

1 MARY ANN SMITH
Deputy Commissioner
2 MIRANDA LEKANDER
Assistant Chief Counsel
3 KELLY SUK (State Bar No. 300225)
Counsel
4 Department of Business Oversight
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7571
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

11 In the Matter of:) CFL LICENSE NO.: 60DBO-60438
12 THE COMMISSIONER OF BUSINESS) SETTLEMENT AGREEMENT
13 OVERSIGHT,)
14 Complainant,)
15 v.)
16 AGILECAP, LLC,)
17 Respondent.)
18)
19)

20 This Settlement Agreement is entered into between the Commissioner of Business Oversight
21 (Complainant or Commissioner) and Respondent Agilecap, LLC (Respondent or Agilecap) and is
22 made with respect to the following facts:

23 **I.**

24 **RECITALS**

25 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
26 entities engaged in the business of finance lending or brokering under the California Financing Law
27 (CFL) (Fin. Code, § 22000 et seq.).
28

1 B. Respondent is a limited liability company organized in the State of Delaware, with a
2 principal place of business at 50 Shadow Ridge Drive, Park City, Utah 84068.

3 C. Respondent is licensed as a finance lender and broker under the CFL with main
4 license number 60DBO-60438.

5 D. Respondent operates no branch offices under any other CFL license number.

6 E. In accordance with Financial Code section 22159, CFL licensees must file an annual
7 report with the Commissioner by March 15 of each year (Annual Report).

8 F. On January 16, 2018, the Commissioner notified CFL licensees of the March 15,
9 2018 deadline to file their annual reports by sending notice to the email address of each CFL
10 licensee established pursuant to the Commissioner's Order on Electronic Communications, dated
11 November 22, 2013. The notification admonished licensees that the Commissioner could assess
12 penalties and summarily revoke CFL license for untimely filing or failing to file pursuant to
13 Financial Code section 22715.

14 G. On February 20, 2018, the Commissioner again notified CFL licensees of the March
15 15, 2018 deadline to file their annual reports by sending notice to the email address each CFL
16 licensee established pursuant to the Commissioner's Order on Electronic Communications, dated
17 November 22, 2013. The notification again warned that the Commissioner could assess penalties and
18 summarily revoke licenses for untimely filing or failing to file pursuant to Financial Code section
19 22715.

20 H. As of March 19, 2018, Respondent had not filed its Annual Report with the
21 Commissioner. As a result, the Commissioner issued a notice letter to Respondent on March 19,
22 2018, advising Respondent that it should file its annual report by or before April 6, 2017 or else its
23 license would be summarily revoked pursuant to Financial Code section 22715 (Notice Letter).

24 I. As of April 6, 2018, Respondent had not filed its Annual Report with the
25 Commissioner as directed in the Notice Letter. As a result, on April 11, 2018, the Commissioner
26 issued an Order Summarily Revoking California Finance Lenders License Pursuant to Financial
27 Code Section 22715 for CFL License Number 60DBO-60438 (Summary Revocation Order).
28

1 J. Upon receiving the Summary Revocation Order, Respondent timely notified the
2 Commissioner that Respondent was requesting a hearing on the Summary Revocation Order.

3 K. On April 17, 2018, Respondent submitted its Annual Report, which was due on
4 March 15, 2018, 23 business days late. Pursuant to Financial Code Section 22715, the maximum
5 penalty that may be imposed for filing 23 business days late is \$9,500.00 (\$100.00 per business day
6 for the first five business days and \$500.00 per business day thereafter up to a maximum of
7 \$25,000.00).

8 L. In connection with these proceedings, Respondent represented to the Commissioner
9 that it had taken no new applications under its license.

10 M. The Commissioner finds that entering into this Settlement Agreement is in the public
11 interest and consistent with the purposes fairly intended by the policies and provisions of the CFL.

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

14 **II.**

15 **TERMS AND CONDITIONS**

16 1. Purpose. The parties intend to resolve this matter for the purpose of judicial economy
17 and expediency and without the uncertainty and expense of a hearing or other litigation.

18 2. Waiver of Hearing Rights. Respondent hereby agrees to withdraw its request for an
19 administrative hearing on the Summary Revocation Order. Respondent acknowledges its right under
20 the CFL to an administrative hearing on the Summary Revocation Order and hereby waives such
21 right to a hearing and to any reconsideration, appeal, injunction or other review that may be afforded
22 under the Financial Code; Administrative Procedure Act, including Government Code section
23 11415.60, subdivision (b); Code of Civil Procedure; or any other provision of law. By waiving such
24 rights, Respondent effectively consents to the finality of the Summary Revocation Order.

25 3. Order Rescinding Summary Revocation Order. The Commissioner hereby rescinds
26 the Summary Revocation Order, which had been issued on April 11, 2018.

27 4. Administrative Penalty. Respondent shall pay an administrative penalty of \$7,000.00
28 no later than 30 days after the effective date of this Settlement Agreement as defined in paragraph

1 18. The penalty must be made payable in the form of a cashier's check or Automated Clearing
2 House deposit to the Department of Business Oversight and transmitted to the attention of
3 Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200,
4 Sacramento, California 95814. Notice of the payment must be concurrently sent to Kelly Suk,
5 Counsel, at the Department of Business Oversight, 320 West 4th Street, Suite 750, Los Angeles,
6 California 90013.

7 5. Failure to Pay Administrative Penalty. If Respondent fails to comply with paragraph
8 4, the Commissioner may summarily suspend it from engaging in business under its license until it
9 provides evidence of compliance to the Commissioner's satisfaction. Respondent hereby waives any
10 notice or hearing rights afforded under the Administrative Procedure Act, including Government
11 Code section 11415.60, subdivision (b); Code of Civil Procedure; or any other provision of law to
12 contest the summary suspension contemplated by this paragraph.

13 6. Full and Final Resolution. Except as stated in paragraph 5, this Settlement
14 Agreement is intended to constitute a full and final resolution of the matter described in it. The
15 Commissioner will not bring any further action or proceeding concerning the matter unless she
16 discovers violations by Respondent that do not form the basis for this Settlement Agreement,
17 including violations knowingly concealed from the Commissioner.

18 7. Commissioner's Duties. Nothing in this Settlement Agreement limits the
19 Commissioner's ability to assist any other government agency with any action brought by that
20 agency against Respondent, including an action based on any of the acts, omissions, or events
21 described in this Settlement Agreement.

22 8. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
23 has had an opportunity to seek independent advice from its attorney(s) and/or representatives with
24 respect to the advisability of executing this Settlement Agreement.

25 9. Reliance. Each of the parties represents, warrants, and agrees that in executing this
26 Settlement Agreement it has relied solely on the statement set forth herein and has had the
27 opportunity to seek the legal advice of its own counsel. Each of the parties further represents,
28 warrants, and agrees that in executing this Settlement Agreement it has placed no reliance on any

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

7 10. Full Integration. This Settlement Agreement is the final written expression and the
8 complete and exclusive statement of all the agreements, conditions, promises, representations, and
9 covenants between the parties with respect to the subject matter hereof, and supersedes all prior or
10 contemporaneous agreements, negotiations, representations, understandings, and discussions
11 between and among the parties, their respective representatives, and any other person or entity, with
12 respect to the subject matter covered hereby. The parties have included this clause to preclude the
13 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
14 Settlement Agreement.

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

22 12. Voluntary Agreement. Respondent hereby enters in this Settlement Agreement
23 voluntarily and without coercion and acknowledges that no promises, threats, or assurances have
24 been made by the Commissioner or any officer, or agent thereof, about this Settlement Agreement.

25 13. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
26 this Settlement Agreement will be valid or binding unless it is in writing and signed by all parties
27 affected by it. Waiver of a provision of this Settlement Agreement will not be deemed a waiver of
28 any other provision.

1 14. Counterparts. The parties agree that this Settlement Agreement may be executed in
2 one or more separate counterparts, each of which when so executed, shall be deemed an original. A
3 fax or electronic mail signature shall be deemed the same as an original signature. Such counterparts
4 shall together constitute and be one and the same instrument.

5 15. Public Record. Respondent acknowledges that the Settlement Agreement is public
6 record.

7 16. Headings. The headings to the paragraphs of this Settlement Agreement are inserted
8 for convenience only and will not be deemed a part hereof or affect the construction or interpretation
9 of the provisions hereof.

10 17. Governing Law. This Settlement Agreement shall be construed and enforced in
11 accordance with and governed by California law.

12 18. Effective Date. This Settlement Agreement will become effective on the date it is
13 signed by all parties and delivered by the Commissioner to Respondent’s counsel Marc Rasich by
14 electronic mail at marc.rasich@stoel.com.

15 19. Settlement Authority. Each party represents that the person signing this Settlement
16 Agreement on its behalf has the authority and capacity to do so.

17

18 Dated: 5/9/18

JAN LYNN OWEN
Commissioner of Business Oversight

19

20

By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

21

22

23

24 Dated: 5/3/18

AGILECAP, LLC

25

26

By: _____
PETER J. FRIEDMAN
President

27

28