BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:  )  CFL LICENSE NO.: 603-I709

THE COMMISSIONER OF BUSINESS OVERSIGHT,  )  CONSENT ORDER

Complainant,  )

v.  )

CHECK INTO CASH OF CALIFORNIA, INC.,  )

Respondent.  )

This Consent Order (Consent Order) is entered into between the Commissioner of Business Oversight (Commissioner) and Check Into Cash of California, Inc. and is made with respect to the following facts:

RECITALS

A. Check Into Cash of California, Inc. (CIC) is a California corporation with its principal place of business at 201 Keith Street SW, Suite 80, Cleveland, Tennessee 37311. CIC maintains a website at www.checkintocash.com. CIC is a finance lender licensed by the Commissioner pursuant
to the California Financing Law (Fin. Code, § 22000, et seq.) (CFL)\(^1\), with the license number 603-1709. As of December 31, 2016, CIC had over 150 locations in the state of California, each with its own individual CFL branch license number.

B. The Department of Business Oversight, through the Commissioner, has jurisdiction over the licensing and regulation of persons and entities engaged in the business of lending and brokering pursuant to the CFL.

C. The CFL is intended to: ensure an adequate supply of credit to borrowers in California; simplify, clarify, and modernize the law governing loans made by finance lenders; foster competition among finance lenders; protect borrowers against unfair practices by some lenders, having due regard for the interests of legitimate and scrupulous lenders; permit and encourage the development of fair and economically sound lending practices; and encourage and foster a sound economic climate in this state. (Fin. Code, § 22001(a).)

D. Steve Scoggins is the President of CIC and, as such, is authorized to enter into this Consent Order on behalf of CIC.

E. As a result of an examination of CIC branches, commencing on October 10, 2014, the Commissioner contends the following:

1) CIC paid for referrals of some of its CFL loan borrowers in violation of California Code of Regulations, title 10, section 1451(a);

2) CIC failed to adequately assess some borrowers’ ability to repay loans in violation of California Code of Regulations, title 10, section 1452;

3) CIC failed to permit some borrowers to make advance payments in any amount on any loan contract at any time in violation of Financial Code section 22337(c);

4) CIC charged some borrowers in excess of the rates of charges prescribed by Financial Code sections 22303 and 22304. Although these loans had principal amounts of $2,500.00 or more, therefore exceeding the regulatory ceilings in Financial Code sections 22303 and 22304, the

Commissioner contends according to Financial Code section 22251 that the loan amounts were chosen for the purpose of evading the regulatory ceiling provisions of the CFL; and

5) CIC made materially misleading statements or representations to some borrowers about the terms or conditions of their loans in violation of Financial Code section 22161, subdivision (a), in stating that it could not make loans of less than $2,500.00 because of state law.

F. The Commissioner finds that entering into this Consent Order is in the public interest and is consistent with the purposes fairly intended by the policy and provisions of the CFL.

NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions contained herein, the parties agree as follows:

TERMS AND CONDITIONS

1. **Purpose.** This Consent Order is entered into for the purpose of judicial economy and to avoid the expense and uncertainty of a hearing or other litigation.

2. **Finality of Consent Order.** CIC hereby agrees to comply with this Consent Order and stipulate that the Consent Order is hereby deemed final.

3. **Desist and Refrain Order.** In accordance with Financial Code section 22712, CIC stipulates that it is ordered to desist and refrain from violating Financial Code sections 22161(a), 22303, 22304, and 22337(c) and California Code of Regulations, title 10, sections 1451(a) and 1452.

4. **Waiver of Hearing Rights.** CIC acknowledges that the Commissioner is ready, willing, and able to proceed with the filing of an administrative enforcement action on the charges and Desist and Refrain Order contained in this Consent Order. CIC hereby waives the right to any hearings, and to any reconsideration, appeal, injunction, or other rights to review which may be afforded pursuant to the Financial Code, the California Administrative Procedure Act, the Code of Civil Procedure, or any other provision of law. CIC further expressly waives any requirement for the filing of an Accusation that may be afforded by Government Code section 11415.60, subdivision (b), the California Administrative Procedure Act, the Code of Civil Procedure, or any other provision of law. By waiving such rights, CIC effectively consents to this Consent Order and Desist and Refrain Order herein becoming final.
5. **Refund Calculation.** CIC shall make refunds to certain borrowers as follows:

   (a) CIC shall audit its files and identify all loans made under its various CFL licenses that were originated between January 1, 2012 and June 30, 2017 and on which an advance payment that would have reduced the outstanding principal balance on the loan to $1,700.00 or less if the entirety of the advance payment was applied to principal was received by CIC on the day of funding or up to one business day thereafter (Refund Population). CIC represents that it has already completed this audit and has identified 694 loans that constitute the Refund Population.

   (b) CIC shall recast each loan identified in the Refund Population as if the loan had complied with the regulatory ceiling provisions of Financial Code sections 22303 or 22304 and determine the amount of interest that should have been paid to CIC according to that recasting (Recast Interest Amount).

   (c) CIC shall subtract the Recast Interest Amount from the actual interest paid to CIC on each loan in the Refund Population (Interest Overcharge).

   (d) CIC shall refund 50 percent of the Interest Overcharge on each loan in the Refund Population to the applicable borrower (Refunds, or, individually, Refund). CIC represents that the total amount of the Refunds is $121,587.40.

   (e) CIC shall submit a report to the Commissioner detailing the Refund Population, each Recast Interest Amount, each Interest Overcharge and each Refund (Refund Population Report). The Commissioner acknowledges receipt of the Refund Population Report prior to the execution of this Consent Order.

6. **Refund Payments.** CIC shall make the Refunds as follows:

   (a) CIC shall make the Refunds no later than 60 days after the Effective Date of this Consent Order, as defined in Paragraph 28.

   (b) CIC shall submit evidence of such payment to the Commissioner no later than 90 days after the Effective Date of this Consent Order, as defined in Paragraph 28. Such evidence shall include a copy of the refund checks, loan balances, and, for assignees and borrowers of charged-off loans assigned to outside collections, advisements of outstanding balance reductions for each loan.
in the Refund Population, as applicable.

(c) Each Refund shall be applied as follows:

i. for current borrowers with open loans which have an outstanding balance of more than the Refund, by reducing the loan’s principal balance by the amount of the Refund;

ii. for current borrowers whose loans have an outstanding balance of less than the Refund, by reducing the loan’s principal balance to zero dollars ($0.00) and mailing a check for the remaining amount to the borrower;

iii. for former borrowers who repaid their loans in full and do not have any loans from CIC with an outstanding balance, by mailing a check for amount of the Refund; or

iv. for borrowers whose loans were charged off, by reducing the charged-off balance by the Refund amount. As to charged-off loans, CIC shall apply the reduction for the Refund amount directly to any loan it retained for collection and shall advise the assignee of the reduced outstanding balance for those assigned for collection. CIC shall also advise each borrower of a charged-off loan that has been assigned for collection of the reduction in outstanding balance by sending notice electronically to the borrower’s last known e-mail address in CIC’s records or, if the borrower has opted out of receiving electronic communications from CIC, by sending notice by U.S. mail to the borrower’s last known mailing address in CIC’s records.

(d) CIC shall escheat all checks that are not cashed to the California State Controller’s Office within the period provided by and in accordance with the Unclaimed Property Act. (Code of Civ. Proc., § 1500 et seq.).

7. **Investigative Fees.** CIC agrees to pay the Commissioner’s investigative fees in an amount of $18,238.11 within ten (10) days of execution of this Consent Order.

8. **Referral Program Compliance.** CIC represents that, as of January 20, 2017, it has suspended its new customer referral programs for its CFL loans and for transactions made under its California Deferred Deposit Transaction Law licenses. CIC shall not restart any such referral programs unless and until it receives prior written approval from the Commissioner.
9. **Underwriting Compliance.** CIC represents that, as of May 31, 2017, it has implemented underwriting procedures which take into account third-party credit reporting information for all new loans made under its CFL licenses. CIC shall maintain this practice unless and until it receives prior written approval from the Commissioner to do otherwise.

10. **Advance Payment Compliance.** CIC agrees that it shall allow borrowers to make advance payments in any amount on any loan contract at any time as provided by Financial Code section 22337.

11. **Bona Fide Principal Amount Compliance.** With respect to loans made pursuant to its CFL license, CIC shall comply with the following provisions unless and until it receives prior written approval from the Commissioner to do otherwise:

   (a) **Disclosure.** CIC represents that, as of January 20, 2017, it has implemented procedures under which all applicants for CFL loans will be required to document the loan amount requested on a CIC-provided form that discloses that CIC does not make loans of less than $2,500.00 in a clear and conspicuous manner (Loan Request Form).

   (b) **Notice of Adverse Action.** CIC shall deliver a Notice of Adverse Action to consumers who request a loan of less than $2,500.00 on a Loan Request Form. The Notice of Adverse Action shall advise the consumer that CIC does not offer loans of the amount requested.

   (c) **Training.** CIC represents that, as of January 20, 2017, it has implemented new training for all California employees that mandates certain actions as described below:

      i. If a California consumer contacts CIC inquiring about or applying for a loan and states at any point that he or she is interested in or desires to borrow an amount less than $2,500.00, CIC employees shall respond with a statement substantially similar to the following: “Check Into Cash does not make loans of less than $2,500.00. California law caps interest rates on loans of less than $2,500.00 at or about 30 percent, which is lower than the interest rates offered on loans made by Check Into Cash. If you want a loan of less than $2,500.00, you should consider whether another lender may offer such a loan to you.” The responsive statement shall not refer to the ability of borrowers to prepay at any time. CIC employees are not prohibited from advising the
prospective borrower about CIC’s prepayment policy, so long as the advisement is not in response to a question about whether CIC makes loans of less than $2,500.00 or in response to a statement of interest in or a desire to borrow an amount less than $2,500.00.

ii. If a California consumer contacts CIC inquiring about or applying for a loan and states at any point that he or she is interested in or desires to borrow an amount less than $2,500.00, CIC employees shall not reference any alleged interest savings of taking out a loan of $2,500.00 or more and making an early prepayment, unless they also contemporaneously disclose that those alleged interest savings would be many times greater if the prospective borrower took out a loan for less than $2,500.00 instead.

iii. If a California consumer contacts CIC inquiring about or applying for a loan and asks why CIC does not make loans of less than $2,500.00, CIC shall not claim that loans of less than $2,500.00 are prohibited under any California state laws, regulations, or rules.

(d) Employee Enforcement. CIC represents that, as of February 27, 2017, CIC implemented a periodic mystery shopper program to promote compliance with Paragraph 11(a)-(c) above.

(e) Monthly Internal Reviews. CIC agrees that no later than 60 days following the Effective Date of this Consent Order, as defined in Paragraph 28, CIC shall implement a monthly review of all CFL loans in which the borrower made a payment of $250.00 or more within two days of origination to ensure that proper procedures, including those in Paragraph 10, were followed. According to the methods described in Paragraphs 5 and 6, CIC shall recast and refund or credit any loan in which the borrower requested less than $2,500.00 and then made a payment of $250.00 or more within two days after origination. CIC agrees that it will make such refunds or credits to consumers no later than 90 days after the subject loan’s origination.

12. Proof of Compliance. It is agreed, and CIC acknowledges and understands, that the Commissioner will examine and review CIC’s compliance with Paragraphs 5 through 11. CIC hereby agrees to provide documentation satisfactory to the Commissioner in order to determine compliance with Paragraphs 5 through 11 upon the Commissioner’s request.
13. **Suspension of License for Failure to Comply.** CIC agrees that, if it fails to comply with any of the terms of this Consent Order, other than through inadvertent and isolated errors that shall be promptly and reasonably corrected by CIC upon CIC’s discovery of such errors and reported in detail to the Commissioner within five business days of such correction, CIC may be suspended from engaging in business under its CFL licenses upon the issuance of an order from the Commissioner until it provides evidence satisfactory to the Commissioner that the terms are met. CIC hereby waives any notice and hearing rights that may be afforded under Government Code section 11415.60, subdivision (b), the California Administrative Procedure Act, the Code of Civil Procedure, or any other provision of law to contest the immediate suspension. CIC acknowledges that the failure to provide documentation requested by the Commissioner in order to determine compliance, pursuant to Paragraph 12 of this Consent Order, shall constitute a failure to comply with this Consent Order.

14. **Consideration.** Except as set forth in Paragraph 13 of this Consent Order, in consideration of CIC’s agreement to the issuance of a final desist and refrain order, payment of refunds, and other relief as provided for herein, the Commissioner hereby agrees that she shall not suspend CIC’s CFL licenses as a result of this action.

15. **Full and Final Settlement.** The parties hereby acknowledge and agree that this Consent Order is intended to constitute a full, final, and complete resolution of the contentions outlined in Paragraph E of the Recitals above and that no further proceedings or actions will be brought by the Commissioner upon those contentions, excepting therefrom any proceeding to enforce compliance with the terms of this Consent Order, or action if such proceeding or action is based upon discovery of new and further violations of the CFL which do not form the basis for this Consent Order or which were knowingly or willfully concealed from the Commissioner by CIC. Further, this Consent Order may be revoked and the Commissioner may pursue any and all remedies available under law against CIC if the Commissioner later discovers that CIC knowingly or willfully withheld information used and relied upon in this Consent Order.
16. **Commissioner’s Duties.** The parties acknowledge and agree that nothing contained in this Consent Order shall operate to limit the Commissioner’s ability to assist any other agency (city, county, state or federal) with any prosecution, whether administrative, civil or criminal, brought by any such agency against CIC or any other person based upon any of the activities alleged in these matters or otherwise.

17. **Third Party Actions.** It is the intent and understanding between the parties that this Consent Order does not create any private rights or remedies against CIC, create any liability for CIC or limit defenses of CIC for any person or entity not a party to this Consent Order.

18. **Waiver, Amendments, and Modifications.** No waiver, amendment, or modification of this Consent Order will be valid or binding unless it is in writing and signed by all parties affected by it. Waiver of a provision of this Consent Order will not be deemed a waiver of any other provision.

19. **Integration.** This Consent Order is the final written expression and the complete and exclusive statement of all the agreements, conditions, promises, representations, and covenants between the parties concerning its subject matter and supersedes all discussion regarding such subject matter between the parties, their representatives, and any other person. Each of the parties represents and agrees that, in executing this Consent Order, it has placed no reliance on any statement, representation, or promise of any other party, or any other person or entity not expressly set forth herein, or upon the failure of any party or any other person or entity to make any statement, representation or disclosure of anything whatsoever. The parties have included this clause to preclude any claim that any party was in any way fraudulently induced to execute this Consent Order and to preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

20. **Independent Legal Advice.** Each party represents that it has received independent advice from its counsel or representatives regarding the advisability of executing this Consent Order.

21. **Headings.** The headings in this Consent Order are for convenience only and do not affect its meaning.
CONSENT ORDER

22. **Governing Law.** This Consent Order will be governed by and construed in accordance with the laws of the State of California.

23. **No Presumption Against Drafting Party.** Each party acknowledges that it has had the opportunity to draft, review, and edit the language of this Consent Order. Accordingly, no presumption for or against the drafting party should apply in construing any part of this Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or corresponding provisions of any successor statute, which provide that in cases of uncertainty, language of a contract should be interpreted most strongly against the party that caused the uncertainty to exist.

24. **Voluntary Agreement.** CIC enters into this Consent Order voluntarily and without coercion and acknowledges that no promises, threats, or assurances about this Consent Order have been made by the Commissioner or any of her officers or agents.

25. **Authority to Sign.** Each party represents that the person signing this Consent Order on its behalf has the authority and capacity to do so.

26. **Counterparts.** This Consent Order may be executed in any number of counterparts, each of which will be deemed an original when executed. All counterparts together will be deemed to constitute a single document.

27. **Signatures.** A signature delivered by facsimile or electronic mail will be deemed an original signature.

28. **Effective Date.** This Consent Order shall not become effective until signed by all parties and delivered by the Commissioner’s counsel by email to Jake Proffitt, CIC’s Associate General Counsel.

29. **Public Record.** Respondent acknowledges that this Consent Order is a public record.
CONSENT ORDER

Dated: 12/11/17

JAN LYNN OWEN
Commissioner of Business Oversight

By
Mary Ann Smith
Deputy Commissioner

Dated: 12/11/17

CHECK INTO CASH OF CALIFORNIA, INC.

By
Steve Scoggins
President