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

11
12 In the Matter of:)
13 THE COMMISSIONER OF FINANCIAL) CONSENT ORDER
PROTECTION AND INNOVATION,)
14)
15 Complainant,)
16 v.)
17 ANNE McCLURE,)
18 Respondent.)
19)
20)
21)
22)

23 The Commissioner of Financial Protection and Innovation (Commissioner) and Anne
24 McClure (McClure or Respondent) enter into this Consent Order (the Consent Order) with respect to
25 the following facts:

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I.

RECITALS

A. The Commissioner has jurisdiction over the licensing and regulation of credit unions in this state under California Financial Code section 550 et seq.

B. At all relevant times, Cabrillo Credit Union (Credit Union) is and was a credit union, duly licensed as a credit union in this state. Credit Union’s principal place of business is 10075 Carroll Canyon Road, Suite 200, San Diego, California 92131.

C. At all relevant times Anne McClure was Credit Union’s Chief Operating Officer.

D. In 2017, Credit Union’s then Chief Executive Officer decided to eliminate the executive employee benefit of use of a company car and offered the particular vehicle for purchase to that employee. Thereafter, Credit Union set the purchase price as the then existing book value.

E. On January 8, 2018, Respondent entered into a contract with Credit Union to purchase from the Credit Union a 2017 Ford Explorer XLT Sports Utility 4D, Vin 1FM5K7D87HGB32003 (“Purchased Vehicle”) for the book value of \$25,836.93.

F. The Commissioner asserts that on January 8, 2018, the market value of the Purchased Vehicle was \$32,985.00. Respondent neither admits nor denies the Commissioner’s assertion of the Purchased Vehicle’s market value.

G. Financial Code section 14765 provides as follows, “No officer, director, or employee of a credit union shall purchase, directly or indirectly or be interested in the purchase of, any of the credit union’s assets for an amount less than the then current market value thereof. Every person violating this section shall be liable to the people of this state for each offence in the amount of twice the market value of the assets so purchased.”

H. Based on the Commissioner’s assertion of market value, the Commissioner of Financial Protection and Innovation is of the opinion that Respondent violated Financial Code section 14765 by purchasing an asset of a state-chartered credit union for less than the then-current market value. Respondent neither admits nor denies the Commissioner’s assertion.

I. Based on Respondent’s assertion of market value, Respondent does not believe that a violation of Financial Code section 14765 occurred.

1 J. Now, it is the intention of McClure and the Commissioner (the Parties) to resolve
2 this matter without an administrative hearing or other litigation.

3 M. The Commissioner finds that this action is appropriate, in the public interest, and
4 consistent with the purposes fairly intended by the policy and provisions of this law.

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

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8 **II.**

9 **TERMS AND CONDITIONS**

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

14 2. Administrative Penalty. Respondent shall pay an administrative penalty of
15 \$13,000.00 no later than 90 days after the effective date of this Consent Order as defined in
16 paragraph 19. The penalty must be made payable in the form of a cashier's check or Automated
17 Clearing House deposit to the Department of Financial Protection and Innovation and transmitted
18 to the attention of Accounting – Litigation, at the Department of Financial Protection and
19 Innovation, 2101 Arena Boulevard , Sacramento, California 95834. Notice of the payment must be
20 concurrently sent to Paul Yee, Senior Counsel, Department of Financial Protection and Innovation,
21 One Sansome Street, Suite 600, San Francisco, California 94104.

22 3. Waiver of Hearing Rights. Respondent acknowledges the Commissioner is ready,
23 willing, and able to proceed with the filing of an administrative enforcement action on the charges
24 contained in this Consent Order. Respondent hereby waives the right to any hearings, and to any
25 reconsideration, appeal, or other right to review which may be afforded pursuant to the Financial
26 Code, the California Administrative Procedure Act, the California Code of Civil Procedure, or any
27 other provision of law. By waiving such rights, Respondent effectively consents to this Consent
28 Order becoming final.

1 4. Full and Final Settlement. Respondent hereby acknowledges and agrees that the
2 Consent Order is intended to constitute a full, final, and complete resolution of Respondent’s
3 alleged violation set forth in the Recitals (Alleged Violation), and that no further proceedings or
4 actions will be brought by the Commissioner against Respondent based on the Alleged Violation or
5 any other provision of law, excepting any proceeding to enforce compliance with the terms of this
6 Consent Order or action if such proceeding is based upon discovery of new and further alleged
7 violations of the Financial Code that do not form the basis for the Consent Order or which
8 Respondent knowingly concealed from the Commissioner.

9 5. Information Willfully Withheld. The Consent Order may be revoked if the
10 Commissioner later finds out that Respondent knowingly or willfully withheld information used and
11 relied upon in the Consent Order.

12 6. Assisting Other Agencies. The Parties further acknowledge and agree that nothing in
13 the Consent Order shall limit the Commissioner’s ability to assist any other agency (city, county,
14 state, or federal) with any prosecution, administrative, civil, or criminal, brought by any such agency
15 against Respondent or any other person based upon any of the activities alleged in this matter or
16 otherwise.

17 7. Headings. The headings to the paragraphs of this Consent Order are inserted for
18 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
19 the provisions hereof.

20 8. Binding. The Consent Order is binding on all heirs, assigns, or successors in interest.

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

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

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

15 12. Governing Law. This Consent Order will be governed by and construed in
16 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,
17 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
18 forum to the maintenance of such action or proceeding in such court.

19 20 13. Counterparts. This Consent Order may be executed in one or more separate
21 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
22 together constitute a single document.

23 14. Effect Upon Future Proceedings. If Respondent is the subject of any future action by
24 the Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for
25 the purpose of such enforcement proceedings(s).

26 27 15. Voluntary Agreement. Respondent enters into the Consent Order voluntarily and
28 without coercion and acknowledges that no promises, threats, or assurances have been made by the

1 Commissioner, or any officer or agent thereof, about the Consent Order.

2 16. Notice. Any notices required under the Consent Order shall be provided to
3 each Party at the following addresses:

4 If to Respondent to: Anne McClure
5 Email: Mcclure92127@yahoo.com

6 If to the Commissioner to: Paul Yee, Senior Counsel
7 Department of Financial Protection and Innovation
8 One Sansome Street, Suite 600
9 San Francisco, California 94104-4448
10 Email: Paul.Yee@dfpi.ca.gov

11 17. Signatures. An electronic signature, or a faxed, photocopied, or scanned copy of an
12 original signature, shall be deemed the same as an original signature.

13 18. Public Record. Respondent acknowledges that this Consent Order shall be matters of
14 public record.

15 19. Effective Date. The Consent Order shall become final and effective when signed by
16 all Parties and delivered by the Commissioner’s agent to Respondent via e-mail at
17 Mcclure92127@yahoo.com.

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

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IN WITNESS WHEREOF, the Parties hereto have approved and executed the Consent Order on the dates set forth opposite their respective signatures.

Dated: December 15, 2020

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: December 8, 2020

By _____
ANNE McCLURE
Respondent