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

11 In the Matter of:)
12)
13 THE COMMISSIONER OF BUSINESS)
14 OVERSIGHT,)
15 Complainant,) SETTLEMENT AGREEMENT
16 v.)
17 CVCREDIT, INC.)
18 Respondent.)
19)

20 The Commissioner of Business Oversight (Commissioner) and CVCredit, Inc. (CVCredit)
21 (collectively, the Parties) enter this Settlement Agreement with respect to the following facts:

22 **I.**
23 **Recitals.**

- 24 A. The Commissioner has jurisdiction over the licensing and regulation of persons and entities
25 engaged in the business of making loans in California pursuant to the California Financing Law
26 (CFL) (Fin. Code, § 22000 et seq.).
27 B. CVCredit is a Florida corporation with a principal office address of 1101 Brickell Avenue,
28 Suite 704-S, Miami, Florida 33131.

1 C. Luis Gabriel Segura is the President of CVCredit and a control person of CVCredit and, as
2 such, is authorized to enter this Settlement Agreement on CVCredit's behalf.

3 D. On or about March 28, 2017, CVCredit submitted an application for a California Finance
4 Lenders License.

5 E. During the Department of Business Oversight's review of CVCredit's application, CVCredit
6 disclosed that it had participated in transactions that it characterized as true sales of accounts
7 receivable ("factoring transactions").

8 F. The Department of Business Oversight contended the transactions in question were loans
9 made in violation of Financial Code section 22100, which prohibits making loans without first
10 obtaining a license from the Commissioner.

11 H. It is the intention and desire of the parties to resolve this matter without the necessity of a
12 hearing and/or other litigation.

13 I. The Commissioner finds that this action is appropriate, in the public interest, and consistent
14 with the purposes fairly intended by the policies and provisions of this law.

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

17 **II.**
18 **Terms**

19 1. Purpose. The Parties enter into this Settlement Agreement for the limited purpose of
20 resolving the matters described in Paragraphs E and F above. The Parties have agreed to enter into
21 this Settlement Agreement in lieu of proceeding with further discovery and without hearing or
22 adjudication of any issue of law or fact. CVCredit executes this Settlement Agreement without
23 admitting or denying the factual matters and alleged violations set in Paragraphs E and F above.

24 2. Waiver of Hearing Rights. CVCredit hereby waives the right to a hearing, and to any
25 reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL
26 concerning the matters set forth herein. CVCredit, further expressly waives any requirement for the
27 filing of an Accusation that may be afforded by Government Code section 11415.60, subdivision
28 (b), the Administrative Procedure Act, the Code of Civil Procedure, or any other provision of law.

1 3. Treatment of Future Factoring Transactions Upon Issuance of Finance Lenders
2 License. CVCredit agrees that if it receives a California Finance Lenders License CVC credit will:
3 a. report its ongoing California factoring transactions as CFL activity in all
4 statutorily required reports to the Department;
5 b. ensure that its California factoring transactions comply with CFL laws and
6 regulations;
7 c. not dispute, in any investigation or action initiated by the Department, that its
8 California factoring transactions are subject to the CFL; and
9 d. submit its California factoring transactions to the Department’s review during
10 any Department examination or investigation of CVCredit.

11 CVCredit agrees that failure to comply with the requirements described in this paragraph shall
12 constitute an independent basis to suspend or revoke CVCredit’s California Finance Lenders
13 License.

14 4. CVCredit’s Application. The Commissioner agrees that she will not consider the
15 conduct described in Paragraphs E and F of this Settlement Agreement when determining whether
16 to approve CVCredit’s pending California Finance Lenders License application. Upon execution of
17 this Settlement Agreement, the Department will review CVCredit’s application consistent with its
18 standard procedures.

19 5. Binding. This Settlement Agreement is binding on all heirs, assigns, and/or
20 successors in interest of the Parties.

21 6. Final Resolution. The Parties hereby acknowledge and agree that this Settlement
22 Agreement is intended to constitute a final resolution of matters described in Paragraphs E and F of
23 this Settlement Agreement up to the effective date of this Settlement Agreement (hereafter,
24 “Released Matters”), as such date is defined in Paragraph 15. The Commissioner will bring no
25 further proceedings or actions in connection with the Released Matters. Notwithstanding this
26 paragraph, the Commissioner may commence a proceeding or action based upon any violation
27 which CVCredit knowingly concealed from the Commissioner.
28

1 7. Third Party Actions. It is the intent and understanding between the Parties that this
2 Settlement Agreement does not create any private rights or remedies against CVCredit, create any
3 liability or limit the positions and defenses of CVCredit in any dispute with any person or entity not
4 a Party to this Settlement Agreement.

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

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

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

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

19 12. Full Integration. Each of the Parties represents, warrants, and agrees that in executing
20 this Settlement Agreement it has relied solely on the statements set forth herein and the advice of its
21 own counsel. Each of the Parties further represents, warrants, and agrees that in executing this
22 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any
23 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
24 party or any other person or entity to make any statement, representation or disclosure of anything
25 whatsoever. The Parties have included this clause: (a) to preclude any claim that any party was in
26 any way fraudulently induced to execute this Settlement Agreement; and (b) to preclude the
27 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
28 Settlement Agreement.

1 13. Presumption of Drafting. In that the Parties have had the opportunity to draft, review
2 and edit the language of this Settlement Agreement, no presumption for or against any party arising
3 out of drafting all or any part of this Settlement Agreement will be applied in any action relating to,
4 connected to, or involving this Settlement Agreement. Accordingly, the Parties waive the benefit of
5 Civil Code section 1654 and any successor or amended statute, 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 14. Voluntary Agreement. CVCredit enters into this Settlement Agreement voluntarily.

9 15. Effective Date. This Settlement Agreement shall become effective on the date when
10 it is signed by all Parties and delivered by the Commissioner’s agent by email to CVCredit’s
11 counsel Steven N. Kurtz at skurtz@laklawyers.com.

12 16. Public Record. The Parties acknowledge that this Settlement Agreement is a public
13 record.

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

16 Dated: December 17, 2018

JAN LYNN OWEN
Commissioner of Business Oversight

18
19 BY: _____
20 Mary Ann Smith
Deputy Commissioner

21 Dated: December 14, 2018

CVCREDIT, INC.

22
23 BY: _____
24 Luis Gabriel Segura
25 President