

## **SETTLEMENT AGREEMENT**

This SETTLEMENT AGREEMENT (“Agreement”) is entered into as of June 23, 2009 by and between the California Corporations Commissioner (“Commissioner”) on the one hand, and Dealer Services Corporation doing business as Discover DSC, (“Discover”) on the other hand, (hereinafter collectively “the Parties”).

### **RECITALS**

This Agreement is made with reference to the following facts:

A. Discover is a corporation in good standing, duly formed and existing pursuant to the laws of the State of Delaware, and authorized to conduct business in California. Discover has its principal place of business located at 1320 City Center Drive, Suite 100, Carmel, IN 46032.

B. After Discover’s decision to submit an application to obtain a lenders license under the California Finance Lenders Law at Financial Code sections 22000 et seq. (“CFLL”), it came to the attention of the Commissioner that Discover has engaged in commercial lending in California prior to the issuance of a Finance Lenders License to Discover.

C. 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. Dispute Regarding Lending Activity. The Commissioner contends that Discover’s lending activities to California borrowers were in violation of the licensing requirements of the CFLL. Discover contends that Discover and its officers, directors, shareholders and employees did not willfully or knowingly engage in business as a finance lender without a license in violation of the CFLL. Discover has not heretofore and is not now making any admission to any violation of the CFLL or any other wrongdoing. Discover intends by the settlement and compromise described herein merely to avoid further dispute with the Commissioner. The fact that Discover entered into this Agreement shall not be binding or admissible against Discover in any action(s) brought against Discover by third parties.

3. Settlement: Discover further agrees that it shall pay a settlement of sixty thousand dollars (\$60,000) to the California Department of Corporations (“Department”);

said payment to be made no later than five (5) business days from the execution of this Agreement.

4. Failure to Make Payment. Discover acknowledges that failure to pay under this Agreement shall be a breach of this Agreement. Failure by Discover to cure after ten (10) business days written notice to Discover from the Commissioner shall be cause for the Commissioner to summarily revoke any license(s) currently held by Discover, and/or deny any pending application(s) of Discover, its successors and assigns, by whatever names they might be known. Discover hereby waives any notice and hearing rights to contest such revocation(s) and/or denial(s) which may be afforded under the CFLL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection therewith as same may pertain to this matter.

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

6. 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 and Discover is hereby released, as to the Department, from further liability in connection with the subject matter of this Agreement. Specifically, to the extent any complaint against Discover is brought to the Department for prior unlicensed lending activity, this settlement will be a bar to further proceedings by the Department. 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 Discover based upon any of the activities alleged in this matter or otherwise. The Commissioner acknowledges that Discover is now in full compliance with CFLL licensing requirements, and Discover agrees to comply with the CFLL going forward.

7. 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.

8. 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.

9. 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.

10. Full Integration. This Agreement 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 supersedes 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.

11. 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 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.

12. 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.

13. 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.

14. 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.

15. Public Record. Discover hereby acknowledges that this Agreement will be a matter of public record, and will be admissible and subject to disclosure in any court of competent jurisdiction should enforcement require appropriate judicial action or review.

16. 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.

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

If to Discover to:	John C. Wick General Counsel Dealer Services Corporation d/b/a Discover DSC
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1320 City Center Drive  
Suite 100  
Carmel, IN 46032  
31-571-3721

With copies to (which shall not constitute Notice):

Mark T. Gillett  
MORRISON & FOERSTER LLP  
555 West 5th Street, 35th Floor  
Los Angeles CA 90013-1024  
213.892.5289

If to the Commissioner to:

John R. Drews  
Corporations Counsel  
Department of Corporations  
71 Stevenson Street  
Suite 2100  
San Francisco, CA 94105  
415-972-8570

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

Dated: 6/25/09

PRESTON DuFAUCHARD  
California Corporations Commissioner

By: \_\_\_\_\_  
ALAN S. WEINGER  
~~Acting~~ Deputy Commissioner

Dated: 6/23/09

DEALER SERVICES CORPORATION

By: \_\_\_\_\_

APPROVED AS TO FORM:  
MORRISON FOERSTER LLP

By \_\_\_\_\_  
Mark Gillett, Attorney for  
DEALER SERVICES CORPORATION

PRESTON DuFAUCHARD  
California Corporations Commissioner

By \_\_\_\_\_  
JOHN R. DREWS, Corporations Counsel  
California Department of Corporations