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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. 603J244
13 THE COMMISSIONER OF BUSINESS) CDDTL LICENSE NO. 1001204
14 OVERSIGHT,)
15 Complainant,) CONSENT ORDER
16 v.)
17 ADVANCE AMERICA, CASH ADVANCE)
18 CENTERS OF CALIFORNIA, LLC,)
19 Respondent.)

20 This Consent Order (Consent Order) is entered into between the California Commissioner of
21 Business Oversight (Commissioner) and Advance America, Cash Advance Centers of California,
22 LLC (AA LLC) and is made with respect to the following facts:

23 **RECITALS**

24 A. AA LLC is a Delaware limited liability company with its principal place of business at
25 135 North Church Street, Spartanburg, South Carolina 29306. AA LLC is a finance lender licensed
26 by the Commissioner pursuant to the California Financing Law (Fin. Code, § 22000, et seq.) (CFL)¹

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28 ¹ Effective October 4, 2017, the name of the “California Finance Lenders Law” changed to the “California Financing Law.” (Assem. Bill No. 1284 (2017-2018 Reg. Sess.) § 4.) For purposes of this Consent Order, a reference to the

1 with the license number 603J244 and is a deferred deposit originator licensed by the Commissioner
2 pursuant to the California Deferred Deposit Transaction Law (Fin. Code, § 23000, et seq.) (CDDTL)
3 with the license number 1001204.

4 B. The Department of Business Oversight, through the Commissioner, has jurisdiction
5 over the licensing and regulation of persons and entities engaged in the business of lending and
6 brokering pursuant to the CFL and has jurisdiction over the licensing and regulation of persons and
7 entities engaged in making deferred deposit transactions pursuant to the CDDTL.

8 C. J. Patrick O'Shaughnessy is the Chief Executive Officer of AA LLC and is authorized
9 to enter into this Consent Order on behalf of AA LLC.

10 D. During an examination of AA LLC under the CDDTL commencing on April 13, 2015,
11 and a company-wide regulatory examination of AA LLC under the CFL commencing on December
12 3, 2015, the Commissioner determined the following (Examination Findings):

13 i. AA LLC's amendments to its CFL and CDDTL applications were incomplete,
14 including, but not limited to, item 6 and exhibit C, in accordance with the representations and
15 agreements made in the applications;

16 ii. AA LLC paid unlicensed lead generators for referrals of some of its CFL loan
17 borrowers in violation of California Code of Regulations, title 10, section 1451, subdivision (c); and

18 iii. AA LLC charged some borrowers in excess of the rates prescribed by
19 Financial Code sections 22303 and 22304 in connection with loans that were secured by vehicles.
20 Although these loans had principal amounts of \$2,500.00 or more, therefore exceeding the regulatory
21 ceilings in Financial Code sections 22303 and 22304, the Commissioner determined that the bona
22 fide principal amount of these loans was less than \$2,500.00 because AA LLC failed to exclude
23 certain registration fees payable to the California Department of Motor Vehicles (DMV) at the
24 direction of the borrowers (DMV Fees). The Commissioner determined that the DMV Fees qualified
25 as "charges" under Financial Code section 22200 for the purposes of determining compliance with
26 Financial Code section 22251, subdivision (c), because AA LLC required its borrowers to pay the
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28 _____
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 DMV Fees as a condition of the loan being made. AA LLC’s requirement in this regard resulted
2 from the DMV’s own requirement that the DMV Fees at issue had to be paid before AA LLC could
3 place a valid lien on the vehicles that would secure each loan.

4 iv. Although the Commissioner determined that the DMV Fees were “charges”
5 under Financial Code Section 22200, the Commissioner did not contend that AA LLC had violated
6 Financial Code section 22346, subdivision (b), on the ground that the DMV Fees would be a “finance
7 charge” as defined by the Truth-In-Lending Act (15 U.S.C. 1601, et seq.).

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

10 F. AA LLC disagrees with the Commissioner’s determinations; however, it is the
11 intention and desire of the parties to resolve this matter amicably without the necessity of a hearing or
12 other litigation.

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

15 **TERMS AND CONDITIONS**

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

20 2. **Finality of Consent Order.** AA LLC hereby agrees to comply with this Consent
21 Order and stipulates that the Consent Order is hereby deemed final.

22 3. **Finality of Desist and Refrain Order.** In accordance with Financial Code section
23 22712, AA LLC stipulates that it is ordered to desist and refrain from violating the regulatory rate
24 provisions of Financial Code sections 22303 and 22304 and from paying compensation to an
25 unlicensed person or company for soliciting or accepting applications for loans in violation of
26 California Code of Regulations, title 10, section 1451, subdivision (c).

27 4. **Waiver of Hearing Rights.** AA LLC acknowledges that the Commissioner is
28 ready, willing, and able to proceed with the filing of an administrative enforcement action on the

1 charges and Desist and Refrain Order contained in this Consent Order. AA LLC hereby waives
2 the right to any hearings, and to any reconsideration, appeal, injunction, or other rights to review
3 which may be afforded pursuant to the Financial Code, the California Administrative Procedure Act,
4 the Code of Civil Procedure, or any other provision of law. AA LLC further expressly waives any
5 requirement for the filing of an Accusation that may be afforded by Government Code section
6 11415.60, subdivision (b), the California Administrative Procedure Act, the Code of Civil Procedure,
7 or any other provision of law. By waiving such rights, AA LLC effectively consents to this
8 Consent Order and the Desist and Refrain Order herein becoming final.

9 5. **Administrative Penalty.** AA LLC shall pay an administrative penalty of \$77,859.09.
10 The Commissioner acknowledges receipt of payment of the penalty from AA LLC contemporaneous
11 with the execution of this Consent Order.

12 6. **Refund Calculation.** AA LLC shall make refunds to certain borrowers as follows:

13 (a) AA LLC shall audit its files and identify all loans made under its various CFL
14 licenses that meet the following criteria (Refund Population):

15 i. a portion of the loan proceeds was transmitted by AA LLC to DMV to
16 satisfy a registration fee incurred by the borrower prior to the origination of the loan, and such
17 satisfaction of the previously incurred registration fee was a condition of the loan being made,
18 whether such condition was imposed by AA LLC or anyone else (Withheld Proceeds); and

19 ii. subtracting the loan’s applicable Withheld Proceeds from its principal
20 amount results in an amount less than \$2,500.00.

21 (b) AA LLC shall refund the amount of the Withheld Proceeds for each loan in the
22 Refund Population to the applicable borrower (Refunds or, individually, Refund) in the manner
23 described in Paragraph 7 below.

24 (c) AA LLC represents that it has already completed the audit described in
25 Paragraph 6(a) above and has identified 519 loans that constitute the Refund Population and that the
26 total amount of the Refunds is \$82,140.91.

27 (d) AA LLC shall submit a report to the Commissioner detailing the Refund
28 Population and each Refund (Refund Population Report) prior to the execution of this Consent Order.

1 The Commissioner’s receipt of the Refund Population Report does not constitute an approval that the
2 Refund Population Report is correct and does not otherwise limit the Commissioner’s audit rights
3 under this Consent Order.

4 7. **Refund Payments.** AA LLC shall pay the Refunds as follows:

5 (a) AA LLC shall make the Refunds no later than 60 days after the Effective Date
6 of this Consent Order, as defined in Paragraph 13.

7 (b) AA LLC shall submit evidence of such payment to the Commissioner no later
8 than 90 days after the Effective Date of this Consent Order, as defined in Paragraph 13. Such
9 evidence must include a copy of the refund checks, loan balances, and, for assignees and borrowers
10 of charged-off loans assigned to outside collections, advisements of outstanding-balance reductions
11 for each loan in the Refund Population, as applicable.

12 (c) AA LLC shall apply each Refund as follows:

13 i. for current borrowers with open loans which have an outstanding
14 balance of more than the Refund, by reducing the outstanding loan balance by the Refund amount;

15 ii. for current borrowers whose loans have an outstanding balance of less
16 than the Refund, by reducing the outstanding loan balance to zero dollars (\$0.00) and mailing a check
17 for the remaining Refund amount to the borrower;

18 iii. for former borrowers who repaid their loans in full and do not have any
19 loans from AA LLC with an outstanding balance, by mailing a check for the Refund amount; or

20 iv. for borrowers whose loans were charged off, by reducing the charged-
21 off balance by the Refund amount. As to charged-off loans, AA LLC shall apply the reduction
22 directly to any loan it retained for collection. For loans assigned for collection, AA LLC shall advise
23 the assignee of the reduced outstanding balance. AA LLC shall also advise each borrower of a
24 charged-off loan that has been assigned for collection of the reduction in outstanding balance by
25 sending notice electronically to the borrower’s last known email address in AA LLC’s records or, if
26 the borrower has opted out of receiving electronic communications from AA LLC, by sending notice
27 by U.S. mail to the borrower’s last known mailing address in AA LLC’s records.

28 (d) AA LLC shall escheat all checks that are not cashed to the California State

1 Controller’s Office within the period provided by and in accordance with the Unclaimed Property
2 Act. (Code of Civ. Proc., § 1500 et seq.)

3 8. **Compliance.** AA LLC shall comply with the following:

4 (a) At all times, AA LLC shall maintain a \$2 million net worth notwithstanding
5 the statutory requirement of a \$25,000.00 net worth pursuant to Financial Code sections 22104,
6 subdivision (b), and 23007.

7 (b) At all times, AA LLC shall post a \$250,000.00 surety bond notwithstanding
8 the statutory requirement of a \$25,000.00 surety bond pursuant to Financial Code section 22112,
9 subdivision (a).

10 (c) At all times, AA LLC shall post a \$250,000.00 surety bond notwithstanding
11 the statutory requirement of a \$25,000.00 surety bond pursuant to Financial Code section 23013,
12 subdivision (a).

13 (d) For any changes that shall occur following the Effective Date of this Consent
14 Order, as defined in Paragraph 13, AA LLC shall submit any amendments to its CFL or CDDTL
15 applications, including, but not limited to, item 6 and exhibit C, as required under its CFL and
16 CDDTL license applications by the dates specified therein.

17 (e) AA LLC shall ensure that any loans, which are made under its CFL licenses
18 that do not comply with the regulatory rate provisions of Financial Code sections 22303 and 22304,
19 shall result in a distribution of Loan Proceeds (the amount financed minus the Withheld Proceeds) to
20 each customer that equals or exceeds \$2,500.00. This practice will ensure that any Withheld
21 Proceeds will not cause a borrower to receive a distribution of Loan Proceeds less than \$2,500.00 at
22 the time of funding. AA LLC shall maintain this practice unless and until the statute or regulation
23 changes, or it receives prior written approval from the Commissioner to do otherwise.

24 (f) Under its CFL licenses, AA LLC is prohibited from paying compensation to a
25 person or company not licensed as a broker under the CFL or otherwise exempt for a referral or lead,
26 if the referral or lead includes or is accompanied by Confidential Data, as defined below.

27 i. Confidential Data is information about a borrower, prospective
28 borrower or applicant (Applicant) that is nonpublic and sensitive. Confidential Data includes,

1 without limitation, the following: bank account numbers or routing numbers; bank statements, credit
2 or debit card account number; self-reported or official FICO score; full or partial social security
3 number; self-reported or verified income information; driver’s license number or government-issued
4 identification number; passport number; employment data or history; date of birth, mother’s maiden
5 name; medical information; health insurance information; insurance policy number; or taxpayer or
6 employer identification number.

7 ii. Confidential Data does not include: name; physical address; phone
8 number; email address; desired loan or financing amount; or stated purpose for loan or financing.

9 iii. For the purposes of this section, AA LLC’s purchase of “pre-screened
10 marketing” lists, as that term is used in the Fair Credit Reporting Act (15 U.S.C § 1681 et seq.), either
11 directly from a consumer reporting agency or from third-party processors that are approved by and
12 have existing agreements with consumer reporting agencies, shall not constitute the payment of
13 compensation to a company for a referral or lead.

14 (g) Under its CFL licenses, AA LLC may pay compensation to a person or
15 company for referrals or leads only if AA LLC enters into and maintains accurate written agreements
16 with the person or company and maintains accurate records of payments made under those
17 agreements.

18 (h) Under its CFL licenses, AA LLC shall take reasonable steps to ensure that all
19 persons or companies providing referrals or leads to AA LLC disclose AA LLC’s CFL license
20 number to the extent required by Financial Code section 22162.

21 9. **Proof of Compliance.** AA LLC acknowledges that the Commissioner will examine
22 and review its compliance with Paragraphs 6 through 8 of this Consent Order. AA LLC agrees to
23 provide, upon the Commissioner’s request, documentation satisfactory to the Commissioner to
24 determine compliance with Paragraphs 6 through 8.

25 10. **Suspension of License for Failure to Comply.** AA LLC agrees that, following 10
26 business days from the receipt of notice from the Commissioner of AA LLC’s failure to comply with
27 any of the terms of this Consent Order, AA LLC may be suspended from engaging in business under
28 its CFL license upon the issuance of an order from the Commissioner until it provides evidence

1 satisfactory to the Commissioner that the terms are met. AA LLC hereby waives any notice and
2 hearing rights that may be afforded under Government Code section 11415.60, subdivision (b), the
3 California Administrative Procedure Act, the Code of Civil Procedure, or any other provision of law
4 to contest the immediate suspension. AA LLC acknowledges that its failure to comply with
5 Paragraphs 6 through 8 of this Consent Order or the failure to provide documentation requested by
6 the Commissioner in order to determine compliance with Paragraphs 6 through 8, pursuant to
7 Paragraph 9 above, shall constitute a failure to comply with this Consent Order and be subject to this
8 Paragraph 10.

9 11. **Consideration.** Except as set forth in Paragraph 10 of this Consent Order, in
10 consideration of AA LLC's agreement to the issuance of a final desist and refrain order, payment of
11 penalty and refunds, AA LLC's submission of Statements of Identity and Questionnaire (SIQs) for
12 certain indirect owners of AA LLC (Indirect Owners) and a worksheet in support of a request to
13 waive the requirement for fingerprints and SIQs for indirect owners that was reviewed by the
14 Commissioner and found acceptable prior to the Effective Date of this Consent Order, as defined in
15 Paragraph 13, and other relief as provided in this Consent Order, the Commissioner hereby agrees
16 that she will take no further action against AA LLC's CFL or CDDTL licenses as a result of this
17 action. Accordingly, this Consent Order does not affect the licensing status of AA LLC set forth in
18 Paragraph A of the above Recitals.

19 12. **Full and Final Agreement.** Except as set forth in Paragraph 10 of this Consent
20 Order, the parties hereby acknowledge and agree that this Consent Order is intended to constitute a
21 full, final, and complete resolution of the Examination Findings and that no further proceedings or
22 actions will be brought by the Commissioner in connection with the Examination Findings, either
23 under the CFL, the CDDTL, or any other provision of law, unless the proceeding or action is based
24 upon discovery of new and further violations of the CFL or CDDTL that do not form the basis for
25 this Consent Order or which were knowingly concealed from the Commissioner by AA LLC.

26 13. **Effective Date.** This Consent Order will not become effective until signed by all
27 parties and delivered by the Commissioner's counsel by email to Jessica Steadman Rustin, Chief
28 Legal Officer for AA LLC.

1 14. **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 15. **Binding.** This Consent Order is binding on all heirs, assigns, or successors in interest.

6 16. **Third Party Actions.** It is the intent and understanding between the parties that this
7 Consent Order does not create any private rights or remedies against AA LLC or create any liability
8 for AA LLC or limit defenses of AA LLC against any person or entity not a party to this Consent
9 Order. Further, entering this Consent Order by AA LLC does not constitute an admission of
10 wrongdoing or violation of law, statute, or regulations.

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

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

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

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

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

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

10 23. **Severability.** The provisions of this Consent Order are severable and the invalidity or
11 unenforceability of any of them will not affect the remainder of this Consent Order.

12 24. **Authority to Execute.** Each party represents that it is authorized to enter into this
13 Consent Order.

14 25. **Public Record.** AA LLC acknowledges that this Consent Order will be a matter of
15 public record.

16 26. **Voluntary Agreement.** AA LLC enters into this Consent Order voluntarily and
17 without coercion and acknowledges that no promises, threats or assurances about this Consent Order
18 have been made by the Commissioner of any of her officers or agents.

19
20 Dated: 3/12/18 JAN LYNN OWEN
 Commissioner of Business Oversight

21
22 By _____
23 Mary Ann Smith
24 Deputy Commissioner

25 Dated: 3/9/18 ADVANCE AMERICA, CASH ADVANCE CENTERS OF
 CALIFORNIA, LLC

26
27 By _____
28 J. Patrick O’Shaughnessy
 Chief Executive Officer