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

13 In the Matter of:) CFL LICENSE NO. 605-3535
14 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
15)
16 Complainant,)
17 v.)
18 QUICK CASH FUNDING, LLC,)
19 Respondent.)

21 This Consent Order (Consent Order) is entered into between the Commissioner of Business
22 Oversight (Commissioner) and Quick Cash Funding, LLC (collectively with the Commissioner, the
23 Parties and each, a Party) and is made with respect to the following facts:

24 **RECITALS**

25 A. Quick Cash Funding, LLC (QC) is a California limited liability company with its
26 principal place of business at 777 North First Street, Suite 420, San Jose, California 95112. QC is a
27 finance lender licensed by the Commissioner pursuant to the California Financing Law (Fin. Code, §
28

1 22000, et seq.) (CFL)¹, with the license number 605-3535. As of December 31, 2016, QC had 9
2 locations in the state of California, each with its own individual CFL branch license number.

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

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

12 D. Mike Shim is the chief executive officer of QC and, as such, is authorized to enter into
13 this Consent Order on behalf of QC.

14 E. Resulting from a companywide regulatory examination of QC, commencing on
15 August 10, 2015, the Commissioner found that QC charged some borrowers in excess of the rates of
16 charges prescribed by Financial Code sections 22303, 22304, and 22305. Although these loans had
17 principal amounts of \$2,500.00 or more, therefore exceeding the regulatory ceilings in Financial
18 Code sections 22303, 22304 and 22305, the Commissioner found, according to Financial Code
19 section 22251, that the loan amounts were chosen for the purpose of evading the regulatory ceiling
20 provisions of the CFL.

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

23 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions

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

1 contained herein, the parties agree as follows:

2 **TERMS AND CONDITIONS**

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

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

7 3. **Desist and Refrain Order.** In accordance with Financial Code section 22712, QC
8 stipulates that it is ordered to desist and refrain from violating Financial Code sections 22303, 22304,
9 and 22305.

10 4. **Waiver of Hearing Rights.** QC acknowledges that the Commissioner is ready,
11 willing, and able to proceed with the filing of an administrative enforcement action on the
12 charges and Desist and Refrain Order contained in this Consent Order. QC hereby waives the
13 right to any hearings, and to any reconsideration, appeal, injunction, or other rights to review which
14 may be afforded pursuant to the Financial Code, the California Administrative Procedure Act, the
15 Code of Civil Procedure, or any other provision of law. QC further expressly waives any
16 requirement for the filing of an Accusation that may be afforded by Government Code section
17 11415.60, subdivision (b), the California Administrative Procedure Act, the Code of Civil Procedure,
18 or any other provision of law. By waiving such rights, QC effectively consents to this Consent
19 Order and Desist and Refrain Order herein becoming final.

20 5. **Refund Calculation.** QC shall make refunds to certain borrowers as follows:

21 (a) QC shall audit its files and identify all loans made under its various CFL
22 licenses that were originated between January 1, 2012 and December 31, 2016 and on which an
23 advance payment of \$250.00 or more was received by QC on the day of funding or up to two days
24 thereafter (Refund Population). QC represents that it has already completed this audit and has
25 identified 423 loans that constitute the Refund Population.

26 (b) QC shall recast each loan identified in the Refund Population as if the loan had
27 complied with the regulatory ceiling provisions of Financial Code sections 22303, 22304 and 22305
28 and determine the amount of interest that should have been paid to QC according to that recasting

1 (Recast Interest Amount).

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

4 (d) QC shall refund 40 percent of the Interest Overcharge on each loan in the
5 Refund Population to the applicable borrower (Refunds, or, individually, Refund). QC represents
6 that the total amount of the Refunds is Fifty Eight Thousand, Two Hundred Thirty One U.S. Dollars
7 and Eight Cents (\$58,231.08).

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

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

13 (a) QC shall make the Refunds no later than 90 days after the Effective Date of
14 this Consent Order, as defined in Paragraph 27.

15 (b) QC shall submit evidence of such payment to the Commissioner no later than
16 120 days after the Effective Date of this Consent Order, as defined in Paragraph 27. Such evidence
17 shall include a copy of the refund checks, loan balances, and, for assignees and borrowers of charged-
18 off loans assigned to outside collections, advisements of outstanding balance reductions for each loan
19 in the Refund Population. Evidence shall be sent to the Commissioner via Adam Wright, Senior
20 Counsel, 320 West 4th St., Suite 750, Los Angeles, CA 90013-2344.

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

22 i. for current borrowers whose loans have an outstanding balance of more
23 than the Refund, by reducing the loan's principal balance of current borrowers who have an
24 outstanding balance in excess of the Refund owed;

25 ii. for current borrowers whose loans have an outstanding balance of less
26 than the Refund, by reducing the loan's principal balance and mailing a check for the remaining
27 amount to the borrower;

28 iii. for former borrowers who repaid their loans in full and do not have any

1 loans from QC with an outstanding balance, by mailing a check for amount of the Refund; or
2 iv. for borrowers whose loans were charged off by the Refund amount, by
3 reducing the charged-off balance. As to charged-off loans, QC shall apply the reduction for the
4 Refund amount directly to any loan it retained for collection and shall advise the assignee of the
5 reduced outstanding balance for those assigned for collection. QC shall also advise each borrower of
6 a charged-off loan that has been assigned for collection of the reduction in outstanding balance by
7 sending notice electronically to the borrower's last known e-mail address in QC's records or, if the
8 borrower has opted out of receiving electronic communications from QC, by sending notice by U.S.
9 mail to the borrower's last known mailing address in QC's records.

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

13 7. **Penalty.** QC agrees to pay the Commissioner a penalty in the amount of Seven
14 Thousand and Seven Hundred U.S. Dollars (\$7,700.00). The Commissioner acknowledges receipt of
15 the payment of the penalty from QC contemporaneously with the execution of this Consent Order.

16 8. **Investigative Fees.** QC agrees to pay the Commissioner's investigative fees in an
17 amount of Two Thousand (\$2,000.00). The Commissioner acknowledges receipt of the payment of
18 investigative fees from QC contemporaneously with the execution of this Consent Order.

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

22 10. **Bona Fide Principal Amount Compliance.** QC shall comply with the following
23 provisions unless and until it receives prior written approval from the Commissioner to do otherwise:

24 (a) **Disclosure.** QC represents that it has implemented procedures under which all
25 applicants for CFL loans will receive a form that discloses, in a clear and conspicuous manner, that
26 QC does not make loans of less than \$2,500.00 and that California law caps interest rates on loans of
27 less than \$2,500.00 at or about 30 percent, which is lower than the interest rates offered on loans
28 made by QC.

1 (b) Training. QC represents that it has implemented new training for all California
2 employees that mandates certain actions as described below:

3 i. If a California consumer contacts QC inquiring about or applying for a
4 loan and states at any point that he or she is interested in or desires to borrow an amount less than
5 \$2,500.00, QC employees shall respond with a statement substantially similar to the following:
6 “Quick Cash does not make loans of less than \$2,500.00. California law caps interest rates on loans
7 of less than \$2,500.00 at or about 30 percent, which is lower than the interest rates offered on loans
8 made by Quick Cash. If you want a loan of less than \$2,500.00, you should consider whether another
9 lender may offer such a loan to you.” The responsive statement shall not refer to the ability of
10 borrowers to prepay at any time. QC employees are not prohibited from advising the prospective
11 borrower about the borrower’s right to prepay pursuant to Financial Code Section 22337, so long as
12 the advisement is not in response to a question about whether QC makes loans of less than \$2,500.00
13 or in response to a statement of interest in or a desire to borrow an amount less than \$2,500.00.

14 ii. If a California consumer contacts QC inquiring about or applying for a
15 loan and states at any point that he or she is interested in or desires to borrow an amount less than
16 \$2,500.00, QC employees shall not reference any alleged interest savings of taking out a loan of
17 \$2,500.00 or more and making an early prepayment, unless they also contemporaneously disclose
18 that those alleged interest savings would be many times greater if the prospective borrower took out a
19 loan for less than \$2,500.00 instead.

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

23 (c) Monthly Reviews. QC agrees that no later than 30 days following the
24 Effective Date of this Consent Order, as defined in Paragraph 27, QC shall implement a monthly
25 review of all CFL loans in which the borrower made a payment of \$250.00 or more within two days
26 of origination to ensure that proper procedures, including those in Paragraph 9, were followed.

27 11. Proof of Compliance. It is agreed, and QC acknowledges and understands, that the
28 Commissioner will examine and review QC’s compliance with Paragraphs 5 through 10. QC hereby

1 agrees to provide documentation satisfactory to the Commissioner in order to determine compliance
2 with Paragraphs 5 through 10 upon the Commissioner's request.

3 12. **Suspension of License for Failure to Comply.** QC agrees that, if it fails to comply
4 with Paragraphs 5 through 11 of this Consent Order, other than through inadvertent and isolated
5 errors that are promptly corrected by QC within fourteen (14) business days with notice of such
6 correction provided to the Commissioner within seven (7) business days of correction, QC may be
7 summarily suspended from engaging in business under its CFL licenses until it provides evidence
8 satisfactory to the Commissioner that the terms are met. QC hereby waives any notice and hearing
9 rights that may be afforded under Government Code section 11415.60, subdivision (b), the California
10 Administrative Procedure Act, the Code of Civil Procedure, or any other provision of law to contest
11 the immediate suspension. QC acknowledges that the failure to provide documentation requested by
12 the Commissioner in order to determine compliance, pursuant to Paragraph 11 of this Consent Order,
13 shall constitute a failure to comply with this Consent Order.

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

19 14. **Full and Final Settlement.** The parties hereby acknowledge and agree that this
20 Consent Order is intended to constitute a full, final, and complete resolution of the findings outlined
21 in Paragraph E of the Recitals above and that no further proceedings or actions will be brought by the
22 Commissioner upon those findings, excepting therefrom any proceeding to enforce compliance with
23 the terms of this Consent Order, or action if such proceeding or action is based upon discovery of
24 new and further violations of the CFL which do not form the basis for this Consent Order or which
25 were knowingly or willfully concealed from the Commissioner by QC. Further, this Consent Order
26 may be revoked and the Commissioner may pursue any and all remedies available under law against
27 QC if the Commissioner later discovers that QC knowingly or willfully withheld information used
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1 and relied upon in this Consent Order. In entering into this Consent Order, QC neither admits nor
2 denies liability for the findings in Paragraph E of the recitals above.

3 15. **Commissioner's Duties.** The parties acknowledge and agree that nothing contained
4 in this Consent Order shall operate to limit the Commissioner's ability to assist any other agency
5 (city, county, state or federal) with any prosecution, administrative, civil or criminal, brought by any
6 such agency against QC or any other person based upon any of the activities alleged in these matters
7 or otherwise.

8 16. **Third Party Actions.** It is the intent and understanding between the parties that this
9 Consent Order does not create any private rights or remedies against QC, create any liability for QC,
10 create any contractual third party beneficiaries, or limit defenses of QC for any person or entity not a
11 party to this Consent Order.

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

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

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

1 20. **Headings.** The headings in this Consent Order are for convenience only and do not
2 affect its meaning.

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

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

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

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

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

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

21 27. **Effective Date.** This Consent Order shall not become effective until signed by all
22 parties and delivered by the Commissioner’s counsel by email to QC’s outside counsel for this
23 matter, Alan Abergel, at alan@abergellaw.com.

24 28. **Public Record.** Respondent acknowledges that this Consent Order is a public record.

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Dated: 12/12/17 JAN LYNN OWEN
Commissioner of Business Oversight

By _____
Mary Ann Smith
Deputy Commissioner

Dated: 12/11/17 QUICK CASH FUNDING, LLC

By _____
Mike Shim
Chief Executive Officer