



# CITY ATTORNEY DENNIS HERRERA

# NEWS RELEASE

FOR IMMEDIATE RELEASE  
THURSDAY, DEC. 27, 2012

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## Herrera kicks off \$4.3 million refund drive for Check 'n Go borrowers over next three months

### ***Statewide outreach effort seeking to ID eligible claimants seeks to mirror success of similar program for Money Mart borrowers***

SAN FRANCISCO (Dec. 27, 2012)—City Attorney Dennis Herrera today announced a three-month outreach effort targeting Check 'n Go borrowers in California whose online installment loans at exorbitant interest rates may entitle them to significant repayments for the interest, fees and finance charges they paid on their loans. The 90-day refund program, which begins tomorrow and will end on March 28, 2013, is among the terms of an agreement Herrera negotiated with the payday lender in June to settle litigation filed by the City Attorney's Consumer Protection Unit on behalf of state consumers. Check 'n Go has agreed to commit up to \$4.3 million toward restitution as part of that settlement, with refunds expected to range from \$20 to more than \$4,600 for each eligible claimant.

Herrera's 2007 civil action alleged that the Cincinnati-based Check 'n Go engaged in an illicit "rent-a-bank" scheme aimed at skirting California's maximum allowable annual interest rate of no more than 36 percent for this type of loan. According to records obtained before and during the course of the litigation, Check 'n Go made online installment loans to California consumers with interest rates as high as 400 percent—far in excess of what state law allows—as late as June 2008. While Check 'n Go has acknowledged no wrongdoing in agreeing to settle the case, Herrera has hailed the agreement (together with a similar stipulation with payday lender Money Mart/Loan Mart) as a major victory for consumers.

"The strongest statement we can make against predatory lending in California is to maximize restitution for every borrower who deserves it," said Herrera. "That's why this outreach push for eligible Check 'n Go borrowers is so important, and it's why we intend to work so hard with community partners and elected leaders throughout California to make it a success. Under our settlement agreement, Check 'n Go has committed \$4.3 million for refunds for eligible borrowers—but they need only make a 'reasonable effort' to notify their borrowers. We know from experience that it often takes an extra effort to locate and fully educate eligible borrowers who may have moved, or who may reasonably ignore arcane legal notices from an unknown claims administrator. We intend to work tirelessly over the next three months to get the word out to consumers about their rights, and to identify as many potential claimants as possible. We hope this outreach effort for Check 'n Go borrowers matches the success we saw with Money Mart/Loan Mart earlier this year. Together, they should send a strong message to financial institutions about the need to adhere to lawful lending practices in California."

A prior three-month outreach drive earlier this year targeting Money Mart and Loan Mart borrowers partnered with elected officials, consumer advocacy groups, community, faith and labor organizations

[MORE]

statewide netted more than \$5.5 million that is currently in the process of being paid to more than 8,100 eligible claimants. The average restitution payment obtained in the Money Mart/Loan Mart efforts was nearly \$700.

Both the Check 'n Go and Money Mart/Loan Mart efforts arose out of litigation that Herrera's Consumer Protection Unit filed on April 26, 2007. That civil action named the payday lenders, their online affiliates and an associated out-of-state bank for unlawful, unfair and fraudulent business practices stemming from short-term installment loans (typically marketed to low-income borrowers) at unlawful interest rates. In addition to Check 'n Go and Money Mart/Loan Mart, the original lawsuit named Wilmington, Del.-based First Bank of Delaware as a defendant for aiding and abetting the predatory lending schemes. Herrera's complaint alleged that Check 'n Go offered installment loans of up to \$1,500, with annual percentage rates exceeding 300 percent, through a questionable arrangement with First Bank of Delaware, in a deliberate effort to circumvent California's interest rate and loan principal limits.

Check 'n Go claimants may be qualified for restitution if they obtained a four-month installment loan online between Nov. 2006 and June 2008 through the websites: checkngo.com, ilp.fbdel.com, and commandloans.com. To be eligible for repayment, borrowers must mail a claim form and a copy of the required form of identification to the settlement administrator, postmarked by March 28, 2013.

Herrera is urging potential claimants who think they may be qualified for restitution to visit, email or call for more information:

- [www.calloanrefund.org](http://www.calloanrefund.org)
- [CALoanRefund@sfgov.org](mailto:CALoanRefund@sfgov.org)
- (Toll Free) 1-855-581-2350

The litigation involving the Check 'n Go loan settlement is: *People of the State of California ex rel. Dennis Herrera v. Check N' Go of California, Inc., et al.* (San Francisco Superior Court Case No. CGC-07-462779).

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Attorneys for Plaintiff People of the State of California

ENDORSED  
FILED  
JUN 15 2012

JUN 15 2012  
CLERK OF THE COURT  
BY: J. BIDS-MERIDA  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through City Attorney Dennis J. Herrera,  
Plaintiff,  
vs.  
CHECK 'N GO OF CALIFORNIA, INC.  
d/b/a CHECK 'N GO; et al.  
Defendants.

Case No. CGC-07-462779  
STIPULATED INJUNCTION AND ORDER FOR ENTRY OF JUDGMENT  
Date Action Filed: April 26, 2007  
Trial Date: November 5, 2012

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3 Plaintiff the People of the State of California ("the People") and Defendants Check 'n Go of  
4 California, Inc.; Southwestern & Pacific Specialty Finance, Inc. d/b/a Check 'n Go; Avante  
5 TelAdvance, Inc. d/b/a Check 'n Go Online (collectively, "the Check 'n Go Defendants"), having  
6 executed a Settlement Agreement and Release, present this Stipulated Injunction And Order For  
7 Entry Of Judgment to Department 304 of the San Francisco Superior Court, the Honorable Richard  
8 A. Kramer presiding. The People and the Check 'n Go Defendants consent to entry of this  
9 Stipulated Injunction And Order For Entry Of Judgment by the Court, and the People and the Check  
10 'n Go Defendants waive their respective rights to a noticed motion, hearing, or trial. First Bank of  
11 Delaware ("FBD") stipulates to the Entry of Judgment as proposed herein. The People and the  
12 Check 'n Go Defendants agree that this Stipulated Injunction And Order For Entry Of Judgment  
13 shall be entered and become final for all purposes upon entry thereof, and each party to this  
14 Stipulated Injunction And Order For Entry Of Judgment waives any right to appeal therefrom.

15 The People and the Check 'n Go Defendants hereby request that this Court retain  
16 jurisdiction pursuant to California Code of Civil Procedure section 664.6 to enforce their Settlement  
17 Agreement and Release.

18 **Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:**

19 **A. JURISDICTION.** This Court has jurisdiction over the subject matter of this lawsuit as  
20 set forth in the allegations of the First Amended Complaint against the Check 'n Go Defendants and  
21 over the People, the Check 'n Go Defendants, and FBD to make further orders and directions as may  
22 be necessary or appropriate for the construction, application or carrying out of the provisions herein.

23 **B. INJUNCTION.** In the State of California, the Check 'n Go Defendants are hereby  
24 enjoined from June 15, 2012 until November 15, 2014 from acting as a marketer, servicer, or agent  
25 in connection with any unsecured personal installment loan offered by a national or state-chartered  
26 banking institution to a borrower residing in California. Nothing in this stipulation shall prohibit  
27 any of the Check 'n Go Defendants from offering any products or services, including unsecured  
28 personal installment loans, that are not prohibited by California law.

1 C. The People shall take nothing further from the Check 'n Go Defendants in connection  
2 with their First Amended Complaint except as provided in this Stipulated Injunction And Order For  
3 Entry Of Judgment and as provided in the Settlement Agreement and Release executed by the  
4 People and the Check 'n Go Defendants, a complete copy of which is attached hereto as Exhibit A.  
5 Further, the People shall take nothing from defendant FBD in connection with the First Amended  
6 Complaint insofar as it relates to any loans made pursuant to or in connection with any agreements  
7 between FBD and any of the Check 'n Go Defendants, except as provided in this Stipulated  
8 Injunction And Order For Entry Of Judgment and as provided in the Settlement Agreement and  
9 Release executed by the People and the Check 'n Go Defendants and attached hereto as Exhibit A.

10 D. Each party shall bear its own fees, costs, and expenses incurred in connection with this  
11 action.

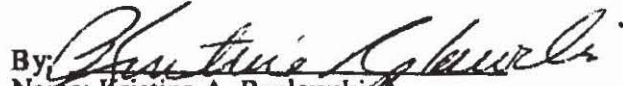
12 E. Pursuant to the request of the People and the Check 'n Go Defendants, this Court shall  
13 retain continuing jurisdiction to enforce the Settlement Agreement and Release.

14 F. The Court hereby orders that Judgment in this matter be entered in the form attached  
15 hereto as Exhibit B.

16 **SO STIPULATED:**

17 DATED: June 13, 2012

18 Plaintiff the People of the State of California, by and  
19 through City Attorney Dennis J. Herrera

20 By:   
21 Name: Kristine A. Poplawski  
22 Deputy City Attorney

23 DATED: \_\_\_\_\_

24 By: \_\_\_\_\_  
25 Name: Mark C. Dosker  
26 Squire Sanders (US) LLP

27 Attorneys for Defendants Check 'n Go of California,  
28 Inc.; Southwestern & Pacific Specialty Finance, Inc.  
d/b/a Check 'n Go; Avante TelAdvance, Inc. d/b/a  
Check 'n Go Online

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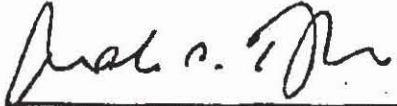
16 **SO STIPULATED:**

17 DATED: \_\_\_\_\_

18 Plaintiff the People of the State of California, by and  
19 through City Attorney Dennis J. Herrera

20 By: \_\_\_\_\_  
21 Name: Kristine A. Poplawski  
22 Deputy City Attorney

23 DATED: June 13, 2012

24 By:  \_\_\_\_\_  
25 Name: Mark C. Dosker  
26 Squire Sanders (US) LLP

27 Attorneys for Defendants Check 'n Go of California,  
28 Inc.; Southwestern & Pacific Specialty Finance, Inc.  
d/b/a Check 'n Go; Avante TelAdvance, Inc. d/b/a  
Check 'n Go Online

1 SO STIPULATED AS TO PARAGRAPHS A, C, D, E, AND F:

2  
3 DATED: June 13, 2012

By: [Signature]  
Name: Paul J. Hall  
DLA Piper LLP (US)

Attorneys for First Bank of Delaware

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9 IT IS SO ORDERED:

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DATED: \_\_\_\_\_

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Honorable Richard A. Kramer  
Judge of the Superior Court

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**SO STIPULATED AS TO PARAGRAPHS A, C, D, E, AND F:**

DATED: \_\_\_\_\_

By: \_\_\_\_\_

Name: Paul J. Hall  
DLA Piper LLP (US)

Attorneys for First Bank of Delaware

**IT IS SO ORDERED:**

DATED: 6-15-12

*S/* **RICHARD A. KRAMER**

Honorable Richard A. Kramer  
Judge of the Superior Court





## SETTLEMENT AGREEMENT AND RELEASE

Plaintiff the People of the State of California, by and through San Francisco City Attorney Dennis J. Herrera ("the People"), and Check 'n Go of California, Inc.; Southwestern & Pacific Specialty Finance, Inc. d/b/a Check 'n Go; Avante TelAdvance, Inc. d/b/a Check 'n Go Online (collectively, "the Check 'n Go Defendants"), do hereby enter into this Settlement Agreement and Release (the "Agreement"), with reference to the following facts:

### Recitals

A. There is pending in the San Francisco Superior Court a civil action captioned *People of the State of California ex rel. Dennis Herrera v. Check 'n Go of California, Inc., et al.*, Case No. CGC-07-462779 (the "Action"). The People initiated the Action by filing a complaint on April 26, 2007 against, *inter alia*, the Check 'n Go Defendants and First Bank of Delaware ("FBD"). On January 5, 2009, the People filed a first amended complaint ("FAC") against, *inter alia*, the Check 'n Go Defendants and FBD. On April 3, 2009, the Check 'n Go Defendants answered the FAC.

B. The People allege in the FAC that the Check 'n Go Defendants offered unsecured installment loans to California consumers, purportedly with defendant FBD as the funder of the loans, where the interest rates on the loans exceeded the limits set by the California Finance Lenders Law (California Finance Code §§ 22000 *et seq.*). The People allege that the Check 'n Go Defendants and not FBD were the true lenders of these installment loans because the Check 'n Go Defendants received the preponderant economic benefit from the loans and bore all risk of loan losses. In the alternative, the People allege that the Check 'n Go Defendants acted as a broker for these installment loans. The People also allege in the FAC that FBD aided and abetted the Check 'n Go Defendants' violations of California law.

C. Based on the allegations of the FAC, the People assert that the Check 'n Go Defendants and FBD are liable for violations of the Unfair Competition Law, California Business and Professions Code §§ 17200 *et seq.* The People seek restitution for consumers of all interest they paid on the challenged installment loans, an order rescinding all challenged loan contracts, injunctive relief against the Check 'n Go Defendants, civil penalties for violations of the Unfair Competition Law, and other relief.

D. The Check 'n Go Defendants deny the allegations asserted by the People in the Action, and deny that they or FBD have any liability to the People arising from the Action or the FAC. FBD also denies the allegations asserted by the People in the Action and denies that it has any liability to the People arising from the Action or the FAC. Specifically, the Check 'n Go Defendants assert that FBD, a state-chartered, FDIC insured financial institution, made the loans challenged in the FAC and that Avante TelAdvance, Inc. was the marketer and servicer of such loans.

E. The Check 'n Go Defendants and the People (collectively the "Parties") have participated in settlement conferences and mediation. In order to eliminate the cost, burden and uncertainty of litigation and trial, and without admission by any party to the Action to the truth or

accuracy of any allegations made in the other's pleadings, the Parties now agree to settle all of the People's claims against the Check 'n Go Defendants that were or could have been asserted in the FAC and the Action; and all of the People's claims against FBD that were or could have been asserted in the FAC and the Action, on the terms and conditions set forth below.

WHEREFORE, in consideration of the promises, covenants, representations and warranties contained herein, and for good and valuable consideration given hereunder, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions

"Action" shall mean that civil action pending in the San Francisco Superior Court captioned *People of the State of California ex rel. Dennis Herrera v. Check 'n Go of California, Inc., et al.*, Case No. CGC-07-462779.

"Agreement" shall mean this Settlement Agreement and Release.

"Challenged Loans" shall mean the Installment Loans.

"Check 'n Go Defendants" shall mean Check 'n Go of California, Inc.; Southwestern & Pacific Specialty Finance, Inc. d/b/a Check 'n Go; Avante TelAdvance, Inc. d/b/a Check 'n Go Online.

"Effective Date" shall mean the date when notice of the entry of the Stipulated Injunction And Order For Entry of Judgment, attached hereto as Exhibit A, as an endorsed order of the San Francisco Superior Court, is served on all parties.

"Eligible Claimant" shall mean a person who, while resident in California, borrowed one or more Challenged Loans with a four-month term and paid interest, fees, or finance charges in connection with such loan(s) that exceeds the amount of unpaid principal for such loan(s).

"FAC" shall mean the People's First Amended Complaint filed in the Action on January 5, 2009.

"FBD" shall mean First Bank of Delaware.

"Installment Loans" shall mean unsecured installment loans offered to California residents, pursuant to agreements between one or more of the Check 'n Go Defendants and FBD, with one or more of the Check 'n Go Defendants as the marketer and/or servicer of the loans.

"Parties" shall mean the People and the Check 'n Go Defendants.

"People" shall mean Plaintiff the People of the State of California, by and through San Francisco City Attorney Dennis J. Herrera.

"Released Parties" shall mean: (1) Check 'n Go of California, Inc.; Southwestern & Pacific Specialty Finance, Inc., d/b/a Check 'n Go; Avante TelAdvance, Inc. d/b/a Check 'n Go Online, and any of their parents, subsidiaries, affiliates, agents, servants, officers, owners, directors, shareholders, attorneys, and employees; and (2) First Bank of Delaware and any of its parents, subsidiaries, affiliates, agents, servants, officers, owners, directors, shareholders, attorneys, and employees to the extent of FBD's business of offering Installment Loans in California pursuant to its agreement(s) with one or more of the Check 'n Go Defendants.

"Verified Claimant" shall mean an Eligible Claimant who returns by mail a claim form to the Claims Administrator in the manner and method agreed upon by the Check 'n Go Defendants and the People.

"Claims Administrator" shall mean the entity selected and retained by the Check 'n Go Defendants, with consent from the People, to administer the settlement.

## **2. Stipulated Injunction and Order for Entry of Judgment**

Within five business days of the execution of this Agreement by all Parties, the Parties shall endorse the Stipulated Injunction and Order for Entry of Judgment attached hereto as Exhibit A and shall present the Stipulated Injunction and Order for Entry of Judgment to the San Francisco Superior Court, Department 304, for entry as a final judgment on all of the People's claims against the Check 'n Go Defendants that were or could have been asserted in the FAC and all of the People's claims against FBD that were or could have been asserted in the FAC and that have not been previously released pursuant to the Settlement Agreement and Release between the Dollar Financial Group, Inc. and the People, attached as Exhibit A to the Stipulated Injunction and Order for Entry of Judgment dated October 19, 2011 ("Dollar Settlement").

## **3. Notices to Eligible Claimants and Restitution to Verified Claimants**

3.1. Within 30 days of having final calculations as to each Verified Claimant's restitution amount per the procedures outlined herein, but in no event later than July 31, 2013, the Check 'n Go Defendants will create a settlement fund with the Claims Administrator in the amount of at least \$2.2 million and no more than \$4.3 million, with the total amount of the settlement fund to be determined as described in this Agreement.

3.2. The settlement fund will be payable to Eligible Claimants who make claims on the settlement fund through the claims process described in Paragraph 4, *infra*.

3.3. Each Eligible Claimant whose identification has been verified (*i.e.*, social security number and a form of identification) will be entitled to a payment according to the following formula:

(Interest, fees, and finance charges paid by the claimant on any Installment Loan with a four-month term less (i) any unpaid principal on that Installment Loan(s); and/or (ii) any other loan principal owed by claimant to any of the Check 'n Go Defendants) multiplied by 0.685, except that if the amount payable is less than \$20, then the claimant will receive no payment.

3.4. For verification purposes, a copy of any one of the following forms of identification will be accepted:

- any government-issued identification card, including a current driver's license, passport, voter registration card, birth certificate, military ID, or immigration documents
- student or school identification card bearing picture and name
- employee identification card bearing picture and name
- public housing identification card with address
- a telephone, water, electricity, garbage, cable television or other utility bill showing name and current address
- bank statement (showing name and current address)
- school tuition bill (showing name and address)
- medical insurance card

3.5. In no event will the settlement fund created by the Check 'n Go Defendants exceed \$4.3 million.

3.6. If claims made by Verified Claimants total more than \$4.3 million, claims will be paid to Verified Claimants pro rata such that the settlement fund does not exceed \$4.3 million.

3.7. If claims made by Verified Claimants total less than \$2.2 million, the Check 'n Go Defendants will recalculate the amount payable to each Verified Claimant. Pursuant to this recalculation, a Verified Claimant will receive payment of all interest, fees, and finance charges he or she actually paid to any of FBD or the Check 'n Go Defendants in connection with any Challenged Loan, less the following offsets:

- (a) A single deduction of \$45 per loan;
- (b) Any of the Challenged Loan's loan principal that the Verified Claimant has not repaid;
- (c) Any other loan principal owed by the Verified Claimant to any of the Check 'n Go Defendants.

3.8. If claims made by Verified Claimants and recalculated pursuant to the foregoing Paragraph 3.7 exceed \$2.2 million, the settlement fund will be capped at \$2.2 million and recalculated claims will be paid to Verified Claimants pro rata.

3.9. If claims made by Verified Claimants and recalculated pursuant to the foregoing Paragraphs 3.7 and 3.8 do not exceed \$2.2 million, any residual up to \$2.2 million will be paid in equal shares to the San Francisco City Attorney's Office and to a 501(c)(3) organization, to be mutually agreed by the Parties, that is a food bank or that provides financial education or similar services to consumers in California.

3.10. The People shall have the right to review the data that Check 'n Go Defendants use to make the calculations described in Paragraphs 3.3 and 3.7.

#### **4. Claims Administration**

4.1. The distribution of the settlement fund will be administered by the Claims Administrator.

4.2. Subject to approval by the People, which approval shall not be unreasonably withheld, the Check 'n Go Defendants will select the Claims Administrator and oversee the administration of the settlement. The Check 'n Go Defendants shall be responsible for paying all costs associated with the administration of the settlement fund, including costs of providing notice. Administration and notice costs may not be paid from the settlement fund.

4.3. Within 60 days of the Effective Date, the Check 'n Go Defendants shall provide to the Claims Administrator a list of Eligible Claimants and their contact information, including mailing addresses and email addresses. The Check 'n Go Defendants shall use reasonable efforts to provide current and up-to-date contact information for Eligible Claimants and shall describe these efforts to the People.

4.4. The Claims Administrator shall provide written notice by first class mail, and by email notice where possible, to Eligible Claimants of their potential eligibility to receive a settlement payment in an amount to be determined as set forth in Paragraphs 3.3 through 3.9. The Parties shall meet and confer with each other and with the Claims Administrator to determine the form and content of the notice.

4.5. The Claims Administrator shall provide to Eligible Claimants a claim form by first class mail, and by email notice where possible, by which the Eligible Claimants may submit a claim to receive a settlement payment in an amount to be determined as set forth in Paragraphs 3.3 through 3.9. In addition, the Claims Administrator shall make claim forms available on its website. The claim form shall include the verification requirements set forth in Paragraphs 3.3 and 3.4 above; the Parties shall otherwise meet and confer with each other and with the Claims Administrator to determine the form and content of the claim form.

4.6. Eligible Claimants may make a claim by returning the claim form. All claims must be received by mail, and postmarked within 90 days following the date on which the Claims Administrator mailed the written notice to the Eligible Claimants pursuant to Paragraph 4.5.

4.7. Based upon the claims made as described in the foregoing Paragraph 4.6, the Claims Administrator shall assemble a list of Verified Claimants and send this list to the Parties. At the election of the Check 'n Go Defendants, either the Check 'n Go Defendants or the Claims Administrator shall perform the settlement calculations described in the foregoing Paragraphs 3.3 through 3.8, subject to the People's right to review as set forth in Paragraph 3.10.

4.8. At the election of the Check 'n Go Defendants, either the Check 'n Go Defendants or the Claims Administrator shall determine the settlement amount to be paid to each Verified Claimant and shall provide this information to the Claims Administrator and the Parties. The Check 'n Go Defendants shall instruct the Claims Administrator to send a settlement check to each Verified Claimant within 30 days of the creation of the settlement fund.

4.9. Settlement checks drawn on the settlement fund must be negotiated by the payee within 120 days of the date of the check, and will so state on the face of each check. Any amount remaining in the settlement fund after 150 days following the last date shown on any of the settlement checks shall revert to the Check 'n Go Defendants, except that in the event that checks drawn on the settlement fund are not cashed such that claims actually paid total less than \$2.2 million, any residual up to \$2.2 million will be paid in equal shares to the San Francisco City Attorney's Office and to a 501(c)(3) organization, to be mutually agreed by the parties, that is a food bank or that provides financial education or similar services to consumers in California.

## **5. Payment To City and County of San Francisco**

Within 35 days after the Effective Date and upon receipt of written payment instructions, the Check 'n Go Defendants shall make a settlement payment of \$1,075,000 to the City and County of San Francisco. The payment shall be made by check payable to the San Francisco City Attorney's Office, and delivered to Deputy City Attorney Kristine A. Poplawski at the address set forth below in Paragraph 10. The People agree that this payment is a payment for the release provided in this Agreement, including the cost of investigating and prosecuting the claims in this Action.

## **6. People's Release**

6.1. Upon entry by the San Francisco Superior Court of the Stipulated Injunction and Order of Entry of Judgment attached hereto as Exhibit A, the People fully, finally and forever release the Released Parties from all actual or potential claims or actions of any sort that were or could have been alleged in the FAC, including but not limited to claims or actions relating to Installment Loans with a four-month or one-year term. This release extends to claims that the People do not know or suspect to exist in their favor. The People agree that this paragraph constitutes a waiver of Section 1542 of the California Civil Code, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

The People acknowledge and agree that this waiver of Section 1542 of the California Civil Code is an essential and material term of this release, and without such waiver the settlement would not have been accepted. The People hereby represent that they understand and acknowledge the significance and consequence of this release and of this specific waiver of Section 1542.

6.2 Notwithstanding any of the foregoing, the People do not release any of the following:

- Any state or municipal administrative, civil, or government claim or liability not related to the conduct and causes of action alleged or could have been alleged in the FAC; and
- Any violations of state or municipal law occurring or continuing after the Effective Date of this Agreement.

The Parties further acknowledge that this release does not in any way relieve the Parties of the obligation to abide by each and every term of this Agreement nor impair their ability to enforce this Agreement as provided in Paragraph 11.3. Further, this release does not deprive the Parties from seeking any relief for failure to comply with the terms of this Agreement.

**7. Authority**

The Parties hereto represent and warrant to each other that the person executing this Agreement on its behalf has full authority and capacity to execute this Agreement and to give the releases and other promises contained herein. If this representation is false or inaccurate, and any claim or matter is asserted against a party by anyone who is the assignee or transferee of such a claim or matter, then the party who assigned or transferred such claim or matter shall fully indemnify, defend, and hold harmless the party against whom such claim or matter is asserted and its successors from and against such claim or matter.

**8. No Admission of Liability**

Each of the Parties understands and agrees that this Agreement affects the settlement of claims which are denied and contested, and nothing contained herein shall be construed as an admission by the Released Parties of any liability of any kind.

**9. Contingency**

If the San Francisco Superior Court does not enter the Stipulated Injunction and Order of Entry of Judgment and Judgment as a final judgment as provided for in this Agreement, if an appeal is taken and the judgment is reversed on appeal, or if the terms of the Agreement are modified in any substantial way by the San Francisco Superior Court or any appellate court, then this Agreement shall be of no force or effect and, in any such event, the Parties agree that this Agreement, including its exhibits, and any and all negotiations, documents and discussions associated with it, shall be without prejudice to the rights of any party, shall not be deemed or construed to be an admission or evidence of any violation of any statute, law or regulation or of any liability or wrongdoing by any of the Released Parties or of the truth of any of the claims or allegations made in the FAC, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way in any action or proceeding. The Parties further agree that in the event an appeal is taken within the statutory time for filing an appeal, all deadlines set forth in this Agreement that have not yet occurred or expired shall be stayed during the pendency of the appeal.

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10. Notices

Any notice or communication required under this Agreement shall be effective when received and sufficient if given in writing, and shall be addressed as follows:

For The People:

Kristine A. Poplawski  
Office of the City Attorney  
1390 Market Street, 7th Floor  
San Francisco, CA 94102  
Ph. (415) 554-3878

For the Check 'n Go Defendants:

Amy L. Brown  
Squire Sanders (US) LLP  
1200 19<sup>th</sup> Street, NW  
Suite 300  
Washington, D.C. 20036

11. General Provisions

11.1. Attorneys' Fees and Costs: The Parties shall bear their own fees, costs and expenses incurred in connection with the disputes between the Parties which are the subject of, or related to, this Agreement.

11.2. Entire Agreement: This Agreement is intended by the Parties as a final expression of their agreement and understanding concerning the subject matter hereof and is intended as a complete statement of the terms and conditions of their settlement, and any and all prior oral or written agreements or understandings between the Parties related hereto are superseded. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement, have been made by any party hereto.

11.3. Choice of Law, Jurisdiction, and Enforcement: This Agreement is being executed in the State of California, and it shall be deemed to be made under, and shall be interpreted in accordance with, the laws of the State of California. The parties agree that the Superior Court of California for the County of San Francisco, Complex Litigation Department, shall have continuing jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure § 664.6.

11.4. Legal Advice and Investigation: Each of the Parties has had the opportunity to consult with independent legal counsel with respect to the advisability of making the settlement provided for herein and of executing this Agreement and all other matters contained herein. Each of the Parties has made such investigation of the facts relating to this Agreement and of all matters it relates to as the Party deems necessary.

11.5. Binding on Successors: This Agreement and the covenants and conditions contained herein shall apply to, be binding upon, and inure to the benefit of the respective heirs,



administrators, executors, legal representatives, assignees and successors-in-interest of the Parties hereto.

**11.6. Waiver, Modification and Amendment:** No provision of this Agreement may be waived unless in writing signed by all Parties hereto. Waiver of any one provision shall not be deemed to be a waiver of any other provision hereof. This Agreement may not be altered, amended or otherwise changed or modified, except in writing signed by all of the Parties.

**11.7. Construction:** In construing this Agreement, none of the Parties hereto shall have any term or provision, or any uncertainty or ambiguity as to any term or provision herein, construed against such party solely by reason of such party having drafted the same, as a result of the manner of the preparation of this Agreement, or otherwise.

**11.8. Execution in Counterparts:** This Agreement may be executed in counterparts and all of said counterparts shall collectively constitute one agreement binding on all Parties.

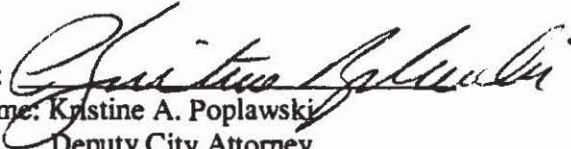
**11.9. Signatures:** Faxed and/or electronically scanned signatures on this Agreement shall be deemed originals.

**11.10. Headings:** Headings or captions contained in this Agreement are solely for the convenience of the Parties, are not a part of this Agreement, and are not intended to create any substantive meaning or to modify the terms and clauses either following them or contained in any other provision of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the dates set forth below.

DATED: June 13, 2012

Plaintiff the People of the State of California, by and through San Francisco City Attorney Dennis J. Herrera

By:   
Name: Kristine A. Poplawski  
Deputy City Attorney

DATED: \_\_\_\_\_

Defendants Check 'n Go of California, Inc.;  
Southwestern & Pacific Specialty Finance, Inc.  
d/b/a Check 'n Go; Avante TelAdvance, Inc. d/b/a  
Check 'n Go Online

By: \_\_\_\_\_  
Name: Stephen J. Schaller  
Title: General Counsel and Secretary

administrators, executors, legal representatives, assignees and successors-in-interest of the Parties hereto.

**11.6. Waiver, Modification and Amendment:** No provision of this Agreement may be waived unless in writing signed by all Parties hereto. Waiver of any one provision shall not be deemed to be a waiver of any other provision hereof. This Agreement may not be altered, amended or otherwise changed or modified, except in writing signed by all of the Parties.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the dates set forth below.

DATED: \_\_\_\_\_

Plaintiff the People of the State of California, by  
and through San Francisco City Attorney Dennis J.  
Herrera

By: \_\_\_\_\_  
Name: Kristine A. Poplawski  
Deputy City Attorney

DATED: 9-13-2012

Defendants Check 'n Go of California, Inc.;  
Southwestern & Pacific Specialty Finance, Inc.  
d/b/a Check 'n Go; Avante TelAdvance, Inc. d/b/a  
Check 'n Go Online

By: Stephen J. Schaller  
Name: Stephen J. Schaller  
Title: General Counsel and Secretary

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DENNIS J. HERRERA, State Bar #139669  
City Attorney  
OWEN J. CLEMENTS, State Bar #141805  
Chief of Special Litigation  
KRISTINE A. POPLAWSKI, State Bar #160758  
ROBERT A. BONTA, State Bar #202668  
PETER J. KEITH, State Bar #206482  
CHRISTINE VAN AKEN, State Bar #241755  
AILEEN M. McGRATH, State Bar #280846  
THOMAS S. LAKRITZ, State Bar #161234  
Deputy City Attorneys  
Office of the City Attorney  
1390 Market St., 7th Floor  
San Francisco, CA 94102  
Telephone: (415) 554-3875  
Facsimile: (415) 554-3985  
E-Mail: kristine.poplawski@sfgov.org  
Attorneys for Plaintiff People of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through City Attorney Dennis J. Herrera,

Plaintiff,

vs.

CHECK 'N GO OF CALIFORNIA, INC.  
d/b/a CHECK 'N GO; et al.

Defendants.

Case No. CGC-07-462779

**JUDGMENT**

Date Action Filed: April 26, 2007  
Trial Date: November 5, 2012

1 Plaintiff the People of the State of California ("the People") and Defendants Check 'n Go of  
2 California, Inc.; Southwestern & Pacific Specialty Finance, Inc. d/b/a Check 'n Go; Avante  
3 TelAdvance, Inc. d/b/a Check 'n Go Online (collectively, "the Check 'n Go Defendants") have  
4 executed a Settlement Agreement and Release, presented along with a Stipulated Injunction and  
5 Order for Entry of Judgment to Department 304 of the San Francisco Superior Court, the Honorable  
6 Richard A. Kramer presiding. The People and the Check 'n Go Defendants consent to entry of this  
7 Judgment and waive their respective rights to a noticed motion, hearing, or trial. The People and  
8 the Check 'n Go Defendants agree that this Judgment shall be entered and become final for all  
9 purposes upon entry thereof, and each party waives any right to appeal therefrom.

10 Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

11 A. The People shall take nothing further from the Check 'n Go Defendants in  
12 connection with their First Amended Complaint except as provided in the Stipulated Injunction  
13 signed by the Court on June \_\_\_\_, 2012 and as provided in the Settlement Agreement and Release  
14 executed by the People and the Check 'n Go Defendants.

15 B. The People shall take nothing from defendant First Bank of Delaware ("FBD") in  
16 connection with the First Amended Complaint insofar as it relates to any loans made pursuant to or  
17 in connection with any agreements between FBD and any of the Check 'n Go Defendants.

18 C. Each party shall bear its own fees, costs, and expenses incurred in connection with  
19 this action.

20 D. This Court shall retain jurisdiction to enforce this Judgment pursuant to California  
21 Code of Civil Procedure section 664.6.

22  
23 IT IS SO ORDERED:

24  
25 DATED: \_\_\_\_\_

\_\_\_\_\_  
26 Honorable Richard A. Kramer  
27 Judge of the Superior Court  
28