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

12 In the Matter of:) CFL LICENSE NO.: 603L440
13 THE COMMISSIONER OF BUSINESS) SETTLEMENT AGREEMENT
OVERSIGHT,)
14)
Complainant,)
15 v.)
16 CROSS STATE FUNDING CORP.,)
17)
Respondent.)
18)
19)

20 This Settlement Agreement is entered into between the Commissioner of Business Oversight
21 (Complainant or Commissioner) and Respondent (Respondent or Cross State Funding Corp.) 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 corporation, with a principal place of business at 416 Oliver Street,
2 North Tonawanda, New York 14120.

3 C. Respondent is licensed as a finance broker under the CFL with main license number
4 603L440.

5 D. Respondent operates no branch offices in California.

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(s) 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. On March 27, 2018, Respondent submitted its Annual Report, which was due on
25 March 15, 2018, 8 business days late. Pursuant to Financial Code Section 22715, the maximum
26 penalty that may be imposed for filing 8 business days late is \$2,000.00 (\$100 per business day for
27 the first five business days and \$500 per business day thereafter up to a maximum of \$25,000).
28

1 Respondent’s late filing of the annual report was unintentional and the result of a serious medical
2 issue on the part of Respondent’s employee.

3 J. As a result of the late filing, on May 23, 2018, the Commissioner issued a Penalty
4 Order pursuant to Financial Code Section 22715 for CFL License Number 603L440 in the amount of
5 \$2,000.00 (Penalty Order).

6 K. Upon receiving the Penalty Order, Respondent timely notified the Commissioner that
7 Respondent was requesting a hearing on the Penalty Order.

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

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

12 **II.**

13 **TERMS AND CONDITIONS**

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

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

23 3. Order Rescinding Penalty Order. The Commissioner hereby rescinds the Penalty
24 Order, which had been issued on May 23, 2018.

25 4. Administrative Penalty. Respondent shall pay an administrative penalty of \$1,000.00
26 no later than 30 days after the effective date of this Settlement Agreement as defined in paragraph
27 18. The penalty must be made payable in the form of a cashier’s check or Automated Clearing
28 House deposit to the Department of Business Oversight and transmitted to the attention of

1 Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200,
2 Sacramento, California 95814. Notice of the payment must be concurrently sent to Paul Yee, Senior
3 Counsel, Department of Business Oversight, One Sansome Street, Suite 600, San Francisco,
4 California 94104.

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

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

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

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

23 9. Reliance. Each of the parties represents, warrants, and agrees that in executing this
24 Settlement Agreement it has relied solely on the statement set forth herein and has had the
25 opportunity to seek the legal advice of its own counsel. Each of the parties further represents,
26 warrants, and agrees that in executing this Settlement Agreement it has placed no reliance on any
27 statement, representation, or promise of any other party, or any other person or entity not expressly
28 set forth herein, or upon the failure of any party or any other person or entity to make any statement,

1 representation, or disclosure of anything whatsoever. The parties have included this clause: (1) to
2 preclude any claim that any party was in any way fraudulently induced to execute this Settlement
3 Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or
4 contradict the terms of this Settlement Agreement.

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

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

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

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

27 14. Counterparts. The parties agree that this Settlement Agreement may be executed in
28 one or more separate counterparts, each of which when so executed, shall be deemed an original. A

1 fax or electronic mail signature shall be deemed the same as an original signature. Such counterparts
2 shall together constitute and be one and the same instrument.

3 15. Public Record. Respondent acknowledges that the Settlement Agreement is public
4 record.

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

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

10 18. Effective Date. This Settlement Agreement will become effective on the date it is
11 signed by all parties and delivered by the Commissioner to Respondent's counsel by electronic mail
12 at kelly@crossstatefunding.com.

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

15
16 Dated: 7/18/18

JAN LYNN OWEN
Commissioner of Business Oversight

17
18
19 By _____
20 MARY ANN SMITH
21 Deputy Commissioner
22 Enforcement Division

23
24 Dated: 7/13/18

CROSS STATE FUNDING CORP.

25
26 By _____
27 KELLY L. SLOMBA
28 President