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8 Attorneys for Complainant

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

12 In the Matter of: ) CFL FILE NO.: 60DBO-44063  
13 THE COMMISSIONER OF FINANCIAL )  
PROTECTION AND INNOVATION, ) CONSENT ORDER  
14 Complainant, )  
15 v. )  
16 EXPANSION CAPITAL GROUP, LLC, )  
17 Respondent. )  
18 )  
19 )

20 This Consent Order (Consent Order) is entered into by and between the Commissioner of  
21 Financial Protection and Innovation (Commissioner) and Expansion Capital Group, LLC  
22 (Expansion).

23 I.

24 **RECITALS**

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

26 A. Expansion Capital Group, LLC is a Delaware limited liability company organized  
27 on July 23, 2013, with its principal place of business at 5020 South Broadband Lane, Suite 100,  
28 Sioux Falls, South Dakota, 57108. Expansion has been licensed as a lender under the California

1 Financing Law (Fin. Code, § 22000, et seq.) (CFL) since April 24, 2015.

2 B. The Department of Financial Protection and Innovation (Department), through the  
3 Commissioner, has jurisdiction over the licensing and regulation of persons and entities engaged  
4 in the business of lending and brokering pursuant to the CFL.

5 C. In 2019, the Department commenced an investigation of Expansion’s compliance  
6 with the CFL in regard to Expansion’s marketing practices and Expansion’s purported non-loan  
7 financing products.

8 D. The Commissioner made the following factual findings from the investigation:

9 i. Expansion provides loans as well as merchant cash advances (MCAs) to  
10 businesses in California.

11 ii. Expansion uses a Future Receivable Sales Agreement (MCA Agreement)  
12 to purchase shares of future revenue “without recourse.” This means that, if the small business’  
13 revenue decreases significantly for reasons outside its control, payments received by Expansion  
14 contractually will be reduced. Additionally, if the business is closed, Expansion is not able to  
15 recoup the upfront money it provided from the general assets of the small business or the small  
16 business’ owners. If the small business’ receivables are insufficient to cover the daily or weekly  
17 payment to Expansion, that may be an indication that the payment amount should be changed  
18 based on the reconciliation process specified in the MCA Agreement terms.

19 iii. Under its MCA Agreement, Expansion takes a daily or weekly payment,  
20 “which shall be calculated to be the equivalent, or a good-faith approximation thereof, of the  
21 Purchased Percentage of the Seller’s Future Receivables,” from the small business’ designated  
22 bank account.

23 iv. However, Expansion’s MCA Agreement provided that a small business is  
24 in default if, on at least five occasions, there are insufficient funds in the bank account the small  
25 business has designated for its daily remittance, referred to in the MCA Agreement as an NSF.

26 v. Expansion stated to the Commissioner that it had declared only two MCAs  
27 with California businesses in default based on the five NSF provision and that it did not exercise  
28 its default remedies with respect to those MCAs.

1 vi. Expansion has also paid a number of loan brokers and independent sales  
2 organizations (ISOs) to assist it in identifying and marketing to small businesses who might want  
3 to obtain CFL loans from Expansion. Some of the brokers that Expansion paid for this service  
4 were not licensed under the CFL, as required.

5 vii. In addition, Expansion changed officers and directors in 2017 but did not  
6 file an amendment to its CFL license application within thirty days of the changes as required,  
7 and Expansion’s new CEO did not disclose all information required on his application.

8 E. The Commissioner and Expansion intend to resolve this matter amicably without  
9 the necessity of a hearing or other litigation. Expansion, by entering into this Consent Order, does  
10 not admit or deny the Commissioner’s findings or conclusions of law.

11 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions  
12 contained herein, the Commissioner and Expansion (the Parties) agree as follows:

13 **II.**

14 **TERMS AND CONDITIONS**

15 1. Purpose. This Consent Order resolves this matter in a manner that avoids the  
16 expense of a hearing and other possible court proceedings, protects small businesses, is in the  
17 public interest, and is consistent with the purposes, policies, and provisions of the CFL.

18 2. Desist and Refrain Order. Pursuant to Financial Code section 22712, Expansion is  
19 hereby ordered to desist and refrain from:

20 i. violating California Code of Regulations, title 10, section 1451,  
21 subdivision (c) by paying compensation to an unlicensed company for soliciting or accepting  
22 applications for loans made under the authority of the CFL; and

23 ii. violating California Code of Regulations, title 10, section 1422,  
24 subdivision (c), by failing to amend its CFL license application within thirty days of a change of  
25 its officers, directors, and any other persons named in its then-current CFL license application in  
26 accordance with the agreements set forth in the Execution Section of the CFL license application  
27 at numbers 3 and 4.

28 3. Penalty. Expansion shall pay a penalty totaling \$167,500.00 (Penalty) to the

1 Commissioner. Payment of the Penalty shall be made no more than 30 days after the Effective  
2 Date, as defined in Paragraph 26 below, and should be made in the form of a cashier’s check or  
3 Automated Clearing House deposit payable to the “Department of Financial Protection and  
4 Innovation” and transmitted to the attention of “Accounting – Litigation” at Department of  
5 Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834-2036.  
6 Notice of such payment shall be forwarded to Joanne Ross, Senior Counsel, Department of  
7 Financial Protection and Innovation, Enforcement Division, via email at:  
8 Joanne.Ross@DFPI.ca.gov.

9 4. Merchant Cash Agreements. Expansion agrees to do the following with respect to  
10 its MCA Agreements or any other similar merchant financing agreement:

- 11 i. Remove multiple NSFs as triggering defaults under the agreements;
- 12 ii. Implement ongoing controls, policies, and procedures regarding MCAs  
13 designed to ensure that such MCA activities do not constitute non-compliant loans, including  
14 continuing to engage in affirmative outreach to MCA customers regarding reconciliation options  
15 in light of possible COVID hardship; and
- 16 iii. Continue to conduct ongoing employee training regarding MCA controls,  
17 policies, and procedures designed to ensure that such MCA activities do not constitute non-  
18 compliant loans.

19 5. Proof of Compliance. Expansion acknowledges that the Commissioner will  
20 examine and review Expansion’s compliance with Paragraph 4 of this Consent Order. Expansion  
21 agrees to provide, upon the Commissioner’s request, documentation satisfactory to the  
22 Commissioner to determine compliance with Paragraph 4.

23 6. Waiver of Hearing Rights. Expansion acknowledges that the Commissioner is  
24 ready, willing, and able to proceed with the filing of an enforcement action upon the matters  
25 discussed herein. Expansion hereby waives the right to any hearings, and to any reconsideration,  
26 appeal, or other right to review which may be afforded pursuant to the CFL, the California  
27 Administrative Procedures Act, the California Code of Civil Procedure, or any other provision of  
28 law. Expansion further expressly waives any requirement for the filing of an Accusation pursuant

1 to Government Code section 11415.60, subdivision (b). By waiving such rights, Expansion  
2 effectively consents to this Consent Order and the Desist and Refrain Order contained herein  
3 becoming final.

4 7. Full and Final Settlement. The Parties hereby acknowledge and agree that this  
5 Consent Order is intended to constitute a full, final, and complete resolution of the matters  
6 discussed herein, and that no further proceedings or actions will be brought by the Commissioner  
7 in connection with them under the CFL or any other provision of law, excepting therefrom any  
8 proceeding to enforce compliance with the terms of this Consent Order.

9 8. Failure to Comply with Consent Order. Expansion agrees that if it fails to comply  
10 with the terms of this Consent Order, the Commissioner may, following 10 business days from  
11 Expansion’s receipt of notice from the Commissioner of Expansion’s failure to comply with any  
12 terms of this Consent Order, in addition to all other available remedies it may invoke under the  
13 CFL, summarily suspend Expansion’s CFL license until Expansion is in compliance. Expansion  
14 waives any notice and hearing rights to contest such summary suspension which may be afforded  
15 under the CFL, the California Administrative Procedure Act, the California Code of Civil  
16 Procedure, or any other provision of law in connection therewith.

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

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

27 11. Assisting Other Agencies. Nothing in this Consent Order limits the  
28 Commissioner’s ability to assist a government agency (whether city, county, state, or federal)

1 with any administrative, civil, or criminal prosecutions brought by that agency against Expansion  
2 or any other person based upon any of the activities alleged in this Consent Order or otherwise.

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

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

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

17 15. Waiver, Amendments, and Modifications. No waiver, amendment, or modification  
18 of this Consent Order will be valid or binding unless it is in writing and signed by each of the  
19 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any  
20 other provision. No waiver by either party of any breach of, or of compliance with, any condition  
21 or provision of this Consent Order by the other party will be considered a waiver of any other  
22 condition or provision or of the same condition or provision at another time.

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

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

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

8            19.    Effect Upon Future Proceedings. If Expansion is the subject of any future action  
9 by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be  
10 admitted for the purpose of such application(s) or proceeding(s). If Expansion is the subject of  
11 any other future enforcement action by the Commissioner, then there will be a rebuttable  
12 presumption that the subject matter hereof is admitted for the purpose of such proceedings(s).

13           20.    Future Applications. If Expansion applies for any license, permit, or qualification  
14 under the Commissioner’s current or future jurisdiction, the subject matter hereof and the  
15 resolution of those matters in this Consent Order may be considered for the purpose of evaluating  
16 such license, permit, or qualification; provided, however, that in the absence of any violation by  
17 Expansion of the terms of this Consent Order, the mere fact of the existence of this Consent Order  
18 shall not alone, without other aggravating or adverse factors, be the sole basis for the denial of  
19 any such application.

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

27           22.    Voluntary Agreement. Expansion enters into this Consent Order voluntarily and  
28 without coercion and acknowledges that no promises, threats, or assurances have been made by

1 the Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each  
2 represent and acknowledge that he, she, or it is executing this Consent Order completely  
3 voluntarily and without any duress or undue influence of any kind from any source.

4 23. Notice. Any notice required under this Consent Order shall be provided to each  
5 party by email and overnight mail at the following addresses.

- 6 i. To Expansion:  
7 Tim Mages [tmages@ecg.com]  
8 Chief Strategy Officer  
9 Expansion Capital Group, LLC  
5801 South Corporate Place  
Sioux Falls, South Dakota 57108
- 10 ii. To the Commissioner:  
11 Joanne Ross [Joanne.Ross@dfpi.ca.gov]  
12 Senior Counsel, Enforcement Division  
13 Department of Financial Protection and Innovation  
2101 Arena Boulevard  
Sacramento, California 95834

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

16 25. Public Record. Expansion hereby acknowledges that this Consent Order is and will  
17 be a matter of public record.

18 26. Effective Date. This Consent Order shall become final and effective when signed  
19 by all Parties and sent by the Commissioner’s agent via e-mail to poster@sonic.net and  
20 nthomas@mofo.com.

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

Dated: April 4, 2022

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

By: \_\_\_\_\_  
Mary Ann Smith  
Deputy Commissioner  
Enforcement Division

Dated: April 4, 2022

EXPANSION CAPITAL GROUP, LLC

By: \_\_\_\_\_  
VINCENT NEY  
Chief Executive Officer