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

10 In the Matter of:) CFL LICENSE NO.: 603-K647
11 THE COMMISSIONER OF BUSINESS)
12 OVERSIGHT,)
13 Complainant,)
14 v.) CONSENT ORDER
15)
16 OPPORTUNITY FINANCIAL, LLC)
17 Respondent.)
18 _____)
19)

20
21 This Consent Order (Consent Order) is entered into between the Commissioner of Business
22 Oversight (Commissioner) and Opportunity Financial, LLC (Opportunity) and is made with respect
23 to the following facts:

24 I.

25 Recitals

26 The Department of Business Oversight (Department), through the Commissioner, has
27 jurisdiction over the licensing and regulation of entities engaged in the business of lending and
28

1 brokering in the State of California pursuant to the California Financing Law.¹

2 A. At all relevant times, Opportunity is a finance lender licensed by the Commissioner on
3 or about January 23, 2014, with its principal business address at 130 East Randolph, Suite 3400,
4 Chicago, Illinois 60601.

5 B. As of December 21, 2017, the Commissioner also granted Opportunity authority under
6 the CFL to act as a broker.

7 C. Jared Kaplan is the Chief Executive Officer of Opportunity. Jared Kaplan is
8 authorized to enter into this Consent Order on behalf of Opportunity.

9 D. On or about February 5, 2016, the Department commenced a regulatory examination
10 of Opportunity pursuant to Financial Code section 22701 (February 2016 Exam). In connection with
11 the February 2016 Exam, on or about September 22, 2016, the Department issued a Demand Letter
12 (September 2016 Demand) to Opportunity demanding books and records relating to Opportunity's
13 compensation to persons or companies for leads or referrals and provision of decline traffic referrals
14 to finance lenders. During the February 2016 Examination, the Commissioner determined the
15 following (Findings):

16 i. In 2015 and 2016, Opportunity compensated unlicensed persons or companies who
17 were not employees regularly employed at Opportunity's licensed place of business for soliciting or
18 accepting applications for loans, in violation of California Code of Regulations, title 10, section 1451,
19 subsection (c).

20 ii. In 2015 and 2016, Opportunity provided referrals to other lenders for customers that
21 were declined loans by Opportunity, in violation of Financial Code section 22100.

22 E. It is the intention and desire of Opportunity and the Commissioner (the Parties) to
23 resolve this matter amicably and without the necessity of a hearing or other litigation.

24 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
25 contained herein, the Commissioner and Opportunity (the Parties) agree as follows:

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28 ¹ 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 document, a reference to the 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 II.

2 **Terms and Conditions**

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

6 2. **Desist and Refrain Order.** Pursuant to Financial Code section 22712, Opportunity
7 Financial LLC is hereby ordered to desist and refrain from compensating unlicensed persons or
8 companies who were not employees regularly employed at Opportunity's licensed place of business
9 for soliciting or accepting applications for loans in violation of California Code of Regulations, title
10 10, section 1451.

11 3. **Administrative Penalty and Investigative Costs.** Opportunity shall pay administrative
12 penalty and investigative costs of \$75,000.00 to the Commissioner (Penalty). The Penalty shall be
13 paid no later than five days after the Effective Date, as defined in Paragraph 22 below (Effective
14 Date), and should be made payable in the form of a cashier's check or Automated Clearing House
15 deposit to the "Department of Business Oversight" and transmitted to the attention of: Accounting –
16 Enforcement Division, Department of Business of Oversight, 1515 K Street, Suite 200, Sacramento,
17 California 95814. Notice of such payment shall be forwarded to Johnny Vuong, Senior Counsel,
18 Department of Business Oversight, Enforcement Division, 320 West 4th Street, Suite 750, Los
19 Angeles, California 90013.

20 4. **Finality.** Opportunity acknowledges the Commissioner is ready, willing, and able to
21 proceed with the filing of an administrative enforcement action on the Findings. Opportunity hereby
22 waives the right to any hearings, and to any reconsideration, appeal, or other right to review which
23 may be afforded pursuant to the CFL, the California Administrative Procedure Act, the California
24 Code of Civil Procedure, or any other provision of law. Opportunity further expressly waives any
25 requirement for the filing of an Accusation or a Statement of Issues pursuant to Government Code
26 section 11415.60, subdivision (b). By waiving such rights, Opportunity effectively consents to this
27 Consent Order becoming final.

28 5. **Full and Final Settlement.** The Parties hereby acknowledge and agree that this
Consent Order is intended to constitute a full, final, and complete resolution of the Findings, and that

1 no further proceedings or actions will be brought by the Commissioner in connection with the
2 Findings under the CFL or any other provision of law, excepting therefrom any proceeding to enforce
3 compliance with the terms of this Consent Order.

4 6. Failure to Pay Administrative Penalty and Investigative Costs. Opportunity agrees that
5 if it fails to pay the administrative penalty and investigative costs the Commissioner may summarily
6 suspend the CFL license of Opportunity until Opportunity provides evidence of payment. Opportunity
7 waives any notice and hearing rights to contest such summary suspension which may be afforded
8 under the CFL, the California Administrative Procedure Act, the California Code of Civil Procedure,
9 or any other provision of law in connection therewith.

10 7. Information Willfully Withheld or Misrepresented. This Consent Order may be
11 revoked, and the Commissioner may pursue any and all remedies available under the law against
12 Opportunity if the Commissioner discovers that Opportunity knowingly or willfully withheld
13 information used for and relied upon in this Consent Order.

14 8. Future Actions by Commissioner. If Opportunity fails to comply with any terms of the
15 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
16 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
17 against Opportunity, or any of its partners, owners, officers, shareholders, directors, employees or
18 successors for any and all unknown violations of the CFL.

19 9. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
20 ability to assist any other government agency (city, county, state, or federal) with any administrative,
21 civil or criminal prosecutions brought by that agency against Opportunity or any other person based
22 upon any of the activities alleged in this matter or otherwise.

23 10. Headings. The headings to the paragraphs of this Consent Order are for convenience
24 only and will not be deemed a part hereof or affect the construction or interpretation of the provisions
25 hereof.

26 11. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
27 interest.

28 12. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
Consent Order it has relied solely on the statements set forth herein and the advice of its own counsel.

1 Each of the parties further represents, warrants, and agrees that in executing this Consent Order it has
2 placed no reliance on any statement, representation, or promise of any other party, or any other
3 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
4 entity to make any statement, representation or disclosure of anything whatsoever. The Parties have
5 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to
6 execute this Consent Order; and (2) to preclude the introduction of parol evidence to vary, interpret,
7 supplement, or contradict the terms of this Consent Order.

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

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

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

24 16. 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 17. Voluntary Agreement. Opportunity enters into this Consent Order voluntarily and
28 without coercion and acknowledges that no promises, threats or assurances have been made by the
Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent

1 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
2 without any duress or undue influence of any kind from any source.

3 18. Effect Upon Future Proceedings. If Opportunity applies for any license, permit or
4 qualification under the Commissioner’s current or future jurisdiction, or is the subject of any future
5 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
6 admitted for the purpose of such application or proceeding. Provided, however, that the fact of the
7 existence of this Consent Order shall not, in and of itself, be the basis for the denial of any such
8 application so long as Opportunity is and has been in compliance with the terms of this Consent
9 Order.

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

12 20. Public Record. Opportunity hereby acknowledges that this Consent Order is and will
13 be a matter of public record.

14 21. Notice. Any notice required under this Settlement Agreement is to be provided to
15 each party at the following addresses:

16 To Opportunity: Marv Gurevich, Esq., Opportunity Financial LLC, 130 East Randolph Street,
17 Suite 3400, Chicago, IL 60601; mgurevich@opploans.com.

18 To the Commissioner: Johnny Vuong, Department of Business Oversight, 320 West 4th
19 Street, Suite 750, Los Angeles, California 90013; Johnny.Vuong@dbo.ca.gov.

20 22. Effective Date. This Consent Order shall become final and effective when signed by
21 all parties and delivered by the Commissioner’s counsel via e-mail to Opportunity’s General Counsel,
22 Marv Gurevich, at mgurevich@opploans.com.

23 23. Third Party Actions. It is the intent and understanding between the Parties that this
24 Consent Order does not create any private rights or remedies against Opportunity or create any
25 liability for Opportunity or limit defense of Opportunity against any person or entity not a party to
26 this Consent Order. Further, entering this Consent Order does not constitute an admission of
27 wrongdoing or violation of law, statute, or regulation.

28 24. Presumption from Drafting. In that the Parties have had the opportunity to draft,
review and edit the language of this Consent Order, no presumption for or against any party arising

1 out of drafting all or any part of this Consent Order will apply in construing this Consent Order.
2 Accordingly, the Parties waive the benefit of Civil Code section 1654 as amended or any successor
3 statute, which provides that in case of uncertainty, language of a contract should be interpreted most
4 strongly against the party that cause the uncertainty to exist.

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

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9 Dated: January 24, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

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11 By _____

MARY ANN SMITH
Deputy Commissioner
Enforcement Division

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14 Dated: January 16, 2020

OPPORTUNITY FINANCIAL LLC

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16 By _____

JARED KAPLAN
Chief Executive Officer

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