

1 MARY ANN SMITH  
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4 Department of Business Oversight  
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7 Attorneys for Complainant

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

10  
11 In the Matter of: )  
 ) CFL LICENSE NO.: 603-K014  
12 THE COMMISSIONER OF BUSINESS )  
13 OVERSIGHT, )  
 ) SETTLEMENT AGREEMENT  
14 Complainant, )  
 )  
15 v. )  
 )  
16 TITLEMAX OF CALIFORNIA, INC., )  
17 )  
18 Respondent. )  
 )

19  
20 This Settlement Agreement is entered into between the Commissioner of Business Oversight  
21 (Commissioner) and Respondent TitleMax of California, Inc. (TitleMax), and is made with respect  
22 to the following facts:

23 **I.**

24 **Recitals**

25 A. The Department of Business Oversight, through the Commissioner, has jurisdiction  
26 over the licensing and regulation of persons and entities engaged in the business of lending and/or  
27 brokering pursuant to the California Financing Law<sup>1</sup> (Fin. Code § 22000, et seq.) (CFL).

28 <sup>1</sup> Effective October 4, 2017, the name of the “California Finance Lenders Law” changed to the “California Financing Law.” (Assem. Bill No. 1284 (2017-2018 Reg. Sess.) § 4.) For purposes of this Consent Order, a reference to the

1 B. TitleMax is a corporation in good standing, duly formed and existing pursuant to the  
2 laws of the State of Delaware and authorized to conduct business in the State of California.

3 TitleMax is a finance lender licensed by the Commissioner pursuant to the CFL with a main license  
4 number 603-K014. TitleMax has its principal place of business located at 15 Bull Street, Savannah,  
5 Georgia 31401. TitleMax currently has 65 CFL branch office licenses. TitleMax has been approved  
6 to do business under its CFL licenses under the names TitleMax and TitleBucks.

7 C. Otto Bielss (Bielss) is the President of TitleMax. Bielss is authorized to enter into  
8 this Settlement Agreement on behalf of TitleMax.

9 D. On December 12, 2018, TitleMax was personally served by the Commissioner with a  
10 Notice of Intention to Issue Order Revoking Finance Lender Licenses, Accusation and  
11 accompanying documents dated December 7, 2018 (Accusation). In the Accusation, the  
12 Commissioner alleged, as a result of a regulatory examination of TitleMax commenced in 2016, that  
13 TitleMax committed the following violations of the CFL (Accusation Allegations):

14 i. making false or misleading statements and/or representations regarding the  
15 terms and conditions of its auto title loans in violation of Financial Code section 22161, subdivision  
16 (a)(1);

17 ii. filing a loan report that misrepresented first payment amounts in violation of  
18 Financial Code sections 22159, subdivision (b) and 22170, subdivision (a);

19 iii. overcharging interest rates in violation of Financial Code sections 22303 or  
20 22304 as a result of including amounts in the bona fide principal loan amount that were paid to the  
21 California Department of Motor Vehicles (DMV) to file its lien and/or satisfy registration and other  
22 fees owed on borrowers' cars and to third-party vendors for handling DMV filings;

23 iv. overcharging administrative fees in violation of Financial Code section 22305  
24 as a result of including amounts in the bona fide principal loan amount that were paid to the DMV to  
25 file its lien; and

26 ///

27  
28 California Financing Law means the California Finance Lenders Law before October 4, 2017 and the California  
Financing Law on and after that date. (Fin. Code, § 22000.)

1 v. charging borrowers third-party DMV handling fees in violation of Financial  
2 Code section 22306.

3 E. On December 21, 2018, TitleMax timely submitted a Notice of Defense to the  
4 Commissioner denying the allegations of the Accusation and requesting an administrative hearing on  
5 the allegations therein.

6 F. As of January 1, 2020, TitleMax will cease originating new loans in California and  
7 will engage only in servicing outstanding loans.

8 G. It is the intention of TitleMax and the Commissioner (the Parties) to resolve the  
9 Accusation Allegations without the necessity of a hearing. TitleMax, by entering into this Settlement  
10 Agreement, does not admit or deny the Accusation Allegations.

11 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions  
12 contained herein, the Parties agree as follows:

13 **II.**

14 **Terms and Conditions**

15 1. Purpose. This Settlement Agreement resolves the Accusation Allegations in a  
16 manner that avoids the expense of a hearing and other possible court proceedings, protects  
17 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions  
18 of the CFL.

19 2. Desist and Refrain Order. Pursuant to Financial Code section 22712, TitleMax of  
20 California, Inc. is hereby ordered to desist and refrain from:

21 (a) making false or misleading statements and/or representations regarding the  
22 terms and conditions of its loans in violation of Financial Code section 22161, subdivision (a)(1);

23 (b) filing inaccurate reports with the Commissioner in violation of Financial Code  
24 sections 22159, subdivision (b) and 22170, subdivision (a);

25 (c) overcharging interest rates and administrative fees in violation of Financial  
26 Code sections 22303, 22304 and/or 22305; and

27 (d) charging borrowers third-party DMV handling fees in violation of Financial  
28 Code section 22306, unless otherwise authorized under the CFL.

1           3.     Penalty. TitleMax shall pay a penalty of \$25,000.00 to the Commissioner (Penalty).  
2 The Penalty is due within five days of the Effective Date, as defined in Paragraph 30 below  
3 (Effective Date), and should be made payable in the form of a cashier’s check or Automated  
4 Clearing House deposit to the “Department of Business Oversight” and transmitted to the attention  
5 of: Accounting – Enforcement Division, Department of Business of Oversight, 1515 K Street, Suite  
6 200, Sacramento, California 95814. Notice of such payment shall be forwarded to Judy L. Hartley,  
7 Senior Counsel, Department of Business Oversight, Enforcement Division, 320 West 4th Street,  
8 Suite 750, Los Angeles, California 90013.

9           4.     Refunds #1. TitleMax shall make refunds as follows:

10           (a)     TitleMax shall pay the sum of \$75.00 to the borrower of each loan identified  
11 in Refund Population #1 (Refunds, or, individually, Refund) in the manner described in Paragraph 7  
12 below.

13           (b)     TitleMax shall review its files and identify all loans made under its CFL  
14 licenses that meet the following criteria (Refund Population #1):

- 15                   (i)     the loan was made on or after January 1, 2013;
- 16                   (ii)    a portion of the loan’s proceeds was paid to a third-party vendor for  
17 DMV handling fees and/or was transmitted by TitleMax to the DMV or a third-party vendor for  
18 transmission to the DMV for lien fees and/or to satisfy registration and other fees owed on  
19 borrowers’ cars (collectively, the Withheld Proceeds #1); and
- 20                   (iii)   subtracting the loan’s applicable Withheld Proceeds #1 from the loan’s  
21 principal amount results in an amount less than \$2,500.00.

22           (c)     TitleMax represents that it has already completed the review as described in  
23 Paragraph 4(b) above and has identified 6,935 loans that constitute Refund Population #1 and that  
24 the total amount of the Refunds for purposes of this Paragraph 4 is \$520,125.00.

25           (d)     TitleMax shall submit a report to the Commissioner detailing Refund  
26 Population #1 and each Refund (Refund Population Report #1) no later than 60 days from the  
27 Effective Date. The Refund Population Report #1 shall include all the loans identified by TitleMax  
28 as coming within the parameters of Refund Population #1, and for each loan, shall list the borrower

1 name, branch, loan number, date of loan, loan funding date, loan amount, interest rate,  
2 administrative fee, DMV lien fee, other DMV fees, third-party DMV handling fee, refund amount,  
3 and refund check number or credit advice. The Commissioner’s receipt of the Refund Population  
4 Report #1 does not constitute an approval that the Refund Population Report #1 is correct and does  
5 not otherwise limit the Commissioner’s audit or examination rights under this Settlement  
6 Agreement.

7 5. Refunds #2. TitleMax shall make refunds as follows:

8 (a) TitleMax shall pay the sum of \$15.00 to the borrower of each loan identified  
9 in Refund Population #2 (Refunds, or, individually, Refund) in the manner described in Paragraph 7  
10 below.

11 (b) TitleMax shall review its files and identify all loans made under its CFL  
12 licenses that meet the following criteria (Refund Population #2):

13 (i) the loan was made between January 1, 2013 and January 10, 2017;

14 (ii) a portion of the loan’s proceeds was paid by TitleMax to DMV or a  
15 third-party vendor for transmission to the DMV for DMV lien fees (collectively, the Withheld  
16 Proceeds #2); and

17 (iii) subtracting the loan’s applicable Withheld Proceeds #2 from the loan’s  
18 principal amount results in an amount of \$2,500.00.

19 (c) TitleMax represents that it has already completed the review as described in  
20 Paragraph 5(b) above and has identified 6,106 loans that constitute Refund Population #2 and that  
21 the total amount of the Refunds for purposes of this Paragraph 5 is \$91,590.00.

22 (d) TitleMax shall submit a report to the Commissioner detailing Refund  
23 Population #2 and each Refund (Refund Population Report #2) within 60 days of the Effective Date.  
24 The Refund Population Report #2 shall include all the loans identified by TitleMax as coming within  
25 the parameters of Refund Population #2, and for each loan, shall list the borrower name, branch, loan  
26 number, date of loan, loan funding date, loan amount, interest rate, administrative fee, DMV lien fee,  
27 refund amount, and the refund check number or credit advice. The Commissioner’s receipt of the  
28 Refund Population Report #2 does not constitute an approval that the Refund Population Report #2

1 is correct and does not otherwise limit the Commissioner’s audit or examination rights under this  
2 Settlement Agreement.

3 6. Refunds #3. TitleMax shall make refunds as follows:

4 (a) TitleMax shall pay the sum of \$10.33 to the borrower of each loan identified  
5 in Refund Population #3 (Refunds, or, individually, Refund) in the manner described in Paragraph 7  
6 below.

7 (b) TitleMax shall review its files and identify all loans made under its CFL  
8 licenses that meet the following criteria (Refund Population #3):

9 (i) the loan was on or after January 1, 2013; and

10 (ii) a portion of the loan’s proceeds was paid by TitleMax to a third-party  
11 vendor as handling fees for transmitting funds to the DMV (collectively, the Handling Fees).

12 (c) TitleMax represents that it has already completed the review as described in  
13 Paragraph 6(b) above and has identified 8,076 loans that constitute Refund Population #3 and that  
14 the total amount of the Refunds for purposes of this Paragraph 6 is \$83,425.08.

15 (d) TitleMax shall submit a report to the Commissioner detailing Refund  
16 Population #3 and each Refund (Refund Population Report #3) within 60 days of the Effective Date.  
17 The Refund Population Report #3 shall include all the loans identified by TitleMax as coming within  
18 the parameters of Refund Population #3, and for each loan, shall list the borrower name, branch, loan  
19 number, date of loan, loan funding date, loan amount, interest rate, administrative fee, third-party  
20 handling fee, refund amount, and the refund check number or credit advice. The Commissioner’s  
21 receipt of the Refund Population Report #3 does not constitute an approval that the Refund  
22 Population Report #3 is correct and does not otherwise limit the Commissioner’s audit or  
23 examination rights under this Settlement Agreement.

24 7. Refund Payments. TitleMax shall pay the Refunds described in Paragraphs 4, 5 and 6  
25 as set forth below. TitleMax understands that this may entail one or more Refunds to the same  
26 person if a borrower comes within one or more of the Refund Populations.

27 (a) TitleMax shall make the Refunds no later than 60 days after the Effective  
28 Date.

1 (b) TitleMax shall submit evidence of such payments to the Commissioner no  
2 later than 90 days after the Effective Date. Such evidence must include a copy of the refund checks,  
3 loan balances, and, for assignees and borrowers of charged-off loans assigned to outside collections,  
4 advisements of outstanding-balance reductions for each loan in the Refund Population, as applicable.

5 (c) TitleMax shall apply each Refund from the Refund Populations as follows:

6 (i) for current borrowers with open loans which have an outstanding  
7 balance of more than the Refund, by reducing the loan’s outstanding balance by the Refund amount;

8 (ii) for current borrowers whose loans have an outstanding balance of less  
9 than the Refund, by reducing the loan’s principal balance to zero dollars (\$0.00) and mailing a check  
10 for the remaining Refund amount to the borrower;

11 (iii) for former borrowers who repaid their loans in full and do not have  
12 any loans from TitleMax with an outstanding balance, by mailing a check for the Refund amount; or

13 (iv) for borrowers whose loans were charged off, by reducing the charged-  
14 off balance by the Refund amount. As to charged-off loans, TitleMax shall apply the reduction  
15 directly to any loan it retained for collection. For loans assigned for collection, TitleMax shall  
16 advise the assignee of the reduced outstanding balance. TitleMax shall also advise each borrower of  
17 a charged-off loan that has been assigned for collection of the reduction in outstanding balance by  
18 sending notice electronically to the borrower’s last known email address in TitleMax’s records or, by  
19 sending notice by U.S. mail to the borrower’s last known mailing address in TitleMax’s records.

20 (d) TitleMax shall escheat any unclaimed refunds to the California State  
21 Controller’s Office within the period provided by Code of Civil Procedure section 1520 of the  
22 Unclaimed Property Law (Code of Civ. Proc., section 1500, et seq.).

23 8. Compliance.

24 (a) So long as TitleMax is licensed as a lender under the CFL, TitleMax shall  
25 ensure that any loans made under its CFL license(s) that do not comply with the regulatory rate  
26 provisions of Financial Code sections 22303, 22304 and 22305 have a bona fide principal amount  
27 that is equal to or higher than the sum of \$2,501.00 and any Withheld Proceeds. This practice will  
28 ensure that any Withheld Proceeds will not cause a borrower to receive \$2,500.00 or less at the time

1 of funding. TitleMax shall maintain this practice unless and until it receives prior written approval  
2 from the Commissioner to do otherwise.

3 (b) In the event TitleMax continues originating loans under the CFL beyond its  
4 projected cessation date of January 1, 2020, TitleMax shall implement certain disclosures, training,  
5 and employee enforcement with respect to loans made under its CFL licenses, as described below.  
6 TitleMax shall comply with the following provisions until it receives written approval from the  
7 Commissioner to do otherwise:

8 (i) Employee training to inform employees they are prohibited from  
9 representing that the minimum loan amount of \$2,600.00 is anything other than company policy.

10 (ii) Secret shopper program to ensure compliance.

11 (iii) Advertisements marketing consumer installment loans to California  
12 consumers shall include the statement “Minimum loan amount is \$2,600” or similar language, if not  
13 already implemented.

14 (c) TitleMax shall notify the Commissioner immediately if it continues or  
15 resumes loan originations under the CFL on or after January 1, 2020.

16 9. Proof of Compliance. TitleMax acknowledges that the Commissioner will examine  
17 and review its compliance with Paragraphs 4 through 8 of this Settlement Agreement. TitleMax  
18 agrees to provide, upon the Commissioner’s request, documentation satisfactory to the  
19 Commissioner to determine compliance with Paragraphs 4 through 8.

20 10. Waiver of Hearing Rights. TitleMax acknowledges that the Commissioner is ready,  
21 willing, and able to proceed with the administrative enforcement action described above in  
22 Paragraph D. TitleMax hereby waives the right to a hearing, and to any reconsideration, appeal, or  
23 other right to review which may be afforded pursuant to the CFL, the California Administrative  
24 Procedure Act, the California Code of Civil Procedure, or any other provision of law. By waiving  
25 such rights, TitleMax effectively consents to this Settlement Agreement becoming final.

26 11. Full and Final Settlement. The Parties hereby acknowledge and agree that this  
27 Settlement Agreement is intended to constitute a full, final, and complete resolution of the  
28 Accusation Allegations, or any other conduct known to the Commissioner, from January 1, 2013 to



1 the Effective Date, and that no further proceedings or actions will be brought by the Commissioner  
2 in connection with the Accusation Allegations under the CFL or any other provision of law,  
3 excepting therefrom any proceeding to enforce compliance with the terms of this Settlement  
4 Agreement.

5 12. Failure to Comply with this Settlement Agreement. TitleMax agrees that if it fails to  
6 comply with the terms of this Settlement Agreement, following 10 days’ written notice from the  
7 Commissioner of TitleMax’s failure to comply with any term of this Settlement Agreement, the  
8 Commissioner may, in addition to all other available remedies it may invoke under the CFL,  
9 summarily suspend the CFL licenses of TitleMax until TitleMax is in compliance. Upon 10 days’  
10 written notice to TitleMax, TitleMax waives any notice and hearing rights to contest such summary  
11 suspensions which may be afforded under the CFL, the California Administrative Procedure Act, the  
12 California Code of Civil Procedure, or any other provision of law in connection therewith.

13 13. Information Willfully Withheld or Misrepresented. This Settlement Agreement may  
14 be revoked, and the Commissioner may pursue any and all remedies available under the law against  
15 TitleMax, if the Commissioner discovers that TitleMax knowingly or willfully withheld information  
16 used for and relied upon in this Settlement Agreement.

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

22 15. Assisting Other Agencies. Nothing in this Settlement Agreement limits the  
23 Commissioner’s ability to assist any other government agency (city, county, state, or federal) with  
24 any administrative, civil or criminal prosecutions brought by that agency against TitleMax or any  
25 other person based upon any of the activities alleged in this matter or otherwise.

26 16. Headings. The headings to the paragraphs of this Settlement Agreement are for  
27 convenience only and will not be deemed a part hereof or affect the construction or interpretation of  
28 the provisions hereof.

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

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

19. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of this Settlement Agreement will be valid or binding unless it is in writing and signed by each of the Parties. The waiver of any provision of this Settlement Agreement will not be deemed a waiver of any other provision. No waiver by either party of any breach of, or of compliance with, any condition or provision of this Settlement Agreement by the other party will be considered a waiver of any other condition or provision or of the same condition or provision at another time.

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

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



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To the Commissioner: Judy L. Hartley, Esq.  
Senior Counsel  
Department of Business Oversight  
320 W. 4<sup>th</sup> Street, Suite 750  
Los Angeles, California 90013-2344  
judy.hartley@dbo.ca.gov

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

29. Public Record. TitleMax hereby acknowledges that this Settlement Agreement is and will be a matter of public record.

30. Effective Date. This Settlement Agreement shall become final and effective when signed by all parties and delivered by the Commissioner’s counsel via e-mail to TitleMax’s counsel, Allen Denson, at adenson@hudco.com.

31. Authority to Sign. Each signatory hereto covenants that he or she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement and undertake the obligations set forth herein.

Dated: 12/16/2019 MANUEL P. ALVAREZ  
Commissioner of Business Oversight

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner

Dated: 12/12/2019 TITLEMAX OF CALIFORNIA, INC.

By \_\_\_\_\_  
OTTO BIELSS, President

APPROVED AS TO FORM:  
By \_\_\_\_\_  
ALLEN DENSON, ESQ. attorney for  
TITLEMAX OF CALIFORNIA, INC.

Commissioner of Business Oversight

By \_\_\_\_\_  
JUDY L. HARTLEY, ESQ., Senior Counsel