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9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) Money Transmitter License No.: 2436
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) STIPULATION
14)
15 Complainant,)
16 vs.)
17 OFFICIAL PAYMENTS CORPORATION,)
18 Respondent.)
19 _____)

20 This Stipulation is entered into by and between Official Payments Corporation (“OPC” or
21 “Respondent”) and the Commissioner of Business Oversight (“Commissioner”), and is made with
22 respect the following facts:

23 **RECITALS**

24 A. OPC is a licensed money transmitter pursuant to the Money Transmission Act (Financial
25 Code section, 2000 et seq.) (“Act”). OPC is a “licensee” as defined in Financial Code section 329,
26 subdivision (a)(2) and has its principal place of business located at 177 Technology Parkway,
27 Auburn, Alabama 36830.

28 B. OPC’s total assets on or around January 31, 2015 were approximately four hundred

1 eighteen million dollars (\$418,000,000.00).

2 C. The Department of Business Oversight (“Department”), through the Commissioner, has
3 jurisdiction over the licensing and regulation of persons and entities engaged in the business of
4 money transmitting pursuant to the Act.

5 D. The Department and the Alaska Division of Banking & Securities conducted a joint
6 examination of Official Payments Corporation beginning March 4, 2014. The March 4, 2014
7 examination (“Examination”) uncovered many violations of the Act.

8 **VIOLATIONS OF THE ACT FOUND AT THE MARCH 4, 2014 EXAMINATION**

9 E. OPC failed to obtain approval for acquisition of control, in violation of Financial Code
10 section 2035, subdivision (a).

11 Financial Code section 2035, subdivision (a) states:

12 No person shall, directly or indirectly, acquire control of a licensee unless the
13 commissioner has first approved, in writing, the acquisition of control. An
14 application to acquire control of a licensee shall be in writing, under oath,
15 and in a form prescribed by the commissioner. The application shall contain
16 that information which the commissioner may require.

17 The application for the acquisition of control of OPC by ACI Worldwide, Inc. was filed
18 with the Commissioner by OPC on November 14, 2013. The acquisition had already concluded
19 on November 5, 2013. Approval for the acquisition has not yet been given by the Commissioner.

20 This is an ongoing violation with a duration of at least two hundred ninety-three (293)
21 days.

22 F. OPC violated the Commissioner’s conditions of approval of OPC’s license in violation of
23 Financial Code section 2036 in the following ways: Financial Code section 2036 states:

24 The commissioner may impose on any authorization, approval, license, or order
25 issued pursuant to this division any conditions that he or she deems reasonable or
26 necessary to the public interest.

27 a. In a September 29, 2011 letter, the Commissioner approved OPC’s application for
28 a money transmitter license subject to twelve (12) conditions (“Condition Letter”). Condition six
(6) required the submission of monthly financial statements and average daily transmission

1 liability reports on or before the tenth (10th) day of the following month. This deadline was
 2 extended by the Department to the fifteenth (15th) business day of the following month. Between
 3 January 2013 and May 2014, OPC failed to timely submit monthly financial statements on eight
 4 (8) occasions. The following table identifies eight (8) late submissions.

Month	Submission Date	Due Date	Business Days Late
January 2013	02/28/2013	02/22/2013	4
February 2013	03/25/2013	03/21/2013	2
April 2013	08/15/2013	05/21/2013	37
May 2013	06/25/2013	06/21/2013	2
January 2014	02/26/2014	02/21/2014	3
March 2014	04/23/2014	04/21/2014	2
April 2014	05/23/2014	05/21/2014	2
May 2014	06/30/2014	05/20/2014	6

12 The combined duration of these violations is fifty-eight (58) days.

13 b. Condition ten (10) of the letter required OPC to establish an inter-company
 14 transaction policy requiring that all inter-company transactions are at “arm’s length,” with terms
 15 and conditions that are consistent with safe and sound business practices. According to OPC
 16 management, no such inter-company transaction policy was maintained.

17 The duration of this violation was from the date of licensure, April 18, 2012, through at
 18 least the date of examination, March 4, 2014, or six hundred eighty-six (686) days.

19 G. OPC did not maintain adequate surety bond coverage, in violation of Financial Code section
 20 2037, subdivision (e).

21 Financial Code section 2037, subdivision (e) states:

22 A licensee that engages in receiving money for transmission shall maintain
 23 securities on deposit or a bond of a surety company in an amount greater than the
 24 average daily outstanding obligations for money received for transmission in
 25 California, provided that such amount shall not be less than two hundred fifty
 thousand dollars (\$250,000) nor more than seven million dollars (\$7,000,000).

26 The following table identifies twenty (20) instances in which OPC’s monthly average daily
 27 transmission liability (“ADTL”) exceeded its two million two hundred thousand dollar
 28 (\$2,200,000.00) surety bond coverage for the period from April 2012 to March 2014:

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Month	ADTL	Month	ADTL
Apr 2012	\$ 7,156,904	Jun 2013	\$ 4,759,119
Jun 2012	\$ 2,739,639	Jul 2013	\$ 4,139,101
Jul 2012	\$ 2,800,440	Aug 2013	\$ 3,253,686
Sep 2012	\$ 2,590,628	Sep 2013	\$ 4,236,942
Dec 2012	\$ 2,778,390	Oct 2013	\$ 4,088,300
Jan 2013	\$ 4,404,722	Nov 2013	\$ 3,256,416
Feb 2013	\$ 2,503,690	Dec 2013	\$ 4,503,428
Mar 2013	\$ 3,081,357	Jan 2014	\$ 4,404,930
Apr 2013	\$ 11,823,207	Feb 2014	\$ 2,474,481
May 2013	\$ 3,066,207	Mar 2014	\$ 2,831,931

Therefore, this violation occurred for at least twenty (20) months or six hundred and seven (607) days.

H. OPC failed to submit its year-end audit report in violation of Financial Code section 2039, subdivision (b).

Financial Code section 2039, subdivision (b) states, in part:

In addition to such other reports as may be required pursuant to Sections 453, 454, and 455, each licensee shall, within 90 days after the end of each fiscal year, or within such extended time as the commissioner may prescribe, file with the commissioner an audit report for the fiscal year that shall comply with all of the following provisions:

(1) The audit report shall contain audited financial statements of the licensee for or as of the end of the fiscal year prepared in accordance with United States generally accepted accounting principles and such other information as the commissioner may require.

(2) The audit report shall be based upon an audit of the licensee conducted in accordance with United States generally accepted auditing standards and such other requirements as the commissioner may prescribe.

OPC failed to conduct an audit at the licensee level for its fiscal years ending September 30, 2012 and September 30, 2013. Audits for these years were only conducted at the parent level. An audit was later conducted for the year ending September 30, 2013; the report was submitted on July 16, 2014, too late to be reviewed. In addition, as a result of the integration of the licensee into the ACI Worldwide family of companies, OPC has changed its fiscal year end to December 31st. No audit report for the interim period of September 30, 2013 through December 31, 2013 was submitted.

1 The duration of OPC’s failure to conduct audits is at least one thousand one hundred forty-
2 two (1,142) days.

3 I. OPC failed to maintain minimum tangible shareholders’ equity (“TSE”) in violation of
4 Financial Code section 2040.

5 Financial Code section 2040 states, in part:

6 (a) An applicant shall possess, and a licensee shall maintain at all times, tangible
7 shareholder’s equity of two hundred fifty thousand dollars (\$250,000) to five
8 hundred thousand dollars (\$500,000), depending on estimated or actual
9 transaction volume, as determined by the commissioner based on the factors
10 described in subdivision (c).

11 (b) The commissioner may increase the amount of net worth required of an
12 applicant or licensee if the commissioner determines, with respect to the applicant
13 or licensee, that a higher net worth is necessary to achieve the purposes of this
14 division based on the factors described in subdivision (c).

15 Condition one (1) of the September 28, 2011 Condition Letter requires OPC to maintain at
16 all times a TSE of not less than ten million dollars (\$10,000,000.00) or ten percent (10%) of total
17 assets, whichever is higher.

18 At January 31, 2014, OPC reported a TSE of negative ninety-seven million dollars
19 (-\$97,000,000.00). This was one hundred ten million dollars (\$110,000,000.00) shareholders’
20 equity less one hundred forty million dollars (\$140,000,000.00) in goodwill and sixty-seven
21 million dollars (\$67,000,000.00) in other intangibles.

22 The violation continued for sixty-eight (68) days.

23 J. OPC failed to maintain adequate eligible securities in violation of Financial Code section
24 2081, subdivision (a).

25 Financial Code section 2081, subdivision (a) states:

26 A licensee shall at all times own eligible securities having an aggregate market
27 value computed in accordance with United States generally accepted accounting
28 principles of not less than the aggregate amount of all of its outstanding payment
instruments and stored value obligations issued or sold in the United States and all
outstanding money received for transmission in the United States.

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1 As part of a March 7, 2013 incremental term loan agreement between OPC’s parent ACI
2 Worldwide Inc. and a consortium of lenders, all of OPC’s assets were pledged as security. Financial
3 Code section 2084, subdivision (a) states:

- 4 A licensee shall be deemed to own an eligible security only if the following apply:
5 (1) The licensee owns the eligible security solely and exclusively in its own right, both of
6 record and beneficially.
7 (2) The eligible security is not subject to any pledge, lien, or security interest.
8 (3) The licensee can freely negotiate, assign, or otherwise transfer the eligible security.

8 Because OPC’s assets were pledged as part of the loan agreement, OPC owned zero (0)
9 eligible securities, in violation of Financial Code section 2081, subdivision (a).

10 This violation continued for approximately five hundred twenty-four (524) days.

11 K. OPC failed to file customer receipt forms, in violation of Financial Code section 2100,
12 subdivision (a)(1).

13 Financial Code section 2100, subdivision (a)(1) states:

14 Each licensee shall file with the commissioner a certified copy of every receipt
15 form used by it or by its agent for receiving money for transmission prior to its
16 first use. No licensee or its agent shall use any receipt, a certified copy of which
17 has not been filed with the commissioner, or use a receipt that the commissioner
18 has deemed not to be in compliance pursuant to paragraph (2).

18 OPC did not file receipt forms for at least two hundred forty-four (244) days.

19 L. OPC did not include the proper right-to-refund language in its receipts, in violation of
20 Financial Code section 2102, subdivision (b).

21 Financial Code 2102, subdivision (b) states:

22 In the case of money received for transmission, a receipt shall be provided by a
23 licensee or its agent to all customers which shall be made available to the
24 customer in English and in the language principally used by that licensee or that
25 agent to advertise, solicit, or negotiate, either orally or in writing, at that branch
26 office if other than English. Except when money is received for transmission for
27 the payment of goods or services, the receipt shall either include or have attached
28 a conspicuous statement in English and in the language principally used by the
licensee or that agent to advertise, solicit, or negotiate, either orally or in writing
at that branch office if other than English in a size equal to at least 10 point bold
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RIGHT TO REFUND

“You, the customer, are entitled to a refund of the money to be transmitted as the result of this agreement if _____ (name of licensee) does not forward the money received from you within 10 days of the date of its receipt, or does not give instructions committing an equivalent amount of money to the person designated by you within 10 days of the date of the receipt of the funds from you unless otherwise instructed by you.

If your instructions as to when the moneys shall be forwarded or transmitted are not complied with and the money has not yet been forwarded or transmitted, you have a right to a refund of your money.

If you want a refund, you must mail or deliver your written request to _____ (name of licensee) at _____ (mailing address of licensee). If you do not receive your refund, you may be entitled to your money back plus a penalty of up to \$1,000 and attorney’s fees pursuant to Section 2102 of the California Financial Code.”

Receipts from one of OPC’s receipt systems contained outdated code references stemming from the pre-2012 version of the Act. As such, all receipts issued from this system, from July 2013 to at least March 4, 2014, had improper right-to-refund language. Therefore, this violation continued for at least two hundred forty-four (244) days.

M. OPC failed to provide requested documentation, in violation of Financial Code section 2120, subdivision (b).

Financial Code section 2120, subdivision (b) states:

The directors, officers, and employees of any licensee or agent of a licensee being examined by the commissioner shall exhibit to the commissioner, on request, any or all of the licensee’s accounts, books, correspondence, memoranda, papers, and other records and shall otherwise facilitate the examination so far as it may be in their power to do so.

OPC management failed to provide recent copies of receipts issued from the Eastern and Central transactions systems by the July 11, 2014 deadline given by the Department examiners. This continued for seven (7) days.

N. OPC failed to maintain records of receipts, in violation of Financial Code section 2124, subdivision (b).

1 Financial Code section 2124, subdivision (b) states:

2 A licensee or its agent shall maintain records of any receipts provided pursuant to
3 Section 2102 for six months or a longer period of time specified in the contract
4 between the licensee and its agent.

5 OPC management stated that it has no mechanism for keeping copies of receipts for two of
6 its three transaction systems.

7 This violation continued for at least two hundred forty-four (244) days.

8 O. The Commissioner is responsible for enforcing provisions of the Act and authorized to
9 pursue administrative and civil actions and remedies against persons who violate the Act.

10 P. The Commissioner finds that the violations identified above are knowing violations under
11 Financial Code section 329, subdivision (b)(2), and that this action is appropriate in the public
12 interest and consistent with the purposes fairly intended by the policy and provisions of the Act.

13 Q. It is the intention and desire of the parties to resolve this matter without the necessity of a
14 hearing and/or other litigation.

15 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
16 forth herein, the parties agree as follows:

17 **TERMS AND CONDITIONS**

18 1. This Stipulation is entered into for the purpose of judicial economy and
19 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

20 2. OPC admits all of the facts set forth in this Stipulation.

21 3. OPC agrees not to repeat or to continue any violations of the Financial Code
22 sections that OPC was found to have violated in the Examination, as set forth in this Stipulation.

23 4. OPC agrees to pay penalties in the amount of one hundred eighty five thousand
24 dollars (\$185,000.00) to the Department, by issuing a check made payable to the Department of
25 Business of Oversight and sent to: Joanne Ross, Senior Counsel, 1515 K Street, Suite 200,
26 Sacramento, California 95814, due and payable upon execution of this Stipulation.

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1 5. The Commissioner agrees to accept said sum in settlement of the violations set
2 forth in this Stipulation and hereby releases OPC from liability for penalties under Financial Code
3 section 2151.1 and section 329, subdivision (b)(2), except as set forth below.

4 6. OPC acknowledges that for knowingly violating any provision of this Stipulation,
5 OPC may be subject to immediate enforcement action, including, but not limited to civil penalties
6 in the amount of \$10,000.00 per day for each day OPC is in violation pursuant to Financial Code
7 section 329, subdivision (b)(2).

8 7. The parties acknowledge and agree that nothing contained in this Stipulation shall
9 operate to limit the Commissioner’s ability to assist any other agency, (city, county, state or
10 federal) with any prosecution, administrative, civil or criminal, brought by any such agency
11 against OPC or any other person based upon any of the activities alleged in these matters or
12 otherwise.

13 8. This Stipulation is binding on all heirs, assigns and/or successors in interest.

14 9. This Stipulation does not create any private rights or remedies against OPC, create
15 any liability for OPC or limit defenses of OPC for any person or entity not a party to this
16 Stipulation.

17 10. This Stipulation may be revoked and the Commissioner may pursue any and all
18 remedies available under law against OPC if the Commissioner later discovers OPC knowingly or
19 willfully withheld information used and relied upon in this Stipulation.

20 11. Each of the parties represents, warrants, and agrees that it has received independent
21 advice from its attorney(s) and/or representatives with respect to the advisability of executing this
22 Stipulation.

23 12. Each of the parties represents, warrants, and agrees that in executing this
24 Stipulation it has relied solely on the statements set forth herein and the advice of its own counsel.
25 Each of the parties further represents, warrants, and agrees that in executing this Stipulation it has
26 placed no reliance on any statement, representation, or promise of any other party, or any other
27 person or entity not expressly set forth herein, or upon the failure of any party or any other person
28 or entity to make any statement, representation or disclosure of anything whatsoever. The parties

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

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

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

16 15. OPC enters into this Stipulation knowingly, voluntarily and without coercion and
17 acknowledges that no promises, threats or assurances have been made by the Commissioner or
18 any officer, or agent thereof, about this Stipulation.

19 16. The waiver amendment and/or change of any provision of this Stipulation shall not
20 operate to waive any other provision set forth herein, and any waiver, amendment and/or change
21 to the terms of this Stipulation must be in writing and signed by the parties.

22 17. This Stipulation shall not become effective until signed and delivered by all parties.

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18. The parties agree that this Stipulation may be executed in one or more separate counterparts, each of which when so executed, shall be deemed an original. A signature in a facsimile document shall be deemed the same as an original signature. Such counterparts shall together constitute and be one and the same instrument.

19. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Stipulation.

Dated: 4/21/15 JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 4/21/15 OFFICIAL PAYMENTS CORPORATION

By _____
Title _____