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Commissioner
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8 Attorneys for Complainant

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

12 In the Matter of:)
13)
14 THE COMMISSIONER OF FINANCIAL) CFL LICENSE Nos. 60DBO-122344 AND
PROTECTION AND INNOVATION,) 60DBO-128101
15)
16 Complainant.) **CONSENT ORDER**
17)
18 v.)
19)
20 WITHCLUTCH INC.,)
Respondent.)

21 This Consent Order is entered into between the Commissioner of Financial Protection and
22 Innovation (Complainant or Commissioner) and Respondent WithClutch Inc. (Respondent) and is
23 made with respect to the following facts:

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I.
RECITALS

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

B. Respondent is a Delaware corporation.

C. Respondent has a principal place of business at 830 Avenue Balboa, Half Moon Bay, CA 94019.

D. Respondent is licensed as a finance broker under the California Financing Law (CFL) (Fin. Code, § 22000, et seq.) with license numbers 60DBO-122344 and 60DBO-128101.

E. In accordance with Financial Code section 22159, CFL licensees must file an annual report with the Commissioner by March 15 of each year (Annual Report).

F. On January 3, 2023, the Commissioner notified CFL licensees of the deadline of March 15, 2023, to file their annual reports by sending a notice to the email address each CFL licensee must establish for communications from the Commissioner (Designated Email Address) pursuant to the Commissioner’s Order on Electronic Communications, dated November 22, 2013. The notice warned that the Commissioner could assess monetary penalties for untimely filing or failing to file pursuant to Financial Code section 22715(b).

G. On February 10, 2023, the Commissioner again notified CFL licensees of the deadline to file their annual reports by sending a notice to the Designated Email Address of each CFL licensee. The notice warned that the Commissioner could assess penalties or summarily revoke licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

H. On March 1, 2023, the Commissioner again notified CFL licensees of the deadline to file their annual reports by sending a notice to the Designated Email Address of each CFL licensee. The notice again warned that the Commissioner could assess penalties or summarily revoke licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

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

1 I. On March 13, 2023, the Commissioner again notified CFL licensees of the deadline
2 to file their annual reports by sending a notice to the Designated Email Address of each CFL
3 licensee. The notice again warned that the Commissioner could assess penalties or summarily revoke
4 licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

5 J. On March 14, 2023, the Commissioner again notified CFL licensees of the deadline
6 to file their annual reports by sending a notice to the Designated Email Address of each CFL
7 licensee. The notice again warned that the Commissioner could assess penalties or summarily revoke
8 licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

9 K. On March 15, 2023, the Commissioner again notified CFL licensees of the deadline
10 to file their annual reports by sending a notice to the Designated Email Address each CFL licensee.
11 The notice again warned that the Commissioner could assess penalties and summarily revoke
12 licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

13 L. As of March 16, 2023, Respondent had not filed its Annual Report with the
14 Commissioner. As a result, on March 16, 2023, the Commissioner issued a notice via email to
15 Respondent’s Designated Email Address advising Respondent that it must file its annual report by
16 March 30, 2023, or its license would be summarily revoked pursuant to Financial Code section
17 22715 (Notice Email).

18 M. As of April 10, 2023, Respondent had not filed its Annual Report with the
19 Commissioner. As a result, on April 12, 2023, the Commissioner issued a notice via certified mail to
20 Respondent’s license address on file with the Commissioner advising Respondent that it should file
21 its annual report by or before April 24, 2023, or else its license would be summarily revoked
22 pursuant to Financial Code section 22715 (Notice Letter). Also on April 13, 2023, the Commissioner
23 notified Respondent of the overdue filing through the Nationwide Multistate Licensing System and
24 Registry (NMLS) in the form of an NMLS license item.

25 N. As of April 24, 2023, Respondent had not filed its Annual Report with the
26 Commissioner as directed in the pre-deadline notices, the Notice Email, and the Notice Letter. As a
27 result, on May 3, 2023, the Commissioner issued an Order Summarily Revoking California Finance
28 Lenders License and/or Broker license pursuant to Financial Code Section 22715 for CFL license

1 numbers 60DBO-122344 and 60DBO-128101 (Summary Revocation Order).

2 O. Respondent notified the Commissioner that Respondent was requesting a hearing on
3 the Summary Revocation Order on May 30, 2023.

4 P. On May 31, 2023, Respondent submitted its Annual Report, which was due on March
5 15, 2023, 54 business days late. Pursuant to Financial Code Section 22715, the maximum penalty
6 that may be imposed for filing 54 business days late is \$25,000.00 (\$100 per business day for the
7 first five business days and \$500 per business day thereafter up to a maximum of \$25,000).

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

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

12 **II.**

13 **TERMS AND CONDITIONS**

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

16 2. Order Rescinding Revocation Order. The Commissioner hereby rescinds the
17 Summary Revocation Order.

18 3. Administrative Penalty. Respondent shall pay an administrative penalty of \$2,500.00
19 no later than 30 days after the Effective Date of this Consent Order as defined in paragraph 25. The
20 penalty must be made payable in the form of a cashier’s check or Automated Clearing House deposit
21 to the Department of Financial Protection and Innovation and transmitted to the attention of
22 Accounting – Litigation, Department of Financial Protection and Innovation, 2101 Arena Boulevard,
23 Sacramento, California 95834. Notice of the payment must be concurrently sent to Galen Yun,
24 Counsel, Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento,
25 California 95834/Galen.Yun@dfpi.ca.gov.

26 4. Failure to Pay Administrative Penalty. If Respondent fails to comply with paragraph
27 3, the Commissioner may summarily suspend Respondent from engaging in business under its
28 license until it provides evidence of compliance to the Commissioner’s satisfaction. Respondent

1 hereby waives any notice or hearing rights afforded under the Administrative Procedure Act,
2 including Government Code section 11415.60, subdivision (b); Code of Civil Procedure; or any
3 other provision of law to contest the summary suspension contemplated by this paragraph.

4 5. Waiver of Notice and Hearing Rights. Respondent acknowledges the Commissioner
5 is ready, willing, and able to proceed with a hearing on the Summary Revocation Order on the
6 charges contained in this Consent Order. Respondent hereby waives the right to any hearings, and to
7 any reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the
8 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
9 provision of law. Respondent further expressly waives any requirement for the filing of an
10 Accusation pursuant to Government section 11415.60, subdivision (b). By waiving such rights,
11 Respondent effectively consents to this Consent Order and the Order Rescinding Revocation Order
12 becoming final.

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

18 7. Failure to Comply with Consent Order. Respondent agrees that if it fails to comply
19 with the terms of this Consent Order, the Commissioner may, in addition to all other available
20 remedies it may invoke under the CFL, summarily suspend/revoke the CFL license of Respondent
21 until Respondent is in compliance. Respondent waives any notice and hearing rights to contest such
22 summary suspensions/revocations which may be afforded under the CFL, the California
23 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law
24 in connection therewith.

25 8. Information Willfully Withheld or Misrepresented. This Consent Order may be
26 revoked, and the Commissioner may pursue any and all remedies available under law against
27 Respondent if the Commissioner discovers that Respondent knowingly or willfully withheld or
28 misrepresented information used for and relied upon in this Consent Order.

1 9. Future Actions by Commissioner. If Respondent fails to comply with the terms of the
2 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
3 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
4 against Respondent, or any of its partners, owners, officers, shareholders, directors, employees, or
5 successors for any and all unknown violations of this CFL.

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

10 11. No Presumption Against Drafter. Each party acknowledges that it has had the
11 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
12 intend no presumption for or against the drafting party will apply in construing any part of this
13 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
14 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
15 language of a contract should be interpreted most strongly against the party who caused the
16 uncertainty to exist.

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

20 13. Headings. The headings to the paragraphs of this Consent Order are inserted for
21 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
22 the provisions hereof.

23 14. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
24 interest.

25 15. Reliance. Each of the parties represents, warrants, and agrees that in executing this
26 Consent Order, it has relied solely on the statements set forth herein and the advice of its own legal
27 counsel, if represented. Each of the parties further represents, warrants, and agrees that in executing
28 this Consent Order it has placed no reliance on any statement, representation, or promise of any

1 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
2 party or any other person or entity to make any statement, representation, or disclosure of anything
3 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
4 any way fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of
5 parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

6 16. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
7 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
8 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
9 provision. No waiver by either party of any breach of, or of compliance with, any condition or
10 provision of this Consent Order by the other party will be considered a waiver of any other condition
11 or provision or of the same condition or provision at another time.

12 17. Full Integration. This Consent Order is the final written expression and the complete
13 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
14 between the parties with respect to the subject matter hereof, and supersedes all prior or
15 contemporaneous agreements, negotiations, representations, understandings, and discussions
16 between and among the parties, their respective representatives, and any other person or entity, with
17 respect to the subject matter covered hereby.

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

22 19. Counterparts. This Consent Order may be executed in one or more separate
23 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
24 together constitute a single document.

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

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

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

8 To Respondent: WithClutch Inc.
9 Alex Hairston
10 830 Avenue Balboa
11 Half Moon Bay, CA 94019
12 Alex.Hairston@withclutch.com

12 To the Commissioner: Galen Yun, Counsel
13 Department of Financial Protection and Innovation
14 2101 Arena Blvd
15 Sacramento, California 95691
16 Galen.Yun@dfpi.ca.gov

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

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

20 25. Effective Date. This Consent Order shall become final and effective when signed by
21 all parties and delivered by the Commissioner’s agent via e-mail to Respondent at the following
22 email address: Alex.Hairston@withclutch.com.

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26. 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: June 5, 2023
Sacramento, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: June 2, 2023

WithClutch Inc.

By _____
Alex Hairston, Counsel