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8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA

11
12 In the Matter of:) CFL FILE NO.: 603-K124
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
14)
15 Complainant,)
16 v.)
17 AVANT OF CALIFORNIA, LLC,)
18 Respondent.)
19)
20)
21)

22 This Consent Order (Consent Order) is entered into by and between the Commissioner of
23 Business Oversight (Commissioner) and Avant of California, LLC (Avant).

24 **I.**
25 **Recitals**

26 A. Avant of California, LLC is a Delaware limited liability company organized in 2012
27 with its principal place of business at 222 North LaSalle Street, Suite 1700, Chicago, Illinois 60601.
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1 B. Avant has been licensed as a finance lender under the California Financing Law¹ (Fin.
2 Code, § 22000, et seq.) (CFL), license number 603-K124, since March 21, 2013. Avant does not
3 have a license to act as a broker under the CFL.

4 C. Ryan McLennan is the General Counsel and Secretary of Avant. Ryan McLennan is
5 authorized to enter into this Consent Order on behalf of Avant.

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

9 E. During an examination of Avant under the CFL commencing on October 26, 2015, the
10 Commissioner determined the following (Examination Findings):

11 Avant's Payments for Pre-Qualification Referral Services

12 i. In 2015 and 2016, in connection with loans Avant made under the CFL, Avant
13 paid two website operators, who either were not licensed as a broker under the CFL or were not
14 conducting the service under a CFL broker license (Website(s)), for pre-qualification referral
15 services, which are described in detail below.

16 ii. The Websites offered consumers the opportunity to inquire as to personalized
17 loan offers and terms from Avant and other lenders.

18 iii. Consumers completed forms provided by the Websites in order to receive pre-
19 qualified offers from Avant and other lenders. The forms requested consumers' confidential
20 information, such as income, employment, and social security number. Consumers also provided the
21 Websites with authorizations for Avant and other lenders to perform credit checks.

22 iv. The Websites transmitted consumers' forms and credit check authorizations to
23 Avant and other lenders.

24 v. Avant reviewed consumers' forms and performed credit checks to determine
25 whether and on what terms Avant could pre-qualify the consumer for a personal loan. Such an offer
26

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 Consent Order, 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. (Fin. Code, § 22000.)

1 is commonly referred to as a pre-qualified offer.

2 vi. If Avant decided to make a consumer an offer, Avant submitted the offer to the
3 Websites, which would then display it to the consumer, alongside offers from other lenders, if any.

4 vii. If a consumer was interested in Avant’s offer, the consumer could click on a
5 link that directed the consumer from the Websites to the website of Avant, where the consumer could
6 complete a loan application.

7 viii. If a loan was made, Avant paid a fee to the Website that referred the consumer.

8 ix. The Commissioner determined that, based on the foregoing, Avant was in
9 violation of the CFL. (Cal. Code Regs., tit. 10, § 1451, subd. (c) [licensee shall not pay
10 compensation to an unlicensed person for soliciting loan applications].)

11 Avant’s Payments for “Ping Tree” Referral Services

12 x. In 2013, 2014, and 2015, in connection with loans Avant made under the CFL,
13 Avant paid persons, who were not licensed as a broker under the CFL (Vendor(s)), for “ping tree”
14 referral services, which are described in detail below.

15 xi. The Vendors and third-party affiliates paid by the Vendors, who are commonly
16 known as lead generators, specialized in identifying and marketing to consumers searching for loans
17 online. The Vendors and their lead generators solicited consumers searching for loans to request loan
18 rates and terms from lenders, which may include Avant.

19 xii. The Vendors and their lead generators asked consumers to complete forms
20 requesting confidential information about each consumers’ profile, which may include the
21 consumer’s contact details, income, employment, bank account numbers, social security number, and
22 desired loan amount. Some Vendors and their lead generators also collected authorizations from
23 consumers for Avant or other lenders to perform credit checks.

24 xiii. The Vendors then sold consumer data collected from the forms—in a format
25 commonly referred to as a “lead”—to a variety of lenders, including Avant, through the use of “ping
26 trees.” Using real-time, computer-based bidding systems developed and operated by the Vendors,
27 commonly known as “ping trees,” Avant purchased “leads” that matched criteria Avant provided to
28 the Vendor.

1 xiv. When Avant purchased a consumer or “lead” from the Vendors, the consumer
2 was re-directed to Avant’s website to complete their loan application.

3 xv. If a loan was made, Avant paid a fee to the Vendor that referred the consumer.

4 xvi. The Commissioner determined that, based on the foregoing, Avant was in
5 violation of the CFL. (Cal. Code Regs., tit. 10, § 1451, subd. (c) [licensee shall not pay
6 compensation to an unlicensed person for soliciting loan applications].)

7 Avant’s Provision of Decline Traffic Referral Services

8 xvii. In 2014 and 2015, Avant was paid by lenders, including lenders who made
9 loans under the CFL (Decline Lender(s)), to provide decline traffic referral services, which are
10 described in detail below.

11 xviii. When Avant declined some consumers’ loan applications, Avant would
12 display advertisements from the Decline Lenders to the declined consumers. The advertisements
13 directed the consumer to the Decline Lender’s website. Typically, Avant advertised only one of its
14 Decline Lenders to a declined consumer.

15 xix. Avant used data obtained from the consumer’s prior, declined loan application
16 with Avant to determine which of its Decline Lenders to present to the consumer.

17 xx. In some instances, Avant was only paid for its service when a consumer
18 obtained a loan from a Decline Lender.

19 xxi. Consumers could interpret the advertisements as Avant’s recommendation of a
20 particular lender based on the declined consumer’s personal circumstances.

21 xxii. The Commissioner determined that, based on the foregoing, Avant was in
22 violation of the CFL. (Fin. Code § 22100, subd. (a) [no person shall perform an act of a broker
23 without obtaining a broker license]; *see also* Fin. Code § 22602, subd. (c) [“[c]ounseling or advising
24 the borrower about a loan” requires a broker’s license]; Cal. Code Regs., tit. 10, § 1422, subd. (c)
25 [“[F]inance lenders may not pay compensation for brokerage services (i.e., brokerage commission,
26 finder’s fee, referral fees, etc.) to anyone not licensed as a broker under [the CFL].”]; Sen. Com. on
27 Banking and Finance, Analysis of Sen. Bill 197 (2015-2016 Reg. Sess.) as amended Aug. 31, 2015,
28 p. 4 [“Existing [CFL] regulations prohibit [CFL] licensees from paying any compensation to any

1 person or company that is unlicensed, in exchange for the referral of business.”].)

2 F. During the examination, and prior to the delivery of the Examination Findings to
3 Avant by the Commissioner, Avant voluntarily ceased paying for and providing each of the referral
4 services referenced above.

5 G. It is the intention and desire of Avant and the Commissioner (Parties) to resolve the
6 Examination Findings amicably, without the necessity of a hearing or other litigation.

7 H. In consenting to entry of this Consent Order, Avant neither admits nor denies the
8 Commissioner’s determinations in the Examination Findings.

9 I. The Commissioner finds that this action is appropriate, in the public interest, and
10 consistent with the purposes fairly intended by the policy and provisions of the CFL.

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

13 **II.**

14 **Terms and Conditions**

15 1. Desist and Refrain Orders. In accordance with Financial Code section 22712, Avant
16 stipulates that it is ordered to desist and refrain from paying compensation to an unlicensed person or
17 company for soliciting or accepting applications for loans in violation of Section 1451, subdivision
18 (c), of Title 10 of the California Code of Regulations, and from engaging in the business of
19 negotiation or performing any act as broker in connection with loans made by a finance lender in
20 violation of section 22100 of the Financial Code.

21 2. Finality. Avant acknowledges that the Commissioner is ready, willing, and able to
22 proceed with the filing of an administrative enforcement action on the allegations contained in
23 this Consent Order. Avant hereby waives the right to any hearings, and to any reconsideration,
24 appeal, injunction, or other rights to review which may be afforded pursuant to the Financial Code,
25 the California Administrative Procedure Act, the Code of Civil Procedure, or any other provision of
26 law. Avant further expressly waives any requirement for the filing of an Accusation that may be
27 afforded by Government Code section 11415.60, subdivision (b), the California Administrative
28 Procedure Act, the Code of Civil Procedure, or any other provision of law. By waiving such rights,

1 Avant effectively consents to this Consent Order and the Desist and Refrain Orders herein
2 becoming final.

3 3. Penalty. Avant shall pay a penalty of \$75,000.00 to the Commissioner (Penalty).
4 The Penalty shall be paid no later than five days after the Effective Date, as defined in Paragraph 5,
5 and should be made payable in the form of a cashier’s check or Automated Clearing House deposit to
6 the “Department of Business Oversight” and transmitted to the attention of: Accounting –
7 Enforcement Division, Department of Business of Oversight, 1515 K Street, Suite 200, Sacramento,
8 California 95814. Notice of such payment shall be forwarded to Adam Wright, Senior Counsel,
9 Department of Business Oversight, Enforcement Division, 320 West 4th Street, Suite 750, Los
10 Angeles, California 90013. Avant agrees that, if it fails to pay the Penalty no later than five days
11 after the Effective Date, as defined in Paragraph 5, Avant may be immediately suspended from
12 engaging in business under its license until it provides evidence that the Penalty has been paid.
13 Avant hereby waives any notice and hearing rights that may be afforded under Government Code
14 section 11415.60, subdivision (b), the California Administrative Procedure Act, the Code of Civil
15 Procedure, or any other provision of law to contest the immediate suspension.

16 4. Full and Final Agreement. The Parties hereby acknowledge and agree that this
17 Consent Order is intended to constitute a full, final, and complete resolution of the allegations set
18 forth in the Examination Findings, and that no further proceedings or actions will be brought by the
19 Commissioner in connection with the Examination Findings, under the CFL or any other provision of
20 law, unless the proceeding or action is based upon discovery of new and further violations of the CFL
21 that do not form the basis for this Consent Order or which were knowingly concealed from the
22 Commissioner by Avant.

23 5. Effective Date. This Consent Order will not become effective until signed by all
24 Parties and delivered by the Commissioner’s counsel by email to Ryan McLennan at
25 ryan.mclennan@avant.com.

26 6. Third Party Actions. It is the intent and understanding between the Parties that this
27 Consent Order does not create any private rights or remedies against Avant or create any liability for
28 Avant or limit defenses of Avant against any person or entity not a party to this Consent Order.

1 7. Counterparts. The Parties agree that this Consent Order may be executed in any
2 number of counterparts, each of which will be deemed an original when executed. A signature
3 delivered by facsimile or email shall be deemed the same as an original signature. Such counterparts
4 will together constitute and be one and the same instrument.

5 8. Binding. This Consent Order is binding on all heirs, assigns, or successors in interest.

6 9. Independent Legal Advice. Each of the Parties represents that it has received
7 independent advice from its counsel or representatives regarding the advisability of executing this
8 Consent Order.

9 10. No Further Representation. Each of the Parties represents that in executing this
10 Consent Order it has relied solely on the statements set forth in this Consent Order and on the advice
11 of its counsel or representatives. Each of the Parties further represents that, in executing this Consent
12 Order, it has not relied on any statement, representation, or promise of any other party or any other
13 person or entity not expressly set forth in this Consent Order or upon the failure of any party or any
14 other person or entity to make any statement, representation, or disclosure. The Parties have included
15 this clause to preclude any claim that any party was fraudulently induced to execute this Consent
16 Order.

17 11. Waiver and Modifications. No waiver, amendment, or modification of this Consent
18 Order shall be valid or binding unless it is in writing and signed by all of the parties affected by it.
19 Waiver of any provision of this Consent Order will not waive any other provision.

20 12. Full Integration. This Consent Order is the final written expression and the complete
21 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
22 between the Parties concerning its subject matter and supersedes all discussions regarding such
23 subject matter between the Parties, their representatives, and any other person or entity. The Parties
24 have included this clause to preclude the introduction of parol evidence to vary, interpret,
25 supplement, or contradict the terms of this Consent Order.

26 13. Presumption from Drafting. In that the Parties have had the opportunity to draft,
27 review and edit the language of this Consent Order, no presumption for or against any party arising
28 out of drafting all or any part of this Consent Order will apply in construing this Consent Order.

1 Accordingly, the Parties waive the benefit of Civil Code section 1654 as amended or any successor
2 statute, which provides that in cases of uncertainty, language of a contract should be interpreted most
3 strongly against the party that caused the uncertainty to exist.

4 14. Headings and Governing Law. The headings to the paragraphs of this Consent Order
5 are for convenience only and do not affect its meaning. This Consent Order will be construed and
6 enforced in accordance with, and governed by, the laws of the State of California.

7 15. Severability. The provisions of this Consent Order are severable and the invalidity or
8 unenforceability of any of them will not affect the remainder of this Consent Order.

9 16. Authority to Execute. Each party represents that it is authorized to enter into this
10 Consent Order.

11 17. Public Record. Avant acknowledges that this Consent Order will be a matter of public
12 record.

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

16
17 Dated: 1/31/19 JAN LYNN OWEN
18 Commissioner of Business Oversight

19 By _____
20 Mary Ann Smith
21 Deputy Commissioner

22 Dated: 1/31/19 AVANT OF CALIFORNIA, LLC

23
24 By _____
25 Ryan McLennan
26 General Counsel and Secretary

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