

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
3 DANIEL P. O'DONNELL
Assistant Chief Counsel
4 TREVOR J. CARROLL (State Bar No. 306425)
Senior Counsel
5 Department of Financial Protection and Innovation
1455 Frazee Road, Suite 315
6 San Diego, California 92108
Telephone: (916) 936-7651
7 Facsimile: (619) 209-3612

8 Attorneys for Complainant

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

11 In the Matter of:)
12 THE COMMISSIONER OF FINANCIAL)
13 PROTECTION AND INNOVATION,) CONSENT ORDER
14 Complainant,)
15 v.)
16 SPLITIT USA INC.,)
17 Respondent.)

18
19 The Commissioner of Financial Protection and Innovation (Commissioner) and Splitit USA
20 Inc. (Splitit) (collectively, the Parties) enter into this consent order with respect to the following
21 facts:

22 **I.**
23 **Recitals**

24 A. The Commissioner has jurisdiction over the regulation of persons engaged in offering
25 or providing a consumer financial product or service in California and affiliated service providers
26 under the California Consumer Financial Protection Law (CCFPL), Cal. Fin. Code §§ 90000-90019.

27 ///
28 ///

1 B. Under the CCFPL, it is unlawful for a “covered person” or “service provider” to
2 “[e]ngage, have engaged, or propose to engage in any unlawful, unfair, deceptive, or abusive act or
3 practice with respect to consumer financial products or services.” Cal. Fin. Code § 90003(a)(1).

4 C. A deceptive act or practice includes a representation, omission, or practice that is
5 likely to mislead consumers acting reasonably under the circumstances and is material. *See Consumer*
6 *Fin. Prot. Bureau v. Gordon*, 819 F.3d 1179, 1192-1193 & fn. 7 (9th Cir. 2016) (defining deceptive
7 act or practice under the Consumer Financial Protection Act of 2010).

8 D. A “covered person” is “[a]ny person that engages in offering or providing a consumer
9 financial product or service to a resident of this state.” Cal. Fin. Code § 90005(f)(1).

10 E. A “service provider” is “any person that provides a material service to a covered
11 person in connection with the offering or provision by that covered person of a consumer financial
12 product or service,” including a person that “[p]articipates in designing, operating, or maintaining the
13 consumer financial product or service.” Cal. Fin. Code § 90005(n)(1)(A).

14 F. A “consumer financial product or service” is generally a “financial product or service
15 that is delivered, offered, or provided for use by consumers primarily for personal, family, or
16 household purposes.” Cal. Fin. Code § 90005(e)(1).

17 G. “Financial product or service” includes, among other things, “[e]xtending credit and
18 servicing extensions of credit, including acquiring, purchasing, selling, brokering extensions of
19 credit.” Cal. Fin. Code § 90005(k)(1).

20 H. “Credit” means the right granted by a person to another person to defer payment of a
21 debt, incur debt and defer its payment, or purchase property or services and defer payment for those
22 purchases. Cal. Fin. Code § 90005(g).

23 I. “Debt” means any obligation of a person to pay another person money regardless of
24 whether the obligation is absolute or contingent, has been reduced to judgment, is fixed, contingent,
25 matured, unmatured, disputed, undisputed, secured, or unsecured and includes any obligation that
26 gives rise to right of an equitable remedy for breach of performance if the breach gives rise to a right
27 to payment. Cal. Fin. Code § 90005(h).

28 J. At all relevant times, Splitit was and is a Delaware corporation that maintained a

1 business address at 5901 Peachtree Dunwoody Road, Suite C-480, Atlanta, Georgia 30328-7188.

2 K. Since at least January 1, 2021, Splitit has offered a service to merchants that allows
3 merchants to offer an installment payment option in which consumers can purchase goods or services
4 from Splitit-partnered merchants and pay for such goods and services over time in installments. A
5 consumer that chooses to pay for goods or services on a merchant’s website using the installment
6 option presents their credit card at checkout and authorizes the merchant to place an authorization on
7 the consumer's credit card for the full amount of the purchase. The merchant and consumer then enter
8 into an installment contract (Contract) whereby the full amount of the purchase is divided into regular
9 installment payments that the consumer pays directly to the merchant over an agreed period of time,
10 pursuant to the authorization previously provided by the consumer on their credit card, until the
11 Contract is paid in full.

12 L. Splitit provides the technology platform for the merchants to enter into Contracts.
13 Splitit also creates, designs, and drafts the Contract templates for the merchants to customize for their
14 own use with the Splitit service. The consumer completes the purchase using Splitit through the
15 merchant’s online checkout process.

16 M. Through its website and social media accounts, Splitit describes its financing service
17 as being interest-free for consumers.

18 N. The following are representations that Splitit made to consumers between June 2016
19 and April 2022, through its website, web-based blog, and Twitter account regarding the interest
20 associated with its financing service:

21 (1) “Splitit allows consumers to pay in interest-free installments on their existing credit cards
22 with no burden of alarming interest rates...”

23 (2) “Always 0% interest.”

24 (3) “No interest or fees.”

25 (4) “Zero interest is ever added.”

26 (5) “Unlike financing, there’s no fine print or sudden surprises when it comes to paying
27 interest. It is always 0% interest when you use Splitit’s installment payment option.”

28 ///

1 (6) “Wouldn’t you consider investing in a better quality, higher ticket item if you had a
2 responsible way to pay for it? Especially if you didn’t have to pay interest!”

3 (7) “With Splitit, you choose the number of monthly installments and they show up right on
4 your credit card statement. Best of all? Zero interest is ever added.”

5 (8) “There are never any additional fees or interest to worry about, because Splitit guarantees
6 your payment.”

7 O. Although Splitit does not charge interest or fees, consumers that pay using Splitit’s
8 service may be charged interest or fees by their credit card issuers if the consumers do not pay their
9 credit card balances in full or are late in making their credit card payments.

10 P. Splitit’s representations enumerated in Paragraph N concerning zero interest are
11 misleading to consumers or are likely to be misleading to consumers. Consumers may be led to
12 believe that the financing offered by Splitit is completely interest-free when in fact a consumer could
13 be charged interest by the credit card issuer if the consumer fails to pay the balance in full or is late in
14 making a credit card payment.

15 Q. Although the terms of the Contract and the website that each consumer uses to make a
16 purchase using the Splitit service contain a disclosure that consumers may be charged interest by their
17 card issuer, the Commissioner finds this warning to be insufficient. The representations that Splitit
18 made in Paragraph N may create the net impression that consumers will not pay interest on their
19 purchase.

20 R. The Commissioner finds that Splitit’s misrepresentations were material because they
21 were likely to affect a consumer’s decision to choose Splitit rather than another available payment
22 method.

23 S. The Contract is an extension of “credit” and creates “debt” under the CCFPL and is
24 therefore a “consumer financial product” covered by the CCFPL.

25 T. The merchants that offer the Contracts are “covered persons” under the CCFPL
26 because they engage in offering or providing consumer financial products or services to California
27 residents.

28 ///

1 U. Splitit is a “service provider” under the CCFPL because it provides a material service
2 to a covered person by participating in designing, operating, or maintaining a consumer financial
3 product or service.

4 V. Based on the above, the Commissioner finds that Splitit violated Financial Code
5 section 90003(a)(1), by engaging, having engaged, or proposing to engage in deceptive practices with
6 respect to consumer financial products or services by misrepresenting its financing service as being
7 interest-free for consumers.

8 W. Splitit neither admits nor denies any wrongdoing.

9 X. Splitit has amended or removed from circulation each representation referenced in
10 Paragraph N that the Commissioner identified and alleged is not compliant with the CCFPL.

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

13 **II.**

14 **Terms and Conditions**

15 1. Purpose. This Consent Order resolves the issues before the Commissioner in a manner
16 that avoids the expense of a hearing and other possible court proceedings, protects consumers, is in
17 the public interest, and is consistent with the purposes and provisions of the CCFPL.

18 2. Finality of Consent Order. Splitit agrees to comply with this Consent Order and
19 stipulates this Consent Order is hereby deemed final.

20 3. Desist and Refrain Order. Pursuant to Financial Code section 90015(d)(1), Splitit is
21 hereby ordered to desist and refrain from violating Financial Code section 90003(a)(1), by engaging,
22 having engaged, or proposing to engage in any unlawful, unfair, deceptive, or abusive act or practice
23 with respect to consumer financial products or services, including the deceptive acts described in
24 Paragraphs N through V above (misrepresenting its financing service as being interest-free for
25 consumers). Additionally, Splitit is hereby ordered to remedy its deceptive advertising. Splitit shall
26 remove usage of “always” when referencing zero percent interest. Splitit also shall add an asterisk at
27 the end of each zero percent interest statement and reference a disclaimer relating to potential interest
28 charges.

1 4. Waiver of Hearing Rights. Splitit acknowledges the Commissioner is ready, willing,
2 and able to proceed with the filing of an administrative enforcement action on the charges contained
3 in this Consent Order. Splitit hereby waives the right to any hearings, and to any reconsideration,
4 appeal, or other right to review which may be afforded pursuant to the CCFPL, the California
5 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law,
6 including those rights under Financial Code section 90015, and to judicial review of this matter
7 pursuant to Code of Civil Procedure section 1094.5 with respect to the issuance of this Consent Order
8 and the Desist and Refrain Order contained herein. Splitit further expressly waives any requirement
9 for the filing of an Accusation pursuant to Government Code section 11415.60(b). By waiving such
10 rights, Splitit effectively consents to this Consent Order and Desist and Refrain Order becoming final.

11 5. Full and Final Settlement. The parties hereby acknowledge and agree that this Consent
12 Order is intended to constitute a full, final, and complete resolution of the violations described herein,
13 and that no further proceedings or actions will be brought by the Commissioner in connection with
14 these matters under the CCFPL or any other provision of law, excepting therefrom any proceeding to
15 enforce compliance with the terms of this Consent Order.

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

20 7. Future Actions by Commissioner. If Splitit fails to comply with any term of this
21 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
22 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
23 against Splitit for any and all unknown violations of the CCFPL.

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

28 ///

1 9. No Representation of Approval of Business Model or Practices. Nothing in this
2 Consent Order shall prevent the Commissioner from asserting at any time in the future that the
3 Contract offered by Splitit requires licensure or registration with the Department under any law under
4 the Department’s jurisdiction. Nothing in this Consent Order shall be interpreted as the
5 Commissioner’s approval of Splitit’s business model or conclusion that the model complies with state
6 or federal law or regulations.

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

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

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

21 13. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
22 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
23 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
24 provision. No waiver by any party of any breach of, or of compliance with, any condition or
25 provision of this Consent Order by any other party will be considered a waiver of any other condition
26 or provision or of the same condition or provision at another time.

27 14. Full Integration. This Consent Order is the final written expression and the complete
28 and exclusive statement of all the agreements, conditions, promises, representations, and covenants

1 between the parties with respect to the subject matter hereof, and supersedes all prior or
2 contemporaneous agreements, negotiations, representations, understandings, and discussions between
3 and among the parties, their respective representatives, and any other person or entity, with respect to
4 the subject matter covered hereby.

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

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

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

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

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

23 To Splitit USA Inc.: Omri Flicker, Esq.
24 Splitit USA Inc.
25 5901 Peachtree Dunwoody Road, Suite C-480
26 Atlanta, Georgia 30328-7188
legal@splitit.com

27 To the Commissioner: Trevor J. Carroll, Senior Counsel
28 Department of Financial Protection and Innovation
1455 Frazee Road, Suite 315

San Diego, California 92108
trevor.carroll@dfpi.ca.gov

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

21. Public Record. Splitit acknowledges that this Consent Order is and will be a matter of public record.

22. 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 Splitit at legal@splitit.com.

23. 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: April 3, 2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By: _____
MARY ANN SMITH
Deputy Commissioner

Dated: February 22, 2023

SPLITIT USA INC.

By: _____
NANDAN SHETH
CEO

Approved as to form:

Dated: February 22, 2023

By: _____
OMRI FLICKER, ESQ.
Chief Legal and Risk Officer