

1 STATE OF CALIFORNIA
2 BUSINESS, TRANSPORTAION AND HOUSING AGENCY
3 DEPARTMENT OF CORPORATIONS

4 In re: Southwestern & Pacific Specialty Finance, Inc. dba Check ‘N Go (File No. 100-2837
5 with 180 additional licensed locations)

6 SETTLEMENT AGREEMENT
7 AND DESIST AND REFRAIN ORDER

8 This Settlement Agreement and Desist and Refrain Order is entered into between the California
9 Corporations Commissioner (“Commissioner”), and Southwestern & Pacific Specialty Finance, Inc.,
10 dba Check ‘N Go (“Check ‘N Go”), and is made with respect to the following facts:

11
12 RECITALS

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14 A. Check ‘N Go has 181 locations in the State of California licensed under the California
15 Deferred Deposit Transaction Law (hereinafter, the “CDDTL”), Cal. Fin. Code sections 23000 *et*
16 *seq.*, with its principal place of business located at 7755 Montgomery Road, Suite 400, Cincinnati,
17 OH 45236.

18 B. The Commissioner or the Department of Corporations (“Department”) is responsible for
19 enforcing the CDDTL.

20 C. In 2009-10, the Department conducted regulatory examinations of various Check ‘N Go
21 locations. The examinations cited purported violations of the CDDTL including that Check ‘N Go
22 allegedly collected excess amounts from customers that made payments on their loans, and allegedly
23 failed to refund excess fees to customers that had already paid off their loans (hereinafter collectively
24 “Exam Finding”).

25 D. In an effort to avoid costly and protracted litigation, it is the parties’ intention to resolve
26 the Exam Findings and related matters (File No. 100-2837) without an administrative hearing or other
27 litigation.

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1 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
2 forth herein, it is hereby agreed, stipulated and ORDERED as follows:

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4 **DESIST AND REFRAIN ORDER**

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6 Pursuant to Financial Code section 23050, Southwestern & Pacific Specialty Finance, Inc. dba
7 Check 'N Go is hereby ordered and agrees to Desist and Refrain from any violation of Financial
8 Code sections 23035(i) and 23036(a),(e),(f). The Order shall remain in full force and effect until
9 further order of the Commissioner.

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11 **TERMS AND CONDITIONS**

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13 1. Purpose. The purpose of this Settlement Agreement and Desist and Refrain Order is to
14 resolve the Exam Findings expeditiously, avoid the expense of costly and protracted litigation
15 obviating the need for further proceedings.

16 2. Waiver of Hearing Rights. Check 'N Go acknowledges its right to a hearing under the
17 CDDTL in connection with the allegations of the Exam Findings, and hereby waives that right to a
18 hearing, and to any reconsideration, appeal, or other right to review which may be afforded pursuant
19 to the CDDTL, the California Administrative Procedure Act ("APA"), the California Code of Civil
20 Procedure, or any other provision of law, and by waiving such rights, consents to the Settlement
21 Agreement and Desist and Refrain Order becoming final.

22 3. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that it has
23 received or been advised to seek independent legal advice from its attorneys with respect to the
24 advisability of executing this Settlement Agreement and Desist and Refrain Order.

25 4. Payments and Forgiveness. Check 'N Go has agreed to make refunds to certain of its
26 customers in the aggregate amount of \$120,897.96 for excess charges. Check 'N Go shall provide
27 proof of refunds to the Department within 30 days of execution of this Settlement Agreement
28 including an electronic bank statement showing all endorsed checks, a list of checks sent, copies of the

1 envelopes for any refunds returned by the Post Office and a list of any uncashed checks. Any
2 refunded amounts unclaimed by customers shall escheat to the State of California pursuant to the
3 California Code of Civil Procedure, Title 10. Check 'N Go also agrees to pay the Commissioner
4 \$98,000.00 for Citations. Payment to the Commissioner shall be made within ten (10) business days
5 following execution of this Settlement Agreement and Desist and Refrain Order, and shall be made
6 payable to the California Department of Corporations and delivered to the Department of
7 Corporations' Sacramento Office to the attention of Senior Corporations Counsel, Brent Lindgren.

8 5. Future Actions by the Commissioner. The Commissioner reserves the right to bring any
9 action against Check 'N Go or any of their partners, owners, employees or successors for any and all
10 unknown or future violations of the CDDTL. However, this Settlement and Desist and Refrain Order
11 resolves and discharges Check 'N Go of any further liability, fine or discipline or other punitive
12 conduct that could have been brought by the Commissioner arising out of or relating to the Exam
13 Findings, the current regulatory examinations and this Settlement Agreement and Desist and Refrain
14 Order so long as Check 'N Go is in compliance with section 4 of the Settlement Agreement and
15 Desist and Refrain Order. If Check 'N Go fails to make timely payment to the Commissioner or offer
16 refunds to the consumers referred to in section 4 above, failure to do so shall be a breach of this
17 Settlement Agreement and Desist and Refrain Order and shall be cause for the Commissioner to
18 revoke or deny any Department license or any pending applications of Check 'N Go or their
19 successors and assigns, by whatever names they might be known.

20 6. Settlement Agreement Coverage. The parties hereby acknowledge and agree that this
21 Settlement Agreement and Desist and Refrain Order is intended to constitute a full, final and
22 complete resolution of the Exam Findings. The parties further acknowledge and agree that this
23 Settlement Agreement and Desist and Refrain Order shall not operate to limit the Commissioner's
24 ability to assist any other agencies with any prosecution, administrative, civil or criminal, brought by
25 any such agency against Check 'N Go based upon any of the activities alleged in this matter or
26 otherwise. Each of the parties represents, warrants, and agrees that in executing this Settlement
27 Agreement and Desist and Refrain Order, it has relied solely on the statements set forth herein and
28 the advice of its own counsel and has placed no reliance on any statement, representation, or promise

1 of any other party, or any other person or entity not expressly set forth herein, or upon the failure of
2 any party or any other person or entity to make any statement, representation or disclosure of
3 anything whatsoever. The parties have included this clause: (1) to preclude any claim that any party
4 was in any way fraudulently induced to execute this Settlement Agreement and Desist and Refrain
5 Order; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or
6 contradict the terms of this Settlement Agreement and Desist and Refrain Order.

7 7. Full Integration. This Agreement and Desist and Refrain Order is the final written
8 expression and the complete and exclusive statement of all the agreements, conditions, promises,
9 representations, and covenants between the parties with respect to the subject matter hereof, and
10 supersedes all prior or contemporaneous agreements, negotiations, representations, understandings,
11 and discussions between and among the parties, their respective representatives, and any other person
12 or entity.

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

21 9. Effective Date. This Settlement Agreement and Desist and Refrain Order shall not become
22 effective until signed and delivered by all parties.

23 10. Counterparts. This Settlement Agreement and Desist and Refrain Order may be executed
24 in any number of counterparts by the parties, and when each party has signed and delivered at least
25 one such counterpart to the other party, each counterpart shall be deemed an original and taken
26 together shall constitute one and the same Settlement Agreement and Desist and Refrain Order. A
27 facsimile signature shall be deemed the same as an original signature.

28 11. Modifications and Qualified Integration. No amendment, change or modification of this

1 Settlement Agreement and Desist and Refrain Order shall be valid or binding to any extent unless it is
2 in writing and signed by both of the parties.

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

8 13. Authority For Settlement. Check 'N Go covenants that it possesses all necessary capacity
9 and authority to sign and enter into this Settlement Agreement and Desist and Refrain Order. Check
10 'N Go warrants and represents that it is fully entitled and duly authorized to enter into and deliver this
11 Settlement Agreement and Desist and Refrain Order. In particular, and without limiting the
12 generality of the foregoing, Check 'N Go warrants and represents that it is entitled to enter into the
13 covenants, and undertake the obligations set forth herein.

14 14. Public Record. Check 'N Go acknowledges that this Settlement Agreement and Desist
15 and Refrain Order is a public record.

16 15. Voluntary Agreement. Check 'N Go represents and acknowledges that it is executing this
17 Settlement Agreement and Desist and Refrain Order completely voluntarily and without any duress
18 or undue influence of any kind from any source.

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1 16. Notices. Notice shall be provided to each party at the following addresses:

2 If to Check 'N Go to: Candace Sheridan – Director of Compliance
3 Southwestern & Pacific Specialty Finance, Inc.
4 7755 Montgomery Road, Suite 400
Cincinnati, Ohio 45236

5 If to the Commissioner to: Steven C. Thompson, Special Administrator
6 Financial Services Division, Department of Corporations
7 320 W. 4th Street, Suite 750
Los Angeles, CA 90013

8 **SIGNED AND AGREED TO:**

9
10 Dated: 6/9/10 PRESTON DuFAUCHARD
California Corporations Commissioner

11
12 By: _____
13 Alan S. Weinger, Deputy Commissioner
14 Department of Corporations

15 Dated: June 1, 2010
16 SOUTHWESTERN & PACIFIC SPECIALTY
FINANCE, INC., dba CHECK 'N GO

17
18 By: _____
19 Stephen Schaller, General Counsel
20 Southwestern & Pacific Specialty Finance, Inc., dba
Check 'N Go

21 **IT IS SO ORDERED:**

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23 Dated: 6/9/10 PRESTON DUFAUCHARD
California Corporations Commissioner

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25 By: _____
26 Alan S. Weinger, Deputy Commissioner
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STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF CORPORATIONS

TO: SOUTHWESTERN & PACIFIC SPECIALITY FINANCE, INC.
(dba CHECK ‘N GO)
5155 Financial Way
Mason, Ohio 45040

CITATION
AND
DESIST AND REFRAIN ORDER
(For violations of California Financial Code section 23005 and 23020)

The California Corporations Commissioner finds that:

1. Southwestern & Pacific Specialty Finance, Inc. doing business as Check ‘N Go (“Southwestern”) is and was at all relevant times herein, a Ohio corporation, with its principal place of business located at 5365 Elkhorn Boulevard, Sacramento, CA 95842. Southwestern has 194 additional licensed locations in California.

2. Southwestern has engaged in the business of deferred deposit transactions by originating deferred deposit transactions as described below.

3. On or about October 12, 2005, Southwestern obtained a license from the California Corporations Commissioner (“Commissioner”) to engage in the business of deferred deposit transactions at its principal place of business located at 5365 Elkhorn Boulevard, Sacramento, CA 95842 and obtained additional licenses to engage in deferred deposit transaction business at other locations in California.

4. Pursuant to California Code sections 23005 and 23020, any person engaged in the business of deferred deposit transactions must have a separate license for each location in which it does deferred deposit transaction business.

1 5. An examination of Southwestern conducted by the Commissioner in February 2007
2 disclosed that Southwestern was engaging in the business of deferred deposit transactions as an
3 originator over the Internet at 5155 Financial Way, Mason, Ohio 45040. The examination further
4 disclosed that Southwestern had engaged in originating approximately 5,800 deferred deposit
5 transactions over the Internet to borrowers in California at this location since at least July 6, 2006.
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7 6. A deferred deposit transaction is a written transaction whereby one person gives
8 funds to another person upon receipt of a personal check and it is agreed that the personal check
9 shall not be deposited until a later date.
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11 7. Southwestern had not been issued a license by the Commissioner authorizing it to
12 engage in the business of deferred deposit transactions under the California Deferred Deposit
13 Transaction Law (California Financial Code §§ 23000 et. seq.) to borrowers in California over the
14 Internet from the location in Mason, Ohio.
15

16 8. Southwestern is not exempt from the licensing requirements of Financial Code
17 section 23005 for the location in Mason, Ohio.
18

19 By reason of the foregoing, Southwestern has engaged in the business of deferred deposit
20 transactions without having first obtained a license from the Commissioner in violation of
21 California Financial Code sections 23005 and 23020.
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23 Pursuant to California Financial Code section 23058, Southwestern is hereby ordered to pay
24 to the Commissioner an administrative penalty in the amount of five hundred dollars (\$500).
25

26 Pursuant to California Financial Code section 23050, Southwestern is hereby ordered to
27 desist and refrain from engaging in the business of deferred deposit transactions in the State of
28 California at any location that is not licensed by the Commissioner, or otherwise exempt including,
but not limited to, the Mason, Ohio location.

1 This Citation and Order is necessary, in the public interest, for the protection of
2 consumers and is consistent with the purposes, policies and provisions of the California Deferred
3 Deposit Transaction Law. This Citation and Order shall remain in full force and effect until further
4 order of the Commissioner.
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6 California Financial Code section 23058 provides, in relevant part:

7 (a) If, upon inspection, examination or investigation, based upon a
8 complaint or otherwise, the department has cause to believe that a person
9 is engaged in the business of deferred deposit transactions without a license,
10 . . . the department may issue a citation to that person in writing, describing
11 with particularity the basis of the citation. Each citation may contain an
12 order to desist and refrain and an assessment of an administrative penalty not
13 to exceed two thousand five hundred dollars (\$2,500)
14 . . .

15 (c) If within 30 days from the receipt of the citation of the person cited fails
16 to notify the department that the person intends to request a hearing as
17 described in subdivision (d), the citation shall be deemed final.

18 (d) Any hearing held under this section shall be conducted in accordance with
19 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2
20 of the Government Code

21 California Financial Code section 23050 provides:

22 Whenever, in the opinion of the commissioner, any person is engaged in the
23 business of deferred deposit transactions, as defined in this division, without
24 a license from the commissioner, or any licensee is violating any provision
25 of this division, the commissioner may order that person or licensee to desist
26 and to refrain from engaging in the business or further violating this division.
27 If, within 30 days, after the order is served, a written request for a hearing is
28 filed and no hearing is held within 30 days thereafter, the order is rescinded.

24 Dated: March 26, 2007
25 Los Angeles, CA

Preston DuFauchard
California Corporations Commissioner

By _____
Steven C. Thompson
Special Administrator
California Deferred Deposit Transaction Law