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8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

11 In the Matter of:) CFL LICENSE NO.: 60DBO-64585
) CDDTL LICENSE NO.: 1003304
12 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,)
13) CONSENT ORDER AND ORDER TO DESIST
Complainant,) AND REFRAIN
14 v.)
)
15 CALIFORNIA CHECK CASHING STORES,)
LLC,)
16)
Respondent.)
17)

18
19 This Consent Order is entered into between the Commissioner of Business Oversight
20 (Commissioner) and California Check Cashing Stores, LLC (CCCS), and is made with respect to
21 the following facts:

22 **RECITALS**

23 California Financing Law

24 A. The Department of Business Oversight, through the Commissioner, has jurisdiction
25 over the licensing and regulation of persons and entities engaged in the business of finance lending
26 or brokering under the California Financing Law (CFL) (Fin. Code, § 22000 et seq.).¹

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28 ¹ Effective October 4, 2017, the name of the California Finance Lenders Law changed to the California Financing Law. (Assem. Bill No. 1284 (2017-2018 Reg. Sess.) § 4.) For purposes of this document, a reference to the

1 B. Under the CFL, the Commissioner has authority to issue orders to desist and refrain
2 from violations of the CFL; to deny, suspend, or revoke licenses pending or issued under the CFL;
3 and to assess penalties.

4 C. The purpose of the CFL is to ensure an adequate supply of credit to borrowers in
5 California; to simplify, clarify, and modernize the law governing loans made by finance lenders; to
6 foster competition among finance lenders; to protect borrowers against unfair practices by some
7 lenders, having due regard for the interests of legitimate and scrupulous lenders; to permit and
8 encourage the development of fair and economically sound lending practices; and to encourage and
9 foster a sound economic climate in this state. (Fin. Code, § 22001, subd. (a).)

10 D. CCCS is a Delaware limited liability company with its principal place of business at
11 6785 Bobcat Way, Suite 200, Dublin, Ohio 43016.

12 E. CCCS is a finance lender and broker licensed by the Commissioner under license
13 number 60DBO-64585. As of October 1, 2018, CCCS had 124 branch locations in California, each
14 with its own CFL license.

15 F. Including based on an examination that began on October 14, 2014 (CFL
16 Examination), the Commissioner found the following:

17 i. CCCS charged some borrowers rates greater than those authorized by
18 Financial Code sections 22303 and 22304 and administrative fees greater than those authorized by
19 section 22305. Although these loans had principal amounts of \$2,500.00 or more, therefore
20 exceeding the regulatory ceilings in sections 22303, 22304, and 22305, the Commissioner contends
21 according to section 22251 that the loan amounts were chosen for the purpose of evading the
22 regulatory ceiling provisions of the CFL. Thus, under section 22251, those borrowers' loans were
23 not loans of a bona fide principal amount of \$2,500.00 or more and were subject to the limitations
24 on charges and administrative fees in sections 22303, 22304, and 22305.

25 ii. In brochures, CCCS advertised “signature loans” of “up to \$5,000” without
26 stating that the minimum loan amount offered by CCCS was \$2,501.00. Thus, CCCS advertised,
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28 _____
California Financing Law means the California Finance Lenders Law before October 4, 2017, and the California
Financing Law on and after that date. (Fin. Code, § 22000.)

1 ii. CCCS made new DDTs to some customers with defaulted DDTs after a prior
2 DDT had been returned for insufficient funds. Thus, CCCS entered into agreements for DDTs with
3 customers while earlier DDTs for the same customers were in effect in violation of Financial Code
4 section 23036, subdivision (c).

5 iii. CCCS overcharged some borrowers with extended payment plans by
6 depositing the original check rather than a check for the remaining payment due in violation of
7 Financial Code section 23036, subdivision (f).

8 iv. CCCS overcharged customers in violation of Financial Code section 23036,
9 subdivision (f), including by collecting charges twice when CCCS accepted cash payments from
10 customers although it had already initiated Automated Clearing House (ACH) payments and such
11 payments had not yet cleared.

12 v. CCCS’s form written agreement stated that CCCS would deposit the
13 customer’s check on the specified “payment due date.” The agreement provided that “any changes
14 to the terms of this Agreement must be in writing [and] signed” by the parties. From July 1 to
15 December 31, 2015, CCCS deposited 28 customers’ checks before the due date specified in their
16 written agreements without written authorization in violation of Financial Code section 23001,
17 subdivision (a).

18 vi. CCCS’s previous point-of-sale software system was unable to produce
19 reports that showed the date and time of transactions. CCCS also failed to maintain accurate records
20 concerning loans it made. The Commissioner discovered that, on occasion, borrowers made single
21 payments toward defaulted DDTs but CCCS recorded two separate payments made at different
22 times, usually on the same day. Thus, CCCS failed to keep and use books, accounts, and records
23 enabling the Commissioner to determine compliance with the CDDTL in violation of Financial
24 Code section 23024.

25 vii. CCCS’s previous point-of-sale software system also was unable to
26 distinguish between transactions relating to its DDT business and those relating to its check-cashing
27 business. Thus, CCCS failed to maintain separate DDT records from records of other business
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1 transacted in the same location in violation of California Code of Regulations, title 10, section
2 2027.

3 K. The Commissioner finds that entering into this Consent Order is in the public interest
4 and consistent with the purposes fairly intended by the policy and provisions of the CDDTL.

5 L. CCCS disagrees with the Commissioner’s determinations; however, it is the
6 intention and desire of the parties to resolve this matter amicably without the necessity of a hearing
7 or other litigation.

8 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
9 contained herein, the parties agree as follows:

10 **TERMS AND CONDITIONS**

11 1. Purpose. This Consent Order is entered into for the purpose of judicial economy and
12 to avoid the expense and uncertainty of a hearing or other litigation.

13 2. Finality of Consent Order. CCCS agrees to comply with this Consent Order and
14 stipulates that this Consent Order is hereby deemed final.

15 3. Desist and Refrain Order (CFL). In accordance with Financial Code section 22712,
16 CCCS stipulates that it is ordered to desist and refrain from violating Financial Code sections
17 22161; 22303; 22304; 22305; and 22337, subdivision (c).

18 4. Desist and Refrain Order (CDDTL). In accordance with Financial Code section
19 23050, CCCS stipulates that it is ordered to desist and refrain from violating Financial Code
20 sections 23001, subdivision (a); 23024; 23036, subdivisions (c) and (f); and 23037, subdivision (a);
21 and California Code of Regulations, title 10, section 2027.

22 5. Waiver of Hearing Rights. CCCS acknowledges that 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. CCCS hereby waives the right to any hearings and to any
25 reconsideration, appeal, or other right to review which may be afforded under the CFL, CDDTL,
26 Administrative Procedure Act, Code of Civil Procedure, or any other provision of law. CCCS
27 further expressly waives any requirement for the filing of an accusation pursuant to Government
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1 Code section 11415.60, subdivision (b). By waiving such rights, CCCS consents to the finality of
2 this Consent Order and the desist-and-refrain orders in it.

3 6. Refund Calculation (CFL). In connection with the CFL Examination, CCCS shall
4 calculate refunds to certain borrowers as follows:

5 (a) CCCS shall audit its files and identify all loans made under its CFL licenses
6 from April 25, 2012, to the effective date of this Consent Order as defined in paragraph 32 for
7 which it received an advance payment on the day of funding or one business day after funding that
8 would have reduced the outstanding principal balance to \$1,700.00 or less if the entire payment had
9 been applied to the principal (CFL Refund Population). Transactions in which the advance payment
10 was the amount of the original principal balance are excluded from the CFL Refund Population.

11 (b) CCCS shall recast each loan in the CFL Refund Population by reducing the
12 original principal amount by the amount of the advance payment and determining the amount of
13 interest and administrative fee it would have charged for the reduced principal amount under the
14 limitations on charges in Financial Code sections 22303 and 22304 and limitations on
15 administrative fees in section 22305 (Recast Interest Amount and Recast Administrative Fee,
16 respectively).

17 (c) For each loan in the CFL Refund Population, CCCS shall determine the
18 amount of excess interest charged (Interest Overcharge) by subtracting the Recast Interest Amount
19 from the actual amount of interest charged.

20 (d) For each loan in the CFL Refund Population, CCCS shall determine the
21 amount of excess administrative fee charged (Administrative-Fee Overcharge) by subtracting the
22 Recast Administrative Fee from the actual administrative fee charged.

23 (e) For each loan in the CFL Refund Population, the amount CCCS shall refund
24 to the borrower (Refund Amount) is 40 percent of the sum of the Interest Overcharge and
25 Administrative-Fee Overcharge.

26 (f) CCCS shall submit a report to the Commissioner detailing the CFL Refund
27 Population, including each Recast Interest Amount, Recast Administrative Fee, Interest Overcharge,
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1 Administrative-Fee Overcharge, and Refund Amount no later than 30 days after the effective date
2 of this Consent Order as defined in paragraph 32.

3 7. Refund Payments (CFL). CCCS shall make the refunds described in paragraph 6 as
4 follows:

5 (a) CCCS shall make the refunds no later than 90 days after the effective date of
6 this Consent Order as defined in paragraph 32.

7 (b) CCCS shall apply each refund as follows:

8 i. For a current borrower whose loan has an outstanding balance that is
9 greater than the Refund Amount, CCCS shall reduce the loan’s principal balance by the Refund
10 Amount.

11 ii. For a current borrower whose loan has an outstanding balance that is
12 less than the Refund Amount, CCCS shall reduce the loan’s principal balance to zero dollars and
13 mail to the borrower’s last known address a check for the difference between the outstanding
14 balance and Refund Amount.

15 iii. For a former borrower whose loan was paid in full and who does not
16 have any loans from CCCS with an outstanding balance, CCCS shall mail to the borrower’s last
17 known address a check for the Refund Amount.

18 iv. For a borrower whose loan was charged off and retained for internal
19 collection, CCCS shall reduce the charged-off balance by the Refund Amount.

20 v. For a borrower whose loan was charged off and assigned for outside
21 collection, CCCS shall direct the assignee to reduce the outstanding balance by the Refund Amount.
22 CCCS shall notify the borrower of the reduced outstanding balance by electronic mail or U.S. mail
23 at the borrower’s last known address.

24 (c) CCCS shall submit evidence of payment of the Refund Amounts to the
25 Commissioner no later than 120 days after the effective date of this Consent Order as defined in
26 paragraph 32. Such evidence must include, at a minimum, for each loan in the CFL Refund
27 Population, documentation of loan balances and, as applicable, documentation of mailing of refund
28 checks or notices of balance reductions.

1 (d) CCCS shall escheat any unclaimed refunds to the California State
2 Controller’s Office within the period provided by Code of Civil Procedure section 1520,
3 subdivision (a) of the Unclaimed Property Law (Code of Civ. Proc., § 1500 et seq.).

4 8. Refunds (CDDTL). In connection with the CDDTL Examinations, CCCS shall
5 calculate and make refunds to certain borrowers as follows:

6 (a) CCCS shall audit its files for all DDTs made under its CDDTL licenses from
7 December 1, 2013, to the effective date of this Consent Order as defined in paragraph 32 and
8 prepare a report (CDDTL Refund Population Report) that identifies each transaction for which
9 CCCS collected more than the amount the customer actually owed and, for each such transaction:

- 10 i. the amount of overpayment;
- 11 ii. whether the customer received a refund for the overpayment;
- 12 iii. if the customer received a refund, the date and amount of the refund;
- 13 iv. and the amount of any refund still owed to the customer, if any.

14 (b) No later than 60 days after the effective date of this Consent Order as defined
15 in paragraph 32, CCCS shall submit the CDDTL Refund Population Report to the Commissioner.

16 (c) No later than 90 days after the effective date of this Consent Order as defined
17 in paragraph 32, CCCS shall make refunds to borrowers identified in the CDDTL Refund
18 Population Report who have not yet received a full refund of the overpayment amount. CCCS shall
19 make any such refunds in accordance with the procedure described in paragraphs 7(b) and 7(d).

20 (d) CCCS shall submit evidence of any refund payments to the Commissioner no
21 later than 120 days after the effective date of this Consent Order as defined in paragraph 32. Such
22 evidence must include, at a minimum, for each refund payment, documentation of loan balances
23 and, as applicable, documentation of mailing of refund checks or notices of balance reductions.

24 9. Administrative Penalty (CFL). In connection with the CFL Examination, CCCS shall
25 pay an administrative penalty of \$20,000.00 no later than 10 days after the effective date of this
26 Consent Order as defined in paragraph 32. CCCS shall pay in accordance with paragraph 12.

27 10. Administrative Penalty (CDDTL). In connection with the CDDTL Examinations,
28 CCCS shall pay an administrative penalty of \$75,000.00 no later than 10 days after the effective

1 date of this Consent Order as defined in paragraph 32. CCCS shall pay in accordance with
2 paragraph 12.

3 11. Investigative Fee (CFL). In connection with the CFL Examination, CCCS shall pay
4 the Commissioner’s investigative fees and costs in the amount of \$15,000.00 no later than 10 days
5 after the effective date of this Consent Order as defined in paragraph 32. CCCS shall pay in
6 accordance with paragraph 12.

7 12. Payment of Fees and Penalties. CCCS shall pay fees and penalties by cashier’s check
8 or Automated Clearing House deposit to the Department of Business Oversight and transmitted to
9 the attention of Accounting – Litigation, at the Department of Business Oversight, 1515 K Street,
10 Suite 200, Sacramento, California 95814. Notice of payments must be sent to Samuel J. Park,
11 Counsel, 320 West 4th Street, Suite 750, Los Angeles, California 90013.

12 13. Compliance Procedures (CFL). No later than 60 days after the effective date of this
13 Consent Order as defined in paragraph 32, CCCS shall implement certain programs, policies, and
14 procedures with respect to loans made under its CFL licenses, as described below. CCCS shall
15 comply with the following provisions unless it receives written approval from the Commissioner to
16 do otherwise:

17 (a) Advertising. CCCS shall remove from its advertising and all printed,
18 displayed, or distributed materials any statement that CCCS makes loans of any amount up to a
19 certain amount, unless they are not false, misleading, or deceptive or they include material
20 information necessary to make the statements not false, misleading, or deceptive.

21 (b) Verbal Disclosures. CCCS shall require its employees to give the following
22 disclosures:

23 i. If a prospective borrower in California contacts CCCS and expresses
24 an interest in or desire for a loan of less than \$2,500.00, CCCS employees must respond with
25 statements substantially similar to the following: “California Check Cashing Stores does not make
26 loans of less than \$2,500.00 to California consumers. California law caps interest rates on loans of
27 less than \$2,500.00 at about 21 to 30 percent, which is lower than the interest rates offered on loans
28 from California Check Cashing Stores. If you want a loan of less than \$2,500.00, you should

1 consider whether another lender may offer such a loan to you.” CCCS employees must not state that
2 loans of less than \$2,500.00 are prohibited by any California law, rule, or regulation. The
3 responsive statements must not refer to borrowers’ ability to make advance payments of any amount
4 at any time. CCCS employees may explain borrowers’ statutory right to prepay to prospective
5 borrowers so long as the explanation is not in response to an expressed interest in or desire for a
6 loan of less than \$2,500.00.

7 ii. If a prospective borrower in California contacts CCCS and expresses
8 an interest in or desire for a loan of less than \$2,500.00, CCCS employees must not refer to any
9 alleged interest-saving from taking a loan of \$2,500.00 or more and making an advance payment,
10 unless they also concurrently explain that any interest-saving would be many times greater if the
11 prospective borrower instead took a loan of less than \$2,500.00.

12 (c) Written Disclosures. CCCS shall provide to applicants a written statement
13 that discloses in a clear and conspicuous manner the following: (i) CCCS’s minimum loan amount;
14 (ii) that California law limits the interest rate that can be charged for loans of less than \$2,500.00 to
15 about 21 to 30 percent, which is lower than the interest rates offered on loans made by CCCS; and
16 (iii) that California law does not limit the interest rate that can be charged for loans of \$2,500.00 or
17 more.

18 (d) Compliance Monitoring. CCCS shall implement a mystery-shopper program
19 that measures compliance with sub-paragraphs (a), (b), and (c). CCCS shall conduct mystery-
20 shopper audits at reasonably frequent intervals and promptly take corrective action to address any
21 deficiencies in compliance identified by the audits.

22 (e) Monthly Internal Reviews. CCCS shall conduct monthly reviews of data
23 relating to loans for which the borrower made an advance payment on the day of funding or one
24 business day after funding that would have reduced the outstanding principal balance to \$1,500.00
25 or less but not to zero if the entire payment had been applied to the principal. CCCS shall identify
26 any branch locations with a large number of transactions involving such advance payments
27 compared with the number at other branch locations. CCCS shall conduct retraining of employees
28 as reasonably necessary based on the results of these monthly reviews.

1 14. Compliance Procedures (CDDTL). No later than 60 days after the effective date of
2 this Consent Order as defined in paragraph 32, CCCS shall implement certain programs, policies,
3 and procedures with respect to deferred deposits originated under its CDDTL licenses, as described
4 below. CCCS shall comply with the following provisions unless it receives written approval from
5 the Commissioner to do otherwise:

6 (a) Software System. CCCS shall use a software system that is able to
7 distinguish between transactions related to CCCS's deferred deposit business and those related to its
8 other businesses. The software system must enable CCCS to promptly provide to the Commissioner
9 details of its deferred deposit transactions, including the date, time, and amount of proceeds, fees,
10 charges, and payments. CCCS represents that it implemented a new point-of-sale software system
11 in October 2016 that meets the foregoing requirements.

12 (b) Review of Overpayments. At least once per week, CCCS shall review all
13 DDTs with cleared ACH payments and identify any overpayments. No later than 10 business days
14 after identifying an overpayment, CCCS shall refund the overpayment to the customer.

15 (c) Early Depositing. CCCS shall not deposit a customer's check before the date
16 specified in the written agreement unless it receives written authorization from the customer to do
17 so. CCCS shall maintain documentation of all such customer authorizations in its records.

18 (d) Payment Plans. CCCS shall require customers on payment plans to write a
19 new check for the current balance after each partial payment.

20 15. Proof of Compliance. The Commissioner may periodically review CCCS's
21 compliance with paragraphs 6 through 14 and may request proof of such compliance. No later than
22 14 business days after any such request, CCCS shall provide evidence of compliance to the
23 Commissioner's satisfaction.

24 16. Failure to Comply. If CCCS fails to comply with any of the terms of this Consent
25 Order, other than through inadvertent and isolated errors that CCCS corrects no later than 14
26 business days after discovering such errors and that CCCS reports to the Commissioner no later
27 than five business days after such corrections, the Commissioner may summarily suspend CCCS
28 from engaging in business under its CFL or CDDTL licenses until it provides evidence of

1 compliance to the Commissioner’s satisfaction. CCCS hereby waives any notice or hearing rights
2 afforded under the Administrative Procedure Act, including Government Code section 11415.60,
3 subdivision (b); Code of Civil Procedure; or any other provision of law to contest the summary
4 suspension.

5 17. Consideration. In consideration of CCCS’s stipulation to the issuance of this Consent
6 Order, the Commissioner agrees not to initiate disciplinary proceedings against CCCS because of
7 this action, except as provided in paragraph 16.

8 18. Full and Final Resolution. Except as provided in paragraph 16, this Consent Order is
9 intended to constitute a full and final resolution of the findings described in paragraphs F and J of
10 the recitals. The Commissioner will not bring any further action or proceeding concerning those
11 findings unless she discovers new and further violations by CCCS that do not form the basis for this
12 Consent Order, including violations knowingly or willfully concealed from the Commissioner. If
13 the Commissioner discovers that CCCS knowingly or willfully withheld information used and
14 relied on in this Consent Order, the Commissioner may rescind this Consent Order and pursue all
15 remedies available under law against CCCS.

16 19. Commissioner’s Duties. Nothing in this Consent Order limits the Commissioner’s
17 ability to assist any other government agency with any action brought by that agency against CCCS,
18 including an action based on any of the acts, omissions, or events described in this Consent Order.

19 20. Independent Legal Advice. Each party represents that it has received independent
20 advice from its counsel or representatives regarding the advisability of executing this Consent
21 Order.

22 21. Reliance. Each party represents that in executing this Consent Order it has relied
23 solely on the statements in the Consent Order and on the advice of its counsel or representatives.
24 Each party also represents that it has not relied on any statement or promise not contained in this
25 Consent Order from any other person or on the failure of such person to make a statement or
26 promise. The parties have included this clause to preclude any claim that a party was fraudulently
27 induced to execute this Consent Order.
28

1 22. Integration. This Consent Order is the final written expression and the complete and
2 exclusive statement of all the agreements, conditions, promises, representations, and covenants
3 between the parties concerning its subject matter and supersedes all discussion regarding such
4 subject matter between the parties, their representatives, and any other person. The parties have
5 included this clause to preclude the introduction of parol evidence to vary, interpret, supplement, or
6 contradict the terms of this Consent Order.

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

13 24. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
14 this Consent Order will be valid or binding unless it is in writing and signed by all parties affected
15 by it. Waiver of a provision of this Consent Order will not be deemed a waiver of any other
16 provision.

17 25. Headings. The headings in this Consent Order are for convenience only and do not
18 affect its meaning.

19 26. Governing Law. This Consent Order will be governed by and construed in
20 accordance with California law.

21 27. Authority to Sign. Each party represents that the person signing this Consent Order
22 on its behalf has the authority and capacity to do so.

23 28. Voluntary Agreement. CCCS enters into this Consent Order voluntarily and without
24 coercion and acknowledges that no promises, threats, or assurances about this Consent Order have
25 been made by the Commissioner or any of the Commissioner’s officers or agents.

26 29. Public Record. CCCS acknowledges that this Consent Order is a public record.
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1 30. Counterparts. This Consent Order may be executed in any number of counterparts,
2 each of which will be deemed an original when executed. All counterparts together will be deemed
3 to constitute a single document.

4 31. Signatures. A signature delivered by facsimile or electronic mail will be deemed an
5 original signature.

6 32. Effective Date. This Consent Order will become effective on the date it is signed by
7 all parties and delivered by the Commissioner to CCCS’s outside counsel for this matter, Nancy
8 Thomas, by electronic mail at nthomas@mofo.com.

9 33. Notice. Any notice to the Commissioner required under this Consent Order must be
10 sent by mail to Samuel J. Park, Counsel, at 320 West 4th Street, Suite 750, Los Angeles, California
11 90013 and contemporaneously by electronic mail to samuel.park@dbo.ca.gov.

12
13 Dated: 1/22/19

JAN LYNN OWEN
Commissioner of Business Oversight

14
15 By: _____
16 MARY ANN SMITH
17 Deputy Commissioner

18 Dated: 1/17/19

CALIFORNIA CHECK CASHING STORES, LLC

19
20 By: _____
21 Bridgette C. Roman
22 Manager