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Deputy Commissioner
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4 Department of Business Oversight
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7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

10
11 In the Matter of:) CFLL LICENSE NO. 603-8638
THE COMMISSIONER OF BUSINESS)
12 OVERSIGHT,) SETTLEMENT AGREEMENT
13)
Complainant,)
14)
v.)
15)
16 CAR CAPITAL FINANCIAL, INC.,)
Respondent.)
17)
18)
19)

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

23 **RECITALS**

- 24 A. Car Capital is a corporation in good standing, duly formed and existing pursuant to
25 the laws of the State of California, and authorized to conduct business in the State of California.
26 B. Car Capital is a finance lender licensed by the Commissioner pursuant to the
27 California Finance Lender Law ("CFLL") (Financial Code § 22000 et seq.). Car Capital has its
28 principal place of business located at 700 W. Collins Avenue, Orange, California 92867.

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

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

7 E. On February 24, 2015, Car Capital was personally served by the Commissioner with
8 a Notice of Intention to Issue Order Revoking Finance Lender License, Accusation and
9 accompanying documents dated February 18, 2015 (“Accusation”). Car Capital has filed a Notice of
10 Defense with the Commissioner regarding the Accusation. A hearing on the Accusation is currently
11 scheduled for November 9 and 10, 2015 at the Los Angeles Office of Administrative Hearings.

12 F. The Commissioner hereby acknowledges that Car Capital has submitted information
13 demonstrating that it has adopted policies and procedures addressing the issues described in the
14 Accusation.

15 G. It is the intention and desire of the parties to resolve this matter without the necessity
16 of a hearing and/or other litigation.

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

19 **TERMS AND CONDITIONS**

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

22 2. Car Capital, by entering into this Agreement, does not admit or deny any of the
23 allegations set forth in the Accusation.

24 3. Car Capital hereby agrees to the immediate issuance by the Commissioner of an order
25 requiring Car Capital to desist and refrain from violating Financial Code sections 22154, 22156,
26 22161, and 22320.5, and Financial Code section 22346, subdivision (b) in conjunction with 12 Code
27 of Federal Regulations, section 1026.18, subdivisions (c) and (d)(2) and section 1026.22, subdivision
28 (a)(2). A copy of the Stipulated Desist and Refrain Order is attached and incorporated herein as

1 Exhibit A.

2 4. Car Capital acknowledges its right to an administrative hearing under the CFLL in
3 connection with the Accusation and/or Stipulated Desist and Refrain Order and hereby waives that
4 right to a hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant
5 to the CFLL, the California Administrative Procedure Act, the California Code of Civil Procedure,
6 or any other provision of law in connection with this matter.

7 5. Car Capital also agrees to pay to the Commissioner the sum of \$5,000.00 in penalties
8 upon execution of this Agreement.

9 6. Car Capital further agrees to the issuance of a refund of the \$75.00 administrative fee
10 to the borrower(s) in the 94 loans identified by Car Capital in its self-audit of all loans made between
11 June 15, 2011 and April 23, 2015 as having APR and/or finance charge understatements. The
12 Commissioner hereby acknowledges that Car Capital has submitted information to the
13 Commissioner indicating that Car Capital has completed the refunds by issuing checks to the
14 affected borrowers.

15 7. Car Capital shall also issue a refund to the affected borrower(s) of any overcharged
16 late fees as identified by Car Capital in its self-audit of all loans made between June 15, 2011 and
17 April 23, 2015. The Commissioner hereby acknowledges that Car Capital has submitted information
18 to the Commissioner indicating that Car Capital has completed the refunds by issuing checks to the
19 affected borrowers.

20 8. Car Capital shall escheat all refund checks that are not cashed or returned as
21 undeliverable to the California State Controller’s Office within the time period provided by and in
22 accordance with the requirements of the Unclaimed Property Act; Code of Civil Procedure, section
23 1500 et seq.

24 9. Car Capital acknowledges and understands that the Department of Business Oversight
25 will review for compliance with the provisions of paragraphs 6-8 during future regulatory
26 examination(s).

27 10. In consideration of the information provided to the Commissioner by Car Capital as
28 described in paragraph F above, Car Capital’s agreement to the issuance of a desist and refrain order,

1 issuance of refunds, and payment of penalties as provided for in paragraphs 3, 5, 6 and 7 above, the
2 Commissioner hereby agrees not to revoke the finance lender license of Car Capital. Accordingly,
3 this Agreement, which resolves the Accusation, does not affect the licensing status of Car Capital set
4 forth in paragraph B above.

5 11. Pursuant to Financial Code section 22154 and Car Capital’s request for permission,
6 the Commissioner hereby authorizes the separately licensed pawnbroker and used car dealership
7 businesses of Car Capital’s affiliate, Car Capital, Inc., to be operated on the licensed premises of Car
8 Capital.

9 12. This Agreement may be revoked and the Commissioner may pursue any and all
10 remedies available under law against Car Capital, if the Commissioner later finds out that Car
11 Capital knowingly or willfully withheld information used and relied upon in this Agreement.

12 13. This Agreement is binding on all heirs, assigns and/or successors in interest.

13 14. This Agreement does not create any private rights or remedies against Car Capital,
14 create any liability for Car Capital or limit defenses of Car Capital for any person or entity not a
15 party to this Agreement.

16 15. The parties hereby acknowledge and agree that this Agreement is intended to
17 constitute a full, final and complete resolution of this matter. However, the parties acknowledge and
18 agree that nothing contained in this Agreement shall operate to limit the Commissioner's ability to
19 assist any other agency, (city, county, state or federal) with any prosecution, administrative, civil or
20 criminal, brought by any such agency against Car Capital or any other person based upon any of the
21 activities alleged in this matter or otherwise.

22 16. Each of the parties represents, warrants, and agrees that it has received independent
23 advice from its attorney(s) and/or representatives with respect to the advisability of executing this
24 Agreement.

25 17. Each of the parties represents, warrants, and agrees that in executing this Agreement
26 it has relied solely on the statements set forth herein and the advice of its own counsel and/or
27 representative. Each of the parties further represents, warrants, and agrees that in executing this
28 Agreement it has placed no reliance on any statement, representation, or promise of any other party,

1 or any other person or entity not expressly set forth herein, or upon the failure of any party or any
2 other person or entity to make any statement, representation or disclosure of anything whatsoever.
3 The parties have included this clause: (1) to preclude any claim that any party was in any way
4 fraudulently induced to execute this Agreement; and (2) to preclude the introduction of parol
5 evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

6 18. This Agreement is the final written expression and the complete and exclusive
7 statement of all the agreements, conditions, promises, representations, and covenants between the
8 parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous
9 agreements, negotiations, representations, understandings, and discussions between and among the
10 parties, their respective representatives, and any other person or entity, with respect to the subject
11 matter covered hereby.

12 19. In that the parties have had the opportunity to draft, review and edit the language of
13 this Agreement, no presumption for or against any party arising out of drafting all or any part of this
14 Agreement will be applied in any action relating to, connected, to, or involving this Agreement.
15 Accordingly, the parties waive the benefit of California Civil Code section 1654 and any successor
16 or amended statute, providing that in cases of uncertainty, language of a contract should be
17 interpreted most strongly against the party who caused the uncertainty to exist.

18 20. The waiver of any provision of this Agreement shall not operate to waive any other
19 provision set forth herein, and any waiver, amendment and/or change to the terms of this Agreement
20 must be in writing signed by the parties.

21 21. This Agreement shall not become effective until signed and delivered by all parties.

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

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

Dated: 10/8/15

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 10/5/15

CAR CAPITAL FINANCIAL, INC.

By _____
GARY RHODES, President

APPROVED AS TO FORM:

THE LAW OFFICES OF JON WEBSTER

By _____
JON WEBSTER., ESQ. Attorneys for
CAR CAPITAL FINANCIAL, INC.

Commissioner of Business Oversight

By _____
JUDY L. HARTLEY
Senior Counsel