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11 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT

12 OF THE STATE OF CALIFORNIA

13 In the Matter of:)
14)
15 THE COMMISSIONER OF BUSINESS)
16 OVERSIGHT,) SETTLEMENT AGREEMENT
17)
18 Complainant,)
19)
20 v.)
21)
22 PS FINANCE, LLC,)
23)
24 Respondent.)

25 This Settlement Agreement (Settlement Agreement) is entered between the Commissioner of
26 Business Oversight (Commissioner) and PS Finance, LLC (PS) (hereinafter collectively referred to as
27 individually referred to as “A Party” and “the Parties”).

28 **I.**
Recitals.

29 A. At all relevant times, PS was a limited liability corporation organized under the laws
30 of the State of New York. PS’s principal place of business is 183 New Dorp Lane, Staten Island,
31 New York 10306.

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1 B. PS has also been known as Pre-Settlement Finance, LLC and Pre-Settlement Funding,
2 LLC. As used herein, the term “PS” refers to these entities as well as any other name used by PS to
3 provide pre-litigation funding to litigants.

4 C. Veronica Mormando is the Chief Operating Officer of PS and is authorized to enter
5 into this Settlement Agreement.

6 D. PS offers cash advances under contracts (Agreement for a Pre-Settlement Advance) to
7 California litigants who have potential or pending legal claims (Litigants).

8 E. These Agreements for a Pre-Settlement Advance are secured by the potential proceeds
9 from the resolution of the Litigant's legal claims.

10 F. The Agreements for a Pre-Settlement Advance also provide that if, upon resolution of
11 the Litigant's legal claims, the net proceeds from such resolution are insufficient to pay PS the
12 amount set forth in the Agreement for a Pre-Settlement Advance, then the Litigant shall owe PS no
13 money in excess of the net proceeds.

14 G. At no time has PS possessed a license issued by the Commissioner pursuant to the
15 California Financing Law (CFL) (Cal. Fin. Code, § 22000 et seq.).¹

16 H. It is the intention and desire of the Parties to resolve the Commissioner’s investigation
17 without the necessity of an administrative action, hearing, and/or other litigation.

18 I. The Commissioner finds that this Settlement Agreement is appropriate, in the public
19 interest, and consistent with the purposes fairly intended by the policies and provisions of the CFL.

20 NOW THEREFORE, in consideration of the foregoing terms and conditions, the Parties agree
21 as follows:

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27 ¹ 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. (Cal. Fin. Code, § 22000.)

II.
Terms

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2 1. Purpose. The Parties enter into this Settlement Agreement for the limited purpose of
3 resolving the Commissioner’s investigation of PS, in lieu of proceeding with further discovery and
4 without hearing or adjudication of any issue of law or fact.

5 2. Future Determinations of the Commissioner. Nothing contained herein shall be
6 construed as precluding the Commissioner from making any determination as to whether
7 Agreements for a Pre-Settlement Advance, or any other cash advance or litigation funding
8 contracts, are loans under the CFL, from and after the date hereof with respect to PS.

9 3. Obligations to Comply with State and Federal Law. Nothing contained herein shall
10 be construed as relieving PS of its obligations to comply with all state and federal statutes,
11 regulations or rules, to the extent such statutes, regulations or rules are applicable to and govern any
12 particular contract, nor shall any of the provisions of this Settlement Agreement be deemed
13 permission to engage in any act or practice prohibited by such statute, regulation or rule, to the
14 extent such statute, regulation or rule is applicable to and governs any particular conduct.

15 4. No Permission to Offer Agreements for a Pre-Settlement Advance. Nothing herein
16 shall be interpreted as the Commissioner expressly or impliedly granting PS permission to continue
17 to offer Agreements for a Pre-Settlement Advance in California as described above, or as relieving
18 PS of any future legal liabilities that may arise from further engaging in such conduct.

19 5. Use of Settlement Agreement in Other Proceedings. Nothing herein shall be
20 construed as giving any right to, or having binding effect, on any third party for or against the
21 proposition that Agreement for a Pre-Settlement Advance are subject to the CFL in any legal or
22 administrative proceeding. Furthermore, nothing contained in this Settlement Agreement, as
23 opposed to any underlying facts, events or occurrences, shall be used as evidence in any legal
24 proceeding between the Parties, except to enforce or interpret the provisions of this Settlement
25 Agreement.

26 6. Investigatory Powers of the Commissioner. Notwithstanding Paragraph 1 or any
27 other provision of this Settlement Agreement, nothing herein shall be interpreted to preclude the
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1 Commissioner from exercising any of her investigatory powers to seek additional information
2 concerning PS's Agreements for a Pre-Settlement Advance.

3 7. Representations Concerning Agreements for a Pre-Settlement Advance. PS agrees
4 that it shall not represent or imply that its Agreements for a Pre-Settlement Advance have been
5 approved, in whole or in part, by the Commissioner.

6 8. Contract Standards. PS further agrees that with respect to every Agreement for a
7 Pre-Settlement Advance executed after the effective date of this Settlement Agreement, as such date
8 is defined in Paragraph 19, the Agreements for a Pre-Settlement Advance shall disclose, on the first
9 page of the contract, the following:

- 10 a. The total funded amount provided to the Litigant under the contract;
- 11 b. An itemization of charges;
- 12 c. The annual percentage rate, calculated using the same methodology that would
13 be used for a closed-end credit transaction under 12 Code of Federal
14 Regulations part 1026.22.
- 15 d. The total amount due from the Litigant, including charges, in six-month or less
16 intervals from the date the contract is executed, for the first three years from the
17 date of execution assuming the underlying litigation is successfully resolved and
18 funds are available to fully satisfy the Agreement for a Pre-Settlement Advance;
- 19 e. A right of rescission, allowing the Litigant to cancel the contract without penalty
20 or further obligation if, within five business days following the execution of the
21 contract or the Litigant's receipt of any portion of the funded amount, the
22 Litigant gives notice of the rescission to PS and returns any funds provided to
23 the Litigant by PS;
- 24 f. A statement that there are no fees or charges to be paid by the Litigant other
25 than what is disclosed in the Agreement for a Pre-Settlement Advance;
- 26 g. In the event the Litigant seeks more than one Agreement for a Pre-Settlement
27 Advance, a disclosure providing the cumulative amount due from the Litigant
28 for each prior Agreement for a Pre-Settlement Advance shall be referenced or

1 repeated in each subsequent Agreement for a Pre-Settlement Advance, including
2 charges under all prior Agreements for a Pre-Settlement Advance;

3 h. A statement that PS has no right to make any decisions regarding the conduct of
4 the legal claim or any settlement or resolution thereof and that the right to make
5 such decisions remains solely with the Litigant and his or her attorney; and,

6 i. A statement that, if there is no recovery of any money from the Litigant's legal
7 claim, the Litigant shall owe nothing to PS and that, if the net proceeds of the
8 Litigant's legal claim are insufficient to fully repay the Litigant's obligations to
9 PS, then the Litigant shall owe PS no money in excess of the net proceeds.

10 9. Other Business Practices. PS further agrees that it shall not do the following in
11 connection with any Agreement for a Pre-Settlement Advance:

12 a. Pay or offer to pay commissions, referral fees, or any other form of consideration
13 to any attorney, law firm, health care provider, health care facility, or an
14 employee of a law firm, health care provider, or health care facility for referring
15 a Litigant to PS;

16 b. Accept any commissions, referral fees, or any other form of consideration from
17 any attorney, law firm, health care provider, health care facility, or an employee
18 of a law firm, health care provider, or health care facility;

19 c. Advertise false or misleading information regarding its products or services.
20 This includes any false representation or advertisement stating that PS's
21 Agreements for a Pre-Settlement Advance have no fees, no costs or no interest
22 charges;

23 d. Receive any right to, nor make, any decisions with respect to the conduct of the
24 Litigant's legal claim or any settlement or resolution.

25 e. Knowingly pay or offer to pay for court costs, filing fees, or attorney's fees
26 either during or after the resolution of the Litigant's legal claim as part of the
27 Litigant's Agreements for a Pre-Settlement Advance;

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- 1 f. Refer a Litigant to a specific attorney, law firm, health care provider, or health
- 2 care facility;
- 3 g. Fail to promptly provide copies of contract documents to the Litigant or to the
- 4 Litigant's attorney;
- 5 h. As part of the Agreement for a Pre-Settlement Advance, obtain a waiver of any
- 6 remedy the Litigant might otherwise have against PS;
- 7 i. Provide legal advice to the Litigant regarding the funding or the underlying legal
- 8 claim; and,
- 9 j. Report a Litigant to a credit reporting agency if the net proceeds of the Litigant's
- 10 legal claim are insufficient to fully repay the Litigant's obligations to PS.

11 10. Waiver of Hearing Rights. PS acknowledges that the Commissioner is ready, willing
12 and able to proceed with the filing of an administrative enforcement action based on the charges
13 contained in this Settlement Agreement. PS hereby waives any right to a hearing, and to any
14 reconsideration, appeal, injunction, or other rights to review which may be afforded pursuant to the
15 Financial Code, the California Administrative Procedure Act, the California Code of Civil
16 Procedure, or any other provision of law.

17 11. Binding. This Settlement Agreement is binding on all heirs, assigns, and/or
18 successors in interest of the Parties.

19 12. Commissioner's Duties. The Parties further acknowledge and agree that nothing
20 contained in this Settlement Agreement shall operate to limit the Commissioner's ability to assist
21 any other agency (city, county, state or federal) with any investigation or prosecution brought by
22 any such agency against PS or any other person based upon any of PS's activities.

23 13. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that
24 it has received independent advice from its attorney(s) and/or representatives with respect to the
25 advisability of executing this Settlement Agreement.

26 14. Counterparts. The Parties agree that this Settlement Agreement may be executed in
27 one or more separate counterparts, each of which when so executed, shall be deemed an original.
28 Such counterparts shall together constitute and be one and the same instrument.

1 15. Waiver, Modification, and Qualified Integration. The waiver of any provision of this
2 Settlement Agreement shall not operate to waive any other provision set forth herein. No waiver,
3 amendment, or modification of this Settlement Agreement shall be valid or binding to any extent
4 unless it is in writing and signed by all the parties affected by it.

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

15 17. Presumption of Drafting. In that the Parties have had the opportunity to draft, review
16 and edit the language of this Settlement Agreement, no presumption for or against any party arising
17 out of drafting all or any part of this Settlement Agreement will be applied in any action relating to,
18 connected to, or involving this Settlement Agreement. Accordingly, the Parties waive the benefit of
19 California Civil Code section 1654 and any successor or amended statute, providing that in cases of
20 uncertainty, language of a contract should be interpreted most strongly against the party who caused
21 the uncertainty to exist.

22 18. Voluntary Agreement. PS enters into this Settlement Agreement voluntarily.

23 19. Effective Date. This Settlement Agreement shall become effective on the date when
24 it is signed by all Parties and delivered by the Commissioner’s agent by email to PS’s counsel at
25 Mercedes.Tunstall@pillsburylaw.com.

26 20. Public Record. The Parties acknowledge that this Settlement Agreement is a public
27 record.

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3 21. Authority to Execute. Each signatory hereto covenants that he/she possesses all
4 necessary capacity and authority to sign and enter into this Settlement Agreement.

5 Dated: March 6, 2018

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JAN LYNN OWEN
Commissioner of Business Oversight

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BY: _____
Mary Ann Smith
Deputy Commissioner

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Dated: March 5, 2018

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PS Finance, LLC

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BY: _____
Veronica Mormando
Chief Operating Officer

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