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7 Attorneys for Complainant

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

11 In the Matter of:) CFL FILE NO.:
12)
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
14)
15 Complainant,)
16 v.)
17 AFTERPAY US, INC.,)
18 Respondent.)

19 This Consent Order is entered into by and between the Commissioner of Business Oversight
20 and Afterpay US, Inc. (Consent Order).

21 **RECITALS**

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

- 23 A. Afterpay US, Inc. (Afterpay) is a corporation organized in Delaware with its principal
24 place of business at 222 Kearny Street, Suite 600, San Francisco, California 94108.
- 25 B. Nicholas Molnar is the Chief Executive Officer of Afterpay and is authorized to enter
26 into this Consent Order on behalf of Afterpay.
- 27 C. The Department of Business Oversight, through the Commissioner of Business
28 Oversight (Commissioner), has jurisdiction over the licensing and regulation of persons and entities

1 engaged in the business of lending and brokering pursuant to the California Financing Law (Fin.
2 Code § 22000, et seq.) (CFL).

3 D. After an inquiry, the Commissioner determined that Afterpay had engaged in the
4 business of a finance lender in California without obtaining a license in violation of Financial Code
5 section 22100, subdivision (a) by making loans through the operation of “buy now, pay later” point
6 of sale products (Transactions). Afterpay neither admits nor denies that it has engaged in the
7 business of a finance lender or broker in California, but agrees to enter into this Consent Order to
8 resolve this amicably and without the necessity of a hearing or litigation.

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

11 **TERMS AND CONDITIONS**

12 1. **Purpose.** This Consent Order resolves the findings described in Paragraph D above
13 in a manner that avoids the expense of a hearing and other possible court proceedings, protects
14 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of
15 the CFL.

16 2. **Desist and Refrain Order.** Pursuant to Financial Code section 22712, Afterpay US,
17 Inc. is hereby ordered to desist and refrain from engaging in the business of a finance lender in
18 California, in violation of Financial Code section 22100, subdivision (a).

19 3. **Administrative Fees.** Afterpay shall pay an administrative fee of \$90,536.00 to the
20 Commissioner (Administrative Fee) within 30 days of the Effective Date, as defined in Paragraph 27
21 below (Effective Date), and should be made payable in the form of a cashier’s check or Automated
22 Clearing House deposit to the “Department of Business Oversight” and transmitted to the attention
23 of: Accounting – Enforcement Division, Department of Business of Oversight, 1515 K Street, Suite
24 200, Sacramento, California 95814. Notice of such payment shall be forwarded to Judy L. Hartley,
25 Senior Counsel, Department of Business Oversight, Enforcement Division, 320 West 4th Street, Suite
26 750, Los Angeles, California 90013.

27 4. **Refunds.** Afterpay shall refund or credit all late fees paid to Afterpay by California
28 residents in connection with Afterpay’s Transactions through the date Afterpay ceased entering into

1 the Transactions. Afterpay represents that it has collected \$905,362.78 in such fees to date
2 (Refunds). Afterpay shall make the refunds no later than 45 days after the Effective Date. Afterpay
3 shall submit evidence of such payments or credits no later than 75 days after the Effective Date.
4 Afterpay shall escheat any unclaimed refunds to the California State Controller's Office within the
5 period provided by Code of Civil Procedure section 1520 of the Unclaimed Property Law (Code of
6 Civ. Proc., section 1500, et seq.).

7 5. **Compliance.** As of the Effective Date, Afterpay shall cease offering and/or entering
8 into Transactions with California residents by means of purchasing credit sales contracts from
9 merchants. Instead, Afterpay, including its subsidiaries and affiliates, will only offer or enter into
10 Transactions and/or extensions of credit with California residents under authority of the license
11 issued by the Commissioner to its wholly owned subsidiary, Afterpay US Services, LLC.

12 6. **Proof of Compliance.** Afterpay acknowledges that the Commissioner will examine
13 and review Afterpay's compliance with Paragraphs 3 through 4 of this Consent Order. Afterpay
14 agrees to provide, upon the Commissioner's request, documentation satisfactory to the Commissioner
15 to determine compliance with Paragraphs 3 through 4.

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

24 8. **Full and Final Settlement.** The Parties hereby acknowledge and agree that this
25 Consent Order is intended to constitute a full, final, and complete resolution of the findings described
26 herein, and that no further proceedings or actions will be brought by the Commissioner in connection
27 with these matters under the CFL or any other provision of law, excepting therefrom any proceeding
28 to enforce compliance with the terms of this Consent Order.

1 9. **Failure to Comply with Paragraphs 3 and 4.** Afterpay, on behalf of itself and its
2 subsidiary, Afterpay US Services, LLC, agrees that, if no cure is made by Afterpay within 10 days'
3 written notice from the Commissioner of Afterpay's failure to comply with Paragraphs 3 and 4 of this
4 Consent Order (relating to the payment of Administrative Fees and Refunds), the Commissioner may,
5 in addition to all other available remedies it may invoke under the CFL, summarily suspend the CFL
6 license of Afterpay US Services, LLC until Afterpay is in compliance. Upon failure to cure within
7 the 10 days' written notice period, Afterpay and Afterpay US Services, LLC waive any notice and
8 hearing rights to contest such summary suspension which may be afforded under the CFL, the
9 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
10 provision of law in connection therewith.

11 10. **Failure to Otherwise Comply with the Consent Order.** Afterpay agrees that, upon
12 any failure to comply with the terms of this Consent Order not discussed in Paragraph 9 above, the
13 Commissioner may immediately commence proceedings to compel compliance under the CFL.
14 Afterpay waives any notice and hearing rights to contest such proceedings which may be afforded
15 under the CFL, the California Administrative Procedure Act, the California Code of Civil Procedure,
16 or any other provision of law in connection therewith.

17 11. **Information Willfully Withheld or Misrepresented.** This Consent Order may be
18 revoked, and the Commissioner may pursue any and all remedies available under the law against
19 Afterpay if the Commissioner discovers that Afterpay knowingly or willfully withheld information
20 used for and relied upon in this Consent Order.

21 12. **Future Actions by Commissioner.** If Afterpay fails to comply with any terms of the
22 Consent Order, the Commissioner may, in accordance with Paragraph 9 and/or 10 as applicable,
23 institute proceedings for any and all violations otherwise resolved under this Consent Order except
24 insofar as Afterpay's obligations hereunder have been otherwise performed. The Commissioner
25 reserves the right to bring any future actions against Afterpay, or any of its partners, owners, officers,
26 shareholders, directors, employees or successors for any and all unknown violations of the CFL.

27 13. **Assisting Other Agencies.** Nothing in this Consent Order limits the Commissioner's
28 ability to assist any other government agency (city, county, state, or federal) with any administrative,

1 civil or criminal prosecutions brought by that agency against Afterpay or any other person based
2 upon any of the activities alleged in this matter or otherwise.

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

6 15. **Binding.** This Consent Order is binding on all heirs, assigns, and/or successors in
7 interest.

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

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

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

1 19. **Third Parties Actions.** This Consent Order does not create or give rise to any private
2 rights or remedies against Afterpay, create any liability for Afterpay, or limit defenses of Afterpay for
3 any person or entity not a party to this Consent Order.

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

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

11 22. **Effect Upon Future Proceedings.** If Afterpay applies for any license, permit or
12 qualification under the Commissioner’s current or future jurisdiction, or is the subject of any future
13 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
14 admitted for the purpose of such application or proceeding. Provided, however, that the fact of the
15 existence of this Consent Order shall not, in and of itself, be the sole basis for any denial of any such
16 application so long as Afterpay is and has been in compliance with the terms of this Consent Order.

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

22 24. **Notice.** Any notice/report required under this Consent Order shall be addressed as
23 follows:

To Afterpay:	Fredrick S. Levin, Esq. Buckley LLP 100 Wilshire Boulevard, Suite 1000 Santa Monica, California 90401 flevin@buckleyfirm.com
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To the Commissioner:

Judy L. Hartley, Esq.
Senior Counsel
Department of Business Oversight
320 W. 4th Street, Suite 750
Los Angeles, California 90013-2344
judy.hartley@dbo.ca.gov

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

26. **Public Record.** Afterpay hereby acknowledges that this Consent Order is and will be a matter of public record.

27. **Effective Date.** This Consent Order shall become final and effective when signed by all parties and delivered by the Commissioner’s counsel via e-mail to Afterpay’s counsel, Fredrick S. Levin, at flevin@buckleyfirm.com.

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

Dated: March 16, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: March 16, 2020

AFTERPAY US, INC.

By _____
NICHOLAS MOLNAR
Chief Executive Officer