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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 NOS.: 603J038 & 603K308
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
14)
15 Complainant,)
16 v.)
17 CARFINANCE CAPITAL, LLC,)
18 Respondent.)
19)
20)
21)

22 This Consent Order is entered into by and between the Commissioner of Business Oversight
23 and CarFinance Capital, LLC (Consent Order).

24 **I.**

25 **RECITALS**

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

27 A. CarFinance Capital, LLC (CarFinance) is a Delaware limited liability company
28 organized in 2011 with its principal place of business at 7525 Irvine Center Drive, Suite 250, Irvine,

1 California 92618.

2 B. CarFinance holds two licenses under the California Financing Law (Fin. Code, §
3 22000, et seq.) (CFL) with the license numbers 603J038 and 603K308.

4 C. Courtney Magnarella is the Associate Counsel of CarFinance. Courtney Magnarella is
5 authorized to enter into this Consent Order on behalf of CarFinance.

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

9 E. By letter on October 28, 2015, CarFinance voluntarily disclosed to the Commissioner
10 various errors in CarFinance’s legacy lending processes that were discovered during an internal
11 compliance audit (Letter), which CarFinance represented had been corrected going forward. The
12 Letter also disclosed a plan to correct the errors.

13 F. On January 7, 2016, the Commissioner commenced a regulatory examination of
14 CarFinance (Exam).

15 G. Based on the Letter, the Exam, and information CarFinance subsequently provided to
16 the Commissioner (Information), the Commissioner made the following findings (Findings):

17 i. Directly and through brokers, CarFinance makes automobile loans online to
18 consumers in California under the authority of the CFL.

19 ii. The Letter disclosed that, in connection with some of its CFL loans,
20 CarFinance had committed four violations (the Disclosed Violations) of the CFL and Regulation Z of
21 the federal Truth in Lending Act (15 U.S.C. § 1601 et seq.) (TILA):

22 a) Prior to the Letter, CarFinance sold Guaranteed Asset Protection
23 Waiver Addendums (GAP Waivers) in connection with some of its CFL loans without obtaining
24 proper voluntary borrower authorizations and without separately listing borrower-borne GAP Waiver
25 fees in the loans’ notes. As a result, CarFinance had, in some cases, improperly excluded the GAP
26 Waiver Fees from the loans’ finance charge.

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1 b) Prior to the Letter, CarFinance used a manual data entry process to
2 create loan documents. In connection with some of its CFL loans, CarFinance mis-entered terms in
3 the loans’ notes, resulting in borrower overcharges (and undercharges) in some cases.

4 c) Prior to the Letter, in connection with some CFL loans, CarFinance
5 charged borrowers interest prior to the disbursement of the loans’ proceeds.

6 d) Prior to the Letter, CarFinance did not allocate payments on some of its
7 CFL loans and retail installment contracts in accordance with their terms.

8 iii. In the Letter, CarFinance voluntarily committed to implementing more robust
9 compliance procedures and to making refunds to California borrowers affected by the Disclosed
10 Violations.

11 iv. Intending to ameliorate any possible harm to borrowers caused by the
12 Disclosed Violations, CarFinance chose to calculate refunds using a method requiring CarFinance to
13 rebuild activity on tens of thousands of loans nationwide—a method that demanded sophisticated
14 technical expertise from third party contractors and internal resources, as well as significant financial
15 expenditure and time (Remediation Methodology).

16 v. Due to unforeseen difficulties in performing the Remediation Methodology,
17 CarFinance’s refunds were delayed well beyond CarFinance’s initial estimations.

18 vi. In the Exam, the Commissioner discovered additional violations of the CFL
19 not addressed in the Letter (Exam Violations):

20 a) To generate borrower referrals, CarFinance paid unlicensed persons to
21 solicit or accept loan applications in violation of Section 1451, subdivision (c), of Title 10 of the
22 California Code of Regulations.

23 b) CarFinance excluded the fees it earned from the sale of GAP Waivers
24 from calculation of loans’ “charges” under the CFL in reliance on Financial Code section 22202,
25 subdivision (g). However, CarFinance had not obtained prior written authorization of the
26 Commissioner to sell GAP Waivers in connection with its CFL loans under Financial Code section
27 22154, subdivision (a), a requirement of the “charges” exclusion in Financial Code section 22202,
28 subdivision (g).

1 H. CarFinance ceased selling GAP Waivers in connection with loans CarFinance made
2 under the CFL on April 10, 2019.

3 I. Based on the Findings, the Commissioner determined that CarFinance had violated
4 Section 1451, subdivision (c), of Title 10 of the California Code of Regulations and sections 22154,
5 subdivision (a), 22346, subdivision (d), and 22306 of the Financial Code.

6 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
7 contained herein, the Commissioner and CarFinance (the Parties) agree as follows:

8 **II.**

9 **TERMS AND CONDITIONS**

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

13 2. Desist and Refrain Order. Pursuant to Financial Code section 22712, CarFinance is
14 hereby ordered to desist and refrain from:

15 i. Violating Regulation Z of TILA in violation of Financial Code section 22346,
16 subdivision (d);

17 ii. Charging prohibited loan rates and fees in violation of Financial Code section
18 22306; and

19 iii. Paying compensation to an unlicensed person or company for soliciting or
20 accepting applications for loans in violation of Section 1451, subdivision (c), of Title 10 of the
21 California Code of Regulations.

22 3. Penalty. CarFinance shall pay a penalty of \$25,000.00 to the Commissioner
23 (Penalty). The Penalty is due within ten business days of the effective date, as defined in Paragraph
24 25 below (Effective Date), and should be made payable in the form of a cashier's check or
25 Automated Clearing House deposit to the "Department of Business Oversight" and transmitted to the
26 attention of: Accounting – Enforcement Division, Department of Business Oversight, 1515 K Street,
27 Suite 200, Sacramento, California 95814. Notice of such payment shall be forwarded to Adam
28 Wright, Senior Counsel, Department of Business Oversight, Enforcement Division, 320 West 4th

1 Street, Suite 750, Los Angeles, California 90013.

2 4. Refunds. CarFinance shall make approximately \$565,260.08 or more in refunds
3 (Refunds, or individually, Refund) to certain borrowers as follows:

4 i. In connection with the Disclosed Violations, CarFinance shall make Refunds
5 to California borrowers for all amounts previously promised, described, or disclosed to the
6 Commissioner in the Information (Disclosed Violations Refunds). As of June 3, 2020, CarFinance
7 has already made at least \$328,260.08 in Refunds pursuant to the Disclosed Violations Refunds.
8 Following June 3, 2020, CarFinance estimates, according to the Remediation Methodology, that
9 Refunds made pursuant to the Disclosed Violations Refunds to California borrowers will total at least
10 an additional \$100,000.00.

11 ii. In connection with the Exam Violations, CarFinance shall make \$237,000.00
12 in Refunds (Exam Violations Refunds) to be distributed, in accordance with Paragraph 5 below,
13 equally amongst all California borrowers who purchased a GAP Waiver in connection with a loan
14 made by CarFinance under the CFL between October 28, 2015 and April 10, 2019.

15 5. Refund Payments. CarFinance shall pay any Refunds not already made prior to the
16 Effective Date as follows:

17 i. CarFinance shall make the Disclosed Violations Refunds no later than
18 December 31, 2020. If CarFinance has not made all Disclosed Violations Refunds by December 31,
19 2020, CarFinance shall pay to the Commissioner \$1,000.00 for each full month after December 2020
20 in which CarFinance has not made all Disclosed Violations Refunds. Each such additional penalty
21 shall be paid within 5 business days of the last day of that month. For example, if CarFinance does
22 not complete all Disclosed Violations Refunds until March 15, 2021, CarFinance shall pay two
23 additional \$1,000.00 penalties to the Commissioner for not having completed all Disclosed
24 Violations Refunds by the end of January 2021 and the end of February 2021.

25 ii. CarFinance shall make the Exam Violations Refunds no later than sixty days
26 after the Effective Date.

27 iii. CarFinance shall submit an electronic report and evidence of the Refunds to
28 the Commissioner on the 5th day of every other full month following the Effective Date until all

1 Refunds are made. Such evidence must include a copy of the Refund checks, loan balances, and, for
2 assignees and borrowers of charged-off loans assigned to outside collections, advisements of
3 outstanding-balance reductions for each loan on which a Refund is made, as applicable.

4 iv. CarFinance shall apply each Refund as follows:

5 a) for borrowers with loans which have an outstanding balance of more
6 than the Refund, by reducing the loan's outstanding balance by the Refund amount;

7 b) for current borrowers whose loans have an outstanding balance of less
8 than the Refund, by reducing the loan's principal balance to zero dollars (\$0.00) and mailing a check
9 for the remaining Refund amount to the primary borrower;

10 c) for former borrowers who repaid their loans in full and do not have any
11 loans from CarFinance with an outstanding balance, by mailing a check to the primary borrower for
12 the Refund amount; or

13 d) for borrowers whose loan balances were charged off, by reducing the
14 charged-off balance by the Refund amount. As to these loans, CarFinance shall apply the reduction
15 directly to any loan it retained for collection. For loans assigned for collection, CarFinance shall
16 advise the assignee of the reduced outstanding balance. CarFinance shall also advise each borrower
17 of a charged-off loan that has been assigned for collection of the reduction in outstanding balance by
18 sending notice electronically to the borrower's last known email address in CarFinance's records or,
19 if the borrower has opted out of receiving electronic communications from CarFinance or if
20 CarFinance has no e-mail address for the borrower, by sending notice by U.S. mail to the borrower's
21 last known mailing address in CarFinance's records.

22 v. CarFinance shall escheat any unclaimed Refunds to the California State
23 Controller's Office within the period provided by Code of Civil Procedure section 1520 of the
24 Unclaimed Property Law (Code of Civ. Proc., section 1500, et seq.).

25 6. Proof of Compliance. CarFinance acknowledges that the Commissioner will examine
26 and review its compliance with Paragraphs 4 and 5 of this Consent Order. CarFinance agrees to
27 provide, upon the Commissioner's request, documentation satisfactory to the Commissioner to
28 determine compliance with Paragraphs 4 and 5.

1 7. Consideration. The Commissioner hereby agrees to accept CarFinance’s surrender of
2 its two CFL licenses within forty-five calendar days of the date on which CarFinance submits the
3 final electronic report and evidence showing that all Refunds have been made.

4 8. Waiver of Hearing Rights. CarFinance acknowledges the Commissioner is ready,
5 willing, and able to proceed with the filing of an administrative enforcement action on the Findings.
6 CarFinance hereby waives the right to any hearings, and to any reconsideration, appeal, or other right
7 to review which may be afforded pursuant to the CFL, the California Administrative Procedure Act,
8 the California Code of Civil Procedure, or any other provision of law. CarFinance further expressly
9 waives any requirement for the filing of an Accusation or a Statement of Issues pursuant to
10 Government Code section 11415.60, subdivision (b). By waiving such rights, CarFinance effectively
11 consents to this Consent Order becoming final.

12 9. Full and Final Settlement. The Parties hereby acknowledge and agree that this
13 Consent Order is intended to constitute a full, final, and complete resolution of the Findings, and that
14 no further proceedings or actions will be brought by the Commissioner in connection with the
15 Findings under the CFL or any other provision of law, excepting therefrom any proceeding to enforce
16 compliance with the terms of this Consent Order.

17 10. Failure to Comply with Consent Order. CarFinance agrees that, if it fails to comply
18 with the terms of this Consent Order, the Commissioner may, in addition to all other available
19 remedies it may invoke under the CFL, summarily suspend the CFL licenses of CarFinance until
20 CarFinance is in compliance. CarFinance waives any notice and hearing rights to contest such
21 summary suspension which may be afforded under the CFL, the California Administrative Procedure
22 Act, the California Code of Civil Procedure, or any other provision of law in connection therewith.

23 11. Information Willfully Withheld or Misrepresented. This Consent Order may be
24 revoked, and the Commissioner may pursue any and all remedies available under the law against
25 CarFinance, including summarily suspending the CFL license of CarFinance, if the Commissioner
26 discovers that CarFinance knowingly or willfully withheld information used for and relied upon in
27 this Consent Order, including, without limitation, the Self-Disclosure and the Information.

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1 12. Future Actions by Commissioner. If CarFinance fails to comply with any terms of the
2 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
3 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
4 against CarFinance, or any of its partners, owners, officers, shareholders, directors, employees or
5 successors for any and all unknown violations of the CFL.

6 13. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
7 ability to assist any other government agency (city, county, state, or federal) with any administrative,
8 civil or criminal prosecutions brought by that agency against CarFinance or any other person based
9 upon any of the activities alleged in this matter or otherwise.

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

13 15. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
14 interest.

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

24 17. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
25 this Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.
26 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
27 provision. No waiver by either party of any breach of, or of compliance with, any condition or
28 provision of this Consent Order by the other party will be considered a waiver of any other condition

1 or provision or of the same condition or provision at another time.

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

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

12 20. Counterparts. This Consent Order may be executed in one or more separate
13 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
14 together constitute a single document.

15 21. Effect Upon Future Proceedings. If CarFinance applies for any license, permit or
16 qualification under the Commissioner's current or future jurisdiction, or is the subject of any future
17 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
18 admitted for the purpose of such application or proceeding.

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

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

26 24. Public Record. CarFinance hereby acknowledges that this Consent Order is and will
27 be a matter of public record.

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