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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. 603A073
13 THE COMMISSIONER OF BUSINESS) SETTLEMENT AGREEMENT
OVERSIGHT,)
14)
Complainant,)
15 v.)
16 GERBER FINANCE INC.)
17)
Respondent.)
18)
19)

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

23 **I.**

24 **RECITALS**

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

1 B. Respondent is a corporation, with a principal place of business at 488 Madison
2 Avenue, New York NY 10022.

3 C. Respondent is licensed as a finance lender under the CFL with main license number
4 603A073.

5 D. Respondent operates one branch office in California.

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

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

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

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

26 I. As of March 15, 2019, Respondent had not filed its Annual Report with the
27 Commissioner. As a result, the Commissioner issued a notice on March 18, 2019 to Respondent to
28 Respondent's email address established pursuant to the Commissioner's Order on Electronic

1 Communications, dated November 22, 2013, advising Respondent that it should file its annual report
2 by or before March 29, 2019 or else its license would be summarily revoked pursuant to Financial
3 Code section 22715 (Notice email).

4 J. As of March 29, 2019, Respondent had not filed its Annual Report with the
5 Commissioner as directed in the Notice Letter. As a result, on April 3, 2019, the Commissioner
6 issued an Order Summarily Revoking California Finance Lenders License Pursuant to Financial
7 Code Section 22715 for CFL License Number 603A073 (Summary Revocation Order).

8 K. Upon receiving the Summary Revocation Order(s), Respondent timely notified the
9 Commissioner that Respondent was requesting a hearing on the Summary Revocation Order(s).

10 L. On May 1, 2019, Respondent submitted its Annual Report, which was due on March
11 15, 2019, 32 business days late. Pursuant to Financial Code Section 22715, the maximum penalty
12 that may be imposed for filing 32 business days late is \$14,000.00 (\$100 per business day for the
13 first five business days and \$500 per business day thereafter up to a maximum of \$25,000).

14 M. In connection with these proceedings, Respondent represented to the Commissioner
15 that it had taken no new applications under its license.

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

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

20 **II.**

21 **TERMS AND CONDITIONS**

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

24 2. Waiver of Hearing Rights. Respondent hereby agrees to withdraw its request for an
25 administrative hearing on the Summary Revocation Order(s). Respondent acknowledges its right
26 under the CFL to an administrative hearing on the Summary Revocation Order(s) and hereby waives
27 such right to a hearing and to any reconsideration, appeal, injunction or other review that may be
28 afforded under the Financial Code; Administrative Procedure Act, including Government Code

1 section 11415.60, subdivision (b); Code of Civil Procedure; or any other provision of law. By
2 waiving such rights, Respondent effectively consents to the finality of the Summary Revocation
3 Order(s).

4 3. Order Rescinding Revocation Order(s). The Commissioner hereby rescinds the
5 Summary Revocation Order, which had been issued on April 3, 2019.

6 4. Administrative Penalty. Respondent shall pay an administrative penalty of \$9,000.00
7 no later than 30 days after the effective date of this Settlement Agreement as defined in paragraph
8 18. The penalty must be made payable in the form of a cashier's check or Automated Clearing
9 House deposit to the Department of Business Oversight and transmitted to the attention of
10 Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200,
11 Sacramento, California 95814. Notice of the payment must be concurrently sent to Uche Enenwali,
12 Senior Counsel, Department of Business Oversight, 320 W. Fourth Street, Suite 750, Los Angeles,
13 California 90013.

14 5. Failure to Pay Administrative Penalty. If Respondent fails to comply with paragraph
15 4, the Commissioner may summarily suspend it from engaging in business under its license until it
16 provides evidence of compliance to the Commissioner's satisfaction. Respondent hereby waives any
17 notice or hearing rights afforded under the Administrative Procedure Act, including Government
18 Code section 11415.60, subdivision (b); Code of Civil Procedure; or any other provision of law to
19 contest the summary suspension contemplated by this paragraph.

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

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

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

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

14 10. Full Integration. This Settlement Agreement is the final written expression and the
15 complete and exclusive statement of all the agreements, conditions, promises, representations, and
16 covenants between the parties with respect to the subject matter hereof, and supersedes all prior or
17 contemporaneous agreements, negotiations, representations, understandings, and discussions
18 between and among the parties, their respective representatives, and any other person or entity, with
19 respect to the subject matter covered hereby. The parties have included this clause to preclude the
20 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
21 Settlement Agreement.

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

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

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

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

12 15. Public Record. Respondent acknowledges that the Settlement Agreement is public
13 record.

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

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

19 18. Effective Date. This Settlement Agreement will become effective on the date it is
20 signed by all parties and delivered by the Commissioner to Respondent by electronic mail at
21 JPalmer@gerberfinance.com.

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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: 6/24/19

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 6/21/19

GERBER FINANCE INC.

By _____
JENNIFER PALMER
President