

1 **I.**

2 **Recitals**

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

4 ***Legal Background***

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

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

13 C. At all relevant times, SAFCO is and was a Florida limited liability company with a
14 principal place of business at 413 East Atlantic Boulevard, Pompano Beach, Florida 33060.

15 ***Applicable Law – DCLA***

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

18 E. The DCLA provides that “[t]he commissioner shall allow any debt collector that
19 submits an application before January 1, 2023, to operate pending the approval or denial of the
20 application.” (Cal. Fin. Code § 100000.5(a)).

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

23 G. “Consumer debt” or “consumer credit” is defined as “money, property, or their
24 equivalent, due or owing, or alleged to be due or owing, from a natural person by reason of a
25 consumer credit transaction. The term “consumer debt” includes “charged-off consumer debt” as
26 defined in Section 1788.50 of the Civil Code.” (Cal. Fin. Code § 100002(f)).

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

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

6 ***Applicable Law – CCFPL***

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

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

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

18 M. Under California Financial Code section 90015(d), if, in the opinion of the
19 Commissioner, any person engages, has engaged, or proposes to engage in any activity prohibited by
20 section 90003 or 90004, the Commissioner “may issue an order directing the person to desist and
21 refrain from engaging in the activity, act, practice, or course of business.” (Cal. Fin. Code §
22 90015(d)).

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

27 ***Commissioner’s Findings***

28 O. SAFCO is a debt collector within the meaning of California Financial Code section

1 100002(j) of the DCLA, defining “debt collector” as any person who, in the ordinary course of
2 business, regularly, on the person’s own behalf or on behalf of others, engages in debt collection.

3 P. On or around December 5, 2022, SAFCO filed an application for a debt collection
4 license pursuant to Cal. Fin. Code § 100001(a) (Application). As of November 28, 2023, due to
5 SAFCO’s failure to submit requested documents, the Application was deemed abandoned by the
6 Department.

7 Q. On or about April 26, 2024, SAFCO re-filed its application for a debt collection
8 license pursuant to Cal. Fin. Code § 100001(a) (Application 2). As of August 28, 2024,
9 Application 2 is still pending.

10 R. During review of Application 2, SAFCO disclosed to the Department that from at
11 least November 28, 2023 to the present date SAFCO was engaging in debt collection activity
12 without a DCLA license, in violation of California Financial Code section 100001(a).

13 S. SAFCO neither admits nor denies any of the findings contained in this Consent
14 Order.

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

17 **II.**

18 **Terms and Conditions**

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

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

25 3. Desist and Refrain Order. Pursuant to California Financial Code section 90015(d),
26 SAFCO is hereby ordered to desist and refrain from engaging in the business of debt collection in
27 this state without first obtaining a license in violation of California Financial Code section
28 100001(a). This desist and refrain order is final and effective from the effective date of this

1 Consent Order, as defined in Paragraph 27 (Effective Date).

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

9 5. Administrative Penalty. SAFCO shall pay an administrative penalty of \$95,000.00
10 to the Commissioner (Penalty). The Penalty shall be paid no later than two business days after the
11 Effective Date and should be made payable in the form of a cashier’s check or Automated Clearing
12 House deposit to the Department of Financial Protection and Innovation transmitted to the attention
13 of Accounting – Litigation, at the Department of Financial Protection and Innovation, 2102 Arena
14 Boulevard, Sacramento, California 95834. Notice of the payment shall be concurrently sent via
15 email to Nami.Kang@dfpi.ca.gov.

16 6. Consideration. In consideration of SAFCO’s execution of this Consent Order, the
17 Commissioner agrees to approve SAFCO’s pending DCLA application within 5 business days of
18 SAFCO’s compliance with Paragraph 5 above.

19 7. 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
21 contained herein, and that no further proceedings or actions will be brought by the Commissioner in
22 connection with the findings under the DCLA, CCFPL or any other provision of law, excepting
23 therefrom any proceeding to enforce compliance with the terms of this Consent Order.

24 8. Failure to Comply with Consent Order. SAFCO agrees that, if it fails to comply
25 with the terms of this Consent Order, the Commissioner may avail herself of any remedies she has
26 under the DCLA, CCFPL, or any other provision of law, until SAFCO is in compliance. SAFCO
27 waives any notice and hearing rights which may be afforded under the DCLA, CCFPL, the
28 California Administrative Procedure Act, the California Code of Civil Procedure, or any other

1 provision of law, that the Commissioner may use to ensure compliance with this Consent Order.

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

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

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

13 12. Information Willfully Withheld or Misrepresented. Notwithstanding paragraph 15
14 below (Reliance), this Consent Order may be revoked by the Commissioner, and the Commissioner
15 may pursue any and all remedies available under the law against SAFCO, if the Commissioner
16 discovers that SAFCO knowingly, or willfully withheld or misrepresented material information.

17 13. 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 SAFCO, including an action based on any of the acts, omissions, or events
21 described in this Consent Order.

22 14. 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 15. 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 16. 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 17. Effect Upon Future Proceedings. If SAFCO applies for any license, permit or
13 qualification under the Commissioner’s current or future jurisdiction, or are the subject of any
14 future action by the Commissioner to enforce this Consent Order, then the subject matter hereof
15 shall be admitted for the purpose of such application(s) or enforcement proceedings(s).

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

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

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

3 21. Governing Law. This Consent Order shall be construed and enforced in accordance
4 with and governed by California law. Each of the parties hereto consents to the jurisdiction of such
5 court in California, administrative or otherwise, best suited to handle any action or proceeding
6 under this Consent Order, and hereby irrevocably waives, to the fullest extent permitted by law, the
7 defense of an inconvenient forum to the maintenance of such action or proceeding in such court.

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

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

15 To SAFCO: Scott Hyman, Partner
16 Womble Bond Dickinson LLP
17 400 Spectrum Center Drive, Suite 1700
18 Irvine, California 92618
19 Scott.Hyman@wbd-us.com

20 To the Commissioner: Nami R. Kang, Senior Counsel
21 Department of Financial Protection and Innovation
22 320 West 4th Street, Suite 750
23 Los Angeles, California 90013
24 Nami.Kang@dfpi.ca.gov

25 24. Counterparts. This Consent Order may be executed in any number of counterparts,
26 each of which will be deemed an original when executed. All counterparts together will be deemed
27 to constitute a single document.

28 25. Signatures. A signature delivered by facsimile or email will be deemed an original
signature.

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

1 27. Effective Date. This Consent Order will become effective on the date it is signed by
2 all parties and delivered by the Commissioner to SAFCO by electronic mail at Scott.Hyman@wbd-
3 us.com.

4 28. Authority to Sign. Each signatory hereto covenants that he or she possesses all
5 necessary capacity and authority to sign and enter into this Consent Order and undertake the
6 obligations set forth herein.

7
8 Dated: September 3, 2024

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

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10
11 By _____
12 MARY ANN SMITH
13 Deputy Commissioner
14 Enforcement Division

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16 Dated: September 3, 2024

SOUTHERN AUTO FINANCE COMPANY, LLC

17 By _____
18 JASON PERSON
19 Chief Financial Officer
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