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

11 In the Matter of:) CFL LICENSE NO.: 60DBO-51478
12 THE COMMISSIONER OF BUSINESS)
13 OVERSIGHT,) SETTLEMENT AGREEMENT
14 Complainant,)
15 v.)
16 FIRST CAPITAL EQUIPMENT FINANCE,)
17 INC.)
18 Respondent.)
19

20 This Settlement Agreement is entered into between the Commissioner of Business Oversight
21 (Complainant or Commissioner) and Respondent (Respondent or First Capital Equipment Finance,
22 Inc.) and is 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 California corporation, with a principal place of business at 19682
2 Torres Way, Trabuco Canyon, California 92679.

3 C. Respondent is licensed as a finance lender and broker under the CFL with main
4 license number 60DBO-51478.

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. On March 31, 2018, Respondent submitted its Annual Report, which was due on
21 March 15, 2018, 11 business days late. Pursuant to Financial Code Section 22715, the maximum
22 penalty that may be imposed for filing four business days late is \$3,500.00 (\$100 per business day
23 for the first five business days and \$500 per business day thereafter up to a maximum of \$25,000).

24 I. As a result of the late filing, on May 25, 2018, the Commissioner issued a Penalty
25 Order pursuant to Financial Code Section 22715 for CFL License Number 60DBO-51478 in the
26 amount of \$3,500.00 (Penalty Order).

27 J. Upon receiving the Penalty Order, Respondent timely notified the Commissioner that
28 Respondent was requesting a hearing on the Penalty Order.

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

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

5 **II.**

6 **TERMS AND CONDITIONS**

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

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

16 3. Order Rescinding Penalty Order. The Commissioner hereby rescinds the Penalty
17 Order, which had been issued on May 25, 2018.

18 4. Administrative Penalty. Respondent shall pay an administrative penalty of \$1,700.00
19 no later than 30 days after the effective date of this Settlement Agreement as defined in paragraph
20 18. The penalty must be made payable in the form of a cashier's check or Automated Clearing
21 House deposit to the Department of Business Oversight and transmitted to the attention of
22 Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200,
23 Sacramento, California 95814. Notice of the payment must be concurrently sent to Uche Enenwali,
24 Senior Counsel, Department of Business Oversight, 320 West Fourth Street, Suite 750, Los Angeles,
25 California 90013.

26 5. Failure to Pay Administrative Penalty. If Respondent fails to comply with paragraph
27 4, the Commissioner may summarily suspend it from engaging in business under its license until it
28 provides evidence of compliance to the Commissioner's satisfaction. Respondent hereby waives any

1 notice or hearing rights afforded under the Administrative Procedure Act, including Government
2 Code section 11415.60, subdivision (b); Code of Civil Procedure; or any other provision of law to
3 contest the summary suspension contemplated by this paragraph.

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

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

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

16 9. Reliance. Each of the parties represents, warrants, and agrees that in executing this
17 Settlement Agreement it has relied solely on the statement set forth herein and has had the
18 opportunity to seek the legal advice of its own counsel. Each of the parties further represents,
19 warrants, and agrees that in executing this Settlement Agreement it has placed no reliance on any
20 statement, representation, or promise of any other party, or any other person or entity not expressly
21 set forth herein, or upon the failure of any party or any other person or entity to make any statement,
22 representation, or disclosure of anything whatsoever. The parties have included this clause: (1) to
23 preclude any claim that any party was in any way fraudulently induced to execute this Settlement
24 Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or
25 contradict the terms of this Settlement Agreement.

26 10. Full Integration. This Settlement Agreement is the final written expression and the
27 complete and exclusive statement of all the agreements, conditions, promises, representations, and
28 covenants between the parties with respect to the subject matter hereof, and supersedes all prior or

1 contemporaneous agreements, negotiations, representations, understandings, and discussions
2 between and among the parties, their respective representatives, and any other person or entity, with
3 respect to the subject matter covered hereby. The parties have included this clause to preclude the
4 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
5 Settlement Agreement.

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

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

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

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

24 15. Public Record. Respondent acknowledges that the Settlement Agreement is public
25 record.

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

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

18. Effective Date. This Settlement Agreement will become effective on the date it is signed by all parties and delivered by the Commissioner to Respondent by electronic mail at rex@firstcapitalef.com.

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

Dated: 8/15/18

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 7/27/18

FIRST CAPITAL EQUIPMENT FINANCE, INC.

By _____
T. REX THOMAS
President