

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN ROONEY
Assistant Chief Counsel
3 TAYLOR STEINBACHER (State Bar No. 285335)
Counsel
4 Department of Business Oversight
320 West 4th Street, Suite 750
5 Los Angeles, California 90013-2344
Telephone: (213) 576-7532
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

11 In the Matter of:) CFL LICENSE NO.: 60DBO-44255
12 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
13)
14 Complainant,)
15 v.)
16 DIRECT MERCHANTS FUNDING LLC,)
17 Respondent.)
18 _____)

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21 This Consent Order is entered into between the Commissioner of Business Oversight
22 (Commissioner) and Direct Merchants Funding LLC (DMF) and is made with respect to the
23 following facts:

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I.

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RECITALS

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A. The Commissioner has jurisdiction over the licensing and regulation of persons and
27 entities engaged in the business of making consumer and commercial loans pursuant to the
28 California Financing Law (CFL) (Fin. Code, § 22000 et seq.).

1 B. DMF is a finance lender and broker that was licensed by the Commissioner from
2 May 22, 2015 to December 29, 2019 (CFL License No. 60DBO-44255). DMF's main office is
3 located at 4000 Hollywood Boulevard, Suite 360-N, Hollywood, Florida 33021.

4 C. DMF operates no branch locations in California.

5 D. Scott Kaplan is the CFO of DMF and, as such, is authorized to enter into this Consent
6 Order on DMF's behalf.

7 E. In accordance with Financial Code section 22107, each finance lender, broker, or
8 program administrator licensee shall pay to the Commissioner its pro rata share of all costs and
9 expenses, including the costs and expenses associated with the licensing of mortgage loan originators
10 it employs, reasonably incurred in the administration of this division, as estimated by the
11 Commissioner, for the ensuing year and any deficit actually incurred or anticipated in the
12 administration of the program in the year in which the assessment is made. CFL licensees must pay
13 the annual assessment on or before the 31st day of October each year.

14 F. Pursuant to Financial Code section 22153, subdivision (a), a licensee is required to
15 submit a change of address form to the Commissioner for approval at least 10 days before an address
16 change.

17 G. On September 30, 2019, the Commissioner sent DMF an Assessment Notice per
18 invoice number CF1053. This notice was mailed to the address DMF registered with the Department
19 upon licensure: 6261 NW 6th Way, Suite 103, Fort Lauderdale, Florida 33309 (Registered Address).
20 The notice stated that the annual assessment would become delinquent if not paid by October 31,
21 2019.

22 H. As of October 31, 2019, DMF had not paid its annual assessment. The failure to pay the
23 annual assessment on or before October 31, 2019 is a violation of Financial Code section 22107.

24 I. As of November 6, 2019, DMF still had not paid its annual assessment. As a result, on
25 November 6, 2019, the Commissioner sent to the Registered Address a Notice of Unpaid Assessment.
26 This notice warned that failure to pay the assessment would result in summary revocation of DMF's
27 license. DMF did not respond to the Commissioner's notice.

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1 J. As of December 6, 2019, DMF still had not paid its annual assessment. As a result, on
2 December 6, 2019, the Commissioner issued an Order Summarily Revoking California Financing
3 Law License Pursuant to Financial Code Section 22107 for CFL License Number 60DBO-44255
4 (Revocation Order). The Department mailed the Revocation Order to the Registered Address along
5 with notice that the Revocation Order would become effective December 30, 2019 unless payment of
6 the annual assessment was received by close of business on December 27, 2019.

7 K. As of December 27, 2019, the assessment remained unpaid. Accordingly, the
8 Revocation Order became effective December 30, 2019.

9 L. DMF concedes that it did not receive the September 2019 notice, the November 2019
10 notice, or the Revocation Order because it failed to properly notify the Commissioner that it had
11 changed its place of business to an address other than that designated on its license, as required by
12 Financial Code section 22153, subdivision (a).

13 M. DMF represents that it has not engaged in any CFL lending or brokering activity since
14 the Revocation Order became effective.

15 N. DMF admits to the jurisdiction of the Commissioner and it is the intention of the parties
16 to resolve this matter without the necessity of a hearing and/or other litigation.

17 O. The Commissioner finds that entering into this Consent Order is in the public interest and
18 consistent with the purposes fairly intended by the CFL.

19 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
20 forth herein, the Parties agree as follows:

21 **II.**

22 **TERMS AND CONDITIONS**

23 1. Purpose. This Consent Order resolves the issues before the Commissioner described
24 above in a manner that avoids the expense of a hearing and other possible court proceedings,
25 protects consumers, is in the public interest, and is consistent with the purposes, policies, and
26 provisions of the CFL.

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1 2. Desist and Refrain Order(s). Pursuant to Financial Code section 22712, DMF is
2 hereby ordered to desist and refrain from violating any provision of the CFL or regulation
3 thereunder, including Financial Code sections 22107 and 22153 as set forth above.

4 3. Order Rescinding Revocation Order(s). The Commissioner hereby rescinds the
5 Revocation Order, which was issued on December 6, 2019, and became effective on December 30,
6 2019.

7 4. Order to Pay Annual Assessment. Pursuant to Financial Code section 22107, the
8 Commissioner hereby orders DMF to pay \$250.00 to the Department of Business Oversight for the
9 2019 – 2020 annual assessment. The annual assessment shall be paid to the Commissioner within
10 30 days of the Effective Date of this Consent Order as defined in paragraph 23. The annual
11 assessment payment shall be labeled “2019 – 2020 annual assessment” and must be made payable in
12 the form of a cashier’s check or Automated Clearing House deposit to the Department of Business
13 Oversight and transmitted to the attention of Accounting – Litigation, at the Department of Business
14 Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice of the payment of the
15 annual assessment must be concurrently sent to Taylor Steinbacher, Counsel, Department of
16 Business Oversight, 320 West 4th Street, Suite 750, Los Angeles, California 90013-2344.

17 5. Administrative Fines and Penalties. DMF shall pay administrative fines and penalties
18 in the amount of \$3,000.00 for the violations of the CFL enumerated herein. DMF shall pay those
19 fines and penalties to the Commissioner within 30 days of the Effective Date of this Consent Order
20 as defined in paragraph 23. Payment of all fines and penalties shall be labeled “fines and penalties”
21 and must be made payable in the form of a cashier’s check or Automated Clearing House deposit to
22 the Department of Business Oversight and transmitted to the attention of Accounting – Litigation, at
23 the Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814.
24 Notice of the payment of the annual assessment must be concurrently sent to Taylor Steinbacher,
25 Counsel, Department of Business Oversight, 320 West 4th Street, Suite 750, Los Angeles, California
26 90013-2344.

27 6. Waiver of Hearing Rights. DMF acknowledges that the Commissioner is ready,
28 willing, and able to proceed with the filing of an administrative enforcement action on the charges

1 contained in this Consent Order. DMF hereby waives the right to any hearings, and to any
2 reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the
3 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
4 provision of law. DMF further expressly waives any requirement for the filing of an Accusation
5 pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights, DMF
6 effectively consents to this Consent Order, the Desist and Refrain Order(s), and the Order
7 Rescinding Revocation Order(s) becoming final.

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

14 8. Information Willfully Withheld or Misrepresented. This Consent Order may be
15 revoked and the Commissioner may pursue any and all remedies available under law against DMF if
16 the Commissioner discovers that DMF knowingly or willfully withheld or misrepresented
17 information used for and relied upon in this Consent Order.

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

23 10. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
24 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
25 administrative, civil or criminal brought by that agency against DMF or any other person based upon
26 any of the activities alleged in this matter or otherwise.

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

4 12. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
5 interest.

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

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

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

27 16. Governing Law. This Consent Order will be governed by and construed in
28 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court,

1 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
2 forum to the maintenance of such action or proceeding in such court.

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

6 18. Effect Upon Future Proceedings. If DMF applies for any license, permit, or
7 qualification under the Commissioner's current or future jurisdiction, or is the subject of any future
8 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
9 admitted for the purpose of such application(s) or enforcement proceedings(s).

10 19. Voluntary Agreement. DMF enters this Consent Order voluntarily and without
11 coercion and acknowledges that no promises, threats or assurances have been made by the
12 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
13 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
14 without any duress or undue influence of any kind from any source.

15 20. Notice. Any notice required under this Consent Order be provided to each party at
16 the following addresses:

17 To Respondent
18 Direct Merchants Funding LLC: Direct Merchants Funding LLC
19 c/o Scott Kaplan, CFO
20 4000 Hollywood Boulevard, Suite 360-N,
21 Hollywood, Florida 33021
22 SKaplan@flashadvance.com

23 To the Commissioner: Taylor Steinbacher, Counsel
24 Department of Business Oversight
25 320 West 4th Street, Suite 750
26 Los Angeles, California 90013-2344
27 Taylor.Steinbacher@dbo.ca.gov

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

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1 22. Public Record. DMF hereby acknowledges that this Consent Order is and will be a
2 matter of public record.

3 23. Effective Date. This Consent Order shall become final and effective when signed by
4 all parties and delivered by the Commissioner’s agent via email to DMF’s representative, at
5 SKaplan@flashadvance.com.

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

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10 Dated: May 18, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

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12
13 By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

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15
16 Dated: May 18, 2020

DIRECT MERCHANTS FUNDING LLC

17
18 By _____
SCOTT KAPLAN
CFO