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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 CREDOVA FINANCIAL, LLC,)
17 Respondent.)

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19 The Commissioner of Financial Protection and Innovation (Commissioner) and Credova
20 Financial, LLC (Credova) (collectively, the Parties) enter into this consent order with respect to the
21 following findings made by the Commissioner:

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 under
26 the California Consumer Financial Protection Law (CCFPL) (Financial Code § 90000 et seq.).

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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.” (Fin. Code, § 90003, subd. (a)(1).)

4 C. A “covered person” is “[a]ny person that engages in offering or providing a consumer
5 financial product or service to a resident of this state.” (Fin. Code, § 90005, subd. (f)(1).)

6 D. A “service provider” is “any person that provides a material service to a covered person
7 in connection with the offering or provision by that covered person of a consumer financial product or
8 service,” including a person that “[p]articipates in designing, operating, or maintaining the consumer
9 financial product or service.” (Fin. Code, § 90005, subd. (n)(1)(A).)

10 E. A “consumer financial product or service” is generally a “financial product or service
11 that is delivered, offered, or provided for use by consumers primarily for personal, family, or household
12 purposes.” (Fin. Code, § 90005, subd. (e)(1).)

13 F. “Financial product or service” includes, among other things, “[e]xtending credit and
14 servicing extensions of credit, including acquiring, purchasing, selling, brokering extensions of credit.”
15 (Fin. Code, § 90005, subd. (k)(1).)

16 G. “Credit” means the right granted by a person to another person to defer payment of a
17 debt, incur debt and defer its payment, or purchase property or services and defer payment for those
18 purchases. (Fin. Code, § 90005, subd. (g).)

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

24 I. At all relevant times, Credova was and is a Delaware corporation that maintained a
25 business address at 515 W Aspen St Ste 204, Bozeman, Montana, 59715.

26 J. Since at least January 1, 2021, Credova has provided an internet-based platform that
27 allows merchants to offer installment contracts (Contracts) to their customers, some of whom were
28 California residents, to finance goods and/or services from the merchants.

1 K. Since at least January 1, 2021, Credova has contracted with a third-party servicer
2 (Servicer) to service all Contracts originated on the Credova Platform.

3 L. Prior to a consumer's first payment, the Servicer provides each consumer with a notice
4 informing the consumer that their account has been assigned to the Servicer for servicing. As part of
5 this communication the Servicer provides the consumer with information on how to make their monthly
6 payments without incurring any fees. The Servicer also provides consumers with options to make their
7 payments through other means, which will cause consumers to incur convenience fees disclosed and
8 collected by the Servicer, including:

- 9 (1) a \$15.00 fee if a consumer chooses to make a payment (debit card, credit card,
10 or ACH) over the phone;
11 (2) a \$10.00 fee if a consumer chooses to make a one-time electronic payment
12 through the Servicer's website; and
13 (3) a \$2.00 fee if a consumer chooses to initiate recurring electronic payments
14 through Servicer's website.

15 M. Though Credova ensured that consumers entering into contracts on the Credova
16 Platform always had a fee-free method to make payments on their account, and the Servicer disclosed
17 the convenience fees to consumers, for a time Credova failed to disclose potential optional convenience
18 fees a consumer might later choose to incur as part of a consumer's initial contract. Due to this,
19 consumers were made aware of both the existence and amounts of the additional, optional convenience
20 fees only after the consumers were already contractually bound.

21 N. In February 2022, Credova amended the form contract used on the Credova Platform to
22 inform consumers that the Servicer could offer additional payment options that would incur a
23 convenience fee payable to the Servicer, as well as the amounts of those optional convenience fees.

24 O. Prior to this date, California consumers were always provided with a fee-free method of
25 making payments on their Contracts but were provided information concerning the convenience fees
26 by the Servicer only after they had already agreed to the Contract.

27 P. The Commissioner believes Credova's conduct was deceptive because Credova did not
28 inform consumers in the Contract that the Servicer might offer certain additional payment options that

1 could cause a consumer to incur convenience fees for making payments on their Contract, if the
2 consumer did not want to use the fee-free method provided under the contract.

3 Q. The Commissioner is of the opinion that Credova’s failure to disclose fees potentially
4 charged by the Servicer as part of the initial contract was material because the Commissioner believes
5 consumers need information regarding optional convenience fees associated with making payments
6 pursuant to the Contract in order to properly evaluate the Contract prior to execution.

7 R. The Contract is an extension of “credit” and creates “debt,” and is therefore a “consumer
8 financial product” covered by the CCFPL.

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

11 T. Credova is a “service provider” under the CCFPL because it provides a material service
12 to a covered person by participating in designing, operating, or maintaining a consumer financial
13 product or service.

14 U. Based on the above, the Commissioner is of the opinion that Credova violated Financial
15 Code section 90003, subdivision (a)(1), by engaging, having engaged, or proposing to engage in
16 deceptive practices with respect to consumer financial products or services by its above-stated failure
17 to disclose to consumers the potential convenience fees associated with the repayment of the Contract.

18 V. Credova, by entering into this Consent Order, neither admits nor denies the findings of
19 fact and conclusions of law contained in this Consent Order.

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

22 **II.**

23 **Terms and Conditions**

24 1. **Purpose.** This Consent Order resolves all issues before the Commissioner set forth in
25 the recitals, in a manner that avoids the expense of a hearing and other possible court proceedings,
26 protects consumers, is in the public interest, and is consistent with the purposes and provisions of the
27 CCFPL.

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1 2. Finality of Consent Order. Credova agrees to comply with this Consent Order and
2 stipulates this Consent Order is hereby deemed final.

3 3. Desist and Refrain Order. Pursuant to Financial Code section 90015, subdivision (d)(1),
4 Credova is hereby ordered to desist and refrain from violating Financial Code section 90003,
5 subdivision (a)(1) by failing to disclose to consumers the potential convenience fees that may be
6 assessed by a servicer but known to Credova at the time a consumer enters into a contract. The
7 Commissioner acknowledges that Credova has, since February 2022, voluntarily complied with this
8 order through the amendments made to the Contract.

9 4. Penalty. Pursuant to Financial Code section 90012, subdivision (c), Credova shall pay
10 the Commissioner a total penalty of \$50,000.00 (Penalty) no later than ten calendar days after the
11 Effective Date of this Consent Order, as defined in Paragraph 22. This Penalty shall be paid by cashier's
12 check or by Automated Clearing House (ACH) deposit to the Department of Financial Protection and
13 Innovation and transmitted to the attention of Accounting – Litigation, at the Department of Financial
14 Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice of such
15 payment shall be forwarded contemporaneously to the Department at the Notice address indicated in
16 Paragraph 19.

17 5. Waiver of Hearing Rights. Credova acknowledges the Commissioner is ready, willing,
18 and able to proceed with the filing of an administrative enforcement action on the charges contained in
19 this Consent Order. Credova hereby waives the right to any hearings, and to any reconsideration,
20 appeal, or other right to review which may be afforded pursuant to the CCFPL, the California
21 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law,
22 including those rights under Financial Code section 90015, and to judicial review of this matter
23 pursuant to Code of Civil Procedure section 1094.5 with respect to the issuance of this Consent Order
24 and the Desist and Refrain Order contained herein. Credova further expressly waives any requirement
25 for the filing of an Accusation pursuant to Government Code section 11415.60, subdivision (b). By
26 waiving such rights, Credova effectively consents to this Consent Order and Desist and Refrain Order
27 becoming final.

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1 6. Information Willfully Withheld or Misrepresented. This Consent Order may be revoked,
2 and the Commissioner may pursue any and all remedies available under the law against Credova, if the
3 Commissioner discovers that Credova knowingly or willfully withheld or misrepresented information
4 used for and relied upon in this Consent Order.

5 7. Full and Final Settlement. The Parties hereby acknowledge and agree that this Consent
6 Order is intended to constitute a full, final, and complete resolution of all issues arising from or relating
7 to in any way, the allegations set forth in the recitals, and that no further proceedings or actions will be
8 brought by the Commissioner in connection with, arising from, or relating in any way to the allegations
9 in the recitals, under the CCFPL or any other provision of law, excepting therefrom any proceeding to
10 enforce compliance with the terms of this Consent Order.

11 8. Future Actions by Commissioner. If Credova fails to comply with any term of this
12 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
13 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
14 against Credova for any and all unknown violations of the CCFPL.

15 9. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
16 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
17 administrative, civil, or criminal brought by that agency against Credova or any other person based
18 upon any of the activities alleged in this matter or otherwise.

19 10. No Representation of Approval of Business Model or Practices. Nothing in this Consent
20 Order shall prevent the Commissioner from asserting at any time in the future that the Contract offered
21 by Credova requires licensure or registration with the Department under any law under the
22 Department's jurisdiction. Nothing in this Consent Order shall be interpreted as the Commissioner's
23 approval of Credova's business model or conclusion that the model complies with state or federal law
24 or regulations.

25 11. Headings. The headings to the paragraphs of this Consent Order are inserted for
26 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
27 the provisions hereof.
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1 12. Binding. This Consent Order is binding on the Commissioner, Credova, and each of
2 their respective heirs, assigns, and/or successors in interest.

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

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

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

24 16. Governing Law. This Consent Order will be governed by and construed in accordance
25 with California law. Solely for purposes of an action to enforce this Consent Order, each of the parties
26 hereto consents to the jurisdiction of the California courts, and hereby irrevocably waives, to the fullest
27 extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or
28 proceeding in such court.

1 17. Counterparts. This Consent Order may be executed in one or more separate
2 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
3 together constitute a single document.

4 18. Effect Upon Future Proceedings. If Credova is the subject of any future action by the
5 Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for the
6 purpose of such application(s) or enforcement proceeding(s).

7 19. Voluntary Agreement. Credova enters into this Consent Order voluntarily and without
8 coercion and acknowledges 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 he, she or it is executing this Consent Order completely voluntarily and without
11 any duress or undue influence of any kind from any source.

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

14 To Credova Financial, LLC: Richard L. Scheff
15 Faegre Drinker Biddle & Reath LLP
16 One Logan Square, Suite 2000
17 Philadelphia, PA 19103
18 richard.scheff@faegredrinker.com

19 To the Commissioner: Trevor J. Carroll, Senior Counsel
20 Department of Financial Protection and Innovation
21 1455 Frazee Road, Suite 315
22 San Diego, California 92108
23 trevor.carroll@dfpi.ca.gov

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

26 22. Public Record. Credova acknowledges that this Consent Order is and will be a matter
27 of public record.

28 23. 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 Credova at
richard.scheff@faegredrinker.com.

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24. 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.

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

Dated: January 9, 2024

By: _____
MARY ANN SMITH
Deputy Commissioner

CREDOVA FINANCIAL, LLC

Dated: December 26, 2023

By: _____

Its: _____

Approved as to form:

Dated: December 26, 2023

By: _____
RICHARD L. SCHEFF, ESQ.
Faegre Drinker Biddle & Reath LLP
Attorney for Credova Financial, LLC