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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
OF THE STATE OF CALIFORNIA

In the Matter of:	)	
	)	CFL LICENSE NOs.: 603F508; 603J714;
THE COMMISSIONER OF BUSINESS	)	60DBO-36031; 60DBO-43809; 60DBO-45215
OVERSIGHT,	)	60DBO-45612; 60DBO-46084.
	)	
Complainant,	)	ACCUSATION/STATEMENT OF ISSUES
	)	
v.	)	
	)	
SIMPLE CASH LOANS, INC. dba	)	
MONTANA CAPITAL TITLE LOANS,	)	
	)	
Respondent.	)	
	)	

The Complainant, the Commissioner of Business Oversight (Commissioner), is informed and believes, and based upon such information and belief, alleges and charges Respondent as follows:

**I.**

**Introduction**

1. Simple Cash Loans, Inc. dba Montana Capital Title Loans (Simple Cash) is a finance lender licensed by the Department of Business Oversight since December 19, 2007, pursuant to the

1 California Financing Law (CFL)<sup>1</sup> (Financial Code § 22000 et seq.).<sup>2</sup> Simple Cash has its principal  
2 place of business located at 12114 Sherman Way, North Hollywood, California 91605. Simple  
3 Cash's primary business is to originate secured vehicle title loans. Simple Cash currently has seven  
4 branch office locations under its CFL license located in California. Simple Cash also has 38  
5 applications for CFL licenses pending for several branch locations in California.

6 2. On or about July 30, 2015, the Commissioner commenced a regulatory examination  
7 of the books and records of Simple Cash (2015 regulatory examination), which revealed that Simple  
8 Cash:

- 9 (i) overcharged borrowers interest by improperly including DMV fees, parking  
10 ticket fees, and/or auto insurance premiums in the bona fide principal amount  
11 of a loan in violation of Sections 22303, 22304, 22306, and 22251(c);
- 12 (ii) overcharged borrowers administrative fees on loans less than \$2,500.00 by  
13 improperly adding DMV fees, parking tickets, and insurance premiums in  
14 determining the bona fide principal amount, in violation of Sections 22251(a);  
15 22251(c); 22305, and 22306,
- 16 (iii) failed to provide books and records to the Commissioner pursuant to the  
17 Commissioner's demand in violation of Section 22156, and;
- 18 (iv) failed to adequately document borrowers' ability to repay loans in violation of  
19 California Code of Regulations, title 10, section 1452.

20 3. Simple Cash engaged in the business of finance lending in violations of the  
21 Financial Code provisions referenced herein in the manner more fully described below.

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25 <sup>1</sup> Effective October 4, 2017, the name of the "California Finance Lenders Law" changed to the  
26 "California Financing Law." (Assem. Bill No. 1284 (2017-2018 Reg. Sess.) § 4.) For purposes of  
27 this document, a reference to the California Finance Lenders Law means the California Finance  
28 Lenders Law before October 4, 2017 and the California Financing Law on and after that date. (Cal.  
Fin. Code, § 22000.)

<sup>2</sup> All further statutory references are to the Financial Code unless otherwise indicated.

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**II.**

**CFL Violations**

A. Simple Cash overcharged customers interest and administrative fees.

4. The 2015 regulatory examination disclosed that Simple Cash overcharged customers interest by improperly including DMV fees, parking ticket fees, and/or auto insurance premiums in the bona fide principal amount of a loan in violation of Sections 22303, 22304, 22251(c), and 22306.

5. Section 22306 prohibits a lender from charging customers an amount in excess of the amount allowed under Article 3 of the CFL (commencing with Section 22300). Sections 22303 and 22304 regulate the rate of interest a lender may charge on loans under \$2,500.00, while the amount a lender may charge on loans exceeding \$2,500.00 is unregulated.

6. Pursuant to Section 22251(c), for the purposes of determining whether the loan amount exceeds a regulatory ceiling, the bona fide principal amount "... shall not be comprised of any charges, or any other fees or recompense specified in Sections 22200, 22201 (including, but not limited to, amounts paid for insurance of the types specified in Sections 22313 and 22314, 22202, 22305, 22316, 22317, 22318, 22319, 22320, 22320.5, and 22336 (Citations)."

7. Section 22200 defines charges as including "... the aggregate interest, fees, ... expenses, and other forms of costs charged, contracted for, or received by a licensee or any other person in connection with ... arranging, negotiating, procuring guaranteeing, making, servicing, collecting, and enforcing of a loan..."

8. The 2015 regulatory examination disclosed that Simple Cash routinely included DMV fees, parking ticket fees, and auto insurance premiums in the bona fide principal amount, resulting in overcharges of interest to customers.

9. The Commissioner finds that the DMV fees, parking tickets, and insurance premiums Simple Cash includes in the bona fide principal amount fall within the definition of charges set forth in Section 22200 (a) and as such, are not part of the bona fide principal amount of a loan for purposes of determining the maximum allowable interest rate.

10. The 2015 regulatory examination further revealed that Simple Cash overcharged borrowers, administrative fees on loans less than \$2,500.00 by improperly adding DMV fees,

1 parking tickets, and insurance premiums in determining the bona fide principal amount, in violation  
2 of Sections 22251(a); 22251(c); and 22305.

3 11. Section 22305 limits the administrative fee a lender may charge on a loan under  
4 \$2,500.00 to the lesser of \$50.00 or 5% of the principal amount of the loan, and limits the  
5 administrative fee on a loan under \$5,000.00 to \$75.00. Simple Cash was noted to have charged  
6 administrative fees that exceeded the lesser of 5% of the principal loan amount or \$50.00 for loans of  
7 a bona fide principal amount of less than \$2,500.00, or \$75.00 for loans between \$2,500.01 and  
8 \$4,999.99 in violation of Section 22305.

9 12. The Commissioner finds that the DMV fees, parking tickets, and insurance premiums  
10 Simple Cash includes in determining the bona fide principal amount are “charges” defined under  
11 Section 2220 (a) and as such, are not part of the bona fide principal amount for purposes of  
12 determining the maximum allowable administrative fees.

13 13. The Commissioner, by correspondence dated February 3, 2016, directed Simple Cash  
14 to review all loans with excess charges and fees made between August 7, 2012 and the date of  
15 request, and correct the violations and issue refunds of the excess interest and charges to borrowers.

16 14. By correspondence dated March 7, 2016, Simple Cash declined the Commissioner’s  
17 request that it review all loans with excess charges and fees and issue refunds, contending that the  
18 DMV fees, parking tickets, and/or insurance premiums included in the bona fide principal amount  
19 are “pre-loan” obligations which must be paid in order for the borrower to legally operate the  
20 collateralized vehicle. Simple Cash stated in its March 7, 2016 letter that it was providing a benefit  
21 to the borrower by paying the DMV fees and other third-party debts from the borrower’s loan  
22 amount.

23 15. Simple Cash submitted further correspondence to the Commissioner dated September  
24 6, 2016, maintaining that its actions were proper. Simple Cash asserted in its September 6, 2016  
25 letter that “any benefit conveyed to a borrower can be the basis of a bona fide loan” and the payment  
26 of a borrower's pre-loan DMV registration fees, parking tickets, and auto insurance premiums are  
27 benefits to the borrower— thus justifying the inclusion of the fees and charges to the bona fide  
28 principal amount. Simple Cash stated it will voluntarily and temporarily cease including DMV

1 charges, parking tickets, and insurance premiums to the bona fide principal until "...a legal  
2 interpretation of the statute can be made...."

3 B. Failure to Furnish Books and Records.

4 16. The 2015 regulatory examination showed that Simple Cash failed to furnish books  
5 and records to the Commissioner pursuant to the Commissioner's demand in violation of Section  
6 22156. Simple Cash failed to provide information, including its agreement with PayNearMe —a  
7 third- party payment service provider that offers a payment option to borrowers, and written  
8 disclosures of the payment options offered to borrowers and any associated fees from May 1, 2011  
9 to July 30, 2016.

10 17. By letter dated September 6, 2016, Simple Cash agreed to cease offering borrowers a  
11 payment option through PayNearMe.

12 18. On or about May 25, 2017, Simple Cash sent a letter to the Commissioner stating that  
13 effective April 24, 2016, Simple Cash ceased offering borrowers the option of repaying their loans  
14 through PayNearMe. Along with its May 25, 2107 letter, Simple Cash provided documents,  
15 including an email correspondence dated June 25, 2013 from PayNearMe to Simple Cash outlining  
16 their agreement terms; an agreement dated July 10, 2013 between Simple Cash and PayNearMe; and  
17 a letter dated March 28, 2016 from PayNearMe confirming Simple Cash's termination of its  
18 agreement with PayNearMe.

19 C. Failure to document a borrower's ability to pay.

20 19. The 2015 regulatory examination revealed that Simple Cash failed to adequately  
21 document the borrowers' ability to repay loans in violation of California Code of Regulations, title  
22 10, section 1452. A review of Simple Cash's loan files disclosed that Simple Cash did not verify the  
23 borrowers' expenses or obtain the borrowers' credit reports in evaluating their respective loan  
24 applications. Further, the Commissioner's staff observed that Simple Cash's underwriting  
25 procedures and policies relied substantially on the equity of the motor vehicle securing the loan.

26 20. During the 2015 regulatory examination, the Commissioner directed Simple Cash to  
27 state its policy regarding how it evaluates a borrower's ability to repay a loan, and the corrective  
28 actions taken to document a borrower's financial ability to repay a loan. This violation was noted to

1 have occurred during a regulatory examination of the books and records of Simple Cash the  
2 Commissioner conducted on or about March 2011.

3 21. In its response letter dated March 7, 2016, Simple Cash provided a copy of a revised  
4 blank application showing applicants were required to state a minimum monthly income of  
5 \$1,800.00 and to list monthly expenses which could not exceed 75% of stated income to be  
6 considered for credit. Simple Cash did not specify what procedures, if any, were implemented to  
7 verify the information disclosed by applicants. Simple Cash further declined to conduct credit  
8 checks or otherwise verify the borrowers' outstanding debts prior to extending loans to borrowers.

9 22. The Commissioner found Simple Cash's policy and underwriting criteria to be  
10 inadequate and on August 25, 2016, the Commissioner directed Simple Cash to take corrective  
11 action to correct this violation and properly evaluate a borrower's ability to pay before extending a  
12 loan(s) to a borrower.

13 23. In response to the Commissioner's August 25, 2016 letter, Simple Cash sent a letter  
14 dated September 6, 2016 to the Commissioner stating that it has revised its underwriting criteria as  
15 follows:

- 16 a. \$1,600.00 minimum monthly income for loans under  
17 \$5,000.00; \$3,000.00 minimum monthly income for loans  
18 over \$5,000.00.
- 19 b. Ratio of debts to income is not to exceed 75%.
- 20 c. Company will "obtain proof" of applicants' timely payment  
21 of expenses.

22 24. Simple Cash still did not specify how it will verify applicants' self-reported income  
23 and expenses or whether it would perform credit checks on applicants to determine their ability to  
24 repay their loans.

25 25. On or about May 26, 2017, the Commissioner received a letter dated May 25, 2017,  
26 along with a copy of Simple Cash's underwriting guidelines reiterating the underwriting criteria  
27 described above in paragraph 22. The underwriting criteria attached to Simple Cash's letter of May  
28 25, 2017 stated that "proof of expense status can include: Rent/Mortgage, Household Expenses,

1 Utility Bill, Credit Card Statement, Insurance.” Simple Cash’s underwriting criteria continues to  
2 show that Simple Cash does not verify a borrower’s expenses, and as such, does not properly  
3 evaluate a borrower’s ability to repay a loan as required under California Code of Regulations, title  
4 10, section 1452.

5 **D. Simple Cash violated other provisions of the Financial Code.**

6 26. The 2015 regulatory examination showed that Simple Cash overcharged at least one  
7 borrower DMV filing fees in violation of section 22336(a). Simple Cash has since taken corrective  
8 action by refunding the filing fee to the affected borrower.

9 27. The 2015 regulatory examination showed that Simple Cash failed to mark “paid” on  
10 paid promissory notes in violation of Section 22337(e). Simple Cash has since taken corrective  
11 action and provided assurances to the Commissioner that it will comply with Section 22337(e) in the  
12 future.

13 28. The 2015 regulatory examination disclosed that Simple Cash assessed late fees  
14 incorrectly in violation of Section 22320.5(a)(1). Simple Cash has since taken corrective action by  
15 conducting a global audit and refunding the late fees to borrowers.

16 29. The 2015 regulatory examination revealed that Simple Cash assessed fees for mailing  
17 a 15-day notice in violation of Sections 22200, 22201, 22303, 22304, 22306, and 22307. Simple  
18 Cash has since taken corrective action by conducting a global audit and refunding the fees to  
19 borrowers.

20 **III.**

21 **Finance Lender/Broker Licenses**

22 30. The violations of the CFL described above, if committed by Simple Cash on or before  
23 having originally sought a license from the Commissioner under the CFL, would have constituted  
24 grounds for the Commissioner to deny the license application of Simple Cash under Section 22109.

25 31. Pursuant to Section 22714, the Commissioner may suspend or revoke any license if  
26 “a fact or condition exists that, if it had existed at the time of the original application for the license,  
27 reasonably would have warranted the commissioner in refusing to issue the license originally.”

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person has any right to collect or receive any principal, charges, or recompense in connection with the transaction.

35. Section 22751 (a) and (b) provide in pertinent part:

(a) If any amount other than or in excess of the charges permitted by this division is charged or contracted for, or received, for any reason other than a willful act of the licensee, the licensee shall forfeit all interest and charges on the loan and may collect or receive only the principal amount of the loan.

(b) Subdivision (a) shall not apply to an error in computation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 60 days of discovering the error the licensee notifies the borrower of the error and makes whatever adjustments in the account are necessary to correct the error.

36. Section 22752 (a) and (b) provide in pertinent part:

(a) If any provision of this division is violated in the making or collection of a loan, for any reason other than a willful act of the licensee, the licensee shall forfeit all interest and charges on the loan and may collect or receive only the principal amount of the loan.

(b) Subdivision (a) shall not apply to a violation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 30 days of discovering the error the licensee notifies the borrower of the error and rectifies the error by making the appropriate changes in the documents or account and by taking other action necessary to correct the error.

V.

**Conclusion**

37. The Commissioner finds that, by reason of the foregoing, Simple Cash has violated Sections 22200; 22201; 22156; 22303; 22304, 22305; 22306(a); 22307; 22320.5(a)(1); 22337(e); 22251(c); and California Code of Regulations, title 10, sections 1452 and 1455(b), and a fact or

1 condition now exists, that if it had existed at the time of original licensure under the CFL, reasonably  
2 would have warranted the Commissioner in refusing to issue the CFL license, and based thereon,  
3 grounds exist to revoke the finance lender and broker licenses of Simple Cash.

4 **VI.**

5 **Prayer**

6 WHEREFORE, IT IS PRAYED that:

7 a) Pursuant to Section 22714, the CFL finance lender and broker licenses of Simple  
8 Cash Loans, Inc. dba Montana Capital Title Loans, license nos.: 603F508; 603J714; 60DBO-36031;  
9 60DBO-43809; 60DBO-45215; 60DBO-45612; and 60DBO-46084, be revoked;

10 b) Pursuant to Section 22109, the pending CFL finance lender and broker license  
11 applications of Simple Cash Loans, Inc. dba Montana Capital Title Loans, to open 38 branch  
12 locations in California be denied.

13 Dated: November 6, 2017  
14 Los Angeles, California

JAN LYNN OWEN  
Commissioner of Business Oversight

15  
16 By \_\_\_\_\_  
17 Uche L. Enenwali  
18 Senior Counsel  
19 Enforcement Division  
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