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8 Attorneys for Complainant

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

12 In the Matter of:

13 THE COMMISSIONER OF BUSINESS
14 OVERSIGHT,

15 Complainant,

16 v.

17 LENDEREDGE, LLC,

18 Respondent.

) OAH CASE NO.: 2018120497
) CFL APPLICATION NO.: 60DBO 66865
) SETTLEMENT AGREEMENT
) Hearing Date: September 16-19, 2019
) Hearing Time: 9:00 a.m.
) Hearing Location: OAH, Los Angeles
320 W. 4th Street, Suite 630
Los Angeles, CA 90013
) Judge: Ji-Lan Zang

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24 This Settlement Agreement (the Settlement Agreement) is entered between the
25 Commissioner of Business Oversight (Commissioner) and LenderEDGE, LLC (LenderEDGE) and
26 is made with respect to the following facts:

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I.

RECITALS

A. The Commissioner has jurisdiction over the licensing and regulation of finance lenders and brokers in this state under the California Financing Law (CFL) (Fin. Code, § 22000 et seq.) and title 10 of the California Code of Regulations (CCR) (Cal. Code Regs., § 1404 et seq.).

B. The Commissioner has jurisdiction over the licensing and regulation of deferred deposit originators in this state under the California Deferred Deposit Transaction Law (CDDTL) (Fin. Code, § 23000 et seq.).

C. LenderEDGE is a limited liability company in good standing, duly formed and existing under the laws of the state of California. LenderEDGE’s principal place of business is 23 Corporate Plaza Drive, Suite 100, Newport Beach, California.

D. Ethan Taub is LenderEDGE’s chief executive officer and, as such, is authorized to enter into the Settlement Agreement on behalf of LenderEDGE.

E. OfferEDGE, Inc. (OfferEDGE) is a corporation in good standing, duly formed and existing under the laws of the state of Delaware. OfferEDGE’s principal place of business is 23 Corporate Plaza Drive, Suite 100, Newport Beach, California. OfferEDGE is the parent and manager of LenderEDGE. Ethan Taub is OfferEDGE’s 100-percent shareholder and owner.

F. On or about February 1, 2017, LenderEDGE applied to the Commissioner to obtain a CFL broker’s license, application number 60DBO 66865.

G. On November 20, 2018, the Commissioner issued LenderEDGE a notice of intention to deny application and statement of issues (Notice of Intention). The Commissioner determined LenderEDGE had violated Financial Code section 22100, subdivision (a) by engaging in the business of a broker without first obtaining a license, and sought to deny LenderEDGE’s CFL broker’s license application under Financial Code section 22109, subdivisions (a)(1) and (a)(3).

H. LenderEDGE timely filed its notice of defense on December 6, 2018.

I. On April 10, 2019, the Commissioner amended the Notice of Intention after determining LenderEDGE had violated Financial Code section 23005, subdivision (a) by assisting a deferred deposit originator in the origination of a deferred deposit transaction without

1 first obtaining a license from the Commissioner.

2 J. The Office of Administrative Hearings has set the matter for hearing on June 10
3 through 13, 2019, before administrative law judge Ji-Lan Zang.

4 **II.**

5 **FINDINGS OF FACT**

6 K. At all times relevant herein, LenderEDGE did not hold any license issued by the
7 Commissioner under the authority of the CFL or CDDTL.

8 L. LenderEDGE operated a website at www.offeredge.com, which advertised
9 LenderEDGE’s services by stating:

10 We match people to Lenders in the Loanry Store using innovative
11 marketing.

12 Using both traditional and cutting EDGE techniques, LenderEDGE
13 supports a revenue-centric approach to lead generation. Each Lender
14 relationship is personalized to meet specific goals. . . . LenderEDGE’s,
15 unique lead generation platform helps Lenders control and purchase
16 leads in the “tree”. Backed by a network of affiliates and an in-house
17 team with years of experience in lending, credit, and marketing
18 industries, LenderEDGE is focused on [the] quality of leads it delivers
19 to its buyers.

20 M. In a promotional video posted to YouTube on September 6, 2017, LenderEDGE chief
21 operating officer Randy Brown described LenderEDGE as:

22 [A] very unique lead generation company that matches leads—for
23 people looking for personal loans, business loans, payday loans—with
24 the lenders that provide them. Our cutting-edge systems allows us to
25 measure the quality of both the leads and back it in with the actual
26 funding of the loans which gives optimum performance on both sides.

27 N. From at least 2014 through at least April 2017, LenderEDGE engaged in the business
28 of a finance broker or solicited or accepted applications for loans while not regularly employed at a
licensed place of business of a CFL-licensed finance lender or broker (Finance Company or
Companies).

O. From at least 2014 through at least April 2017, LenderEDGE paid fees to independent
sales organizations, referral partners, lead generators, and finders (collectively, Referral Partners),

1 which were not licensed as brokers under the CFL, in connection with loans originated by Finance
2 Companies.

3 P. From 2014 to at least April 2017, LenderEDGE received fees from Finance
4 Companies for providing them with contact information about specific borrower applicants, such
5 consumer contact information is commonly referred to as a "referral" or "lead." But LenderEDGE
6 went a step further, providing Finance Companies with information it had obtained from Referral
7 Partners concerning applicants for the purpose of evaluating and recommending loan options for each
8 applicant, such as social security number, contact information (address, phone number, e-mail
9 address), and monthly income.

10 Q. LenderEDGE received a fee for each referral or lead it sold to Finance Companies.

11 R. In one example, on February 18, 2014, LenderEDGE entered into a "Marketing
12 Agreement" with a Finance Company. The marketing agreement provided that LenderEDGE would
13 receive compensation from the Finance Company for providing valid qualified submissions or
14 leads, which the parties defined as:

15 [A] lead or submission that includes the information for an individual
16 person that . . . is not a computer[-]generated user . . . and has
17 submitted information that meets all of [the Finance Company's]
18 criteria as provided to [LenderEDGE] and all necessary data to use the
19 lead in the manner as set forth herein or in the [insertion order].

20 S. On October 17, 2014, LenderEDGE and the Finance Company agreed to a
21 "Marketing Insertion Order" that specified the terms and conditions for compensable leads by the
22 Finance Company, including specified minimum age; state of residency; and completion of all
23 required fields in the application form (including the applicant's first and last name, e-mail, phone
24 number, social security number, address, and monthly income).

25 T. LenderEDGE provided invoices for compensable leads on an approximately weekly
26 basis to the Finance Company, which set forth the number of leads sold, the amount of
27 compensation for each lead sold, and the total amount invoiced to the Finance Company for that
28 week. In one buyer report LenderEDGE provided to the Commissioner, LenderEDGE sold 126
leads to the Finance Company during the week of November 10, 2014.

1 U. As described above, and according to its promotional video posted to YouTube,
2 LenderEDGE claimed to match leads for people looking for payday loans with the lenders that
3 provide them.

4 V. Beginning in or about March 2015, LenderEDGE engaged in the business of a
5 deferred deposit originator by arranging deferred deposit transactions for a deferred deposit
6 originator or assisting a deferred deposit originator in the origination of deferred deposit
7 transactions. The public commonly refers to deferred deposit transactions as "payday loans."

8 W. For example, LenderEDGE and a Referral Partner, who was not licensed under the
9 CDDTL as a deferred deposit originator, entered a marketing insertion order dated March 17, 2015,
10 under which LenderEDGE agreed to purchase "Payday Real Time Leads" from the Referral Partner.
11 The parties' insertion order specified the terms and conditions for compensable "payday" leads by
12 LenderEDGE, which included a consumer's first and last name; address; state of residence; phone
13 number; social security number; date of birth; driver's license number and state of issuance;
14 employment information; frequency of pay; and bank account information.

15 X. From at least June 2015, in connection with deferred deposit transactions originated by
16 deferred deposit originators, LenderEDGE paid fees to Referral Partners who were not licensed under
17 the CDDTL.

18 Y. Beginning in at least February 2016 until at least February 2017, LenderEDGE
19 received fees from deferred deposit originators for providing them with leads for deferred deposit
20 transactions.

21 Z. LenderEDGE received a fee for each lead it sold to deferred deposit originators.
22 LenderEDGE sold leads to at least three deferred deposit originators who hold or held licenses under
23 the CFL and CDDTL.

24 AA. In one example, on or about November 11, 2015, LenderEDGE entered into a "Lead
25 Purchase Agreement" with a company dually licensed as a finance lender and deferred deposit
26 originator. The purchase agreement stated LenderEDGE would receive compensation from the
27 dually licensed company for providing it with consumer leads for short-term loans. The purchase
28 agreement described LenderEDGE as being in the business of generating leads "by the placing of

1 online advertisements, ad banners, hyperlinks, text content, buttons, and/or other forms of
2 advertisement[.]”

3 BB. LenderEDGE and the dually licensed company agreed to an "Insertion Order" that
4 specified the terms and conditions for compensable leads by the dually licensed company, including
5 specified minimum age; bank account information; employment status; income frequency;
6 minimum monthly income; employment length; military status; and desired loan amount.

7 CC. LenderEDGE provided invoices for compensable leads on an approximately weekly
8 basis to the dually licensed company, which set forth the number of leads sold, the amount of
9 compensation for each lead sold, and the total amount invoiced to the dually licensed company for
10 that month. In one buyer report LenderEDGE provided to the Commissioner, LenderEDGE sold 13
11 leads to the dually licensed company during the week of February 29, 2016.

12 **III.**

13 **CONCLUSIONS OF LAW**

14 DD. Financial Code section 22004 provides, “‘Broker’ includes any person who is engaged
15 in the business of negotiating or performing any act as broker in connection with loans made by a
16 finance lender.”

17 EE. Financial Code section 22100, subdivision (a) states, “No person shall engage in the
18 business of a . . . broker without obtaining a license from the commissioner.”

19 FF. Title 10 of the California Code of Regulations, section 1451, subdivision (c):

20 No finance company shall pay any compensation to an unlicensed
21 person or company for soliciting or accepting applications for loans,
22 except for an employee regularly employed at a licensed place of
23 business of the finance company[.]

24 GG. Financial Code section 22712, subdivision (a) provides, in pertinent part:

25 Whenever, in the opinion of the commissioner, any person is engaged
26 in business as a finance lender, broker, program administrator, or a
27 mortgage loan originator, as defined in this division, without a license
28 from the commissioner, or any licensee violates any provision of this
division, any provision of an order, or any regulation adopted pursuant
to this division, the commissioner may order that person or licensee to
desist and to refrain from engaging in the business or further continuing

1 that violation. If, within 30 days after the order is served, a written
2 request for a hearing is filed and no hearing is held within 30 days
3 thereafter, the order is rescinded. For purposes of this section,
“licensee” includes a mortgage loan originator.

4 HH. Financial Code section 23005, subdivision (a) provides in relevant part:

5 A person shall not . . . arrange a deferred deposit transaction for a
6 deferred deposit originator . . . or assist a deferred deposit originator in
7 the origination of a deferred deposit transaction without first obtaining
8 a license from the commissioner and complying with the provisions of
[the CDDTL].

9 II. Financial Code section 23050 provides:

10 Whenever, in the opinion of the commissioner, any person is engaged
11 in the business of deferred deposit transactions . . . without a license
12 from the commissioner, . . . the commissioner may order that person . .
. to desist and to refrain from engaging in the business or further
violating [the CDDTL].

13 JJ. Based on the foregoing, the Commissioner is of the opinion that LenderEDGE
14 violated Financial Code section 22100, subdivision (a) by engaging in the business of a broker
15 without obtaining a license from the Commissioner and is not exempt from licensure under the CFL.
16 Pursuant to Financial Code section 22712, subdivision (a) LenderEDGE is hereby ordered to desist
17 and refrain from violating Financial Code section 22100, subdivision (a).

18 KK. Based on the foregoing, the Commissioner is further of the opinion that LenderEDGE
19 violated Financial Code section 23005, subdivision (a) by assisting a deferred deposit originator in
20 the origination of a deferred deposit transaction without first obtaining a license from the
21 Commissioner. Under Financial Code section 23050, LenderEDGE is hereby ordered to desist and
22 refrain from violating Financial Code section 23005, subdivision (a).

23 LL. The Commissioner finds that entering into the Settlement Agreement is in the public
24 interest, protects consumers, and is consistent with the purposes fairly intended by the policies and
25 provisions of the CFL and CDDTL. LenderEDGE neither admits nor denies the allegations
26 contained in the Notice of Intention, Findings of Fact, or Conclusions of Law.

27 MM. It is the intention of LenderEDGE and the Commissioner (the Parties) to resolve
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1 this matter without an administrative hearing or other litigation.

2 NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set
3 forth herein, the Parties agree as follows:

4 **IV.**

5 **TERMS AND CONDITIONS**

6 1. **Purpose.** The Settlement Agreement is entered into for the purpose of judicial
7 economy and expediency, and to avoid the expense of a hearing, and possible further court
8 proceedings.

9 2. **Acknowledgment.** LenderEDGE acknowledges that the Commissioner issued and
10 served it with the Notice of Intention, in which the Commissioner sought to deny LenderEDGE's
11 CFL broker application under Financial Code section 22109, subdivisions (a)(1) and (a)(3), as
12 discussed in the Recitals above.

13 3. **Desist and Refrain Order.** Under Financial Code section 22712, LenderEDGE
14 stipulates that it is ordered to desist and refrain from violating the CFL by engaging in the business of
15 a broker without first obtaining a license from the Commissioner in violation of Financial Code
16 section 22100, subdivision (a) (the Order). Under the Order and Financial Code section 23050,
17 LenderEDGE further stipulates that it is ordered to desist and refrain from violating the CDDTL by
18 assisting a deferred deposit originator in the origination of a deferred deposit transaction without first
19 obtaining a license from the Commissioner in violation of Financial Code section 23005, subdivision
20 (a).

21 4. **Administrative Penalties.** LenderEDGE agrees to pay the Commissioner
22 administrative penalties of \$85,000.00 (the Penalty). The Penalty shall be due within five business
23 days from the Effective Date of the Settlement Agreement and made payable in the form of a
24 cashier's check or Automated Clearing House deposit to the "Department of Business Oversight,"
25 and transmitted to the attention of Accounting – Enforcement Division, Department of Business
26 Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice of the Penalty payment
27 shall be sent to Blaine A. Noblett, Senior Counsel, Department of Business Oversight, 320 W. 4th
28 Street, Suite 750, Los Angeles, California 90013.

1 5. Withdrawal of Request for Hearing and Waiver of Hearing Rights. LenderEDGE
2 agrees that the Settlement Agreement shall have the effect of withdrawing its request for an
3 administrative hearing on the Notice of Intention as described in the Recitals above. LenderEDGE
4 acknowledges its right to an administrative hearing under the CFL and CDDTL in connection with
5 the Notice of Intention and the Order, and hereby waives such right to a hearing and to any
6 reconsideration, appeal, or other rights that may be afforded to it under the CFL, the CDDTL, the
7 Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.), the Code of Civil Procedure
8 (CCP) (Code Civ. Proc., § 1 et seq.), or any provision of law in connection with this matter. By
9 waiving its rights, LenderEDGE understands, acknowledges, and consents to the finality of the
10 Order.

11 6. Compliance. LenderEDGE acknowledges and agrees that it shall comply with
12 Financial Code sections 22156, 23005, subdivision (a), and 10 CCR 1451, subdivisions (b) and (c).

13 7. Proof of Compliance. It is agreed, and LenderEDGE acknowledges and understands,
14 that the Commissioner will examine and review LenderEDGE's compliance with Paragraph 6. of the
15 Settlement Agreement. LenderEDGE agrees to provide, upon the Commissioner's request,
16 documentation satisfactory to the Commissioner in order to determine compliance with Paragraph 6.

17 8. Suspension of License for Failure to Comply. LenderEDGE agrees that, if it fails to
18 comply with any provision of the Settlement Agreement, other than through inadvertent and isolated
19 errors that are promptly corrected by LenderEDGE within 15 business days of discovery, with notice
20 of such correction provided to the Commissioner within seven business days of correction,
21 LenderEDGE may be summarily suspended from engaging in business under its CFL license until it
22 provides evidence to the Commissioner that the terms are met. LenderEDGE further acknowledges
23 that its failure to comply with Paragraph 4. of the Settlement Agreement or the failure to provide
24 documentation requested by the Commissioner to determine compliance with Paragraph 6., under
25 Paragraph 7. above, shall constitute a failure to comply with the Settlement Agreement and be
26 subject to this paragraph.

27 9. Full and Final Settlement. Except as set forth in Paragraph 8., above, the Parties
28 hereby acknowledge and agree that the Settlement Agreement is intended to constitute a full, final,

1 and complete resolution of LenderEDGE's violations set forth in the Notice of Intention as
2 amended and Order (collectively, the Violations), and that no further proceedings or actions will be
3 brought by the Commissioner based on the Violations or any other provision of law, excepting any
4 proceeding to enforce compliance with the terms of this Settlement Agreement or action if such
5 proceeding is based upon discovery of new and further violations of the CFL or the CDDTL that do
6 not form the basis for the Settlement Agreement or which LenderEDGE knowingly concealed from
7 the Commissioner.

8 10. Information Willfully Withheld. The Settlement Agreement may be revoked and the
9 Commissioner may revoke the CFL license issued to LenderEDGE if the Commissioner later finds
10 out that LenderEDGE knowingly or willfully withheld information used and relied upon in the
11 Settlement Agreement.

12 11. Approval of Pending Application. In consideration of LenderEDGE's agreement to the
13 issuance of the Order, payment of the Costs, and other relief as provided for in the Settlement
14 Agreement, the Commissioner hereby acknowledges that LenderEDGE's CFL broker application
15 number 60DBO 66865 is ready to be approved, and the Commissioner hereby agrees to approve it
16 within five business days from the Effective Date of the Settlement Agreement.

17 12. Commissioner's Duties. The Parties further acknowledge and agree that nothing in
18 the Settlement Agreement shall limit the Commissioner's ability to assist any other agency (city,
19 county, state, or federal) with any prosecution, administrative, civil, or criminal, brought by any
20 such agency against LenderEDGE or any other person based upon any of the activities alleged in
21 this matter or otherwise.

22 13. Binding. The Settlement Agreement is binding on all heirs, assigns, or successors in
23 interest.

24 14. Independent Legal Advice. Each of the parties represents, warrants, and agrees that
25 he or she has received independent advice from his or her attorney(s) or representative(s) with
26 respect to the advisability of executing the Settlement Agreement.

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

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

7 17. Third Party Actions. It is the intent and understanding between the parties that this
8 Settlement Agreement does not create any private rights or remedies against LenderEDGE, create
9 any liability for LenderEDGE, or limit defenses of LenderEDGE with respect to any person or
10 entity not a party to this Settlement Agreement.

11 18. Headings and Governing Law. The headings to the paragraphs of the Settlement
12 Agreement are inserted for convenience only and do not affect its meaning. The Settlement
13 Agreement shall be construed and enforced in accordance with and governed by California law.

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

24 20. Presumption from Drafting. In that the Parties have had the opportunity to draft,
25 review, and edit the language of the Settlement Agreement, no presumption for or against any party
26 arising out of drafting all or any part of the Settlement Agreement will be applied in any action
27 relating to, connected to, or involving the Settlement Agreement. Accordingly, the Parties waive the
28 benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases of

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

3 21. Voluntary Agreement. LenderEDGE enters into the Settlement Agreement
4 voluntarily and without coercion and acknowledges that no promises, threats, or assurances have
5 been made by the Commissioner, or any officer or agent thereof, about the Settlement Agreement.

6 22. Signatures. A signature delivered by facsimile or e-mail shall be deemed an original
7 signature.

8 23. Public Record. LenderEDGE acknowledges that the Settlement Agreement and
9 Order shall be matters of public record.

10 24. Effective Date. The Settlement Agreement shall become final and effective when
11 signed by all Parties and delivered by the Commissioner's agent to LenderEDGE's counsel via e-
12 mail at krasovec.alexandra@dorsey.com and shirk@lotsteinlegal.com.

13 25. Notice. Any notices required under the Settlement Agreement shall be provided to
14 each party at the following addresses:

15 If to Respondent to: Ethan Taub, CEO
16 LenderEDGE, LLC
17 23 Corporate Plaza Drive, Suite 100
18 Newport Beach, California 92660

19 with copies to: Alexandra N. Krasovec, Esq.
20 Dorsey & Whitney LLP
21 600 Anton Boulevard, Suite 2000
22 Costa Mesa, California 92626-7655

23 David Shirk, Esq.
24 LotsteinLegal PLLC
25 5185 MacArthur Boulevard, NW, Suite 800
26 Washington, District of Columbia 20016

27 If to the Commissioner to: Blaine A. Noblett, Senior Counsel
28 Department of Business Oversight
320 W. 4th Street, Suite 750
Los Angeles, California 90013-2344

26 26. Authority to Execute. Each signatory hereto covenants that he/she possesses all
27 necessary capacity and authority to sign and enter into the Settlement Agreement.

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IN WITNESS WHEREOF, the parties hereto have approved and executed the Settlement Agreement on the dates set forth opposite their respective signatures.

Dated: May 9, 2019

JAN LYNN OWEN
Commissioner of Business Oversight

By _____

MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: May 8, 2019

LENDEREDGE, LLC, Respondent

By _____

ETHAN TAUB, CEO
LenderEDGE, LLC

Approved as to form and content:

By _____

Alexandra N. Krasovec, Esq.
Dorsey & Whitney LLP
on behalf of LenderEDGE, LLC

By _____

David Shirk, Esq.
LotsteinLegal, Attorneys at Law
on behalf of LenderEDGE, LLC