

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 SOPHIA C. KIM (State Bar No. 265649)
Senior Counsel
4 Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7594
6 Facsimile: (213) 576-7181

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:) FILE NO.: 9550102
12 THE COMMISSIONER OF FINANCIAL) CONSENT ORDER
13 PROTECTION AND INNOVATION,)
14 Complainant,)
15 v.)
16 COMMUNITY FIRST CREDIT UNION,)
17 Respondents.)
18)
19)

20 This Consent Order is entered into between the Commissioner of Financial Protection and
21 Innovation (Commissioner) and Respondent Community First Credit Union (CFCU), and is made
22 with respect to the following facts:

23 **I.**

24 **RECITALS**

25 A. The Commissioner has jurisdiction over the licensing and regulation of investment
26 advisers in California under the Corporate Securities Law of 1968 (Corp. Code, § 25000 *et seq.*)
27 (CSL). The Commissioner is authorized to administer the CSL and the rules and regulations
28 promulgated in California Code of Regulations, title 10, section 260.000 *et seq.*

1 B. The Commissioner also has jurisdiction over the licensing and regulation of state-
2 chartered credit unions under the California Credit Union Law (Fin. Code, § 14000 *et seq.*).

3 C. At all relevant times, CFCU is a California corporation organized on or around
4 January 18, 1961, and a California state-chartered credit union with license number 9550102.
5 CFCU’s principal place of business is located at 1105 North Dutton Avenue, Santa Rosa, California
6 95401.¹

7 D. From on or around February 11, 2015, through January 18, 2018, CFCU held an
8 investment adviser certificate from the Commissioner, CRD number 173804. Since January 19,
9 2018, CFCU has not been licensed to engage in the business of an investment adviser.

10 E. In or around January 2015, CFCU and The McBride Group, LLC (TMG) entered into
11 a Solicitation and Referral Agreement (TMG Agreement). The Agreement provided that CFCU, the
12 “Soliciting Firm,” is a registered investment adviser with the State of California and that “throughout
13 the duration of the Agreement it will remain in compliance with all statutes . . . including the
14 California Corporations Code and the California Code of Regulations” The TMG Agreement
15 further provided that CFCU “shall use its best efforts to solicit Members of Soliciting Firm in its
16 capacity as a credit union for the Adviser Programs . . . encourage those Members it solicits to
17 remain as advisory clients of the Adviser Programs”

18 F. In or around October 2020 the Department received information that CFCU may be
19 engaging in the business of an investment adviser without a valid investment adviser certificate.

20 G. The Department discovered that from in or around January 2018 through June 2021,
21 CFCU made the following representations on its website at
22 <https://www.comfirstcu.org/benefits/financial-advice/>:

23 Financial Advice from Trusted Local Pros. Community First partners
24 with The McBride Group and Golden State Wealth Management. Rock-
25 solid advice and financial management. Global knowledge, with LOCAL
26 perspective. Wealth management . . . we looked for experienced LOCAL
27 experts with the same ethics of a not-for-profit cooperative. *We found
them!* . . . The McBride Group, a California Registered Investment
Adviser firm, has been serving our Napa and Sonoma Members since

28 ¹ In or around February 2018 CFCU merged with Mendo Lake Credit Union, a California corporation organized on or
around May 26, 1959. The surviving credit union was named “Community First Credit Union.”

1 2014. We watched and vetted these guys for three years. That’s dogged
2 due diligence . . . Golden State Wealth Management has been serving our
3 Clearlake, Lakeport, Ukiah and Fort Bragg Members since 2016 . . . As
4 part of the benefits of being a Community First Credit Union Member Jim
5 offers: Equity Investments, Portfolio Reviews, Comprehensive Asset
6 Management

7 H. The Department’s investigation also disclosed that from in or around January 2018,
8 through October 2020, CFCU referred approximately 24 of its members to TMG and approximately
9 19 of its members to LPL. CFCU received approximately \$57,563.98 in total compensation for its
10 solicitation activities.

11 I. In or around June 2021, the Department notified CFCU that the representations made
12 on CFCU’s website, the TMG Agreement’s terms providing for CFCU to use best efforts to solicit
13 its members to use TMG’s advisory services and remain advisory clients of TMG, and CFCU’s
14 receipt of compensation therefor constitute engaging in the business of an “investment adviser,” as
15 defined in Corporations Code section 25009. The Department further notified CFCU that its
16 conduct from on or around January 19, 2018, through June 2021 constituted engaging in the business
17 of an investment adviser without a certificate, in violation of Corporations Code section 25230.

18 J. In or around June and August 2021 CFCU voluntarily agreed to revise its website to
19 clarify CFCU’s licensing status and include disclosures regarding investment advisory services
20 being offered by the referenced investment adviser and broker-dealer.

21 K. The Commissioner finds that entering into this Consent Order is in the public interest
22 and consistent with the purposes fairly intended by the policies and provisions of the CSL.

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

25 **II.**
26 **TERMS AND CONDITIONS**

27 1. Purpose. This Consent Order resolves the issues before the Commissioner set forth in
28 Paragraphs A through K above in a manner that avoids the expense of a hearing and other possible
court proceedings, protects investors, is in the public interest, and is consistent with the purposes,
policies, and provisions of the CSL.

1 2. Final Desist and Refrain Order. CFCU hereby agrees that pursuant to Corporations
2 Code section 25532, subdivision (b), it is ordered to desist and refrain from any further violations of
3 Corporations Code section 25230 (Order). CFCU further agrees that the Order is a final order.

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

12 4. Failure to Comply with Consent Order. CFCU agrees that if it fails to comply with
13 the terms of this Consent Order, the Commissioner may, in addition to all other available remedies
14 he may invoke under the CSL, deny any application and/or summarily suspend or revoke any license
15 granted by the Commissioner to CFCU until CFCU is in compliance. CFCU waives any notice and
16 hearing rights to contest such denial or summary suspension or revocation which may be afforded
17 under the CSL, Credit Union Law, the California Administrative Procedure Act, the California Code
18 of Civil Procedure, or any other provision of law in connection therewith.

19 5. Information Willfully Withheld or Misrepresented. This Consent Order may be
20 revoked and the Commissioner may pursue any and all remedies available under law against CFCU
21 if the Commissioner discovers that CFCU knowingly or willfully withheld or misrepresented
22 information used for and relied upon in this Consent Order.

23 6. Future Actions by Commissioner. If CFCU fails to comply with any terms of the
24 Consent Order or Order, the Commissioner may institute proceedings for any and all violations
25 otherwise resolved under this Consent Order. The Commissioner reserves the right to bring any
26 future actions against CFCU, or any of its partners, owners, officers, shareholders, directors,
27 employees or successors for any and all unknown violations of the CSL.

28 ///

1 7. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
2 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
3 administrative, civil or criminal brought by that agency against CFCU or any other person based
4 upon any of the activities alleged in this matter or otherwise.

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

8 9. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
9 interest.

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

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

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

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

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

13 15. Governing Law. This Consent Order shall be construed and enforced in accordance
14 with and governed by California law.

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

18 17. Effect Upon Future Proceedings. If CFCU applies for any license, permit or
19 qualification under the Commissioner’s current or future jurisdiction, or are the subject of any future
20 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
21 admitted for the purpose of such application(s) or enforcement proceeding(s).

22 18. Voluntary Agreement. CFCU enters into this Consent Order voluntarily and without
23 coercion and acknowledge that no promises, threats or assurances have been made by the
24 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
25 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
26 without any duress or undue influence of any kind from any source.

27 19. Notice. Any notice required under this Consent Order shall be provided to each party
28 at the following addresses:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

To CFCU:

Scott Johnson, Community First Credit Union, 1105 North Dutton Avenue, Santa Rosa, California 95401.

To the Commissioner:

Sophia C. Kim, Senior Counsel, Enforcement Division, Department of Financial Protection and Innovation, 320 West 4th Street, Suite 750, Los Angeles, California 90013; Sophia.Kim@dfpi.ca.gov.

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

26. Public Record. CFCU hereby acknowledges that this Consent Order is and will be a matter of public record.

27. Effective Date. This Consent Order shall become final and effective when signed by all parties and delivered by the Commissioner’s counsel via e-mail to CFCU at tsheffield@comfirstcu.org.

28. 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: 9/17/21

CHRISTOPHER S. SHULTZ
Acting Commissioner of Financial Protection and Innovation

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 9/17/21

COMMUNITY FIRST CREDIT UNION

By _____
SCOTT JOHNSON
Chief Executive Officer