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California Corporations Commissioner
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9 BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

10 In the Matter of the Citations, Desist and Refrain)
11 Order, and Order Voiding Transactions issued to) OAH Case No. 2008060660
)
12 HOT LAVA FLOW, INC. doing business as) SETTLEMENT AGREEMENT
13 CASH PLUS)
)
14)
15)
16)

17 **SETTLEMENT AGREEMENT**

18
19 This Settlement Agreement (“Agreement”) is entered into by and between the Complainant, the
20 California Corporations Commissioner (“Commissioner”), and Respondent Hot Lava Flow, Inc. (“Hot
21 Lava”) doing business as CASH PLUS (hereinafter collectively “the Parties”).

22 **RECITALS**

23 This Agreement is made with reference to the following facts:

- 24 A. Hot Lava, doing business as CASH PLUS, is a corporation in good standing, duly formed and
25 existing pursuant to the laws of the State of Nevada, and authorized to conduct business in this State.
26 Hot Lava has its principal place of business, CASH PLUS, located at 1342 East Florida Ave., Space
27 A-15, Hemet, CA 92545.
28 B. Jennifer Nicole Coyle (“Ms. Coyle”) is, and was at the time of the issuance of the Order

1 described in paragraph D below, the Secretary of Hot Lava. Ms. Coyle is authorized to enter into this
2 Agreement on Hot Lava's behalf.

3 C. Hot Lava holds license number 100-3169 from the Commissioner under the California
4 Deferred Deposit Transaction Law ("CDDTL") pursuant to California Financial Code sections
5 23005, 23008 and 23009.

6 D. On May 16, 2008, the Commissioner issued Citations, a Desist and Refrain Order, and Order
7 Voiding Transactions to Hot Lava for violations of California Financial Code sections 23000 *et seq.*,
8 (specifically section 23036) served upon Hot Lava on May 22, 2008.

9 E. It is the intention of the parties to resolve this matter without the necessity of an
10 administrative hearing or other litigation.

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

13 **TERMS AND CONDITIONS**

14 1. Purpose: The purpose of this Agreement is to expeditiously resolve the Citations, Desist and
15 Refrain Order, and Order Voiding Transactions. The parties wish to avoid the expense of a hearing
16 and possible further court proceedings.

17 2. Waiver of Hearing Rights: Hot Lava acknowledges its right to a hearing under the CDDTL in
18 connection with the Citations, Desist and Refrain Order, and Order Voiding Transactions and hereby
19 waives that right to a hearing, and to any reconsideration, appeal, or other right to review which may
20 be afforded pursuant to the CDDTL, the California Administrative Procedure Act ("APA"), the
21 California Code of Civil Procedure, or any other provision of law, and by waiving such rights, Hot
22 Lava consents to the agreement becoming final.

23 3. Independent Legal Advice: Each of the Parties represents, warrants, and agrees that it has
24 received independent legal advice from an attorney with respect to the advisability of executing this
25 Agreement. Hot Lava acknowledges that it is willingly and knowingly entering into this Agreement.

26 4. Admissions: Hot Lava admits the FACTS recited in the Citations, Desist and Refrain Order,
27 and Order Voiding Transactions solely for the limited purposes of this Agreement and any future
28 proceeding(s) that may be initiated by or brought before the Commissioner or other agencies against

1 Hot Lava. It is the intent and understanding between the parties that this Agreement, and particularly
2 the admissions of Hot Lava herein, shall not be binding or admissible against them in any action(s)
3 with third parties.

4 5. Citations: Hot Lava hereby agrees to pay to the Commissioner FIVE THOUSAND
5 DOLLARS (\$5,000.00) for the Citations (“Citation Payment”). Payment shall be made in two equal
6 installments. The first payment of TWO THOUSAND FIVE HUNDRED (\$2,500) dollars shall be
7 made on or before August 1, 2008. The second payment of TWO THOUSAND FIVE HUNDRED
8 (\$2,500) dollars shall be made on or before September 18, 2008. If Hot Lava fails to make payment
9 in strict accord with the terms of this paragraph, then the total amount of Citations (\$42,500.00)
10 ordered in Citations, Desist and Refrain Order, and Order Voiding Transactions is immediately due
11 and payable to the Department and, in addition, the order voiding the transactions outlined in the
12 Citations, Desist and Refrain Order, and Order Voiding Transactions shall become final, requiring
13 Hot Lava to return both interest and principal to the seventeen (17) customers who paid excess NSF
14 fees totaling FIVE THOUSAND AND SEVENTY ONE (\$5,071) dollars. Hot Lava’s agreed upon
15 Citation Payment shall be payable to the California Department of Corporations and delivered to the
16 Department of Corporations’ Sacramento Office to the attention of the Complainant’s Enforcement
17 counsel Erik Brunkal.

18 6. License Surrender: Although the Commissioner did not seek revocation of Hot Lava’s
19 license, in lieu of other sanctions, penalties, and remedies available to the Commissioner, Hot Lava
20 hereby agrees to surrender its CDDTL license number 100-3169 pursuant to Financial Code section
21 23052 (“License Surrender”). This surrender will preclude Hot Lava, its successors and assigns, by
22 whatever names they might be known, and/or any company owned or controlled by any of the
23 principals of Hot Lava identified in the Citations, Desist and Refrain Order, and Order Voiding
24 Transactions from engaging in any CDDTL activities beginning on July 30, 2008. Hot Lava agrees it
25 shall be precluded from all CDDTL transactions including any with existing clients effective July 30,
26 2008. Hot Lava further agrees to return its original license to the Complainant’s counsel, Erik
27 Brunkal, on or before August 1, 2008, along with the first of the two payments contemplated in this
28 agreement. This surrender does not preclude Hot Lava from engaging in pure collection activities

1 that permit: (1) receipt of cash from customers for existing transactions entered into before the date of
2 surrender, (2) forwarding any checks received from Hot Lava's clients to a bank for deposit relating
3 to transactions entered into before the date of surrender, (3) responding to regulatory inquiries from
4 the Department of Corporations or other agencies, (4) making refunds to customers, and (5)
5 otherwise responding to customer inquiries concerning existing transactions. However, Hot Lava
6 acknowledges it may not collect excess, non-sufficient fund fees ("NSF fees"), charged, but not
7 collected, in fifty eight (58) transactions outlined in the Citations, Desist and Refrain Order, and
8 Order Voiding Transactions.

9 7. Restitution: Hot Lava hereby agrees to refund, as restitution, THREE HUNDRED TWENTY
10 TWO (\$322.00) dollars in excess NSF fees collected in violation of California Financial Code section
11 23036 as described in the Citations, Desist and Refrain Order, and Order Voiding Transactions. Hot
12 Lava shall issue 17 refunds to customers totaling \$322.00 for these excess NSF fees charged to
13 customers in violation of Financial Code 23036, on or before August 1, 2008. Any amounts
14 remaining unclaimed by clients as of September 18, 2008 shall escheat to the State of California.

15 8. Failure to Timely Issue Refunds as Restitution: Hot Lava acknowledges that failure to timely
16 offer and to pay any refund to customers, as described in Paragraph 7 under this Agreement, shall be
17 a breach of this Agreement. If Hot Lava fails to make payment in strict accord with the terms of
18 Paragraph 7, then the total amount of Citations (\$42,500.00) ordered in the Citations, Desist and
19 Refrain Order, and Order Voiding Transactions shall become immediately due and payable to the
20 Department and, in addition, the order voiding the transactions outlined in the Citations, Desist and
21 Refrain Order, and Order Voiding Transactions shall become final, requiring Hot Lava to return both
22 interest and principal to the seventeen (17) customers who paid excess NSF fees totaling FIVE
23 THOUSAND AND SEVENTY ONE (\$5,071) dollars.

24 9. Costs of Examination and Enforcement action: Hot Lava hereby agrees to pay the costs of the
25 Complainant's examination as described in the invoice (approximately \$2,800.00), as well as the cost
26 of the Complainant's enforcement action (\$4, 161.50), on or before September 18, 2008.

27 10. Failure to Pay Costs of Examination and Enforcement Action: If Hot Lava fails to make its
28 payment in strict accord with the terms of Paragraph 9, then the total amount of Citations

1 (\$42,500.00) ordered in the Citations, Desist and Refrain Order, and Order Voiding Transactions
2 shall become immediately due and payable to the Department and, in addition, the order voiding the
3 transactions outlined in the Citations, Desist and Refrain Order, and Order Voiding Transactions shall
4 become final, requiring Hot Lava to return both interest and principal to the seventeen (17) customers
5 who paid excess NSF fees totaling FIVE THOUSAND AND SEVENTY ONE (\$5,071) dollars.

6 11. Future Actions by the Commissioner: The Commissioner reserves the right to bring any
7 future actions against Hot Lava or any of its partners, employees or successors for any and all
8 unknown or future violations of the CDDTL. This Agreement shall not serve to exculpate Hot Lava
9 or any of its partners, affiliates, employees or successors from liability for any and all unknown or
10 future violations of the CDDTL. If it is found, after the execution of this Agreement, that Hot Lava
11 has at any time violated any provision of the CDDTL heretofore unknown to the Commissioner, the
12 Commissioner reserves the right to take further action against Hot Lava, including but not limited to,
13 imposing penalties and requesting restitution of all CDDTL transactions originated in breach of this
14 Agreement. Hot Lava acknowledges and agrees that the License Surrender provided for above in
15 paragraph 6 shall not be the exclusive remedy available to the Commissioner in pursuing future
16 violations but may be sought and employed in addition to any other remedy available pursuant to the
17 CDDTL.

18 12. Settlement Agreement Coverage: The parties hereby acknowledge and agree that this
19 Agreement is intended to constitute a full, final and complete resolution of the Citations, Desist and
20 Refrain Order, and Order Voiding Transactions. The parties further acknowledge and agree that
21 nothing contained in this Agreement shall operate to limit the Commissioner's ability to assist any
22 other agencies with any administrative, civil or criminal prosecution brought by any such agency
23 against Hot Lava based upon any of the activities alleged in this matter or otherwise. This
24 Agreement shall not become effective until signed by Hot Lava and delivered by all parties. Each of
25 the parties represents, warrants, and agrees that in executing this Agreement it has relied solely on the
26 statements set forth herein and has placed no reliance on any statement, representation, or promise of
27 any other party, or any other person or entity not expressly set forth herein, or upon the failure of any
28 party or any other person or entity to make any statement, representation or disclosure of anything

1 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
2 any way fraudulently induced to execute this Agreement; and (2) to preclude the introduction of
3 parole evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

4 13. Full Integration: This Agreement, including the attached Exhibits, is the final written
5 expression and the complete and exclusive statement of all the agreements, conditions, promises,
6 representations, and covenants between the parties with respect to the subject matter hereof, and
7 supercedes all prior or contemporaneous agreements, negotiations, representations, understandings,
8 and discussions between and among the parties, their respective representatives, and any other person
9 or entity.

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

17 15. Effective Date: This Agreement shall not become effective until signed and delivered by all
18 parties. The Commissioner shall file this Agreement with the Office of Administrative Hearings
19 within five days following execution by all parties. If the agreement has not been signed and
20 delivered as contemplated in this paragraph before July 30, 2008, Hot Lava will nevertheless cease all
21 CDDTL licensed activities on or before July 30, 2008, as indicated in paragraph 6, so long as the
22 parties are acting in good faith to sign and deliver the Agreement in accordance with this paragraph.

23 16. Counterparts: This Agreement may be executed in any number of counterparts by the Parties
24 and when each Party has signed and delivered at least one such counterpart to the other Party, each
25 counterpart shall be deemed an original and taken together shall constitute one and the same
26 Agreement.

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

1 parties affected by it.

2 18. Headings and Governing Law: The headings to the paragraphs of this Agreement are inserted
3 for convenience only and will not be deemed a part hereof or affect the construction or interpretation of
4 the provisions hereof. This Agreement shall be construed and enforced in accordance with and
5 governed by California law.

6 19. Authority for Settlement: Each Party covenants that each possesses all necessary capacity and
7 authority to sign and enter into this Agreement. Each Party warrants and represents that such Party is
8 fully entitled and duly authorized to enter into and deliver this Agreement. In particular, and without
9 limiting the generality of the foregoing, each Party warrants and represents that it is fully entitled to
10 enter into the covenants, and undertake the obligations set forth herein.

11 20. Public Record: Hot Lava acknowledges that this Agreement is a public record.

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

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

16 If to Respondent either to:

17 HOT LAVA doing business as CASH PLUS
18 1342 East Florida Ave., Space A-15
19 Hemet, CA 92545

20 And/or to Respondent's Counsel:

21 Fredrick M. Ray, A Professional Corporation
22 770 The City Drive, Suite 8100
23 Orange, CA 92868-6927

24 If to the Commissioner to:

25 Steven C. Thompson, Special Administrator
26 Financial Services Division, Department of Corporations
27 320 W. 4th Street, Suite 750
28 Los Angeles, CA 90013-2344

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

3
4 Dated: _____

PRESTON DuFAUCHARD
California Corporations Commissioner

5
6
7 By _____

ALAN S. WEINGER
Acting Deputy Commissioner
Enforcement Division

8
9
10 HOT LAVA doing business as CASH PLUS

11
12
13 Dated: _____

By _____

JENNIFER NICOLE COYLE
Secretary