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9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) CFL LICENSE NO.: 603-I709
13)
14 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
15)
16 Complainant,)
17 v.)
18 CHECK INTO CASH OF CALIFORNIA, INC.,)
19 Respondent.)
_____)

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

24 **RECITALS**

25 A. Check Into Cash of California, Inc. (CIC) is a California corporation with its principal
26 place of business at 201 Keith Street SW, Suite 80, Cleveland, Tennessee 37311. CIC maintains a
27 website at www.checkintocash.com. CIC is a finance lender licensed by the Commissioner pursuant
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1 to the California Financing Law (Fin. Code, § 22000, et seq.) (CFL)¹, with the license number 603-
2 I709. As of December 31, 2016, CIC had over 150 locations in the state of California, each with its
3 own individual CFL branch license number.

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

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

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

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

- 17 1) CIC paid for referrals of some of its CFL loan borrowers in violation of
18 California Code of Regulations, title 10, section 1451(a);
- 19 2) CIC failed to adequately assess some borrowers' ability to repay loans in
20 violation of California Code of Regulations, title 10, section 1452;
- 21 3) CIC failed to permit some borrowers to make advance payments in any amount
22 on any loan contract at any time in violation of Financial Code section 22337(c);
- 23 4) CIC charged some borrowers in excess of the rates of charges prescribed by
24 Financial Code sections 22303 and 22304. Although these loans had principal amounts of \$2,500.00
25 or more, therefore exceeding the regulatory ceilings in Financial Code sections 22303 and 22304, the

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27 ¹ Effective October 4, 2017, the name of the "California Finance Lenders Law" changed to the "California Financing
28 Law." (Assem. Bill No. 1284 (2017-2018 Reg. Sess.) § 4.) For purposes of this document, a reference to the California
Financing Law means the California Finance Lenders Law before October 4, 2017 and the California Financing Law on
and after that date. (Cal. Fin. Code, § 22000.)

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

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

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

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

10 **TERMS AND CONDITIONS**

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

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

15 3. **Desist and Refrain Order.** In accordance with Financial Code section 22712, CIC
16 stipulates that it is ordered to desist and refrain from violating Financial Code sections 22161(a),
17 22303, 22304, and 22337(c) and California Code of Regulations, title 10, sections 1451(a) and 1452.

18 4. **Waiver of Hearing Rights.** CIC acknowledges that the Commissioner is ready,
19 willing, and able to proceed with the filing of an administrative enforcement action on the
20 charges and Desist and Refrain Order contained in this Consent Order. CIC hereby waives the
21 right to any hearings, and to any reconsideration, appeal, injunction, or other rights to review which
22 may be afforded pursuant to the Financial Code, the California Administrative Procedure Act, the
23 Code of Civil Procedure, or any other provision of law. CIC further expressly waives any
24 requirement for the filing of an Accusation that may be afforded by Government Code section
25 11415.60, subdivision (b), the California Administrative Procedure Act, the Code of Civil Procedure,
26 or any other provision of law. By waiving such rights, CIC effectively consents to this Consent
27 Order and Desist and Refrain Order herein becoming final.
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1 5. **Refund Calculation.** CIC shall make refunds to certain borrowers as follows:

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

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

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

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

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

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

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

24 (b) CIC shall submit evidence of such payment to the Commissioner no later than
25 90 days after the Effective Date of this Consent Order, as defined in Paragraph 28. Such evidence
26 shall include a copy of the refund checks, loan balances, and, for assignees and borrowers of charged-
27 off loans assigned to outside collections, advisements of outstanding balance reductions for each loan
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1 in the Refund Population, as applicable.

2 (c) Each Refund shall be applied as follows:

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

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

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

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

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

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

24 8. **Referral Program Compliance.** CIC represents that, as of January 20, 2017, it has
25 suspended its new customer referral programs for its CFL loans and for transactions made under its
26 California Deferred Deposit Transaction Law licenses. CIC shall not restart any such referral
27 programs unless and until it receives prior written approval from the Commissioner.

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1 9. **Underwriting Compliance.** CIC represents that, as of May 31, 2017, it has
2 implemented underwriting procedures which take into account third-party credit reporting
3 information for all new loans made under its CFL licenses. CIC shall maintain this practice unless
4 and until it receives prior written approval from the Commissioner to do otherwise.

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

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

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

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

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

20 i. If a California consumer contacts CIC inquiring about or applying for a
21 loan and states at any point that he or she is interested in or desires to borrow an amount less than
22 \$2,500.00, CIC employees shall respond with a statement substantially similar to the following:
23 “Check Into Cash does not make loans of less than \$2,500.00. California law caps interest rates on
24 loans of less than \$2,500.00 at or about 30 percent, which is lower than the interest rates offered on
25 loans made by Check Into Cash. If you want a loan of less than \$2,500.00, you should consider
26 whether another lender may offer such a loan to you.” The responsive statement shall not refer to the
27 ability of borrowers to prepay at any time. CIC employees are not prohibited from advising the
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1 prospective borrower about CIC's prepayment policy, so long as the advisement is not in response to
2 a question about whether CIC makes loans of less than \$2,500.00 or in response to a statement of
3 interest in or a desire to borrow an amount less than \$2,500.00.

4 ii. If a California consumer contacts CIC inquiring about or applying for a
5 loan and states at any point that he or she is interested in or desires to borrow an amount less than
6 \$2,500.00, CIC employees shall not reference any alleged interest savings of taking out a loan of
7 \$2,500.00 or more and making an early prepayment, unless they also contemporaneously disclose
8 that those alleged interest savings would be many times greater if the prospective borrower took out a
9 loan for less than \$2,500.00 instead.

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

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

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

24 12. Proof of Compliance. It is agreed, and CIC acknowledges and understands, that the
25 Commissioner will examine and review CIC's compliance with Paragraphs 5 through 11. CIC
26 hereby agrees to provide documentation satisfactory to the Commissioner in order to determine
27 compliance with Paragraphs 5 through 11 upon the Commissioner's request.

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

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

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

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

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

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

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

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

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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.

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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