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Commissioner
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BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
OF THE STATE OF CALIFORNIA

In the Matter of:)
)
THE COMMISSIONER OF FINANCIAL) CFL LICENSE No.: 60DBO-136962
PROTECTION AND INNOVATION,)
) **CONSENT ORDER**
Complainant.)
)
v.)
)
TRAKKXPAY, LLC,)
)
Respondent.)
_____)

1 This Consent Order is entered into between the Commissioner of Financial Protection and
2 Innovation (Complainant or Commissioner) and Respondent TRAKKXPAY, LLC (Respondent) and
3 is made with respect to the following facts:

4 **I.**

5 **RECITALS**

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

9 B. Respondent is a California limited liability company.

10 C. Respondent has a principal place of business at 1302 N Coast Highway, Suite 201,
11 Encinitas, CA 92024.

12 D. Respondent was licensed as a finance lender under the California Financing Law
13 (CFL) (Fin. Code, § 22000, et seq.) with license number 60DBO-136962 from March 28, 2022
14 through December 30, 2022.

15 E. Under Financial Code section 22150, Complainant may make general rules and
16 regulations and specific rulings, demands, and findings for the enforcement of, and within the
17 general purposes of, the CFL.

18 F. Pursuant to a Commissioner’s Order on Electronic Communications, dated November
19 22, 2013, each CFL licensee must establish an email address for communications from the
20 Commissioner (Designated Email Address).

21 G. Under California Code of Regulations, Title 10, Section 1422.4 (Regulation 1422.4),
22 which went into effect on October 1, 2021, all CFL licensees were required to transition to the
23 Nationwide Multistate Licensing System and Registry (NMLS) by December 31, 2021. On
24 December 16, 2021, Complainant extended the deadline to transition to NMLS to March 15, 2022.
25 On March 7, 2022, Complainant again extended the deadline to transition to NMLS to March 31,
26 2022.

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

1 H. Complainant asked Respondent to comply with Regulation 1422.4 via email to
2 Respondent’s Designated Email Address on July 11, 2022, and September 12, 2022.

3 I. To date, Respondent has not complied with Regulation 1422.4 by transitioning its license
4 to NMLS.

5 J. The Commissioner finds that entering into this Consent Order is in the public interest
6 and consistent with the purposes fairly intended by the policies and provisions of the CFL.

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

9
10 **II.**

11 **TERMS AND CONDITIONS**

12 1. Purpose. The parties intend to resolve this matter for the purpose of judicial economy
13 and expediency and without the uncertainty and expense of a hearing or other litigation.

14 2. Transition to NMLS. Respondent shall complete the transition of its license to
15 NMLS as required by Regulation 1422.4 within 30 days of the effective date of this Consent Order
16 as defined in paragraph 24.

17 3. Administrative Penalty. Respondent shall pay an administrative penalty of \$2,500.00
18 no later than 30 days after the effective date of this Consent Order as defined in paragraph 24. The
19 penalty must be made payable in the form of a cashier’s check or Automated Clearing House deposit
20 to the Department of Financial Protection and Innovation and transmitted to the attention of
21 Accounting – Litigation, Department of Financial Protection and Innovation, 2101 Arena Boulevard,
22 Sacramento, California 95834. Notice of the payment must be concurrently sent to Galen Yun,
23 Counsel, Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento,
24 California 95834/Galen.Yun@dfpi.ca.gov.

25 4. Failure to Transition License to NMLS or Pay Administrative Penalty. If Respondent
26 fails to comply with paragraphs 2 or 3, the Commissioner may summarily revoke Respondent’s
27 license.
28

1 5. Waiver of Notice and Hearing Rights. Respondent acknowledges the Commissioner
2 is ready, willing, and able to file an accusation to revoke Respondent’s license pursuant to Financial
3 Code section 22714 and proceed with a hearing on the accusation. Respondent hereby waives the
4 right to any notice or hearings, and to any reconsideration, appeal, or other right to review which
5 may be afforded pursuant to the CFL, the California Administrative Procedure Act, the California
6 Code of Civil Procedure, or any other provision of law. By waiving such rights, Respondent
7 effectively consents to this Consent Order becoming final.

8 6. Full and Final Resolution. The parties hereby acknowledge and agree that this
9 Consent Order is intended to constitute a full and final resolution of the violations described herein,
10 and that no further proceedings or actions will be brought by the Commissioner in connection with
11 these matters except under the CFL or any other provision of law, excepting therefrom any
12 proceeding to enforce compliance with the terms of this Consent Order.

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

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

22 9. Assisting Other Agencies. Nothing in this Consent Order limits the
23 Commissioner’s ability to assist any other government agency (city, county, state or federal) with
24 any prosecution, administrative, civil or criminal action brought by that agency against Respondent
25 or any other person based on any of the activities alleged in this matter or otherwise.

26 10. No Presumption Against Drafter. Each party acknowledges that it has had the
27 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
28 intend no presumption for or against the drafting party will apply in construing any part of this

1 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
2 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
3 language of a contract should be interpreted most strongly against the party who caused the
4 uncertainty to exist.

5 11. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
6 has had the opportunity to receive independent advice from an attorney(s) and/or representatives
7 with respect to the advisability of executing this Consent Order.

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

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

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

22 15. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
23 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
24 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
25 provision. No waiver by either party of any breach of, or of compliance with, any condition or
26 provision of this Consent Order by the other party will be considered a waiver of any other condition
27 or provision or of the same condition or provision at another time.
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1 16. Full Integration. This Consent Order is the final written expression and the complete
2 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
3 between the parties with respect to the subject matter hereof, and supersedes all prior or
4 contemporaneous agreements, negotiations, representations, understandings, and discussions
5 between and among the parties, their respective representatives, and any other person or entity, with
6 respect to the subject matter covered hereby.

7 17. Governing Law. This Consent Order will be governed by and construed in
8 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court
9 and thereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
10 forum to the maintenance of such action or proceeding in such court.

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

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

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

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

25 To Respondent: TRAKKXPAY, LLC
26 Johnny Lozito
27 1302 N Coast Highway, Suite 201
28 Encinitas, CA 92024
 Johnny.Loizito@trakkxpay.com

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To the Commissioner: Galen Yun, Counsel
Department of Financial Protection and Innovation
2101 Arena Blvd
Sacramento, California 95691
Galen.Yun@dfpi.ca.gov

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

23. Public Record. Respondent hereby acknowledges that the Consent Order is and will be a matter of public record.

24. Effective Date. This Consent Order shall become final and effective when signed by all parties and delivered by the Commissioner’s agent via e-mail to Respondent at the following email address: Mufeed.khan@trakkxpay.com.

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25. 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: March 17, 2023
Sacramento, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



By _____
Mary Ann Smith
Deputy Commissioner
Enforcement Division

Dated: March 15, 2023

TrakkxPay, LLC

By _____
John Lozito, Member