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

12 In the Matter of: ) CFL Application No. 286332  
13 )  
14 THE COMMISSIONER OF BUSINESS ) STIPULATION  
OVERSIGHT, )  
15 )  
16 Complainant, )  
17 v. )  
18 )  
19 MED ONE CAPITAL FUNDING, LLC, )  
20 Respondent. )  
21 \_\_\_\_\_ )

22  
23 This Stipulation (Stipulation) is entered into between Med One Capital Funding, LLC (Med  
24 One Capital) and the Commissioner of Business Oversight (Commissioner) (collectively referred to  
25 herein as the Parties) in consideration of the application filed by Med One Capital for a license under  
26 the

1 California Financing Law (CFL)<sup>1</sup> (Fin. Code, § 22000 et seq.), and is made with respect to the  
2 following facts:

3 **RECITALS**

4 A. Med One Capital is a Utah limited liability company formed on or about March 30,  
5 2001. Its principal place of business is located at 10712 South 1300 East, Sandy, Utah 84094.

6 B. On or about February 16, 2017, Med One Capital voluntarily filed with the  
7 Commissioner an application for licensure under the CFL. In addition to the application, the  
8 Commissioner requested, and Med One Capital provided, a loan report, a revised loan report and the  
9 supporting documentation for all loans made in the state of California for the period of September 15,  
10 2015 through April 5, 2017 (collectively the Application). A review of the Application disclosed that  
11 Med One Capital had engaged in unlicensed finance lender activity in the state of California during  
12 the above period, as described below.

13 C. Med One Capital originated 16 commercial equipment leases from September 15,  
14 2015 through April 5, 2017, with a buyout option of \$1.00 at the end of the lease term. A  
15 commercial equipment lease with a purchase or buyout option of \$1.00 at the end of the lease term is  
16 considered by the Commissioner to be a commercial equipment loan subject to the CFL.

17 D. In addition, the Commissioner reviewed the Application to determine if there were  
18 interest charges and fees in excess of the 10-percent usury limitation under Article 15, section 1, of  
19 the California Constitution. It appears that interest charges and fees in 10 out of the 16 commercial  
20 loans will exceed the 10-percent usury limitation, provided all payments are made as scheduled. The  
21 usurious interest or fee overcharge from the 10 loans is estimated to be approximately \$27,849.80.

22 E. It is the intention and desire of the Parties to resolve this matter without the necessity  
23 of a hearing. The Commissioner finds that entering into this Stipulation is appropriate, in the public  
24 interest, and consistent with the purposes fairly intended by the policy and provisions of the CFL.

25  
26 \_\_\_\_\_  
27 <sup>1</sup> Effective October 4, 2017, the name of the “California Finance Lenders Law” changed to the “California Financing  
28 Law.” (Assem. Bill No. 1284 (2017-2018 Reg. Sess.) § 4.) For purposes of this document, a reference to the California  
Financing Law means the California Finance Lenders Law before October 4, 2017 and the California Financing Law on  
and after that date. (Fin. Code, § 22000.)

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

3 **TERMS AND CONDITIONS**

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

6 2. **Finality of the Stipulation.** Med One Capital agrees to comply with this Stipulation  
7 and agrees that the Stipulation is final.

8 3. **Finality of the Desist and Refrain Order Issued.** Med One Capital agrees to the  
9 issuance of the Desist and Refrain Order (Order) issued under section 22712 of the Financial Code,  
10 directing Med One Capital to desist and refrain from engaging in the business of a finance lender in  
11 this state without first obtaining a license from the Commissioner, in violation of Financial Code  
12 section 22100. The Order will be considered a final order. Med One Capital agrees that the delivery  
13 by certified mail of the executed Order issued by the Commissioner to the address set forth in  
14 paragraph A above shall constitute valid service of the Order. A true and correct copy of the Order is  
15 attached hereto and incorporated herein by reference as **Exhibit 1**.

16 4. **Waiver of Hearing Rights.** Med One Capital acknowledges its right to an  
17 administrative hearing under the CFL in connection with the Order and the application for licensure  
18 under the CFL and hereby waives that right to a hearing, and to any reconsideration, appeal, or other  
19 review which may be afforded under the CFL, the Administrative Procedure Act (Govt. Code, §  
20 11370 et seq.), or any other provision of law pertaining to this matter.

21 5. **Issuance of CFL License.** Med One Capital agrees that the Commissioner shall not  
22 approve its application for licensure under the CFL unless, within 30 days after service of this  
23 Stipulation, as set forth in paragraph 7, Med One Capital does the following:

24 (a) Submit satisfactory evidence that Med One Capital has refunded all usurious amounts  
25 under commercial equipment loans to California borrowers originated by Med One Capital during the  
26 period of September 15, 2015 through April 5, 2017 that exceed the 10-percent interest rate allowed  
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28

1 under article 15, section 1 of the California Constitution and provide assurance that all future  
2 payment collections will not exceed the 10-percent usury limitation.

3 (b) Med One Capital pays an administrative penalty in the amount of \$10,000.00 made  
4 payable in the form of a cashier’s check or Automated Clearing House deposit to the “Department of  
5 Business Oversight,” and transmitted to the attention of: Accounting- Enforcement Division, at the  
6 Department of Business Oversight located at 1515 K Street, Suite 200, Sacramento, California,  
7 95814.

8 Med One Capital shall submit the evidence of refunds and penalty payment required under  
9 this paragraph to the attention of Marlou de Luna, Senior Counsel, Enforcement Division, 320 W. 4th  
10 Street, Suite 750, Los Angeles, California 90013.

11 6. **Review of Refunds.** Refunds issued under paragraph 5 (a) shall be subject to final  
12 examination and review by the Commissioner and sent to the borrower with the accompanying  
13 notice:

Pursuant to an agreement entered with the Department of Business  
Oversight, a refund or adjustment in the amount of \$\_\_\_\_\_ is  
being made for your benefit.  
If you have any questions concerning this refund, please contact Bryce  
Ray at Med One Capital Funding, LLC at 1-800-248-5882.

17 (a) Satisfactory evidence of the refunds required under paragraph 5 (a) shall include, at a  
18 minimum, the following: (1) the borrower’s loan number, name, last known address, loan amount,  
19 loan date, interest charged; (2) date of issuance of refund check; and (3) evidence of refund in the  
20 form of a copy of the refund check or ACH deposit and accompanying correspondence sent to the  
21 borrower.

22 (b) Med One Capital shall be responsible for ensuring that any outstanding refund  
23 payments required by paragraph 5 (a) above is escheated to the State of California under the  
24 provisions of the California Unclaimed Property Law (Code Civ. Proc., § 1500 et seq.).

25 7. **Failure to Timely Comply.** Med One Capital agrees that failure to timely comply  
26 with the conditions set forth in paragraphs 5 (a), 5 (b) and 6 (a) within 30 days of execution of this  
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1 Stipulation, as such date is set forth in paragraph 21, shall result in summary denial of Med One  
2 Capital’s application for a CFL license.

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

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

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

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

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

5 13. **Voluntary Agreement.** Med One Capital enters into this Stipulation voluntarily and  
6 without coercion and acknowledges that no promises, threats, or assurances have been made by the  
7 Commissioner or any officer, or agent thereof, about this Stipulation.

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

11 15. **Authority for Settlement.** Each party warrants and represents that such party is fully  
12 entitled and duly authorized to enter into and deliver this Stipulation. In particular, and without  
13 limiting the generality of the foregoing, each party warrants and represents that it is fully entitled to  
14 enter into the covenants, and undertake the obligations set forth herein.

15 16. **Counterparts.** The Parties agree that this Stipulation may be executed in one or more  
16 separate counterparts, each of which, when so executed, shall be deemed an original and taken  
17 together shall constitute one and the same Stipulation.

18 17. **Signatures.** This Stipulation may be executed by facsimile or scanned signature, and  
19 any such facsimile or scanned signature by any party hereto shall be deemed to be an original  
20 signature and shall be binding on such party to the same extent as if such facsimile or scanned  
21 signature were an original signature.

22 18. **Capacity to Contract.** Each signatory hereto covenants that he or she possesses all  
23 necessary capacity and authority to sign and enter into this Stipulation.

24 19. **Headings and Governing Law.** The headings to the paragraphs of this Stipulation  
25 are inserted for convenience only and will not be deemed a part hereof or affect the construction or  
26 interpretation of the provisions hereof. This Stipulation shall be construed and enforced in  
27 accordance with and governed by California law.

20. **Public Record.** Med One Capital acknowledges that this Stipulation and the Desist and Refrain Order referenced herein are public records.

21. **Effective Date.** This Stipulation shall become final and effective when signed by all parties and delivered by the Commissioner’s agent to Med One Capital, Attn: Bryce Ray at 10712 South 1300 East, Sandy, Utah 84094.

22. **Notice.** Any notices required under this Stipulation shall be provided to each party at the following addresses:

If to Med One Capital to: Med One Capital Funding, LLC  
10712 South 1300 East  
Sandy, UT 84094  
Attn: Bryce Ray

If to the Commissioner to: Marlou de Luna, Senior Counsel  
Department of Business Oversight  
320 West 4th Street, Suite 750  
Los Angeles, California 90013

Dated: 1/8/18

JAN LYNN OWEN  
Commissioner of Business Oversight

By: \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

Dated: 1/5/18

MED ONE CAPITAL FUNDING, LLC

By: \_\_\_\_\_  
LARRY R. STEVENS  
Chief Executive Officer and President

APPROVED AS TO FORM:

By: \_\_\_\_\_  
RICHARD H. MADSEN, II  
Ray Quinney & Nebeker P.C.  
Attorneys for Med One Capital Funding, LLC