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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
12 In the Matter of:) AGENCY NO.: 25579
13 THE COMMISSIONER OF FINANCIAL) SETTLEMENT AGREEMENT
PROTECTION AND INNOVATION,)
14)
15 Complainant,)
16 v.)
17 VIABILL INC.,)
18 Respondent.)
19)
20)
21)

22 This Settlement Agreement is entered into by and between the Commissioner of Financial
23 Protection and Innovation and ViaBill Inc. (Agreement).

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

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

27 A. ViaBill Inc. (ViaBill) is a Delaware corporation organized in 2018 with its principal
28 place of business at 510 E 14th Street, Suite 702, 10009 New York, New York.

1 B. ViaBill has never been licensed under the California Financing Law (Fin. Code, §
2 22000, et seq.) (CFL).

3 C. Kristian Thogersen is the President of ViaBill. Kristian Thogersen is authorized to
4 enter into this Agreement on behalf of ViaBill.

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

9 E. From February 2019 through July 14, 2020, ViaBill offered an online “buy now, pay
10 later” point-of-sale financing product to California residents (Product). ViaBill collected no interest
11 or fees from California residents in connection with its Product. Instead, ViaBill relied exclusively
12 on merchant discounts for compensation. ViaBill did not comply with the CFL in the offering of the
13 Product.

14 F. Following an inquiry from the Department, ViaBill voluntarily ceased offering the
15 Product to California residents on July 14, 2020.

16 G. Based upon information voluntarily provided during the inquiry (Information), the
17 Commissioner found that the Product was a loan within the meaning of, and non-compliant with, the
18 CFL (Finding).

19 H. Based on the Finding, the Commissioner determined that ViaBill violated Financial
20 Code section 22100, subdivision (a), by “engag[ing] in the business of a finance lender . . . without
21 obtaining a license from the commissioner.”

22 I. ViaBill neither admits nor denies that it offered the Product in violation of the CFL,
23 but agrees to enter into this Agreement to amicably resolve this matter without the necessity of a
24 hearing or litigation.

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

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1 II.

2 **Terms and Conditions**

3 1. **Purpose.** This Agreement resolves the Finding in a manner that avoids the expense
4 of a hearing and other possible court proceedings, protects consumers, is in the public interest, and
5 is consistent with the purposes, policies, and provisions of the CFL.

6 2. **Desist and Refrain Order.** Pursuant to Financial Code section 22712, ViaBill is
7 hereby ordered to desist and refrain from violating Financial Code section 22100, subdivision (a), by
8 engaging in the business of a finance lender without obtaining a license from the Commissioner or
9 without an applicable exemption from the CFL.

10 3. **Administrative Fee.** ViaBill shall pay an administrative fee of \$2,500.00 to the
11 Commissioner (Administrative Fee). The Administrative Fee is due within five days of the Effective
12 Date, as defined in Paragraph 23 below (Effective Date), and should be made payable in the form of a
13 cashier’s check or Automated Clearing House deposit to the “Department of Financial Protection and
14 Innovation” and transmitted to the attention of “Accounting – Litigation” at Department of Financial
15 Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834-2036. Notice of
16 such payment shall be forwarded to Adam Wright, Senior Counsel, Department of Financial
17 Protection and Innovation, Enforcement Division, 320 West 4th Street, Suite 750, Los Angeles,
18 California 90013.

19 4. **Compliance.** As of the Effective Date, ViaBill shall only make loans, deferred
20 payment products, or extensions of credit to California residents under the authority of a CFL license
21 and in compliance with the CFL.

22 5. **Waiver of Hearing Rights.** ViaBill acknowledges the Commissioner is ready,
23 willing, and able to proceed with the filing of an administrative enforcement action on the Finding.
24 ViaBill hereby waives the right to any hearings, and to any reconsideration, appeal, or other right to
25 review which may be afforded pursuant to the CFL, the California Administrative Procedure Act, the
26 California Code of Civil Procedure, or any other provision of law. ViaBill further expressly waives
27 any requirement for the filing of an Accusation or a Statement of Issues pursuant to Government
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1 Code section 11415.60, subdivision (b). By waiving such rights, ViaBill effectively consents to this
2 Agreement becoming final.

3 6. **Full and Final Settlement.** The Parties hereby acknowledge and agree that this
4 Agreement is intended to constitute a full, final, and complete resolution of the Finding, and that no
5 further proceedings or actions will be brought by the Commissioner against ViaBill, or any of its
6 partners, owners, officers, shareholders, directors, employees or successors in connection with the
7 Information or the Finding under the CFL or any other provision of law, excepting therefrom any
8 proceeding to enforce compliance with the terms of this Agreement.

9 7. **Failure to Comply with the Settlement Agreement.** ViaBill agrees that, upon any
10 failure to comply with the terms of this Agreement, the Commissioner may immediately commence
11 proceedings to compel compliance under the CFL. ViaBill waives any notice and hearing rights to
12 contest such proceedings which may be afforded under the CFL, the California Administrative
13 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection
14 therewith.

15 8. **Information Willfully Withheld or Misrepresented.** This Agreement may be
16 revoked, and the Commissioner may pursue any and all remedies available under the law against
17 ViaBill if the Commissioner discovers that ViaBill knowingly or willfully withheld information used
18 for and relied upon in this Agreement, including, without limitation, the Information.

19 9. **Future Actions by Commissioner.** If ViaBill fails to comply with any terms of the
20 Agreement, the Commissioner may, in accordance with Paragraphs 7 and 8 above as applicable,
21 institute proceedings for any and all violations otherwise resolved under this Agreement. The
22 Commissioner reserves the right to bring any future actions against ViaBill, or any of its partners,
23 owners, officers, shareholders, directors, employees or successors for any and all unknown violations
24 of the CFL.

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

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

4 12. **Binding.** This Agreement 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
16 of this Agreement 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 Agreement will not be deemed a waiver of any other provision.
18 No waiver by either party of any breach of, or of compliance with, any condition or provision of this
19 Agreement by the other party will be considered a waiver of any other condition or provision or of
20 the same condition or provision at another time.

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

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

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

3 17. **Counterparts**. This Agreement 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 ViaBill 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 Agreement, then the subject matter hereof shall be
9 admitted for the purpose of such application or proceeding. Provided, however, that the fact of the
10 existence of this Agreement shall not, in and of itself, be the sole basis for any denial of any such
11 application so long as ViaBill is and has been in compliance with this Agreement.

12 19. **No Private Right of Action**. This Agreement does not create or give rise to any
13 private rights or remedies against ViaBill, create any liability for ViaBill, or limit any defenses of
14 ViaBill against claims of any kind from any person or entity not a party to this Agreement.

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

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

22 22. **Public Record**. ViaBill hereby acknowledges that this Agreement is and will be a
23 matter of public record.

24 23. **Effective Date**. This Agreement shall become final and effective when signed by all
25 parties and delivered by the Commissioner's counsel via e-mail to ViaBill's counsel, James Kim, at
26 kimj@ballardspahr.com.

27 24. **Authority to Sign**. Each signatory hereto covenants that he or she possesses all
28 necessary capacity and authority to sign and enter into this Agreement and undertake the obligations

1 set forth herein.

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3 Dated: January 13, 2021

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

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By _____
Mary Ann Smith
Deputy Commissioner

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8 Dated: January 13, 2021

VIABILL INC.

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By _____
Kristian Thogersen
President

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