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

11	In the Matter of:)	OAH CASE NO.: 2017060891
12	THE COMMISSIONER OF BUSINESS)	CFL LICENSE NO.: 603B449
13	OVERSIGHT,)	SETTLEMENT AGREEMENT
14	Complainant,)	
15	v.)	Hearing Date: October 4, 2017
16	KRACKSMITH, INC.,)	Hearing Time: 9:00 a.m.
17	Respondent.)	Location: Office of Administrative Hearings
18)	320 West 4th Street, Suite 630
)	Los Angeles, California 90013
)	Judge: Hon. Cindy F. Forman
)	

19 This Settlement Agreement is entered into between the Commissioner of Business Oversight
20 (Commissioner) and Respondent Kracksmith, Inc. (Kracksmith), and is made with respect to the
21 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. Kracksmith is a California corporation with its principal place of business at 2360
5 Huntington Drive, San Marino, California 91108.

6 D. Allan Lee is the president of Kracksmith.

7 E. On August 9, 2005, Kracksmith was issued a license as a finance lender under
8 license number 603B449.

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

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

22 J. On May 31, 2017, Kracksmith filed its annual report, which was due on March 15,
23 2017.

24 K. Kracksmith does business under the names The American Business Fund and
25 American Business Fund and maintains a website at www.americanbusinessfund.com. On May 16,
26 2017, the website did not refer to Kracksmith’s licensure under the CFL.
27
28

1 L. Kracksmith represented to the Commissioner that it had not conducted any business
2 requiring a CFL license from April 19, 2017, the effective date of the summary revocation, to June
3 5, 2017.

4 M. The Commissioner is of the opinion that Kracksmith failed to file an annual report
5 with the Commissioner in violation of Financial Code section 22159.

6 N. The Commissioner is also of the opinion that Kracksmith failed to refer to its
7 licensure under the CFL in written, printed, or oral communications in violation of California Code
8 of Regulations, title 10, section 1550.

9 O. On June 5, 2017, based on her determination that Kracksmith failed to file an annual
10 report and failed to refer to its licensure under the CFL in written, printed, or oral communications,
11 the Commissioner issued a Citation under Financial Code section 22707.5. A true and correct copy
12 of the Citation is attached as Exhibit A.

13 P. Concurrently with the Citation, the Commissioner issued an order rescinding the
14 April 19, 2017 revocation order and reinstating Kracksmith's CFL license.

15 Q. On June 7, 2017, Kracksmith timely requested a hearing on the Citation. A true and
16 correct copy of the request for hearing is attached as Exhibit B.

17 R. A hearing is currently set to be held at the Office of Administrative Hearings on
18 October 4, 2017.

19 S. The Commissioner finds that entering into this Settlement Agreement is in the public
20 interest and consistent with the purposes fairly intended by the policy and provisions of the CFL.

21 The parties therefore agree as follows:

22 **TERMS AND CONDITIONS**

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

25 2. Waiver of Hearing Rights. Kracksmith agrees to withdraw its request for an
26 administrative hearing on the Citation. Kracksmith acknowledges its right under the CFL to an
27 administrative hearing on the Citation and hereby waives such right to a hearing and to any
28 reconsideration, appeal, injunction, or other review that may be afforded under the Financial Code;

1 Administrative Procedure Act, including Government Code section 11415.60, subdivision (b); Code
2 of Civil Procedure; or any other provision of law. By waiving such rights, Kracksmith effectively
3 consents to the finality of the Citation.

4 3. Administrative Fine. Kracksmith shall pay an administrative fine of \$1,000.00 no
5 later than 60 days after the effective date of this Settlement Agreement as defined in paragraph 18.
6 The penalty must be made payable in the form of a cashier’s check or Automated Clearing House
7 deposit to the Department of Business Oversight and transmitted to the attention of Accounting –
8 Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200, Sacramento,
9 California 95814. Notice of the payment must be sent to Samuel J. Park, Counsel, 320 West 4th
10 Street, Suite 750, Los Angeles, California 90013.

11 4. Failure to Pay Administrative Fine. If Kracksmith fails to comply with paragraph 3,
12 the Commissioner may summarily suspend it from engaging in business under its license until it
13 provides evidence of compliance to the Commissioner’s satisfaction. Kracksmith hereby waives
14 any notice or hearing rights afforded under the Administrative Procedure Act, including
15 Government Code section 11415.60, subdivision (b); Code of Civil Procedure; or any other
16 provision of law to contest the summary suspension.

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

22 6. Commissioner’s Duties. Nothing in this Settlement Agreement limits the
23 Commissioner’s ability to assist any other government agency with any action brought by that
24 agency against Kracksmith, including an action based on any of the acts, omissions, or events
25 described in this Settlement Agreement.

26 7. Independent Legal Advice. Each party represents that it has received independent
27 advice from its counsel or representatives regarding the advisability of executing this Settlement
28 Agreement.

1 8. Reliance. Each party represents that in executing this Settlement Agreement it has
2 relied solely on the statements in the Settlement Agreement and on the advice of its counsel or
3 representatives. Each party also represents that it has not relied on any statement or promise not
4 contained in this Settlement Agreement from any other person or on the failure of such person to
5 make a statement or promise. The parties have included this clause to preclude any claim that a
6 party was fraudulently induced to execute this Settlement Agreement.

7 9. 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 concerning its subject matter and supersedes all discussion regarding
10 such subject matter between the parties, their representatives, and any other person. The parties
11 have included this clause to preclude the introduction of parol evidence to vary, interpret,
12 supplement, or contradict the terms of this Settlement Agreement.

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

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

24 12. Headings. The headings in this Settlement Agreement are for convenience only and
25 do not affect its meaning.

26 13. Governing Law. This Settlement Agreement will be governed by and construed in
27 accordance with the laws of the State of California.

28 14. Authority to Sign. Each party represents that the person signing this Settlement

1 Agreement on its behalf has the authority and capacity to do so.

2 15. Voluntary Agreement. Kracksmith enters into this Settlement Agreement voluntarily
3 and without coercion and acknowledges that no promises, threats, or assurances about this
4 Settlement Agreement have been made by the Commissioner or any of her officers or agents.

5 16. Counterparts. This Settlement Agreement may be executed in any number of
6 counterparts, each of which will be deemed an original when executed. All counterparts together
7 will be deemed to constitute a single document.

8 17. Signatures. A signature delivered by facsimile or electronic mail will be deemed an
9 original signature.

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 Kracksmith by electronic mail at
12 boz@americanbusinessfund.com.

13
14 Dated: 9/28/17

JAN LYNN OWEN
Commissioner of Business Oversight

15
16 By: _____
17 MARY ANN SMITH
Deputy Commissioner

18
19 Dated: 9/27/17

KRACKSMITH, INC.

20
21 By: _____
ALLAN LEE
President