

Suffolk, SS.

Docket No. 2021-004

## CONSENT ORDER

WHEREAS, the Division conducted an examination of Monterey pursuant to M.G.L.

chapter 93, section 24D as of January 29, 2020 to assess the Company's level of compliance with applicable Massachusetts and federal statutes, rules, and regulations governing the conduct of those engaged in the business of a debt collector in the Commonwealth;

WHEREAS, the Report of Examination (the Report) issued pursuant to the Division's examination of Monterey as of January 29, 2020 alleged substantial non-compliance with applicable state and federal statutes, rules, and regulations governing the conduct of those engaged in the business of a debt collector and/or loan servicer in Massachusetts;

WHEREAS, Monterey denies the allegations found in the Report and denies that it has engaged in any unlawful conduct or violated any law;

WHEREAS, the Commissioner is charged with the administration of M.G.L. chapter 255D and the Division's regulation 209 C.M.R. 20.00 *et seq.*, relating to the licensure of an entity engaging in the business of a retail installment sales finance company;

WHEREAS, M.G.L. chapter 255D, section 2 requires entities to be licensed by the Commissioner of Banks if they are engaged in the business of a retail installment sales finance company that purchases retail installment sale agreements or revolving credit agreements from retail sellers of goods primarily for personal, family or household purposes;

WHEREAS, M.G.L. chapter 255D, section 1 defines a retail installment sale agreement as an agreement for a specific amount which the buyer undertakes to pay in five or more installments subsequent to the making of the agreement, if such agreement does not involve a finance charge. Retail installment sale agreements also include any contract in the form of a lease if the lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the value of goods involved and it is agreed that the lessee will become, or for no other or for a nominal

consideration has the option to become the owner of the goods upon full compliance with his obligations under the contract;

WHEREAS, books and records reviewed by the Division's examiners revealed that Monterey has engaged in the business of debt collecting and servicing purported lease agreements which the Division alleges are in fact retail installment sale agreements on behalf of unlicensed sales finance companies;

WHEREAS, 209 C.M.R. 18.19 prohibits debt collectors from collecting any amount, including interest, fees, charges, or expenses incidental to the principal obligation, if such amounts are not expressly authorized by law;

WHEREAS, 209 C.M.R. 18.23 prohibits a third party loan servicer from using unfair or unconscionable means in servicing any loan; and

WHEREAS, the parties now seek to resolve by mutual agreement the matters identified above.

### ORDER

NOW COME the parties in the above-captioned matter, the Division and the Company, and stipulate and agree as follows:

1. The Company shall pay an administrative penalty to the Division in the amount of seventy-five thousand dollars (\$75,000.00). The penalty shall be due upon execution of the Consent Order and shall be payable by check to the "Commonwealth of Massachusetts," mailed to the Division of Banks, Attn: Consumer Finance Examination Unit, 1000 Washington Street, 10th Floor, Boston, Massachusetts 02118.

2. Monterey shall immediately cease and desist from engaging in any business activity that is prohibited in Massachusetts, including but not limited to servicing and collecting on those retail installment sale agreements that are in violation of M.G.L. chapter 255D<sup>1</sup>. Monterey further agrees that it shall not service, purchase, or collect on any new dog leases in the Commonwealth of Massachusetts. Notwithstanding the foregoing, nothing in this Consent Order shall prevent Monterey from acquiring, servicing, or collecting on any lawful lease agreement(s).
3. Within thirty (30) days from the execution of this Consent Order, Monterey shall conduct a portfolio review to identify all purported leases which are in fact retail installment sale agreements<sup>2</sup> originated in Massachusetts serviced and/or collected on since January 29, 2016.
4. Regarding the affected consumers identified in paragraph 3, Monterey shall:
  - a. For those accounts owned by Monterey, waive any early termination penalty, transfer ownership of the product to the consumer, and notify the consumer that they have no further obligations under the subject agreement.
  - b. For those accounts not owned by Monterey, return the subject account(s) to the account owner(s) and cease serving and/or collection on the subject account.
  - c. For all accounts, remove any negative credit reporting regarding the account.

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<sup>1</sup> For purposes of this analysis, the parties agree that a purported lease is presumed to be a finance agreement under M.G.L. 255D when the lessee (1) agrees to pay an amount substantially equivalent to or in excess of the product or pet's initial fair market value; and (2) has the option of becoming the owner of the item upon full compliance with the terms of the contract for nominal additional consideration. "Substantially equivalent" is considered 90% of the agreed upon value (initial fair market value) of the product or pet which includes but is not limited to the down payment, all periodic payments, final payment, or applicable disposition fee for the product or pet. "Nominal additional consideration" is considered 10% or less of the agreed upon value (initial fair market value) of the product or pet.

<sup>2</sup> As defined in footnote <sup>1</sup>.

5. Regarding the affected consumers identified in paragraph 3 who made payments totaling more than the product's initial fair market value, Monterey shall also distribute one hundred seventy-five thousand dollars (\$175,000.00) to those affected consumers on a pro-rata basis.
6. Within thirty (30) days from the execution of this Consent Order, Monterey shall conduct a portfolio review of all Massachusetts accounts to identify all Massachusetts consumer accounts that were charged payment convenience fees since January 29, 2016, and the Company shall distribute thirty-five thousand dollars (\$35,000.00) to these consumers on a pro-rata basis.
7. Monterey agrees that from the date of the execution of this Consent Order, Monterey shall no longer charge convenience fees on any accounts serviced or collected by Monterey unless the amount is expressly authorized by the agreement creating the debt or permitted by law.
8. Consumer reimbursements under Paragraphs 5 and 6 shall be disbursed to the consumer(s) by check.
  - a. All checks sent to joint obligors will be made payable to both obligors. If a consumer demonstrates that a joint obligor should be removed as a payee (by, for example, providing the Company with a copy of a death certificate or other evidence that the joint obligor has died), then the Company may reissue the check in the sole obligor's name. If the Company is uncertain as to the status of a joint obligor, the Company will refer the matter to the Division for further instructions.
9. Within ninety (90) days of the effective date of this Consent Order, Monterey shall submit to the Division evidence of all consumer reimbursements under Paragraphs 5

and 6, including but not limited to: the consumer's name, the account number, origination date, name of the lease company, type of product (including, if applicable, type of pet) purchased, total agreed upon value of the product (including, if applicable, the value of the pet), total of payments made on the account, total amount refunded to each borrower under each refund requirement, the date of each refund, and the check number for each refund.

10. Monterey shall certify that it has made a reasonable good faith effort to identify the current address of all consumers who are entitled to refund checks. In all cases where consumers cannot be located, the Company shall comply with M.G.L. chapter 200A regarding the disposition of unclaimed property.

11. Within ninety (90) days of the effective date of this Consent Order, Monterey shall submit to the Division evidence of all accounts forgiven under Paragraph 5-a., including but not limited to: the consumer's name, the account number, origination date, name of the lease company, type of product (including, if applicable, type of pet) purchased, total agreed upon value of the product (including, if applicable, the value of the pet), total of payments made on the account, total amount of obligation forgiven, and the date each account was forgiven. Monterey shall also provide examples of any communication provided to borrowers notifying them of the transfer of ownership and forgiveness of obligations.

12. Within ninety (90) days of the effective date of this Consent Order, Monterey shall submit to the Division evidence of all accounts returned to the account owner under Paragraph 4-b, including but not limited to: the consumer's name, the account number, origination date, name of the lease company, name of the account owner, type of

product or pet purchased, total agreed upon value of the product or pet, total of payments made on the account while serviced by Monterey, total amount of obligation remaining at the time of return, and the date each account was returned. Monterey shall also provide examples of any communication provided to borrowers notifying them of the transfer of servicing as well as any communication with the account owner regarding the return of accounts.

13. Monterey agrees to address and correct all deficiencies in the Report not specifically addressed herein by the provisions of this Consent Order, and perform the required corrective action as discussed in the Report, unless otherwise notified by the Division.
14. Monterey shall continue to implement and maintain adequate internal policies and procedures to ensure that the Company refrains from engaging in any business activity that is prohibited in Massachusetts, including but not limited to servicing and collection of unlawful retail installment sale agreements in violation of M.G.L. chapter 255D.
15. Monterey shall continue to implement and maintain an effective overall compliance management system to ensure its compliance with the statutes, rules, and regulations governing the conduct of those engaged in the business of a debt collector and loan servicer in Massachusetts, and the specific provisions of this Consent Order. It is understood that an effective compliance management system includes, but is not limited to: sufficient oversight by the directors and senior management; adequate policies and procedures; operational controls; internal monitoring; training; complaint processes; and periodic independent testing to ensure compliance.

16. Monterey shall furnish written progress reports to the Division by the thirtieth (30th) day after the end of each calendar quarter following the effective date of this Consent Order via secure email to [dobprogressreport@mass.gov](mailto:dobprogressreport@mass.gov). The progress reports shall detail the form, content, and manner of any actions taken to address each section of this Consent Order, and will describe, in detail, any other consumer compliance initiatives instituted during the calendar quarter to improve the compliance position of the Company, and the results thereof. Each progress report submitted to the Division pursuant to this section of the Consent Order will be reviewed and signed by a duly authorized senior officer of Monterey.
17. Regarding any application(s), including any renewal(s), submitted to the Division by Monterey, the Division retains all of the discretion set forth within M.G.L. in determining the appropriate action on the concerned application, provided, however, that the Division would not take any adverse action on said application or renewal solely as a result of any of the issues resolved by this Consent Order or because the Company entered into the Consent Order or agreed to the issuance of this Consent Order.
18. Nothing in this Consent Order shall be construed as permitting Monterey to violate any law, rule, regulation, or regulatory bulletin to which the Company is subject.
19. Failure to comply with the terms of this Consent Order shall constitute grounds for formal regulatory action pursuant to applicable provisions of the General Laws of the Commonwealth of Massachusetts including, but not limited to, revocation of any and all licenses and registrations issued by the Division or denial of any applications pending with the Division.



20. This Consent Order shall become effective immediately upon the date of its issuance.
21. The provisions of this Consent Order shall be binding upon Monterey and its respective subsidiaries, officers and directors, successors and assigns, and those persons in active participation with them, directly or indirectly, acting individually or through any corporate or other entity.
22. In consideration of this Consent Order, the Division agrees not to pursue any other remedial measures, sanctions, or penalties relative to this matter unless the Division is made aware of material information that is not addressed in this Consent Order, or if Monterey fails to comply with the terms of this Consent Order.
23. The provisions of this Consent Order shall not limit, estop, or otherwise prevent any other state agency or department from taking any other action under separate authority affecting the Company or any of its officers and directors, or their successors or assigns.
24. The provisions of this Consent Order shall remain effective and enforceable except to the extent that, and until such time as the Commissioner or a court of competent jurisdiction modifies, terminates, suspends, or sets aside any provision of this Consent Order.
25. In accordance with the terms of the Consent Agreement entered into by Monterey and the Commissioner, Monterey has waived all rights of appeal that it may have relative to this Consent Order or any of its provisions.
26. This Consent Order and the Consent Agreement are the complete documents representing the resolution of this matter. There are no other agreements between the Division and Monterey.

BY ORDER AND DIRECTION OF THE COMMISSIONER OF BANKS:

Dated at Boston, Massachusetts, this 13<sup>th</sup> day of April 2022.

By:

/s/ Mary L. Gallagher  
Commissioner of Banks