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

10
11 In the Matter of:) CFL LICENSE NO.: 6032159
12 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
13 Complainant,)
14 v.)
15 BALBOA CAPITAL CORPORATION,)
16 Respondent.)
17

18
19 This Consent Order is entered into between the Commissioner of Business Oversight
20 (Commissioner) and Respondent Balboa Capital Corporation (Balboa Capital), and is made with
21 respect to the following facts:

22 **RECITALS**

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

26 B. The purpose of the CFL is to ensure an adequate supply of credit to borrowers in
27 California; to simplify, clarify, and modernize the law governing loans made by finance lenders; to
28 foster competition among finance lenders; to protect borrowers against unfair practices by some

1 lenders, having due regard for the interests of legitimate and scrupulous lenders; to permit and
2 encourage the development of fair and economically sound lending practices; and to encourage and
3 foster a sound economic climate in this state. (Fin. Code, § 22001, subd. (a).)

4 C. Balboa Capital is a California corporation with its principal place of business at 575
5 Anton Boulevard, 12th Floor, Costa Mesa, California 92626.

6 D. Robert J. Rasmussen is the chief operating officer of Balboa Capital.

7 E. On July 1, 1995, Balboa Capital was issued a license as a finance lender and broker
8 under license number 6032159.

9 F. Under Financial Code section 22159, CFL licensees must file an annual report with
10 the Commissioner by March 15 of each year.

11 G. On March 6, 2017, the Commissioner reminded CFL licensees of the March 15
12 deadline for filing their annual reports by sending notice to the e-mail addresses designated by the
13 licensees for receiving communications from the Commissioner according to the Commissioner’s
14 Order on Electronic Communications dated November 22, 2013.

15 H. As of March 22, 2017, Balboa Capital had not filed its annual report. The
16 Commissioner sent a final notice dated March 22, 2017, to Balboa Capital by certified mail,
17 informing it that if it did not file the annual report by the close of business on April 10, 2017, its
18 license would be summarily revoked under Financial Code section 22715.

19 I. On April 11, 2017, Balboa Capital still had not filed its annual report. Thus, on April
20 19, 2017, the Commissioner issued an order summarily revoking Balboa Capital’s CFL license. The
21 order was effective that day.

22 J. Under Financial Code section 22715, Balboa Capital was entitled to request a
23 hearing within 30 days of the issuance of the revocation order, but it did not request one.

24 K. On July 17, 2017, Balboa Capital filed its annual report, which was due on March
25 15, 2017.

26 L. During these proceedings, Balboa Capital represented to the Commissioner that it
27 took applications for 70 loans from April 19, 2017, the effective date of the summary revocation, to
28

1 July 20, 2017. In taking the applications, Balboa Capital engaged in the business of a finance lender
2 or broker without a license in violation of Financial Code section 22100, subdivision (a).

3 M. The Commissioner finds that entering into this Consent Order is in the public
4 interest and consistent with the purposes fairly intended by the policy and provisions of the CFL.

5 The parties therefore agree as follows:

6 **TERMS AND CONDITIONS**

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

9 2. Desist and Refrain Order. Balboa Capital stipulates to the issuance of a desist and
10 refrain order in the form of the one attached as Exhibit A. The order, issued under Financial Code
11 section 22712, directs Balboa Capital to desist and refrain from failing to timely file an annual
12 report in violation of Financial Code section 22159 and from engaging in the business of a finance
13 lender or broker without a license in violation of Financial Code section 22100, subdivision (a).
14 Balboa Capital agrees to accept service of the desist and refrain order by electronic mail at
15 robertjr@balboacapital.com.

16 3. Waiver of Hearing Rights. Balboa Capital acknowledges that the Commissioner is
17 ready, willing, and able to proceed with the filing of an administrative enforcement action on
18 the charges and desist and refrain order contained in this Consent Order. Balboa Capital hereby
19 waives the right to notice, hearings, and any reconsideration, appeal, injunction, or other review that
20 may be afforded under the Financial Code; Administrative Procedure Act, including Government
21 Code section 11415.60, subdivision (b); Code of Civil Procedure; or any other provision of law. By
22 waiving such rights, Balboa Capital effectively consents to the finality of this Consent Order and
23 the desist and refrain order contained in it.

24 4. Administrative Penalty. Balboa Capital shall pay an administrative penalty of
25 \$20,000.00 no later than 30 days after the effective date of this Consent Order as defined in
26 paragraph 20. The penalty must be made payable in the form of a cashier's check or Automated
27 Clearing House deposit to the Department of Business Oversight and transmitted to the attention of
28 Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200,

1 Sacramento, California 95814. Notice of the payment must be sent to Samuel J. Park, Counsel, 320
2 West 4th Street, Suite 750, Los Angeles, California 90013.

3 5. Rescinding of Revocation. The Commissioner hereby rescinds her April 19, 2017
4 order summarily revoking Balboa Capital’s CFL license number 6032159. The license will be
5 deemed restored as of the effective date of this Consent Order.

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

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

17 8. Commissioner’s Duties. Nothing in this Consent Order limits the Commissioner’s
18 ability to assist any other government agency with any action brought by that agency against Balboa
19 Capital, including an action based on any of the acts, omissions, or events described in this Consent
20 Order.

21 9. Independent Legal Advice. Each party represents that it has received independent
22 advice from its counsel or representatives regarding the advisability of executing this Consent
23 Order.

24 10. Reliance. Each party represents that in executing this Consent Order it has relied
25 solely on the statements in the Consent Order and on the advice of its counsel or representatives.
26 Each party also represents that it has not relied on any statement or promise not contained in this
27 Consent Order from any other person or on the failure of such person to make a statement or
28 promise. The parties have included this clause to preclude any claim that a party was fraudulently

1 induced to execute this Consent Order.

2 11. Integration. This Consent Order is the final written expression and the complete and
3 exclusive statement of all the agreements, conditions, promises, representations, and covenants
4 between the parties concerning its subject matter and supersedes all discussion regarding such
5 subject matter between the parties, their representatives, and any other person. The parties have
6 included this clause to preclude the introduction of parol evidence to vary, interpret, supplement, or
7 contradict the terms of this Consent Order.

8 12. No Presumption Against Drafting Party. Each party acknowledges that it has had the
9 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
10 intend that no presumption for or against the drafting party will apply in construing any part of this
11 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
12 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
13 language of a contract should be interpreted most strongly against the party that caused the
14 uncertainty to exist.

15 13. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
16 this Consent Order will be valid or binding unless it is in writing and signed by all parties affected
17 by it. Waiver of a provision of this Consent Order will not be deemed a waiver of any other
18 provision.

19 14. Headings. The headings in this Consent Order are for convenience only and do not
20 affect its meaning.

21 15. Governing Law. This Consent Order will be governed by and construed in
22 accordance with the laws of the State of California.

23 16. Authority to Sign. Each party represents that the person signing this Consent Order
24 on its behalf has the authority and capacity to do so.

25 17. Voluntary Agreement. Balboa Capital enters into this Consent Order voluntarily and
26 without coercion and acknowledges that no promises, threats, or assurances about this Consent
27 Order have been made by the Commissioner or any of her officers or agents.

28 18. Counterparts. This Consent Order may be executed in any number of counterparts,

1 each of which will be deemed an original when executed. All counterparts together will be deemed
2 to constitute a single document.

3 19. Signatures. A signature delivered by facsimile or electronic mail will be deemed an
4 original signature.

5 20. Effective Date. This Consent Order will become effective on the date it is signed by
6 all parties and delivered by the Commissioner to Balboa Capital by electronic mail at
7 robertjr@balboacapital.com.

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9 Dated: 8/31/17

JAN LYNN OWEN
Commissioner of Business Oversight

10
11 By: _____
12 MARY ANN SMITH
Deputy Commissioner

13 Dated: 8/28/17

BALBOA CAPITAL CORPORATION

14
15 By: _____
16 ROBERT J. RASMUSSEN
Chief Operating Officer