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

12 In the Matter of:) CFL LICENSE NO. 603J988
)
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
14)
15 Complainant,)
)
16 v.)
)
17 5 STAR LOANS, INC.,)
)
18 Respondent.)
19)
20)

21 This Consent Order (Consent Order) is entered into between the California Commissioner of
22 Business Oversight (Commissioner) and 5 Star Loans, Inc. (5 Star) and is made with respect to the
23 following facts:

24 **RECITALS**

25 A. 5 Star is a California corporation with its principal place of business at 2216 East Colorado
26 Boulevard, Pasadena, California 91107. 5 Star is a finance lender licensed by the Commissioner
27 pursuant to the California Financing Law (Fin. Code, § 22000, et seq.) (CFL), with the license number
28 603J988.

1 B. The Department of Business Oversight, through the Commissioner, has jurisdiction over the
2 licensing and regulation of finance lender and brokers operating under the CFL.

3 C. Carmel Gordon is the President of 5 Star and is authorized to enter into this Consent Order on
4 behalf of 5 Star.

5 D. During an examination of 5 Star commencing on December 7, 2015, the Commissioner
6 determined the following (Examination Findings):

7 i. 5 Star miscalculated the “bona fide principal amount” of loans in violation of Financial
8 Code section 22251, subdivision (c). This resulted in interest exceeding the rates required by Financial
9 Code sections 22303 and 22304 in connection with loans secured by vehicles. Although these loans
10 had principal amounts of \$2,500.00 or more, therefore exceeding the regulatory ceilings in Financial
11 Code sections 22303 and 22304, the Commissioner determined that the bona fide principal amount of
12 these loans was less than \$2,500.00 because 5 Star failed to exclude auto insurance premiums, parking
13 ticket fees, and certain registration fees payable to the Department of Motor Vehicles (DMV)
14 (collectively DMV fees). The Commissioner determined that the DMV fees qualified as “charges”
15 under Financial Code section 22200 for the purposes of determining compliance with Financial Code
16 section 22251, subdivision (c).

17 ii. As a result of 5 Star improperly adding the DMV fees in determining the bona fide
18 principal amount, it overcharged administrative fees on the loans less than \$2,500.00, in violation of
19 Financial Code section 22305.

20 iii. 5 Star also charged borrowers auction fees in violation of Financial Code section 22306.

21 E. Although the Commissioner requested full refunds to borrowers on May 3, 2016 and October
22 12, 2016, 5 Star made only partial refunds on some of the loans because it disagreed with the
23 Commissioner’s determinations.

24 F. Without admitting or denying the Commissioner’s findings, 5 Star wishes to enter into this
25 Consent Order which the Commissioner finds is in the public interest, protects consumers, and is
26 consistent with the purposes fairly intended by the policies and provisions of the CFL.

27 G. It is the intention and desire of the parties to resolve this matter amicably without the necessity
28 of a hearing or other litigation.

1 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
2 contained herein, the parties agree as follows:

3 **TERMS AND CONDITIONS**

4 1. **Purpose.** This Consent Order resolves the alleged violations before the Commissioner
5 in a manner that avoids the expense of a hearing and possible further court proceedings, is in the public
6 interest, protects consumers, and is consistent with the purposes, policies, and provisions of the CFL.

7 2. **Finality of Consent Order.** 5 Star hereby agrees to comply with this Consent Order
8 and stipulates that the Consent Order is hereby deemed final.

9 3. **Finality of Desist and Refrain Order.** In accordance with Financial Code section
10 22712, 5 Star stipulates that it is ordered to desist and refrain from violating the regulatory rate
11 provisions of Financial Code sections 22303 and 22304 by miscalculating the “bona fide principal
12 amount” provisions of section 22251, subdivision (c); and shall desist and refrain from adding any
13 charges, fees or recompense as prohibited by section 22251, subdivision (c), including, but not limited
14 to, any DMV fees described in Paragraph D1 of the Recitals above. 5 Star also stipulates that it is
15 ordered to desist and refrain from violating section 22305 by receiving an administrative fee of \$75 on
16 loans of \$2,500.00 or less, and from charging auction fees in violation of section 22306.

17 4. **Waiver of Hearing Rights.** 5 Star acknowledges that the Commissioner is ready,
18 willing, and able to proceed with the filing of an administrative enforcement action on the charges and
19 Desist and Refrain Order contained in this Consent Order. 5 Star hereby waives the right to any
20 hearings, and to pay reconsideration, appeal, injunction, or other rights to review which may be
21 afforded pursuant to the Financial Code, the California Administrative Procedure Act, or Code of Civil
22 Procedure, or any other provision of law. 5 Star further expressly waives any requirement for the
23 filing of an Accusation that may be afforded by Government Code section 11415.60, subdivision (b),
24 the California Administrative Procedure Act, the Code of Civil Procedure, or any other provision of
25 law. By waiving such rights, 5 Star electively consents to this Consent Order and Desist and Refrain
26 Order herein becoming final.

27 5. **Reimbursement of Additional Examination Costs.** 5 Star shall pay additional
28 examination costs of \$6,250.00 within 30 days of the effective date of this order as defined in

1 Paragraph 9. The payment shall be paid by cashier check or ACH made payable to the “Department of
2 Business Oversight,” and mailed to the attention of Accounting-Litigation, Department of Business
3 Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice of payment shall be
4 concurrently made to Timothy LeBas, Senior Counsel at Department of Business Oversight, 1515 K
5 Street, Suite 200, Sacramento, California 95814.

6 6. **Refund Amounts.** 5 Star identified 145 loans in which the loans had a bona fide
7 principal amount less than \$2,500.00 when charges, fees and recompense (including DMV fees as
8 described in Paragraph above) were excluded from the loan amount to calculate the bona fide principal
9 amount as outlined in section 22251, subdivision (c) (Withheld Proceeds); and in which it charged an
10 administrative fee of \$75. 5 Star shall refund or credit (all future references to refund shall be
11 inclusive of credits) 50 percent of the Withheld Proceeds and administrative fees for each loan to the
12 applicable borrower. In addition, 5 Star identified 233 loans in which it charged auction fees to
13 borrowers. 5 Star shall refund 50 percent of the auction fees for each loan to the applicable borrower,
14 and shall not reduce that refund by any partial refund already made by 5 Star. All refunds shall be
15 made by 5 Star in the manner described in Paragraph 7 below.

16 7. **Refund Payments.** 5 Star shall pay the Refunds or Credits (Refunds) as follows:

17 (a) 5 Star shall make the Refunds no later than 30 days after the effective date of this
18 Consent Order, as defined in Paragraph 9.

19 (b) 5 Star shall submit evidence of such payment to the Commissioner no later than 60 days
20 after the effective date of this Consent Order, as defined in Paragraph 9. Such evidence must include
21 records sufficient to show mailing of refund checks to customers and transmittal of uncashed refund
22 checks to the California State Controller’s Office, loan balances, and, for assignees and borrowers or
23 charged-off loans assigned to outside collections, advisements of outstanding-balance reductions for
24 each loan, as applicable.

25 (c) 5 Star shall apply each Refund as follows:

26 i. For borrowers with open loans which have an outstanding balance of more than
27 the Refund, by reducing the outstanding loan balance by the Refund amount;

28 ii. For borrowers whose loans have an outstanding balance of less than the Refund,

1 by reducing the outstanding loan balance to zero dollars and mailing a check for the remaining Refund
2 amount to the borrower;

3 iii. For former borrowers who repaid their loans in full and do not have any loans
4 from 5 Star with an outstanding balance, by mailing a check for the Refund amount;

5 iv. For borrowers whose loan were charged off, by reducing the charged-off
6 balance by the Refund amount. As to charged-off loans, 5 Star shall apply the reduction directly to
7 any loan it retained for collection. For loans assigned to collection, 5 Star shall advise the assignee of
8 the reduced outstanding balance. 5 Star shall also advise each borrower of a charged-off loan that it
9 has been assigned for collection of the reduction in outstanding balance by sending notice
10 electronically to the borrower's last known e-mail address in 5 Star's records or, if the borrower has
11 opted out of receiving electronic communications from 5 Star, by sending notice by U.S. mail to the
12 borrower's last known mailing address in 5 Star's records.

13 (d) 5 Star shall escheat all unclaimed Refunds to the California State Controller's Office
14 within the period provided by and in accordance with Code of Civil Procedure section 1519.5, of the
15 Unclaimed Property Law. (Code of Civ. Proc., § 1500 et seq.)

16 8. **Full and Final Agreement.** The parties hereby acknowledge and agree that this
17 Consent Order is intended to constitute a full, final, and complete resolution of the Examination
18 Findings and that no further proceedings or actions will be brought by the Commissioner in connection
19 with the Examination Findings, either under the CFL or any other provision of law, unless the
20 proceeding or action is based upon discovery of new and further violations of the CFL that do not form
21 the basis for this Consent Order or which were knowingly concealed from the Commissioner by 5 Star.

22 9. **Effective Date.** This Consent Order will not become effective until signed by all
23 parties and delivered by the Commissioner's legal counsel by email to Bruce Greenberg, counsel for 5
24 Star.

25 10. **Counterparts.** The parties agree that this Consent Order may be executed in any
26 number of counterparts, each of which will be deemed an original when executed. A signature
27 delivered by facsimile or email shall be deemed the same as original signature. Such counterparts will
28 together constitute and be one and the same instrument.

1 11. **Binding.** The Consent Order is binding on all heirs, assigns, or successors in interest.

2 12. **Third Party Actions.** It is the intent and understanding between the parties that this
3 Consent Order does not create any private rights or remedies against 5 Star, or create any liability for 5
4 Star, or limit defenses of 5 Star against any person or entity not a party to this Consent Order. Further,
5 entering into this Consent Order by 5 Star does not constitute any admission of wrongdoing or
6 violation of law, statute, or regulations.

7 13. **Independent Legal Advice.** Each party represents that it has received independent
8 advice from its counsel or representatives regarding the advisability of executing this Consent Order.

9 14. **No Further Representation.** Each party represents that in executing this Consent
10 Order it has relied solely on the statements set forth in this Consent Order and on the advice of its
11 counsel or representatives. Each party further represents that in executing this Consent Order, it has
12 not relied on any statement, representation, or promise of any other party or any other person or entity
13 not expressly set forth in this Consent Order or upon the failure of any party or any other person or
14 entity to make any statement, representation, or disclosure. The parties have included this clause to
15 preclude any claim that any party was fraudulently induced to execute this Consent Order.

16 15. **Waiver and Modifications.** No waiver, amendment, or modification of this Consent
17 Order shall be valid or binding unless it is in writing and signed by all of the parties affected by it.
18 Waiver of any provision of this Consent Order will not waive any other provision.

19 16. **Full Integration.** This Consent Order is the final written expression and the complete
20 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
21 between the parties concerning its subject matter and supersedes all discussions regarding such subject
22 matter between the parties, their representatives, and any other person or entity. The parties have
23 included this clause to preclude the introduction of parol evidence to vary, interpret, supplement, or
24 contradict the terms of this Consent Order.

25 17. **Presumption from Drafting.** In that the parties have had the opportunity to draft,
26 review and edit the language of this Consent Order, no presumption for or against any party arising out
27 of drafting all or any part of this Consent Order will apply in construing this Consent Order.
28 Accordingly, the parties waive the benefit of Civil Code section 1654 as amended or any successor

1 statute, which provide that in cases of uncertainty, language of a contract should be interpreted most
2 strongly against the party that caused the uncertainty to exist.

3 18. **Headings and Governing Law.** The headings to the paragraphs of the Consent Order
4 are for convenience only and do not affect its meaning. This Consent Order will be construed and
5 enforced in accordance with, and governed by, the laws of the State of California.

6 19. **Severability.** The provisions of this Consent Order are severable and the invalidity or
7 unenforceability of any of them will not affect the remainder of this Consent Order.

8 20. **Authority to Execute.** Each party represents that it is authorized to enter into this
9 Consent Order.

10 21. **Public Record.** 5 Star acknowledges that this Consent Order will be a matter of public
11 record.

12 22. **Voluntary Agreement.** 5 Star enters into this Consent Order voluntarily and without
13 coercion and acknowledges that no promises, threats or assurances about this Consent Order have been
14 made by the Commissioner of any of her officers or agents.

15 Dated: 12/20/18

JAN LYNN OWEN
Commissioner of Business Oversight

17 By _____
18 Mary Ann Smith
19 Deputy Commissioner

20 Dated: 12/18/18

5 STAR LOANS, INC.

22 By _____
23 Carmel Gordon
24 President

25 AS TO FORM

26 Dated: 12/18/18

27 By _____
28 Bruce A. Greenberg
A Professional Law Corporation
Attorney for 5 Star Loans, Inc.