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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-H273, et al.
13 OVERSIGHT,)
)
14 Complainant,) CONSENT ORDER
)
15 v.)
)
16 SOUTHWESTERN & PACIFIC SPECIALTY)
17 FINANCIAL, INC. doing business as CHECK)
18 N' GO,)
)
19 Respondent.)

20 This Consent Order (Consent Order) is entered into by and between Southwestern & Pacific
21 Specialty Finance, Inc. dba Check N' Go (SWP) and the Commissioner of Business Oversight
22 (Commissioner) (collectively the Parties), and is made with respect to the following facts:

23 **I.**

24 **RECITALS**

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

27 B. SWP is a finance lender and broker licensed by the Commissioner pursuant to the
28 California Financing Law (CFL) (Fin. Code § 22000 et seq.). SWP has its principal place of

CONSENT ORDER

1 business located at 7755 Montgomery Road, Suite 400, Cincinnati, Ohio 45236. SWP currently has
2 176 CFL branch office licenses located in California and Ohio. SWP has been approved to do
3 business under its CFL licenses under the name Check N’ Go.

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

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

10 E. The purpose of the CFL is to ensure an adequate supply of credit to borrowers in
11 California; simplify, clarify, and modernize the law governing loans made by finance lenders; foster
12 competition among finance lenders; protect borrowers against unfair practices by some lenders,
13 having due regard for the interests of legitimate and scrupulous lenders; permit and encourage the
14 development of fair and economically sound lending practices; and encourage and foster a sound
15 economic climate in this state. (Fin. Code, § 22001, subdivision (a)).

16 F. Douglas D. Clark (Clark) is the chief executive officer of SWP, and as such, is
17 authorized to enter into this Consent Order on behalf of SWP.

18 G. As a result of a regulatory examination of SWP commenced in October 2015 and
19 follow up investigation, the Commissioner found that SWP routinely made statements and/or
20 representations regarding the terms and conditions of the loans that were false, misleading or
21 deceptive and/or omitted material information that was necessary to make the statements and/or
22 representations made not false, misleading, or deceptive in violation of Financial Code section
23 22161, subdivisions (a)(1) and (3)¹ as follows:

24 i. When prospective borrowers asked about loans for less than \$2,500.00, SWP told
25 them, that on the day after funding or shortly thereafter, the unwanted amount could just be given
26 back (prepayment), which would reduce the principal balance and result in interest savings.

27 _____
28 ¹ Financial Code section 22161 was amended on October 4, 2017, with changes mostly relating to the numbering of
subdivisions (Assem. Bill No. 1284 (2017-2018 Reg. Sess.) § 57). The violations described in subdivision (a)(1) to (a)(6)
correspond to those described in former subdivisions (a), (b), and so on, respectively, before October 4, 2017, and
subdivision (a)(1), (a)(2), and so on, respectively, on or after that date.

1 However, SWP failed to disclose that because the loan was for \$2,500.00 or more, SWP was not
2 subject to the interest rate limitations (approximately 30%) set forth in Financial Code sections
3 22303 and/or 22304. During the period of January 1, 2013 through March 31, 2018, SWP charged
4 interest rates of 54.39% to 360% on loans of \$2,600.00 or less. A review of loans originated by
5 SWP during January 1, 2013 through March 31, 2018 disclosed only approximately 3% involved
6 prepayments within a few days of loan funding, a potential violation of Financial Code section
7 22251.

8 ii. SWP could not make loans of less than \$2,505.00 because of state law.

9 iii. State law required SWP to wait at least two days before allowing a prepayment.

10 iv. SWP required on installment loans that a borrower write a check to Southwestern for
11 the full amount of the loan to be held as collateral even though the standard installment contract
12 employed by SWP allows the borrower to choose between two cash payment options and one such
13 option does not require the borrower to write a check to Southwestern to be held for collateral.

14 v. State law required borrowers to write a check to SWP for the full amount of the loan
15 to be held as collateral.

16 H. The regulatory examination and follow up investigation further disclosed that while
17 SWP routinely gave instructions regarding prepayments when asked about loans for less than
18 \$2,500.00; SWP required a wait period of at least one day before allowing unwanted funds to be
19 returned in violation of Financial Code section 22337, subdivision (c).

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

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

24 **II.**

25 **TERMS AND CONDITIONS**

26 1. Purpose. This Consent Order resolves the issues before the Commissioner of the
27 findings of the 2015 regulatory examination of SWP and follow up investigation described in
28 paragraphs G and H above in a manner that avoids the expense of a hearing and other possible court

1 proceedings, protects consumers, is in the public interest, and is consistent with the purposes,
2 policies, and provisions of the CFL.

3 2. Finality of Consent Order. SWP agrees to comply with this Consent Order and
4 stipulates this Consent Order is hereby deemed final.

5 3. Desist and Refrain Order. In accordance with Financial Code section 22712, SWP
6 stipulates that it is ordered to desist and refrain from violating Financial Code section 22161,
7 subdivision (a) (1) and (3) and Financial Code section 22337, subdivision (c).

8 4. Administrative Penalty and Investigative Costs. SWP shall pay to the Commissioner
9 the sum of \$10,000.00 as and for her legal, investigative and clerical costs, and \$10,000.00 as
10 administrative penalties, for a total of \$20,000.00, within 10 days of the Effective Date of this
11 Consent Order, as defined in Paragraph 25. The payment shall be made by electronic fund transfer
12 or cashiers' check payable to the Department of Business Oversight and shall be sent to the
13 Department, attention, Accounting-Litigation, 1515 K Street, Suite 200, Sacramento, CA 95814-
14 4052.

15 5. Remediation. No later than 30 days after the Effective Date of this Consent Order, as
16 defined in Paragraph 25, SWP shall implement certain disclosures, training, monthly internal
17 reviews, and employee enforcement with respect to loans made under its CFL licenses, as described
18 below. SWP shall comply with the following provisions until it receives written approval from the
19 Commissioner to do otherwise:

20 (a) Verbal Disclosures.

21 i. If a prospective borrower contacts SWP, in person or otherwise, and
22 expresses an interest in or desire for a loan of less than \$2,500.00, SWP employees shall respond
23 with statements substantially similar to the following: "*Check N' Go does not make consumer*
24 *installment loans of less than \$2,505.00 to California consumers. California law caps interest rates*
25 *on loans of less than \$2,500.00 at or about 30 percent, which is lower than the interest rates offered*
26 *on consumer installment loans made by Check N' Go. Licensed finance lenders are permitted to*
27 *make smaller loans, but Check N' Go chooses not to do so. If you want a loan of less than*
28 *\$2,505.00, you may wish to seek a loan from another lender."* SWP employees must not state that

1 SWP cannot make loans of less than \$2,505.00 because of California law, rule, or regulation.

2 Except as set forth in the following sentence, the responsive statements shall not refer to the
3 borrowers’ ability to make advance payments of any amount at any time. SWP employees may
4 explain borrowers’ statutory right to prepay to prospective borrowers so long as the explanation is
5 not in response to an expressed interest in or desire for a loan of less than \$2,505.00.

6 ii. If a prospective borrower contacts SWP, in person or otherwise, expressing an
7 interest in or desire for a loan of less than \$2,505.00, SWP employees must not refer to any alleged
8 interest-saving from taking a loan of \$2,505.00 or more and making an advance payment, unless
9 they also concurrently explain that any interest-saving would be many times greater if the
10 prospective borrower instead took a loan of less than \$2,500.00.

11 iii. SWP employees must not state to prospective borrowers that prepayments are
12 prohibited by California law, rule, or regulation.

13 iv. SWP employees must not state to prospective borrowers that it is a
14 requirement for an installment loan that a borrower write a check to SWP for the full amount of the
15 loan to be held as collateral.

16 v. SWP employees must not state that any California law, rule, or regulation
17 requires the borrower to write a check to SWP for the full amount of the loan to be held as collateral.

18 (b) Written Disclosures. SWP shall provide to all applicants for CFL loans a written
19 statement that discloses in a clear and conspicuous manner the following: (i) SWP’s minimum loan
20 amount; (ii) that California law limits the interest rate that can be charged for loans of less than
21 \$2,500.00 to about 30% which is a lower interest rate than what SWP charges on its loans; and (iii)
22 that California law does not contain similar interest rate limits for loans of \$2,500.00 or more.

23 (c) Advertising. SWP shall include the statement “Minimum loan amount is
24 \$2,505” or similar language in any advertisement marketing consumer installment loans to
25 California consumers.

26 (d) Quality-Control Procedures. SWP shall conduct appropriate quality-control
27 procedures, including periodic training/retraining and telephone and in-person testing (mystery
28 shopper program), to assure compliance with sub-paragraphs (a), (b) and (c). SWP shall conduct

1 such quality-control procedures at reasonably frequent intervals and promptly take corrective action
2 to address any deficiencies.

3 6. Proof of Compliance. The Commissioner may periodically review SWP’s
4 compliance with Paragraph 5 and request proof of such compliance. SWP shall promptly provide
5 evidence of compliance to the Commissioner’s satisfaction in response to any such request.

6 7. Consideration. In consideration of SWP’s agreement to the issuance of a final desist
7 and refrain order, and other relief as provided for herein, the Commissioner hereby agrees that he
8 shall not suspend, revoke or commence other adverse administrative proceedings against the CFL
9 licenses of SWP as a result of this action, except as provided in Paragraphs 9 - 12 of this Consent
10 Order.

11 8. Waiver of Hearing Rights. SWP acknowledges that the Commissioner is ready,
12 willing, and able to proceed with the filing of an administrative enforcement action on the charges
13 contained in this Consent Order. SWP hereby waives the right to any hearings, and to any
14 reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the
15 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
16 provision of law. SWP further expressly waives any requirement for the filing of an Accusation
17 pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights, SWP
18 effectively consents to this Consent Order becoming final.

19 9. Full and Final Settlement. The parties hereby acknowledge and agree that this
20 Consent Order is intended to constitute a full, final and complete resolution of the violations
21 described herein, and that no further proceedings or actions will be brought by the Commissioner in
22 connection with these matters either under the CFL, or any other provision of law, excepting
23 therefrom any proceeding to enforce compliance with the terms of this Consent Order.

24 10. Failure to Comply. SWP agrees that if it fails to comply with the terms of this
25 Consent Order, the Commissioner may, in addition to all other available remedies it may invoke
26 under the CFL, summarily suspend the CFL licenses of SWP until SWP is in compliance. SWP
27 waives any notice and hearing rights to contest such summary suspension which may be afforded
28 under the CFL, the California Administrative Procedure Act, the California Code of Civil Procedure,

1 or any other provision of law in connection therewith.

2 11. Information Willfully Withheld. This Consent Order may be revoked and the
3 Commissioner may pursue and any and all remedies available under law against SWP if the
4 Commissioner discovers that SWP knowingly or willfully withheld information used and relied upon
5 in this Consent Order.

6 12. Future Actions by the Commissioner. If SWP fails to comply with any of the terms
7 of this Consent Order, the Commissioner may institute proceedings for any and all violations
8 otherwise resolved by this Agreement. The Commissioner reserves the right to bring any future
9 actions against SWP, or any of its partners, owners, officers, shareholders, directors, employees, or
10 successors for any and all unknown violations of the CFL.

11 13. Assisting Other Agencies. Nothing in this Agreement limits the Commissioner's
12 ability to assist any other governmental agency, (city, county, state or federal) with any prosecution,
13 administrative, civil or criminal, brought by any such agency against SWP, or any other person
14 based upon any of the activities alleged in this matter or otherwise.

15 14. Binding. This Agreement is binding on all heirs, assigns and/or successors in interest.

16 15. Third Party Actions. This Agreement does not create any private rights or remedies
17 against SWP, create any liability for SWP, or limit defenses of SWP for any person or entity not a
18 party to this Consent Order.

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

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

1 any way fraudulently induced to execute this Agreement; and (2) to preclude the introduction of
2 parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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

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

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

20 21. Headings and Governing Law. The headings to the paragraphs of this Consent Order
21 are inserted for convenience only and will not be deemed a part hereof or affect the construction or
22 interpretation of the provisions hereof. This Consent Order shall be construed and enforced in
23 accordance with and governed by California law.

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

27 23. Signatures. A signature delivered by facsimile or electronic mail will be deemed an
28 original signature.

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APPROVED AS TO FORM:

By _____
ANDREA A. ANDRE, ESQ. attorney for
SOUTHWESTERN & PACIFIC SPECIALTY
FINANCE, INC.