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

11 In the Matter of:) CONSENT ORDER AS TO PRODIGY
12 THE COMMISSIONER OF FINANCIAL) PORTFOLIO MANAGEMENT
13 PROTECTION AND INNOVATION,)
14 Complainant,)
15 v.)
16 MOSS WESTINGHOUSE AND)
17 ASSOCIATES; and PRODIGY PORTFOLIO)
18 MANAGEMENT,)
19 Respondents.)

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22 The Complainant, the Commissioner of Financial Protection and Innovation
23 (Commissioner) of the Department of Financial Protection and Innovation (Department) and
24 Prodigy Portfolio Management (PPM) enter into this Consent Order with respect to the following
25 facts:

26 I.
27 Recitals

28 This Consent Order is made with reference to the following:

1 *Legal Background*

2 A. The Commissioner has jurisdiction over the licensing and regulation of persons
3 engaged in the business of debt collection in California under the Debt Collection Licensing Act
4 (DCLA) (Cal. Fin. Code §§ 100000 – 100025).

5 B. The Commissioner also has jurisdiction over the regulation of persons who engage,
6 have engaged, and propose to engage in offering or providing a consumer financial product or
7 service in California and affiliated service providers under the California Consumer Financial
8 Protection Law (CCFPL) (Cal. Fin. Code §§ 90000 – 90019). Collecting debt related to a consumer
9 financial product or service is conduct covered by the CCFPL. (Cal. Fin. Code § 90005(k)(10).)

10 C. At all relevant times, PPM is a business entity of unknown type with a principal place
11 of business located at 2082 Business Center Drive, Suite 243, Irvine, California 92612. PPM
12 operates a website at www.prodigy-pm.com and sends emails from bxm@prodigy-pm.com.

13 D. At all relevant times, Moss Westinghouse and Associates (Moss Westinghouse) was a
14 business entity of unknown type with a principal place of business located at 4533 MacArthur
15 Boulevard, Suite 332, Newport Beach, California 92660. Moss Westinghouse uses the following
16 phone numbers: (877) 799-2362; (310) 620-8377; (949) 561-3731; and (949) 354-6449.

17 *Applicable Law - DCLA*

18 E. Under the DCLA, “[n]o person shall engage in the business of debt collection in this
19 state without first obtaining a license.” (Cal. Fin. Code § 100001(a)).

20 F. The DCLA provides that “[t]he commissioner shall allow any debt collector that
21 submits an application prior to January 1, 2022, to operate pending the approval or denial of the
22 application.” (Cal. Fin. Code § 100001(c)).

23 G. “Debt” is defined as “money, property, or their equivalent that is due or owing or
24 alleged to be due or owing from a natural person to another person.” (Cal. Fin. Code § 100002(h)).

25 H. “Consumer debt” or “consumer credit” is defined as “money, property, or their
26 equivalent, due or owing, or alleged to be due or owing, from a natural person by reason of a
27 consumer credit transaction. The term “consumer debt” includes a mortgage debt. The term
28 “consumer debt” includes “charged-off consumer debt” as defined in Section 1788.50 of the Civil

1 Code.” (Cal. Fin. Code § 100002(f)).

2 I. The DCLA defines “debt collection” as “any act or practice in connection with the
3 collection of consumer debt.” (Cal. Fin. Code § 100002(i)).

4 J. “Debt collector” means “any person who, in the ordinary course of business,
5 regularly, on the person’s own behalf or on behalf of others, engages in debt collection. The term
6 includes any person who composes and sells, or offers to compose and sell, forms, letters and other
7 collection media used or intended to be used for debt collection. The term “debt collector” includes
8 “debt buyer” as defined in Section 1788.50 of the Civil Code.” (Cal. Fin. Code § 100002(j)).

9 *Applicable Law – CCFPL*

10 K. Under the CCFPL, it is unlawful for a “covered person” to do any of the following:
11 “(1) Engage, have engaged, or propose to engage in any unlawful, unfair, deceptive, or abusive act
12 or practice with respect to consumer financial products or services. (2) Offer or provide to a
13 consumer any financial product or service not in conformity with any consumer financial law or
14 otherwise commit any act or omission in violation of a consumer financial law” (Cal. Fin. Code
15 § 90003(a)(1) and (a)(2)).

16 L. A “covered person” includes “(1) [a]ny person that engages in offering or providing a
17 consumer financial product or service to a resident of this state . . . (3) [a]ny *service provider* to the
18 extent that the person engages in the offering or provision of its own consumer financial product or
19 service” (Cal. Fin. Code § 90005(f)(1) and (f)(3)).

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

23 N. “Financial product or service” includes, among other things, “[p]roviding financial
24 advisory services . . . including . . . [c]ollecting debt related to any consumer financial product or
25 service” (Cal. Fin. Code § 90005(k)(10)).

26 O. California Financial Code section 90015, subdivision (c) provides, “[a]fter notice and
27 an opportunity to be heard, the commissioner may, by order, assess penalties.”

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1 P. Under California Financial Code section 90015, subdivision (d), if, in the opinion of
2 the Commissioner, any person engages, has engaged, or proposes to engage in any activity
3 prohibited by section 90003 or 90004, the Commissioner “may issue an order directing the person to
4 desist and refrain from engaging in the activity, act, practice, or course of business.” (Cal. Fin. Code
5 § 90015(d)).

6 Q. Under California Financial Code section 90012, subdivision (c), in any administrative
7 action brought pursuant to the CCFPL, any person that violates, through any act or omission, any
8 provision of the CCFPL shall forfeit and pay a penalty not exceeding \$2,500.00 for each act or
9 omission in violation of the CCFPL. (Cal. Fin. Code § 90012(c)(1)(A)(i)).

10 R. The following laws are consumer financial laws within the meaning of California
11 Financial Code section 90003, subdivision (a)(2): the DCLA, the Rosenthal Fair Debt Collection
12 Practices Act (Rosenthal Act), the Fair Debt Collection Practices Act (FDCPA), and Regulation F,
13 implementing the FDCPA.

14 ***Applicable Law – Rosenthal Act (Cal. Civ. Code §§ 1788 – 1788.33)***

15 S. California Civil Code section 1788.2, subdivision (c) provides:

16 The term “debt collector” means any person who, in the ordinary course of
17 business, regularly, on behalf of that person or others, engages in debt
18 collection. The term includes any person who composes and sells, or
19 offers to compose and sell, forms, letters, and other collection media used
20 or intended to be used for debt collection.

21 T. California Civil Code section 1788.10, subdivision (e) provides:

22 No debt collector shall collect or attempt to collect a consumer debt by
23 means of the following conduct: . . . (e) The threat to any person that
24 nonpayment of the consumer debt may result in the arrest of the debtor or
25 the seizure, garnishment, attachment or sale of any property or the
26 garnishment or attachment of wages of the debtor, unless such action is in
27 fact contemplated by the debt collector and permitted by the law.

28 U. California Civil Code section 1788.13 provides in relevant part:

No debt collector shall collect or attempt to collect a consumer debt by
means of the following practices: . . . (e) The false representation that the
consumer debt may be increased by the addition of attorney’s fees,
investigation fees, service fees, finance charges, or other charges if, in
fact, such fees or charges may not legally be added to the existing

obligation . . . (j) The false representation that a legal proceeding has been, is about to be, or will be instituted unless payment of a consumer debt is made

V. California Civil Code section 1788.14 provides in relevant part:

No debt collector shall collect or attempt to collect a consumer debt by means of the following practices: . . . (d) Sending a written communication to a debtor in an attempt to collect a time-barred debt without providing the debtor with one of the following written notices:

(1) If the debt is not past the date for obsolescence set forth in Section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c), the following notice shall be included in the first written communication provided to the debtor after the debt has become time-barred:

“The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, [insert name of debt collector] may [continue to] report it to the credit reporting agencies as unpaid for as long as the law permits this reporting”

W. California Civil Code section 1788.17 provides in relevant part:

Notwithstanding any other provision of this title, every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code

Applicable Law – FDCPA (15 U.S.C. §§ 1692 – 1692p) (FDCPA) and Regulation F (12 C.F.R. part 1006)

X. 15 U.S.C. section 1692e provides in relevant part:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: . . .

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken . . .

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer

1 is oral, in that initial oral communication, that the debt collector is
2 attempting to collect a debt and that any information obtained will be used
3 for that purpose, and the failure to disclose in subsequent communications
4 that the communication is from a debt collector, except that this paragraph
5 shall not apply to a formal pleading made in connection with a legal action
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7 Y. 15 U.S.C. section 1692g provides in relevant part:

8 (a) Notice of debt; contents

9 Within five days after the initial communication with a consumer in
10 connection with the collection of any debt, a debt collector shall, unless
11 the following information is contained in the initial communication or the
12 consumer has paid the debt, send the consumer a written notice
13 containing--

- 14 (1) the amount of the debt;
- 15 (2) the name of the creditor to whom the debt is owed;
- 16 (3) a statement that unless the consumer, within thirty days after receipt of
17 the notice, disputes the validity of the debt, or any portion thereof, the debt
18 will be assumed to be valid by the debt collector;
- 19 (4) a statement that if the consumer notifies the debt collector in writing
20 within the thirty-day period that the debt, or any portion thereof, is
21 disputed, the debt collector will obtain verification of the debt or a copy of
22 a judgment against the consumer and a copy of such verification or
23 judgment will be mailed to the consumer by the debt collector; and
- 24 (5) a statement that, upon the consumer's written request within the thirty-
25 day period, the debt collector will provide the consumer with the name
26 and address of the original creditor, if different from the current creditor . .

27 Z. 12 C.F.R. part 1006.26(b) of Regulation F provides:

28 Legal actions and threats of legal actions prohibited. A debt collector
must not bring or threaten to bring a legal action against a consumer to
collect a time-barred debt. This paragraph (b) does not apply to proofs of
claim filed in connection with a bankruptcy proceeding.

Commissioner's Findings

AA. On or around June 10, 2022, Moss Westinghouse contacted at least one California
resident (Consumer) in an attempt to collect a consumer debt, as follows:

- a) The caller contacted the Consumer's employer and claimed to be "Moss and
Westinghouse," with a phone number of 877-799-2362, and gave a reference number, 399521;

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1 b) The caller identified himself as “Mark” and stated that the Consumer had a
2 \$300.00 Speedy Cash loan that was unpaid from 2013;

3 c) Mark stated that the debt was sent to their law offices for collection with the
4 goal of suing the Consumer to recoup what was purportedly owed;

5 d) Mark stated that the debt, including interest, totaled \$1,469.10, but if the
6 Consumer was willing to settle out of court by making a payment over the phone today, Moss
7 Westinghouse would take \$649.89;

8 e) When the Consumer requested documentation validating the purported debt,
9 Mark stated the Consumer could accept the offer of \$649.89 without documentation today, or he
10 could instead get served with legal paperwork and have to pay the full \$1,469.10 plus court costs and
11 attorneys’ fees;

12 f) When asked whether the purported debt was too old to sue on, Mark stated
13 that the statute of limitations does not apply because these were “hard money cash loans;”

14 g) Mark stated that they only take cases they are guaranteed to win, and it is
15 impossible for them to lose in court;

16 h) When the Consumer requested Moss Westinghouse’s website or address,
17 Mark refused to provide this information;

18 i) When the Consumer stated he wanted time to consider the offer by Moss
19 Westinghouse, Mark provided his direct phone number, (949) 561-3731;

20 j) The Consumer called the number Mark provided, (949) 561-3731, stating that
21 he was hesitant to provide his banking or credit card information over the phone without proof of the
22 debt; Mark responded that the Consumer would be sued in a few days and his wages would be
23 garnished.

24 BB. On or around September 1, 2022, the Consumer called the phone number provided by
25 Mark, (949) 561-3731, and was told by a person identifying himself as Ray Stewart that Mark was
26 “no longer with us.” After the Consumer provided the reference number, 399521, Ray Stewart
27 stated that the Consumer’s purported debt was \$1,469.10, payable by nine monthly payments of
28 \$163.23, or a “one-time settlement of \$649.89 for full payment.” Similar to what Mark stated on or

1 around June 10, 2022, Ray Stewart stated that the purported debt was a Speedy Cash loan originally
2 from September 16, 2013.

3 CC. Ray Stewart also stated:

4 We are a litigation firm, so what happens is a group of investors purchase
5 the account, they send out notices, whoever responds they resolve it,
6 whoever doesn't because it's under \$5,000 they go ahead and file a civil
7 case, which relinquishes them from hiring an attorney and you don't have
8 to hire an attorney because it is small claims. A representative will go
9 down prior to a judgment being placed which would be an additional fee
10 for the person representing the company.

11 DD. On or around November 1, 2022, the Consumer again called the phone number
12 provided by Mark, (949) 561-3731, and spoke with a person identifying himself as Jason. After the
13 Consumer provided the reference number, 399521, Jason stated, "Mr. Stewart is not available, but I
14 can help you with that." Jason stated that according to the Consumer's "file," the total balance was
15 \$1,469.10, but he could settle today for \$649.89, or set up a payment plan. Jason stated that the first
16 option is over a nine-month period paying \$163.23 per month, and the second option is over a six-
17 month period paying \$244.85 per month.

18 EE. When the Consumer stated he would make a one-time payment of \$649.89, Jason
19 stated he would receive an email from Bob Moss in about 30 minutes.

20 FF. On or around November 1, 2022, the Consumer received an email from
21 www.hellosign.com that stated, "Bob Moss (bxm@prodigy-pm.com) has requested a signature."
22 Clicking on a "Review & Sign" link, the Consumer received a document with the header, "Moss
23 Westinghouse & Associates, 4533 MacArthur Blvd., Suite 332, Newport Beach, CA 92660"
24 (Settlement Offer). The Settlement Offer stated that the original creditor was "Speedy Rapid Cash,"
25 the current creditor was "Moss Westinghouse & Associates," and the current balance was \$1,469.10.
26 The Settlement Offer further stated:

27 We would like to make the following Settlement Offer concerning this
28 account. We are authorized to accept the sum of \$649.89 as a compromise
in full on the above referenced account. To accept this offer and complete
this agreement, your payment(s) must post to your account on or before
the following dates. There will be a total of 1 payment. . . . Payment (\$) \$649.89 . . . Due Date 11/01/2022 . . . Upon full payment, and conclusion
of the settlement, we may notify credit reporting agencies that the debt is

1 paid in full . . . However, if the settlement amount is not received timely,
2 we reserve the right to withdraw the offer and the settlement agreement
3 will be considered as null and void and our client may then pursue the full
4 amount of the unpaid obligation. This is a one-time offer and is non-
5 negotiable.

6 ***Prodigy Portfolio Management (PPM)*** will appear on your bank
7 statement as our payment processor. You must sign and date the
8 agreement prior to the release of liability. Should you require additional
9 assistance regarding your file you may contact the undersigned
10 administrator.

11 Sincerely,
12 Jason Caruso
13 Legal Administrator
14 Contact (949) 354-6449

15 GG. The Settlement Offer sent to the Consumer by Moss Westinghouse and PPM failed to
16 state that they are a debt collector attempting to collect a debt and that any information obtained will
17 be used for that purpose, in violation of Civil Code section 1788.17 of the Rosenthal Fair Debt
18 Collections Practices Act (Rosenthal Act) (Cal. Civ. Code §§ 1788 – 1788.33), which incorporates
19 15 U.S.C. section 1692e(11) of the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. §§ 1692
20 – 1692p).

21 HH. Moss Westinghouse failed to provide at least one California resident with any written
22 notification that included the following information required pursuant to 15 U.S.C. section 1692g(a)
23 of the FDCPA within five days of its initial communication regarding the alleged debt, in violation
24 of California Civil Code section 1788.17: (1) the amount of the debt; (2) the name of the creditor to
25 whom the debt is owed; (3) a statement that unless the consumer, within thirty days after receipt of
26 the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be
27 valid by the debt collector; (4) a statement that if the consumer notifies the debt collector in writing
28 within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will
29 obtain verification of the debt or a copy of a judgment against the consumer and a copy of such
30 verification or judgment will be mailed to the consumer by the debt collector; and (5) a statement
31 that, upon the consumer’s written request within the thirty-day period, the debt collector will provide

1 the consumer with the name and address of the original creditor, if different from the current
2 creditor.

3 II. As of September 29, 2023, despite not signing the Settlement Offer, the Consumer
4 had not been sued “in a few days” from June 10, 2022, as threatened by Mark, indicating this was a
5 false representation that a legal proceeding has been, is about to be, or will be instituted unless
6 payment of a consumer debt is made, in violation of California Civil Code section 1788.13,
7 subdivision (j) of the Rosenthal Act and 15 U.S.C. section 1692e(5) of the FDCPA.

8 JJ. Moreover, Mark’s threat on or around June 10, 2022 that the Consumer’s wages
9 would be garnished for nonpayment of the consumer debt violated California Civil Code section
10 1788.10, subdivision (e) of the Rosenthal Act and 15 U.S.C. section 1692e(4) of the FDCPA.

11 KK. Based on the claim by Mark and Ray Stewart that the purported debt was a Speedy
12 Cash loan from on or around September 16, 2013, Moss Westinghouse’s failure to include the
13 required notice that the law limits how long the Consumer can be sued on a debt and because of the
14 age of the debt the debt collector will not sue the Consumer for it in their written communication to
15 the Consumer in an attempt to collect a time-barred debt the, violated California Civil Code section
16 1788.14, subdivision (d). Moreover, threatening to sue to collect a time-barred debt violated 12
17 C.F.R. part 1006.26(b) of Regulation F (12 C.F.R. part 1006), implementing the FDCPA.

18 LL. Mark’s claim on or around June 10, 2022, that the Consumer would be sued and have
19 to pay court costs and attorneys’ fees if the Consumer requested debt validation rather than accepting
20 the offer of \$649.89 without debt validation was a false representation in violation of California
21 Civil Code section 1788.13, subdivision (e).

22 MM. The false representations made by Mark on behalf of Moss Westinghouse were
23 material and likely to mislead a consumer acting reasonably under the circumstances, constituting
24 deceptive acts or practices, in violation of California Financial Code section 90003, subdivision
25 (a)(1).

26 NN. The DCLA, which became effective on January 1, 2021, requires persons engaged in
27 the business of debt collection in California to be licensed beginning on January 1, 2022, pursuant
28 to California Financial Code section 100001(a).

1 OO. The Commissioner has not issued a license to Moss Westinghouse or PPM,
2 authorizing either of them to engage in the business of debt collection under the DCLA.
3 Furthermore, neither Moss Westinghouse nor PPM has applied for a license under the DCLA.
4 Neither Moss Westinghouse nor PPM is exempt from the licensing requirements of California
5 Financial Code section 100001.

6 PP. In or around June 2022 through at least November 2022, despite lacking licensure or
7 a pending application, Moss Westinghouse and PPM engaged in the unlicensed business of debt
8 collection in this state by attempting to collect a debt from at least one California resident, in
9 violation of California Financial Code section 100001(a), by contacting a California resident via
10 telephone and/or email to collect on an alleged debt.

11 QQ. On or around October 23, 2023, the Commissioner issued a Desist and Refrain Order
12 and Order Assessing Penalties (Desist and Refrain Order) to Moss Westinghouse and PPM as
13 covered persons and/or service providers pursuant to California Financial Code section 90015(b),
14 (c), and (d)(1) for engaging in unlawful acts or practices, in violation of California Financial Code
15 section 90003(a)(1) and offering or providing to a consumer any financial product or service not in
16 conformity with any consumer financial law or otherwise committing any act or omission in
17 violation of a consumer financial law, in violation of California Financial Code section 90003(a)(2).
18 The Desist and Refrain Order is incorporated herein by this reference.

19 RR. On or around October 27, 2023, the Commissioner served the Desist and Refrain
20 Order upon PPM via email, regular U.S. mail, and certified mail at PPM’s business address and
21 bxm@prodigy-pm.com. On or around November 9, 2023, an officer of PPM acknowledged receipt
22 of the Desist and Refrain Order.

23 SS. The Commissioner finds that this Consent Order is appropriate, in the public interest,
24 and consistent with the purposes fairly intended by the policy and provisions of the CCFPL and
25 DCLA.

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

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II.

Terms and Conditions

1. Purpose. This Consent Order resolves the issues before the Commissioner, set forth in paragraphs A to SS, above, in a manner that avoids the expense of a hearing and other possible court proceedings, protects consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of the DCLA and CCFPL.

2. Finality of Consent Order. PPM agrees to comply with the terms and conditions of this Consent Order and stipulates that this Consent Order is hereby deemed final.

3. Finality of Desist and Refrain Order. Pursuant to California Financial Code section 90015, subdivision (d), PPM is hereby ordered to desist and refrain from engaging in the business of debt collection in this state without first obtaining a license, in violation of California Financial Code section 100001(a), and is ordered to desist and refrain from engaging in unlawful acts and practices with respect to consumer financial products or services in violation of the California Financial Code section 90003(a)(1). PPM is also hereby ordered to desist and refrain from offering or providing to a consumer any financial product or service not in conformity with the following consumer financial laws, in violation of California Financial Code section 90003(a)(2): California Financial Code section 100001(a), California Civil Code section 1788.17, and 15 U.S.C. section 1692(e)(11). This desist and refrain order is final and effective from the effective date of this Consent Order, as defined in paragraph 25 (Effective Date).

4. Waiver of Hearing Rights. PPM acknowledges that the Commissioner is ready, willing, and able to proceed with the filing of an enforcement action upon the charges contained in this Consent Order. PPM hereby waives the right to any hearings, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the DCLA, CCFPL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law. By waiving such rights, PPM effectively consents to this Consent Order, and the Desist and Refrain Order contained herein, becoming final.

5. Administrative Penalty. PPM shall pay an administrative penalty totaling \$7,500.00, which shall be made payable in the form of a cashier's checks or Automated Clearing House

1 deposits to the Department of Financial Protection and Innovation transmitted to the attention of
2 Accounting – Litigation, at the Department of Financial Protection and Innovation, 2102 Arena
3 Boulevard, Sacramento, California 95834, with notice of each payment shall be concurrently sent
4 via email to Sophia.Kim@dfpi.ca.gov, as follows:

- 5 (a) \$625.00 due on the Effective Date;
- 6 (b) \$625.00 by no later than May1, 2024;
- 7 (c) \$6250.00 by no later than June 3, 2024;
- 8 (d) \$625.00 by no later than July 1, 2024;
- 9 (e) \$625.00 by no later than August 1, 2024;
- 10 (f) \$625.00 by no later than September 3, 2024;
- 11 (g) \$6250.00 by no later than October 1, 2024;
- 12 (h) \$625.00 by no later than November 1, 2024;
- 13 (i) \$625.00 by no later than December 2, 2024;
- 14 (j) \$625.00 by no later than January 2, 2025;
- 15 (k) \$625.00 by no later than February 3, 2025;
- 16 (l) \$625.00 by no later than March 3, 2025;

17 6. Client / Consumer List. PPM agrees to submit to the Department concurrently with
18 any DCLA application a complete list of (1) clients, customers, or associates for whom PPM
19 collected any California consumer debts as a service provider, and (2) any California consumers
20 from whom PPM collected debts as a debt collector, for the period from January 1, 2021 to the
21 current date.

22 7. Failure to Comply with Consent Order. PPM agrees that, if it fails to comply with
23 the terms of this Consent Order, the Commissioner may avail herself of any remedies she has under
24 the DCLA, CCFPL, or any other provision of law, including but not limited to denial of any
25 pending application and suspension or revocation of any license or conditional license, until PPM is
26 in compliance. PPM waives any notice and hearing rights which may be afforded under the DCLA,
27 CCFPL, the California Administrative Procedure Act, the California Code of Civil Procedure, or
28 any other provision of law, that the Commissioner may use to ensure compliance with this Consent

1 Order.

2 8. Full and Final Settlement. The parties hereby acknowledge and agree that this
3 Consent Order is intended to constitute a full, final, and complete resolution of the findings
4 contained herein, and that no further proceedings or actions will be brought by the Commissioner in
5 connection with the findings under the DCLA, CCFPL or any other provision of law, excepting
6 therefrom any proceeding to enforce compliance with the terms of this Consent Order.

7 9. Effect Upon Future Proceedings. If PPM applies for any license, permit or
8 qualification under the Commissioner’s current or future jurisdiction, or is the subject of any future
9 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
10 admitted for the purpose of such application(s) or enforcement proceeding(s).

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

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

17 12. Commissioner’s Duties. Nothing in this Consent Order limits the Commissioner’s
18 ability to assist any other government agency with any action brought by that agency (city, county,
19 state or federal) with any prosecution, administrative, civil, and/or criminal brought by any such
20 agency against PPM, including an action based on any of the acts, omissions, or events described in
21 this Consent Order.

22 13. Independent Legal Advice. Each party represents that he or she has received
23 independent advice from its counsel or representatives regarding the advisability of executing this
24 Consent Order.

25 14. Reliance. Each of the parties represents, warrants, and agrees that in executing this
26 Consent Order he or she has relied solely on the statements set forth herein and the advice of his or
27 her own counsel. Each of the parties further represents, warrants, and agrees that in executing this
28 Consent Order he or she 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 15. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
7 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
8 parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
9 other provision. No waiver by either party of any breach of, or of compliance with, any condition
10 or provision of this Consent Order by the other party will be considered a waiver of any other
11 condition or provision or of the same condition or provision at another time.

12 16. 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 17. No Presumption Against Drafting Party. Each party acknowledges that he or she has
19 had the opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the
20 parties intend that no presumption for or against the drafting party will apply in construing any part
21 of this Consent Order. The parties waive the benefit of California Civil Code section 1654 as
22 amended or corresponding provisions of any successor statute, which provide that in cases of
23 uncertainty, language of a contract should be interpreted most strongly against the party that caused
24 the uncertainty to exist.

25 18. Headings. The headings in this Consent Order are for convenience only and will not
26 be deemed a part hereof or affect the construction or interpretation of the provisions hereof.

27 19. Governing Law. This Consent Order shall be construed and enforced in accordance
28 with and governed by California law. Each of the parties hereto consents to the jurisdiction of such

1 court in California, administrative or otherwise, best suited to handle any action or proceeding
2 under this Consent Order, and hereby irrevocably waives, to the fullest extent permitted by law, the
3 defense of an inconvenient forum to the maintenance of such action or proceeding in such court.

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

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

11 To PPM: Prodigy Portfolio Management
12 2082 Business Center Drive, Suite 243
13 Irvine, California 92612
Rserrato37@gmail.com

14 To the Commissioner: Sophia C. Kim, Senior Counsel
15 Department of Financial Protection and Innovation
16 320 West 4th Street, Suite 750
17 Los Angeles, California 90013
Sophia.Kim@dfpi.ca.gov

18 22. Counterparts. This Consent Order may be executed in any number of counterparts,
19 each of which will be deemed an original when executed. All counterparts together will be deemed
20 to constitute a single document.

21 23. Signatures. A signature delivered by facsimile or email will be deemed an original
22 signature.

23 24. Public Record. PPM acknowledges that this Consent Order is and will be a matter of
24 public record.

25 25. Effective Date. This Consent Order will become effective on the date it is signed by
26 all parties and delivered by the Commissioner to the PPM by electronic mail at
27 Rserrato37@gmail.com.

28 ///

1 26. Authority to Sign. Each signatory hereto covenants that he or she possesses all
2 necessary capacity and authority to sign and enter into this Consent Order and undertake the
3 obligations set forth herein.

4
5 Dated: April 3, 2024

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

7
8 By _____
9 MARY ANN SMITH
10 Deputy Commissioner
11 Enforcement Division

12
13 Dated: April 2, 2024

PRODIGY PORTFOLIO MANAGEMENT

14 By _____
15 ROBERT SERRATO
16 Owner/Manager