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8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

10
11 In the Matter of:)
)
12 THE COMMISSIONER OF BUSINESS) CFL LICENSE NO.: 603-B441
13 OVERSIGHT,)
) SETTLEMENT AGREEMENT
14 Complainant,)
)
15 v.)
)
16 CASH AMERICA ADVANCE, INC.,)
17)
18 Respondent.)
19)

20 This Settlement Agreement (Agreement) is entered into by and between the Commissioner of
21 Business Oversight (Commissioner) and Cash America Advance, Inc. (CAA) (collectively the
22 Parties), and is made with respect to the following facts:

23 **I.**

24 **Recitals**

25 A. CAA is a corporation in good standing, duly formed and existing pursuant to the laws
26 of the State of Delaware and authorized to conduct business in California.

27 B. CAA holds a finance lender and broker license issued by the Commissioner pursuant
28

1 to the California Financing Law (CFL) (Fin. Code § 22000 et seq.). CAA has its principal place of
2 business located at 1600 West 7th Street, Fort Worth, Texas 76102. Prior to May 2018, CAA had 11
3 licensed branch offices located in California. CAA, which came under new ownership on September
4 1, 2016, made a decision to cease doing business in California on or about April 5, 2018.”

5 C. The Department of Business Oversight (Department), through the Commissioner, has
6 jurisdiction over the licensing and regulation of persons and entities engaged in the business of
7 lending and/or brokering pursuant to the CFL.

8 D. Pursuant to the CFL, the Commissioner has authority to issue orders to desist and
9 refrain from violations of the CFL, to deny, suspend, or revoke licenses pending or issued under the
10 CFL, and to assess penalties.

11 E. The CFL is intended to: ensure an adequate supply of credit to borrowers in
12 California; simplify, clarify, and modernize the law governing loans made by finance lenders; foster
13 competition among finance lenders; protect borrowers against unfair practices by some lenders,
14 having due regard for the interests of legitimate and scrupulous lenders; permit and encourage the
15 development of fair and economically sound lending practices; and encourage and foster a sound
16 economic climate in this state. (Fin. Code, § 22001, subdivision (a)) The Commissioner finds that
17 this action is appropriate, in the public interest, and consistent with the purposes fairly intended by
18 the policy and provisions of the CFL.

19 F. Rick Wessell (Wessell) is the chief executive officer of CAA, and as such, is
20 authorized to enter into this Agreement on behalf of CAA.

21 G. On August 31, 2018, CAA was personally served by the Commissioner with a Notice
22 of Intention to Issue Order Revoking Finance Lender and Broker License, Accusation and
23 accompanying documents dated August 31, 2018 (Revocation Action). CAA has filed a Notice of
24 Defense with the Commissioner on the above-referenced matter. A hearing on the Revocation
25 Action is currently scheduled for March 25 through March 27, 2019 at the Los Angeles Office of
26 Administrative Hearings.

27 H. In entering into this Agreement, CAA neither admits nor denies the findings and
28 allegations in the Accusation.

1 I. It is the intention and desire of the parties to resolve this matter amicably without the
2 necessity of a hearing and/or other litigation.

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

5 **II.**

6 **Terms and Conditions**

7 1. Purpose. This Agreement is entered into for the purpose of judicial economy and to
8 avoid the expense and uncertainty of a hearing or other litigation.

9 2. Finality of Agreement. CAA agrees to comply with this Agreement and stipulates
10 this Agreement is hereby deemed final.

11 3. Desist and Refrain Order. In accordance with Financial Code section 22712, CAA
12 stipulates that it is ordered to desist and refrain from violating Financial Code
13 section 22161, subdivision (a)(2); Financial Code section 22161, subdivision (a)(4); and Financial
14 Code section 22337, subdivision (c).

15 4. Waiver of Hearing Rights. CAA acknowledges its right to an administrative hearing
16 under Financial Code sections 22712 and 22714 in connection with the Amended Accusation and/or
17 the Stipulated Desist and Refrain Order and hereby waives that right to a hearing, and to any
18 reconsideration, appeal, or other rights which may be afforded pursuant to the CFL, the California
19 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law
20 in connection with this matter herein.

21 5. Refund Population Calculation. CAA shall audit its files and identify all new loans¹
22 made under its various CFL licenses that were originated between August 24, 2012 and May 17,
23 2017 and on which an advance payment was received by CAA on the day of funding or up to one
24 day thereafter that brought the principal balance down to \$1,700.00 or less (Refund Population).
25 CAA shall submit its Refund Population Report to the Commissioner no later than 30 days from the
26 Effective Date of this Agreement, as defined in Paragraph 27. The Refund Population Report shall

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28 ¹ New loan is defined as a loan to a borrower who has not previously had a CFL loan with CAA.

1 include all the loans identified by CAA as coming within the parameters of the Refund Population,
2 and for each loan, shall list the borrower name, branch, loan number, date of loan, loan funding date,
3 loan amount, interest rate, administrative fee, 1st scheduled payment due date, amount of 1st
4 scheduled payment, date first payment made, and amount of first payment. The Commissioner
5 agrees to review the Refund Population Report and submit any inquiries and/or requests for
6 supporting documentation to CAA within 30 days of its receipt of the Refund Population Report,
7 which CAA will respond to within 14 days thereof. CAA agrees to make refunds to the Refund
8 Population identified by the Commissioner and compiled from the CFL Supplemental Report dated
9 May 15, 2017 previously submitted to the Commissioner by CAA if the Commissioner’s testing of
10 CAA’s Refund Population Report reveals more than a 10 percent error rate as to the Refund
11 Population.

12 6. Refund Payments. CAA shall make the refunds as follows:

13 (a) CAA shall pay the sum of \$60.00 to the borrower of each loan identified in
14 the Refund Population (Refunds, or, individually, Refund) no later than 60 days after the Refund
15 Population has been determined in accordance with Paragraph 5 above.

16 (b) CAA shall submit evidence of such payment to the Commissioner no later
17 than 90 days after the Refund Population has been determined in accordance with Paragraph 5
18 above. Such evidence shall include a copy of the refund checks, loan balances, and/or advisements
19 of outstanding balance reductions to assignees, if any, and borrowers of charged-off loans assigned
20 to outside collections, if any, for each loan in the Refund Population. Evidence shall be sent to the
21 Commissioner via Judy L. Hartley, Senior Counsel, 320 West 4th Street, Suite 750, Los Angeles,
22 CA 90013-2344.

23 (c) Each Refund shall be applied as follows:

24 i. for current borrowers whose loans have an outstanding balance of
25 more than the Refund, by reducing the loan’s principal balance of current borrowers who have an
26 outstanding balance in excess of the Refund owed;

27 ii. for current borrowers whose loans have an outstanding balance of less
28 than the Refund, by reducing the loan’s principal balance and mailing a check for the remaining

1 amount to the borrower;

2 iii. for former borrowers who repaid their loans in full and do not have
3 any loans from Cash America with an outstanding balance, by mailing a check for amount of the
4 Refund; or

5 iv. for borrowers whose loans were charged off, by reducing the charged-
6 off balance. As to charged-off loans, CAA shall apply the reduction for the Refund amount directly
7 to any loan it retained for collection and shall advise the assignee, if any, of the reduced outstanding
8 balance for those assigned for collection, if any. CAA shall also advise each borrower of a charged-
9 off loan that has been assigned for collection, if any, of the reduction in outstanding balance by
10 sending notice by U.S. Mail to the borrower’s last known mailing address in CAA’s records.

11 (d) In the event any borrower in the Refund Population has notified CAA that the
12 borrower has an active bankruptcy proceeding, then as to such borrower CAA shall:

13 (i) If a refund payment is to be made to the borrower, pay the refund due to
14 that borrower to the bankruptcy trustee; or

15 (ii) If a credit is to be made, notify whichever of the bankruptcy trustee, the
16 bankruptcy court, or the borrower’s attorney of record that CAA has been in contact with concerning
17 the bankruptcy.

18 (iii) CAA shall report each such borrower to the Commissioner as part of its
19 documentation of its compliance with this Agreement.

20 (e) CAA is not required to send a check to any borrower whose remaining refund
21 balance is \$5.00 or less after application of the refund to the outstanding balance for refunds
22 described in paragraph 6.c.(ii) above.

23 (f) CAA shall escheat all checks not cashed to the California State Controller’s
24 Office within the period provided by and in accordance with the Unclaimed Property Act. (Code of
25 Civ. Proc., § 1500 et seq.).

26 7. Administrative Penalty. CAA shall pay to the Commissioner the sum of \$10,000.00
27 as administrative penalties no later than 60 days after the Effective Date of this Agreement, as
28 defined in Paragraph 27. The payment shall be made by cashiers’ check payable to the Department

1 of Business Oversight and shall be sent to the Department, attention, Accounting-Litigation, 1515 K
2 Street, Suite 200, Sacramento, CA 95814-4052.

3 8. Future Compliance. CAA represents and warrants to the Commissioner that (i) CAA
4 has no intention of reentering the California loan market, either directly or through any affiliated
5 entity; and (ii) in the event that CAA ever does seek to reenter the California market, either directly
6 or through any affiliated entity, it agrees that any CFL license issued to such entity may be
7 conditioned upon CAA's agreement to comply with all provisions of applicable law and regulation
8 and the substance of consent orders and settlement agreements the Commissioner has entered into
9 with other CFL-licensees, pertaining to disclosures, advertisements, training, internal reviews, and
10 employee enforcement with regard to the disclosure of loans in principal amounts of \$2,500 or more.

11 9. License Surrender. CAA has previously surrendered all of its branch licenses and
12 intends to surrender its remaining license to the Commissioner as part of its cessation of its doing
13 business in California. The parties hereby agree that the remaining CFL license of CAA has been
14 tendered and shall be deemed surrendered upon completion of all the terms and conditions of this
15 Agreement.

16 10. Revocation of License for Failure to Comply. CAA agrees that, if it fails to comply
17 with Paragraphs 5 through 7 of this Agreement, the CFL license of CAA shall be summarily
18 revoked. CAA hereby waives any notice and hearing rights that may be afforded pursuant to the
19 CFL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any
20 other provision of law.

21 11. Consideration. Except as set forth in Paragraph 10 of this Agreement, in
22 consideration of CAA's entering into this Agreement, to the issuance of a final desist and refrain
23 order, payment of refunds, and other relief as provided for herein, the Commissioner hereby agrees
24 that she shall not suspend or revoke the CFL license of CAA as a result of this action.

25 12. Binding. This Agreement is binding on all heirs, assigns, and/or successors in
26 interest.

27 13. Third Party Actions. This Agreement does not create any private rights or remedies
28 against CAA, create any liability for CAA, constitute evidence of any wrongdoing by CAA for

1 purposes of any third-party proceeding, create any contractual third-party beneficiaries, or limit
2 defenses of CAA for any person or entity not a party to this Agreement.

3 14. Full and Final Settlement. The parties hereby acknowledge and agree that this
4 Agreement is intended to constitute a full, final, and complete resolution of the Accusation through
5 the Effective Date of this Agreement, as defined in Paragraph 27 and that no further proceedings or
6 actions will be brought by the Commissioner in connection therewith either under the CFL, or any
7 other provision of law, excepting therefrom (i) any proceeding to enforce compliance with the terms
8 of this Agreement or (ii) any proceeding or action if such action or proceeding is based upon
9 violations of the CFL which were knowingly or willfully concealed from the Commissioner by
10 CAA. Further, this Agreement may be revoked and the Commissioner may pursue any and all
11 remedies available under law against CAA if the Commissioner later discovers that CAA knowingly
12 or willfully withheld information used for and relied upon in this Agreement

13 15. Commissioner’s Duties. The parties acknowledge and agree that nothing contained in
14 this Agreement shall operate to limit the Commissioner’s ability to assist any other agency (city,
15 county, state or federal) with any prosecution, administrative, civil or criminal, brought by any such
16 agency against CAA or any other person based upon any of the activities alleged in these matters or
17 otherwise.

18 16. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
19 has received independent advice from its attorney(s) and/or representatives with respect to the
20 advisability of executing this Agreement.

21 17. Reliance. Each of the parties represents, warrants, and agrees that in executing this
22 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel
23 and/or representative. Each of the parties further represents, warrants, and agrees that in executing
24 this Agreement it has placed no reliance on any statement, representation, or promise of any other
25 party, or any other person or entity not expressly set forth herein, or upon the failure of any party or
26 any other person or entity to make any statement, representation or disclosure of anything
27 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
28 any way fraudulently induced to execute this Agreement, and (2) to preclude the introduction of

1 parol evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

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

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

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

18 21. Headings. The headings to the paragraphs of this Agreement are inserted for
19 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
20 the provisions hereof.

21 22. Governing Law. This Agreement will be governed by and construed in accordance
22 with and governed by California law.

23 23. Voluntary Agreement. CAA enters into this Agreement voluntarily and without any
24 coercion and acknowledges that no promise, threats, or assurances about this Agreement have been
25 made by the Commissioner or any of her officers or agents.

26 24. Counterparts. This Agreement may be executed in one or more separate counterparts,
27 each of which when so executed, shall be deemed an original. Such counterparts shall together
28 constitute a single document.

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APPROVED AS TO FORM:
LAW OFFICES OF PAUL SOTER
By _____
PAUL SOTER, ESQ. attorneys for
CASH AMERICA ADVANCE, INC.

Commissioner of Business Oversight

By _____
JUDY L. HARTLEY
Senior Counsel