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Deputy Commissioner
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4 Counsel
5 Department of Business Oversight
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8 Attorneys for Complainant

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

13 In the Matter of:) CDDTL LICENSE NO.: 10DBO-45360
14 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
15)
16 Complainant,)
17 v.)
18 MODERN ASSET MANAGEMENT, INC.,)
19 DBA PAID2DAY,)
20 Respondent.)

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22 This Consent Order is entered into between the Commissioner of Business Oversight
23 (Commissioner) and Respondent, Modern Asset Management, Inc., DBA Paid2Day (Modern Asset)
24 (collectively, the Parties), and is made with respect to the following:

25 **I.**
26 **Recitals**

27 A. The Commissioner, as the chief officer of the Department of Business Oversight
28 (Department), has jurisdiction over the licensing and regulation of persons and entities

1 engaged in the business of payday lending under the California Deferred Deposit Transaction Law
2 (CDDTL) (Fin. Code, § 23000 et seq.) and the regulations promulgated under title 10 of the
3 California Code of Regulations (CCR) (Cal. Code Regs. tit. 10, § 2020 et seq.).

4 B. Modern Asset is licensed by the Commissioner pursuant to the CDDTL and has its
5 primary place of business at 23030 Lake Forest Drive, #202, Laguna Hills, California 92653.

6 C. Steve Hodgdon is the President of Modern Asset and, as such, is authorized to enter
7 into this Consent Order on behalf of Modern Asset.

8 D. On December 5, 2016, the Department commenced a regulatory examination of
9 Modern Asset’s books and records.

10 E. In response to the 2016 examination, Modern Asset provided separate quarterly
11 balance sheets for Modern Asset Management, Inc. and Paid2Day. The Department received
12 quarterly “Assets, Liabilities and Stockholder Equities” documents for Paid2Day from December
13 2015 to March 2017, and quarterly balance sheets for Modern Asset Management, Inc. from
14 December 2016 to September 2017. A review of the balance sheets and “Assets, Liabilities and
15 Stockholder Equities” show that Modern Asset failed to maintain a minimum net worth of
16 \$25,000.00 at all times, as required by Financial Code section 23007.

17 F. The exam further revealed that Modern Asset failed to keep books and records that
18 would enable the Commissioner to determine if it was complying with the CDDTL, in violation of
19 Financial Code section 23024 and CCR section 2025, subdivision (b).

20 G. The Commissioner finds that Modern Asset violated Financial Code sections 23007
21 and 23024, and CCR section 2025, subdivision (b).

22 H. Modern Asset admits to the jurisdiction of the Department, consents to entry of this
23 Consent Order by the Department and agrees to comply with its terms.

24 I. The Commissioner finds that this Consent Order is necessary, in the public interest
25 and consistent with the purposes, policies, and provisions of the CDDTL.

26 **II.**
27 **Terms and Conditions**

28 1. **Desist and Refrain Order.** Pursuant to Financial Code section 23050, Modern Asset is

1 hereby ordered to desist and refrain from engaging in the business of deferred deposit transactions in
2 the State of California in violation of Financial Code sections 23007 and 23024 and CCR section
3 2025, subdivision (b), and further stipulates that this Order is hereby deemed a final and enforceable
4 order issued pursuant to the Commissioner's authority under the CDDTL.

5 2. Administrative Penalties. Pursuant to Financial Code section 23058, Modern Asset is
6 hereby ordered to pay administrative penalties in the amount of \$7,000.00, due and payable to the
7 Department within 5 days of the effective date of this Consent Order, as such date is defined below in
8 Paragraph 15 (Effective Date). The penalty payment shall be made in the form of a cashier's check or
9 Automated Clearing House deposit to the "Department of Business Oversight," and transmitted to the
10 attention of: Accounting - Litigation, Department of Business Oversight, 1515 K Street, Suite 200,
11 Sacramento, California 95814. Notice of payment shall be sent concurrently to Affi Eghbaldari,
12 Counsel, Enforcement Division, by email at: affi.eghbaldari@dbo.ca.gov. In the event the payment
13 due date falls on a weekend or holiday, the payment shall be due the next business day.

14 3. License Surrender. Modern Asset acknowledges that it has requested to surrender its
15 CDDTL license (License No. 10DBO-45360). The parties hereby agree that the CDDTL license
16 (License No. 10DBO-45360) of Modern Asset shall be deemed surrendered upon completion of all
17 the terms and conditions of this Consent Order and receipt of its original CDDTL license. Modern
18 Asset shall submit the original of its CDDTL license to the Department prior to the effectiveness of
19 such surrender. Within 5 days of the Effective Date of this Consent Order, the original CDDTL
20 license shall be delivered to Affi Eghbaldari, Counsel, Department of Business Oversight, 1350 Front
21 Street, Room 2034, San Diego, California 92101.

22 4. Remedy for Breach. Modern Asset agrees that if it fails to timely comply with the
23 conditions set forth in Paragraph 2, the CDDTL license (License No. 10DBO-45360) of Modern
24 Asset shall be summarily revoked. Modern Asset also authorizes the Commissioner to
25 immediately seek to enforce the terms of this Consent Order as to administrative penalties against
26 Modern Asset as a final Consent Order.

27 5. Waiver of Hearing Rights. Modern Asset acknowledges its right to an administrative
28 hearing under the CDDTL in connection with this Consent Order and remedies specified herein and

1 hereby waives its right to a hearing, and to any reconsideration, appeal, or other right which may be
2 afforded under the CDDTL, and to judicial review of this matter pursuant to Code of Civil Procedure
3 section 1094.5 with respect to the issuance of this Consent Order.

4 6. Future Actions by the Commissioner. The Commissioner reserves the right to bring
5 any future action(s) against Modern Asset or any of its partners, owners, officers, directors,
6 shareholders, employees, or successors for all unknown or future violations of the CDDTL. This
7 Consent Order shall not serve to exculpate Modern Asset or any of its partners, owners, officers,
8 directors, shareholders, employees, or successors from liability for all unknown or future violations
9 of the CDDTL.

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

12 8. Full and Final Settlement. The Parties hereby acknowledge and agree that this
13 Consent Order is intended to constitute a full, final and complete resolution of the violations of the
14 CDDTL, occurring from 2015 to 2017, identified in Paragraphs E, F and G above (hereafter,
15 Released Matters). Notwithstanding this paragraph, the Commissioner may commence a proceeding
16 or action based upon any violation which Modern Asset knowingly concealed from the
17 Commissioner. The Parties further acknowledge and agree that nothing contained in this Consent
18 Order shall operate to limit the Commissioner's ability to assist any other agency (city, county, state
19 or federal) with any prosecution; administrative, civil or criminal, brought by any such agency
20 against Modern Asset, based on any of the activities alleged in these matters or otherwise.

21 9. Independent Legal Advice. Each of the Parties represents and warrants that they have
22 received independent advice from their attorneys and/or other representatives with respect to the
23 advisability of executing this Consent Order.

24 10. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
25 Consent Order, they have placed no reliance on any statement, representation, or promise of any
26 other party, or any person or entity not expressly set forth herein, or upon the failure of any party or
27 any other person or entity to make any statement, representation, or disclosure of anything
28 whatsoever. The Parties have included this clause: (1) to preclude any claim that any party was in any

1 way fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
2 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

3 11. Full Integration. This Consent Order is the final written expression and the complete
4 and exclusive statement of all stipulations, agreements, conditions, promises, representations, and
5 covenants between the Parties with respect to the matter hereof, and supersedes all prior or
6 contemporaneous agreements, discussions, negotiations, representations, and understandings between
7 and among the Parties, their respective representatives, and any other person or entity, with respect to
8 the subject matter covered in this Consent Order.

9 12. No Presumption from Drafting. In that the Parties have had the opportunity to draft,
10 review and edit the language of this Consent Order, no presumption for or against any party arising
11 out of drafting all or any part of this Consent Order will be applied in any action relating to,
12 connected to, or involving this Consent Order. Accordingly, the Parties waive the benefit of Civil
13 Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,
14 language of a contract should be interpreted most strongly against the party who caused the
15 uncertainty to exist.

16 13. Waiver or Modification. The waiver of any provision of this Consent Order shall not
17 operate to waive any other provision set forth herein, and any waiver, amendment and/or change to
18 the terms of this Consent Order must be in writing and signed by the Parties. No amendment, change
19 or modification of this Consent Order shall be valid or binding to any extent unless it is in writing and
20 signed by all the Parties affected by it.

21 14. Headings and Governing Law. The headings of the paragraphs of this Consent Order
22 are inserted for conveniences only and will not be deemed a part hereof or affect the construction or
23 interpretation of the provisions hereof. This Consent Order shall be construed and enforced in
24 accordance with and governed by California law.

25 15. Effective Date. This Consent Order shall not become effective until signed by all
26 parties and delivered by the Commissioner's counsel by email to Modern Asset's counsel, Paul Soter,
27 at: psoter@sonic.net.

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1 16. Counterparts. This Consent Order may be executed in any number of counterparts by
2 the Parties, and when each party has signed and delivered at least one such counterpart to the other
3 party, each counterpart shall be deemed an original, and taken together shall constitute one and the
4 same Consent Order.

5 17. Public Record. Modern Asset acknowledges that this Consent Order is a public record.

6 18. Information Willfully Withheld. This Consent Order may be revoked, and the
7 Commissioner may pursue all remedies available under the law against Modern Asset if the
8 Commissioner later finds out that Modern Asset knowingly or willfully withheld information used
9 and relied upon in this Consent Order.

10 19. Settlement Authority. Each signatory hereto covenants that he/she possesses all
11 necessary capacity and authority to sign and enter into this Consent Order.

12 20. Voluntary Agreement. Modern Asset enters into this Consent Order voluntarily and
13 without coercion and acknowledges that no promises, threats, or assurances have been made by the
14 Commissioner or any officer, or agent thereof, about this Consent Order.

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1 21. Signatures. This Consent Order may be executed by facsimile or scanned signature,
2 and any such facsimile or scanned signature by any party hereto shall be deemed to be an original
3 signature and shall be binding on such party to the same extent as if such facsimile or scanned
4 signature was an original signature.

5 Dated: October 31, 2018

JAN LYNN OWEN
Commissioner of Business Oversight

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By _____
Mary Ann Smith
Deputy Commissioner
Enforcement Division

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11 Dated: October 29, 2018

MODERN ASSET MANAGEMENT, INC., DBA
PAID2DAY

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By _____
Steve Hodgdon, President
Modern Asset Management, Inc., DBA Paid2Day

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APPROVED AS TO FORM:

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By _____ October 26, 2018

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Paul Soter, Esq.

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Attorney for Modern Asset Management, Inc., DBA Paid2Day

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