



1 9, 2005, that each had received the Third Amended Order.

2 Pre-hearing conferences were convened in the matter on May 27, 2005; July 29,  
3 2005; September 9, 2005; and October 28, 2005. A number of pre-hearing issues raised by  
4 Titus were addressed prior to the hearing.

5 On May 5, 2006, Agency filed a Motion for Partial Summary Determination on the  
6 issues concerning violations of the Oregon Securities Law. The Motion did not include the  
7 issues related to being a "Debt Consolidating Agency" or a "Credit Services Organization."  
8 Titus and Haragan filed similar responses to the Motion (and renewed Motions to Dismiss).

9 The Ruling On Legal Issues dated May 22, 2006, denied Respondents' Motions to  
10 Dismiss and denied Agency's Motion for Partial Summary Determination. The Ruling found  
11 that there were genuine issues of material fact that were still in dispute regarding violations  
12 of the Oregon Securities Law.<sup>1</sup>

### 13 *Discovery*

14 Agency moved in May and June 2005 to compel discovery. An Order to Compel  
15 Discovery was signed and issued by ALJ Francis on July 29, 2005, setting September 1,  
16 2005, as the deadline. ALJ Francis recorded on September 30, 2005, that discovery from  
17 Haragan had been completed. ALJ Francis also recorded that Titus had indicated that he  
18 would be unable to comply with the discovery order in that he is without assistance or  
19 ability to comply. Titus never provided any discovery to Agency.

20 Titus made an initial demand for disclosure (discovery) of Agency's "entire  
21 evidentiary record" with his request for hearing. By correspondence addressed to ALJ  
22 Francis dated August 30, 2005, and September 7, 2005, Agency indicated that it had

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24 <sup>1</sup> Part of the difficulty addressed in the Ruling is that the two Respondents, Titus d/b/a Redwood Trust and Haragan d/b/a  
25 Bountiful LLC, do not stand in the same legal relationship to the facts. Although their business relationships were  
26 intertwined, and much of the legal discussion treats them as one entity, they were in fact separate entities. The Ruling stated  
that although the matters would be heard as a consolidated hearing, each Respondent would receive a separate decision.  
The Findings of Fact in the two Proposed Orders are identical, and the Opinion is much the same for the alleged securities  
violations and operating as a "debt-consolidating agency." But the factual bases upon which the violations were found as  
"credit services organizations" are independent.

1 provided copies of discovery to Titus and Haragan. On September 30, 2005, ALJ Francis  
2 reported that Agency's discovery continues and is being completed. By the date of the first  
3 scheduled hearing in this matter, February 13, 2006, Titus and Haragan had been provided  
4 copies of all the documents that Agency intended to rely upon at hearing and a complete list  
5 of witnesses.

6 Titus has continued to assert throughout the proceeding, up to and including the date  
7 of hearing, that he has not been provided with full discovery by Agency. Titus has never  
8 specified what it is that he believes Agency possesses in the way of discovery that has not  
9 been provided to Titus. At hearing, Haragan offered information indicating that certain  
10 cassette tapes he provided to Agency could be what Titus was demanding. The issue of the  
11 cassette tapes is addressed more fully below under Evidentiary Rulings.

12 Titus made a Motion to Dismiss on February 9, 2006, "for failing to provide the  
13 discovery demanded from it well over a year ago." Agency's Representative John  
14 Bondurant became ill and Agency moved on February 9, 2006, to postpone the hearing  
15 scheduled to begin on February 13, 2006. The reset was granted. Mr. Bondurant filed a  
16 response to the Motion to Dismiss on March 23, 2006. By Order dated March 29, 2006,  
17 ALJ Tegger denied the Motion to Dismiss.

18 Titus signed a second Motion to Dismiss Parties With Prejudice on March 28, 2006,  
19 which is date-stamped received by the Office of Administrative Hearings on April 3, 2006.  
20 That motion crossed in the mail with the Order dated March 29, 2006. The March 28 motion  
21 renewed the grounds for dismissal based on lack of discovery (and lack of jurisdiction--see  
22 below). The Motion to Dismiss for lack of discovery was renewed again on May 19, 2006,  
23 in Titus' response to Agency's Motion for Partial Summary Determination. The Motions to  
24 Dismiss for lack of discovery were denied again by ALJ Tegger in the Ruling On Legal  
25 Issues dated May 22, 2006, that was "intended to deny all previously filed motions  
26 regarding discovery, summary determination, and/or dismissal." Titus renewed his motion

1 again by fax dated June 5, 2006, and again in his oral statement at the beginning of the  
2 hearing.

3 *Jurisdiction*

4 Titus is a resident of the State of New York and has consistently maintained that  
5 Agency does not have personal jurisdiction over him. Titus made an oral motion during pre-  
6 hearing conference for the State to prove the basis for its jurisdiction. Agency filed a  
7 Response to Jurisdictional Challenge on September 19, 2005. Titus filed a Special  
8 Appearance and Rebuttal to State's Jurisdictional Statement on October 6, 2005. The motion  
9 was treated and argued as a challenge based on constitutional grounds. On November 1,  
10 2005, ALJ Francis records that during the pre-hearing conference on October 28, 2005, he  
11 denied the motion challenging personal jurisdiction over Titus.

12 In the Ruling on Legal Issues dated May 22, 2006, ALJ Tegger clarified that it was  
13 still an issue as to whether Titus was "doing business in this state and engaged in any  
14 activity with respect to securities or any aspect of the securities business," within the  
15 meaning of ORS 59.235. The previous motion based on constitutional grounds was properly  
16 denied, but the reach of an administrative agency is determined by its statutory authority.

17 *Participation*

18 On July 29, 2005, Titus submitted a medical report from the Veterans  
19 Administration Medical Center in Albany, New York, dated February 23, 2005, stating that  
20 Titus had been diagnosed with chronic myelogenous leukemia in 2001. On August 30, 2005,  
21 Mr. Bondurant argued that the medical document did not state that Titus was unable to  
22 travel. On November 1, 2005, ALJ Francis recorded that a motion by Titus to appear at  
23 hearing by telephone was tentatively denied absent competent medical information that  
24 precludes his appearance in person.

25 On February 9, 2006, with respect to the hearing scheduled to begin on February 13,  
26 2006, Titus stated that he would *only* be appearing by telephone "for lack of health and

1 funds" and because he was "expressly forbidden by the U.S. District Court from leaving this  
2 area under pain of arrest." The scheduled hearing was reset due to Mr. Bondurant's illness.

3 By letter dated March 23, 2006, Mr. Bondurant renewed his objection to Titus  
4 appearing by telephone, but confirmed that Titus was under U.S. District Court conditions  
5 of release restricting his travel outside the Northern District of New York without  
6 permission of the court. Mr. Bondurant reported that as of March 15, 2006, Titus had not  
7 requested permission of the court to travel to Oregon for the hearing in this matter.

8 In the Order dated March 29, 2006 (Denying Motion to Dismiss), ALJ Tegger  
9 granted Titus permission to participate in the hearing by telephone. At that time, the hearing  
10 had been reset to begin April 11, 2006.

11 On April 7, 2006, Titus filed a Request to Postpone Hearing "for at least six months  
12 at which time you could reevaluate my health." The request was accompanied by a letter  
13 from Thea Delfino, MD, at the Albany VA hospital. She reported that Titus has been treated  
14 with oxycodone for low back pain, which makes him lethargic and fatigued. She also  
15 reported that due to the pain he has difficulty walking distances and makes traveling a  
16 challenge. Titus indicated that his health "will not allow me to travel to a hearing or  
17 participate in any manner."

18 On April 10, 2006, Agency filed a Motion to Reset Hearing due to Mr. Bondurant's  
19 continued health problems. Agency indicated that the file would be reassigned to another  
20 representative who had just received the file, and Agency requested reset to the week of  
21 June 5, 2006.

22 On April 10, 2006, ALJ Tegger issued an Order Granting Reset to Week of June 5,  
23 2006. In that Order, the ALJ indicated that the hearing would not be reset again based on  
24 Titus's health. Titus could not choose to remain unrepresented in the matter and then use his  
25 health as an excuse not to participate. If Titus chose to retain counsel, his participation in the  
26 rescheduled hearing would be assured and his rights to cross-examination, presentation of

1 evidence, and his own testimony could be managed by his attorney even if Titus was not  
2 physically able to participate on the date of hearing. By choosing to remain unrepresented,  
3 Titus had to make the difficult choice between participation in spite of his health problems  
4 or waiving participation.

5 The ALJ restated his prior ruling granting the request by Titus to appear by  
6 telephone. The ALJ instructed Titus to do whatever he needed to do before the rescheduled  
7 hearing to obtain a speaker telephone, amplification equipment, and/or assistive listening  
8 devices in order to participate comfortably by telephone.

9 *Summary Determination*

10 On May 5, 2006, Agency filed a Motion for Partial Summary Determination on the  
11 issues concerning violations of the Oregon Securities Law. The Motion did not include the  
12 issues related to being a "Debt Consolidating Agency" or a "Credit Services Organization."  
13 Titus and Haragan filed similar responses to the Motion (and renewed Motions to Dismiss).

14 The Ruling on Legal Issues dated May 22, 2006, denied Respondents' Motions to  
15 Dismiss and denied Agency's Motion for Partial Summary Determination. The Ruling found  
16 that there were genuine issues of material fact that were still in dispute regarding violations  
17 of the Oregon Securities Law.

18 *Hearing*

19 A hearing was convened on June 6, 7, and 8, 2006, in Salem, Oregon. Agency was  
20 represented by Special Assistant Attorney General Caroline Smith. Rex Haragan appeared  
21 in person and represented himself. Haragan participated throughout the proceeding. Ken  
22 Titus appeared by telephone briefly at the start of the hearing on June 6, 2006. Titus read a  
23 statement into the record, and then disconnected from the telephone conference. He did not  
24 participate further in the proceeding.

25 Testifying on behalf of Agency were Fern Sanchez (by telephone), Michelle Troxel,  
26 Michael Gray, Jeffery Reilly, Mary Ann Jimmerson, Dorothy Ridley, Clairean Smith, David

1 Stauffer, Fiona Harpster, Patrick Fitzgerald, Christos Mandalides, Mary Ann Mathis, and  
2 Kirsten Anderson (aka Jepsen). Rex Haragan was called as a witness by Agency and also  
3 testified on his own behalf. Ken Calhoun initially testified as a witness on behalf of Rex  
4 Haragan on June 8, 2006. His testimony concluded the presentation of evidence by the  
5 parties. On June 9, 2006, the ALJ discovered that for some unexplained reason the  
6 testimony of Ken Calhoun did not record. The hearing was reconvened by telephone on  
7 Thursday, June 15, 2006, to rehear the testimony of Ken Calhoun. Written closing  
8 arguments were timely received from Agency and Haragan by fax on June 29, 2006. The  
9 record closed on June 29, 2006.

10 *ALJ's Proposed Order and Exceptions*

11 ALJ Steven R. Tegger issued a Proposed Order on July 24, 2006. The ALJ opined  
12 that there was no security in this case, and proposed that the Agency dismiss all allegations  
13 based on violations of the Oregon Securities Law. The ALJ also recommended the Agency  
14 dismiss allegations based on operating as a debt-consolidating agency. The ALJ determined  
15 that Respondent violated three provisions of the Oregon law governing credit services  
16 organizations and recommended the assessment of civil penalties totaling \$3,000 against  
17 Respondent for those violations.

18 Respondents filed Exceptions to the ALJ's Proposed Order in August 2006. The  
19 Agency filed Agency's Response to Exceptions to Proposed Order on September 1, 2006.  
20 Respondents did not file Replies.

21 *Amended Proposed Order and Exceptions*

22 The Director issued an Amended Proposed Order, which was mailed to Respondent  
23 Kenneth G. Titus, Sr. d/b/a Redwood Trust on March 22, 2007. The Amended Proposed  
24 Order included notice of the 30-day deadline to file exceptions. Respondent Kenneth G.  
25 Titus, Sr. d/b/a Redwood Trust did not file exceptions to the Amended Proposed Order.

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1 ORS 646.382.

2 8. Whether Titus was registered as a credit services organization pursuant to ORS  
3 646.386(1).

4 9. Whether Titus, operating as a credit services organization, engaged in prohibited  
5 conduct pursuant to the provisions of ORS 646.384.

6 10. Whether Titus, operating as a credit services organization, provided the  
7 consumer with written disclosure of the information described in ORS 646.390.

8 11. Whether Titus is subject to any civil penalties for violations, and if so, in what  
9 amounts.

#### 10 EVIDENTIARY RULING

11 Exhibits A-1 through A-6, A-10 through A-13, A-16, A-17, A-21, A-23 through A-  
12 27, A-29, A-30, A-32 through A-40, and A-42, offered by Agency, were admitted into the  
13 record without objection. Exhibits marked A-7, A-8, A-9, A-14, A-15, A-18, A-19, A-20,  
14 A-22, A-28, A-31, A-41, A-43, and A-44, were offered, but the ALJ excluded them.

15 Respondent Haragan offered Exhibits R-1 through R-6. R-3 and R-5 were excluded  
16 as not relevant. Exhibits R-1, R-2, R-4, and R-6 were admitted into the record without  
17 objection. The Director adopts these rulings.

18 Titus did not participate fully in the hearing. After reading a brief statement into the  
19 record renewing his claim that Agency had not provided full discovery in the matter, Titus  
20 disconnected from the telephone conference and did not participate further in the  
21 proceeding.

22 After Titus hung up, the ALJ asked Haragan if he knew specifically what Titus was  
23 claiming Agency failed to provide as discovery. Haragan stated he had given the  
24 enforcement officer, Patrick Fitzgerald, several cassette tapes of conference calls where  
25 Titus provided information to representatives of Redwood Trust. It was Haragan's belief that  
26 these tapes were the subject of the continued demands by Titus for discovery.

1           The ALJ requested Agency's Representative, Caroline Smith, to make a search for  
2 the tapes after adjournment of the hearing on June 6. Ms. Smith brought a manila envelope  
3 to the reconvened hearing on June 7 containing seven cassette tapes that Mr. Haragan  
4 identified as the tapes he had given to Mr. Fitzgerald.

5           Mr. Fitzgerald testified at the hearing on June 7. Exhibit A-40 was received into the  
6 record during the course of his testimony. In reviewing that exhibit, the ALJ noted at page 9  
7 a letter to Mr. Fitzgerald from Rex Haragan dated November 15, 2004, in which Mr.  
8 Haragan stated: " Also I have included seven cassette tapes of recording of conference call  
9 over the last several weeks and month. They are not labeled or in order however the [*sic*] are  
10 timely." The ALJ asked Mr. Fitzgerald what he did with the tapes after receiving them. His  
11 response was "nothing" Fitzgerald stated that he had never listened to the tapes and had no  
12 idea what was on them.

13           In the interest of fairness, the ALJ had copies of the cassette tapes made and  
14 overnight mailed them to Titus via Federal Express. The cover letter specifically requested  
15 Titus to confirm whether the tapes were the discovery that Titus had been demanding all  
16 along. If confirmed, the ALJ indicated that he would consider a request to admit the tapes  
17 into evidence. Since Titus had withdrawn from participation, Titus would not be allowed to  
18 present testimony or any other evidence besides the tapes. If there was anything of  
19 exculpatory value on the tapes, the tapes would have to speak for themselves.

20           The ALJ received a faxed response from Titus on June 14, 2006. Titus did not  
21 confirm that the tapes were the discovery he was demanding, but rather, renewed his  
22 unspecified demand that Agency provide him with "*everything, the entire file the state has*  
23 *used and could use against me.*" (Emphasis in original) The ALJ determined the, Agency  
24 provided full discovery and Titus received several months before the hearing "everything"  
25 Agency has relied upon to make its case against Titus. According to Agency's investigator  
26 to whom the tapes were given, he never listened to them and did not know the contents

1 | thereof. Agency never had any intent to use the tapes against Titus. Copies of the tapes were  
2 | provided to Titus based on Haragan's belief that these were the demanded discovery. Titus  
3 | did not confirm this, but requested that tape #5 be admitted to the record. Agency made  
4 | several appropriate objections at the reconvened hearing on June 15, 2006, and the tape was  
5 | excluded principally upon lack of foundation, and therefore, lack of relevance to the  
6 | proceeding. The Director adopts these rulings.

### 7 | **FINDINGS OF FACT**

8 |         1. Redwood Trust is purportedly a "humanitarian aid" organization located in  
9 | Schenectady, New York. The legal status of this entity is unknown. No instrument  
10 | creating Redwood Trust was produced in this proceeding. It is alleged in a Criminal  
11 | Indictment filed in the United States District Court for the Northern District of New  
12 | York on March 21, 2005, that: "On or about July 20, 2000, KENNETH G. TITUS, SR.  
13 | formed Redwood Trust ('Redwood') by executing a 'Revocable Living Trust.'" The only  
14 | alleged registration with the State of New York is with the New York Employment  
15 | Department. Redwood Trust does have employees, but the number and duties of such  
16 | employees are unknown. Ken Titus holds himself out as a trustee of Redwood Trust. At  
17 | all times material to this proceeding, Titus was a resident of the State of New York. If  
18 | there are other trustees or principals involved in the management of Redwood Trust,  
19 | they are unknown. Titus is the only individual named in the Criminal Indictment.  
20 | Redwood Trust holds itself out as a "for profit" organization. It is not organized as a  
21 | "non-profit" organization. Redwood Trust does not have tax-exempt status from the  
22 | Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code.  
23 | Redwood Trust is not to be confused with a real estate investment firm by the same  
24 | name located in California. (Test. of Haragan, Fitzgerald, Ex. A-2, A-5.)

25 |         2. Bountiful LLC is an unincorporated association of independent  
26 | representatives of Redwood Trust. Rex Haragan is the organizer of Bountiful LLC and

1 maintained its principle place of business at his residence in Oregon. At all times  
2 material to this proceeding, Rex Haragan was resident of, and doing business in, the  
3 State of Oregon. Although the letters "LLC" were used in the assumed business name,  
4 Bountiful was never organized as a Limited Liability Company or as any formal  
5 business entity under the laws of the State of Oregon. (Test. of Haragan, Ex. A-5.)

6 3. At all times material to this proceeding, Redwood Trust had a website located  
7 at [www.redwoodtrust.net](http://www.redwoodtrust.net). Exhibit A-16 is one version of this website that was  
8 downloaded and printed on Thursday, November 4, 2004. Each page contained footer  
9 with the following statement: "© 2004 Redwood Trust. All rights reserved. This  
10 product is pending and has not yet begun." The following statements appeared on the  
11 website. [Note: all statements are *sic*.]

12 Redwood Trust is a group of agents organized together to help Americans  
13 with humanitarian aid in many forms. This aid, usually in the form of grants,  
14 is given to adults and families as a way to make a huge difference within their  
15 lives. Focusing first on homes, these grants and aids are provided for those  
16 who need help. Primarily starting with foreclosures but also allowing for  
17 distressed and near foreclosure homes.

18 This humanitarian assistance not only helps the families in need but also help  
19 strengthen the American economy as well as create more jobs, better life-  
20 styles and help families stay together in what can be one of the most stressful  
21 times, foreclosure or late house payments.

22 The humanitarian trust is a Christian organization with the ideals of providing  
23 their fellow persons with a more successful and uplifting life.

24 Humanitarian aid is assistance given to people in distress by individuals,  
25 organizations, or governments to relieve suffering. The term often carries an  
26 international connotation, but this is not always the case. Many full time,  
27 professional humanitarian aid organizations exist, both within government  
(USAID, DFID), and as private voluntary organizations (or non-  
28 governmental organizations, e.g. Oxfam, Mercy Corps).

29 Redwood Trust was created as an instrument to help relieve the suffering of  
30 American families. Foreclosures, child-support, credit card debt and medical  
31 expenses can tear families apart. We want to help strengthen them and give  
32 people a new lease on life.

1 It works like this. Redwood Trust has direct access to humanitarian funds for  
2 many programs. We specialize in Foreclosure Grants, Mortgage Grants,  
3 Child Support Grants, Credit Card Grants, Church Grants, Medical Grants as  
4 well as Credit Restoration.

5 Many of these programs require no funds to apply. Others are by cooperative  
6 pay (15%) while others are fee based.

7 To apply for any of these grants you need to meet some basic criteria. In the  
8 case of foreclosure and mortgage grants, you need to be one of the property  
9 owners on the mortgage or have Power of Attorney to act in the homeowner's  
10 behalf. The property pay-off must be less than \$1.2 Million.

11 The property will have a title search so you will need to have all the proper  
12 information included within your mortgage agreement. You must be  
13 seasoned for at least one month before starting the settlement process. To  
14 qualify for a foreclosure grant you need to be in actual foreclosure. There is  
15 only the one-month seasoning requirement for a mortgage grant (anything  
16 other than a foreclosure is a considered a mortgage grant in good standing).

17 What are the costs?

18 Prices for these services are as follows:

19 Foreclosure Grants: \$5,000 for a 1st mortgage. This is payable AFTER the  
20 deed is cleared. Payment may be made over a 2-year period at ZERO %  
21 interest. If there are additional mortgages, they can be added at a rate of  
22 \$2000 each. Currently, grants are being completed in as little as 30-45 days.

23 Mortgage Grants: \$3000 payable in advance for any non-foreclosure grant  
24 for mortgages. If there are any additional mortgages they can be added as the  
25 rate of \$2000 each, payable in advance. Grants are currently being completed  
26 in as little as 30-45 days.

Too good to be true?

Many would say so. After all, we've all heard the axiom "If it sounds too  
good to be true, it probably is!" However, there is a reason the word  
"probably" was put there. If it were always true, then what would that  
statement say about our fellow man?

As we stated before, this is a Christian Trust Fund simply created to help our  
fellow American's. Believe it or not, there are people in this country who feel  
that we should help each other. Like the popular movie a few years ago, we  
like to "Pay it forward."

We invite your skepticism and your probing questions. If you would like

1 more information about this process, please contact us by telephone or email  
2 us. (Ex. A-16.)

3 4. Individuals registered with Redwood Trust on the website to be independent  
4 representatives or associates to promote the mortgage pay-off program and receive  
5 commissions to be paid after mortgages were paid. There was no cost to the individual to  
6 register with Redwood Trust and apparently no qualifying criteria for representatives.  
7 Spouses registered as a single representative. Representatives were required to sign a  
8 "Mortgage Clearing Mutual Non-Circumvention/Non-Disclosure Agreement and Associate  
9 Application." This agreement obligated the representatives not to interfere with each other  
10 or disclose confidential information to third parties. It also provided: "All commissions  
11 earned from business between the parties shall be per the commission schedule that is  
12 available in the Redwood Trust home office. All such commissions shall be distributed  
13 within seven days of the receipt of the cleared mortgage funds." It is alleged in the Criminal  
14 Indictment that there were 7,000 "independent representatives" at the time the U.S.  
15 Government seized the Redwood Trust funds. (Test. of Haragan, Ex. A-2, A-32.)

16 5. Rex Haragan first became involved with Redwood Trust as a website designer  
17 doing business as Window shades Multigraphics. Haragan was referred to Titus by Ken  
18 Calhoun, an associate of Northwest Business Advisors (NWBA), in approximately early  
19 March 2004. NWBA was organized in Oregon and had a principle place of business in  
20 Portland, Oregon. Haragan had performed website design work for NWBA. Calhoun was  
21 familiar with his work and that Redwood Trust needed help with its website. NWBA  
22 marketed or promoted a credit restoration or credit clean-up program in which NWBA  
23 agreed to assist in the process of removing and/or correcting information on a client's credit  
24 reports under the provisions of the Fair Credit Reporting Act. At some point in time, NWBA  
25 authorized Redwood Trust to post documents on Redwood's website promoting the program.  
26 These documents are part of Exhibit A-16. A formal promotional agreement between

1 NWBA and Redwood Trust was drawn up and signed by representatives of NWBA, but  
2 apparently never signed and returned by Titus. Calhoun brought Haragan and Titus together  
3 over the telephone. Haragan explained what he could do in the development of a back-end,  
4 encrypted website to handle a large volume of personal information and forms relating to the  
5 mortgage pay-off program. Titus called back a few days later and engaged the services of  
6 Haragan in Oregon to develop the website and form process located at NetMyNet.Net which  
7 was then linked to the Redwood Trust website. (Test. of Haragan, Calhoun, Ex. A-5, A-16.)

8         6. Calhoun was involved in organizing an NWBA "Spectacular Seminar" to be held  
9 at the Howard Johnson Airport Hotel in Portland, Oregon, on May 21-23, 2004. He knew  
10 that Titus was coming to Portland to pick up a medical device. Since Titus was going to be  
11 in Portland, Calhoun asked him to speak at the seminar on the Redwood Trust mortgage  
12 pay-off program. Titus spoke at the seminar for approximately one hour on May 23, 2004.  
13 The topic was listed on the promotional flyer as "Mortgage Elimination." Haragan also  
14 spoke at the seminar on website development. Haragan, whose website services for  
15 Redwood Trust had already been engaged, met Titus in-person at the seminar but did not  
16 listen to his presentation. (Test. of Haragan, Calhoun, Exs. A-5, R-1 & R-2.)

17         7. Titus held weekly or periodic telephone conference calls where he would provide  
18 updates and information about Redwood Trust to the representatives. Titus and Haragan  
19 discussed the possibility of web casting these telephone calls in an archive form so that  
20 people could listen to them at their leisure. Around the time of the Spectacular Seminar,  
21 Haragan started listening in on the telephone calls to see if he would be able to do the web  
22 casting. This was when Haragan began to understand what Titus was promoting. Haragan  
23 brought his wife in to listen to one of the telephone calls and they both became interested in  
24 being representatives. Haragan asked Titus about getting involved, and Titus referred him to  
25 Ken Calhoun, who was already registered as a Redwood Trust representative. (Test.  
26 Haragan, Ex. A-5.)

1 8. Redwood Trust representatives would assist applicants<sup>3</sup> for a foreclosure or  
2 mortgage grant in completing a packet of forms available on the website. The  
3 representatives made sure that all the forms were properly filled out and forwarded the  
4 documents as one packet to the address in New York using an overnight delivery service  
5 such as UPS, Airborne Express or FedEx. Redwood Trust would not accept documents sent  
6 via the US Postal Service. Any payments were to be remitted in the form of a cashier's check  
7 or money order made payable to Redwood Trust. These were forwarded along with the  
8 packet to Redwood Trust. Redwood Trust representatives did not (or were not supposed to)  
9 receive any monies from grant applicants. After a mortgage was cleared or paid, the  
10 Redwood Trust representative who referred the application was to receive 8 percent of the  
11 pay-off amount as a commission. The commissions were to be paid by Redwood Trust over  
12 and above the mortgage pay-off amounts, and from the same source of funds as the  
13 mortgage payments. (Test. of Haragan, Ex. A-5, A-13.)

14 9. The Redwood Trust application packet contained several forms. The cover sheet  
15 was entitled "Mortgage Clearance Instructions and Checklist." This document contained the  
16 following statement:

17 Please keep in mind that Redwood Trust is accepting your debt, not the asset.  
18 Your home is yours. We do not guarantee that we will be able to use the  
19 mortgage cancellation and/or settlement process successfully for your  
20 property. If for any reason we are unable to clear your mortgage and/or deed  
21 of trust, the entire fee paid for the mortgage cancellation and/or settlement  
22 process action will be fully refunded to you. Also within a five (5) day period  
23 of submission of this package, you are able to cancel the program and receive  
24 a full refund of any fees paid. (Ex. A-13.)

25 10. The checklist was followed by a "Client Information Mortgage Settlement  
26 Worksheet." The website worksheet had fields that could be filled in and the worksheet

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<sup>3</sup> As in the ALJ's Proposed Order, the Director also uses the terms "applicants," "mortgage grant applicants," "consumers" and "investors" interchangeably in this Order. They all refer to the individuals who applied for Redwood Trust mortgage grants.

1 printed with the information. This worksheet gathered basic information identifying the  
2 applicant, the property, the lender, the status of the mortgage, the pay-off amount, and either  
3 the pre-payment fee or the post pay-off fee as applicable. This worksheet was to be  
4 accompanied by a copy of the instrument evidencing the mortgage debt, a copy of the deed  
5 or document evidencing the interest in the property, and the most recent statement of the  
6 mortgage debt. (Ex. A-13.)

7 11. The settlement worksheet was followed by an "Assignment of Debt." This  
8 document was to be signed and notarized by the applicant and purported to assign the  
9 mortgage debt to Redwood Trust "upon the signing and witnessing [*sic*] recording of this  
10 document in the COUNTY RECORDER'S OFFICE OF THE STATE OF \_\_\_\_\_  
11 FOR THE COUNTY OF \_\_\_\_\_." There was no evidence that any assignment had  
12 actually been recorded anywhere. The document does not mention anything about  
13 requesting the lender's permission to make an assignment of debt. None of the applicants  
14 who testified stated that they had spoken to their lender about the assignment or had the  
15 lender's express consent to make an assignment. (Test. of Troxel, Gray, Reilly, Ex. A-13.)

16 12. The next document in the packet was an "Affidavit of Limited Power of  
17 Attorney." This document was to be signed and notarized and consisted of two paragraphs.  
18 The first paragraph gave Redwood Trust a 12-month Limited Power of Attorney "to  
19 negotiate and settle all debts on my behalf" and "to sign my name in furtherance of settling  
20 debts." The second paragraph stated the following:

21 Redwood Trust has a Limited Power of Attorney to place a lien or mortgage  
22 on the property located at \_\_\_\_\_, for the purpose of  
23 securing and disbursing funds to satisfy all fees and commissions due to  
24 others and with the balance going to Redwood Trust, from the elimination  
25 and/or settlement process. This may only be done if this mortgage and/or  
26 deed of trust are put through the same process as well. It is understood that no  
monies will be returning to the property owner except by special exception  
from this process and all mortgages and/or deeds of trust will be zeroed out at  
the end of this process.

1 The applicants and representatives (at least those who testified) did not have any  
2 understanding of what this paragraph meant. (Test. of Troxel, Gray, Reilly, Ex. A-13.)

3 13. The next document in the packet was a "Letter of Acceptance." This document  
4 was also to be signed and notarized by the "offeror(s)" [applicant]. Although the document  
5 purports to be an agreement or contract, there is no place for the "offeree" [Redwood Trust]  
6 to sign. The document contained the following statement:

7 Offeror(s) agrees to pay \$3000.00 to Redwood Trust for assistance in debt  
8 elimination and/or settlement of offeror's lien of Deed on Trust or Mortgage  
9 and \$2000.00 for each additional Deed of Trust. Mortgage, home equity loan,  
10 or line of credit. Offeror additionally agrees to a payment of a remaining fee  
11 of 100% of a mortgage amount based on 50% of the value of the property.  
12 Offeror(s) understand that each account number is handled as a separate  
13 issue. A nominal amount of \_\_\_\_\_ will be forwarded, along with  
14 requested documentation indicated elsewhere in this package of forms, as  
15 consideration of this offer and acceptance. \*\*\* Remaining payment will be  
satisfied as follows: \*\*\* Offeror(s) will secure additional mortgage through  
whatever means necessary to satisfy that remaining fee to Redwood Trust.  
\*\*\* Offeror(s) agree(s) to provide Offeree, Redwood Trust, with accurate,  
current and correct information to move forward with said debt elimination  
and/or settlement in a timely manner.

16 The applicants and representatives (at least those who testified) did not have any  
17 understanding of the purpose of this document. But the applicants (at least those who  
18 testified) did not have any confusion about the amounts they would be required to pay if  
19 their mortgage was paid by Redwood Trust. Prior to offering the mortgage pay-off program,  
20 Redwood Trust offered some kind of arbitration process where it attempted to negotiate or  
21 settle a mortgage in foreclosure. Redwood Trust did not start offering the mortgage pay-off  
22 grants until 2004. (Test. of Haragan, Troxel, Gray, Reilly, Ex. A-5, A-13.)

23 14. Haragan created a document entitled "Frequently Asked Questions," which  
24 restated the mortgage pay-off program for the benefit of Bountiful representatives. In that  
25 document, the following statement is made: "The Letter of Acceptance, is for the Bank  
26 Process, the Trust along with the Client become the Offeror, [*sic*] this form is not being used

1 at this time, however, we are still requesting that it be completed so that we do not have to  
2 request it in the future." Some representatives were instructed to draw an "X" across the  
3 entire page when submitting the packet. Some of the Letters of Acceptance in evidence are  
4 X'd out, and some are not. (Test. of Haragan, Troxel, Gray, Reilly, Ex. A-5, A-13.)

5 15. Following the Letter of Acceptance was a form of a Promissory Note to be  
6 signed and notarized by applicants for a foreclosure grant. Monthly payments were to  
7 commence "30 days from remittance of funds to mortgage lender." (Ex. A-13.)

8 16. Rex and Kathy Haragan created Bountiful LLC in the summer of 2004 to have  
9 more control and organization over how the Redwood Trust mortgage pay-off program was  
10 represented. In Redwood Trust there was no structure as to how representatives were  
11 brought into the process. The majority of people involved with Redwood Trust were  
12 primarily interested in paying off the mortgage on their own home, or homes owned by  
13 neighbors or family, and most of these were not in foreclosure. The Haragans felt the  
14 concept of helping people was losing out to the concept of selling people on making money.  
15 They wanted to turn that around with Bountiful LLC. Redwood Trust had a standard for  
16 representatives of referring one mortgage (in good standing) grant to one foreclosure grant.  
17 Haragan set a standard for Bountiful representatives of two foreclosure grants to one  
18 mortgage grant. (Test. of Haragan, Ex. A-5.)

19 17. Bountiful LLC had a three-tiered structure. Rex and Kathy Haragan held  
20 themselves out as National Coordinators. Underneath them, there were eight to ten Regional  
21 Coordinators. Although Bountiful had representatives in 12 states, Regional Coordinators  
22 did not have a geographic region, it was just a level within the hierarchy. Underneath the  
23 Regional Coordinators were Area Coordinators. If an Area Coordinator referred an applicant  
24 to Redwood Trust and the mortgage was paid, the Area Coordinator was to receive an 8  
25 percent commission, the Regional Coordinator was to receive a 4 percent commission, and  
26 the National Coordinators were to receive (together) a 4 percent commission. There were a

1 total of approximately 45 Bountiful representatives, with 12 of these located in Oregon.

2 (Test. of Haragan, Ex. A-5, A-21.)

3 18. The Regional Coordinators could bring in people (Area Coordinators) underneath  
4 them only with Haragan's permission. The new people had to speak directly with Haragan,  
5 they had to know what they were talking about, and they had to be computer literate. They  
6 had to agree to adhere to the same standards as the Haragans. Haragan had the final approval  
7 of these individuals to become Bountiful representatives. Haragan had them sign a  
8 "Bountiful, LLC Non-Circumvention, Non-Disclosure and Working Agreement." (Test. of  
9 Haragan, Ex. A-5, A-42.)

10 19. Once accepted, Haragan provided the Bountiful LLC representatives with their  
11 own personalized websites. Bountiful had the main website at [www.BountifulLLC.com](http://www.BountifulLLC.com).  
12 This served as a template for the individualized websites. If Haragan had constructed each  
13 website from scratch, each website would cost or be valued at \$2,000. Haragan spent only  
14 an hour or two personalizing each website. The domain name for the individual was  
15 reserved as [www.Bountiful\\_\\_\\_\\_.com](http://www.Bountiful____.com) with the individual's initials substituting for LLC. The  
16 application packet was personalized by showing the name of the representative referring the  
17 application. Other than the changes made to personalize the website, the website looked  
18 substantially the same as the Bountiful website, which in turn was substantially the same as  
19 the Redwood Trust website developed by Haragan. Each Bountiful representative was  
20 charged \$10 a year to reserve his or her domain name. (Test. of Haragan, Ex. A-5, A-13.)

21 20. To make commission payments, Redwood Trust decided to use the NWBA  
22 ATM/Debit card system. Bountiful Regional and Area Coordinators would receive their  
23 commission payments via electronic transfer to these cards at the same time that the  
24 mortgage was paid. The card system would allow the withdrawal of funds from ATMs or  
25 the representative could go to a website to transfer the funds to any existing bank account.  
26 These ATM/Debit cards cost \$29.95 and needed \$20 to be placed in the account to activate.

1 The monthly fee for the card was \$6.95. As an option, the representative could choose an E-  
2 money MasterCard that could be used like any other charge card. This card cost \$49.95 and  
3 needed \$50 to activate. The monthly fee was the same at \$6.95. These cards were available  
4 at [www.YourMoneyCard.com](http://www.YourMoneyCard.com) or from Bountiful LLC. In addition, Bountiful representatives  
5 paid Bountiful LLC \$5.00 for business cards (250 count). (Test. of Haragan, A-5, A-13.)

6 21. Christos Mandalides worked as a dancing instructor at the Greek Cusina in  
7 downtown Portland. Rex Haragan's stepson, Shawn McCorkle, also worked at the restaurant  
8 and told Mandalides about Redwood Trust. Mandalides was interested and attended a  
9 meeting at the Greek Cusina in August 2004, at which Rex and Kathy Haragan explained  
10 the mortgage pay-off program. Mandalides signed up that day to be a Bountiful LLC  
11 representative and paid the fees for the website, business and electronic cards. He received  
12 the personalized Bountiful website. Mandalides began recruiting applicants in September  
13 2004 after he received his business cards. The initial leads came from the Haragans who had  
14 subscribed to a real estate website that showed properties in foreclosure. After that,  
15 Mandalides began picking up a daily commerce journal and reviewing the legal notices of  
16 foreclosure sales. He personalized his own flyer, which identified him as an Area  
17 Coordinator for Bountiful LLC, but the content was copied from the Bountiful website. He  
18 would either mail the flyer or leave a copy at a prospective applicant's door, and call back  
19 later. Mandalides helped ten people apply for foreclosure grants. None of the people he  
20 helped paid any money up front. He understood that Redwood Trust was located in New  
21 York and that Ken Titus was the trustee. He understood that Redwood Trust would be  
22 getting money from overseas to invest to pay off the mortgages and that he would receive  
23 commissions from Redwood Trust if it was successful in paying off the mortgages of his  
24 applicants. Mandalides was active as a representative for Bountiful from September to  
25 November 30, 2004 (the date of the Cease and Desist Order). He estimates that he  
26 contributed a total of about 50 hours to this activity during that time period. In addition to

1 the up-front fees paid to Bountiful, Mandalides also paid for the cost of the flyers and  
2 postage out of his pocket. Mandalides never received any commissions. (Test. of Haragan,  
3 Mandalides, Ex. A-5, A-10, A-11.)

4 22. Mary Ann Mathis is Rex Haragan's aunt. She first heard about Redwood Trust  
5 from her sister. Mathis attended an informational meeting hosted by Rex and Kathy Haragan  
6 at the American Legion in Portland in July 2004. There were eight to ten people at the  
7 meeting. Mathis signed up to be an Area Coordinator for Bountiful. She received her  
8 business cards and personalized website. Mathis received lists of contacts from Rex and  
9 Kathy Haragan. Mathis would mail out a flyer on yellow colored paper. Mathis helped ten or  
10 eleven people apply for grants, all but two of which (her children) were foreclosure grants.  
11 She would forward the completed paperwork to Rex Haragan in Portland, who would then  
12 send it on to Redwood Trust. Mathis understood that the money was coming from Redwood  
13 Trust to pay off the mortgages and that she would receive commissions from Redwood Trust  
14 if it was successful in paying off the mortgages of applicants she helped. Mathis was an  
15 active Area Coordinator until the Cease and Desist Order issued on November 30, 2004.  
16 During the time she was active, she estimates that it cost her at least \$100 out of her pocket  
17 and that she devoted a total of about 70 hours to this activity. Mathis did not receive any  
18 commissions. (Test. of Haragan, Mathis, Ex. A-5, A-12, A-26.)

19 23. Michelle Troxel and Michael Gray are children of Mary Ann Mathis. They each  
20 applied for a mortgage grant through Mathis in September and October 2004. They each  
21 cashed in 401k accounts to pay the \$3,000 up-front fee to Redwood Trust. Their mortgages  
22 were never paid. They have not received a refund of their up-front payment. (Test. of  
23 Troxel, Gray, Ex. A-24, A-25.)

24 24. Fern Sanchez lives in Canby, Oregon. She is 67 years old, retired and disabled.  
25 She heard about the mortgage pay-off program through Kathy Haragan. In November 2004,  
26 Sanchez made an application to Redwood Trust for a mortgage grant to pay off her

1 mortgage balance of approximately \$85,000. Sanchez sent a cashier's check for \$3,000 by  
2 Federal Express payable to Redwood Trust on or about December 1, 2004, as an up-front  
3 fee. She first understood that her mortgage would be paid within 90 days. Sanchez was later  
4 told that there would be a delay, but that her mortgage would eventually be paid. Her  
5 mortgage was never paid and she has not received a return of her \$3,000. (Test. of Sanchez,  
6 Ex. A-23, A-37.)

7 25. During the times relevant to this proceeding, Jeffery Reilly had a house in Wood  
8 Village, Oregon. Around October 2004, he owed about \$224,000 on his mortgage and was  
9 in arrears by approximately \$8,500. He had already received a notice of foreclosure from the  
10 lender when he received information in the mail from Rex Haragan and Bountiful LLC  
11 regarding the Redwood Trust mortgage pay-off program. Reilly made an application to  
12 Redwood Trust for a foreclosure grant and signed a promissory note for \$5,000, promising  
13 to pay Redwood Trust, without interest, in 24 monthly payments commencing within 30  
14 days after Redwood Trust paid his mortgage. Based on information from Rex Haragan,  
15 Reilly believed that his mortgage would be paid within 60 days. After that deadline came  
16 and went, he was told weekly that the mortgage would be paid. The lender never received  
17 any funds from Redwood Trust and Reilly lost the home in foreclosure. Reilly never paid  
18 any moneys to Redwood Trust. (Test. of Reilly, Ex. A-29, A-38.)

19 26. Mary Ann Jimmerson lives in Lebanon, Oregon. She was losing her home of 27  
20 years after her husband passed away. Jimmerson had already moved out of the home on the  
21 advice of her realtor in order to sell the home. She heard about Redwood Trust through  
22 Riley Haragan, Rex Haragan's son. Jimmerson filled out the paperwork to apply to Redwood  
23 Trust for a foreclosure grant. Jimmerson received a copy of a Letter of Intent dated October  
24 13, 2004, mailed by Rex Haragan to her lender, First Horizon, informing the lender that her  
25 application for a grant had been accepted by Redwood Trust and that the grant would pay  
26 the mortgage in full. The letter stated: "Redwood Trust will release funds for this grant

1 within the next 60 days." The letter requested that the lender "temporarily withdraw this  
2 home from auction so Redwood Trust can pay this mortgage and keep Mary Ann Jimmerson  
3 in her home." The letter was signed by Rex Haragan, Bountiful LLC. The letter was on  
4 letterhead with a Bountiful LLC logo and a "Headquarters" address on SW Pacific Highway  
5 in Portland, Oregon, which was Rex Haragan's home address. Based on the acceptance and  
6 letter of intent, Jimmerson moved back into her home. The lender never received any funds  
7 from Redwood Trust to pay off the mortgage. The house was auctioned off on December 21,  
8 2004, and Jimmerson was given a seven-day eviction notice. (Test. of Jimmerson, Ex. A-  
9 27.)

10 27. From approximately July 2004 until March 2005, the United States Postal  
11 Inspection Service (USPIS), and the Internal Revenue Service, Criminal Investigation (IRS-  
12 CI) conducted an investigation of Redwood Trust and Ken Titus. On March 21, 2005, the  
13 Internal Revenue Service filed a Verified Complaint For Forfeiture In Rem in the United  
14 States District Court for the Northern District of New York, seizing funds in various  
15 accounts held by Redwood Trust and Ken Titus. The investigation revealed that  
16 approximately 954 individuals had sent money to Redwood Trust to have their mortgages  
17 paid, while eight others invested in another Redwood Trust program. Redwood Trust  
18 received a total of approximately \$4.2 million. Of the moneys received, approximately 2  
19 percent (\$93,000) was used to pay off one mortgage and the arrears on three others; and  
20 approximately 12 percent (\$502,000) was refunded to those who requested a refund. The  
21 remainder, more than \$3.6 million, was used either for the benefit of Redwood Trust or  
22 Titus. The funds were used to pay for payroll, utilities, office supplies, fixed assets, rent,  
23 license fees, travel, meals and other ordinary business expenses. From September 2003 to  
24 December 2004, Redwood Trust paid out at least \$358,000 in payroll and other expenses.  
25 (Ex. A-1.)

26 28. The mortgage grant applicants' funds were deposited in one Redwood Trust bank

1 account at Pioneer Savings Bank in New York, account number ending in 2965. These funds  
2 were pooled, rather than segregated into an individual account for each mortgage grant  
3 applicant. (Ex A-1 and Ex. A-2).<sup>4</sup>

4 29. Titus informed the government investigators that he was planning to transfer  
5 approximately \$2 million of the funds to participate in a program promising 100 percent  
6 return on his investment every few weeks. Titus stated that he received documents from a  
7 third party stating that a group of people, unknown to him, had investments and wanted the  
8 proceeds to go to a good cause. Titus stated that if he opened a joint account with the two  
9 men he had never met and deposited the \$2 million, they would allow Redwood Trust to  
10 take \$20 million a week. Titus also spoke about meeting an individual at a seminar in  
11 Detroit who intended to give Redwood Trust \$1.4 billion from the proceeds of Mexican gold  
12 sales, but the U.S. Government had tied up the funds. Titus also stated that a woman in  
13 California, whom he had not met, was interested in giving gold mine claims in the U.S. and  
14 abroad to organizations that help people. She claimed to have 50 gold mine claims valued at  
15 \$1 trillion. Titus expected to get at least one claim. (Ex. A-1.)

16 30. Initially, Titus told representatives that funds would be available to pay off  
17 mortgages in mid-September 2004. In weekly telephone conferences after that, Titus gave  
18 various explanations as to when the funds to pay off the mortgages and commissions would  
19 be available. The expected pay off date kept being pushed back month-by-month. (Test. of  
20 Haragan, Ex. A-5.)

21 31. Titus informed the government investigators that he was not a paid staff member  
22 of Redwood Trust. He was a volunteer and his only form of compensation was a car paid for  
23 by Redwood Trust and the payment of his personal medical expenses (which included  
24 treatment for a serious medical condition). Titus holds himself out as pastor of the God's

25 \_\_\_\_\_  
26 <sup>4</sup> The Director makes this additional finding of fact because the ALJ's Proposed Order did not fully and adequately set forth this material evidence in the record.

1 Saint's Christian Church. Among the items seized by the U.S. Government was a \$20,000  
2 Teller's Check dated March 16, 2004, payable to God's Saint's Christian Church and drawn  
3 on funds originally held in the Redwood Trust account. (Ex. A-1.)

4 32. The only known mortgage grant applicant through Bountiful to be paid by  
5 Redwood Trust was actually a land sales contract for the purchase of a doublewide mobile  
6 home by Shawn McCorkle, Rex Haragan's stepson. The pay-off amount was \$19,984.01,  
7 payable to Pacific Northwest Title by a check drawn on Pioneer Savings Bank of Troy, New  
8 York. The U.S. Government investigation identified this account as a Redwood Trust  
9 account. Rex Haragan spoke directly to Ken Titus about McCorkle's situation and urged the  
10 payment. Rex Haragan received a commission from Redwood Trust on the pay-off, which is  
11 the only known commission paid by Redwood Trust. (Test. of Haragan, Ex. A-1, A-5, R-6.)

12 33. The In Rem proceeding was followed by the Criminal Indictment filed in the  
13 U.S. District Court on July 21, 2005. The indictment alleges mail fraud and wire fraud by  
14 Ken Titus and Redwood Trust. The matter had not gone to trial as of the date of this  
15 proceeding. (Test. of Fitzgerald, Ex. A-2.)

16 34. Redwood Trust and Bountiful LLC did not register securities in the State of  
17 Oregon and there is no record of any federal covered security for which a notice has been  
18 filed and fees have been paid. (Test. of Smith, Stauffer, Ex. A-33, A-34, A-39.)

19 35. Ken Titus and Rex Haragan have not been licensed by the State of Oregon as  
20 securities salespersons, investment advisers or broker dealers since 1991. (Test. of Smith,  
21 Stauffer, Ex. A-33, A-34, A-39.)

22 36. Ken Titus and Rex Haragan were not registered with the Director of the  
23 Department of Consumer and Business Services as operating a debt-consolidating agency.  
24 (Test. of Smith, Stauffer, Ex. A-33, A-34, A-39.)

25 37. Redwood Trust and Bountiful LLC were not registered with the Director of the  
26 Department of Consumer and Business Services as a credit services organization. There was

1 no disclosure of the information required to be disclosed by a credit services organization.  
2 There was no statement revealing the existence of the required surety bond or irrevocable  
3 letter of credit in the amount of \$25,000, or a statement regarding the procedure for a  
4 consumer to recover damages by commencing an action on the bond or irrevocable letter of  
5 credit. There was no written agreement between Bountiful LLC and the consumer applicants  
6 detailing the credit services to be provided by Bountiful LLC. (Test. of Smith, Stauffer,  
7 Fitzgerald, Ex. A-33, A-34, A-37, A-38 A-39.)

8 38. The Director of the Department of Consumer and Business Services issued a  
9 Cease and Desist Order on November 30, 2004. It was served on Titus and Haragan and  
10 other Bountiful representatives. (Test. of Fitzgerald, A-5, A-36.)

#### 11 **CONCLUSIONS OF LAW<sup>5</sup>**

12 1. Titus was doing business in this state and is subject to the authority of the Director  
13 of the Department of Consumer and Business Services

14 2. The mortgage grants are investment contracts, and therefore securities.

15 3. Titus sold unregistered securities in Oregon.

16 4. Titus sold securities in Oregon without a securities license.

17 5. Titus made a misrepresentation or omission in connection with the sales of  
18 securities in Oregon.

19 6. Titus did not operate as or purport to be a debt-consolidating agency.

20 7. Titus did operate as a credit services organization doing business in this state.

21 8. Titus was not registered as a credit services organization.

22 9. Titus engaged in prohibited conduct while operating as a credit services  
23 organization.

24 ///

25 \_\_\_\_\_  
26 <sup>5</sup> The Director rejects the ALJ's proposed Conclusions of Law regarding the securities regulation violations and makes the following Conclusions of Law, as more fully explained in the Opinion.



1 legislature intended evidence of "doing business" independent of the securities activity to  
2 balance the equation. ALJ Tegger did not need to resolve this question because under the  
3 facts as found in this case, there was evidence to satisfy both prongs of the test even when  
4 viewed as independent of one another.

5 Titus engaged the services of an Oregon-based business, Window shades  
6 Multigraphics, to provide website development for Redwood Trust. Titus also had a  
7 relationship with another Oregon-based business, Northwest Business Advisors (NWBA), to  
8 promote its credit restoration program on the Redwood Trust website and also to use  
9 electronic ATM/debit cards offered through NWBA to pay the commissions to Redwood  
10 Trust representatives. These business relationships were independent of the mortgage grants  
11 and provide independent evidence of Titus and Redwood Trust "doing business" in Oregon.

12 The mortgage grants qualify as a security, and Titus and Redwood Trust engaged in  
13 securities activity in Oregon. First, there was the seminar in Portland in May 2004 where  
14 Titus appeared and spoke for about an hour on "Mortgage Elimination," promoting the  
15 mortgage grants offered by Redwood Trust. Second, there was the actual payoff by Titus  
16 and Redwood Trust of one mortgage (land sales contract) to an Oregon applicant. Third,  
17 through its web site, Redwood Trust solicited Oregon investors to apply for mortgage grants.  
18 Finally, Redwood Trust deposited upfront fees received from Oregon consumers, such as the  
19 cashier's check for \$3,000 payable to Redwood Trust from Fern Sanchez. This is sufficient  
20 to find that Titus and Redwood Trust "engaged in \* \* \* activity with respect to securities"  
21 while "doing business" in Oregon.

22 The Director of the Department of Consumer and Business Services has authority  
23 under ORS 59.235 to serve the Cease and Desist Order on Titus and Redwood Trust and to  
24 hold them to this proceeding.

25 ***B. Violations***

26 The Oregon Securities Law, ORS Chapter 59 and OAR Chapter 441, governs the

1 offer and sale of securities in Oregon. The underlying policy of Oregon's securities laws is  
2 "to afford the greatest possible protection to the public." *Badger v. Paulson Investment Co.*,  
3 311 Or 14, 20, 803 P2d 1178, 1181 (1991). Generally, the Oregon Securities Law requires  
4 that securities sold in Oregon must be registered with the Agency, those who offer and sell  
5 securities in Oregon must be licensed with the Agency, and securities transactions must be  
6 free from fraud. ORS 59.055, ORS 59.165, ORS 59.135.

7 The Redwood Trust grant program offered and sold to Oregon consumers by the  
8 Respondent is an investment contract, and therefore, a security. The Agency has no record  
9 of securities registration for the Redwood Trust grant program. The record in this case  
10 shows the Respondent was not licensed by the Agency to sell securities, that he offered to  
11 sell, and sold, securities to Oregon residents, and those securities were not registered with  
12 the Agency. Furthermore, Respondent made a misrepresentation of material fact in  
13 connection with the sale of securities in Oregon. The Director rejects the ALJ's Opinion  
14 section regarding securities because the ALJ's Proposed Order did not correctly apply the  
15 legal standard for determining whether the Redwood Trust mortgage grants are investment  
16 contracts, and therefore, securities.<sup>6</sup> The ALJ opined that the mortgage grants do not meet  
17 the criteria for an investment contract; however, the evidence in the record establishes an  
18 investment contract.<sup>7</sup> The ALJ's characterization of the mortgage grant transactions as "fee  
19 for service" is not supported by legal precedent or case law.

20 **1. The Redwood Trust mortgage grants are securities.**

21  
22  
23 <sup>6</sup> The ALJ's Proposed Order defines "security" at p. 22 using Webster's dictionary, instead of the applicable law, which is  
24 ORS 59.015(19)(a). Also, the ALJ gave undue weight to note cases such as *Great Western Bank & Trust v. Kotz*, 532 F2d  
25 1252 (9<sup>th</sup> Cir. 1976) and *Reves v. Ernst & Young*, 494 U.S. 56 (1990), which are not entirely on point in this matter. The  
26 ALJ's Proposed Order overlooked the pyramid scheme cases, such as *SEC v. Glenn W. Turner Enterprises* and *Webster v. Omnitrition Int'l*,  
79 F.3d 776 (9th Cir. 1996). Those Ninth Circuit cases have established that investments in pyramid schemes are  
investment contracts, and thus securities.

<sup>7</sup> The ALJ erred when he opined that horizontal commonality has not been shown in this case, and specifically, the ALJ's  
proposed order does not acknowledge the evidence in the hearing record that Redwood Trust and Ken Titus pooled the  
mortgage grant applicants' funds in a bank account in New York. Finally, the ALJ erred by reasoning that a fixed rate of  
return negated the consumers' expectations of profit.

1           The Redwood Trust mortgage grant program is an investment contract, and  
2 therefore, a security. According to ORS 59.015(19)(a), a security includes “a note, stock,  
3 bond, debenture, evidence of indebtedness . . . **investment contract.**” (Emphasis added).  
4 Case law has defined the term “investment contract.” The leading case defining investment  
5 contract is *SEC v. W.J. Howey* and is commonly referred to as the “*Howey test.*” *SEC v.*  
6 *W.J. Howey Co.*, 328 U.S. 293 (1946).

7           Oregon adopted a modified version of the *Howey test* in 1976. In Oregon, the  
8 elements of an investment contract are: (1) an investment of money (or money’s worth);  
9 (2) in a common enterprise; (3) with the expectation of a profit; (4) to be made through the  
10 management and control of others. *Pratt v. Kross*, 276 Or 483, 497, 555 P2d 765 (1976).

11           In this case, Oregon consumers Fern Sanchez, Michelle Troxel and Michael Gray  
12 invested money, or money’s worth, in the form of Jeffery A. Reilly’s promissory note, in the  
13 Redwood Trust grant program.

14           The Redwood Trust grant program was a common enterprise because the success of  
15 the consumers’ investments were interwoven with and dependent upon the efforts and  
16 success of Bountiful and Redwood Trust. Because Bountiful and Redwood Trust were not  
17 successful in arranging to have the home mortgages of consumers Fern Sanchez, Jeffery A.  
18 Reilly, Michelle Troxel, and Michael Gray paid off, those home mortgages were not paid  
19 off, and their investments of money (or money’s worth) in the Redwood Trust program were  
20 not successful.

21           The applicants for Redwood Trust mortgage grants expected to profit from the  
22 mortgage payoff program.<sup>8</sup> In this case, Fern Sanchez expected to profit by having the  
23 \$85,000 balance of her home mortgage paid within 90 days. Jeffery Reilly believed that his  
24

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25 <sup>8</sup> In Oregon, a cash payout or other form of money is not required to meet the expectation of profit element of an  
26 investment contract. For instance, the Oregon Court of Appeals has found favorable tax consequences to fulfill the  
expectation of profit element of an investment contract. *Black v. Corporation Division*, 54 Or App 432, 634 P2d 1383  
(1981).

1 mortgage of approximately \$224,000 would be paid within 60 days.

2 Finally, the profits were to be made through the management and control of others.  
3 The mortgage grant applicants depended on Redwood Trust and Bountiful LLC to arrange  
4 for their home mortgages to be paid off. The applicants had no control over whether  
5 Redwood would pay off those mortgages once they invested their money. Respondent  
6 acknowledged his plans to invest in a nebulous offshore deal to actually have the funds to  
7 pay off the investors' mortgages. These efforts were the significant managerial efforts that  
8 investors relied on to make the scheme succeed and pay off their mortgages. Because  
9 Bountiful and Redwood Trust did not succeed in arranging to have the home mortgages of  
10 consumers such as Fern Sanchez and Jeffery A. Reilly paid off, their home mortgages were  
11 not paid off.

12 **2. The securities that Respondent Kenneth G. Titus, Sr. dba Redwood Trust sold in**  
13 **Oregon were not registered with the Agency.**

14 ORS 59.055 prohibits any person from offering or selling any security in Oregon  
15 unless the security is registered, exempt, or a federal covered security for which a notice has  
16 been filed and fees have been paid. In its regular course of business, the Agency registers  
17 securities that are to be offered or sale in Oregon and maintains the records of securities  
18 registration for the State of Oregon. None of the notes, promissory notes, or investment  
19 contracts, offered or sold by Kenneth G. Titus, Sr., Redwood Trust, Rex A. Haragan, or  
20 Bountiful LLC. were registered or filed with the Agency.

21 The exemptions from securities registration under the Oregon Securities Law are  
22 provided by ORS 59.025 and ORS 59.035. The Redwood Trust grant program does not  
23 qualify for the exemptions allowed for government-issued securities, securities issued by  
24 banks, securities listed on the major stock exchanges such as the New York Stock  
25 Exchange, or any other exemption under ORS 59.025 or ORS 59.035. Therefore, the  
26 securities Respondent Titus offered to sell and sold were not registered in Oregon, not

1 exempt from registration, and not federal covered securities for which a notice had been  
2 filed with the Agency and a fee paid pursuant to ORS 59.049. The Respondent sold the  
3 securities in violation of ORS 59.055. Any person who violates ORS 59.055 is subject to a  
4 civil penalty of up to \$20,000 per violation, pursuant to ORS 59.995(1). The Director  
5 considers a \$5,000 civil penalty appropriate for the violations of ORS 59.055 committed by  
6 Respondents in this case.

7 **3. Respondent Kenneth G. Titus, Sr. dba Redwood Trust was not licensed to sell**  
8 **securities in Oregon.**

9       ORS 59.165 prohibits any person from transacting business in Oregon as a broker-  
10 dealer, investment adviser, or salesperson unless the person is licensed under the Oregon  
11 Securities Law. ORS 59.015(18)(a) defines "salesperson" as "a person, other than a broker-  
12 dealer, who represents or purports to represent a broker-dealer, issuer or owner of securities  
13 in effecting or attempting to effect in any manner transactions in securities." In this case,  
14 Redwood Trust was the issuer of the mortgage grant program. Respondent Titus, through  
15 the website he controlled, [www.redwoodtrust.net](http://www.redwoodtrust.net), acted as a salesperson for Redwood Trust.  
16 Redwood Trust accepted the cashier's check for \$3,000 from Fern Sanchez as part of the  
17 mortgage grant program. Also, Respondent Titus promoted the Redwood Trust program in  
18 Oregon in person at the NWBA "Spectacular Seminar" held in May 2004. Rex A. Haragan  
19 and other Bountiful representatives acted as agents for Respondent Titus and Redwood  
20 Trust.

21       In its regular course of business, the Agency licenses securities salespersons, broker-  
22 dealers and investment advisers and maintains records of those licenses. The agency has no  
23 record of securities license for Mr. Titus at any time material to this order. Mr. Titus acted  
24 as an unlicensed securities salesperson, in violation of ORS 59.165. Any person who  
25 violates ORS 59.165 is subject to a civil penalty of up to \$20,000 per violation, pursuant to  
26 ORS 59.995(1). The Director considers a \$5,000 civil penalty appropriate for the violations

1 of ORS 59.165 committed by Respondents in this case.

2 **4. Respondent Kenneth G. Titus, Sr. dba Redwood Trust made a misrepresentation of**  
3 **material fact in connection with the sales of securities in Oregon.**

4 Respondent Kenneth G. Titus, Sr. dba Redwood Trust misrepresented on the  
5 Redwood Trust website the time within which mortgages would be paid off. The Redwood  
6 Trust website represented as to both foreclosure and mortgage grants: "Grants are currently  
7 being completed in as little as 30-45 days." During telephone conferences, Titus gave  
8 Redwood Trust representatives various explanations as to when the funds to pay off the  
9 mortgages (and commissions) would be available, and the expected pay-off date kept being  
10 pushed back. By the time the Agency issued its order to cease and desist on November 30,  
11 2004, it is clear that foreclosure and mortgage grants were not being completed in as little as  
12 30-45 days, and that this representation was false and misleading.

13 The Respondents made a misrepresentation of material fact in connection with the  
14 sale of securities in Oregon, in violation of ORS 59.135. Any person who violates ORS  
15 59.135 is subject to a civil penalty of up to \$20,000 per violation, pursuant to ORS  
16 59.995(1). The Director considers a \$10,000 civil penalty appropriate for the violation of  
17 ORS 59.135 committed by Respondents in this case.

18 **II. DEBT CONSOLIDATING AGENCY**

19 The ALJ considered whether Titus and Redwood Trust were acting as a "debt  
20 consolidating agency" subject to registration and regulation under ORS 697.602 to 697.842.  
21 Under Oregon law, a person is operating as a "debt consolidating agency" if:

22 [T]he person in the regular course of the person's business directly or  
23 indirectly solicits, offers to take or takes anything of value belonging to the  
24 debtor or an assignment of the wages, salary, income, credits or any other  
thing of value of a debtor for the purpose of paying to any creditor of the

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1 debtor the debtor's wages, salary, income, credits or things of value, or the  
2 proceeds from the sale of the things of value.<sup>9</sup>

3 Money (income) was solicited and paid by mortgage debtors to Redwood Trust for  
4 "assistance in debt elimination." While the government investigation revealed that a small  
5 amount (2 percent) of the gross proceeds was used to pay off one mortgage (land sales  
6 contract) and the arrears on three others, this appears to have been an exception. The funds  
7 were being used primarily to pay operating expenses and Titus was actively seeking other  
8 sources of funds from which to pay off the mortgages.

9 The plain text of the statutory terms contemplates--taking a "thing of value" from *the*  
10 debtor for the purpose of paying to any creditor "of *the* debtor" the "thing of value" (or the  
11 proceeds from sale). The statute requires a one-to-one (debtor-to-creditor) payment to  
12 qualify as "debt consolidating." In this case, the mortgage creditors who actually received  
13 any funds (the mobile home land sales contract in Oregon and the three arrears) were paid  
14 from funds that came from other mortgage debtors, not the debtors whose mortgages were  
15 paid. This is not the type of transaction that qualifies as "debt consolidating."

16 The evidence does not preponderate in favor of finding Titus and Redwood Trust to  
17 have been operating as a "debt-consolidating agency." The funds solicited from the  
18 mortgage applicants (debtors) were being used primarily by Redwood Trust to pay operating  
19 expenses and were not intended to pay mortgage creditors. The Director concludes that  
20 Respondent did not engage in unregistered debt consolidating agency conduct.

21 \_\_\_\_\_  
22 <sup>9</sup> ORS 697.612(1) A person shall not operate as a debt-consolidating agency or in any way purport to be a debt-  
23 consolidating agency unless the person is first registered with the Director of the Department of Consumer and Business  
24 Services under ORS 697.632. For purposes of this section, a person operates as a debt consolidating agency and is subject  
25 to ORS 697.602 to 697.842 if the person in the regular course of the person's business directly or indirectly solicits, offers  
26 to take or takes anything of value belonging to the debtor or an assignment of the wages, salary, income, credits or any  
other thing of value of a debtor for the purpose of paying to any creditor of the debtor the debtor's wages, salary, income,  
credits or things of value, or the proceeds from the sale of the things of value.

(2) An employee of a debt-consolidating agency is not required to register with the director under subsection (1) of  
this section if the debt-consolidating agency is registered under ORS 697.632.

(3) Subsection (1) of this section is subject to the exemptions in ORS 697.622.

(4) A person who violates subsection (1) of this section is subject to ORS 697.762, 697.832 and 697.990 (3).

1 **III. CREDIT SERVICES ORGANIZATION**

2 *Registration*

3 Titus and Redwood Trust were acting as an unregistered "credit services  
4 organization" in violation of ORS 646.386. Under Oregon law, any person is operating as a  
5 "credit services organization" who:

6 [W]ith respect to the extension of credit by others, sells, provides, performs,  
7 or represents that the organization can or will sell, provide or perform, in  
8 return for the payment of money or other valuable consideration, any of the  
9 following services:

- 10 (A) Improving, saving or preserving a consumer's credit record,  
11 history or rating.
- 12 (B) Obtaining an extension of credit for a consumer.
- 13 (C) Providing advice, assistance, instruction or instructional materials  
14 to a consumer with regard to either subparagraph (A) or (B) of this  
15 paragraph.<sup>10</sup>

16 The pay off of a borrower's mortgage would have the effect of "improving, saving or  
17 preserving a consumer's credit record, history or rating." While the Redwood Trust website  
18 did not expressly state that its purpose in providing mortgage grants was to improve, save or  
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20 <sup>10</sup> ORS 646.386(2)(a) "Credit services organization" means any person who, with respect to the extension of credit by  
21 others, sells, provides, performs, or represents that the organization can or will sell, provide or perform, in return for the  
22 payment of money or other valuable consideration, any of the following services:

- 23 (A) Improving, saving or preserving a consumer's credit record, history or rating.
- 24 (B) Obtaining an extension of credit for a consumer.
- 25 (C) Providing advice, assistance, instruction or instructional materials to a consumer with regard to either  
26 subparagraph (A) or (B) of this paragraph.
- (b) "Credit services organization" does not include:
  - (A) Any person authorized to make loans or extensions of credit under the laws of this state or the United States  
who is subject to regulation and supervision by this state or the United States or a lender approved by the Secretary of  
Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act.
  - (B) Any financial institution, financial holding company or bank holding company as those terms are defined in  
ORS 706.008 or any subsidiary or affiliate of a financial institution, financial holding company or bank holding company.
  - (C) A mortgage banker or mortgage broker as defined in ORS 59.840.
  - (D) Any nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code,  
provided that the organization does not require a fee for its services and does not receive any money or other valuable  
consideration prior to the rendering of any services by the organization for the consumer.
  - (E) Any person licensed as a real estate broker or principal real estate broker by this state if the person is acting  
within the course and scope of that license.
  - (F) Any person licensed to practice law in this state if the person renders services within the course and scope of  
practice as an attorney.
  - (G) Any broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures  
Trading Commission if the broker-dealer is acting within the course and scope of that regulation.
  - (H) Any consumer reporting agency as defined in the Federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.
  - (I) Any licensee licensed under ORS chapter 725.

1 preserve an applicant's credit history; it is reasonable to infer from the following statements  
2 that this was at least part of the intent:

3 This aid, usually in the form of grants, is given to adults and families as a  
4 way to make a huge difference within their lives. Focusing first on homes,  
5 these grants and aids are provided for those who need help. Primarily starting  
6 with foreclosures but also allowing for distressed and near foreclosure homes.  
7 \* \* \* help families stay together in what can be one of the most stressful  
8 times, foreclosure or late house payments \* \* \* Foreclosures, child-support,  
9 credit card debt and medical expenses can tear families apart. We want to  
10 help strengthen them and give people a new lease on life. \* \* \* Like the  
11 popular movie a few years ago, we like to "Pay it forward."

12 In the case of the one mortgage (land sales contract) actually paid in Oregon,  
13 the mortgage pay off achieved the purpose of "saving or preserving" the creditor's  
14 credit history. Titus and Redwood Trust were "conducting business in this state" as a  
15 "credit services organization."

16 Titus and Redwood Trust were not registered as a "credit services  
17 organization" as required under ORS 646.386(1).<sup>11</sup> Agency sought a \$1,000 civil  
18 penalty for this violation, the amount of which was not contested. The Director may  
19 impose a civil penalty in an amount not to exceed \$1,000 per violation, pursuant to  
20 ORS 646.396. The Director considers a \$1,000 civil penalty appropriate for the  
21 violations of ORS 646.386 committed by the Respondents in this case.

22 *Misrepresentation*

23 Agency alleged that Titus and Redwood Trust engaged in prohibited conduct as a  
24 credit services organization by misrepresenting the nature of the services to be performed,  
25 the time within which the services would be performed, the ability of Redwood Trust to  
26 improve a consumer's credit report or credit rating, and the qualification, training or

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<sup>11</sup> ORS 646.386 (1) A credit services organization shall file a registration statement with the Department of Consumer and Business Services before conducting business in this state. The department by rule shall establish a registration system for credit services organizations. The system shall provide for annual renewals of registrations.

1 experience of the organization's personnel. ORS 646.384(1) provides:

2 A credit services organization, its salespersons, agents, representatives and  
3 independent contractors who sell or attempt to sell the services of a credit  
services organization shall not do any of the following:

4 (a) Misrepresent directly or indirectly in any advertising, promotional  
materials, sales presentation, or in any other manner:

5 (A) The nature of the services to be performed.

6 (B) The time within which the services will be performed.

7 (C) The ability to improve the consumer's credit report or credit  
rating.

8 (D) The amount or the type of credit a consumer can expect to receive  
as a result of the performance of the services offered.

9 (E) The qualifications, training or experience of the organization's  
personnel.

10 There was a misrepresentation as to the time within which the services would be  
11 performed. The Redwood Trust website represented as to both foreclosure and mortgage  
12 grants: "Grants are currently being completed in as little as 30-45 days." The record does  
13 not establish when the particular version of the Redwood Trust website that is in evidence  
14 was created and posted to the Internet for public viewing. It may be that this was an honest  
15 (perhaps optimistic) representation when originally made, but by Thursday, November 4,  
16 2004, when this version of the website (containing the representation) was downloaded and  
17 printed, it is clear from the evidence that this was no longer an accurate representation. At  
18 that time, the Redwood Trust representatives were being given various explanations by Titus  
19 in telephone conferences as to when the funds to pay off the mortgages (and commissions)  
20 would be available, and the expected pay-off date kept being pushed back. By the time the  
21 Cease and Desist Order was issued on November 30, 2004, it is clear that foreclosure and  
22 mortgage grants were not being completed in as little as 30-45 days, and that this  
23 representation was false and misleading. Agency sought a \$1,000 civil penalty for this  
24 violation, the amount of which was not contested. Titus and Redwood Trust misrepresented  
25 the time within which services would be performed, in violation of ORS 646.384. The  
26 Director may impose a civil penalty in an amount not to exceed \$1,000 per violation,

1 pursuant to ORS 646.396. The Director considers a \$1,000 civil penalty appropriate for the  
2 violations of ORS 646.384 committed by the Respondents in this case.

3 *Required Disclosures*

4 Titus and Redwood Trust failed to make the required disclosures as a credit services  
5 organization. ORS 646.390(1)<sup>12</sup> provides that the disclosures must be made before any  
6 agreement is entered into or before any money is paid. ORS 646.390(2) provides for the  
7 content of the required disclosure:

8 (a) A complete and accurate statement of the consumer's rights to  
9 review any file on the consumer maintained by any consumer reporting  
10 agency, as provided under the Federal Fair Credit Reporting Act, 15 U.S.C.  
11 1681 et seq.

12 (b) A statement that the consumer may review the consumer's file  
13 under paragraph (a) of this subsection at no charge if the request is made to  
14 the credit reporting agency within 30 days after receiving notice that credit  
15 has been denied.

16 (c) The approximate price the consumer will be charged by the credit  
17 reporting agency to review the consumer's file maintained by the credit  
18 reporting agency.

19 (d) A complete and detailed description of the services to be  
20 performed by the credit services organization for the consumer and the total  
21 amount the consumer will have to pay, or become obligated to pay, for the  
22 services.

23 (e) A statement detailing the existence and purpose of the surety bond  
24 or irrevocable letter of credit as described in ORS 646.388, and describing  
25 the procedure for commencing an action on the bond or irrevocable letter of  
26 credit.

(f) The name and address of the surety company or insured institution  
that issued the bond or irrevocable letter of credit.

(g) A statement that a written, signed agreement is necessary between the  
parties.

While the Redwood Trust application packet did provide a description of the services  
to be performed by Redwood Trust, there were confusing statements in the Letter of

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<sup>12</sup> ORS 646.390 (1) Before any agreement is entered into, or before any money is paid by a consumer, whichever occurs first, the credit services organization shall provide the consumer with written disclosure of the information described in subsection (2) of this section. The credit services organization shall maintain on file for a period of two years an exact copy of the disclosure statement, personally signed by the consumer, acknowledging receipt of a copy of the disclosure statement.

1 Acceptance regarding the total amount of fees the consumer was obligated to pay and  
2 whether the property was subject to a lien under the Limited Power of Attorney to secure the  
3 fees. Most of these documents seem to have been drafted in relation to a prior arbitration  
4 program that Redwood Trust offered to negotiate a settlement of mortgage debts. Under the  
5 mortgage grant program, few of these documents were necessary or served any purpose. To  
6 write out a check to a lender to pay off the mortgage balance, Redwood Trust only needed  
7 the information provided by the applicant on the Settlement Worksheet. Because there  
8 would be no direct interaction between the lender and Redwood Trust, there was no purpose  
9 in making an Assignment of Debt or requiring a Limited Power of Attorney. As for the fees,  
10 the website provided the applicant with all the relevant information, while the fee structure  
11 described in the Letter of Acceptance appears totally unrelated to the mortgage grant  
12 program. But despite all the confusing documents in the Redwood Trust application packet,  
13 none of the applicants who testified were confused about the mortgage grant program itself  
14 or the fees that would be required if a mortgage was paid by Redwood Trust. Thus, the  
15 evidence does not support a conclusion that there was a failure to disclose a "complete and  
16 detailed description of the services to be performed" or "the total amount the consumer will  
17 have to pay," as required under ORS 646.390(2)(d).

18 But the application packet did not contain any of the other required disclosures, and  
19 specifically did not reference any surety company or a bond or irrevocable letter of credit in  
20 the amount of \$25,000. There was no disclosure describing the procedure for commencing  
21 an action on the bond or irrevocable letter of credit. Thus, there was a failure to make  
22 disclosures as required under ORS 646.390(2)(e). Agency sought a \$1,000 civil penalty for  
23 this violation, the amount of which was not contested. Titus and Redwood Trust did not  
24 make the required disclosures as a "credit services organization," in violation of ORS  
25 646.390(2). The Director may impose a civil penalty in an amount not to exceed \$1,000 per  
26 violation, pursuant to ORS 646.396. The Director considers a \$1,000 civil penalty

1 appropriate for the violations of ORS 646.390(2) committed by the Respondents in this case.

2 **EXCEPTIONS**

3 Respondent Titus filed exceptions to the ALJ's Proposed Order.<sup>13</sup> The Director has  
4 reviewed the exceptions filed by Titus and concludes they are without merit.

5 Respondent's exceptions did not point to any law that the ALJ misapplied,  
6 misinterpreted, or failed to follow in this case. Also, the Respondent failed to point to  
7 evidence in the record that the ALJ overlooked, disregarded, or failed to give appropriate  
8 weight in reaching his decision.

9 *Respondent's Exception 1: Jurisdiction<sup>14</sup>*

10 Respondent's exception regarding jurisdiction raised no new issues. The ALJ  
11 properly denied Titus's motion challenging jurisdiction. The Director adopts this ruling by  
12 the ALJ. Respondent's first exception is without merit and is denied.

13 *Respondent's Exception 2: Discovery<sup>15</sup>*

14 Respondent Titus never provided any discovery to the Agency. Therefore, Titus  
15 forfeited his right to raise discovery objections in this case. Furthermore, the Agency met its  
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17 <sup>13</sup> Titus's exceptions were not timely filed. The ALJ issued his Proposed Order on July 24, 2006. The Notice  
18 of Review and Appeal Rights in the Proposed Order instructs parties to file exceptions with the Administrator  
19 of the Division of Finance and Corporate Securities. Respondent Titus filed his exceptions with the ALJ, and  
20 Special Assistant Attorney General Caroline Smith received a copy on August 23, 2006. The exceptions filed  
21 by Titus were forwarded from Caroline Smith to David Tatman, Administrator of the Division of Finance and  
22 Corporate Securities, on August 24, 2006. Because Titus's exceptions were not timely filed, the Director is not  
23 required to consider them. Nevertheless, the Director has reviewed Titus's exceptions and concludes they are  
24 without merit.

21 <sup>14</sup> Titus's exception to the ALJ's proposed order, with regard to jurisdiction, states: "Regardless of your and  
22 your predecessor's denial, your state has yet to prove how it has jurisdiction over me. Jurisdiction is *not* based  
23 on an administrative agency's 'statutory authority.' I've already covered this subject." Emphasis original.

22 <sup>15</sup> Titus's exception to the ALJ's proposed order, with regard to discovery, states: "On the bottom of the first  
23 page and carrying into the second, you explained how discovery supposedly advanced. At no time am I aware  
24 of *ever* receiving any certificate or notice of any kind from your state stating it had complied with my demand  
25 for disclosure. Two sure indicators the state failed to provide the full disclosure as demanded are (A) my and  
26 Mr. Haragan's 'Demand for Hearing and Disclosure' filed in early December were not provided to me with the  
usual 'Received' date stamp, and (B) Mr. Fitzgerald's affidavit indicated he had spoken to many persons  
around the country in the course of persecuting us for this case, yet despite the plain language of my Demand  
that *disclosure*, not *discovery*, include but not be limited to 'the investigative report and accompanying  
documents of Patrick A. Fitzgerald,' no notes he made during those conversations were ever included in any  
'discovery' provided by your state's prosecution." Emphasis original.

1 obligation to provide the Respondent with copies of the documents that the Agency intended  
2 to rely upon at hearing, and a list of witnesses, in advance of the hearing. In presenting its  
3 case, the Agency did not use documents that had not been provided to the Respondents prior  
4 to the hearing and did not call witnesses who were not on the witness list.

5 The Agency was never obligated to comply with Respondent's "demand for  
6 disclosure." Also, the Agency did not rely upon at hearing any "Demand for Hearing and  
7 Disclosure" or Patrick Fitzgerald's notes of conversations. Therefore, the Agency was not  
8 required to provide copies of them to Titus as part of discovery. In the Proposed Order, the  
9 ALJ referred to motions to dismiss based on lack of discovery made by Titus in February  
10 2006, March 2006, May 2006 and June 2006. Those motions were properly denied. The  
11 Director adopts these rulings by the ALJ. In his Proposed Order, the ALJ correctly  
12 determined that the Agency provided full discovery. Respondent's second exception is  
13 without merit and is denied.

14 *Respondent's Exception 3: Securities law violations<sup>16</sup>*

15 Respondent Titus's denial that he violated any [sic] "security laws" raised no new  
16 issues. Titus did not testify under oath at the hearing, did not subject himself to cross-  
17 examination, and he did not present any evidence. The blanket denial from Titus two months  
18 after the hearing was neither timely nor persuasive. Respondent's third exception is without  
19 merit and is denied.

20 Because they are without merit, all of Titus's exceptions to the ALJ's Proposed  
21 Order are denied. Respondent Titus did not file exceptions to the Amended Proposed Order.

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25 <sup>16</sup> Titus's exception to the ALJ's proposed order, with regard to the securities law violations, states: "Even if  
26 your state had jurisdiction, I deny I violated any security laws. How you made the leap from these laws you  
cited to my violating them is one I still do not understand. To me this is the same kind of mentality which  
produced the original accusation that Mr. Haragan and I were practicing dentistry without a license! I continue  
to stand on all my defenses previously made."

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**ORDER**

Based on the Findings of Fact and Conclusions of Law stated above, and the record of this matter, the director now issues the following ORDER:

1. The Director, pursuant to ORS 59.245 and ORS 646.386<sup>17</sup> hereby **ORDERS** Respondent Kenneth G. Titus, Sr. dba Redwood Trust to cease and desist from:

- (a) Offering or selling unregistered securities in Oregon, in violation of ORS 59.055;
- (b) Offering or selling securities without a license, in violation of ORS 59.165; and
- (c) Violating any provision of the Oregon Securities Law, including ORS Chapter 59 and OAR Chapter 441.

(d) Transacting any business as a credit services organization without first having registered with the Department of Consumer and Business Services, in violation of ORS 646.384; and

(e) Violating any provision of the Oregon law governing credit services organizations, including ORS Chapter 646 and OAR Chapter 441.

2. The Director, pursuant to ORS 59.045, hereby **DENIES** the Respondent Kenneth G. Titus, Sr. dba Redwood Trust the use of any securities or transaction exemption that would otherwise be available under ORS 59.025 or ORS 59.035.

3. The Director, hereby **ORDERS** Respondent Kenneth G. Titus, Sr. d/b/a Redwood Trust to pay the following **CIVIL PENALTIES**:

(a) \$5,000 for violation of ORS 59.055 (sale of unregistered securities), pursuant to ORS 59.995(1);

(b) \$5,000 for violation of ORS 59.165 (sale of securities by unlicensed person), pursuant to ORS 59.995(1);

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<sup>17</sup> The 2005 Oregon legislature clarified the Director's authority to issue an order to cease and desist. 2005 Or. Law Ch. 338 § 5.

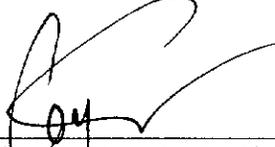
1 (c) \$10,000 for violation of ORS 59.135 (making a misrepresentation or omission of  
2 material fact in connection with sale of securities), pursuant to ORS 59.995(1);

3 (d) \$1,000 for violation of ORS 646.386 (operating as a credit services organization  
4 without being registered), pursuant to ORS 646.396;

5 (e) \$1,000 for violation of ORS 646.390 (failing to make required disclosures as a  
6 credit services organization), pursuant to ORS 646.396; and

7 (f) \$1,000 for violation of ORS 646.384 (prohibited conduct by a credit services  
8 organization), pursuant to ORS 646.396.

9 IT IS SO ORDERED. Dated this 15<sup>th</sup> day of June 2007 in Salem, Oregon.

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12 \_\_\_\_\_  
13 **CORY STREISINGER**, Director  
14 Department of Consumer and Business Services

15 ISSUANCE AND MAILING DATE:

16 June 18, 2007

17 **NOTICE OF REVIEW AND APPEAL RIGHTS**

18 NOTICE: You are entitled to judicial review of this Order by the Oregon Court of  
19 Appeals pursuant to the provisions of ORS 183.480 and 183.482. Judicial review may be  
20 obtained by filing with the court a petition for review within sixty (60) days from the service  
21 of this Order. If you file a petition, you are requested to also send a copy of the Division of  
22 Finance and Corporate Securities, Enforcement Section.

23 **NOTICE OF EFFECT OF FAILURE TO PAY CIVIL PENALTY AND COSTS**

24 You are hereby notified that, unless you timely appeal this Final Order, payment of  
25 the civil penalty is due within seventy (70) days after the date of service of this Final Order,  
26 and that if payment is not so made then, pursuant to ORS 183.745(6), the civil penalty will  
become a judgment against you that can be filed with the county clerk of any county in  
Oregon.

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- 1 Ex. A-33: DCBS Securities Registration Certification.
- 2 Ex. A-34: DCBS Securities Registration Certification.
- 3 Ex. A-35: Letter dated October 14, 2005 (and fax cover sheet).
- 4 Ex. A-36: Affidavit of Patrick A. Fitzgerald.
- 5 Ex. A-37: Affidavit of Fern Sanchez.
- 6 Ex. A-38: Affidavit of Jeffery A. Reilly.
- 7 Ex. A-39: Affidavit of David Stauffer.
- 8 Ex. A-40: Subpoena Duces Tecum.
- 9 Ex. A-42: Bountiful Associate Agreement.
- 10 Ex. R-1: Spectacular Seminar Flyer.
- 11 Ex. R-2: Letter dated May 31, 2006, from Don Curtis.
- 12 Ex. R-4: Letter dated December 2, 2004, from Theresa M. Soracco.
- 13 Ex. R-6: Escrow Deposit Receipt dated December 3, 2004.
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