

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered into as of October 25, 2010, by and between the Complainant, the California Corporations Commissioner (“Commissioner”), and Respondents Avantis Financial LLC (hereinafter referred to as “Avantis”) and James C. Jacobson, President and registered agent of Avantis, doing business at 101 N. Main Ave, Suite 220, Sioux Falls, South Dakota, 57104 (hereinafter collectively “the Parties”).

### **RECITALS**

This Agreement is made with reference to the following facts.

A. Avantis has engaged in the business of offering deferred deposit transactions to persons who provide a California residential address, by means of the internet. Avantis is an online payday lender located and licensed in South Dakota. The Commissioner has determined that Avantis has also engaged in this state in activities requiring licensure under the provisions of the California Finance Lenders Law (“CFL”).

B. Avantis has not been issued a license by the Commissioner authorizing it to engage in the business of deferred deposit transactions under the California Deferred Deposit Transaction Law (“CDDL”) in violation of California Financial Code section 23005.

C. Avantis has also not been issued a license by the Commissioner to engage in the business of a finance lender under the CFL in violation of California Financial Code section 22100.

D. It is the opinion of the Commissioner that Avantis is not exempt from the licensing requirements of California Financial Code section 23005, or the requirements of California Financial Code section 22100.

E. It is the intention of the Parties to resolve the issues set forth above (“Issues”) in an amicable manner and without the necessity of an administrative hearing 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 resolve the Issues expeditiously, avoid the expense of a hearing, and avoid possible further court proceedings.

2. Consent to Desist and Refrain. Respondents consent pursuant to California Financial Code section 23005 to desist and refrain as of the date of the execution of this Agreement, from engaging in the business of deferred deposit transactions in the state of California without first obtaining a license from the Commissioner, or otherwise being exempt. Respondents further consent pursuant to California Financial Code section 22100 to desist and refrain as of the date of the execution of this Agreement, from engaging in the business of a finance lender in the state of California without first obtaining a license from the Commissioner, or otherwise being exempt. Respondents further agree to cease any collection activities on any accounts with a California mailing address, notwithstanding whether such accounts are delinquent or current.

3. Waiver of Future Hearing Rights. Respondents acknowledge their future rights to a hearing under the CDDTL in connection with the issuance of any desist and refrain resulting from a violation of this settlement agreement. Without deemed to have admitted or conceded to any allegations in a future Administrative Action, Avantis hereby waives that right to a hearing, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the CDDTL, the CFLL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of the law, and by waiving such rights, consent to this Agreement becoming final. However, Respondents reserve all rights, including but not limited to a right to a hearing in the event of future actions other than entry of a desist and refrain order resulting from a violation of this Agreement by the Commissioner.

4. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that it has received or been advised to seek independent legal advice from its attorney with respect to the advisability of executing this Agreement.

5. No Admissions. Respondents do not admit or deny any of the opinions of the Commissioner. Nothing in this Agreement shall be considered as either an express or implied admission of any kind.

6. Future Actions by the Commissioner. The Commissioner reserves the right to bring any future actions against Respondents, or any of their partners, owners, employees or successors of Respondents for any and all unknown or future violations of the CDDTL or the CFLL. Respondents further stipulate that if evidence of the continuing engagement in business in violation of the CDDTL or the CFLL is discovered after the execution of this Agreement, the Commissioner may seek additional remedies against Respondents. These remedies include, but are not limited to, civil injunctive and ancillary relief as set out in the relevant parts of the CDDTL or the CFLL in the California Financial Code.

7. Settlement Agreement Coverage. The Parties hereby acknowledge and agree that this Agreement is intended to constitute a full, final and complete resolution of this Administrative Action. The Parties further acknowledge and agree that nothing contained in this Agreement shall operate to limit the Commissioner's ability to assist

any other agencies with any prosecution, administrative, civil or criminal, brought by any such agency against Respondents based upon any of the activities alleged in this matter or otherwise. This Agreement shall not become effective until signed by Respondents and delivered by all Parties. 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 and 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 of 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.

8. Full Integration. This Agreement, including the attached Administrative Action 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.

9. 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.

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

11. 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.

12. 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.

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 California law.

14. Authority For Settlement. Each Respondents covenant that they possess all necessary capacity and authority to sign and enter into this Agreement. 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. Respondents acknowledge that this Agreement is a public record.

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 Respondents to:

James C. Jacobson, Avantis Financial LLC  
101 N. Main Ave., Suite 220, Sioux Falls, SD 57104

If to the Commissioner to:

John R. Drews, Corporations Counsel  
Enforcement Division, Department of Corporations 71 Stevenson  
Street, San Francisco, CA 94105-2980

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

Dated: 10/27/10

CALIFORNIA CORPORATIONS COMMISSIONER

\_\_\_\_\_  
By: ALAN S. WEINGER  
Deputy Commissioner  
Enforcement Division

Dated: 25 Oct 2010

AVANTIS FINANCIAL, LLC

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By: JAMES C. JACOBSON  
President of Avantis Financial, LLC

Dated: 25 Oct 2010

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JAMES C. JACOBSON, Individually