

## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is entered into as of August 12, 2005, by and between the California Corporations Commissioner ("Commissioner"), on the one hand, and Advanced Capital, Inc. ("Advanced") and Timothy B. Morrow ("Morrow"), on the other hand, (hereinafter collectively "the Parties").

### RECITALS

This Agreement is made with reference to the following facts:

- A. Advanced is a corporation in good standing, duly formed and existing pursuant to the laws of the State of Oregon, and authorized to conduct business in the State of California. Advanced has its principal place of business located at 1951 N. Gateway, Suite 101, Fresno, California 93727.
- B. Morrow is, and was at the time of the issuance of the Order described in paragraph C below, a director, shareholder and the chief executive officer of Advanced. Morrow is authorized to enter into this Agreement on behalf of Advanced.
- C. On or about December 13, 2004, Advanced filed four applications under the California Deferred Deposit Transaction Law ("CDDTL") with the Commissioner pursuant to California Financial Code section 23005 (File Nos. 100-2312, 100-2313, 100-2314, and 100-2315, hereinafter "CDDTL applications"). Advanced has since subleased these locations and will be withdrawing the CDDTL applications as provided herein below. Advanced is desirous of filing applications for CDDTL and/or California Finance Lenders Law ("CFLL") license(s) with the Commissioner in the future.
- D. On February 15, 2005, the Commissioner issued a Desist and Refrain Order (the "Order") to Advanced for violations of the CFLL in connection with Advanced's V.I.P. Platinum Instant Rebate Program (the "Rebate Program"), a copy of which is attached and incorporated herein as Exhibit "1". Advanced was served with the Order on February 16, 2005, and timely filed a request for hearing with the Commissioner.
- E. It is the intention and desire of the parties to resolve this matter without the necessity of a hearing and/or other litigation.

NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set forth herein, the parties agree as follows:

### TERMS AND CONDITIONS

1. Purpose. The purpose of this Agreement is to settle and resolve the matters between the parties hereto, for judicial economy and expediency, and to avoid the expense of a hearing, and possible further court proceedings.

2. Waiver of Hearing Rights. Advanced and Morrow acknowledge the right of Advanced to a hearing under the CFLL in connection with the Order and hereby waive that right to a hearing, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the CFLL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law, and by waiving such rights, consent to the Order becoming final.

3. Admissions. Advanced and Morrow admit the findings contained in the Order except that the principal address of Advanced is now 1951 N. Gateway, Suite 101, Fresno, CA. 93727. The admissions of Advanced and Morrow are solely for the limited purposes of this proceeding and any future proceeding(s) that may be initiated by or brought before the Commissioner against Advanced, Morrow or any of the officers, directors, shareholders or employees of Advanced. It is the intent and understanding between the parties that this Agreement and particularly the admissions of Advanced and/or Morrow herein, shall not be binding or admissible against Advanced and/or Morrow in any action(s) brought against Advanced, Morrow by third parties.

4. Contentions. Notwithstanding their admissions herein, Advanced and Morrow contend that Advanced and its officers, directors, shareholders and employees did not willfully or knowingly (i) engage in the business of a finance lender; (ii) offer cash rebates that were loans subject to the CFLL; (iii) charge interest rates in excess of those allowed under the CFLL; and (iv) did not willfully or knowingly engage in business as a finance lender without a license in violation of the CFLL.

5. Refunds. Advanced hereby agrees to make refunds totaling ONE HUNDRED FORTY THOUSAND DOLLARS (\$140,000) (the "Settlement Amount") equally and proportionately, which shall be based upon a percentage calculation of the amount paid by each customer, to all of its California customers who participated in the Rebate Program. The Settlement Amount constitutes the entire settlement amount and there shall be no additional payments required by the Commissioner to any of the customers of Advanced who participated in the Rebate Program. Advanced shall make the refunds by way of four (4) installments to each of its California Rebate Program customers as follows:

- (a) The first refund installment shall be in the amount of \$70,000 ("Payment One") and shall take place within thirty (30) days of the Effective Date of this Settlement Agreement.
- (b) The second refund installment shall be in the amount of \$23,333.33 ("Payment Two") and shall take place within one hundred twenty (120) days after Payment One.
- (c) The third installment shall be in the amount of \$23,333.33 ("Payment Three") and shall take place within one hundred twenty (120) days after Payment Two.

- (d) The fourth installment shall be in the amount of \$23,333.34 ("Payment Four") and shall take place within one hundred twenty (120) days after Payment Three.

In the event the payment due date falls on a weekend or holiday, the payment shall be due the next business day. Advanced shall send all refund checks by first class mail to the customers' last known address with a request for any and all forwarding address(es) of the customers on the cover of the envelopes. Advanced shall immediately re-send all refund checks returned by the United States Post Office with a forwarding or corrected address.

6. Locating Customers. If no current address can be located for a customer(s), those funds may remain in a separate account of Advanced until such time as the funds are to be escheated as provided in paragraph 8 below.

7. Reports. Advanced shall submit to the Commissioner with each payment installment a detailed report of all refunds made, to include the name, loan number, amount of loan, date of loan, and amount of refund, within two weeks of completion of each payment installment. Advanced shall also submit to the Commissioner ninety (90) days after payment four a report listing all refunds that have been returned to Advanced as undeliverable.

8. Escheatment. Advanced shall escheat all refunds returned as undeliverable by the United States Post Office to the State Controller's Office within the time period provided by the Unclaimed Property Act, Code of Civil Procedure, Sections 1500 et seq. which the parties understand to be one year from the date upon which it is determined that the refund is undeliverable. The term undeliverable as used herein means returned to Advanced by the United States Post Office for any reason. Advanced shall concurrently send the Commissioner a copy of the escheatment report(s) submitted by Advanced to the State Controllers Office.

9. Costs. All costs associated with making the refunds, including escheatment, shall be borne by Advanced.

10. Withdrawal of Pending Applications: Advanced agrees that immediately upon execution and delivery of this Agreement that it shall submit to the Commissioner its written withdrawal of the CDDTL applications.

11. Future Applications. The Commissioner hereby agrees to process any application(s) filed by Advanced under the CDDTL and/or CFLL in the normal and ordinary course of business except as otherwise provided herein. The Commissioner further agrees that the Order, which is the basis of this Agreement, shall not be employed as cause to deny any such application, provided Advanced is not in breach of this Agreement.

12. Failure to Timely Refund. Advanced and Morrow acknowledge that failure to timely pay any payment installment under this Agreement or escheat unclaimed refunds pursuant to this Agreement shall be a breach of this Agreement and shall be cause for the Commissioner to immediately revoke any license(s) obtained by, and/or deny any pending application(s) of Advanced, its successors and assigns, by whatever names they might be known, and/or any company owned or controlled by Morrow. Advanced and Morrow hereby waive any notice and hearing rights to contest such revocation(s) and/or denial(s) which may be afforded under the CFLL, CDDTL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection therewith.

13. Effective Date. This Agreement shall not become effective until signed, and delivered by all parties.

14. Settlement Agreement Coverage. The parties hereby acknowledge and agree that this Agreement is intended to constitute a full, final and complete resolution of this matter. The parties further acknowledge and agree that nothing contained in this Agreement shall operate to limit the Commissioner's ability to assist any other agency, (county, state or federal) with any prosecution, administrative, civil or criminal, brought by any such agency against Advanced based upon any of the activities alleged in this matter or otherwise.

15. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that it has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement.

16. No Other Representation. Each of the parties represents, warrants, and agrees that in executing this Agreement it has relied solely on the statements set forth herein and the advice of its own counsel. Each of the parties further represents, warrants, and agrees that in executing this Agreement 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: (1) to preclude any claim that any party was in any way fraudulently induced to execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

17. Modifications and Qualified Integration. No amendment, change or modification of this Agreement shall be valid or binding to any extent unless it is in writing and signed by all of the parties affected by it.

18. Full Integration. This Agreement, including the attached Order, is the final written expression and the complete and exclusive statement of all the agreements, conditions, promises, representations, and covenants between the parties with respect to the subject matter hereof, and supercedes all prior or contemporaneous agreements, negotiations, representations, understandings, and discussions between and among the parties, their

respective representatives, and any other person or entity, with respect to the subject matter covered hereby.

19. No Presumption From Drafting. In that the parties have had the opportunity to draft, review and edit the language of this Agreement, no presumption for or against any party arising out of drafting all or any part of this Agreement will be applied in any action relating to, connected, to, or involving this Settlement Agreement. Accordingly, the parties waive the benefit of California Civil Code section 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.

20. Counterparts. This Agreement may be executed in any number of counter-parts by the Parties, and when each Party has signed and delivered at least one such counterpart to the other Party, each counterpart shall be deemed an original and taken together shall constitute one and the same Agreement.

21. Headings and Governing Law. The headings to the paragraphs of this Agreement are inserted for convenience only and will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

22. Authority For Settlement. Each Party warrants and represents that such Party is fully entitled and duly authorized to enter into and deliver this Agreement. In particular, and without limiting the generality of the foregoing, each Party warrants and represents that it is fully entitled to enter into the covenants, and undertake the obligations set forth herein.

23. Public Record. Advanced and Morrow hereby acknowledge that this Agreement will be a matter of public record.

24. Voluntary Agreement. The Parties each represent and acknowledge that he, she or it is executing this Agreement completely voluntarily and without any duress or undue influence of any kind from any source.

25. Notices. Notice shall be provided to each party at the following addresses:

If to Advanced to:                    1951 N. Gateway  
Suite 101  
Fresno, CA 93727  
Attn: Tim Morrow

If to the Commissioner to:        Judy L. Hartley  
Senior Corporations Counsel  
Department of Corporations  
320 W. 4<sup>th</sup> Street, Suite 750  
Los Angeles, CA 90013-2344

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Agreement on the dates set forth opposite their respective signatures.

Dated: 8-12-05

WAYNE STRUMPFER  
Acting California Corporations Commissioner  
By  
ALAN S. WEINGER  
Acting Deputy Commissioner

Dated: 8-5-05

ADVANCED CAPITAL, INC.

By  
TIMOTHY B. MORROW  
Chief Executive Officer

Dated: 8-5-05

By  
TIMOTHY B. MORROW, an individual

APPROVED AS TO FORM:

REIN EVANS & SESTANOVICH LLP

By  
JEFFREY R. GLASSMAN, Attorneys for ADVANCED  
CAPITAL, INC. and TIMOTHY B. MORROW

WAYNE STRUMPFER  
Acting California Corporations Commissioner

By  
JUDY L. HARTLEY, Senior Corporations Counsel

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Agreement on the dates set forth opposite their respective signatures.

Dated:

WAYNE STRUMPFER  
Acting California Corporations Commissioner  
By  
ALAN S. WEINGER  
Acting Deputy Commissioner

Dated:

ADVANCED CAPITAL, INC.

8-5-05

By  
TIMOTHY B. MORROW  
Chief Executive Officer

Dated:

8-5-05

By  
TIMOTHY B. MORROW, an individual

APPROVED AS TO FORM:

REIN EVANS & SESTANOVICH LLP

By

~~JEFFREY R. GLASSMAN~~, Attorneys for ADVANCED CAPITAL, INC. and TIMOTHY B. MORROW

WAYNE STRUMPFER  
Acting California Corporations Commissioner

By

JUDY L. HARTLEY, Senior Corporations Counsel

1 STATE OF CALIFORNIA  
2 BUSINESS, TRANSPORTATION AND HOUSING AGENCY  
3 DEPARTMENT OF CORPORATIONS  
4

5 TO: ADVANCED CAPITAL, INC.  
6 516 Villa Suite 22  
7 Clovis, California 93611

8 DESIST AND REFRAIN ORDER  
9 (For violations of California Financial Code section 22100)

10 The California Corporations Commissioner finds that:

11 1. Advanced Capital, Inc. is an Oregon corporation and has its principal place of  
12 business in California located at 516 Villa, Suite 22, Clovis, California 93611.

13 2. Advanced Capital, Inc. doing business as Approved! Instant Cash Rebates has  
14 engaged in the business of a finance lender from on or about October 2003 through at least  
15 September 2004 as described below.

16 3. An examination of Advanced Capital, Inc. conducted by the California Corporations  
17 Commissioner ("Commissioner") in January 2005 disclosed that Advanced Capital, Inc. had begun  
18 offering a "cash rebates program". Advanced Capital, Inc. commenced the "cash rebates program"  
19 on or about October 1, 2003 and continued doing so through at least September 2004. During this  
20 period, Advanced Capital, Inc. entered into at least 1,044 cash rebate agreements with customers in  
21 the State of California.

22 4. The "cash rebates" made by Advanced Capital, Inc. required the customer to enter  
23 into a written agreement with Advanced Capital, Inc. whereby the customer agreed to purchase a  
24 pre-paid long distance telephone card, which Advanced Capital, Inc. called the "V.I.P. Platinum  
25 Value Card. Upon entering into the agreement, the customer was given an instant cash rebate  
26 ranging from \$50.00 to \$700.00, assessed an activation fee of the greater of 4% or \$4.00, and  
27 required to re-charge the phone card every two weeks for a set fee, i.e., \$105.00 every two weeks for  
28 52 weeks for a \$500.00 rebate. The number of pre-paid long distance minutes equaled the amount of  
the cash rebate minute for dollar, i.e., 500 minutes a \$500.00 cash rebate agreement. The cash rebate



1 agreement also provided for a cancellation or termination fee of a set amount if the customer  
2 terminated the agreement prior to the end of the agreement term or otherwise failed to make its bi-  
3 monthly payments. The termination fee for a \$500.00 rebate was \$587.50. If the customer carried  
4 the agreement to full term, the customer was given a further rebate in the same amount of the initial  
5 rebate. The agreement further required customers to pay a returned check fee of \$25.00 and to agree  
6 to allow Advanced Capital, Inc. to automatically debit their bank account if timely payments were  
7 not made.

8           5.       The cash rebates made by Advanced Capital, Inc. were loans subject to the  
9 requirements of the California Finance Lenders Law (California Financial Code §§ 22000 et. seq.)

10           6.       Advanced Capital, Inc. has never been issued a license by the Commissioner  
11 authorizing it to engage in the business of a finance lender under the CFLL.

12           7.       Advanced Capital, Inc. is not exempt from the licensing requirements of  
13 California Financial Code section 22100.

14           8.       The special examination further disclosed that Advanced Capital, Inc. charged  
15 interest rates in excess of those allowed under the CFLL in all twenty loan files pulled for  
16 review.

17           By reason of the foregoing, Advanced Capital, Inc. has engaged in business as a finance  
18 lender without having first obtained a license from the Commissioner in violation of California  
19 Financial Code section 22100. Pursuant to California Financial Code section 22712, Advanced  
20 Capital, Inc. is hereby ordered to desist and refrain from engaging in the business of a finance  
21 lender and/or broker in the State of California without first obtaining a license from the  
22 Commissioner, or otherwise being exempt. This Order is necessary, in the public interest, for the  
23 protection of consumers and is consistent with the purposes, policies and provisions of the  
24 California Finance Lenders Law. This order shall remain in full force and effect until further  
25 order of the California Corporations Commissioner.

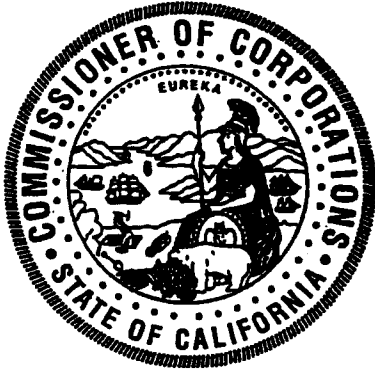
26           California Financial Code section 22712 provides in pertinent part:

27                   Whenever, in the opinion of the commissioner, any person is engaged in  
28                   business as a broker or finance lender, as defined in this division, without  
                    a license from the commissioner . . . the commissioner may order that person  
                    . . . to desist and to refrain from engaging in the business . . . If, within 30 days

after the order is served, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded.

Dated: February 15, 2005  
Los Angeles, CA

WILLIAM P. WOOD  
California Corporations Commissioner



By \_\_\_\_\_  
Patricia R. Speight  
Special Administrator  
California Finance Lenders Law

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