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

11
12 In the Matter of:) CFL LICENSE NO.: 60DBO-44020
13 THE COMMISSIONER OF BUSINESS) SETTLEMENT AGREEMENT
OVERSIGHT,)
14)
15 Complainant,)
16 v.)
17 KLARNA INC.,)
18 Respondent.)
19)
20)
21)

22 This Settlement Agreement is entered into by and between the Commissioner of Business
23 Oversight and Klarna Inc. (Agreement).

24 **I.**
25 **Recitals**

26 This Agreement is made with reference to the following facts:

27 A. Klarna Inc. (Klarna) is a Delaware corporation organized in 2011 with its principal
28 place of business at 629 North High Street, Suite 300, Columbus, Ohio 43215.

1 B. Klarna has been licensed under the California Financing Law (Fin. Code, § 22000, et
2 seq.) (CFL) since July 14, 2015.

3 C. Timothy K. Spencer is the Chief Compliance Officer of Klarna. Spencer is
4 authorized to enter into this Agreement on behalf of Klarna.

5 D. The Department of Business Oversight (Department), through the Commissioner of
6 Business Oversight (Commissioner), has jurisdiction over the licensing and regulation of persons and
7 entities engaged in the business of lending and brokering pursuant to the CFL.

8 E. In March 2019, Klarna submitted to the Department an interpretative opinion request
9 pursuant to Department Release No. 61-C seeking clarification regarding whether its “Pay in 4”
10 product should be offered and reported under its CFL license.

11 F. Upon completion of the Department’s own independent inquiry, and based, in part, on
12 information provided by Klarna, the Commissioner made the following findings (Findings):

- 13 i. Klarna offered a “buy now, pay later” point-of-sale financing product to California
14 consumers, which Klarna brands as “Pay in 4” (Product).
- 15 ii. Klarna collected \$6,929.82 total in fees from California residents in connection
16 with their use of the Product (Fees).
- 17 iii. Klarna did not fully comply with the CFL in the offering of the Product.
- 18 iv. The Commissioner determined that the Product was a loan within the meaning of
19 the CFL.

20 G. Based on the Findings, the Commissioner determined that Klarna did not fully comply
21 with the CFL. Following this determination, Klarna performed a review of Pay in 4, which it
22 completed March 1, 2020.

23 H. Klarna neither admits nor denies that it failed to comply with the CFL as to the
24 offering of the Product, but agrees to enter into this Agreement to amicably resolve this matter
25 without the necessity of a hearing or litigation.

26 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
27 contained herein, the Commissioner and Klarna (the Parties) agree as follows:

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1 II.

2 **Terms and Conditions**

3 1. **Purpose.** This Agreement 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. **Citation.** Pursuant to Financial Code section 22707.5, subdivision (a), the
7 Commissioner hereby issues a citation to Klarna for failing to comply with the CFL as to the offering
8 of the Product.

9 3. **Administrative Fee.** Klarna shall pay an administrative fee of \$693.00 to the
10 Commissioner (Administrative Fee). The Administrative Fee is due within five days of the Effective
11 Date, as defined in Paragraph 25 below (Effective Date), and should be made payable in the form of a
12 cashier's check or Automated Clearing House deposit to the "Department of Business Oversight" and
13 transmitted to the attention of: Accounting – Enforcement Division, Department of Business of
14 Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice of such payment shall be
15 forwarded to Adam Wright, Senior Counsel, Department of Business Oversight, Enforcement
16 Division, 320 West 4th Street, Suite 750, Los Angeles, California 90013.

17 4. **Refunds.** Klarna shall refund all fees paid to Klarna by California residents in
18 connection with Klarna's Product (Refunds). Klarna represents to the Commissioner that it has
19 collected \$6,929.82 in such fees as of March 1, 2020. Klarna shall make the Refunds no later than 30
20 days after the Effective Date. Klarna shall submit evidence of such payments or credits no later than
21 60 days after the Effective Date. Klarna shall escheat any unclaimed refunds to the California State
22 Controller's Office within the period provided by Code of Civil Procedure section 1520 of the
23 Unclaimed Property Law (Code of Civ. Proc., section 1500, et seq.).

24 5. **Compliance.** As of the Effective Date, Klarna shall only make loans, deferred
25 payment products, or extensions of credit to California residents under the authority of a CFL license
26 and in compliance with the CFL.

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

1 Klarna hereby waives the right to any hearings, and to any reconsideration, appeal, or other right to
2 review which may be afforded pursuant to the CFL, the California Administrative Procedure Act, the
3 California Code of Civil Procedure, or any other provision of law. Klarna further expressly waives
4 any requirement for the filing of an Accusation or a Statement of Issues pursuant to Government
5 Code section 11415.60, subdivision (b). By waiving such rights, Klarna effectively consents to this
6 Agreement becoming final.

7 7. **Full and Final Settlement.** The Parties hereby acknowledge and agree that this
8 Agreement is intended to constitute a full, final, and complete resolution of the Findings, and that no
9 further proceedings or actions will be brought by the Commissioner in connection with the Findings
10 under the CFL or any other provision of law, excepting therefrom any proceeding to enforce
11 compliance with the terms of this Agreement.

12 8. **Failure to Comply with Paragraphs 3, 4 and 5.** Klarna agrees that, if no cure is
13 made by Klarna within 10 days' written notice from the Commissioner of Klarna's failure to comply
14 with Paragraphs 3, 4 and 5 of this Agreement, the Commissioner may, in addition to all other
15 available remedies it may invoke under the CFL, summarily suspend the CFL license of Klarna until
16 Klarna is in compliance. Upon failure to cure within the 10 days' written notice period, Klarna
17 waives any notice and hearing rights to contest such summary suspension which may be afforded
18 under the CFL, the California Administrative Procedure Act, the California Code of Civil Procedure,
19 or any other provision of law in connection therewith.

20 9. **Failure to Otherwise Comply with the Settlement Agreement.** Klarna agrees that,
21 upon any failure to comply with the terms of this Agreement not discussed in Paragraph 8 above, the
22 Commissioner may immediately commence proceedings to compel compliance under the CFL.
23 Klarna waives any notice and hearing rights to contest such proceedings which may be afforded
24 under the CFL, the California Administrative Procedure Act, the California Code of Civil Procedure,
25 or any other provision of law in connection therewith.

26 10. **Information Willfully Withheld or Misrepresented.** This Agreement may be
27 revoked, and the Commissioner may pursue any and all remedies available under the law against
28 Klarna if the Commissioner discovers that Klarna knowingly or willfully withheld information used

1 for and relied upon in this Agreement.

2 11. **Future Actions by Commissioner.** If Klarna fails to comply with any terms of the
3 Agreement, the Commissioner may, in accordance with Paragraphs 9 and 10 above as applicable,
4 institute proceedings for any and all violations otherwise resolved under this Agreement. The
5 Commissioner reserves the right to bring any future actions against Klarna, or any of its partners,
6 owners, officers, shareholders, directors, employees or successors for any and all unknown violations
7 of the CFL.

8 12. **Assisting Other Agencies.** Nothing in this Agreement limits the Commissioner's
9 ability to assist any other government agency (city, county, state, or federal) with any administrative,
10 civil or criminal prosecutions brought by that agency against Klarna or any other person based upon
11 any of the activities alleged in this matter or otherwise.

12 13. **Headings.** The headings to the paragraphs of this Agreement are for convenience
13 only and will not be deemed a part hereof or affect the construction or interpretation of the provisions
14 hereof.

15 14. **Binding.** This Agreement is binding on all heirs, assigns, and/or successors in
16 interest.

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

26 16. **Waiver, Amendments, and Modifications.** No waiver, amendment, or modification
27 of this Agreement will be valid or binding unless it is in writing and signed by each of the Parties.
28 The waiver of any provision of this Agreement will not be deemed a waiver of any other provision.

1 No waiver by either party of any breach of, or of compliance with, any condition or provision of this
2 Agreement by the other party will be considered a waiver of any other condition or provision or of
3 the same condition or provision at another time.

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

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

14 19. **Counterparts.** This Agreement may be executed in one or more separate
15 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
16 together constitute a single document.

17 20. **Effect Upon Future Proceedings.** If Klarna applies for any license, permit or
18 qualification under the Commissioner's current or future jurisdiction, or is the subject of any future
19 action by the Commissioner to enforce this Agreement, then the subject matter hereof shall be
20 admitted for the purpose of such application or proceeding. Provided, however, that the fact of the
21 existence of this Agreement shall not, in and of itself, be the sole basis for any denial of any such
22 application so long as Klarna is and has been in compliance with this Agreement.

23 21. **No Private Right of Action.** This Agreement does not create or give rise to any
24 private rights or remedies against Klarna, create any liability for Klarna, or limit any defenses of
25 Klarna against claims of any kind from any person or entity not a party to this Agreement.

26 22. **Voluntary Agreement.** Klarna enters into this Agreement voluntarily and without
27 coercion and acknowledges that no promises, threats or assurances have been made by the
28 Commissioner or any officer, or agent thereof, about this Agreement. The Parties each represent and

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

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

5 24. **Public Record.** Klarna hereby acknowledges that this Agreement is and will be a
6 matter of public record.

7 25. **Effective Date.** This Agreement shall become final and effective when signed by all
8 parties and delivered by the Commissioner’s counsel via e-mail to Klarna’s counsel, Andrew
9 Lorentz, at AndrewLorentz@dwt.com.

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

14 Dated: June 3, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

16 By _____
17 Mary Ann Smith
18 Deputy Commissioner

19 Dated: June 3, 2020

KLARNA INC.

21 By _____
22 Timothy K. Spencer
23 Chief Compliance Officer