 Conn. 790, 819 (2008). "An administrative finding is supported by substantial evidence if the record affords a substantial basis of fact from which the fact in issue can be reasonably inferred." *Id*. The Department in this matter bears the ultimate burden of proving the elements of the offense by a preponderance of the evidence in support of the Commissioner's findings. *See Bialowas v. Commissioner of Motor Vehicles,* 44 Conn. App. 702, 692 A. 2d 834 (1997).

C. Alleged Violations of Sections 36a-556(a)(1) and 36a-558(c)(1) of the Act

The Department alleges that Respondent violated Section 36a-556(a)(1) of the Act by offering and entering into Agreements to provide advance funds for personal expenses to Connecticut consumers

on future potential monetary judgments or settlements in connection with pending personal injury lawsuits without the requisite license. In addition, the Department alleges that Respondent also violated Section 36a-558(c)(1) of the Act by enforcing and collecting monies pursuant to such Agreements without the required license. Attempts to collect on small loans made by unlicensed persons are void and unenforceable pursuant to Section 36a-558(c) of the Act. As discussed, the parties agree on most of the relevant facts regarding Respondent's activities. The parties disagree, however, that such activity requires a small loan license pursuant to Section 36a-556. At issue is whether the Respondent's transactions with Connecticut consumers fall within the statutory definition of "small loan" provided in Section 36a-555(11).

Respondent provided funding to a Connecticut borrower in two separate transactions of $5,000 each, to be repaid from proceeds of a pending personal injury action. (DOB Exhibit 9; Transcript at 37-39). By the terms of each Agreement, the $5,000 advance would increase to $6,300 in six-months, and $8,800 within a year. (Transcript at 43; DOB Ex. 19).

In connection with these transactions, Respondent was the plaintiff in two civil actions filed in the Connecticut Superior Court Small Claims Session in May 2019 in order to collect on the Agreements. (Stipulation 13). "Crash Advance is seeking prejudgment interest because of the amount of time that the defendant has refused to repay the funded amount." (Transcript at 40). Respondent was awarded judgments in both lawsuits, triggering a court ordered wage execution of the Defendant, a Connecticut resident (Stipulation 14) of $35 per week. (Stipulation 18).

1. Legal Standard

When interpreting the meaning and application of statutory provisions, Connecticut case law advises:

> [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and

> considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . . *Vincent v. New Haven*, 285 Conn. 778, 784-85, 941 A.2d 932 (2008).

Remedial statutes intended to protect consumers, including the Small Loan Lending and Related Activities Act, "should be construed liberally in favor of those whom the law is intended to protect." *Solomon v. Gilmore*, 248 Conn. 769, 774-75 (1999) (quoting *Dysart Corp. v. Seaboard Surety Co*., 240 Conn. 10, 18 (1997) and describing statutes governing secondary mortgages as remedial). See also, *State v. Andresen*, 256 Conn. 313, 322-23 (2001) (noting that state securities laws intended to protect investors are remedial).[2]

2. Analysis

a. The Plain & Unambiguous Meaning of "Small Loan"

As described more fully above, the Respondent offered Connecticut borrowers money for personal use in the form of monetary advances in connection with pending personal injury lawsuits and legal claims. The Respondent entered into so-called "Funding and Sale Agreements" with at least one such borrower which stated that the borrower is "granting a lien and security interest in the proceeds" of the pending lawsuit to the Respondent. The Agreements also stated that "[t]his is non-recourse funding.[3]

[2] "The purpose of our Small Loan Act was to furnish an opportunity for borrowing to persons of small means who might be in need of money and unable to obtain it to relieve their necessities, at ordinary commercial rates . . . provisions of the act indicate care and foresight on the part of the legislature. *Westville & Hamden Loan Co. v Pasquale* 109 Conn. 110, 114 (1929). We may fairly assume legislative recognition that . . . loaning money at a rate of interest greatly in excess of the legal rate permitted . . . called for strict limitations upon the lender and for measures of protection to the borrower who was forced to make such agreements by the necessities of the situation." *G. Nicotera Loan Corp. v. Gallagher* 115 Conn. 102, 104-105 (1932).

[3] "A nonrecourse debt (loan) precludes the lender from pursuing anything other than the collateral itself." *Black's Law Dictionary,* Rev., 4th Ed., West Publishing (1968), at 950; "[P]re-settlement funding is non-recourse in nature . . . a cash advance based on an estimated future lawsuit settlement. The repayment is tied to . . . projected compensation or settlement . . . so the funding company will get an agreed upon portion of [the] settlement or jury award. . . . " The National Law Review Editorial Team, *Lawsuit Loans, Litigation Finance, Cash Advances on Lawsuit Settlements: What are Differences and What to Look for in Litigation Funding?* The National Law Review, Volume XII, Number 181, at 1 (2023).

[Respondent] will get paid only from the proceeds of the Legal Claim . . . . This is not a loan. If there is no recovery under the Legal Claim, then you do not have to pay [Respondent] anything." The Agreements further stated that the Respondent was "purchasing . . . a financial interest in the proceeds of the Legal Claim equal to the amounts" of the advances made by Respondent to the borrower. (Stipulations 15, 16; DOB Exhibits 9, 10).

Connecticut General Statutes Section 36a-556(a)(1) provides that:

> Without having first obtained a small loan license from the commissioner pursuant to section 36a-565, no person shall, by any method, including, but not limited to, mail, telephone, Internet or other electronic means, unless exempt pursuant to section 36a-557: (1) Make a small loan to a Connecticut borrower; (2) Offer, solicit, broker, directly or indirectly arrange, place or find a small loan for a prospective Connecticut borrower; . . . and (6) Advertise or cause to be advertised in this state a small loan or any of the services described in subdivisions (1) to (5), inclusive, of this subsection.

Connecticut General Statutes Section 36a-558(c)(1) provides that:

> Except as the result of a bona fide error or as set forth in subdivision (2) of this subsection, any small loan described in subsection (a) or (b) of this section that contains any condition or provision inconsistent with the requirements in subsections (d) to (g), inclusive, of this section shall not be enforced in this state. Such small loan shall be void and no person shall have the right to collect or receive any principal, interest, charge or other consideration thereon. Any person attempting to collect or receive principal, interest, charge or other consideration on such small loan shall be subject to the provisions of section 36a-570.

Connecticut General Statutes Section 36a-555 (11) provides, in relevant part,

> Small loan means any loan of money or extension of credit, *or the purchase of, or an advance of money on, a borrower's future income* where the following conditions are present: (A) The amount or value is fifteen thousand dollars or less; and (B) the APR is greater than twelve per cent. For purposes of this subdivision *"future income" means any future potential source of money, and expressly includes, but is not limited to, a future pay or salary, pension or tax refund*. For purposes of this section and sections 36a-556 to 36a-573, inclusive, "small loan" shall not include: (i) A retail installment contract made in accordance with section 36a-772; (ii) a loan or extension of credit for agricultural, commercial, industrial or governmental use; (iii) a residential mortgage loan, as defined in section 36a-485; or (iv) an open-end credit account that is accessed by a credit card issued by an exempt entity, as described in subdivision (1) of subsection (b) of section 36a-557." (Emphasis added).

An examination of the statutory text reveals the meaning of "small loan" to be plain and unambiguous and broad enough to encompass an advance of funds on a borrower's future potential source of money – including such advance on a potential monetary judgment or settlement in connection with a personal injury lawsuit or legal claim. Although the legislature chose to expressly include certain "future potential sources of money" within the definition of small loan, it also made plain – through the phrase "but is not limited to" – that the definition was intended to *include* advances on other future potential sources of money. It may be reasonably presumed in statutory construction that the legislature knows how to clearly express its intent . . . or to use broader or limiting terms when it chooses to do so. See, e.g., *Stitzer v. Rinaldi's Restaurant*, 211 Conn. 116, 119, 557 A.2d 1256 (1989). *Scholastic Book Clubs, Inc. v. Comm'r of Revenue Services*, 304 Conn. 204, 219, 38 A.3d 1183, cert. denied, U.S., 133 S. Ct. 425, 184 L. Ed. 2d 255 (2012).

To put it another way, there is nothing in the statutory text to indicate that the legislature intended to *exclude* advances on a potential monetary judgment or settlement in connection with a personal injury lawsuit or legal claim. "The General Assembly is . . . presumed to know all of the existing statutes and the effect that its action or [nonaction] will have upon any one of them." *Asylum Hill Problem Solving Revitalization Assn. v King,* 277 Conn. 238, 256-257 (2006). Indeed, the legislature certainly knew how to exclude certain types of transactions from the purview of the Small Loan and Related Activities Act and did so expressly in Section 36a-555(11) by stating that "'small loan' shall not include . . . [a] retail installment contract . . . a loan or extension of credit for agricultural, commercial, industrial or governmental use . . . a residential mortgage loan . . . or . . . an open-end credit account that is accessed by a credit card issued by an exempt entity. . . ." "[I]n the absence of ambiguity, we look only to what the legislature actually said, not to what it might have meant to say." *Caulkins v. Petrillo*, 200 Conn. 713, 716-718, 513 A.2d 43 (1986); *Hayes v. Smith,* 194 Conn. 52, 57-58, 480 A.2d 425 (1984). Therefore, "small loan" includes Respondent's advance of money on a borrower's potential monetary judgment or settlement in connection with a personal injury lawsuit or legal claim.

Ignoring the plain and unambiguous meaning of "small loan," Respondent asserts that its activities fall outside the scope of the Small Loan Lending and Other Activities Act because the statutory definition of "small loans" does not encompass the advances it offered and made on "future potential sources of money." Specifically, Respondent asserts that by Agreement it enables the customer to sell an "equity interest" in the outcome of a pending claim by Respondent making an equity investment in the pending litigation matter. (Transcript at 37, Respondent Ex. A at 1-2, 6). In Respondent's view, the customer effectively sells an interest in his or her pending claim and Respondent purchases a financial interest in the proceeds of the claim. (Respondent's Exhibit A at 6). According to Respondent, there is no borrower and thus, the funds advanced are not loans.

Respondent also posits that because the legislature did not pass the Bill it considered in 2008 that would have regulated the "cash advance industry," that it did not intend to regulate advances in 2016 when it passed legislation that became Public Act 16-65. (Respondent Ex. A. at 6). Respondent "believe[s] that the expansion of the scope of the activities covered under the Small Loan lender Act was intended to cover other 'lenders' such as payday lenders and tax refund lenders..." (Respondent Ex. A at 5). As Respondent acknowledges, however, the Public Act was intended to "expand[] the scope of activities that require licensure." (Respondent Ex. A. at 5). Respondent's arguments are flatly inconsistent with the meaning of the 2016 Public Act's definition of "small loan" as discussed above. Although the legislature could have expressly included (or excluded) "cash advances on future lawsuit proceeds," the broad and non-limiting language it chose to use plainly and unambiguously encompasses advances of the type offered and made by the Respondent.

b. Contingent Obligation to Repay Advances

Respondent also argues that because the borrower's obligation to repay the advances was contingent upon a monetary judgment or settlement of the personal injury lawsuits, the advances do not create "debt" and therefore fall outside the statutory definition of a "small loan." This argument presumes that a "small loan" under the statute requires the existence of "debt," as traditionally defined as:

> A sum of money due by certain and express agreement. A specified sum of money owing to one person from another, including not only obligation of debtor to pay but right of creditor to receive and enforce payment. . . . A fixed and certain obligation to pay money or some other valuable thing or things, either in the present or in the future. *Black's Law Dictionary* 6th Edition 416 (1990).

Again, this argument is inconsistent with the statutory definition of "small loan" in Section 36a-555(11), which provides, in relevant part, that "[s]mall loan means . . . any loan of money or extension of credit, *or the purchase of, or an advance of money on, a borrower's future income* . . . ." (Emphasis added). Section 36a-555(11) further provides that "future income means *any* future *potential* source of money . . . ." The adjective "potential" is defined by *Merriam-Webster Dictionary* as "existing in possibility, capable of development into actuality." *Merriam Webster Dictionary* online: https://www.merriam-webster.com/dictionary/potential. Moreover, "potential" is defined as "[e]xisting in possibility[4] but not in act. . . ." *Black's Law Dictionary* 6th ed. 1168 1105, (1990). As evidenced by the text of the statutes and the dictionary definitions, the legislature therefore plainly and unambiguously intended for advances on any future *potential* source of money to be regulated as "small loans" within the Small Loan and Related Activities Act. Finally, the dictionary definitions of "advance payment" and "advances" offer further support for the conclusion that the legislature intended the meaning of "small loan" to include an advance on a future potential source of money that is only a possibility or contingency and that may never develop into an actual source of money. Specifically, "advance payment" is defined as "[p]ayment[] made in anticipation of a contingent or fixed future liability or obligation." *Black's Law Dictionary* 6th ed. 53 (1990). "Advances" are defined in relevant part as "a loan or . . . money advanced to be repaid conditionally." *Id.*

Moreover, the conclusion that the Small Loan and Related Activities Act covers a litigation funding advance that includes a contingent repayment obligation is consistent with the approach taken by courts in other jurisdictions. *See, Odell v. Legal Bucks, LLC,* 192 N.C. App. 298, 2008 N.C. App. LEXIS 1619 (2008) (concluding that non-recourse litigation funding agreement under which creditor advanced

[4] In turn, "possibility" is defined as "[a]n uncertain thing that may happen . . . [a] contingent interest." *Black's Law Dictionary* 6th ed. 1165 (1990).

money to borrower to be repaid out of potential recovery in a pending personal injury claim violated North Carolina's usury law and holding that the law covered advances of money, *even when repayment of the advance was contingent upon plaintiff's recovery in the litigation, and which – depending on the amount recovered – could be as little as zero); Oasis Legal Finance Group, LLC* v. *Coffman*, 2015 Colo. 63, 361 P.3d 400 (2015) (concluding that litigation finance companies making non-recourse advances of money to tort plaintiffs for personal expenses in exchange for future litigation proceeds are making "loans" subject to Colorado's consumer loan laws even though the plaintiff-borrowers do not have an obligation to repay any deficiency if the litigation proceeds are ultimately less than the amount due).

c. In Substance the Advances Are Within the Meaning of "Small Loan"

Respondent asserts that its transactions with the Connecticut borrower were not "small loans" but rather "nonrecourse capital advances" or "equity investments" in the borrower's pending personal injury lawsuit. According to Respondent, the Connecticut borrower effectively sold, and Respondent purchased a "financial interest" in a potential monetary judgment or settlement. (Respondent Exhibit 1 at 1-2, 6).

Although Respondent attempts to characterize the transactions as something other than "small loans" and therefore outside of the licensure requirement of the remedial Small Loan and Related Activities Act, it is the substance rather that the form of the transaction that matters. *See e.g., Jarozewski* v. *Gamble*, Docket No. FSTCV095010065S, 2013 Conn. Super. LEXIS 2064 (Super. Sep. 12, 2013) (noting that courts disregard form in favor of substance and place emphasis on the economic reality when determining whether a particular financial transaction falls within the purview of remedial statutes intended to protect investors).

Moreover, Respondent's transactions with the Connecticut borrower differ from equity investments and assignments. Both of Respondent's Agreements with the Connecticut borrower provide that the financial obligation is set to increase with time, reflected by disclosure statements or "APR spreadsheets." (DOB Ex. 19). "This growth in the repayment obligation over time is a finance charge and a hallmark of a consumer loan…" (Stipulated Findings 10, 19, *Oasis* at 11-12.) An Annual Percentage Rate ("APR") calculation measures the cost of credit on an annual rate, or in other words the "finance

charge." "The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit." 12 C.F.R. § 1026.4 of Regulation Z.

More fundamentally, the transactions are not assignments because there is no transfer of ownership rights between the Connecticut borrower and Respondent. "An assignment transfers rights and duties and puts the assignee in the assignor's shoes." (*Oasis* at 12). Here, in contrast, the borrower receiving the advance continues to control their pending personal injury litigation despite agreeing to relinquish a portion of potential litigation proceeds. *Id.* In addition, the transactions are inconsistent with Respondent's characterization that the Connecticut borrower sold an equity interest in his pending claim, simply based on the definition of "sale:" "[T]he act of selling specifically - the transfer of ownership of and title to property from one person to another for a price." *Merriam Webster Dictionary* online https://www.merriam-webster.com/dictionary/sale. As discussed, in substance the advances Respondent offered and made are within the definition of "small loan" provided in Section 36a-555(11) of the Act.

d. Tax Treatment of Personal Injury Awards Does Not Alter Meaning of "Small Loan"

Finally, Respondent argues that because proceeds of personal injury lawsuits are not taxable as "income" under federal tax law[5], that advances on such proceeds are not within the meaning of "future income" as used in Section 36a-555(11) of the Act. This argument, however, ignores that the statute expressly provides that "'future income' means *any future potential source of money . . . .*" *Id.* (Emphasis added). Moreover, the argument also ignores that the legislature expressly included advances on tax refunds within the definition of "small loan", which are also not taxable as income under federal tax law.

3. Conclusions

a. The plain and unambiguous meaning of "small loan" under Section 36a-555 (11) includes an

[5] IRC Section 104(a)(2) provides, a taxpayer may exclude from gross income "the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injuries or physical sickness."

advance of money on any future potential source of money, *including advances on a potential monetary judgment or settlement in connection with a personal injury lawsuit or legal claim.*

b. The statutory definition of "small loan" in Section 36a-555(11), and definitions of "potential," "advance" and "advance payment", directly support the conclusion that the legislature intended for litigation funding advances that include a *contingent* repayment obligation to fall within the Small Loan and Related Activities Act.

c. Based on the substance or "economic reality" of the transactions, Respondent's advances fall under the umbrella of remedial statutes and within the definition of "small loan" provided in Section 36a-555(11) of the Act.

d. Respondent maintained an online presence including advertising and "apply now" application forms. Respondent offered to provide advance funds for personal expenses to Connecticut consumers on future potential monetary judgments or settlements in connection with pending personal injury lawsuits. Respondent offered advances of $500 to $5,000, including a repayment obligation that increases over time. By offering and making two such advances to a Connecticut borrower, each in the sum of $5,000, while charging the borrower between 36.79% and 76% APR, Respondent engaged in transactions with Connecticut borrowers that fall within the meaning of "small loan" without having first obtained a small loan license from the commissioner pursuant to section 36a-565, in violation of Section 36a-556(a)(1) of the Act.

e. Attempts to collect on small loans made by unlicensed persons are void and unenforceable pursuant to Section 36a-558(c) of the Act. Respondent funded a Connecticut borrower $5,000 on two occasions, in exchange for the proceeds of a pending personal injury action. Respondent later sued the borrower to collect on the Agreements. By attempting to collect and collecting on principal, interest, charge or other consideration on small loans, Respondent is subject to the provisions of section 36a-570. Respondent violated Section 36a-558(c)(1).

D. Alleged Violation of Section 36a-17(e)

As described more fully above, the parties agreed in the Stipulation of Facts that "Respondent refused and failed to provide information requested by the Division during the investigation of this matter …" (DOB Ex. 18, Transcript at 62). More specifically, although the Division attempted to investigate and examine the activities of Respondent to determine if it had violated, was violating or was about to violate the provisions of the Connecticut General Statutes or Regulations within the jurisdiction of the Commissioner, Respondent repeatedly failed to provide information and documents requested by the Division. (Transcript at 58-62; DOB Exhibits 11-17; Stipulations u-aa; Findings of Fact 5-10;) Rather, in response to the Department's repeated requests, Respondent reiterated its belief that its conduct and activities were not within the jurisdiction of the Commissioner. *Id.*

Connecticut General Statutes, Section 36a-(17)(e) provides, in relevant part,

> Any person who is the subject of any inquiry, investigation, examination or proceeding pursuant to this section shall (1) make its records available to the commissioner in readable form; (2) provide personnel and equipment necessary, including, but not limited to, assistance in the analysis of computer-generated records; (3) provide copies or computer printouts of records when so requested; (4) make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including accounting compilations, information lists and dates of transactions in a format prescribed by the commissioner or such other information as the commissioner deems necessary to carry out the purposes of this section; (5) furnish unrestricted access to all areas of its principal place of business or wherever records may be located; and (6) otherwise cooperate with the commissioner.

1. Legal Standard

"[I]t is the general rule that an administrative agency may and must determine whether it has jurisdiction in a particular situation." *Polymer Resources v. Keeney*, 227 Conn. 545, 558 (1993). Accordingly, when a statute authorizes an agency to act in a particular situation, it necessarily confers upon the agency the authority to determine whether the agency has authority to act. *Id.* Moreover, "[u]nless the administrative inquiry is plainly irrelevant, a party resisting compliance [with the

agency's requests] . . . may not challenge the applicability of the regulatory statute to the conduct under investigation." *Shulansky v. Rodriguez*, 235 Conn. 465 (1995).

2. Analysis

Respondent's (unfounded) belief that it was not subject to the jurisdiction of the Commissioner does not excuse its (admitted)[6] refusal to provide information requested by the Division during its investigation. Like other administrative enforcement agencies, the Department has the authority to determine its jurisdiction. *See, Polymer Resources v. Keeney*, 227 Conn. 545, 558 (1993). The Department has broad authority to investigate potential violations of the laws within the Commissioner's jurisdiction.

Specifically, pursuant to Section 36a-17(a) of the Connecticut General Statutes:

> The Commissioner . . . may . . . (1) [m]ake, within or outside of this state, such public or private investigations or examinations concerning any person subject to the jurisdiction of the commissioner; [and] (2) require . . . any person to testify, produce a record or file a statement in writing, under oath, or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated. . . ."

Moreover, the Department's investigatory demands carry "a presumption that [they were] issued legally, in good faith, and under proper authority for a proper purpose." *See Shulansky v. Cambridge-Newport Fin. Servs. Corp.,* 42 Conn. Supp. 439, 444 (Super. Ct. 1992) (rejecting defendant's argument that the Banking Commissioner "should not be permitted to enforce [a] subpoena without first providing facts and circumstances by which he claims jurisdiction over the defendant. . . .").

Accordingly, notwithstanding Respondent's belief that the Small Loan & Related Activities Act does not apply to its conduct, its refusal to provide the requested information violated Section 36a-17(e).

[6] "A formal stipulation of facts by the parties to an action constitutes a mutual judicial admission and under ordinary circumstances should be adopted by the court in deciding the case." *Cantonbury Heights Condo. Ass'n v. Local Land Dev., LLC*, 273 Conn. 724, 745 (2005).

3. Conclusion

During the course of the investigation by the Department, Respondent was obligated to make records available, including information lists and dates of transactions, accounting compilations and reports. More broadly, Respondent was legally obligated to cooperate with the Commissioner. Instead, Respondent intentionally refused to provide such records requested by the Department, reflected in multiple email records and the Stipulations of Fact. Respondent's failure to provide information requested during the Investigation, constitutes a violation of Section 36a-17(e) of the Connecticut General Statutes.

V. ORDER

Having read the record, I hereby **ORDER**, pursuant to Sections 36a-17, 36a-50, and 36a-52 of the General Statutes of Connecticut, that:

1. Legal Funding LLC d/b/a Crash Advance **CEASE AND DESIST** from violating Sections 36a-556(a)(1)**,** 36a-558(c)(1) and 36a-17(e) of the Connecticut General Statutes;

2. Legal Funding LLC d/b/a Crash Advance **PRODUCE** to Carmine Costa, Director, Consumer Credit Division, Department of Banking, 260 Constitution Plaza, Hartford, Connecticut 06103-1800, or carmine.costa@ct.gov, a list of all Connecticut residents who, on or after October 1, 2016, have: (1) applied for a small loan or any advanced funding agreement from Legal Funding, LLC d/b/a Crash Advance, or (2) entered into any advanced funding agreement with Legal Funding, LLC d/b/a Crash Advance in which the interest paid on the agreement is at a rate in excess of 12%. For each small loan, and/or other agreement included within the statutory definition of a small loan, consummated by a Connecticut borrower, such submission shall include: (a) a copy of each loan agreement specifying the amount, annual interest rate of the loan and/or the scheduled repayment amounts as attached any agreement, and (b) a list of each Connecticut borrower's name and address and full itemization of payments made pursuant to the loan agreement, specifying the dates and amounts of such payments;

3. Legal Funding, LLC d/b/a Crash Advance **MAKE RESTITUTION** of any sums obtained as a result of violating subsection (1) of Section 36a-556(a) of the Connecticut General Statutes, plus interest at the legal rate set forth in Section 37-1 of the Connecticut General Statutes;

   Specifically, the Commissioner **ORDERS** that: Not later than thirty (30) days from the date this Order is mailed, Legal Funding, LLC d/b/a Crash Advance shall:

   a. Repay any amounts received by Legal Funding, LLC d/b/a Crash Advance from Connecticut borrowers in connection with a loan, plus interest. Payments shall be made by cashier's check, certified check or money order; and;

b. Provide to Carmine Costa, Director, Consumer Credit Department, Department of Banking, 260 Constitution Plaza, Hartford, Connecticut 06103-1800, or carmine.costa@ct.gov, evidence of such repayments.

4. A **CIVIL PENALTY** of Twenty-Five Thousand and 00/100 Dollars ($25,000) be imposed upon Legal Funding, LLC d/b/a Crash Advance, to be remitted to the Department of Banking by wire transfer, cashier's check, certified check or money order, made payable to "Treasurer, State of Connecticut", no later than forty-five (45) days after the date this Order is mailed;

5. The Order shall become effective when mailed.

Dated at Hartford, Connecticut,
this 8th day of August 2023.

/s/

Jorge L. Perez
Banking Commissioner

CERTIFICATION

I hereby certify that on this 8th day of August 2023, the foregoing Findings of Fact, Conclusions of Law and Order was sent by certified mail, return receipt requested, to Legal Funding, LLC d/b/a Crash Advance, 64 Thompson Street, Suite A101, East Haven, Connecticut 06513, Certified Mail No. 70222410000095983873; a hard copy of the Findings of Fact, Conclusions of Law and Order was hand delivered to Attorney Jeffrey Schuyler, State of Connecticut, Department of Banking, Consumer Credit Division, 260 Constitution Plaza, Hartford, Connecticut; and an email attaching a copy of the Findings of Fact, Conclusions of Law and Order was sent to Robert M. Taylor III, esq., FisherBroyles, LLP, and Attorney Schuyler.

/s/
Christopher W. Cartelli
Paralegal