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9
10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA
12

13 In the Matter of:) CFL LICENSE NO.: 60DBO-44255
14 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,) ACCUSATION IN SUPPORT OF
15) ORDER REVOKING CALIFORNIA
Complainant,) FINANCING LAW LICENSE OF DIRECT
16) MERCHANTS FUNDING LLC
v.)
17)
18 DIRECT MERCHANTS FUNDING LLC,)
Respondent.)
19)
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28)

1 The Complainant, the Commissioner of Financial Protection and Innovation (Commissioner),
2 is informed and believes, and based upon such information and belief, alleges and charges as follows:

3 **I.**

4 **Introduction**

5 1. The Commissioner has jurisdiction over the licensing and regulation of persons and
6 entities engaged in the business of finance lending or brokering under the California Financing Law
7 (CFL) (Cal. Fin. Code § 22000 et seq.)¹

8 2. Respondent Direct Merchants Funding LLC (DMF) is a Florida limited liability
9 company with its principal place of business at 4000 Hollywood Boulevard, Suite 360-N, Hollywood,
10 Florida 33021. DMF is licensed as a CFL lender and broker with license number 60DBO-44255.

11 **II.**

12 **Background**

13 **DMF's Past Enforcement History**

14 3. On December 6, 2019, the Department of Business Oversight² issued an order
15 revoking DMF's CFL license for failure to pay its annual CFL assessment pursuant to Section 22107.
16 This order provided that it would have an effective date of December 30, 2019, if DMF failed to pay
17 the assessment before then. DMF did not pay its annual assessment, and thus the revocation order
18 went into effect on December 30, 2019.

19 4. On May 18, 2020, DMF entered into a Consent Order with the Department.³ In that
20 Consent Order, DMF conceded that it did not receive annual assessment notices from the Department

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23 ¹ Cal. Fin. Code § 22000, *et seq.* All subsequent statutory references are to the California Financial
24 Code unless otherwise specified.

25 ² On September 30, 2020, the Department of Business Oversight was renamed as the Department of
26 Financial Protection and Innovation (Department).

27 ³ Available at [https://dfpi.ca.gov/wp-content/uploads/sites/337/2020/05/Consent-Order-Direct-](https://dfpi.ca.gov/wp-content/uploads/sites/337/2020/05/Consent-Order-Direct-Merchants-Funding-LLC.pdf)
28 [Merchants-Funding-LLC.pdf](https://dfpi.ca.gov/wp-content/uploads/sites/337/2020/05/Consent-Order-Direct-Merchants-Funding-LLC.pdf). This Consent Order was entered into with the Commissioner of the
Department of Business Oversight, a predecessor agency to the Department of Financial Protection
and Innovation.

1 because it had failed to properly notify the Commissioner that it had changed its place of business to
2 an address other than that designated on its license, as required by Section 22153(a).

3 5. As part of DMF’s Consent Order with the Department, DMF agreed to pay its annual
4 assessment plus an administrative penalty, and further agreed to desist and refrain from further
5 violating the CFL, including with Section 22107 (payment of annual CFL assessment) and Section
6 22153(a) (failure to properly update business address). As a result of this Consent Order, the
7 Department rescinded the CFL license revocation order that into effect on December 30, 2019.

8 DMF’s “Forfeited” Status with the California Franchise Tax Board

9 6. Under Section 22150, the Commissioner may make general rules and regulations and
10 specific rulings, demands, and findings for the enforcement of, and within the general purposes of,
11 the CFL. One such rule is that each CFL licensee must establish an email address for
12 communications from the Commissioner (each, a Designated Email Address) pursuant to the
13 Commissioner’s Order on Electronic Communications, dated November 22, 2013.

14 7. On August 28, 2020, a Department examiner sent an email to DMF’s Designated
15 Email Address, stating in part

16 It has been brought to our attention that your Corporate Standing with the California
17 Secretary of State’s office has been forfeited. As a licensee under the California
18 Finance Lenders Law, you are required to have your company in good standing
19 with the California Secretary of State’s office at all times. You are not permitted
20 to conduct business in the State of California unless your corporate status with the
21 California Secretary of State is “active”. Please take the necessary steps to return
22 your corporate status to “active” immediately. **You are hereby directed to**
23 **discontinue all lending and/or brokering activities under your California**
24 **Finance Lenders License until you have corrected your standing with the**
25 **California Secretary of State.**

26 The email went on to demand that DMF provide evidence to the Department that it was in
27 good standing to do business by no later than September 11, 2020.

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1 Licensing System and Registry (NMLS) by December 31, 2021.⁵ On December 16, 2021, the
2 Commissioner extended the deadline to transition to NMLS to March 15, 2022. On March 7, 2022,
3 the Commissioner again extended the deadline to transition to NMLS to March 31, 2022.

4 15. The Commissioner provided notice of this requirement to DMF – via email to its
5 Designated Email Address on July 20, 2021, September 16, 2021, October 14, 2021, November 8,
6 2021, and December 16, 2021. The Commissioner also provided notice via email to each CFL
7 licensee that had not yet transitioned to NMLS, including DMF, on March 7, 2022, and again via
8 email and mail on March 28, 2022. The Commissioner provided further notice of this requirement
9 over the telephone – Department employees made at least two calls to the designated telephone
10 number provided by each CFL licensee, including DMF – between February 1 and March 15, 2022.

11 16. Counsel for the Commissioner also raised this issue with DMF via email in July 2022.

12 17. Despite these repeated notices, as of the date of this pleading, DMF has failed to
13 transition its license to NMLS.

14 DMF Has Insufficient Net Worth to Retain Its CFL License

15 18. Section 22159 requires CFL licensees to file an annual report with the Commissioner
16 by March 15 of each year reflecting the licensee's previous calendar year's business and operations
17 (Annual Report).

18 19. Section 22104(a) requires that CFL licensees “maintain a net worth of at least
19 maintain a net worth of at least twenty-five thousand dollars (\$25,000) at all times.”

20 20. On March 15, 2021, DMF submitted its Annual Report for the year 2020. DMF
21 reported that its net worth was -\$35,812.

22 21. On March 14, 2022, DMF submitted its Annual Report for the year 2021. DMF
23 reported that its net worth was -\$103,801.

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25 ⁵ NMLS is a web-based platform for regulatory agencies to administer initial license applications and
26 ongoing compliance requirements. NMLS is used by participating agencies to process the
27 applications of companies and individuals looking to apply, renew, surrender, or amend licenses for
28 various industries. NMLS is used by mortgage lenders, mortgage loan Originators, money
transmitters, money services companies such as check cashing and currency exchange businesses,
and more.

1 **III.**

2 **Violation # 1: Failure to Maintain Good Corporate Standing**

3 22. Section 22101 provides that an application for a CFL license shall be in the form and
4 contain the information that the Commissioner may by rule require. Pursuant to California Code of
5 Regulations, title 10, section 1422, a corporate applicant for a CFL license is required to submit an
6 original certificate of good standing from the California Secretary of State evidencing that the
7 corporate applicant is qualified to do business in the State of California.

8 23. Pursuant to Section 22714(a)(3), the Commissioner may revoke a CFL license if “a
9 fact or condition exists that, if it had existed at the time of the original application for the license,
10 reasonably would have warranted the commissioner in refusing to issue the license originally.”

11 24. As DMF’s status with the California Secretary of State is “FTB Forfeited,” and
12 appears to have been since at least May 2019, a fact or condition exists that, if it had existed at the
13 time of the original application by DMF for a license under the CFL, reasonably would have
14 warranted the Commissioner in refusing to issue the license, to wit, not being qualified to do business
15 in the State of California.

16 25. Accordingly, the Commissioner finds that by failing to be qualified to do business in
17 California, a condition now exists warranting the revocation of DMF’s CFL license, pursuant to
18 Section 22714(a)(3).

19 **IV.**

20 **Violation # 2: Failure to Transition License to NMLS**

21 26. As noted above, California Code of Regulations, title 10, section 1422.4 required all
22 CFL licenses to transition their license to NMLS by no later than December 31, 2021—this deadline
23 was later extended to March 31, 2022. To date, DMF has not completed this required transition to
24 NMLS.

25 27. Pursuant to Section 22714(a)(2), the Commissioner may revoke a CFL license if the
26 “licensee has violated any provision of this division or any rule or regulation made by the
27 commissioner under and within the authority of this division.” Moreover, pursuant to Section
28 22714(a)(1), the Commissioner may revoke a CFL license if the “licensee has failed to comply with

1 any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of
2 this division.”

3 28. Accordingly, the Commissioner finds that, pursuant to Section 22714(a)(2), DMF’s
4 CFL license is subject to revocation for failure to comply with a demand or requirement of the
5 Commissioner to transition its CFL license to NMLS. Furthermore, the Commissioner finds that,
6 pursuant to Section 22714(a)(1), DMF’s CFL license is subject to revocation due to its violation of
7 California Code of Regulations title 10, section 1422.4 by failing to timely transition its license to
8 NMLS.

9 **V.**

10 **Violation # 3: Failure to Maintain Sufficient Net Worth**

11 29. As noted above, all CFL licensees are required to maintain a net worth of at least
12 twenty-five thousand dollars (\$25,000.00) at all times pursuant to Financial Code section 22104(a).

13 30. DMF has submitted consecutive Annual Reports to the Commissioner in which the
14 company states that its net worth is negative; one of these reports disclosed that the company’s net
15 worth was more than \$100,000.00 negative.

16 31. Pursuant to Section 22714(a)(2), the Commissioner may revoke a CFL license if the
17 “licensee has violated any provision of this division or any rule or regulation made by the
18 commissioner under and within the authority of this division.”

19 32. Accordingly, the Commissioner finds that, pursuant to Section 22714(a)(2), DMF’s
20 CFL license is subject to revocation for its violation of Section 22014(a), which requires CFL
21 licensees to maintain a net worth of at least \$25,000.00 at all times.

22 **VI.**

23 **Prayer for Relief**

24 WHEREFORE, IT IS PRAYED that

25 33. Pursuant to Section 22714(a)(3), that the California Financing Law license of
26 Respondent Direct Merchants Funding LLC be revoked because a fact or condition exists that, if it
27 had existed at the time of the original application by DMF for a license under the CFL, reasonably
28 would have warranted the Commissioner in refusing to issue the license, to wit, not being qualified to

1 do business in the State of California.

2 34. Pursuant to Section 22714(a)(2), that the California Financing Law license of
3 Respondent Direct Merchants Funding LLC be revoked due to its failure to its violations of the CFL
4 and its regulations, including: (1) the requirement of California Code of Regulations, title 10,
5 section 1422.4 to transition its CFL license to NMLS; and (2) the requirement of section 22104(a) to
6 maintain a net worth of at least \$25,000.00 at all times.

7 35. Pursuant to Section 22714(a)(1), that the California Financing Law license of
8 Respondent Direct Merchants Funding LLC be revoked due to its failure to comply with a demand or
9 requirement of the Commissioner, to wit, the requirement to transition its license to the NMLS by no
10 later than March 31, 2022.

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12 Dated: November 4, 2022
13 Los Angeles, CA

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

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By _____
Taylor Steinbacher
Senior Counsel
Enforcement Division

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