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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 LICENSE NO. 603-7920
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,)
14) CONSENT ORDER
15 Complainant,)
16 v.)
17 RATEGENIUS, INC.,)
18 Respondent.)
19

20 This Consent Order (Consent Order) is entered into between the Commissioner of Business
21 Oversight and RateGenius, Inc. and is made with respect to the following facts:

22 **RECITALS**

23 A. RateGenius, Inc. (RateGenius) is a Texas corporation with its principal place of
24 business at 9300 United Drive, Suite 180, Austin, Texas 78758. RateGenius has been licensed as a
25 broker under the California Financing Law (Fin. Code, § 22000, et seq.) (CFL)¹ since August 6, 2001

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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 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 with the license number 6037920.

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

5 C. James Potts is the Chief Legal Officer of RateGenius and is authorized to enter into
6 this Consent Order on behalf of RateGenius.

7 D. Following an examination of RateGenius under the CFL that commenced on April 4,
8 2016, the Commissioner made the following determinations (Examination Findings):

9 RateGenius Platform

10 i. RateGenius provides a website through which consumers looking to refinance
11 existing vehicle loans can find offerings from credit unions and other lenders, including CFL-licensed
12 lenders, that have partnered with RateGenius (RateGenius Platform).

13 ii. RateGenius's lending partners pay a referral fee to RateGenius if a loan is
14 made to a borrower through the RateGenius Platform.

15 iii. In connection with loans made on the RateGenius Platform under the authority
16 of the CFL, RateGenius reports the resulting referral fee to the Commissioner as brokering income
17 earned under its CFL broker license.

18 License Transfer Violations

19 iv. RateGenius represented that RateGenius, itself, would conduct any brokering
20 activity in connection with loans made under the CFL on the RateGenius Platform.

21 v. In or around 2005, RateGenius formed a subsidiary, RateGenius Loan
22 Services, Inc. (RGLS), which, like RateGenius, Inc., did business using the name "RateGenius."

23 vi. From inception, RGLS carried out all critical brokering functions on behalf of
24 RateGenius in connection with the RateGenius Platform.

25 vii. RGLS operated from RateGenius's CFL-licensed location.

26 viii. RGLS never held a CFL license.

27 ix. RGLS applied for a CFL broker license in January 2013 but abandoned the
28 application by June 2013.

1 x. RateGenius never obtained written authorization from the Commissioner for
2 RGLS to operate from RateGenius’s licensed place of business.

3 xi. The Commissioner determined that, based on the foregoing, RateGenius was in
4 violation of the Financial Code. (Fin. Code, §§ 22151, subd. (b) [transferring license prohibited],
5 22161, subd. (a)(2) [publishing misleading representations prohibited] & 22154, subd. (a)
6 [conducting other business from licensed location prohibited, unless otherwise approved in writing].)

7 Brokering Violations

8 xii. RateGenius provided disclosure statements to some borrowers that did not
9 comply with Financial Code section 22338 because the statements did not show the date, amount, and
10 terms of agreements between RateGenius and CFL-licensed lenders, and that did not list all amounts
11 paid or to be paid to RateGenius.

12 xiii. To help drive visitors to the RateGenius Platform, RateGenius paid for referral
13 services from CFL-licensed brokers and unlicensed companies acting as lead generators.

14 xiv. RateGenius paid two CFL-licensed brokers (Brokers) to deliver referrals by
15 means of a pre-qualification service.

16 xv. As part of the pre-qualification service, the Brokers obtained, on their own
17 websites, forms from consumers with sufficient personal information to allow RateGenius’s lenders
18 to make pre-qualified loan offers.

19 xvi. The Brokers then sent completed forms to RateGenius.

20 xvii. RateGenius, in turn, was obligated to deliver to the Brokers pre-qualified loan
21 offers for presentation to the consumers on the Brokers’ websites.

22 xviii. If a consumer ultimately obtained a loan from a RateGenius lender partner
23 following the presentation of a pre-qualified offer on the Brokers’ website, RateGenius paid a referral
24 fee to the Brokers.

25 xix. One of the Brokers reported referral fee payments it received from RateGenius
26 as brokering income on reports to the Commissioner.

27 xx. Under at least 5 separate agreements, RateGenius paid lead generators to
28 “generate & provide leads to RateGenius . . . by submitting the applicant application data fields

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

3 **TERMS AND CONDITIONS**

4 1. **Purpose.** This Consent Order resolves the violations before the Commissioner in a
5 manner that avoids the expense of a hearing and possible further court proceedings, is in the public
6 interest, protects consumers, and is consistent with the purposes, policies, and provisions of the CFL.

7 2. **Finality of Consent Order.** RateGenius hereby agrees to comply with this Consent
8 Order and stipulates that the Consent Order is hereby deemed final.

9 3. **Finality of Desist and Refrain Order.** In accordance with Financial Code section
10 22712, and as described more fully in the Examination Findings, RateGenius stipulates that it is
11 ordered to desist and refrain from violating: subdivision (b) of section 22151 of the Financial Code;
12 subdivision (a) of section 22154 of the Financial Code; subdivision (a), paragraph (2), of section
13 22161 of the Financial Code; section 22338 of the Financial Code, and; subdivisions (b) and (c) of
14 section 1451 of Title 10, California Code of Regulations.

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

25 5. **Refunds.** RateGenius shall make refunds to certain borrowers as follows:

26 (a) RateGenius shall audit its files and identify all California-resident borrowers
27 who (1) obtained a loan between January 1, 2013 and December 31, 2017 from a CFL-licensed
28 lender through the RateGenius Platform and (2) purchased a GAP Waiver in connection with the loan

1 from RateGenius (Refund Population).

2 (b) RateGenius shall pay refunds totaling \$233,352.00 to the borrowers who
3 constitute the Refund Population.

4 (c) RateGenius represents to the Commissioner that RateGenius previously paid
5 \$33,352.00 to some borrowers in the Refund Population in connection with GAP Waivers purchased
6 from RateGenius (Prior Refunds, or, individually, Prior Refund). The Commissioner will credit the
7 Prior Refunds against the total refund amount to be paid by RateGenius.

8 (d) RateGenius shall pay to each borrower who did not already receive a Prior
9 Refund a pro rata share of the remaining \$200,000.00 of the total refund amount.

10 (e) RateGenius shall submit a report to the Commissioner detailing the Refund
11 Population and Prior Refunds (Refund Population Report) prior to the execution of this Consent
12 Order. The Commissioner's receipt of the Refund Population Report does not constitute an approval
13 that the Refund Population Report is accurate and does not otherwise limit the Commissioner's audit
14 rights under this Consent Order.

15 6. **Refund Payments.** RateGenius shall pay refunds as follows:

16 (a) RateGenius shall pay the refunds through the mailing of checks to the last
17 known address of each borrower no later than 60 days after the Effective Date of this Consent Order,
18 as defined in Paragraph 11.

19 (b) RateGenius shall submit evidence of such payment to the Commissioner no
20 later than 90 days after the Effective Date of this Consent Order, as defined in Paragraph 11.

21 (c) RateGenius shall escheat any unclaimed refunds to the California State
22 Controller's Office within the period provided by Code of Civil Procedure section 1520, subdivision
23 (a) of the Unclaimed Property Law (Code of Civ Proc., § 1500 et seq.).

24 7. **Proof of Compliance.** RateGenius acknowledges that the Commissioner will
25 examine and review its compliance with Paragraphs 5 and 6 of this Consent Order. RateGenius
26 agrees to provide, upon the Commissioner's request, documentation satisfactory to the Commissioner
27 to determine compliance with Paragraphs 5 and 6.
28

1 8. **Suspension of License for Failure to Comply.** RateGenius agrees that, if it fails to
2 comply with any of the terms of this Consent Order, RateGenius may be immediately suspended
3 from engaging in business under its license until it provides evidence satisfactory to the
4 Commissioner that the terms are met. RateGenius hereby waives any notice and hearing rights that
5 may be afforded under Government Code section 11415.60, subdivision (b), the California
6 Administrative Procedure Act, the Code of Civil Procedure, or any other provision of law to contest
7 the immediate suspension. RateGenius acknowledges that its failure to comply with Paragraphs 5
8 and 6 of this Consent Order or the failure to provide documentation requested by the Commissioner
9 in order to determine compliance with Paragraphs 5 and 6, pursuant to Paragraph 7 above, shall
10 constitute a failure to comply with this Consent Order.

11 9. **Full and Final Agreement.** Except as set forth in Paragraph 8 of this Consent Order,
12 the parties hereby acknowledge and agree that this Consent Order is intended to constitute a full,
13 final, and complete resolution of the Examination Findings and that no further proceedings or actions
14 will be brought by the Commissioner in connection with the Examination Findings, either under the
15 CFL or any other provision of law, unless the proceeding or action is based upon discovery of new
16 and further violations of the CFL that do not form the basis for this Consent Order or which were
17 knowingly concealed from the Commissioner by RateGenius. The parties acknowledge and agree
18 that nothing contained in this Consent Order shall operate to limit the Commissioner's ability to
19 assist any other agency (city, county, state or federal) with any prosecution, administrative, civil or
20 criminal, brought by any such agency against RateGenius or any other person, based upon the
21 Examination Findings or otherwise.

22 10. **Additional Consideration.** Except as set forth in Paragraph 8 of this Consent Order,
23 in consideration of RateGenius' agreement to the issuance of final desist and refrain order, payment
24 of refunds, and other relief as provided in this Consent Order, and in addition to the Commissioner's
25 release set forth in Paragraph 9, the Commissioner hereby agrees that she will accept RateGenius's
26 surrender of its CFL broker license (#6037920) either 120 days after the Effective Date of this
27 Consent Order, or 30 days after RateGenius submits evidence or documentation requested by the
28 Commissioner pursuant to Paragraphs 6(b) and 7, whichever date is later.

1 11. **Effective Date.** This Consent Order will not become effective until signed by all
2 parties and delivered by the Commissioner’s counsel by email to RateGenius’s outside counsel,
3 Jeremy A. Meier, at meierj@gtlaw.com.

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

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

9 14. **Third Party Actions.** It is the intent and understanding between the parties that this
10 Consent Order does not create any private rights or remedies against RateGenius, create any liability
11 for RateGenius, or limit defenses of RateGenius against any person or entity not a party to this
12 Consent Order. Further, entering into this Consent Order by RateGenius does not constitute an
13 admission of wrongdoing or violation of law, statute, or regulation.

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

16 16. **No Further Representation.** Each party represents that in executing this Consent
17 Order it has relied solely on the statements set forth in this Consent Order and on the advice of its
18 counsel or representatives. Each party further represents that, in executing this Consent Order, it has
19 not relied on any statement, representation, or promise of any other party or any other person or entity
20 not expressly set forth in this Consent Order or upon the failure of any party or any other person or
21 entity to make any statement, representation, or disclosure. The parties have included this clause to
22 preclude any claim that any party was fraudulently induced to execute this Consent Order.

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

26 18. **Full Integration.** This Consent Order is the final written expression and the complete
27 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
28 between the parties concerning its subject matter and supersedes all discussions regarding such

1 subject matter between the parties, their representatives, and any other person or entity. The parties
2 have included this clause to preclude the introduction of parol evidence to vary, interpret,
3 supplement, or contradict the terms of this Consent Order.

4 19. **Presumption from Drafting.** In that the parties have had the opportunity to draft,
5 review and edit the language of this Consent Order, no presumption for or against any party arising
6 out of drafting all or any part of this Consent Order will apply in construing this Consent Order.
7 Accordingly, the parties waive the benefit of Civil Code section 1654 as amended or any successor
8 statute, which provide that in cases of uncertainty, language of a contract should be interpreted most
9 strongly against the party that caused the uncertainty to exist.

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

13 21. **Severability.** The provisions of this Consent Order are severable and the invalidity or
14 unenforceability of any of them will not affect the remainder of this Consent Order.

15 22. **Authority to Execute.** Each party represents that it is authorized to enter into this
16 Consent Order.

17 23. **Public Record.** RateGenius acknowledges that this Consent Order will be a matter of
18 public record.

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

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Dated: 12/21/18

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
Mary Ann Smith
Deputy Commissioner

Dated: 12/20/18

RATEGENIUS, INC.

By _____
James Potts
Chief Legal Officer