

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 KELLY SUK (State Bar No. 301757)
Counsel
4 Department of Business Oversight
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7571
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

11 In the Matter of:) CFL LICENSE NO.: 603L556
12 THE COMMISSIONER OF BUSINESS) SETTLEMENT AGREEMENT
13 OVERSIGHT,)
14 Complainant,)
15 v.)
16 MEDICAL ACQUISITION, INC.,)
17 Respondent.)
18)
19)

20 This Settlement Agreement is entered into between the Commissioner of Business Oversight
21 (Complainant or Commissioner) and Respondent, Medical Acquisition, Inc. (Respondent or MAC)
22 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.).
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1 B. Respondent is a corporation, with a principal place of business at 2772 Gateway
2 Road, Carlsbad, California 92009.

3 C. Respondent is licensed as a finance lender under the CFL with main license number
4 603L556.

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 H. As of March 19, 2018, Respondent had not filed its Annual Report with the
9 Commissioner. As a result, the Commissioner issued a notice letter to Respondent on March 19,
10 2018, advising Respondent that it should file its annual report by or before April 6, 2017 or else its
11 license would be summarily revoked pursuant to Financial Code section 22715 (Notice Letter).

12 I. On April 4, 2018, Respondent submitted its Annual Report, which was due on March
13 15, 2018, 14 business days late. Pursuant to Financial Code Section 22715, the maximum penalty
14 that may be imposed for filing 14 business days late is \$5,000.00 (\$100 per business day for the first
15 five business days and \$500 per business day thereafter up to a maximum of \$25,000).

16 J. As a result of the late filing, on May 25, 2018, the Commissioner issued a Penalty
17 Order pursuant to Financial Code Section 22715 for CFL License Number 603L556 in the amount of
18 \$5,000.00 (Penalty Order).

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

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

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

25 **II.**

26 **TERMS AND CONDITIONS**

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

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

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

10 4. Administrative Penalty. Respondent shall pay an administrative penalty of \$1,000.00
11 no later than 30 days after the effective date of this Settlement Agreement as defined in paragraph
12 18. The penalty must be made payable in the form of a cashier's check or Automated Clearing
13 House deposit to the Department of Business Oversight and transmitted to the attention of
14 Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200,
15 Sacramento, California 95814. Notice of the payment must be concurrently sent to Kelly Suk,
16 Counsel, Department of Business Oversight, 320 West 4th Street, Suite 750, Los Angeles, California
17 90013.

18 5. Failure to Pay Administrative Penalty. If Respondent fails to comply with paragraph
19 4, the Commissioner may summarily suspend it from engaging in business under its license until it
20 provides evidence of compliance to the Commissioner's satisfaction. Respondent hereby waives any
21 notice or hearing rights afforded under the Administrative Procedure Act, including Government
22 Code section 11415.60, subdivision (b); Code of Civil Procedure; or any other provision of law to
23 contest the summary suspension contemplated by this paragraph.

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

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

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

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

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

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

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

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

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

19 15. Public Record. Respondent acknowledges that the Settlement Agreement is public
20 record.

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

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

26 18. Effective Date. This Settlement Agreement will become effective on the date it is
27 signed by all parties and delivered by the Commissioner to Respondent's Counsel, Tara Lushner, by
28 electronic mail at lushner.law@gmail.com.

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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: 8/10/18

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 8/8/18

MEDICAL ACQUISITION, INC.

By: _____
CHARLES PEREZ
President