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STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF CORPORATIONS

In Re: Advance America, Cash Advance
Centers of California LLC
(File No. 100-1204)

**SETTLEMENT AGREEMENT
AND DESIST AND REFRAIN ORDER**

This Settlement Agreement and Desist and Refrain Order is entered into between the California Corporations Commissioner (“Commissioner”) and Advance America, Cash Advance Centers of California LLC (“Advance America”), and is made with respect to the following facts:

RECITALS

- A. Advance America has 291 locations in the State of California licensed under the California Deferred Deposit Transaction Law (hereinafter, the “CDDTL”), Cal. Fin. Code §23000 *et seq.*, with its principal place of business located at 135 N. Church St., Spartanburg, SC 23906.
- B. The Commissioner or the Department of Corporations (“Department”) is responsible for enforcing the CDDTL.
- C. In 2008 the Department conducted regulatory examinations of various Advance America locations. The examinations cited purported violations of the CDDTL, including that Advance America allegedly collected excess amounts from customers that made partial payments on their loans, allegedly collected NSF fees on returned checks that were deposited after customers made partial payments on their loans, allegedly failed to refund finance charges to customers that paid off their loans the next business day following origination, and allegedly conducted deferred deposit transactions at an unlicensed location (hereinafter collectively “Exam Findings”). Advance America disputes and denies the Exam Findings.

1 D. In an effort to avoid costly and protracted litigation, it is the parties' intention to
2 resolve the Exam Findings and related matters (File No. 100-1204) without an administrative
3 hearing or other litigation.

4 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions
5 set forth herein, it is hereby agreed, stipulated and ORDERED as follows:
6

7 **DESIST AND REFRAIN ORDER**

8 Pursuant to Financial Code section 23050 Advance America, Cash Advance Centers of
9 California LLC, is hereby ordered and agrees to Desist and Refrain from any violation of
10 Financial Code sections 23005, 23036(f) and 23037(f). The Order shall remain in full force and
11 effect until further order of the Commissioner.
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13 **TERMS AND CONDITIONS**

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15 1. Purpose. The purpose of this Settlement Agreement and Desist and Refrain Order is
16 to resolve the Exam Findings expeditiously, avoid the expense of costly and protracted litigation
17 obviating the need for further proceedings.

18 2. Waiver of Hearing Rights. Advance America acknowledges its right to a hearing
19 under the CDDTL in connection with the allegations of the Exam Findings, and hereby waives
20 that right to a hearing, and to any reconsideration, appeal, or other right to review with may be
21 afforded pursuant to the CDDTL, the California Administrative Procedure Act ("APA"), the
22 California Code of Civil Procedure, or any other provision of law, and by waiving such rights,
23 consent to the Settlement Agreement and Desist and Refrain Order becoming final.
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25 3. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
26 has received or been advised to seek independent legal advice from its attorneys with respect to
27 the advisability of executing this Settlement Agreement and Desist and Refrain Order.
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1 4. No Admission of Liability. This Settlement Agreement and Desist and Refrain Order
2 constitutes the settlement of disputed claims. Advance America denies that it has acted in any
3 improper or illegal manner and denies the allegations of the Exam Findings. The parties enter
4 into this Settlement Agreement and Desist and Refrain Order solely for the limited purpose of
5 resolving the Exam Findings as well as any future proceeding(s) that may be initiated by, or
6 brought before, the Commissioner related to the Exam Findings. The parties agree that this
7 Settlement Agreement and Desist and Refrain Order does not and shall not constitute or be
8 deemed to be an admission or evidence of any violation of statute, regulation or liability or
9 wrongdoing by Advance America, or the proper scope of liability under any statute or law, or the
10 truth of any allegation or finding in the Examination Findings. Nothing contained herein may be
11 admitted in any court, administrative tribunal or elsewhere as evidence of Advance America's
12 liability for any of the allegations asserted in the Exam Findings.

15 5. Payments and Forgiveness. Advance America has already escheated to the State of
16 California \$11,358.27 comprised of amounts collected by Advance America due and owing to
17 customers who, despite the exercise of due diligence, could not be located. In addition, Advance
18 America shall pay the Commissioner \$164,000.00, and shall make refunds to certain of its
19 customers in the aggregate amount of \$94,037.75. Of the latter amounts, \$48,300.00 will be
20 returned to customers for NSF fees paid on returned checks that were deposited after customers
21 made partial payments on their loans; and, \$45,737.75 in finance charges will be returned to
22 customers who paid their loans in full the next business day following origination. Also,
23 \$2,500.00 will be paid to the State for Advance America's operations at a location alleged
24 operating without a license but otherwise operating in compliance with the CDDTL. Finally,
25 Advance America shall forgive \$25,590 of charged but uncollected NSF fees associated with the
26 refunds identified above. The payment to the Commissioner shall be made within ten (10)
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1 business days following execution of this Settlement Agreement and Desist and Refrain Order.
2 Refunds to customers shall be made as soon as practicable following execution of this Settlement
3 Agreement and Desist and Refrain Order but no later than within 60 days of the date of this
4 agreement. Any amounts remaining unclaimed by customers shall escheat to the State of
5 California pursuant to the California Code of Civil Procedure, Title 10.
6

7 6. Future Actions by the Commissioner. The Commissioner reserves the right to bring
8 any action against Advance America or any of their partners, owners, employees or successors
9 for any and all unknown or future violations of the CDDTL. However, this Settlement
10 Agreement and Desist and Refrain Order resolves and discharges Advance America of any
11 further liability, fine or discipline or other punitive conduct that could have been brought by the
12 Commissioner arising out of or relating to the Exam Findings, the current regulatory
13 examinations and this Settlement Agreement and Desist and Refrain Order so long as Advance
14 America is in compliance with section 5 of the Settlement Agreement and Desist and Refrain
15 Order. If Advance America fails to make any payments to the Commissioner or offer refunds to
16 the consumers referred to in section 5 above, failure to do so shall be a breach of this Settlement
17 Agreement and Desist and Refrain Order and shall be cause for the Commissioner to revoke or
18 deny, respectively any Department license or any pending applications of Advance America or
19 their successors and assigns, by whatever names they might be known.
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22 7. Settlement Agreement Coverage. The parties hereby acknowledge and agree that this
23 Settlement Agreement and Desist and Refrain Order is intended to constitute a full, final and
24 complete resolution of the Exam Findings. The parties further acknowledge and agree that this
25 Settlement Agreement and Desist and Refrain Order shall not operate to limit the
26 Commissioner's ability to assist any other agencies with any prosecution, administrative, civil or
27 criminal, brought by any such agency against Advance America based upon any of the activities
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1 alleged in this matter or otherwise. Each of the parties represents, warrants, and agrees that in
2 executing this Settlement Agreement and Desist and Refrain Order it has relied solely on the
3 statements set forth herein and the advice of its own counsel and has placed no reliance on any
4 statement, representation, or promise of any other party, or any other person or entity not
5 expressly set forth herein, or upon the failure of any party or any other person or entity to make
6 any statement, representation or disclosure of anything whatsoever. The parties have included
7 this clause: (1) to preclude any claim that any party was in any way fraudulently induced to
8 execute this Settlement Agreement and Desist and Refrain Order; and (2) to preclude the
9 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
10 Settlement Agreement and Desist and Refrain Order.
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12 8. Full Integration. This Agreement and Desist and Refrain Order is the final written
13 expression and the complete and exclusive statement of all the agreements, conditions, promises,
14 representations, and covenants between the parties with respect to the subject matter hereof, and
15 supersedes all prior or contemporaneous agreements, negotiations, representations,
16 understandings, and discussions between and among the parties, their respective representatives,
17 and any other person or entity.
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19 9. No Presumption From Drafting. In that the parties have had the opportunity to draft,
20 review and edit the language of this Settlement Agreement and Desist and Refrain Order, no
21 presumption for or against any party arising out of drafting all or any part of this Settlement
22 Agreement and Desist and Refrain Order will be applied in any action relating to, connected to
23 or involving this Settlement Agreement and Desist and Refrain Order. Accordingly, the parties
24 waive the benefit of California Civil Code section 1654 and any successor or amended statute,
25 providing that in cases of uncertainty, language of a contract should be interpreted most strongly
26 against the party who caused the uncertainty to exist.
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1 10. Effective Date. This Settlement Agreement and Desist and Refrain Order shall not
2 become effective until signed and delivered by all parties.

3 11. Counterparts. This Settlement Agreement and Desist and Refrain Order may be
4 executed in any number of counter-parts by the parties, and when each party has signed and
5 delivered at least one such counter-part to the other party, each counter-part shall be deemed an
6 original and taken together shall constitute one and the same Settlement Agreement and Desist
7 and Refrain Order.
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9 12. Modifications and Qualified Integration. No amendment, change or modification of
10 this Settlement Agreement and Desist and Refrain Order shall be valid or binding to any extent
11 unless it is in writing and signed by both of the parties.
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13 13. Headings and Governing Law. The headings to the paragraphs of this Settlement
14 Agreement and Desist and Refrain Order are inserted for convenience only and will not be
15 deemed a part hereof or affect the construction or interpretation of the provisions hereof. This
16 Settlement Agreement and Desist and Refrain Order shall be construed and enforced in
17 accordance with and governed by California law.
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19 14. Authority For Settlement. Advance America covenants that it possesses all
20 necessary capacity and authority to sign and enter into this Settlement Agreement and Desist and
21 Refrain Order. Advance America warrants and represents that it is fully entitled and duly
22 authorized to enter into and deliver this Settlement Agreement and Desist and Refrain Order. In
23 particular, and without limiting the generality of the foregoing, Advance America warrants and
24 represents that it is entitled to enter into the covenants, and undertake the obligations set forth
25 herein.
26

27 15. Public Record. Advance America acknowledges that this Settlement Agreement and
28 Desist and Refrain Order is a public record.

1 16. Voluntary Agreement. Advance America represents and acknowledges that it is
2 executing this Settlement Agreement and Desist and Refrain Order completely voluntarily and
3 without any duress or undue influence of any kind from any source.

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

5
6 If to Advance America to: Thomas Newell, General Counsel
7 Advance America, Cash Advance
8 Centers of California LLC
9 135 N. Church St.
10 Spartanburg, SC 23906

11 With a copy to

12 Lewis S. Wiener
13 Sutherland Asbill & Brennan
14 1275 Pennsylvania Avenue, N.W.
15 Washington, D.C. 20004

16
17 If to the Commissioner to: Steven C. Thompson, Special Administrator
18 Department of Corporations
19 320 W. 4th Street, Suite 750
20 Los Angeles, CA 90013-2344

21 **SIGNED AND AGREED TO:**

22 Dated: February 23, 2009

23 PRESTON DUFAUCHARD
24 California Corporations Commissioner

25 By: _____
26 Alan S. Weinger, Lead Corporations
27 Counsel, Department of Corporations

28 Dated: February 9, 2009

 ADVANCE AMERICA, CASH ADVANCE
 CENTERS OF CALIFORNIA LLC

 By: _____
 Thomas Newell, General Counsel
 Advance America, Cash Advance
 Centers of California LLC

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IT IS SO ORDERED:

Dated: February 23, 2009

PRESTON DUFAUCHARD
California Corporations Commissioner

By: _____
Alan S. Weinger, Lead Corporations
Counsel