



RECITALS

A. The Commissioner has jurisdiction over the licensing and regulation of finance lenders and brokers operating in California under the California Financing Law (Fin. Code, § 22000 et seq.) (CFL).<sup>1</sup>

B. Simple Cash is a California corporation with its principal place of business located at 12114 Sherman Way, North Hollywood, California. Simple Cash is a finance lender and broker licensed under the CFL. Simple Cash’s primary business is to originate secured vehicle title loans. The company has seven branch office locations operating under its CFL licenses.

C. Simple Cash currently has 38 pending CFL branch applications. The Commissioner has not yet approved Simple Cash’s pending branch applications.

D. Yochay Eliaz is Simple Cash’s chief executive officer and, as such, is authorized to enter into this Settlement Agreement on behalf of Simple Cash.

E. During an examination of Simple Cash under the CFL commencing on July 30, 2015, the Commissioner determined the following (Examination Findings):

i. Simple Cash charged borrowers in excess of the rates prescribed by Financial Code sections 22303 and 22304 in connection with loans secured by vehicles. Although these loans had principal amounts of \$2,500.00 or more, therefore exceeding the regulatory ceilings in Financial Code sections 22303 and 22304, the Commissioner determined that the bona fide principal amount of these loans was less than \$2,500.00 because Simple Cash failed to exclude auto insurance premiums, parking ticket fees, and certain registration fees payable to the Department of Motor Vehicles (DMV) (collectively, DMV Fees). The Commissioner determined that the DMV Fees qualified as “charges” under Financial Code section 22200 for the purposes of determining compliance with Financial Code section 22251, subdivision (c), because Simple Cash required its borrowers to pay the DMV Fees as a condition of making the loan.

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<sup>1</sup> Effective October 4, 2017, the name of the “California Finance Lenders Law” changed to the “California Financing Law.” (Assem. Bill No. 1284 [2017-2018 Reg. Sess.] § 4.) For purposes of this Settlement Agreement, a reference to the California Financing Law means the California Finance Lenders Law before October 4, 2017, and the California Financing Law on and after that date. (Fin. Code, § 22000.)

1           ii.       As a result of Simple Cash improperly adding the DMV Fees in determining  
2 the bona fide principal amount, it overcharged administrative fees on loans less than \$2,500.00 in  
3 violation of Financial Code sections 22251, subdivision (c), 22305, and 22306.

4           iii.       Simple Cash failed to provide books and records in response to the  
5 Commissioner’s demand in violation of Financial Code section 22156.

6           iv.       Simple Cash failed to adequately document borrowers’ ability to repay loans  
7 in violation of the California Code of Regulations, title 10, section 1452.

8           v.        Although the Commissioner determined that the DMV Fees were “charges”  
9 under Financial Code section 22200, the Commissioner did not contend that Simple Cash had  
10 violated Financial Code section 22346, subdivision (b), on the ground that the DMV Fees would be a  
11 “finance charge” as defined by the Truth-In-Lending Act (15 U.S.C. 1601 et seq.).

12          vi       The Examination Findings included certain conduct that was also reviewed in  
13 a prior examination in 2011, but which did not result in examination findings at that time.

14          F.       On the basis of the Commissioner’s determination that Simple Cash had violated the  
15 CFL, on November 6, 2017, the Commissioner issued an accusation/statement of issues and notice  
16 of intention to revoke the CFL licenses issued to Simple Cash and to deny the company’s 38 pending  
17 branch applications (collectively, Accusation). A true and correct copy of the Accusation is attached  
18 and incorporated herein as **Exhibit A**.

19          G.       Simple Cash disagrees with the Commissioner’s determinations. Simple Cash timely  
20 filed its notice of defense under section 11506 of the Government Code for the purpose of denying  
21 the allegations of the Accusation and requesting an administrative hearing on the allegations in the  
22 Accusation. Simple Cash also timely filed a Demurrer to Accusation and Motion to Strike the  
23 Accusation. The Demurrer and Motion to Strike set for May 11, 2018 were taken off calendar  
24 without prejudice due to this Settlement Agreement. The administrative hearing is currently set for  
25 trial before the Office of Administrative Hearings on September 24 through 28, 2018.

26          H.       The Commissioner finds that entering into this Settlement Agreement is in the public  
27 interest, protects consumers, and is consistent with the purposes fairly intended by the policies and  
28 provisions of the CFL.

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

3 TERMS AND CONDITIONS

4  
5 1. Purpose. It is the intention and desire of the parties to resolve this matter amicably  
6 without the necessity of a hearing or other litigation for the purpose of judicial economy and  
7 expediency and to avoid the expense of a hearing and possible further court proceedings.

8 2. Waiver of Hearing Rights. Simple Cash agrees that this Settlement Agreement shall  
9 have the effect of withdrawing its request for an administrative hearing on the matter set forth  
10 herein. Simple Cash acknowledges its right to an administrative hearing under the CFL in  
11 connection with the Accusation and hereby waives such right to a hearing and to any  
12 reconsideration, appeal, or other rights which may be afforded it under the CFL, the Administrative  
13 Procedure Act (APA) (Gov. Code, § 11370 et seq.), the Code of Civil Procedure (CCP) (Code Civ.  
14 Proc., § 1 et seq.), or any provision of law in connection with these matters.

15 3. Acknowledgment. Simple Cash acknowledges that the Commissioner issued an  
16 Accusation dated November 6, 2017, in which the Commissioner alleged the company violated the  
17 regulatory rate provisions of Financial Code sections 22303 and 22304, among other violations  
18 described in the Examination Findings above. The Commissioner acknowledges that Simple Cash  
19 filed a Notice of Defense and a Demurrer and Motion to Strike in response to the Accusation.

20 4. Refund Calculation. Solely for the purpose of settling the allegations, Simple Cash  
21 shall make refunds or credits (collectively, Refunds) to certain borrowers as follows:

22 (a) Simple Cash shall audit its files and identify all loans made under its CFL  
23 licenses that meet the following criteria (Refund Population):

24 i. a portion of the loan proceeds was transmitted by Simple Cash to other  
25 third parties, including the DMV, to satisfy DMV Fees incurred by the borrower prior to the  
26 origination of the loan (Withheld Proceeds); and

27 ii. subtracting the loan's applicable Withheld Proceeds from its principal  
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1 amount results in amount less than \$2,500.00.

2 (b) For each loan identified in the Refund Population, as described above, Simple  
3 Cash shall also identify the amount the Commissioner contends was an overcharge in administrative  
4 fees (under Financial Code sections 22305 and 22306) by including Withheld Proceeds in its  
5 calculation of the bona fide principal amount under Financial Code section 22251, subdivision (c)  
6 (Administrative Fees).

7 (c) Simple Cash shall refund 50 percent of the Withheld Proceeds and  
8 Administrative Fees for each loan in the Refund Population to the applicable borrower in the manner  
9 described in Paragraph 5. below.

10 (d) Simple Cash represents that it has already completed the audit described in  
11 Paragraphs 4.(a) and (b) above and has identified 914 loans that constitute the Refund Population  
12 and the total amount of Refunds due is \$121,556.35.

13 (e) Simple Cash shall submit a report to the Commissioner detailing the Refund  
14 Population and each Refund (Refund Population Report) prior to the execution of this Settlement  
15 Agreement. The Commissioner's receipt of the Refund Population Report does not constitute an  
16 approval that the Refund Population Report is correct and does not otherwise limit the  
17 Commissioner's audit rights under this Settlement Agreement.

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19 5. Refund Payments. Simple Cash shall pay the Refunds as follows:

20 (a) Simple Cash shall make the Refunds no later than 30 days after the Effective  
21 Date of this Settlement Agreement, as defined in Paragraph 22.

22 (b) Simple Cash shall submit evidence of such payment to the Commissioner no  
23 later than 60 days after the Effective Date of this Settlement Agreement, as defined in Paragraph 22.  
24 Such evidence must include records sufficient to show mailing of refund checks to customers and  
25 transmittal of uncashed refund checks to the California State Controller's Office, loan balances, and,  
26 for assignees and borrowers of charged-off loans assigned to outside collections, advisements of  
27 outstanding-balance reductions for each loan in the Refund Population, as applicable.

28 (c) Simple Cash shall apply each Refund as follows:

- 1                   i.       for current borrowers with open loans which have an outstanding
- 2 balance of more than the Refund, by reducing the outstanding loan balance by the Refund amount;
- 3                   ii.       for current borrowers whose loans have an outstanding balance of less
- 4 than the Refund, by reducing the outstanding loan balance to zero dollars and mailing a check for the
- 5 remaining Refund amount to the borrower;
- 6                   iii.       for former borrowers who repaid their loans in full and do not have
- 7 any loans from Simple Cash with an outstanding balance, by mailing a check for the Refund amount;
- 8                   iv.       for borrowers whose loan were charged off, by reducing the charged-
- 9 off balance by the Refund amount. As to charged-off loans, Simple Cash shall apply the reduction
- 10 directly to any loan it retained for collection. For loans assigned to collection, Simple Cash shall
- 11 advise the assignee of the reduced outstanding balance. Simple Cash shall also advise each borrower
- 12 of a charged-off loan that it has been assigned for collection of the reduction in outstanding balance
- 13 by sending notice electronically to the borrower's last known e-mail address in Simple Cash's
- 14 records or, if the borrower has opted out of receiving electronic communications from Simple Cash,
- 15 by sending notice by U.S. mail to the borrower's last know mailing address in Simple Cash's
- 16 records.

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18                   (d)       Simple Cash shall escheat all unclaimed Refunds to the California State

19 Controller's Office within the period provided by and in accordance with Code of Civil Procedure

20 section 1519.5 of the Unclaimed Property Law. (Code of Civ. Proc., § 1500 et seq.)

21           6.       Compliance. Simple Cash shall ensure that any loans, which are made under its CFL

22 licenses that do not comply with the regulatory rate provisions of Financial Code sections 22303

23 and 22304, shall result in a distribution of Loan Proceeds (the amount financed minus the Withheld

24 Proceeds) to each customer that equals or exceeds \$2,500.00. This practice will ensure that any

25 Withheld Proceeds will not cause a borrower to receive a distribution of Loan Proceeds less than

26 \$2,500.00 at the time of funding. Simple Cash shall maintain this practice unless and until the statue

27 or regulation changes, or it receives prior written approval from the Commissioner to do otherwise.

28           7.       Proof of Compliance. Simple Cash acknowledges that the Commissioner will

1 examine and review its compliance with Paragraphs 4. through 6. of this Settlement Agreement.  
2 Simple Cash agrees to provide, upon the Commissioner's request, documentation satisfactory to the  
3 Commissioner to determine compliance with Paragraphs 4. through 6.

4 8. Remedies for Breach. Simple Cash agrees that, following 10 business days from the  
5 receipt of notice from the Commissioner of Simple Cash's failure to comply with any term of this  
6 Settlement Agreement, Simple Cash may be suspended from engaging in business under its CFL  
7 licenses upon the issuance of an order from the Commissioner until it provides evidence  
8 satisfactory to the Commissioner that the terms are met. Simple Cash hereby waives any notice and  
9 hearing rights that may be afforded under the CFL, APA, CCP, or any other provision of law to  
10 contest immediate suspension. Simple Cash further acknowledges that its failure to comply with  
11 Paragraphs 4. through 6. of this Settlement Agreement or the failure to provide documentation  
12 requested by the Commissioner to determine compliance with Paragraphs 4. through 6., under  
13 Paragraph 7. above, shall constitute a failure to comply with this Settlement Agreement and be  
14 subject to this paragraph.

15 9. Approval of Pending Branch Applications. The Commissioner hereby acknowledges  
16 that the 38 CFL branch applications filed by Simple Cash are ready to be approved, and the  
17 Commissioner hereby agrees to approve them concurrently with the execution of this Settlement  
18 Agreement. The pending branch licenses shall be issued not later than the Effective Date of this  
19 Settlement Agreement. Neither the Accusation nor this Settlement Agreement shall be a basis for the  
20 denial of approval of future CFL branch applications, if any.

21 10. Consideration. Except as set forth in Paragraph 8. of this Settlement Agreement, in  
22 consideration of Simple Cash's agreement to pay Refunds, and other relief as provided in this  
23 Settlement Agreement, the Commissioner hereby agrees that she will take no further action against  
24 Simple Cash's CFL licenses because of this action. Accordingly, this Settlement Agreement does  
25 not affect the licensing status of Simple Cash set forth in Paragraph B. of the above Recitals.

26 11. Full and Final Settlement. The parties hereby acknowledge and agree that this  
27 Settlement Agreement is intended to constitute a full, final, and complete resolution of the  
28 Examination Findings, including Examination Findings relating to conduct that was reviewed in the

1 2011 examination but which did not result in Examination Findings until 2015, and that no further  
2 proceedings or actions will be brought by the Commissioner in connection with the Examination  
3 Findings, either under the CFL or any other provision of law, excepting any proceeding to enforce  
4 compliance with the terms of this Settlement Agreement or action if such proceeding is based upon  
5 discovery of new and further violations of the CFL which do not form the basis for this Settlement  
6 Agreement or which Simple Cash knowingly concealed from the Commissioner.

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

12       13.    Binding. This Settlement Agreement is binding on all heirs, assigns, or successors in  
13 interest.

14       14.    Independent Legal Advice. Each of the parties represents, warrants, and agrees that it  
15 has received independent advice from its attorney(s) or representative(s) with respect to the  
16 advisability of executing this Settlement Agreement.

17       15.    Counterparts. The parties agree that this Settlement Agreement may be executed in  
18 one or more separate counterparts, each of which shall be deemed an original when so executed.  
19 Such counterparts shall together constitute and be one and the same instrument.

20       16.    Waiver, Modification, and Qualified Integration. The waiver of any provision of this  
21 Settlement Agreement shall not operate to waive any other provision set forth herein. No waiver,  
22 amendment, or modification of this Settlement Agreement shall be valid or binding to any extent  
23 unless it is in writing and signed by all the parties affected by it.

24       17.    Headings and Governing Law. The headings to the paragraphs of this Settlement  
25 Agreement are inserted for convenience only and will not be deemed a part hereof or affect the  
26 construction or interpretation of the provisions hereof. This Settlement Agreement shall be construed  
27 and enforced in accordance with and governed by California law.  
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1           18.    Full Integration. Each of the parties represents, warrants, and agrees that in executing  
2 this Settlement Agreement it has relied solely on the statements set forth herein and the advice of its  
3 own counsel. Each of the parties further represents, warrants, and agrees that in executing this  
4 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any  
5 other party, or any other person or entity not expressly set forth herein, or upon the failure of any  
6 party or any other person or entity to make any statement, representation, or disclosure of anything  
7 whatsoever. The parties have included this clause (1) to preclude any claim that any party was in any  
8 way fraudulently induced to execute this Settlement Agreement and (2) to preclude the introduction  
9 of parol evidence to vary, interpret, supplement, or contradict the terms of this Settlement  
10 Agreement.

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

18           20.    Voluntary Agreement. Simple Cash enters into this Settlement Agreement voluntarily  
19 and without coercion and acknowledges that no promises, threats, or assurances have been made by  
20 the Commissioner, or any officer or agent thereof, about this Settlement Agreement.

21           21.    Third Party Actions. This Settlement Agreement does not create or give rise to any  
22 private rights or remedies against Simple Cash or create any liability for Simple Cash or limit Simple  
23 Cash's defenses against any person or entity not a party to this Settlement Agreement. Further, this  
24 Settlement Agreement does not constitute an admission of wrongdoing or violation of law, statute, or  
25 regulation.

26           22.    Effective Date. This Settlement Agreement shall become final and effective when  
27 signed by all parties and delivered by the Commissioner's agent via e-mail to Simple Cash's counsel  
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1 at isabelle.ord@dlapiper.com and bagreenberg@netzero.net.

2 23. Notice. Any notices required under this Settlement Agreement shall be provided to  
3 each party at the following addresses:

4 If to Respondent to: Yochay Eliaz, CEO  
5 Simple Cash Loans, Inc. dba Montana Capital Car Title Loans,  
6 aka Montana Capital  
7 12114 Sherman Way  
North Hollywood, California 91605

8 with copies to: Bruce A. Greenberg, Esq.  
9 Bruce A. Greenberg, APLC  
400 Oceangate, Suite 520  
10 Long Beach, California 90802

11 Isabelle L. Ord, Esq.  
12 DLA Piper, LLP (US)  
555 Mission Street, Suite 2400  
13 San Francisco, California 94105

14 If to the Commissioner to: Blaine A. Noblett, Senior Counsel  
15 Department of Business Oversight  
320 West 4th Street, Suite 750  
16 Los Angeles, California 90013-2344

17 24. Authority to Execute. Each signatory hereto covenants that he/she possesses all  
18 necessary capacity and authority to sign and enter into this Settlement Agreement.

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

Dated: 6/1/18

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

SIMPLE CASH LOANS, INC. dba Montana Capital  
Car Title Loans, aka Montana Capital

Dated: 5/31/18

By \_\_\_\_\_  
YOCHAY ELIAZ, CEO  
On behalf of Simple Cash, Inc. dba Montana Capital  
Car Title Loans, aka Montana Capital

Approved as to Form and Content

By \_\_\_\_\_  
Isabelle L. Ord, Esq.  
DLA Piper LLP (US)  
Attorneys on behalf of Simple Cash Inc.  
dba Montana Capital Car Title Loans, aka  
Montana Capital

Approved as to Form and Content

By \_\_\_\_\_  
Bruce A. Greenberg, Esq.  
Bruce A. Greenberg, APLC  
Attorneys on behalf of Simple Cash Inc.  
dba Montana Capital Car Title Loans, aka  
Montana Capital