

1 MARY ANN SMITH
Deputy Commissioner
2 DANIEL P. O'DONNELL
Assistant Chief Counsel
3 CHARLES CARRIERE (State Bar No. 285837)
Senior Counsel
4 Department of Business Oversight
5 One Sansome Street, Suite 600
6 San Francisco, California 94104-4448
Telephone: (415) 972-8544
7 Facsimile: (415) 972-8500

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9 Attorneys for Complainant

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

13 In the Matter of:) CFL LICENSE NO.: 603I149, 603I568
14 THE COMMISSIONER OF BUSINESS)
15 OVERSIGHT,)
16 Complainant,) CONSENT ORDER
17 v.)
18 NAV TECHNOLOGIES, INC.,)
19 Respondent.)
20 _____)

21 The Commissioner of Business Oversight (Complainant or Commissioner) and Respondent
22 (Respondent, Nav Technologies Inc. or Nav) enter this Consent Order with respect to the following
23 facts:

24
25 **I.**
26 **RECITALS**

27 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
28 entities engaged in the business of finance lending or brokering under the California Financing Law
(CFL) (Fin. Code, § 22000 et seq.).

1 B. Nav is a corporation, with a principal place of business at 13693 S. 200 W, Suite 200,
2 Draper, Utah 84020.

3 C. Since at least 2012, Nav has offered a range of services to California small
4 businesses, including:

- 5 1. A “MatchFactor” service which provides small business users with an
6 estimate of whether they will be approved for a loan with a given lender,
7 based upon information submitted by the user.
- 8 2. A “prequalification” service in which Nav provides a user’s information, with
9 the user’s approval, to lenders, and returns “prequalified” offers from those
10 lenders to the user.

11 D. Nav’s prequalification service included lenders licensed under the California
12 Financing Law, but Nav has represented that no California-based Nav users accepted prequalified
13 offers from licensed lenders.

14 E. In 2018, the Department of Business Oversight (Department) initiated an
15 investigation into whether Nav was engaged in unlicensed brokering under the California Financing
16 Law.

17 F. During the investigation, NAV represented that it did not share any confidential
18 borrower data (credit score, income information, etc.) with lenders through its MatchFactor service.

19 G. After receiving an inquiry from the Department concerning its services for California
20 users, Nav suspended its prequalification service and applied for a broker’s license with the
21 Department.

22 H. The Commissioner finds that entering this Consent Order is in the public interest and
23 consistent with the purposes fairly intended by the policies and provisions of the CFL.

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

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28 //

1 **II.**

2 **TERMS AND CONDITIONS**

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

7 2. Desist and Refrain Order. Pursuant to Financial Code section 22712, the
8 Commissioner orders Nav to desist and refrain from engaging in the business of negotiation or
9 performing any act as a broker in connection with loans made by a finance lender in violation of
10 section 22100 of the Financial Code without first obtaining a license from the Commissioner.

11 3. Penalties. Nav hereby agrees to pay a penalty of \$30,000 to resolve the
12 Commissioner’s investigation. The penalty payment is due within 30 calendar days of the Effective
13 Date of this Consent Order, as such date is defined in Paragraph 21, made payable in the form of a
14 cashier’s check or Automated Clearing House deposit to the “Department of Business Oversight,”
15 and mailed to the attention of: Accounting – Litigation, at the Department of Business Oversight
16 located at 1515 K Street, Suite 200, Sacramento, California 95814. Notice of all payments shall be
17 sent to Charles Carriere, Counsel, Enforcement Division, at the Department of Business Oversight
18 located at One Sansome Street, Suite 600, San Francisco, California 94104.

19 4. Licensing. The Commissioner has reviewed Nav’s license application and will grant
20 Nav’s license promptly upon execution of this Consent Order.

21 5. Waiver of Hearing Rights. Nav acknowledges the Commissioner is ready, willing,
22 and able to proceed with the filing of an administrative enforcement action on the charges contained
23 in this Consent Order. Nav hereby waives the right to any hearings, and to any reconsideration,
24 appeal, or other right to review which may be afforded pursuant to the CFL, the California
25 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law.
26 Nav further expressly waives any requirement for the filing of an Accusation pursuant to
27 Government Code section 11415.60, subdivision (b). By waiving such rights, Nav effectively
28 consents to this Consent Order and Desist and Refrain Order becoming final.

1 6. Full and Final Resolution. The parties hereby acknowledge and agree that this
2 Consent Order is intended to constitute a full, final, and complete resolution of the commissioner’s
3 investigation into potential unlicensed CFL activity by Nav, and that no further proceedings or
4 actions will be brought by the Commissioner in connection with these matters under the CFL or any
5 other provision of law, excepting therefrom any proceeding to enforce compliance with the terms of
6 this Consent Order.

7 7. Commissioner’s Duties. Nothing in this Consent Order limits the
8 Commissioner’s ability to assist any other government agency with any action or investigation
9 brought by that agency against Nav, including an action based on any of the acts, omissions, or
10 events described in this Consent Order.

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

18 9. Information Willfully Withheld or Misrepresented. The Commissioner may revoke
19 this Consent Order and pursue any and all remedies available under law against Nav if the
20 Commissioner discovers that Nav withheld or misrepresented information used for and relied upon
21 in this Consent Order.

22 10. Future Actions by Commissioner. The Commissioner reserves the right to bring any
23 future actions against Nav, or any of its partners, owners, officers, shareholders, directors,
24 employees or successors for any and all unknown violations of the CFL or any other law under his
25 jurisdiction.

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

1 12. Binding. This Consent Order is binding on both parties’ heirs, assigns, and/or
2 successors in interest.

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

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

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

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

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

4 18. Voluntary Consent Order. Nav enters this Consent Order voluntarily and without
5 coercion and acknowledges that no promises, threats or assurances have been made by the
6 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
7 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
8 without any duress or undue influence of any kind from any source.

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

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

13 21. Effective Date. This Consent Order shall become final and effective when signed by
14 all parties and delivered by the Commissioner's agent via e-mail to Nav's counsel at legal@nav.com.

15 22. Authority to Sign. Each signatory hereto covenants that he possesses all necessary
16 capacity and authority to sign and enter into this Consent Order and undertake the obligations set
17 forth herein.

18 23. No Presumption Against Drafting Party. Each party acknowledges that it has had the
19 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
20 intend that no presumption for or against the drafting party will apply in construing any part of this
21 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
22 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
23 language of a contract should be interpreted most strongly against the party that caused the
24 uncertainty to exist.

25 24. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
26 has received independent advice from its attorney(s) and/or representatives with respect to the
27 advisability of executing this Consent Order.
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Dated: February 19, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: February 18, 2020

NAV TECHNOLOGIES, INC.

By _____
GREG OTT
Chief Executive Officer