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9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA
12

13 In the Matter of:) CDDTL FILE NO.: 10DBO-101427
14 THE COMMISSIONER OF BUSINESS) CFL LICENSE NO.,: 60DBO-88992
15 OVERSIGHT,) CONSENT ORDER
16 Complainant,)
17 v.)
18 POSSIBLE FINANCIAL, INC.,)
19 Respondent.)
20)
21)
22)

23 In consideration of the application filed by Possible Financial, Inc. for a license under the
24 California Deferred Deposit Transaction Law (Fin. Code, § 23000, et seq.) (CDDTL), this Consent
25 Order is entered into by and between the Commissioner of Business Oversight (Commissioner) and
26 Possible Financial, Inc. (Consent Order).

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RECITALS

This Consent Order is made with reference to the following facts:

A. Possible Financial Inc. (Company) is a Delaware corporation organized in 2017 with its principal place of business at 2231 First Avenue, Seattle, Washington 98121.

B. Tony Huang is the Chief Executive Officer of Company. Mr. Huang is authorized to enter into this Consent Order on behalf of Company.

C. The Department of Business Oversight, through the Commissioner, has jurisdiction over the licensing and regulation of persons and entities engaged in the business of lending and brokering pursuant to the CFL.

D. On or about November 13, 2019, Company voluntarily filed with the Commissioner an application for licensure as a deferred deposit originator under the CDDTL (CDDTL File No. 10DBO-101427) (Application). Prior to and during the application process, Company provided to the Commissioner information relating to its services and history (Information). From the Commissioner’s review of the Application and the Information, the Commissioner made the following factual findings (Findings):

i. Sometime prior to October 2018, Company decided that it should obtain a license from the Commissioner in order to make 4-payment installment loans of \$255 in California.

ii. Company retained a licensing consultant (Consultant) to assist Company in obtaining the requisite license for Company’s loan product.

iii. Company intended to make its installment loans in compliance with the CDDTL, utilizing the “payment plan” option contemplated under Financial Code sections 23035, subdivision (e)(6), and 23036, subdivision (b).

iv. Nevertheless, due to an apparent miscommunication between Consultant and Company, Consultant incorrectly submitted an application on Company’s behalf for a license under the California Financing Law (Fin. Code, § 22000, et seq.) (CFL).

v. The Commissioner approved Company’s CFL application and granted Company a CFL lender license on October 18, 2018 (CFL License).

vi. Company then began making loans in California under its CFL license.

1 vii. However, Company’s loans did not and were not intended to comply with the
2 CFL.

3 viii. On July 2, 2019, during a compliance audit, Company realized that it had
4 obtained the incorrect license.

5 ix. As a result, Company voluntarily self-disclosed the mistake to the
6 Commissioner and immediately ceased making loans in California.

7 x. Company timely provided all information requested by the Commissioner in
8 response to the self-disclosure and cooperated with the Commissioner’s subsequent investigation in
9 all respects.

10 E. Based on the Findings, the Commissioner determined that Company made deferred
11 deposit transactions without first obtaining a CDDTL license and complying with the provisions of
12 the CDDTL—in particular, Financial Code section 23036, subdivision (b)—in violation of section
13 23005, subdivision (a), of the Financial Code.

14 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
15 contained herein, the Commissioner and Company (the Parties) agree as follows:

16 **TERMS AND CONDITIONS**

17 1. **Purpose.** This Consent Order resolves the Findings in a manner that avoids the
18 expense of a hearing and other possible court proceedings, protects consumers, is in the public
19 interest, and is consistent with the purposes, policies, and provisions of the CDDTL.

20 2. **Desist and Refrain Order.** Pursuant to Financial Code section 23050, Possible
21 Financial, Inc. is hereby ordered to desist and refrain from engaging in the business of deferred
22 deposit transactions without a license from the Commissioner, in violation of Financial Code section
23 23005.

24 3. **Penalty.** Company shall pay a penalty of \$51,500.00 to the Commissioner (Penalty).
25 The Penalty is due by the Effective Date, as defined in Paragraph 22 below (Effective Date), and
26 should be made payable in the form of a cashier’s check or Automated Clearing House deposit to the
27 “Department of Business Oversight” and transmitted to the attention of: Accounting – Enforcement
28 Division, Department of Business of Oversight, 1515 K Street, Suite 200, Sacramento, California

1 95814. Notice of such payment shall be forwarded to Adam Wright, Senior Counsel, Department of
2 Business Oversight, Enforcement Division, 320 West 4th Street, Suite 750, Los Angeles, California
3 90013.

4 4. **Consideration.** In consideration of Company’s agreement to the issuance of this
5 Consent Order, Company’s payment of the Penalty, the Application, and the Information, the
6 Commissioner hereby agrees to issue a CDDTL license to Company within five business days of the
7 Effective Date.

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

16 6. **Full and Final Settlement.** The Parties hereby acknowledge and agree that this
17 Consent Order is intended to constitute a full, final, and complete resolution of the Findings, and that
18 no further proceedings or actions will be brought by the Commissioner in connection with the
19 Findings under the CDDTL, the CFL or any other provision of law, excepting therefrom any
20 proceeding to enforce compliance with the terms of this Consent Order.

21 7. **Failure to Comply with Consent Order.** Company agrees that, failure to comply
22 with the terms of this Consent Order, the Commissioner may, in addition to all other available
23 remedies it may invoke under the CDDTL or the CFL, summarily suspend both the CFL license of
24 Company and the CDDTL license of Company, if subsequently issued, until Company is in
25 compliance. Company waives any notice and hearing rights to contest such summary suspension
26 which may be afforded under the CDDTL, the CFL, the California Administrative Procedure Act, the
27 California Code of Civil Procedure, or any other provision of law in connection therewith.

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1 8. **Information Willfully Withheld or Misrepresented.** This Consent Order may be
2 revoked, and the Commissioner may pursue any and all remedies available under the law against
3 Company if the Commissioner discovers that Company knowingly or willfully withheld information
4 used for and relied upon in this Consent Order.

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

10 10. **Assisting Other Agencies.** Nothing in this Consent Order limits the Commissioner’s
11 ability to assist any other government agency (city, county, state, or federal) with any administrative,
12 civil or criminal prosecutions brought by that agency against Company or any other person based
13 upon any of the activities alleged in this matter or otherwise.

14 11. **Headings.** The headings to the paragraphs of this Consent Order are for convenience
15 only and will not be deemed a part hereof or affect the construction or interpretation of the provisions
16 hereof.

17 12. **Binding.** This Consent Order is binding on all heirs, assigns, and/or successors in
18 interest.

19 13. **Reliance.** Each of the Parties represents, warrants, and agrees that in executing this
20 Consent Order it has relied solely on the statements set forth herein and the advice of its own counsel.
21 Each of the Parties further represents, warrants, and agrees that in executing this Consent Order it has
22 placed no reliance on any statement, representation, or promise of any other party, or any other
23 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
24 entity to make any statement, representation or disclosure of anything whatsoever. The Parties have
25 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to
26 execute this Consent Order; and (2) to preclude the introduction of parol evidence to vary, interpret,
27 supplement, or contradict the terms of this Consent Order.

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1 14. **Waiver, Amendments, and Modifications.** No waiver, amendment, or modification
2 of this Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.
3 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
4 provision. No waiver by either party of any breach of, or of compliance with, any condition or
5 provision of this Consent Order by the other party will be considered a waiver of any other condition
6 or provision or of the same condition or provision at another time.

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

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

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

20 18. **Effect Upon Future Proceedings.** If Company applies for any license, permit or
21 qualification under the Commissioner’s current or future jurisdiction, or is the subject of any future
22 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
23 admitted for the purpose of such application or proceeding.

24 19. **Voluntary Agreement.** Company enters into this Consent Order voluntarily and
25 without coercion and acknowledges that no promises, threats or assurances have been made by the
26 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
27 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
28 without any duress or undue influence of any kind from any source.

1 20. **Signatures.** A fax or electronic mail signature shall be deemed the same as an
2 original signature.

3 21. **Public Record.** Company hereby acknowledges that this Consent Order is and will
4 be a matter of public record.

5 22. **Effective Date.** This Consent Order shall become final and effective when signed by
6 all parties and sent by the Commissioner’s counsel via e-mail to Company’s outside counsel, Robert
7 Savoie, at rsavoie@mcglinchey.com.

8 23. **Authority to Sign.** Each signatory hereto covenants that he or she possesses all
9 necessary capacity and authority to sign and enter into this Consent Order and undertake the
10 obligations set forth herein.

11 Dated: December 24, 2019

MANUEL P. ALVAREZ
Commissioner of Business Oversight

13 By _____
14 Mary Ann Smith
Deputy Commissioner

15 Dated: December 24, 2019

POSSIBLE FINANCIAL, INC.

17 By _____
18 Tony Huang
Chief Executive Officer