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

12 In the Matter of:) CFL LICENSE NO.: 6034727
13 THE COMMISSIONER OF BUSINESS) SETTLEMENT AGREEMENT
OVERSIGHT,)
14 Complainant,)
15 v.)
16 LEASE CORPORATION OF AMERICA,)
17 Respondent.)
18)
19)

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21 This Settlement Agreement is entered into between the Commissioner of Business Oversight
22 (Complainant or Commissioner) and Respondent (Respondent or Lease Corporation of America)
23 and is made with respect to the following facts:

24 **I.**

25 **RECITALS**

26 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
27 entities engaged in the business of finance lending or brokering under the California Financing Law
28 (CFL) (Fin. Code, § 22000 et seq.).

1 B. Respondent is a Michigan corporation, with a principal place of business at 3150
2 Livernois, Suite 300, Troy, Michigan 48083.

3 C. Respondent is licensed as a finance lender under the CFL with main license number
4 6034727.

5 D. Respondent does not have branch offices in California but transacts business in
6 California through its main office in Michigan.

7 E. In accordance with Financial Code section 22159, CFL licensees must file an annual
8 report with the Commissioner by March 15 of each year (Annual Report).

9 F. On January 2, 2019, the Commissioner notified CFL licensees of the March 15, 2019
10 deadline to file their annual reports by sending notice to the email address of each CFL licensee
11 established pursuant to the Commissioner's Order on Electronic Communications, dated November
12 22, 2013. The notification admonished licensees that the Commissioner could assess penalties and
13 summarily revoke CFL license(s) for untimely filing or failing to file pursuant to Financial Code
14 section 22715.

15 G. On February 1, 2019, the Commissioner again notified CFL licensees of the March
16 15, 2019 deadline to file their annual reports by sending notice to the email address each CFL
17 licensee established pursuant to the Commissioner's Order on Electronic Communications, dated
18 November 22, 2013. The notification again warned that the Commissioner could assess penalties and
19 summarily revoke licenses for untimely filing or failing to file pursuant to Financial Code section
20 22715.

21 H. On March 5, 2019, the Commissioner again notified CFL licensees of the March 15,
22 2019 deadline to file their annual reports by sending notice to the email address each CFL licensee
23 established pursuant to the Commissioner's Order on Electronic Communications, dated November
24 22, 2013. The notification again warned that the Commissioner could assess penalties and
25 summarily revoke licenses for untimely filing or failing to file pursuant to Financial Code section
26 22715.

27 I. As of March 15, 2019, Respondent had not filed its Annual Report with the
28 Commissioner. As a result, the Commissioner issued a notice on March 18, 2019 to Respondent to

1 Respondent’s email address established pursuant to the Commissioner’s Order on Electronic
2 Communications, dated November 22, 2013, advising Respondent that it should file its annual report
3 by or before March 29, 2019 or else its license would be summarily revoked pursuant to Financial
4 Code section 22715 (Notice Email).

5 J. Respondent alleges that Respondent is unable to locate the four notices issued and
6 sent by the Commissioner as described in paragraphs F through I above, but for purposes of this
7 Settlement Agreement, Respondent does not dispute that the notices were issued or sent to
8 Respondent’s email established pursuant to the Commissioner’s Order on Electronic
9 Communications, dated November 22, 2013.

10 K. As of March 29, 2019, Respondent had not filed its Annual Report with the
11 Commissioner as directed in the Notice Email. As a result, on April 3, 2019, the Commissioner
12 issued an Order Summarily Revoking California Finance Lenders License Pursuant to Financial
13 Code Section 22715 for CFL License Number 6034727 (Summary Revocation Order).

14 L. Upon receiving the Summary Revocation Order, Respondent timely notified the
15 Commissioner that Respondent was requesting a hearing on the Summary Revocation Order.

16 M. On April 12, 2019, Respondent submitted its Annual Report, which was due on
17 March 15, 2019, 19 business days late. Pursuant to Financial Code Section 22715, the maximum
18 penalty that may be imposed for filing 19 business days late is \$7,500.00 (\$100 per business day for
19 the first five business days and \$500 per business day thereafter up to a maximum of \$25,000).

20 N. In connection with these proceedings, Respondent represented to the Commissioner
21 that it had taken no new applications under its license.

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

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

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1 II.

2 TERMS AND CONDITIONS

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

5 2. Waiver of Hearing Rights. Respondent hereby agrees to withdraw its request for an
6 administrative hearing on the Summary Revocation Order. Respondent acknowledges its right under
7 the CFL to an administrative hearing on the Summary Revocation Order and hereby waives such
8 right to a hearing and to any reconsideration, appeal, injunction or other review that may be afforded
9 under the Financial Code; Administrative Procedure Act, including Government Code section
10 11415.60, subdivision (b); Code of Civil Procedure; or any other provision of law. By waiving such
11 rights, Respondent effectively consents to the finality of the Summary Revocation Order.

12 3. Order Rescinding Revocation Order. The Commissioner hereby rescinds the
13 Summary Revocation Order, which had been issued on April 3, 2019.

14 4. Administrative Penalty. Respondent shall pay an administrative penalty of \$7,500.00
15 no later than 30 days after the effective date of this Settlement Agreement as defined in paragraph
16 18. **The penalty must be made payable in the form of a cashier’s check or Automated Clearing
17 House deposit to the Department of Business Oversight and transmitted to the attention of
18 Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200,
19 Sacramento, California 95814.** Notice of the payment must be concurrently sent to Boryana
20 Arsova, Counsel, Department of Business Oversight, 1515 K Street, Suite 200, Sacramento,
21 California 95814, email: boryana.arsova@dbo.ca.gov.

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

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

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

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

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

23 10. Full Integration. This Settlement Agreement is the final written expression and the
24 complete and exclusive statement of all the agreements, conditions, promises, representations, and
25 covenants between the parties with respect to the subject matter hereof, and supersedes all prior or
26 contemporaneous agreements, negotiations, representations, understandings, and discussions
27 between and among the parties, their respective representatives, and any other person or entity, with
28 respect to the subject matter covered hereby. The parties have included this clause to preclude the

1 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
2 Settlement Agreement.

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

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

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

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

21 15. Public Record. Respondent acknowledges that the Settlement Agreement is public
22 record.

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

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

28 18. Effective Date. This Settlement Agreement will become effective on the date it is

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signed by all parties and delivered by the Commissioner to Respondent by electronic mail at jsugg@leasecorp.com.

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: 5/3/19

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 5/2/19

LEASE CORPORATION OF AMERICA

By _____
Jeffrey A. Sugg
President