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

13 In the Matter of THE COMMISSIONER OF) CFL Application No. 184670
14 BUSINESS OVERSIGHT,)
15 Complainant,) STIPULATION TO ENTRY OF DESIST AND
16) REFRAIN ORDER, ISSUANCE OF
17 v.) REFUNDS, AND PAYMENT OF PENALTIES
18)
19 DEUTSCHE LEASING USA, INC.,)
20 Respondent.)
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24 This Stipulation to entry of a Desist and Refrain Order, Issuance of Refund, and Payment of
25 Penalties (“Stipulation”) is entered into between Deutsche Leasing USA, Inc. (“Deutsche Leasing”)
26 and the Commissioner of Business Oversight (“Commissioner”)(collectively referred to herein as the
27 “Parties”) in consideration of the application filed by Deutsche Leasing for a license under the

1 California Finance Lenders Law (“CFLL”) (Fin. Code, § 22000 et seq.), and is made with respect to
2 the following facts:

3 **RECITALS**

4 A. Deutsche Leasing is a Delaware corporation formed on or about August 14, 2007. Its
5 principal place of business is located at 190 South LaSalle Street, Suite 2150, Chicago, IL 60603.

6 B. On or about July 29, 2015, Deutsche Leasing filed with the Commissioner an
7 application for licensure under the California Finance Lenders Law (“CFLL”) (Application No.
8 184670). In addition to the application, the Commissioner requested, and Deutsche Leasing provided,
9 a loan report and the supporting documentation for all loans made in the state of California for the
10 period of August 17, 2008 through January 1, 2016 (collectively the “Application”). A review of the
11 Application disclosed that Deutsche Leasing had engaged in unlicensed finance lender activity in the
12 state of California during the period August 17, 2008 through January 1, 2016, as described below.

13 C. Deutsche Leasing made 23 non-real estate secured commercial loans in California
14 during the relevant period. Out of the 23 commercial loans, 14 were originated by Deutsche Leasing,
15 and nine were purchased from two third parties who are not related to Deutsche Leasing. Deutsche
16 Leasing modified the terms of eight of the promissory notes purchased from one of the third parties.
17 A loan whose terms are modified after being purchased would be considered a new loan origination
18 falling under the purview of the CFLL.

19 D. Additionally, Deutsche Leasing made 55 commercial equipment finance leases in
20 California during the relevant period. These commercial equipment finance leases are essentially
21 ‘capitalized leases’ or ‘equipment purchase financing,’ that are considered to be commercial
22 equipment loans under the CFLL. Deutsche Leasing originated 48 of the 55 equipment finance leases
23 and purchased seven from an unrelated third party. It appears that Deutsche Leasing did not modify
24 the terms in the seven equipment finance lease agreements purchased from the unrelated third party.

25 E. Furthermore, the Commissioner reviewed the Application to determine if there were
26 interest charges and fees in excess of the 10% usury limitation under Article 15, section 1, of the
27 California Constitution. The Commissioner considered loan points and fees paid directly to Deutsche
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1 Leasing in calculating whether the company violated California’s 10% usury limitation. The
2 Commissioner found one equipment finance lease had interest overcharges totaling \$599.00 in excess
3 of the 10% usury limitation.

4 F. It is the intention and desire of the Parties to resolve this matter without the necessity
5 of a hearing or other litigation.

6 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
7 forth herein, the Parties agree as follows:

8 **TERMS AND CONDITIONS**

9 1. This Stipulation is entered into for the purpose of judicial economy and expedience,
10 and to avoid the expense of a hearing, and possible further court proceedings.

11 2. Deutsche Leasing agrees to the issuance of the Desist and Refrain Order (“Order”)
12 issued under section 22712 of the Financial Code, directing Deutsche Leasing to desist and refrain
13 from engaging in the business of a finance lender in this state in violation of Financial Code section
14 22100. The Order will be considered a final order. Deutsche Leasing agrees that the delivery by
15 certified mail of the executed Order issued by the Commissioner to the address set forth in Paragraph
16 A above shall constitute valid service of the Order. A true and correct copy of the Order is attached
17 hereto and incorporated herein by reference as **Exhibit 1**.

18 3. Deutsche Leasing acknowledges its right to an administrative hearing under the CFLL
19 in connection with the Desist and Refrain Order and the application for licensure under the CFLL and
20 hereby waives that right to a hearing, and to any reconsideration, appeal, or other review which may
21 be afforded under the CFLL, the Administrative Procedure Act (Govt. Code, § 11370 et seq.), the
22 Code of Civil Procedure (Code of Civ. Proc., § 1 et seq.), or any other provision of law in connection
23 with this matter.

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1 4. Respondent agrees that the Commissioner shall not approve its application for
2 licensure under the CFLL unless, within 30 days after service of this Stipulation, as set forth in
3 Paragraph 8, Respondent does the following:

4 (a) Satisfactory evidence that Deutsche Leasing has refunded all usurious amounts charged to
5 a California borrower in excess of the 10% interest rate allowed under article 15, section 1 of the
6 California Constitution during the period that Deutsche Leasing did not have a CFLL license, then in
7 effect, in the sum of \$599.00.

8 (b) Deutsche Leasing agrees to pay administrative penalties for violations of Financial Code
9 section 22100 in the amount of \$50,000.00 in the form of a cashier's check made payable to the
10 'Department of Business Oversight.'

11 Deutsche shall submit the evidence of refunds and penalty payment required under this
12 paragraph to the attention of Marlou de Luna, Senior Counsel, Enforcement Division, 320 W. 4th
13 Street, Suite 750, Los Angeles, California 90013.

14 5. Refunds issued under Paragraph 4 shall be subject to final examination review by the
15 Commissioner and sent to the borrower with the accompanying notice: 'Pursuant to an agreement
16 entered with the California Department of Business Oversight, a refund or adjustment in the amount
17 of \$599.00 is being made for your benefit. If you have any questions concerning this refund, please
18 contact Latham & Watkins LLP on behalf of Deutsche Leasing, attn.: Alan Avery.'

19 6. Satisfactory evidence of the refund required under Paragraph 4 shall include, at a
20 minimum, the following: (a) the borrower's loan number, name, last known address, loan amount,
21 loan date, interest charged; (b) date of issuance of refund check; and (c) evidence of refund in the
22 form of a copy of the refund check or ACH deposit and accompanying correspondence sent to the
23 borrower.

24 7. Deutsche Leasing shall be responsible for ensuring that any outstanding refund
25 payment required by Paragraph 4 (a) above is escheated to the State of California under the
26 provisions of the California Unclaimed Property Law (Code Civ. Proc., § 1500 et seq.).
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1 8. Deutsche Leasing agrees that failure to timely comply with the conditions set forth in
2 Paragraphs 4, 5, 6 and 7 within 30 days of execution of this Stipulation, as such date is set forth in
3 Paragraph 18, shall result in summary denial of Deutsche Leasing’s application for a CFLL license.

4 9. The Parties further acknowledge and agree that nothing contained in this Stipulation
5 shall operate to limit the Commissioner’s ability to assist any other agency (city, county, state or
6 federal) with any prosecution (administrative, civil, or criminal) brought by any such agency against
7 Deutsche Leasing or any other person based on any of the activities alleged in these matters or
8 otherwise.

9 10. Each of the parties represents, warrants, and agrees that it has received independent
10 advice from their attorneys or representatives with respect to the advisability of executing this
11 Stipulation.

12 11. Each of the parties represents, warrants, and agrees that in executing this Stipulation
13 they have relied solely on the statements set forth herein and the advice of their own counsel. Each of
14 the parties further represents, warrants, and agrees that in executing this Stipulation it has placed no
15 reliance on any statement, representation, or promise of any other party, or any other person or entity
16 not expressly set forth in this Stipulation, or on the failure of any party or any other person or entity
17 to make any statement, representation or disclosure of anything whatsoever. The Parties have
18 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to
19 execute this Stipulation; and (2) to preclude the introduction of parol evidence to vary, interpret,
20 supplement, or contradict the terms of the Stipulation.

21 12. This Stipulation is the final written expression and the complete and exclusive
22 statement of all agreements, conditions, promises, representations, and covenants between the parties
23 with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements,
24 negotiations, representations, understandings, and discussions between and among the parties, their
25 respective representatives, and any other person or entity, with respect to the subject matter covered
26 by the Stipulation.

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1 13. In that the Parties have had an opportunity to draft, review, and edit the language of
2 this Stipulation, no presumption for or against any party arising out of drafting all or any part of this
3 Stipulation will be applied in any action relating to, connected to, or involving this Stipulation.
4 Accordingly, the Parties waive the benefit of Civil Code section 1654 and any successor or amended
5 statute, providing that in cases of uncertainty, language of a contract should be interpreted most
6 strongly against the party who caused the uncertainty to exist.

7 14. Deutsche Leasing enters into this Stipulation voluntarily and without coercion and
8 acknowledges that no promises, threats, or assurances have been made by the Commissioner or any
9 officer, or agent thereof, about this Stipulation.

10 15. The waiver of any provision of this Stipulation shall not operate to waive any other
11 provision set forth herein, and any waiver, amendment, or change to the terms of this Stipulation
12 must be in writing and signed by the Parties.

13 16. Each signatory hereto covenants that he/she possesses all necessary capacity and
14 authority to sign and enter into this Stipulation.

15 17. The Parties agree that this Stipulation may be executed in one or more separate
16 counterparts, each of which, when so executed, shall be deemed an original. A facsimile or scanned
17 signature shall be deemed the same as an original signature. Such counterparts together constitute one
18 document.

19 18. This Stipulation shall not become effective until it is signed and delivered by all
20 parties.

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22 Dated: 10/10/16

JAN LYNN OWEN
Commissioner of Business Oversight

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25 By: _____
26 MARY ANN SMITH
27 Deputy Commissioner
28 Enforcement Division

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Dated: 10/8/16

DEUTSCHE LEASING USA, INC.

By: _____
FABIEN LEDUC
President

APPROVED AS TO FORM:

LATHAM & WATKINS

By: _____
Alan Avery
Counsel for Deutsche Leasing USA, Inc.

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____
MARLOU de LUNA
Senior Counsel
Enforcement Division