

# **TEMPLATE FOR CONSENT ORDER AND STIPULATION**

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**STIPULATION AND CONSENT.....1**

**COLOR CODE:**

**BLACK** text signifies default provisions. As a general matter, these provisions should be included in all orders, as drafted.

**BLUE** text signifies provisions that will apply in only certain orders. As a general matter, if you include these provisions, they should be included as drafted.

**RED** text signifies provisions you should consider for individuals and closely-held entities.

**PURPLE** text aims to provide an illustrative example.

**UNITED STATES OF AMERICA**  
**BUREAU OF CONSUMER FINANCIAL PROTECTION**

ADMINISTRATIVE PROCEEDING

File No. Year-BCFP-

In the Matter of:

**CONSENT ORDER**

**[FULL LEGAL NAME OF  
RESPONDENT]**

The Bureau of Consumer Financial Protection (Bureau) has reviewed [relevant activities] of [Full legal name of Respondent] (Respondent, as defined below) and has identified the following law violations: [describe violations]. Under Sections 1053 and 1055 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

**Comment [RL{}]**: Include dbas as: “, also doing business as [insert names].

**Comment [RL{}]**: This paragraph should generally describe the practices that Staff investigated and Staff’s findings, including nature of violation and citation to laws violated.

## I Overview

**Comment [RL()]:** If the introductory paragraph above is not sufficient to provide a short, plain-language summary of the law violations and settlement, include it here.

## II Jurisdiction

**Comment [SL()]:** Paragraphs must be numbered sequentially

1. The Bureau has jurisdiction over this matter under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565 [identify other enumerated laws that give us jurisdiction, e.g., FCRA].

(b)(5); (b)(7)(E)

## III Stipulation

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated [ ] (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order by the Bureau under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565.†, [without admitting or denying any of the findings of fact or conclusions of law, except that] Respondent admits the facts necessary to establish the Bureau’s jurisdiction over Respondent and the subject matter of this action.

## IV Definitions

DEFAULT AS APPROPRIATE FOR INDIVIDUALS/CLOSELY HELD ILLUSTRATION

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3. The following **definitions** apply to this Consent Order:

- a. “Affected Consumers” includes [define the group of consumers eligible for redress and include the timeframe that the applicable violations cover, which should correspond to the timeframe in the Findings Section].
- b. “Board” means Respondent’s duly-elected and acting Board of Directors.
- c. “Clearly and prominently” means:
  - i. In textual communications (e.g., printed publications or words displayed on the screen of an electronic device), the disclosure must be of a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background on which it appears;
  - ii. In communications disseminated orally or through audible means (e.g., radio or streaming audio), the disclosure must be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it;
  - iii. In communications disseminated through video means (e.g., television or streaming video), the disclosure must be in writing in a form consistent with subsection (i), and must appear on the

**Comment [RL(]:** List the defined terms in alphabetical order. To avoid creating loopholes or ambiguity, do not define words that have a contextual or common meaning. To facilitate enforceability, avoid incorporating by reference any other document, other than the stipulation. Where possible, restate the definition from a statute rather than incorporating it by reference. Define only the terms that you use in the order.

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{ screen for a duration sufficient for an ordinary consumer to read and comprehend it;

- iv. In communications made through interactive media such as the internet, online services, and software, the disclosure must be unavoidable and presented in a form consistent with subsection (i);
- v. In communications that contain both audio and visual portions, the disclosure must be presented simultaneously in both the audio and visual portions of the communication; and
- vi. In all instances, the disclosure must be presented before the consumer incurs any financial obligation, in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication with the consumer.

**Comment [SL()]:** Only include the subsections that are addressed in the order.

- d. “Effective Date” means the date on which the Consent Order is issued.
- e. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Bureau of Consumer Financial Protection, or his or/ her delegate.
- f. “Regional Director” means the Regional Director for the [West/East/Midwest/ Southeast] Region for the Office of Supervision for the Bureau of Consumer Financial Protection, or his or/ her delegate.

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- g. “Related Consumer Action” means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Respondent based on substantially the same facts as described in Section \_\_\_ of this Consent Order.
- h. “Relevant Period” includes the period from [x date] to [y date].
- i. “Respondent” means [full legal name of Respondent], [including [list all d/b/a’s or fictitious business names associated with the legal entity]], and its successors and assigns.

(b)(5); (b)(7)(E)

**DEFAULT AS APPROPRIATE FOR INDIVIDUALS/CLOSELY HELD ILLUSTRATION**



**V**

**Bureau Findings and Conclusions**

The Bureau finds the following:

4. Respondent is a national bank headquartered in City, State. As of Month 1, 2013, Respondent had \$x billion in total assets.
5. Respondent is an [insured depository institution with assets greater than \$10,000,000,000 within the meaning of 12 U.S.C. § 5515(a)] [insured credit union with assets greater than \$10,000,000,000 within the meaning of 12 U.S.C. § 5515(a)] [affiliate of [(1) or (2)]].
6. Respondent is a “covered person” [or “service provider”] as that term is defined by 12 U.S.C. § 5481(6) [or § 5481(26)].
7. Beginning in early 2012, Respondent began to market and sell Products A, B, and C to Cardholders.
8. During the Relevant Period, Respondent marketed Products A and B through outbound and inbound telemarketing.
9. Respondent employed telemarketers to market Products A and B to Cardholders, and required them to adhere to a telemarketing script that Respondent developed.

**Comment [RL]:** We are required to include Findings of Fact under 12 CFR Section 1081.200(d)(b)(2) and Conclusions of Law under 12 CFR Section 1081.200(d)(b)(2). The Findings of Fact and Conclusions of Law should be presented in a single Section. The Section should first identify the legal basis for jurisdiction. It should then describe, on a claim-by-claim basis, the material facts that establish each violation of law followed by the legal conclusion.

(b)(5); (b)(7)(E)

**Comment [RL]:** We are required to include Findings of Fact under 12 CFR Section 1081.200(d)(b)(2) and Conclusions of Law under 12 CFR Section 1081.200(d)(b)(2). The Findings of Fact and Conclusions of Law should be presented in a single Section. The Section should first identify the legal basis for jurisdiction. It should then describe, on a claim-by-claim basis, the material facts that establish each violation of law followed by the legal conclusion.

(b)(5); (b)(7)(E)

**DEFAULT AS APPROPRIATE FOR INDIVIDUALS/CLOSELY HELD ILLUSTRATION**

**Findings and Conclusions as to Misrepresentation re Product A**

10. The telemarketing script described Product A as a “free benefit” available to existing Cardholders.
11. But Cardholders who agreed to enroll in Product A were charged \$10 each month.
12. During the Relevant Period, Respondent sold Product A to x Cardholders, and generated \$2,000,000 in revenues through the sale of Product A.
13. Section 1036(a)(1)(B) of the CFPA prohibits “unfair, deceptive, or abusive” acts or practices. 12 U.S.C. § 5536(a)(1)(B).
14. As described in Paragraphs [paragraph numbers describing misrepresentations relevant to this law violation], in connection with the advertising, marketing, promoting, offering for sale, or sale of [Product A], in numerous instances, Respondent has represented, expressly or impliedly, that [state deceptive claim at issue, e.g., “Product A is free”].
15. In fact, [state the converse of the deceptive claim, e.g., “Product A is not free”].

Thus, Respondent’s representations, as described in Paragraph \_\_[the paragraph stating the misrepresentation (2 paragraphs up)] constitute deceptive acts or practices in violation of sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).]

**DEFAULT AS APPROPRIATE FOR INDIVIDUALS/CLOSELY HELD ILLUSTRATION**

(b)(5); (b)(7)(E)

**Findings and Conclusions as to [Deceptive Omission re Product B]**

16. The telemarketing script stated that Cardholders who enrolled in Product B would receive, among other benefits, a refund of ATM fees incurred at non-XYZ Bank ATMs.
17. But Cardholders who enrolled in Product B received refunds of ATM fees incurred at non-Respondent ATMs for only the first two non-XYZ Bank ATM transactions per month.
18. During the Relevant Period, Respondent sold Product B to x Cardholders, and generated \$2,000,000 in revenues through the sale of Product B.]
19. Section 1036(a)(1)(B) of the CFPA prohibits “unfair, deceptive, or abusive” acts or practices. 12 U.S.C. § 5536(a)(1)(B).
20. As described in Paragraphs [paragraph numbers describing misrepresentations relevant to this law violation], in connection with the advertising, marketing, promoting, offering for sale, or sale of [Product B], in numerous instances, Respondent has represented, expressly or impliedly, that [state the predicate deceptive claim or half-truth, e.g., “Cardholders who enrolled in Product B would receive a refund of ATM fees incurred at non-XYZ Bank ATMs”]. Respondents failed to disclose or disclose adequately that [state the omission that renders the predicate claim deceptive, e.g., “Cardholders who enrolled in Product B would receive

refunds of ATM fees incurred at non-XYZ Bank ATMs for only the first two non-XYZ Bank ATM transactions per month.”] Respondent’s failure to disclose this fact, in light of the representation made, was, and is, a deceptive act or practice.

21. Therefore, Respondent engaged in deceptive acts or practices in violation of sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).]

**Findings and Conclusions as to [Unfair Practice re Product C]**

22. If a Cardholder agreed to enroll in either Product A or Product B, Respondent also enrolled the Cardholder in Product C, which cost Cardholders \$25 per month. The telemarketing script did not mention Product C. The Cardholders’ first opportunity to learn that they had been enrolled in Product C was after they had incurred the first monthly fee. Numerous consumers failed to notice this fee.
23. During the Relevant Period, Respondent enrolled x Cardholders in Product C, and generated \$5,000,000 in revenues through the sale of Product C.
24. Section 1036(a)(1)(B) of the CFPA prohibits “unfair, deceptive, or abusive” acts or practices.” 12 U.S.C. § 5536(a)(1)(B). An act or practice is unfair if it causes or is likely to cause consumers substantial injury that

is not reasonably avoidable and if the substantial injury is not outweighed by countervailing benefits to consumers or to competition.

25. Respondent's [summarize unfair practices at issue, e.g., "practice of enrolling in Product C all Cardholders who agreed to enroll in either Product A or Product B, without first notifying the Cardholders that they also would be enrolled in Product C or that Product C would cost \$25 per month"] [or refer to the paragraphs that describe the unfair practices, e.g., the acts and practices described in Paragraphs \_\_\_\_] caused substantial injury to consumers that was not reasonably avoidable or outweighed by any countervailing benefit to consumers or to competition.
26. Thus, Respondent engaged in unfair acts and practices in violation of sections 1036(a)(1)(B) and 1031(c)(1) of the CFPA. 12 U.S.C. §§ 5536(a)(1)(B) and 5531(c)(1).

**Findings and Conclusions as to [Next Violation, e.g. of Enumerated Statute]**

27. ...[Fact findings regarding next violation]
28. ...
29. ...
30. ...[Legal conclusion regarding next violation]
31. ...

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**ORDER**  
**VI**  
**Conduct Provisions**

**IT IS ORDERED**, under sections 1053 and 1055 of the CFPA, that:

32. [Respondent] and its [officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly], may not violate [insert specific section of statute or regulation found to have been violated, e.g., “sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531 and 5536,” or Order found to have been violated], as follows [and must take the following affirmative actions]:

a. *{For cases warranting a ban on participating in an industry or line of business, e.g., debt-relief or credit-card add-ons: Respondent, whether acting directly or indirectly, is permanently restrained from:*

- i. Advertising, marketing, promoting, offering for sale, selling, or assisting in the sale of [Debt-Relief Services]; or
- ii. Receiving any remuneration or other consideration from, holding any ownership interest in, providing services to, or working in any capacity for any person engaged in or assisting in advertising, marketing, promoting, offering for sale, or selling [Debt-Relief Services];

Nothing in this Consent Order shall be read as an exception to this Paragraph.

**Comment [RL(]:** The introductory paragraph below should detail the specific provision/s of law that are at issue. Following that paragraph, set out the specific conduct prohibitions or requirements that address each law violation.

(b)(5); (b)(7)(E)

Depending on how many requirements the order will have, you may want to include subheadings.

(b)(5); (b)(7)(E)

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CAUTION! These materials may be subject to one or more of the following privileges: Attorney-Client, Work Product, Law Enforcement.

- b. *{For cases involving deceptive practices:* Respondent, and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with [the advertising, marketing, promotion, offering for sale, sale, or performance] of [any consumer financial product or service], may not misrepresent, or assist others in misrepresenting, expressly or impliedly:
- i. *{List each precise misrepresentation challenged in the case};*
  - ii. *{List misrepresentations in the general category of those at issue};*  
or
  - iii. Any other fact material to consumers concerning [describe specific product or service]~~any good or service~~, such as: the total costs; any material restrictions, limitations, or conditions;~~or any material aspect of its performance, efficacy, nature, or central characteristics.~~
- c. *[For cases where the entity is not enrolled in the Bureau's Consumer Complaint Portal]* Within 30 days of the Effective Date, Respondent must complete all steps necessary to register for the Bureau's Company Portal, including providing the information required at [www.consumerfinance.gov/company-signup](http://www.consumerfinance.gov/company-signup) and in the Bureau's Company Portal Boarding Form (OMB No. 3170-0054). Respondent, in connection with responding to consumer complaints and inquiries, whether acting directly or indirectly, is subject to and may not violate § 1034(b) and (c) of the CFPA, 12 U.S.C. §§ 5534(b) and (c).
- d. *[Next category of conduct relief]*

(b)(5); (b)(7)(E)

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33. {For cases in which Respondent will be required to secure a determination of non-objection before selling a particular product or participating in a specific business line, include:}

Respondent, and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, must discontinue the marketing and sale of the [subject product/service/program], and may not market or sell any [products/services/programs similar to the subject products/services/programs] without first securing a determination of non-objection from the [Regional Director][Enforcement Director], as follows:

- a. [Respondent must submit] to the [Regional Director] [Enforcement Director] a *comprehensive* compliance plan designed to ensure that Respondent's [relevant conduct, e.g., sale of credit card add-on products] complies with all applicable [laws the Bureau enforces] and the terms of this Consent Order ([Product Specific] Compliance Plan).
- b. The [Regional Director] [Enforcement Director] will have the discretion to make a determination of non-objection to the [Product Specific] Compliance Plan or direct the Respondent to revise it. If the [Regional Director] [Enforcement Director] directs the Respondent to revise the [Product Specific] Compliance Plan, the Respondent must make the

(b)(5); (b)(7)(E)

**Comment [RL]:** Note, these provisions do not include a timeframe, because they come into play only if and when the Respondent chooses to continue to engage in the specified line of business.

(b)(5); (b)(7)(E)

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revisions and resubmit the [Product Specific] Compliance Plan to the [Regional Director] [Enforcement Director].

- c. Respondent may market or sell the [products/services/programs similar to the subject products/services/programs] only after receiving notification that the [Regional Director] [Enforcement Director] has made a determination of non-objection to the [Product Specific] Compliance Plan and only after adhering to the steps, recommendations, deadlines, and timeframes outlined in the [Product Specific] Compliance Plan.]

VII

Compliance Plan [Option 1]

IT IS FURTHER ORDERED that:

34. Within 30 days of the Effective Date, Respondent must submit to the [Regional Director] [Enforcement Director] for review and determination of non-objection a comprehensive compliance plan designed to ensure that Respondent's [relevant conduct, e.g., sale of credit card add-on products] complies with all applicable [Federal consumer financial laws] and the terms of this Consent Order (Compliance Plan). The Compliance Plan must include, at a minimum:
- a. Detailed steps for addressing each action required by this Consent Order;
  - b. [Other steps, as appropriate]; and
  - c. Specific timeframes and deadlines for implementation of the steps described above.
35. The [Regional Director] [Enforcement Director] will have the discretion to make a determination of non-objection to the Compliance Plan or direct the Respondent to revise it. If the [Regional Director] [Enforcement Director] directs the Respondent to revise the Compliance Plan, the Respondent must make the revisions and resubmit the Compliance Plan to the [Regional Director] [Enforcement Director] within [15-30] days.

**Comment [RL(]:** Any requirement that Respondent submit a Compliance Plan should be included here in the ORDER Section.

Three options are presented here:  
Option 1-Requirement of Compliance Plan without independent consultant or compliance committee:  
Option 2- Requirement of Compliance Plan and Compliance Committee  
Option 3-Requirement of Compliance Plan prepared by independent consultant

(b)(5); (b)(7)(E)

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36. After receiving notification that the [Regional Director] [Enforcement Director] has made a determination of non-objection to the Compliance Plan, the Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.]

## **VIII**

### **Compliance Committee and Compliance Plan [Option 2]**

**IT IS FURTHER ORDERED** that:

37. The [Board][Specified Committee] must establish a Compliance Committee of at least [three directors, of which at least two may not be officers or employees of Respondent or any of its affiliates][other appropriate composition]. Within [14] days of the Effective Date, the [Board][Specified Committee] must provide in writing to the [Regional Director] [Enforcement Director] the name of each member of the Compliance Committee. If there is a change of membership to the [Board][Specified Committee], the [Board][Specified Committee] must submit the name of any new member in writing to the [Regional Director] [Enforcement Director].
38. For x years, the Compliance Committee will be responsible for monitoring and coordinating the Respondent's adherence to the provisions of this Consent Order. The Compliance Committee must meet at least bi-monthly, and must maintain minutes of its meetings.
39. Within [30] days of the Effective Date, [and quarterly thereafter] [for x years], the Compliance Committee must submit a Compliance Plan [to the Board] [to Specified Committee] [to the [Regional Director] [Enforcement

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Director] for review and determination of non-objection], which details the actions taken to comply with this Consent Order, and the results and status of those actions. The Compliance Plan must also, at a minimum, address:

- a. Detailed steps for addressing each action required by this Consent Order;
- b. [A mechanism to ensure that the Board is kept apprised of the status of compliance actions];
- c. [Other steps, as appropriate]; and
- d. Specific timeframes and deadlines for implementation of the steps described above.

40. *{If the above provision requires the plan to first go to the Board or other specified committee, add:}* Within [10] days of receiving the Compliance Plan, the [Board][Specified Committee] must submit a copy of the Compliance Plan, with any additional comments by the [Board][Specified Committee], to the [Regional Director] [Enforcement Director] for review and determination of non-objection.

41. The [Regional Director] [Enforcement Director] will have the discretion to make a determination of non-objection to the Compliance Plan or direct the Respondent to revise it. If the [Regional Director] [Enforcement Director] directs the Respondent to revise the Compliance Plan, the

Respondent must make the revisions and resubmit the Compliance Plan to the [Regional Director] [Enforcement Director] within [30] days.

42. After receiving notification that the [Regional Director] [Enforcement Director] has made a determination of non-objection to the Compliance Plan, the Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.

## **IX**

### **Independent Consultant's Report and Compliance Plan [Option 3]**

#### **IT IS FURTHER ORDERED** that:

43. Within [30] days of the Effective Date, the Respondent must secure and retain one or more independent consultants, [with specialized experience in [practices at issue]], and acceptable to the [Regional Director][Enforcement Director], to conduct an independent review of Respondent's [the line of business at issue]. The review must include [more specificity on scope, *e.g.*, the time period, the type of transaction, or type of consumer. The purposes of the review must be to determine:
- a. whether [list elements of legal compliance in separate subparagraphs]
  - b. whether []; and
  - c. whether [].
44. Within [180] days of the Effective Date, the independent consultant(s) must prepare a written report detailing the findings of the review (the "Independent Consultant Report"), and provide the Independent Consultant Report to the [Compliance Committee and] [Specified Committee and][the Board].
45. Within [20] days of receiving the Independent Consultant Report, the [Board][Specified Committee] must:

(b)(5); (b)(7)(E)

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- a. Develop a plan (the “Compliance Plan”) to: (i) correct any deficiencies identified, and (ii) implement any recommendations or explain in writing why a particular recommendation is not being implemented; and
  - b. Submit the Independent Consultant Report and the Compliance Plan to the [Regional Director] [Enforcement Director].
46. The [Regional Director] [Enforcement Director] will have the discretion to make a determination of non-objection to the Compliance Plan or to direct the Respondent to revise it. If the [Regional Director] [Enforcement Director] directs the Respondent to revise the Compliance Plan, the Board must make the requested revisions and resubmit the Compliance Plan to the [Regional Director] [Enforcement Director] within [20] days.
47. After receiving notification that the [Regional Director] [Enforcement Director] has made a determination of non-objection to the Compliance Plan, the Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.]

## **X**

### **Customer Information**

#### **IT IS FURTHER ORDERED that:**

48. Respondent, and its officers, agents, servants, employees, and attorneys who receive actual notice of this Consent Order, whether acting directly or indirectly, may not disclose, use, or benefit from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that Respondent obtained before the Effective Date [in connection with *{identify the type of practices that are the subject matter of the case, e.g. the offering of credit repair services}*]; ~~or~~ and attempt to collect, sell, assign, or otherwise transfer any right to collect payment from any consumer who purchased or agreed to purchase [identify the type of practices that are the subject matter of the case, e.g. credit repair services] from Respondent.

However, customer information may be disclosed if requested by a government agency or required by law, regulation, or court order.

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## **XI**

### **Role of the Board**

**IT IS FURTHER ORDERED** that:

49. The Board must review all submissions (including plans, reports, programs, policies, and procedures) required by this Consent Order prior to submission to the Bureau.
50. Although this Consent Order requires the Respondent to submit certain documents for the review or non-objection by the [Regional Director] [Enforcement Director], the Board will have the ultimate responsibility for proper and sound management of Respondent and for ensuring that Respondent complies with [Federal consumer financial law] and this Consent Order.
51. In each instance that this Consent Order requires the Board to ensure adherence to, or perform certain obligations of Respondent, the Board must:
  - a. Authorize whatever actions are necessary for Respondent to fully comply with the Consent Order;
  - b. Require timely reporting by management to the Board on the status of compliance obligations; and

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(b)(5); (b)(7)(E)

- c. Require timely and appropriate corrective action to remedy any material non-compliance with any failures to comply with Board directives related to this Section.

~~{MONETARY PROVISIONS}~~

XII

Order to Pay Redress [Option 1]

IT IS FURTHER ORDERED that:

52. Within 10 days of the Effective Date, Respondent must reserve or deposit into a segregated deposit account \$ [amount of consumer injury], for the purpose of providing redress to [Affected Consumers] as required by this Section.
53. Within [30] days of the Effective Date, Respondent must submit to the [Regional Director][Enforcement Director] for review and non-objection a comprehensive written plan for providing redress consistent with this Consent Order (Redress Plan). The [Regional Director][Enforcement Director] will have the discretion to make a determination of non-objection to the Redress Plan or direct the Respondent to revise it. If the [Regional Director][Enforcement Director] directs the Respondent to revise the Redress Plan, the Respondent must make the revisions and resubmit the Redress Plan to the [Regional Director][Enforcement Director] within [15] days. After receiving notification that the [Regional Director][Enforcement Director] has made a determination of non-objection to the Redress Plan,

**Comment [RL]:** This Section sets out three options for an order to pay redress. These options may need to be combined or calibrated as appropriate. Option 1 requires the respondent to develop and administer a redress plan. Option 2 requires respondent to transfer the funds to the Bureau and we administer redress. Option 3, which has 2 parts, imposes a suspended judgment based on inability to pay.

(b)(5); (b)(7)(E)

**Comment [RL]:** This Section sets out three options for an order to pay redress. These options may need to be combined or calibrated as appropriate. Option 1 requires the respondent to develop and administer a redress plan. Option 2 requires respondent to transfer the funds to the Bureau and we administer redress. Option 3, which has 2 parts, imposes a

**Comment [RL]:** Based on the length and complexity of your order, you may want to include this as a heading in your order.

**Comment [RL]:** In cases where the injury amount is yet to be determined, replace with: "amount not less than \$[ ] (Payment Floor)."

**Comment [RL]:** Be sure this term is defined.

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the Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Redress Plan.

54. The Redress Plan must:

- a. [Element One]
- b. [Element Two];

55. [After completing the Redress Plan], if the amount of redress provided to Affected Consumers is less than \$[amount of consumer injury], within [30] days of the completion of the Redress Plan, Respondent must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, the difference between the amount of redress provided to Affected Consumers and \$[amount of consumer injury].

56. The Bureau may use these remaining funds to pay additional redress to Affected Consumers. If the Bureau determines, in its sole discretion, that additional redress is wholly or partially impracticable or otherwise inappropriate, or if funds remain after the additional redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Respondent will have no right to challenge any actions that the Bureau or its representatives may take under this Section.

**Comment [RL]:** Plan should provide the form in which the required redress shall be provided, e.g., a credit to the Affected Consumer's account/a certified or bank check, with a proviso that Regional Director or Enforcement Director or delegated representative may modify the form of redress in whole or in part, upon a showing of good cause, under Section [Compliance and Extensions of Time ].

(b)(5); (b)(7)(E)

**Comment [RL]:** Include this paragraph and the following as appropriate, especially where the respondent is unlikely to find or redress all victims.

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57. Respondent may not condition the payment of any redress to any Affected Consumer under this Consent Order on that Affected Consumer waiving any right.



### XIII

#### Order to Pay Redress [Option 2]

**Comment [RL(]:** Option 2 is for situations in which Respondent will transfer funds to the Bureau and Bureau or its agent will administer redress.

**Comment [RL(]:** Option 2 is for situations in which Respondent will transfer funds to the Bureau and Bureau or its agent will administer redress. In this scenario, the order has to specify the amount of redress rather than a formula for computing it (e.g., amount of principal, interest, and fees paid).

**IT IS FURTHER ORDERED** that:

58. A judgment for equitable monetary relief [and damages] is entered in favor of the Bureau and against the Respondent in the amount of \$[amount].
59. Within [10] days of the Effective Date, Respondent must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, \$[Amount] in full satisfaction of the judgment as ordered in Paragraph [above paragraph] of this Section.
60. Any funds received by the Bureau in satisfaction of this judgment will be deposited into a fund or funds administered by the Bureau or to the Bureau's agent according to applicable statutes and regulations to be used for redress for injured consumers, including, but not limited to, refund of moneys, restitution, damages, or other monetary relief, and for any attendant expenses for the administration of any such redress.
61. If the Bureau determines, in its sole discretion, that redress to consumers is wholly or partially impracticable or if funds remain after redress is completed, the Bureau will deposit any remaining funds in the U.S.

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Treasury as disgorgement. Respondent will have no right to challenge any actions that the Bureau or its representatives may take under this Section.

62. Payment of redress to any Affected Consumer under this Consent Order may not be conditioned on that Affected Consumer waiving any right.

#### XIV

#### Order to Pay Redress [Option 3, Part A]

#### IT IS FURTHER ORDERED that:

63. [A] judgment for equitable monetary relief [and damages] is entered in favor of the Bureau and against Respondent, in the amount of [ ] dollars (\$[]); however, full payment of this judgment will be suspended upon satisfaction of the obligations in Paragraphs \_ through \_ of this Section and [Paragraphs \_ through \_ of] Section [Other Monetary Provisions] and subject to Section [Effect of Misrepresentation or Omission of Financial Condition] of this Consent Order.]
64. [A] judgment for equitable monetary relief [and damages] is entered in favor of the Bureau and against Respondent in the amount of [ ] dollars (\$[]). Full payment [or specify partial amount waived] of this judgment

**Comment [RL]:** Use Option 3 if Respondent will be required to pay only a portion of the injury amount, based on demonstrated inability to pay the full amount.

**Comment [RL]:** Use Option 3 if Respondent will be required to pay redress for none or only a portion of the injury amount, due to inability to pay or concerns about CMP eligibility.

**Comment [RL]:** Use this version if you are *suspending* all or part of the judgment based on inability to pay. (b)(5); (b)(7)(E)

**Comment [RL]:** Exclude the paragraph that requires notification in the future of Related Consumer Actions, as Respondent need not satisfy this obligation prior to the judgment being suspended.

**Comment [RL]:** Use this version if you are *waiving* all or part of the judgment based on payment of CMPs. (b)(5); (b)(7)(E)

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will be waived upon satisfaction of [the obligations] in Paragraphs \_ through \_ [first 2 paragraphs of Civil Money Penalty Section].]

65. Within 10 days of the Effective Date, Respondent must pay to the [Bureau], by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, \$[Amount], in full satisfaction of the judgment referenced in Paragraph [70] of this Section.

66. With regard to any redress that Respondent pays under this Section [Order to Pay Redress], if Respondent receives, directly or indirectly, any reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, or if Respondent secures a tax deduction or tax credit with regard to any federal, state, or local tax, Respondent must: (a) immediately notify the [Regional Director] [Enforcement Director] in writing, and (b) within [10] days of receiving the funds or monetary benefit, Respondent must transfer to the Bureau the full amount of such funds or monetary benefit (Additional Payment) to the Bureau or to the Bureau's agent according to the Bureau's wiring instructions. After the Bureau receives the Additional Payment, the amount of the suspended judgment referenced in Paragraph \_\_ will be reduced by the amount of the Additional Payment.

(b)(5); (b)(7)(E)

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67. Any funds received by the Bureau in satisfaction of this judgment will be deposited into a fund or funds administered by the Bureau or to the Bureau's agent according to applicable statutes and regulations to be used for redress for injured consumers, including, but not limited to, refund of moneys, restitution, damages or other monetary relief, and for any attendant expenses for the administration of any such redress.
68. If the Bureau determines, in its sole discretion, that redress to consumers is wholly or partially impracticable or if funds remain after redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Respondent will have no right to challenge any actions that the Bureau or its representatives may take under this Section.
69. Payment of redress to any Affected Consumer under this Consent Order may not be conditioned on that Affected Consumer waiving any right.

XV

**Effect of Misrepresentation or Omission Regarding Financial Condition**

**[Option 3, Part B]**

**Comment [RL]:** Include this Section whenever there is a full or partial suspension of judgment, i.e., Option 3.

**Comment [RL]:** List each date on which respondent provided documents.

**IT IS FURTHER ORDERED** that:

70. The Bureau's agreement to issue this Consent Order is expressly premised on the truthfulness, accuracy, and completeness of Respondent's financial statements and supporting documents submitted to the Bureau on or about [date], which Respondent asserts are truthful, accurate, and complete.
71. If the Bureau in its sole discretion determines that Respondent has failed to disclose any material asset or that any of its financial statements contain any material misrepresentation or omission, including materially misstating the value of any asset, then the suspension of the monetary judgment entered in Section \_\_\_ will be terminated, and the Bureau can seek to enforce in any Federal district court in a district in which the Respondent is located or resides or is doing business, as immediately due and payable the full judgment entered in Section \_\_\_ of this Consent Order, [ ]dollars (\$[ ]), less any amounts paid under Section \_\_\_ [refer back to any Sections requiring immediate payment of funds to consumers or the Bureau] of the Consent Order.
72. After the reinstatement of the monetary judgment under this Section, the Bureau will be entitled to interest on the judgment, computed from the date of entry of this Consent Order, at the rate prescribed by 28 U.S.C. § 1961, as amended, on any outstanding amounts not paid.

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## **XVI**

### **Order to Pay Civil Money Penalties**

#### **IT IS FURTHER ORDERED** that:

73. Under section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section \_ ~~[Findings]~~ Section] of this Consent Order, and taking into account the ~~factors in 12 U.S.C. § 5565(c)(3),~~ Respondent must pay a civil money penalty of \$[amount] to the Bureau.
74. Within 10 days of the Effective Date, Respondent must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.
75. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).
76. Respondent must treat the civil money penalty paid under this Consent Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Respondent may not:
- a. Claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Consent Order; or
  - b. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any

(b)(5); (b)(7)(E)

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insurance policy, with regard to any civil money penalty paid under this Consent Order.

77. [To preserve the deterrent effect of the civil money penalty] in any Related Consumer Action, Respondent may not argue that Respondent is entitled to, nor may Respondent benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action ~~or because of any payment that the Bureau makes from the Civil Penalty Fund (Penalty Offset).~~ If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Respondent based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund ~~grants such a Penalty Offset~~, Respondent must, within 30 days after entry of a final order granting ~~the Penalty~~ such offset or reduction, notify the Bureau, and pay the amount of the ~~Penalty Offset~~ or reduction to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.]

(b)(5); (b)(7)(E)

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**XVII**

**Additional Monetary Provisions**

(b)(5); (b)(7)(E)

**IT IS FURTHER ORDERED** that:

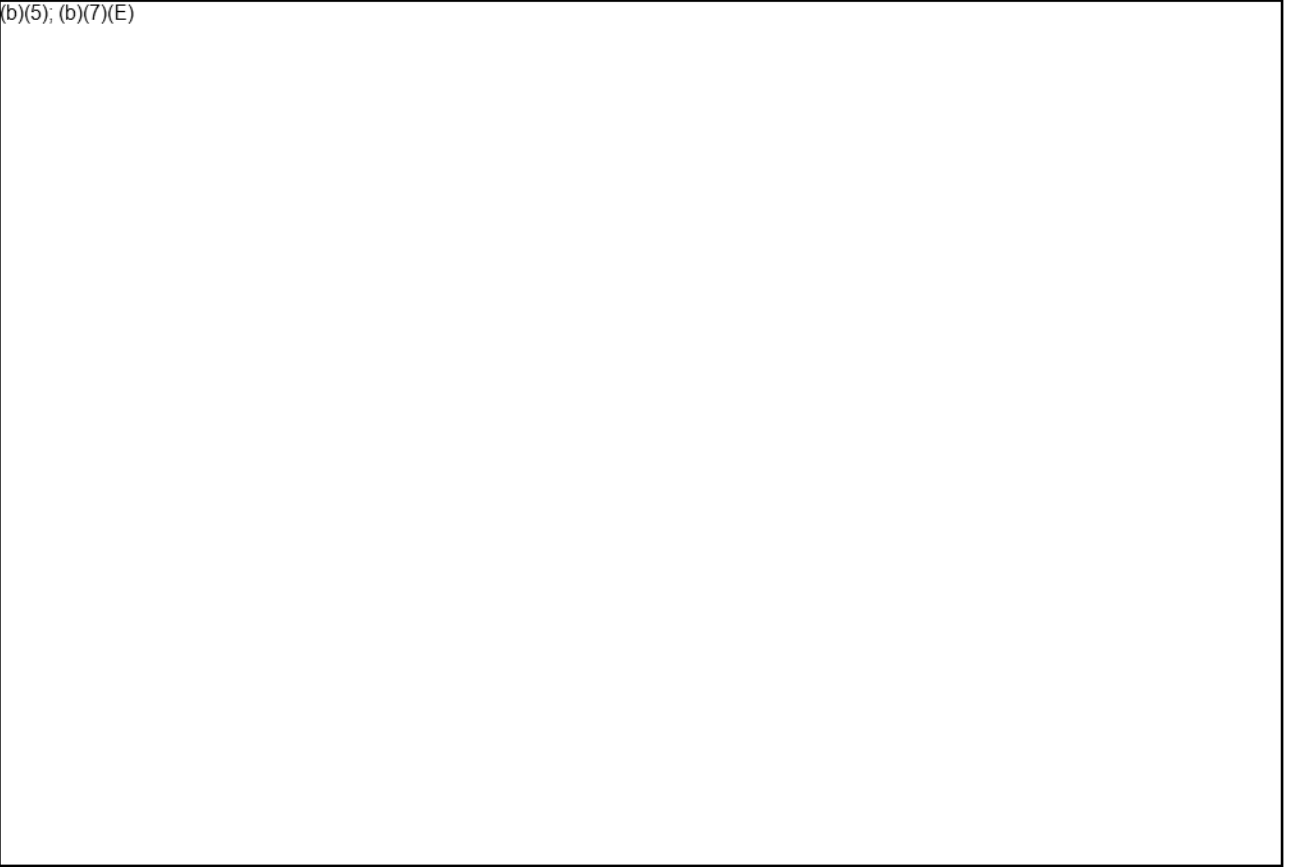
78. In the event of any default on Respondent's obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.
79. Respondent must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Respondent.
80. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.
81. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the [Regional Director] [Enforcement Director] of the final judgment, consent order, or settlement in writing. That notification must indicate the amount

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of redress, if any, that Respondent paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

(b)(5); (b)(7)(E)



***{COMPLIANCE PROVISIONS}***

**XVIII**

**Reporting Requirements**

**Comment [RL(]:** Based on the length and complexity of your order, you may want to include this as a heading in your order.

**IT IS FURTHER ORDERED** that:

83. Respondent must notify the Bureau of any development that may affect compliance obligations arising under this Consent Order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Order; the filing of any bankruptcy or insolvency proceeding by or against Respondent; or a change in Respondent's name or address. Respondent must provide this notice, if practicable, at least 30 days before the development, but in any case no later than 14 days after the development.
84. Within 7 days of the Effective Date, Respondent must:
  - a. Designate at least one telephone number and email, physical, and postal address as points of contact, which the Bureau may use to communicate with Respondent;

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- b. Identify all businesses for which Respondent is the majority owner, or that Respondent directly or indirectly controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
  - c. Describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales.
  - d. Identify Individual Respondent's telephone numbers and all email, Internet, physical, and postal addresses, including all residences;
  - e. Describe in detail Individual Respondent's involvement in any business for which he performs services in any capacity or which he wholly or partially owns, including Respondent's title, role, responsibilities, participation, authority, control, and ownership.
85. Respondent must report any change in the information required to be submitted under Paragraph [83] at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.
86. Within [90 days] of the Effective Date, and again one year after [the Effective Date], Respondent must submit to the [Regional Director] [Enforcement Director] an accurate written compliance progress report (Compliance Report) [that has been approved by the [Board]][Specified Committee], which, at a minimum:

**Comment [JSP]:** In cases where there is a Compliance Plan required without a Redress Plan requirement, substitute "receiving notice of non-objection to the Compliance Plan."

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- a. Lists each applicable paragraph and subparagraph of the Order and describes in detail the manner and form in which Respondent has complied with each such paragraph and subparagraph of the Consent Order;
- b. [as applicable] Describes in detail the manner and form in which Respondent has complied with the [Redress Plan] [Compliance Plan];  
and
- c. Attaches a copy of each Order Acknowledgment obtained under Section [Section requiring order distribution], unless previously submitted to the Bureau.

**Comment [SL()]:** Add as applicable if the Consent Order has a Redress Plan or Compliance Plan requirement

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## **XIX**

### **Order Distribution and Acknowledgment**

**IT IS FURTHER ORDERED** that,

87. Within 7 days of the Effective Date, Respondent must submit to the [Regional Director] [Enforcement Director] an acknowledgment of receipt of this Consent Order, sworn under penalty of perjury.
88. Within 30 days of the Effective Date, Respondent [and Individual Respondent, for any business for which s/he is the majority owner or which s/he directly or indirectly controls] must deliver a copy of this Consent Order to [each of its board members and executive officers], [as well as to any managers, employees, Service Providers, or other agents and representatives who have responsibilities related to the subject matter of the Consent Order].
89. For 5 years from the Effective Date, Respondent [and Individual Respondent, for any business for which s/he is the majority owner or which s/he directly or indirectly controls] must deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in Section [Reporting Requirements], any future [board members and executive officers], [as well as to any managers, employees, Service Providers, or other agents and representatives who will

(b)(5); (b)(7)(E)

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have responsibilities related to the subject matter of the Consent Order]  
before they assume their responsibilities.

90. [Respondent must secure a signed and dated] statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Consent Order under this Section.

(b)(5); (b)(7)(E)

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**XX**  
**Recordkeeping**

**IT IS FURTHER ORDERED** that

91. Respondent must create, or if already created, must retain for the duration of the Consent Order, the following business records [for any business for which Individual Respondent, individually or collectively with any other Respondent, is a majority owner or which s/he directly or indirectly controls]:
- a. All documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the Bureau.
  - b. All documents and records pertaining to the Redress Plan, described in Section [Redress Section] above.
  - c. [Copies] of all sales scripts; training materials; advertisements; websites; and other marketing materials relating to the subject of this Consent Order, ; and including any such materials used by a third party on behalf of Respondent.

**Comment [RL(]:** Include in cases involving representations made to consumers, as appropriate:

**Comment [RL(]:**

(b)(5); (b)(7)(E)

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- d. *{In cases involving a particular product/program, in which customer data will be necessary to ensure compliance or administer future redress, regardless of whether redress is required by the order.}* For each individual Affected Consumer and his or her enrollment in that [product/program/service]: the consumer's name, address, phone number, email address; amount paid, quantity of [product/program/service] purchased, description of the [product/program/service] purchased, the date on which the [product/program/service] was purchased, a copy of any promotional or welcome materials provided, and, if applicable, the date and reason consumer left the program.
- e. For [relevant product/program/service], accounting records showing the gross and net revenues generated by the [product/program/service];
- f. All consumer complaints and refund requests (whether received directly or indirectly, such as through a third party), and any responses to those complaints or requests.
- g. Records showing, for each employee providing services [related to relevant product/program/service], that person's: name; telephone number; email, physical, and postal address; job title or position; dates of service; and, if applicable, the reason for termination.
- h. Records showing, for each service provider providing services [related to



relevant product/program/service], the name of a point of contact, and that person's telephone number; email, physical, and postal address; job title or position; dates of service; and, if applicable, the reason for termination.

92. Respondent must retain the documents identified in Paragraph [91] for the duration of the Consent Order.
93. Respondent must make the documents identified in Paragraph [91] available to the Bureau upon the Bureau's request.

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## **XXI**

### **Notices**

**IT IS FURTHER ORDERED** that:

94. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, “*In re* [name of Respondent], File No. Year-BCFP- ,” and send them by overnight courier or first-class mail to the below address and contemporaneously by email to Enforcement\_Compliance@cfpb.gov:

[Regional Director, Bureau [West] Region  
[insert mailing address for Regional Director]]

[Assistant Director for Enforcement]  
[Bureau of Consumer Financial Protection  
ATTENTION: Office of Enforcement  
1700 G Street, N.W.  
Washington D.C. 20552]

**Comment [SL()]:** Make sure this email address is not underlined so it does not obscure the underscore in the address

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## **XXII**

### **Cooperation with the Bureau**

#### **IT IS FURTHER ORDERED** that:

95. [Respondent] must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, each Affected Consumer. Respondent must provide such information in its or its agents' possession or control within 14 days of receiving a written request from the Bureau.
96. [Respondent] must cooperate fully with the Bureau in this matter and in any investigation related to or associated with the conduct described in Section [Findings Section]. Respondent must provide truthful and complete information, evidence, and testimony. [Individual Respondent must appear] [and] [Corporate Respondent must cause Respondent's officers, employees, representatives, or agents to appear] for interviews, discovery, hearings, trials, and any other proceedings that the Bureau may reasonably request upon 10 days written notice, or other reasonable notice, at such places and times as the Bureau may designate, without the service of compulsory process.

(b)(5); (b)(7)(E)

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## **XXIII**

### **Compliance Monitoring**

**IT IS FURTHER ORDERED** that, to monitor Respondent's compliance with this Consent Order [, including the financial representations upon which [part of] the judgment was suspended]:

97. Within 14 days of receipt of a written request from the Bureau, Respondent must submit additional Compliance Reports or other requested non-privileged information, related to requirements of this Consent Order, which must be made under penalty of perjury; provide sworn testimony related to requirements of this Consent Order and Respondents' compliance with those requirements; or produce non-privileged documents related to requirements of this Consent Order and Respondents' compliance with those requirements.
98. For purposes of this Section, the Bureau may communicate directly with Respondent, unless Respondent retains counsel related to these communications.
99. Respondent must permit Bureau representatives to interview about the requirements of this Consent Order and Respondents compliance with those requirements any employee or other person affiliated with Respondent who

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has agreed to such an interview. The person interviewed may have counsel present.

100. Nothing in this Consent Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

101. [For the duration of the Consent Order] in whole or in part, Respondent agrees to be subject to the Bureau's supervisory authority under 12 U.S.C. § 5514. Consistent with 12 C.F.R. § 1091.111, Respondent may not petition for termination of supervision under 12 C.F.R. § 1091.113.

(b)(5); (b)(7)(E)

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## **XXIV**

### **Modifications to Non-Material Requirements**

**IT IS FURTHER ORDERED** that:

102. Respondent may seek a modification to non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) by submitting a written request to the [Regional Director][Enforcement Director].
103. The [Regional Director][Enforcement Director] may, in his or/her discretion, modify any non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) if he or /she determines good cause justifies the modification. Any such modification by the [Regional Director][Enforcement Director] must be in writing.

**{ADMINISTRATIVE PROVISIONS}**

**XXV**

**Administrative Provisions**

**Comment [RL(]:** Based on the length and complexity of your order, you may want to include this as a heading in your order.

104. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau, or any other governmental agency, from taking any other action against Respondent[, except as described in Paragraph [105]].
105. The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section [Findings Section] of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against Respondent and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.
106. All pending motions are hereby denied as moot.

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107. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under section 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.

108. Duration of the Order: This Consent Order will terminate 5 years from the Effective Date, or 5 years from the most recent date that the Bureau

~~initiates an action alleging any violation of the Consent Order by Respondent. If such action is dismissed or the relevant adjudicative body rules that Respondent did not violate any provision of the Consent Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Consent Order will terminate as though the action had never been filed.~~

The Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.

109. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.

110. Should Respondent seek to transfer or assign all or part of its operations that are subject to this Consent Order, Respondent must, as a condition of

(b)(5); (b)(7)(E)

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sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.

111. The provisions of this Consent Order will be enforceable by the Bureau.

For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under section 1055(c) of the CFPA, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever Respondent may be found and Respondent may not contest that court's personal jurisdiction over Respondent.

112.  This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.

**Comment [RL(]:** If we are settling with fewer than all of the named parties in an ongoing administrative action, add a provision, under C.F.R. § 1081.400(c)(2), in which the hearing officer expressly determines that there is no just reason for delay.

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113. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing the Respondent, [its Board,] officers, or employees to violate any law, rule, or regulation.

**IT IS SO ORDERED**, this [ ]th day of [month], [year].

---

Kathleen Kraninger  
Director  
Bureau of Consumer Financial Protection

**UNITED STATES OF AMERICA  
BUREAU OF CONSUMER FINANCIAL PROTECTION**

**File No. Year-BCFP-**

**STIPULATION AND CONSENT  
TO THE ISSUANCE OF  
A CONSENT ORDER**

**In the matter of:**

**[RESPONDENT NAME]**

The Bureau of Consumer Financial Protection (Bureau) intends to initiate an administrative proceeding against [Full legal name of Respondent] (Respondent), under 12 U.S.C. §§ 5563 and 5565, for its *[relevant activities]* in violation of *[relevant law (e.g., “the CFPA’s prohibition on unfair, deceptive, or abusive acts or practices, 12 U.S.C. §§ 5531, 5536” or “section 8 of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2607)]*.

Respondent, in the interest of compliance and resolution of the matter, and without admitting or denying any wrongdoing,] consents to the issuance of a Consent Order substantially in the form of the one to which this Stipulation and

(b)(5); (b)(7)(E)

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Consent to the Issuance of a Consent Order is attached (Consent Order), and which is incorporated by reference.

**DEFAULT AS APPROPRIATE FOR INDIVIDUALS/CLOSELY HELD ILLUSTRATION**

In consideration of the above premises, Respondent agrees to the following:

**Jurisdiction**

1. The Bureau has jurisdiction over this matter under sections 1053 and 1055 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5563, 5565.

**Consent**

2. Respondent agrees to the issuance of the Consent Order, without admitting or denying any of the findings of fact or conclusions of law, except that Respondent,] and admits the facts necessary to establish the Bureau's jurisdiction over Respondent and the subject matter of this action.
3. Respondent agrees that the Consent Order will be deemed an "order issued with the consent of the person concerned" under 12 U.S.C. § 5563(b)(4), and agrees that the Consent Order will become a final order, effective upon issuance, and will be fully enforceable by the Bureau under 12 U.S.C. §§ 5563(d)(1) and 5565.
4. Respondent voluntarily enters into this Stipulation and Consent to the Issuance of a Consent Order.
5. The Consent Order resolves only Respondent's potential liability for law violations that the Bureau asserted or might have asserted based on the

(b)(5); (b)(7)(E)

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practices described in Section [Findings Section] of the Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. Respondent acknowledges that no promise or representation has been made by the Bureau or any employee, agent, or representative of the Bureau, about any liability outside of this action that may have arisen or may arise from the facts underlying this action or immunity from any such liability.

6. Respondent agrees that the facts described in Section \_\_[Findings and Conclusions Section] of the Consent Order will be taken as true and be given collateral estoppel effect, without further proof, in any proceeding before the Bureau to enforce the Consent Order, or in any subsequent civil litigation by the Bureau to enforce the Consent Order or its rights to any payment or monetary judgment under the Consent Order, [such as a non-dischargeability complaint in any bankruptcy case].

7. [Individual Respondent] further agrees that the facts in Section \_\_[Findings Section] of the Consent Order establish all elements necessary to sustain an action by the Bureau under section 523(a)(2)(A) of the Bankruptcy Code, U.S.C. § 523(a)(2)(A), and that for such purposes this Consent Order will have collateral estoppel effect against Individual Respondent, even in Individual Respondent's capacity as debtor-in-possession.

**Comment [RL(]:** Include this clause if redress is required by the order:

**Comment [RL(]:** Include for individual respondents, in cases that allege deceptive practices and require payment of redress.

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8. Individual Respondent agrees that the civil penalty imposed by the Consent Order represents a civil penalty owed to the United States Government, is not compensation for actual pecuniary loss, and, thus, as to Individual Respondent, it is not subject to discharge under the Bankruptcy Code under 11 U.S.C. § 523(a)(7).
9. The terms and provisions of this Stipulation and the Consent Order will be binding upon, and inure to the benefit of, the parties hereto and their successors in interest.
10. Respondent agrees that the Bureau may present the Consent Order to the Bureau Director for signature and entry without further notice.

#### Waivers

11. Respondent, by consenting to this Stipulation, waives:
- a. Any right to service of the Consent Order, and agrees that issuance of the Consent Order will constitute notice to the Respondent of its terms and conditions;
  - b. Any objection to the jurisdiction of the Bureau, including, without limitation, under section 1053 of the CFPA, 12 U.S.C. § 5563;
  - c. The rights to all hearings under the statutory provisions under which the proceeding is to be or has been instituted; the filing of proposed

**Comment [RL(]:** Include for individual respondents, in cases that require payment of civil money penalties.

**Comment [RL(]:** We are required to include in the stipulation the following waivers, under 12 CFR Part 1081.120(c): “... (3)(i) All hearings pursuant to the statutory provisions under which the proceeding is to be or has been instituted; (ii) The filing of proposed findings of fact and conclusions of law; (iii) Proceedings before, and a recommended decision by, a hearing officer; (iv) All post-hearing procedures; (v) Judicial review by any court; and (vi) Any objection to the jurisdiction of the Bureau under Section 1053 of the Act... (4) ... (i) Such provisions of this part or other requirements of law as may be construed to prevent any Bureau employee from participating in the preparation of, or advising the Director as to, any order, opinion, finding of fact, or conclusion of law to be entered pursuant to the offer; and (ii) Any right to claim bias or prejudgment by the Director based on the consideration of or discussions concerning settlement of all or any part of the proceeding.

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findings of fact and conclusions of law; proceedings before, and a recommended decision by, a hearing officer; all post-hearing procedures; and any other procedural right available under section 1053 of the CFPA, 12 U.S.C. § 5563, or 12 CFR Part 1081;

- d. The right to seek any administrative or judicial review of the Consent Order;
- e. Any claim for fees, costs or expenses against the Bureau, or any of its agents or employees, and any other governmental entity, related in any way to this enforcement matter or the Consent Order, whether arising under common law or under the terms of any statute, including, but not limited to the Equal Access to Justice Act and the Small Business Regulatory Enforcement Fairness Act of 1996; for these purposes, Respondent agrees that Respondent is not the prevailing party in this action because the parties have reached a good faith settlement;
- f. Any other right to challenge or contest the validity of the Consent Order;
- g. Such provisions of the Bureau's rules or other requirements of law as may be construed to prevent any Bureau employee from participating in the preparation of, or advising the Director as to, any order,



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opinion, finding of fact, or conclusion of law to be entered in connection with this Stipulation or the Consent Order; and

h. Any right to claim bias or prejudice by the Director based on the consideration of or discussions concerning settlement of all or any part of the proceeding.

[NAME OF RESPONDENT] BY:<sup>1</sup>

[Name] \_\_\_\_\_ Date \_\_\_\_\_  
[title], [name of respondent]

The undersigned [directors of [name of respondent]] each acknowledges having read this Stipulation and the Consent Order, and approves of [name of respondent] entering into this Stipulation.

[Name] \_\_\_\_\_ Date \_\_\_\_\_  
Director, [name of respondent]

<sup>1</sup>

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**Comment [RL(]:** Note that the Bureau representatives do not sign the stipulation unless we are settling after having filed a noticed of proposed charges.

**Comment [RL(]:** Representatives with the authority to represent and bind the entity should execute the stipulation (b)(5);

(b)(5); (b)(7)(E)

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[Name]

Date

Director, [name of respondent]

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