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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 LICENSE NO.: 60DBO-44255
12)
13 THE COMMISSIONER OF FINANCIAL) SETTLEMENT AGREEMENT
PROTECTION AND INNOVATION,)
14 Complainant,)
15 v.)
16 DIRECT MERCHANTS FUNDING LLC,)
17 Respondent.)
18)

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21 This Settlement Agreement is entered into between the Commissioner of Financial Protection
22 and Innovation (Commissioner) and Direct Merchants Funding LLC (DMF) and is made with
23 respect to the following facts:

24 **I.**

25 **RECITALS**

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

1 B. Respondent Direct Merchants Funding LLC (DMF) is a Florida limited liability
2 company with its principal place of business at 4000 Hollywood Boulevard, Suite 360-N, Hollywood,
3 Florida 33021. DMF is licensed as a CFL lender and broker with license number 60DBO-44255.
4 Scott Kaplan is the CFO of DMF and, as such, is authorized to enter into this Settlement Agreement
5 on DMF’s behalf.

6 DMF’s Past Enforcement History

7 C. On December 6, 2019, the Department of Business Oversight¹ issued an order
8 revoking DMF’s CFL license for failure to pay its annual CFL assessment pursuant to Section 22107.
9 This order provided that it would have an effective date of December 30, 2019, if DMF failed to pay
10 the assessment before then. DMF did not pay its annual assessment, and thus the revocation order
11 went into effect on December 30, 2019.

12 D. On May 18, 2020, DMF entered into a Consent Order with the Department.² In that
13 Consent Order, DMF conceded that it did not receive annual assessment notices from the Department
14 because it had failed to properly notify the Commissioner that it had changed its place of business to an
15 address other than that designated on its license, as required by Section 22153(a).

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 As a result of this Consent Order, the Department rescinded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

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25 ¹ On September 30, 2020, the Department of Business Oversight was renamed as the Department of
26 Financial Protection and Innovation (Department).

27 ² 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.

The Current Enforcement Action

F. On November 4, 2022, the Department issued an Accusation to revoke DMF’s CFL license and a notice of intent to do the same, among other documents (the Pleadings). The Pleadings allege that DMF has committed the following violations of the CFL:

- (1) DMF is not in good standing with the California Secretary of State. All CFL licensees are required to be in good standing with the California Secretary of State pursuant to Financial Code sections 22101, 22714(a)(3), and California Code of Regulations, title 10, section 1422;
- (2) DMF has not transitioned its CFL license to the Nationwide Multistate Licensing System and Registry (NMLS).³ California Code of Regulations, title 10, section 1422.4 as well as Financial Code sections 22714(a)(1)-(2) required that all CFL licensees transition their licenses to the NMLS by no later than March 31, 2022; and
- (3) DMF has reported in its CFL annual report for the last two years that DMF’s net worth is less than \$25,000.00 in violation of Financial Code section 22104(a).

G. DMF requested submitted a Notice of Defense to the Department requesting a hearing on the revocation request in the Pleadings.

NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set forth herein, the parties agree as follows:

II.

TERMS AND CONDITIONS

1. Purpose. This Settlement Agreement resolves the issues before the Commissioner described above in a manner that avoids the expense of a hearing and other possible court proceedings, protects consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of the CFL.

³ NMLS is a web-based platform for regulatory agencies to administer initial license applications and ongoing compliance requirements. NMLS is used by participating agencies to process the applications of companies and individuals looking to apply, renew, surrender, or amend licenses for 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 2. Desist and Refrain Order(s). Pursuant to Financial Code section 22712, DMF is
2 hereby ordered to desist and refrain from violating any provision of the CFL or regulation
3 thereunder, including requirement of California Code of Regulations title 10, section 1422 to remain
4 in good standing with the California Secretary of State and section 1422.4 requiring CFL licensees
5 to transition their CFL license to the NMLS, as well as Financial Code sections 22104(a) and
6 22714(a)(1)-(3) as set forth above.

7 3. Order Suspending CFL License Pending Cure. DMF’s CFL license is hereby
8 suspended, subject to reinstatement upon completion of the following items:

- 9 (1) Providing competent evidence that DMF is once again in good standing with the
10 California Secretary of State;
- 11 (2) Providing competent evidence that DMF has transitioned its CFL license to the NMLS;
- 12 (3) Providing competent evidence that DMF has successfully updated its business address on
13 file with the Department, and paid any fees associated with that update; and
- 14 (4) Providing competent evidence that DMF currently has a net worth of greater than
15 \$25,000.00, subject to review and approval by the Department.

16 The evidence of the completion of each item listed in paragraph 3 shall be provided via e-mail to the
17 Commissioner at the notice e-mail address listed in paragraph 19.

18 4. Administrative Fines and Penalties. DMF shall pay administrative fines and penalties
19 in the amount of \$7,500.00 for the violations of the CFL enumerated herein. DMF shall pay those
20 fines and penalties to the Commissioner within 10 days of the Effective Date of this Settlement
21 Agreement as defined in paragraph 22. Payment of all fines and penalties shall be labeled “fines and
22 penalties” and must be made payable in the form of a cashier’s check or Automated Clearing House
23 deposit, under the instructions which shall be separately provided, and payable to the Department of
24 Financial Protection and Innovation, Accounting – Enforcement Division, Department of Financial
25 Protection & Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice of such
26 payment shall be sent concurrently the Commissioner at the Notice address provided below.

27 5. Waiver of Hearing Rights. DMF agrees that the Settlement Agreement shall have the
28 effect of withdrawing its request for an administrative hearing on the matters set forth in the

1 Pleadings. DMF acknowledges its right to an administrative hearing on the Pleadings and DMF
2 hereby waives the right to any hearings, and to any reconsideration, appeal, or other right to review
3 which may be afforded pursuant to the CFL, the California Administrative Procedure Act, the
4 California Code of Civil Procedure, or any other provision of law in connection with this matter. By
5 waiving such rights, DMF effectively consents to this Settlement Agreement, the Desist and Refrain
6 Order(s), and the Order Suspending CFL License Pending Cure becoming final.

7 6. Failure to Comply with Settlement Agreement. DMF agrees that if it fails to comply
8 with the terms of this Settlement Agreement, the Commissioner may, in addition to all other
9 available remedies it may invoke under the CFL, summarily suspend or revoke DMF's CFL license
10 until DMF is in compliance. DMF waives any notice and hearing rights to contest such summary
11 suspension or revocation which may be afforded under the CFL, the California Administrative
12 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection
13 therewith.

14 7. Information Willfully Withheld or Misrepresented. This Settlement Agreement may
15 be revoked and the Commissioner may pursue any and all remedies available under law against
16 DMF if the Commissioner discovers that DMF knowingly or willfully withheld or misrepresented
17 information used for and relied upon in this Settlement Agreement

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

23 9. Assisting Other Agencies. Nothing in this Settlement Agreement limits the
24 Commissioner's ability to assist any other government agency (city, county, state, or federal) with
25 any prosecution, administrative, civil or criminal brought by that agency against DMF or any other
26 person based upon any of the activities alleged in this matter or otherwise.

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

4 11. Binding. This Settlement Agreement is binding on all heirs, assigns, and/or
5 successors in interest.

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

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

21 14. Full Integration. This Settlement Agreement is the final written expression and the
22 complete and exclusive statement of all the agreements, conditions, promises, representations, and
23 covenant 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 15. 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 16. Counterparts. This Settlement Agreement 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 17. Effect Upon Future Proceedings. If DMF 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 Settlement Agreement, then the subject matter hereof
9 shall be admitted for the purpose of such application(s) or enforcement proceedings(s).

10 18. Voluntary Agreement. DMF enters this Settlement Agreement 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 Settlement Agreement r. The parties each
13 represent and acknowledge that he, she or it is executing this Settlement Agreement completely
14 voluntarily and without any duress or undue influence of any kind from any source.

15 19. Notice. Any notice required under this Settlement Agreement be provided to each
16 party at the following addresses:

17 To Respondent
18 Direct Merchants Funding LLC: Direct Merchants Funding LLC
19 c/o Scott Kaplan, CFO
20 4000 Hollywood Boulevard, Suite 360-N,
21 Hollywood, Florida 33021
22 SKaplan@flashadvance.com

23 To the Commissioner: 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 20. Signatures. A fax or electronic mail signature shall be deemed the same as an
original signature.

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1 21. Public Record. DMF hereby acknowledges that this Settlement Agreement is and
2 will be a matter of public record.

3 22. Effective Date. This Settlement Agreement shall become final and effective when
4 signed by all parties and delivered by the Commissioner’s agent via email to DMF’s representative,
5 at SKaplan@flashadvance.com.

6 23. Authority to Sign. Each signatory hereto covenants that he/she possesses all
7 necessary capacity and authority to sign and enter into this Settlement Agreement and undertake the
8 obligations set forth herein.

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10 Dated: January 9, 2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

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12 By _____
13 MARY ANN SMITH
14 Deputy Commissioner
Enforcement Division

15 Dated: January 6, 2023

DIRECT MERCHANTS FUNDING LLC

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17
18 By _____
19 SCOTT KAPLAN
20 CFO