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9
10 **BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT**
11 **OF THE STATE OF CALIFORNIA**

12 In the Matter of the Accusation of THE) File No.: 603-8780; 603-H991; 603-J333; 603-
13 COMMISSIONER OF BUSINESS) J386; 603-J514; and 603-J823
14 OVERSIGHT,)
15 Complainant,) SETTLEMENT AGREEMENT
16 vs.)
17 CASHCALL, INC.,)
18 Respondent.)
19

20 This Settlement Agreement is entered into between Respondent CashCall, Inc. (“CashCall”)
21 and Complainant the Commissioner of Business Oversight (“Commissioner”), and is made with
22 respect to the following facts:

23 **RECITALS**

24 A. CashCall is a corporation in good standing, duly formed and existing pursuant to the
25 laws of the State of California, and authorized to conduct business in the State of California.

26 B. CashCall is a finance lender licensed by the Commissioner pursuant to the Finance
27 Lenders Law (Financial Code §22000 et seq.) (“FLL”). CashCall currently holds six licenses issued
28 under the FLL. CashCall has its principal place of business located at One City Boulevard, Suite

1 1000, Orange, California 92868.

2 C. The Department of Business Oversight (“Department”), through the Commissioner,
3 has jurisdiction over the licensing and regulation of persons and entities engaged in the business of
4 lending and/or brokering pursuant to the FLL.

5 D. Pursuant to the FLL, the Commissioner has authority to issue orders to desist and
6 refrain from violations of the FLL, to deny, suspend, or revoke licenses pending or issued under the
7 FLL, and to assess penalties.

8 E. On June 4, 2014, CashCall was personally served by the Commissioner with a Notice
9 of Intention to Issue Order Suspending Finance Lender Licenses, Accusation and accompanying
10 documents dated June 4, 2014 (“Accusation”). CashCall has filed a Notice of Defense with the
11 Commissioner on the above-referenced matter. A hearing on the Accusation is currently scheduled
12 for July 13 through July 29, 2015 at the Los Angeles Office of Administrative Hearings.

13 F. It is the intention and desire of the parties to resolve this matter without the necessity
14 of a hearing and/or other litigation.

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

17 **TERMS AND CONDITIONS**

18 1. This Settlement Agreement is entered into for the purpose of judicial economy and
19 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

20 2. CashCall, by entering into this Settlement Agreement, does not admit or deny any of
21 the allegations set forth in the Accusation.

22 3. CashCall hereby agrees to the immediate issuance by the Commissioner of an order
23 requiring CashCall to desist and refrain from violating Financial Code sections 22108, 22159(b),
24 22161(a) and (b), 22170(a) and (b), and 22701 and California Code of Regulations, title 10, section
25 1409.1 (the “Stipulated Desist and Refrain Order”). A copy of the Stipulated Desist and Refrain
26 Order is attached and incorporated herein as Exhibit A.

27 4. CashCall acknowledges its right to an administrative hearing under Financial Code
28 sections 22712 and 22714 in connection with the Accusation and/or the Stipulated Desist and

1 Refrain Order and hereby waives that right to a hearing, and to any reconsideration, appeal, or other
2 rights which may be afforded pursuant to the FLL, the California Administrative Procedure Act, the
3 California Code of Civil Procedure, or any other provision of law in connection with this matter
4 herein.

5 5. Commencing thirty (30) days from the date of execution of this Settlement
6 Agreement, CashCall shall comply with the following provisions (as used in the following and all
7 other provisions of this Settlement Agreement, the term “Loan” shall mean and be limited to a loan
8 offered and/or originated by CashCall for personal, family or household purposes to a California
9 consumer, but not including automobile or mortgage loans):

10 (a) In a clear and conspicuous manner, CashCall shall include the statement
11 “Minimum loan amount is \$2,600” or similar language in any advertisement marketing Loans to
12 California consumers. For purposes of this disclosure “clear and conspicuous” means that the
13 statement “minimum loan amount is \$2,600” or similar language (a) for visual text advertisements
14 on the Internet or television is not obscured by techniques such as graphical displays, shading,
15 coloration, or other devices; (b) for visual text advertisements on television is displayed in a manner
16 that allows a consumer to read the information required to be disclosed; and (c) for oral
17 advertisements whether by radio, television, or other medium, is given at a speed and volume
18 sufficient for a consumer to hear and comprehend the disclosure. For examples, very fine print in a
19 television advertisement would not meet the clear and conspicuous standard if consumers cannot see
20 and read the information required to be disclosed. Likewise, information stated very rapidly or at a
21 low volume in a radio or television advertisement would not meet the clear and conspicuous
22 standard if consumers cannot hear and comprehend the information required to be disclosed.

23 (b) If a California consumer contacts CashCall inquiring about and/or applying for a
24 Loan and states at any point that he or she is interested in or desires to borrow an amount less than
25 \$2,600, CashCall shall make a statement substantially similar to the following: “CashCall does not
26 make loans of less than \$2,600. California law caps interest rates on loans of less than \$2,500 at or
27 about 30%, which is a lower interest rate than CashCall offers on its own loans. If you want a loan of
28 less than \$2,600, you should consider whether another lender may offer such a loan to you” and shall

1 not include a statement regarding the ability to prepay as part of the foregoing statement. This
2 provision shall not otherwise preclude CashCall from advising the consumer about its prepayment
3 policy in connection with the Loan, so long as that advisement is not made in response to a question
4 about whether CashCall makes Loans of less than \$2,600 or in response to the consumer stating that
5 they are interested in or desire to borrow an amount less than \$2,600.

6 (c) CashCall shall apply a prepayment¹ received from a borrower first to any
7 outstanding fees and charges and then to interest that may have accrued on that borrower's Loan as
8 of the date of the prepayment and then to reduce the principal balance. The remainder of any
9 prepayment shall be applied to reduce the borrower's principal balance. In addition, even if a
10 prepayment is made, CashCall shall collect the first regularly scheduled payment when due under
11 the applicable promissory note, unless the borrower explicitly requests that CashCall apply the
12 borrower's prepayment towards all or part of the borrower's the first regularly scheduled payment
13 under the applicable promissory note. CashCall shall also make to the borrower at the time the
14 borrower authorizes a prepayment (unless the borrower explicitly requests that CashCall apply the
15 borrower's prepayment towards the first regularly scheduled payment and the prepayment would
16 satisfy that payment in full) a verbal or recorded statement substantially similar to the following:
17 "Your first regularly scheduled payment will still occur on the date as scheduled. Because you are
18 making a prepayment, the amount of your first regularly scheduled payment may be less than the
19 amount reflected in your promissory note."

20 (d) CashCall shall credit any prepayment made within thirty (30) days of the date on
21 which the Loan is funded as of the date on which the borrower authorizes CashCall to withdraw that
22 prepayment from the borrower's bank account, provided that the borrower has sufficient funds in his
23 or her account when the prepayment is actually withdrawn. In the event a borrower authorizes
24 CashCall to make a prepayment on a Loan on a future date, CashCall will credit the prepayment on
25 that future date, provided the borrower has sufficient funds in the account when the prepayment
26 actually is withdrawn.

27
28 _____
¹ For purposes of this Settlement Agreement, any payment received from a borrower prior to the borrower's first scheduled payment is referred to as a "prepayment".

1 6. If necessary, CashCall shall modify the promissory notes and any other related
2 agreements it enters into with California consumers with respect to Loans to reflect the requirements
3 of paragraph 5 above.

4 7. CashCall shall conduct an audit, by and through an independent certified public
5 accountant, of all non-mortgage related loans to California borrowers that were funded between
6 January 1, 2008 and August 31, 2014. The audit is to identify all Loans in which: (1) a prepayment
7 was authorized by the borrower within fourteen (14) calendar days of the date on which the Loan
8 was funded; (2) the borrower had sufficient funds to make the prepayment when withdrawn; and (3)
9 following the prepayment, CashCall skipped one or more of the first three (3) monthly payments that
10 were scheduled under the applicable promissory note. Such Loans shall be referred to herein as the
11 “Skipped Payment Loans(s).”

12 8. CashCall, by and through its independent certified public accountant, shall submit a
13 report of the audit (“audit report”) to the Commissioner within 90 days of the date of execution of
14 this Settlement Agreement. For each Skipped Payment Loan, the audit report shall include the
15 borrower’s loan number, name, address, loan amount, funding date, prepayment authorization date,
16 and the date(s) of the scheduled payment(s) that were not withdrawn.

17 9. CashCall shall pay the sum of \$125 to the borrower of each Skipped Payment Loan
18 identified in the audit report. CashCall understands that this may entail one or more payments of
19 \$125 to the same person if a borrower had more than one Skipped Payment Loan during the relevant
20 period. CashCall shall submit evidence of such payment to the Commissioner simultaneously with
21 the audit report, which evidence shall include a copy of the refund checks, loan balances, and/or
22 advisements of outstanding balance reductions to assignees and borrowers of charged-off Loans
23 assigned to outside collections, as applicable, to each Skipped Payment Loan.

24 10. The payments required under paragraph 9 above shall be made by (a) reducing the
25 principal balance of current borrowers who have an outstanding balance in excess of \$125; (b)
26 reducing the principal balance of current borrowers who have an outstanding balance of less than
27 \$125 and mailing a check for the remaining amount to the borrower; (c) mailing a check for \$125 to
28 former borrowers who have repaid their Skipped Payment Loan in full and do not have an

1 outstanding balance on another loan from Cashcall; or (d) reducing the charged-off balance for
2 borrowers whose Skipped Payment Loans were charged-off. As to charged-off Skipped Payment
3 Loans, CashCall shall apply the reduction directly to any Skipped Payment Loans it retained for
4 collection and advise the assignee of the reduced outstanding balance for those assigned for
5 collection. CashCall shall also advise each borrower of a charged-off Skipped Payment Loan that
6 has been assigned for collection of the reduction in outstanding balance by sending notice
7 electronically to the last known e-mail address of such borrowers in CashCall’s records or, if a
8 borrower has opted out of receiving electronic communications from CashCall, by sending notice by
9 U.S. mail to the last known postal mail address of such a borrower in CashCall’s records.

10 11. It is agreed, and CashCall acknowledges and understands, that the Commissioner will
11 examine and review the audit process and the audit results to ensure their accuracy.

12 12. CashCall shall escheat all checks that are not cashed to the California State
13 Controller’s Office within the time period provided by and in accordance with the requirements of
14 the Unclaimed Property Act; Code of Civil Procedure, section 1500 et seq.

15 13. CashCall shall pay to the Commissioner the sum of \$800,000.00 as and for her legal,
16 investigative and clerical costs, and \$200,000 as administrative penalties, for a total of
17 \$1,000,000.00. The sum of \$600,000.00 is due and payable within sixty (60) calendar days of the
18 date of execution of this Settlement Agreement. The remaining \$400,000 is due and payable within
19 ninety (90) calendar days of execution of this Settlement Agreement. The payments shall be made
20 by certified checks payable to the Department of Business Oversight and shall be sent to the
21 Department, attention Judy L. Hartley, Senior Corporations Counsel, 320 W. 4th Street, Los Angeles,
22 California 90403.

23 14. The payments required by this Settlement Agreement are not dischargeable in
24 bankruptcy.

25 15. CashCall agrees that failure to comply with any of the provisions set forth in this
26 Settlement Agreement shall constitute grounds for disciplinary action under the FLL. If CashCall
27 fails to comply with any of the provisions set forth in paragraphs 7, 8, 9, 10 and 13 above and five
28 (5) days following the issuance of a written notice of demand, the Commissioner may, in addition to

1 all other available remedies under the FLL, summarily suspend the finance lender license(s) of
2 CashCall until such time as CashCall comes into full compliance. CashCall hereby waives any
3 notice and hearing rights to contest such summary suspension which may be afforded under the FLL,
4 the California Administrative Procedure Act, the California Code of Civil Procedure, or any other
5 provision of law in connection therewith.

6 16. Except as set forth in paragraph 15 above, in consideration of CashCall’s agreement
7 to the issuance of a desist and refrain order, payment of costs and penalties, and other relief as
8 provided for herein, the Commissioner hereby agrees that she shall not suspend the finance lender
9 licenses of CashCall as a result of this action. Accordingly, this Settlement Agreement does not
10 affect the licensing status of CashCall set forth in paragraph B of the above Recitals. In addition, the
11 Commissioner hereby agrees that the Department’s 2010 examination of CashCall is complete.

12 17. The provisions of paragraph 16 above shall become null and void and the
13 Commissioner may pursue any and all remedies available under law against CashCall, if the
14 Commissioner later learns that CashCall knowingly withheld information used and relied upon in
15 this Settlement Agreement.

16 18. This Settlement Agreement is binding on all heirs, assigns and/or successors in
17 interest.

18 19. This Settlement Agreement does not create any private rights or remedies against
19 CashCall or its shareholders, directors, officers or employees (collectively, “CashCall Parties”),
20 create any liability for CashCall Parties or limit defenses of CashCall Parties for any person or entity
21 not a party to this Settlement Agreement.

22 20. The parties hereby acknowledge and agree that this Settlement Agreement is intended
23 to constitute a full, final and complete resolution of this matter, including any claim that was raised
24 in the examination that led to this matter, excepting therefrom any claim if such claim is based upon
25 facts not presently known to the Commissioner and which knowingly withheld from the
26 Commissioner by CashCall. The parties further acknowledge and agree that nothing contained in
27 this Settlement Agreement shall operate to limit the Commissioner's ability to assist any other
28 agency, (city, county, state or federal) with any prosecution, administrative, civil or criminal,

1 brought by any such agency against CashCall or any other person based upon any of the activities
2 alleged in this matter or otherwise.

3 20. Each of the parties represents, warrants, and agrees that it has received independent
4 advice from its attorney(s) and/or representatives with respect to the advisability of executing this
5 Settlement Agreement.

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

16 22. This Settlement Agreement is the final written expression and the complete and
17 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 23. In that the parties have had the opportunity to draft, review and edit the language of
23 this Settlement Agreement, no presumption for or against any party arising out of drafting all or any
24 part of this Settlement Agreement will be applied in any action relating to, connected, to, or
25 involving this Settlement Agreement. Accordingly, the parties waive the benefit of California Civil
26 Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,
27 language of a contract should be interpreted most strongly against the party who caused the
28 uncertainty to exist.

1 24. This Settlement Agreement shall not become effective until signed and delivered by
2 all parties.

3 25. This Settlement Agreement may be executed in one or more counterparts, each of
4 which shall be an original but all of which, together, shall be deemed to constitute a single
5 document. This Settlement Agreement may be executed by facsimile signature, and any such
6 facsimile signature by any party hereto shall be deemed to be an original signature and shall be
7 binding on such party to the same extent as if such facsimile signature were an original signature.

8 26. Any notice required under this Settlement Agreement shall be addressed as follows:

9 To CashCall: Brad W. Seiling, Esq.
10 Manatt, Phelps & Phillips, LLP
11 11355 West Olympic Blvd.
12 Los Angeles, California 90064-1614

13 To the Commissioner: Judy L. Hartley, Esq.
14 Senior Corporations Counsel
15 Department of Business Oversight
16 320 W. 4th Street, Suite 750
17 Los Angeles, California 90013-2344

18 27. Each signatory hereto covenants that he/she possesses all necessary capacity and
19 authority to sign and enter into this Settlement Agreement.

20 Dated: February 5, 2015 JAN LYNN OWEN
21 Commissioner of Business Oversight

22 By _____
23 MARY ANN SMITH
24 Deputy Commissioner

25 Dated: _____ CASHCALL, INC.
26 By _____
27 J. PAUL REDDAM, President
28

1 APPROVED AS TO FORM:
2 MANATT, PHELPS & PHILLIPS, LLP

3
4 By _____
5 BRAD W. SEILING, ESQ. Attorney for
6 CASHCALL, INC.

7 JAN LYNN OWEN
8 Commissioner of Business Oversight

9 By _____
10 JUDY L. HARTLEY
11 Senior Corporations Counsel

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