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

11 In the Matter of:) CONSENT ORDER
12 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
13)
14 Complainant,)
15 v.)
16 BB&T EQUIPMENT FINANCE LLC,)
17 Respondent.)
18 _____)

19 This Consent Order is entered into by and between the Commissioner of Financial Protection
20 and Innovation (Commissioner) and BB&T Equipment Finance LLC (Consent Order).

21 I.

22 **RECITALS**

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

24 A. BB&T Equipment Finance LLC (BB&T) is a North Carolina limited liability
25 company.

26 B. Gregory C. Badger is the President and a Manager of BB&T and is authorized to enter
27 into this Consent Order on behalf of BB&T.
28

1 C. The Department, through the Commissioner, has jurisdiction over the licensing and
2 regulation of persons and entities engaged in the business of lending and brokering in California,
3 pursuant to the California Financing Law (Fin. Code § 22000, et seq.) (CFL).

4 D. In September 2020, after receiving a self-reporting letter sent by BB&T admitting to
5 unlicensed CFL activity, the Department commenced an investigation of BB&T’s compliance with
6 the CFL and BB&T’s purported unlicensed CFL lending.

7 E. As a result of that investigation, the Commissioner is of the opinion that from 2000 to
8 2019, BB&T engaged in the business of a finance lender in California by making at least 536
9 commercial loans without first obtaining a finance lender license from the Commissioner, in violation
10 of Financial Code section 22100, subdivision (a).

11 F. By entering this Consent Order, BB&T and the Commissioner intend to resolve this
12 matter without the necessity of a hearing or other litigation.

13 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
14 contained herein, the Commissioner and BB&T (the Parties) agree as follows:

15 **II.**

16 **TERMS AND CONDITIONS**

17 1. Purpose. This Consent Order resolves the Commissioner’s findings herein in a
18 manner that avoids the expense of a hearing and other possible court proceedings, protects
19 consumers and small businesses, is in the public interest, and is consistent with the purposes,
20 policies, and provisions of the CFL.

21 2. Desist and Refrain Order. Pursuant to Financial Code section 22712, BB&T is hereby
22 ordered to desist and refrain from lending in California until or unless properly licensed under the
23 CFL.

24 3. Penalty. BB&T shall pay an administrative penalty of \$75,000.00 to the
25 Commissioner (Administrative Penalty) within 30 days of the Effective Date, as defined in Paragraph
26 23 below (Effective Date), and should be made payable in the form of a cashier’s check or
27 Automated Clearing House deposit to the “Department of Financial Protection and Innovation” and
28 transmitted to the attention of: Accounting – Enforcement Division, Department of Financial

1 Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice of such
2 payment shall be forwarded to Kelly Suk, Counsel, Department of Financial Protection and
3 Innovation, Enforcement Division, 320 West 4th Street, Suite 750, Los Angeles, California 90013.

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

12 5. 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 this matter, and that
14 no further proceedings or actions will be brought by the Commissioner in connection with this matter
15 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 6. Failure to Comply with Consent Order. BB&T agrees that if it fails to comply with
18 the terms of this Consent Order, the Commissioner may, in addition to all other available remedies it
19 may invoke under the CFL, deny the issuing of BB&T's CFL license, or, if issued, summarily
20 suspend BB&T's CFL license until BB&T is in compliance. BB&T waives any notice and hearing
21 rights to contest such denial or summary suspension which may be afforded under the CFL, the
22 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
23 provision of law in connection therewith.

24 7. Information Willfully Withheld or Misrepresented. This Consent Order may be
25 revoked, and the Commissioner may pursue any and all remedies available under the law against
26 BB&T if the Commissioner discovers that BB&T knowingly or willfully withheld or misrepresented
27 information used for and relied upon in this Consent Order.

28 8. Future Actions by Commissioner. If BB&T fails to comply with any terms of the

1 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
2 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
3 against BB&T, or any of its partners, owners, officers, shareholders, directors, employees, or
4 successors for any and all unknown violations of the CFL.

5 9. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
6 ability to assist a government agency (whether city, county, state, or federal) with any administrative,
7 civil or criminal prosecutions brought by that agency against BB&T or any other person based upon
8 any of the activities alleged in this matter or otherwise.

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

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

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

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

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

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

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

14 17. Effect Upon Future Proceedings. If BB&T applies for any license, permit or
15 qualification under the Commissioner’s current or future jurisdiction, or is the subject of any future
16 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
17 admitted for the purpose of such application(s) or proceeding(s).

18 18. Third Parties. This Consent Order does not create or give rise to any private rights or
19 remedies against BB&T, or any of its past, present, and future predecessors, successors, parents,
20 subsidiaries, affiliates, and related entities, and each of their respective partners, employees, agents,
21 attorneys, officers, directors, shareholders, members, partners, joint venturers, representatives and
22 assigns (BB&T Parties), create any liability on the part of BB&T or the BB&T Parties, or limit the
23 defenses of BB&T or the BB&T Parties for any person or entity not a party to this Consent Order.

24 19. Voluntary Agreement. BB&T enters into this Consent Order voluntarily and without
25 coercion and acknowledges that no promises, threats or assurances have been made by the
26 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
27 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
28 without any duress or undue influence of any kind from any source.

