

CLOTHILDE V. HEWLETT
Commissioner
MARY ANN SMITH
Deputy Commissioner
DANIEL P. O'DONNELL
Assistant Chief Counsel
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Department of Financial Protection and Innovation
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Attorneys for Complainant

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

In the Matter of:) CONSENT ORDER
THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
Complainant,)
v.)
ESPRESSO CAPITAL USA INC. AND)
ESPRESSO CREDIT US LP,)
Respondents.)

The Commissioner of Financial Protection and Innovation (Commissioner) on the one hand, and Espresso Capital USA Inc. (Espresso Capital) and Espresso Credit US LP (Espresso Credit, and together, Respondents), on the other hand (collectively, the Parties), enter into this Consent Order (Consent Order) with respect to the following facts:

I.
RECITALS

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

1 B. The CFL requires that all persons engaging in the business of finance lending or
2 brokering in California must obtain a license issued by the Commissioner. Cal. Fin. Code § 22100.

3 C. Espresso Capital is a corporation with its principal place of business at 8 King Street
4 East, Suite 300, Toronto, Ontario, Canada, M5C 1B5. Espresso Capital’s articles of incorporation
5 were filed with the Delaware Secretary of State on September 27, 2019.

6 D. Espresso Credit is a limited partnership with its principal place of business also at 8
7 King Street East, Suite 300, Toronto, Ontario, Canada M5C 1B5. Espresso Credit’s certificate of
8 limited partnership was filed with the Delaware Secretary of State on October 4, 2018.

9 E. The commissioner has never issued a license to Espresso Capital or Espresso Credit
10 under the CFL, but both entities had applied for CFL licenses by September of 2022.

11 F. During the Commissioner’s review of these applications, counsel for the
12 Respondents provided information to the Commissioner showing that Espresso Credit issued, and
13 Espresso Capital brokered, loans to California residents between 2019 and 2023. Based on that
14 information, the Commissioner finds (the Findings) that:

15 i. Espresso Credit made twenty-three (23) commercial loans subject to the CFL
16 between July of 2019 and February of 2023.

17 ii. Espresso Credit made the loans without the required finance lender license
18 from the Commissioner, in violation of Cal. Fin. Code § 22100(a).

19 iii. Espresso Capital brokered each of the twenty-three loans subject to the CFL
20 between July of 2019 and February of 2023.

21 iv. Espresso Capital brokered the loans without the required finance broker
22 license from the Commissioner, in violation of Cal. Fin. Code § 22100(a).

23 G. Respondents consent to the entry of this Order by the Commissioner solely for the
24 purpose of resolving this matter amicably without a hearing or other litigation. Respondents admit
25 to the jurisdiction of the Commissioner, but neither admit to nor deny the findings of fact and
26 conclusions of law contained in this Order.

27 NOW THEREFORE, in consideration of the foregoing, and the terms and conditions set
28 forth herein, the Parties agree as follows:

1 II.

2 **TERMS AND CONDITIONS**

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

6 2. Desist and Refrain Order. Pursuant to Financial Code section 22707.5, the
7 Respondents hereby agree to desist and refrain from violating the CFL, including without limitation
8 Financial Code section 22100.

9 3. Penalty. Espresso Capital and Espresso Credit shall each pay an administrative
10 penalty of \$50,250.00 (Penalty) to the Commissioner. Payment of the Penalty shall be made no
11 more than 30 calendar days after the Effective Date. The Penalty payments should be made in the
12 form of Automated Clearing House deposit or cashier’s check payable to the “Department of
13 Financial Protection and Innovation” and transmitted to the attention of “Accounting – Litigation”
14 at Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento,
15 California 95834-2036. Notice of each such Penalty payment shall be forwarded to Noah M. Bean,
16 Senior Counsel, at the e-mail address noted in Paragraph 19. The Respondents shall relinquish all
17 dominion, control, and title to the Penalty to the fullest extent permitted by law and no part of the
18 Penalty may be returned to the Respondents.

19 4. Full and Final Settlement. The Parties hereby acknowledge and agree that this
20 Consent Order is intended to constitute a full, final, and complete resolution of the Findings, and
21 that no further proceedings or actions will be brought by the Commissioner in connection with the
22 Findings under the CFL or any other provision of law, excepting therefrom any proceeding to
23 enforce compliance with the terms of this Consent Order.

24 5. Waiver of Hearing Rights. Respondents acknowledge the Commissioner is ready,
25 willing, and able to proceed with the filing of an administrative enforcement action on the charges
26 contained in this Consent Order. Respondents hereby waive the right to any hearings, and to any
27 reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the
28 California Administrative Procedure Act, the California Code of Civil Procedure, or any other

1 provision of law. Respondents further expressly waive any requirement for the filing of an
2 Accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights,
3 Respondents effectively consent to this Consent Order becoming final.

4 6. Failure to Comply with Consent Order. Respondents agree that if either fails to
5 comply with the terms of this Consent Order, the Commissioner may avail herself of all other
6 remedies available to her pursuant to the CFL, the California Administrative Procedure Act, the
7 California Code of Civil Procedure, or any other provision of law in connection therewith until
8 Respondents are in compliance.

9 7. Information Willfully Withheld or Misrepresented. This Consent Order may be
10 rescinded, and the Commissioner may pursue any and all remedies available under the law against
11 Respondents if the Commissioner discovers that either of Respondents knowingly or willfully
12 withheld or misrepresented information used for and relied upon in this Consent Order.

13 8. Future Actions by Commissioner. If Respondents fail to comply with any terms of
14 the Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
15 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
16 against Respondents, or any of Respondents’ partners, owners, officers, shareholders, directors,
17 employees or successors for any and all unknown violations of law.

18 9. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
19 ability to assist a government agency (whether city, county, state, or federal) with any
20 administrative, civil, or criminal prosecutions brought by that agency against Respondents, or any
21 other person based upon any of the activities alleged in this matter or otherwise.

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

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

27 12. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
28 Consent Order it has relied solely on the statements set forth herein and the advice of its own

1 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
2 Order it has placed no reliance on any statement, representation, or promise of any other party, or
3 any other person or entity not expressly set forth herein, or upon the failure of any party or any other
4 person or entity to make any statement, representation or disclosure of anything whatsoever. The
5 Parties have included this clause: (1) to preclude any claim that any party was in any way
6 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
7 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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

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

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

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

27 17. Effect Upon Future Proceedings. If Respondents, or any other entity controlled by
28 Respondents, applies for any license, permit or qualification under the Commissioner’s current or

1 future jurisdiction, or is the subject of any future action by the Commissioner to enforce this Consent
2 Order, then the subject matter hereof shall be admitted for the purpose of such application(s) or
3 proceeding(s). Notwithstanding the foregoing, if Respondents, or any other entity controlled by
4 Respondents, applies to the Commissioner for a license, permit or qualification, the Commissioner
5 shall not deny such license, permit or qualification solely due to the existence of this Consent Order
6 or the Findings contained therein.

7 18. Voluntary Agreement. Respondents enter into this Consent Order voluntarily and
8 without coercion and acknowledge that no promises, threats or assurances have been made by the
9 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
10 and acknowledge that it is executing this Consent Order completely voluntarily and without any
11 duress or undue influence of any kind from any source.

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

- 14
- 15 i. c/o Espresso Capital and Espresso Credit
16 Enio Lazzer, COO & CFO
17 8 King Street East, Suite 300
18 Toronto, ON M5C 1B5
19 eniol@espressocapital.com
 - 20 ii. To the Commissioner:
21 Noah M. Bean, Senior Counsel
22 Department of Financial Protection and Innovation
23 2101 Arena Boulevard
24 Sacramento, California 95834
25 Noah.Bean@dfpi.ca.gov

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

28 21. Public Record. Respondents hereby acknowledge that this Consent Order is and will
be a matter of public record.

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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 Respondents at eniol@espressocapital.com.

23. Authority to Sign. Each signatory hereto covenants that he, she, or they possess all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: September 26, 2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By: _____
MARY ANN SMITH
Deputy Commissioner

Dated: September 26, 2023

ESPRESSO CAPITAL USA INC.

By: _____
ENIO LAZZER
COO, CFO

Dated: September 26, 2023

ESPRESSO CREDIT US LP

By: _____
ENIO LAZZER
COO, CFO