

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
3 SEAN M. ROONEY
Assistant Chief Counsel
4 TAYLOR STEINBACHER (State Bar No. 285335)
Senior Counsel
5 Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
6 Los Angeles, California 90013
Telephone: (213) 576-7632
7 Facsimile: (213) 576-7181

8 Attorneys for Complainant

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

11 In the Matter of:) CFL FILE NO.: 60DBO-143478
12 THE COMMISSIONER OF FINANCIAL)
13 PROTECTION AND INNOVATION,) CONSENT ORDER
14 Complainant,)
15 v.)
16 SOUND FINANCE CORPORATION,)
17 Respondent.)

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19 This Consent Order (Consent Order) is entered into between the Commissioner of Financial
20 Protection and Innovation (Commissioner) and Sound Finance Corporation (Sound Finance), and is
21 made with respect to the following facts:

22 I.

23 RECITALS

24 A. The Department of Financial Protection and Innovation, through the Commissioner,
25 has jurisdiction over the licensing and regulation of persons engaged in the business of lending
26 under the California Financing Law (Fin. Code, § 22000 et seq.) (CFL).

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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. Sound Finance is a Washington corporation, with its principal place of business at
11 81 Blue Ravine Road, Suite 117, Folsom, California 95630. Sound Finance has never been licensed
12 under the CFL.

13 E. Harpreet Virk is the President of Sound Finance and is authorized to enter into this
14 Consent Order on Sound Finance’s behalf.

15 F. On or about June 7, 2021, Sound Finance filed an application for licensure as a
16 finance lender under the CFL under file number 60DBO-143478. As part of that application, Sound
17 Finance self-reported to the Department that, since June 23, 2016, the company had entered into
18 recourse factoring agreements with 65 California entities. The company acknowledged that, in the
19 past, the Department had found recourse factoring transactions to be loans under the CFL and that a
20 license was required to offer them in California.

21 G. Consistent with Sound Finance’s disclosures and self-reporting provided in its CFL
22 application, the Department determined that Sound Finance’s factoring agreements contained
23 recourse provisions that gave the company the ability to charge back or require the client to
24 repurchase any account remaining unpaid after a certain time regardless of whether the applicable
25 account debtor had become insolvent or had generally stopped paying its debts.

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1 H. Based on these findings, the Commissioner asserts that from June 23, 2016, to
2 April 8, 2022, Sound Finance made commercial loans and engaged in the business of a finance
3 lender in violation of Financial Code section 22100, subdivision (a).

4 I. As of April 11, 2022, Sound Finance amended its factoring agreements with its
5 California clients. Under the amended contracts, Sound Finance assumes the risk of non-payment
6 on factored accounts, subject to certain exceptions, so long as the reason for non-payment is the
7 insolvency of the account debtor.

8 J. Sound Finance represents that since April 8, 2022, it has engaged in only non-
9 recourse factoring transactions with its California clients.

10 K. Sound Finance neither admits nor denies the factual matters and alleged violations
11 described in paragraphs F through H.

12 L. The Commissioner finds that entering into this Consent Order is in the public
13 interest and consistent with the purposes fairly intended by the policy and provisions of the CFL.

14 NOW THEREFORE, in consideration of the foregoing, and the terms and conditions set
15 forth herein, the Parties agree as follows:

16 **II.**

17 **TERMS AND CONDITIONS**

18 1. Purpose. The Commissioner finds that entering into this Consent Order is in the
19 public interest and consistent with the purposes fairly intended by the policies and provisions of the
20 CFL.

21 2. Desist and Refrain Order. In accordance with Financial Code section 22712,
22 Sound Finance stipulates that it is ordered to desist and refrain from violating Financial Code
23 section 22100, subdivision (a).

24 3. Administrative Penalty. Sound Finance shall pay an administrative penalty of
25 \$10,000.00 no later than 30 calendar days after the effective date of this Consent Order as
26 defined in paragraph 26. Payment of the penalty must be by cashier's check or Automated
27 Clearing House deposit and made payable to the Department of Financial Protection and
28 Innovation and transmitted to the attention of Accounting – Litigation, Department of Financial

1 Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Payment
2 instructions will be separately provided. Notice of the payment must be concurrently sent to
3 Taylor Steinbacher, Senior Counsel at Taylor.Steinbacher@dfpi.ca.gov.

4 4. Refunds. Sound Finance shall provide refunds to certain factoring clients, to be
5 calculated as follows:

6 (a) Sound Finance shall audit its files and take all practicable steps to identify
7 all transactions from June 23, 2016 to April 8, 2022 conducted under its factoring contracts with
8 California-based clients in which Sound Finance advanced an amount of money to the client
9 (Refund Population).

10 (b) For each loan in the Refund Population, Sound Finance shall determine the
11 amount of fees, expenses, and costs charged in excess of the 10-percent annual interest permitted
12 under article XV, section 1 of the California Constitution (Usurious Overcharge). Sound
13 Finance is not required to include in this calculation any administrative fee or cost incurred by
14 that Sound Finance in connection with the factoring transaction.

15 (c) For each loan in the Refund Population, the amount Sound Finance shall
16 refund to the borrower (Refund Amount) is the Usurious Overcharge.

17 (d) No later than 30 days after the effective date of this Consent Order as
18 defined in paragraph 26, Sound Finance shall submit a report to the Commissioner detailing the
19 Refund Population and Refund Amounts. The estimated total of Refund Amounts is
20 \$251,063.01.

21 5. Payment of Refunds. Sound Finance shall administer the refunds described in
22 paragraph 4 as follows:

23 (a) Sound Finance shall make each refund as follows:

24 i. for a current factoring client whose account has an outstanding
25 balance that is greater than the Refund Amount, Sound Finance shall reduce the account's
26 principal balance by the Refund Amount or, alternatively, pay the Refund Amount to the
27 factoring client by Automated Clearing House (ACH) transfer to the client's bank account on

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1 record with Sound Finance, or if ACH information is stale or unavailable, with a check sent by
2 mail to the client’s last known address;

3 ii. for a current factoring client whose account has an outstanding
4 balance that is less than the Refund Amount, Sound Finance shall reduce the account’s principal
5 balance to zero dollars and refund the remaining balance of the Refund Amount to the factoring
6 client by Automated Clearing House (ACH) transfer to the client’s bank account on record with
7 Sound Finance, or if ACH information is stale or unavailable, with a check sent by mail to the
8 client’s last known address;

9 iii. for a former factoring client whose account was paid in full and
10 who does not have any factoring transactions from Sound Finance with an outstanding balance,
11 Sound Finance shall pay the Refund Amount to the former factoring client by Automated
12 Clearing House (ACH) transfer to the client’s bank account on record with Sound Finance, or if
13 ACH information is stale or unavailable, with a check sent by mail to the client’s last known
14 address;

15 iv. for a factoring client whose factoring transaction was charged off
16 and retained for internal collection, Sound Finance shall reduce the charged-off balance by the
17 Refund Amount; or

18 v. for a factoring client whose factoring transaction was charged off
19 and assigned for outside collection, Sound Finance shall direct the assignee to reduce the
20 outstanding balance by the Refund Amount. Sound Finance shall notify the factoring client of
21 the reduced outstanding balance by electronic mail or U.S. mail at the borrower’s last known
22 address.

23 (b) Sound Finance shall pay the refunds described in paragraphs 4 and 5 as
24 follows:

25 i. for any refund of greater than \$1,000, Sound Finance, at its
26 election, may make this refund in six equal monthly payments (within \$1.00) over the next 180
27 days after the effective date of this Consent Order as defined in paragraph 26.

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1 ii. for any refund less than or equal to \$1,000, Sound Finance shall
2 make this refund within 60 days after the effective date of this Consent Order as defined in
3 paragraph 26.

4 (c) Sound Finance shall submit evidence of payment of the Refund Amounts
5 to the Commissioner by no later than 15 days after the final refund has been issued.

6 (d) Sound Finance shall escheat any unclaimed or undeliverable refunds to the
7 California State Controller’s Office within the period provided by the Unclaimed Property Law
8 (Cal. Code Civ. Proc § 1500 *et seq.*).

9 6. Treatment of Factoring Transactions. If Sound Finance receives a lender license
10 under the CFL, it shall do the following unless it receives written approval from the
11 Commissioner to do otherwise:

12 (a) report its California factoring transactions as CFL activity in all statutorily
13 required reports to the Commissioner;

14 (b) ensure that its California factoring transactions comply with the CFL;

15 (c) not dispute, in any examination of, investigation of, or action against Sound
16 Finance by the Commissioner, that its California factoring transactions are subject to the CFL;
17 and

18 (d) submit its California factoring transactions to the Commissioner for review
19 during any examination or investigation of Sound Finance.

20 7. Consideration. In consideration of Sound Finance’s agreement to the issuance of
21 this Consent Order, Sound Finance’s payment of the administrative penalties, its ongoing
22 payment of refunds, and its CFL license application, the Commissioner hereby agrees that she
23 shall issue a CFL lending license to Sound Finance within five business days of the effective
24 date, as defined in paragraph 26.

25 8. Proof of Compliance. The Commissioner may periodically review Sound
26 Finance’s compliance with paragraphs 2 through 6 of this Consent Order and may request proof
27 of such compliance. In response to any such request, Sound Finance shall promptly provide
28 evidence of compliance to the Commissioner’s satisfaction.

1 9. Waiver of Hearing Rights. Sound Finance acknowledges that the Commissioner
2 is ready, willing, and able to proceed with the filing of an administrative enforcement action on
3 the charges contained in this Consent Order. Sound Finance hereby waives the right to any
4 hearings and to any reconsideration, appeal, or other right to review which may be afforded
5 under the CFL, Administrative Procedure Act, Code of Civil Procedure, or any other provision
6 of law. Sound Finance further expressly waives any requirement for the filing of an accusation
7 pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights, Sound
8 Finance consents to this Consent Order becoming final and the desist-and-refrain order in it.

9 10. Failure to Comply with Consent Order. Sound Finance agrees that if it fails to
10 comply with the terms of this Consent Order, the Commissioner may summarily revoke Sound
11 Finance’s CFL license. Sound Finance hereby waives any notice or hearing rights afforded
12 under the Administrative Procedure Act, including Government Code section 11415.60,
13 subdivision (b); Code of Civil Procedure; or any other provision of law to contest the summary
14 suspension.

15 11. Information Willfully Withheld or Misrepresented. This Consent Order may be
16 rescinded, and the Commissioner may pursue any and all remedies available under the law against
17 Sound Finance if the Commissioner discovers that Sound Finance knowingly or willfully withheld
18 or misrepresented information used for and relied upon in this Consent Order.

19 12. Future Actions by Commissioner. If Sound Finance fails to comply with any terms
20 of the Consent Order, the Commissioner may institute proceedings for any and all violations
21 otherwise resolved under this Consent Order. The Commissioner reserves the right to bring any
22 future actions against Sound Finance, or any of its partners, owners, officers, shareholders,
23 directors, employees or successors for any and all unknown violations of the CFL.

24 13. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
25 ability to assist a government agency (whether city, county, state, or federal) with any
26 administrative, civil, or criminal prosecutions brought by that agency against Sound Finance or any
27 other person based upon any of the activities alleged in this matter or otherwise.

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

4 15. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
5 interest.

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

15 17. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
16 this Consent Order 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 Consent Order will not be deemed a waiver of any other
18 provision. No waiver by either party of any breach of, or of compliance with, any condition or
19 provision of this Consent Order by the other party will be considered a waiver of any other condition
20 or provision or of the same condition or provision at another time.

21 18. Full Integration. This Consent Order 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
25 between and among the Parties, their respective representatives, and any other person or entity, with
26 respect to the subject matter covered hereby.

27 19. Governing Law. This Consent Order will be governed by and construed in
28 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,

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

3 20. Counterparts. This Consent Order 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 21. Effect Upon Future Proceedings. If Sound Finance 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 Consent Order, then the subject matter hereof shall be
9 admitted for the purpose of such application(s) or proceeding(s).

10 22. Voluntary Agreement. Sound Finance enters into this Consent Order voluntarily and
11 without coercion and acknowledges that no promises, threats or assurances have been made by the
12 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
13 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
14 without any duress or undue influence of any kind from any source.

15 23. Notice. Any notice required under this Consent Order shall be provided to each
16 party at the following addresses.

- 17 i. To Sound Finance:
18 Attention: Harvey Virk
19 81 Blue Ravine Rd, Suite -117
20 Folsom, California 95630
21 harvey@soundfinance.com
- 22 ii. To the Commissioner:
23 Taylor Steinbacher, Senior Counsel
24 Department of Financial Protection and Innovation
25 320 West 4th Street, Suite 750
26 Los Angeles, California 90013-2344
27 Taylor.Steinbacher@dfpi.ca.gov

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

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

1 26. Effective Date. This Consent Order shall become final and effective when signed by
2 all Parties and delivered by the Commissioner’s agent via e-mail to Sound Finance at
3 bheuer@Buchalter.com.

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

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8 Dated: July 11, 2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

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10 By: _____
11 MARY ANN SMITH
Deputy Commissioner

12 Dated: July 11, 2022

SOUND FINANCE CORPORATION

13
14 By: _____
15 HARPREET VIRK
16 President

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