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10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) CFL License No.: 60DBO-43820
13 THE COMMISSIONER OF BUSINESS)
14 OVERSIGHT,) CONSENT ORDER
15 Complainant,)
16 v.)
17 TOYOTA INDUSTRIES COMMERCIAL)
18 FINANCE, INC.,)
19 Respondent.)

21 The Commissioner of Business Oversight (Commissioner) and Toyota Industries
22 Commercial Finance, Inc. (TICF), (collectively, Parties), enter into this Consent Order with respect
23 to the following facts:

24 RECITALS

25 A. The Commissioner has jurisdiction over the licensing and regulation of persons and entities
26 engaged in the business of making consumer and commercial loans pursuant to the California
27 Financing Law (CFL) (Fin. Code, § 22000 et seq.).
28

1 B. TICF is a finance lender that was licensed by the Commissioner from June 8, 2015 to
2 December 26, 2018 (CFL License No. 60DBO-43820). TICF has its principal office located at 8951
3 Cypress Waters Boulevard, Suite 300, Dallas, Texas 75019.

4 C. TICF has no branch locations in California.

5 D. Mark Taggart is the President and CEO and a control person of TICF and, as such, is
6 authorized to enter into this Consent Order on TICF's behalf.

7 E. In accordance with Financial Code section 22107, each finance lender, broker, or program
8 administrator licensee shall pay to the Commissioner its pro rata share of all costs and expenses,
9 including the costs and expenses associated with the licensing of mortgage loan originators it
10 employs, reasonably incurred in the administration of this division, as estimated by the
11 Commissioner, for the ensuing year and any deficit actually incurred or anticipated in the
12 administration of the program in the year in which the assessment is made. CFL licensees must pay
13 the annual assessment on or before the 31st day of October each year.

14 F. Pursuant to Financial Code section 22153, a licensee is required to submit a change of address
15 form 10 days prior to an address change.

16 G. On September 30, 2018, the Commissioner sent TICF the Assessment Notice per invoice
17 number CF3118. The notice was mailed to the address TICF registered with the Department
18 (Registered Address): 8951 Cypress Waters Boulevard, Suite 300, Dallas, Texas 75019. The notice
19 stated that the annual assessment would become delinquent if not paid by October 31, 2018.

20 H. As of October 31, 2018, TICF had not paid its annual assessment. The failure to pay the annual
21 assessment on or before October 31, 2018 represents a violation of Financial Code section 22107.

22 I. As of November 6, 2018, TICF had not paid its annual assessment. As a result, the
23 Commissioner sent to TICF's Registered Address a Notice of Unpaid Assessment on November 7,
24 2018. The notice warned that failure to pay the assessment would result in summary revocation of
25 TICF's license. TICF did not respond to the Commissioner's notice.

26 J. As of December 7, 2018, TICF had not paid its annual assessment. As a result, on December
27 7, 2018, the Commissioner issued an Order Summarily Revoking California Financing Law License
28 Pursuant to Financial Code Section 22107 for CFL License Number 60DBO-43820 (Revocation

1 Order). The Department mailed the Revocation Order to TICF's Registered Address along with
2 notice that it would become effective December 27, 2018 unless payment of the annual assessment
3 was received by December 26, 2018. The Revocation Order was delivered to TICF's Registered
4 Address via certified mail on December 12, 2019 and the return receipt was signed by an agent of
5 TICF.

6 K. As of December 26, 2018, the assessment remained unpaid. As such, the Revocation Order
7 became effective December 27, 2018.

8 L. Under Financial Code section 22107, subdivision (d), a request for hearing must be filed
9 within 30 days after an order is made. On May 6, 2019, TICF submitted to the Commissioner an
10 untimely request for hearing on the Revocation Order.

11 M. TICF stated that it did not receive the notices or the Revocation Order due to an error by a third-
12 party vendor employed by TICF to receive and deliver mail from a central location.

13 N. In connection with these proceedings, TICF represented to the Commissioner that after its license
14 had been revoked, it had made advances on commercial lines of credit that it had originated prior to the
15 date of license revocation. The Commissioner finds that TICF engaged in the business of a finance
16 lender in violation of Financial Code section 22100.

17 O. TICF admits to the jurisdiction of the Department of Business Oversight (Department) and it is
18 the intention of the parties to resolve this matter without the necessity of a hearing and/or other litigation.

19 P. The Commissioner finds this action is appropriate, in the public interest, and consistent with the
20 purposes fairly intended by the CFL.

21 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
22 forth herein, the Parties agree as follows:

23 TERMS

24 1. Purpose. This Consent Order resolves the issues before the Commissioner described
25 above in a manner that avoids the expense of a hearing and other possible court proceedings,
26 protects consumers, is in the public interest, and is consistent with the purposes, policies, and
27 provisions of the CFL.

28 2. Desist and Refrain Order. Pursuant to Financial Code section 22712, TICF is hereby

1 ordered to desist and refrain from failing to timely pay the annual assessment in violation of
2 Financial Code section 22107.

3 3. Order Rescinding Revocation Order(s). The Commissioner hereby rescinds the
4 Revocation Order, which was issued on December 7, 2018, and became effective on December 27,
5 2018, as of the effective date of revocation.

6 4. Order to Pay Annual Assessment. Pursuant to Financial Code section 22107, the
7 Commissioner hereby orders TICF to pay \$309.63 to the Department of Business Oversight for the
8 2018 – 2019 annual assessment. The annual assessment shall be paid to the Commissioner within 30
9 days of the Effective Date of this Consent Order as defined in paragraph 23. The annual assessment
10 shall be labeled “2018 – 2019 annual assessment” and made payable in the form of a cashier’s check
11 or Automated Clearing House deposit to the “Department of Business Oversight,” and transmitted to
12 the attention of:

13 ATTN: Accounting
14 Department of Business Oversight
15 1515 K Street, Suite 200
16 Sacramento, California 95814

17 Notice of payment shall be made via email to Trevor Carroll, Counsel at Department of
18 Business Oversight, at trevor.carroll@dbo.ca.gov.

19 5. Administrative Penalties and Fines. TICF shall pay administrative fines and penalties in
20 the amount of \$193,000.00 for the violation of the CFL enumerated herein. All fines and penalties
21 shall be labeled “fines and penalties” and made payable in the form of a cashier’s check or
22 Automated Clearing House deposit to the “Department of Business Oversight,” and transmitted to
23 the attention of:

24 ATTN: Accounting – Litigation
25 Department of Business Oversight
26 1515 K Street, Suite 200
27 Sacramento, California 95814

28 Notice of payment shall be made via email to Trevor Carroll, Counsel at Department of
29 Business Oversight, at trevor.carroll@dbo.ca.gov.

6. Waiver of Hearing Rights. TICF acknowledges that the Commissioner is ready, willing,

1 and able to proceed with the filing of an administrative enforcement action on the charges contained
2 in this Consent Order. TICF hereby waives the right to any hearings, and to any reconsideration,
3 appeal, or other right to review which may be afforded pursuant to the CFL, the California
4 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law.
5 TICF further expressly waives any requirement for the filing of an Accusation pursuant to
6 Government Code section 11415.60, subdivision (b). By waiving such rights, TICF effectively
7 consents to this Consent Order and Order to Discontinue Violations becoming final.

8 7. Failure to Comply with Consent Order. TICF agrees that if it fails to comply with the
9 terms of this Consent Order, the Commissioner may, in addition to all other available remedies it
10 may invoke under the CFL, summarily suspend or revoke the CFL license of TICF until TICF is in
11 compliance. TICF waives any notice and hearing rights to contest such summary suspension which
12 may be afforded under the CFL, the California Administrative Procedure Act, the California Code of
13 Civil Procedure, or any other provision of law in connection therewith.

14 8. Information Willfully Withheld or Misrepresented. This Consent Order may be revoked
15 and the Commissioner may pursue any and all remedies available under law against TICF if the
16 Commissioner discovers that TICF knowingly or willfully withheld or misrepresented information
17 used for and relied upon in this Consent Order.

18 9. Future Actions by the Commissioner. If TICF fails to comply with any terms of the
19 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
20 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
21 against TICF, or any of its partners, owners, officers, shareholders, directors, employees or
22 successors for any and all unknown violations of the CFL.

23 10. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
24 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
25 administrative, civil or criminal brought by that agency against TICF or any other person based upon
26 any of the activities alleged in this matter or otherwise.

27 11. Headings. The headings to the paragraphs of this Consent Order are inserted for
28 convenience only and will not be deemed a part hereof or affect the construction or interpretation of

1 the provisions hereof.

2 12. Bindings. This Consent Order is binding on all heirs, assigns, and/or successors in
3 interest.

4 13. Reliance. Each of the parties represents, warrants, and agrees that in executing this
5 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel.
6 Each of the parties further represents, warrants, and agrees that in executing this Agreement it has
7 placed no reliance on any statement, representation, or promise of any other party, or any other
8 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
9 entity to make any statement, representation or disclosure of anything whatsoever. The parties have
10 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to
11 execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret,
12 supplement, or contradict the terms of this Agreement.

13 14. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
14 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
15 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
16 provision. No waiver by either party of any breach of, or of compliance with, any condition or
17 provision of this Consent Order by the other party will be considered a waiver of any other condition
18 or provision or of the same condition or provision at another time.

19 15. Full Integration. This Consent Order is the final written expression and the complete and
20 exclusive statement of all the agreements, conditions, promises, representations, and covenant
21 between the parties with respect to the subject matter hereof, and supersedes all prior or
22 contemporaneous agreements, negotiations, representations, understandings, and discussions
23 between and among the parties, their respective representatives, and any other person or entity, with
24 respect to the subject matter covered hereby.

25 16. Governing Law. This Consent Order will be governed by and construed in accordance
26 with California law. Each of the parties hereto consents to the jurisdiction of such court, and hereby
27 irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to
28 the maintenance of such action or proceeding in such court.

1 17. Counterparts. This Consent Order may be executed in one or more separate counterparts,
2 each of which when so executed, shall be deemed an original. Such counterparts shall together
3 constitute a single document.

4 18. Effect Upon Future Proceedings. If TICF applies for any license, permit, or qualification
5 under the Commissioner’s current or future jurisdiction, or is the subject of any future action by the
6 Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for the
7 purpose of such application(s) or enforcement proceedings(s).

8 19. Voluntary Agreement. TICF enters this Consent Order voluntarily and without coercion
9 and acknowledges that no promises, threats or assurances have been made by the Commissioner or
10 any officer, or agent thereof, about this Consent Order. The parties each represent and acknowledge
11 that he, she or it is executing this Consent Order completely voluntarily and without any duress or
12 undue influence of any kind from any source.

13 20. Notice. Any notice required under this Consent Order be provided to each party at the
14 following addresses:

15 To TICF:

16 Clinton R. Rockwell, Esq.
17 Buckley LLP
18 100 Wilshire Boulevard, Suite 1000
19 Santa Monica, California 90401
20 crockwell@buckleyfirm.com

21 To the Commissioner:

22 Trevor J. Carroll, Counsel
23 Department of Business Oversight
24 Enforcement Division
25 1515 K Street, Suite 200
26 Sacramento, California 95814
27 trevor.carroll@dbo.ca.gov

28 21. Signatures. A fax or electronic mail signature shall be deemed the same as an original
signature.

 22. Public Record. TICF hereby acknowledges that this Consent Order is and will be a

1 matter of public record.

2 23. Effective Date. This Consent Order shall become final and effective when signed by all
3 parties and delivered by the Commissioner’s agent via email to TICF’s counsel, at
4 crockwell@buckleyfirm.com.

5 24. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary
6 capacity and authority to sign and enter into this Consent Order and undertake the obligations set
7 forth herein.

8
9 Dated: September 9, 2019

MANUEL P. ALVAREZ
Commissioner of Business Oversight

11 By _____
12 MARY ANN SMITH
13 Deputy Commissioner
14 Enforcement Division

15
16 Dated: September 6, 2019

By _____
17 TOYOTA INDUSTRIES COMMERCIAL
18 FINANCE, INC.

19 APPROVED AS TO FORM AND CONTENT

20
21 Dated: September 6, 2019

By _____
22
23 Counsel for TOYOTA INDUSTRIES
24 COMMERCIAL FINANCE, INC.