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7 Attorneys for Complainant

8
9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:) CFL LICENSE NO.: 60DBO-96799
12 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,) CONSENT ORDER
13)
14 Complainant,)
15 v.)
16 CIT FINANCIAL SERVICES II, LLC,)
17)
18 Respondent,)

19 This Consent Order is entered into between the Commissioner of Financial Protection
20 and Innovation (Complainant or Commissioner) and Respondent CIT Financial Services II, LLC
21 (Respondent) and is made with respect to the following facts:

22 **I.**
23 **RECITALS**

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

27 B. Respondent is a limited liability company, with a principal place of business at 11
28 West 42nd Street, New York, New York 10036.

1 C. Respondent is licensed as a finance lender under the CFL with main license number
2 60DBO-96799.

3 D. Respondent operates no branch offices in California.

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

11 F. On September 30, 2019, the Commissioner sent Respondent the Assessment Notice
12 per invoice number CF0825. The notice was mailed to the address Respondent registered with the
13 Department (Registered Address): 11 West 42nd Street, New York, New York 10036. The notice
14 stated that the annual assessment would become delinquent if not paid by October 31, 2019.

15 G. As of October 31, 2019, Respondent had not paid its annual assessment. The failure
16 to pay the annual assessment on or before October 31, 2019 represents a violation of Financial Code
17 section 22107.

18 H. As of November 6, 2019, Respondent had not paid its annual assessment. As a result,
19 the Commissioner sent to Respondent's Registered Address a Notice of Unpaid Assessment on
20 November 6, 2019. The notice warned that failure to pay the assessment would result in summary
21 revocation of Respondent's license. Respondent did not respond to the Commissioner's notice.

22 I. As of December 6, 2019, Respondent had not paid its annual assessment. As a result,
23 on December 6, 2019, the Commissioner issued an Order Summarily Revoking California Financing
24 Law License Pursuant to Financial Code Section 22107 for CFL License Number 60DBO-96799
25 (Revocation Order). The Department mailed the Revocation Order to Respondent's Registered
26 Address along with notice that it would become effective December 30, 2019 unless payment of the
27 annual assessment was received by close of business on December 27, 2019.
28

1 J. As of December 27, 2019, the assessment remained unpaid. As such, the Revocation
2 Order became effective December 30, 2019. On December 31, 2019, Respondent paid the \$250
3 assessment in full.

4 K. In connection with these proceedings, Respondent represented to the Commissioner
5 that it had taken no new applications under its license.

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

8 **II.**

9 **TERMS AND CONDITIONS**

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

14 2. Order Rescinding Revocation Order. The Commissioner hereby rescinds the
15 Revocation Order, which was issued on December 6, 2019, and became effective on December 30,
16 2019, as of the effective date of revocation.

17 3. Administrative Penalty. Respondent shall pay an administrative penalty of \$1,000.00
18 no later than 30 days after the effective date of this Consent Order as defined in paragraph 25. The
19 penalty must be made payable in the form of a cashier's check or Automated Clearing House deposit
20 to the Department of Financial Protection and Innovation and transmitted to the attention of
21 Accounting – Litigation, at the Department of Financial Protection and Innovation, 2101 Arena
22 Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent to
23 Taylor Herrlinger, Counsel, Department of Financial Protection and Innovation, 2101 Arena
24 Boulevard, Sacramento, California 95834.

25 4. Failure to Pay Administrative Penalty. If Respondent fails to comply with paragraph
26 3, the Commissioner may summarily suspend Respondent from engaging in business under its
27 license until it provides evidence of compliance to the Commissioner's satisfaction. Respondent
28 hereby waives any notice or hearing rights afforded under the Administrative Procedure Act,

1 including Government Code section 11415.60, subdivision (b); Code of Civil Procedure; or any
2 other provision of law to contest the summary suspension contemplated by this paragraph.

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

12 6. Full and Final Resolution. The parties hereby acknowledge and agree that this
13 Consent Order is intended to constitute a full and final resolution of the violations described herein,
14 and that no further proceedings or actions will be brought by the Commissioner in connection with
15 these matters except under the CFL or any other provision of law, excepting therefrom any
16 proceeding to enforce compliance with the terms of this Consent Order.

17 7. Failure to Comply with Consent Order. Respondent 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/revoke the CFL license of Respondent
20 until Respondent is in compliance. Respondent waives any notice and hearing rights to contest such
21 summary suspensions/revocations which may be afforded under the CFL, the California
22 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law
23 in connection therewith.

24 8. Information Willfully Withheld or Misrepresented. This Consent Order may be
25 revoked, and the Commissioner may pursue any and all remedies available under law against
26 Respondent if the Commissioner discovers that Respondent knowingly or willfully withheld or
27 misrepresented information used for and relied upon in this Consent Order.
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1 9. Future Actions by Commissioner. If Respondent fails to comply with the 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 Respondent, or any of its partners, owners, officers, shareholders, directors, employees, or
5 successors for any and all unknown violations of this CFL.

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

10 11. No Presumption Against Drafter. Each party acknowledges that it has had the
11 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
12 intend no presumption for or against the drafting party will apply in construing any part of this
13 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
14 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
15 language of a contract should be interpreted most strongly against the party who caused the
16 uncertainty to exist.

17 12. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
18 has received independent advice from its attorney(s) and/or representatives with respect to the
19 advisability of executing this Consent Order.

20 13. Headings. The headings to the paragraphs of this Consent Order are inserted for
21 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
22 the provisions hereof.

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

25 15. Reliance. Each of the parties represents, warrants, and agrees that in executing this
26 Consent Order, it has relied solely on the statements set forth herein and the advice of its own legal
27 counsel. Each of the parties further represents, warrants, and agrees that in executing this Consent
28 Order it has placed no reliance on any statement, representation, or promise of any other party, or

1 any other person or entity not expressly set forth herein, or upon the failure of any party or any other
2 person or entity to make any statement, representation, or disclosure of anything whatsoever. The
3 parties have included this clause: (1) to preclude any claim that any party was in any way
4 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
5 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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

12 17. Full Integration. This Consent Order is the final written expression and the complete
13 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
14 between the parties with respect to the subject matter hereof, and supersedes all prior or
15 contemporaneous agreements, negotiations, representations, understandings, and discussions
16 between and among the parties, their respective representatives, and any other person or entity, with
17 respect to the subject matter covered hereby.

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

22 19. Counterparts. This Consent Order may be executed in one or more separate
23 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
24 together constitute a single document.

25 20. Effect Upon Future Proceedings. If Respondent applies for any license, permit or
26 qualification under the Commissioner's current jurisdiction, or are the subject of any future action by
27 the Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for
28 the purpose of such application(s) or enforcement proceeding(s).

1 21. Voluntary Agreement. Respondent hereby enters in this Consent Order voluntarily
2 and without coercion and acknowledges that no promises, threats, or assurances have been made by
3 the Commissioner or any officer, or agent thereof, about this Consent Order. The parties each
4 represent and acknowledge that he, she, or it is executing this Consent Order completely voluntarily
5 and without any duress or undue influence of any kind from any source.

6 22. Notice. Any notice required under this Consent Order be provided to each party at the
7 following addresses:

8 To CIT Financial Services II, LLC: CIT Financial Services II, LLC
9 11West 42nd Street
10 New York, New York 10036
11 CIT.CoSEC@cit.com

12 To the Commissioner: Taylor Herrlinger, Counsel
13 Department of Financial Protection and Innovation
14 2101 Arena Boulevard
15 Sacramento, California 95834
16 Taylor.herrlinger@dfpi.ca.gov

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

19 24. Public Record. Respondent hereby acknowledges that the Consent Order is and will
20 be a matter of public record.

21 25. Effective Date. This Consent Order shall become final and effective when signed by
22 all parties and delivered by the Commissioner’s agent via e-mail to Respondent at the following
23 email address: CIT.CoSEC@cit.com.

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

Dated: November 17, 2020

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

CIT FINANCIAL SERVICES II, LLC

Dated: November 17, 2020

By _____
JAMES P. SHANAHAN
Senior Vice President