

1 MARY ANN SMITH  
Deputy Commissioner  
2 SEAN ROONEY  
Assistant Chief Counsel  
3 BORYANA ARSOVA (State Bar No. 282703)  
Counsel  
4 Department of Business Oversight  
1515 K Street, Suite 200  
5 Sacramento, California 95814  
Telephone: (916) 322-8730  
6 Facsimile: (916) 455-6985

7  
8 Attorneys for Complainant

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

12 In the Matter of: ) CFL LICENSE NO.: 603J903  
13 THE COMMISSIONER OF BUSINESS ) SETTLEMENT AGREEMENT  
OVERSIGHT, )  
14 )  
Complainant, )  
15 v. )  
16 OPENGATE LOANS INC., )  
17 )  
Respondent. )  
18 )  
19 )

20  
21 This Settlement Agreement is entered into between the Commissioner of Business Oversight  
22 (Complainant or Commissioner) and Respondent (Respondent or Opengate Loans Inc.) and is made  
23 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 Delaware corporation, with a principal place of business at 18008  
2 Sky Park Circle, Suite 270, Irvine, California 92614.

3 C. Respondent is licensed as a finance broker under the CFL with main license number  
4 603J903.

5 D. Respondent operates one main 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 Email. 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 603J903 (Summary Revocation Order).

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

10 L. On June 20, 2019, Respondent submitted its Annual Report, which was due on March  
11 15, 2019, 67 business days late. Pursuant to Financial Code Section 22715, the maximum penalty  
12 that may be imposed for filing 67 business days late is \$25,000.00 (\$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. Respondent acknowledges its right under  
26 the CFL to an administrative hearing on the Summary Revocation Order and hereby waives such  
27 right to a hearing and to any reconsideration, appeal, injunction or other review that may be afforded  
28 under the Financial Code; Administrative Procedure Act, including Government Code section

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

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

5 4. Administrative Penalty. Respondent shall pay an administrative penalty of \$20,000.00  
6 no later than 60 days after the effective date of this Settlement Agreement as defined in paragraph  
7 18. **The penalty must be made payable in the form of a cashier's check or Automated Clearing**  
8 **House deposit to the Department of Business Oversight and transmitted to the attention of**  
9 **Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200,**  
10 **Sacramento, California 95814.** Notice of the payment must be concurrently sent to Boryana  
11 Arsova, Counsel, Department of Business Oversight, 1515 K Street, Suite 200, Sacramento,  
12 California 95814, email: boryana.arsova@dbo.ca.gov.

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

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

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

28 ///

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 [atran@opengatelending.com](mailto:atran@opengatelending.com).

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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: 6/25/19 MANUEL P. ALVAREZ  
Commissioner of Business Oversight

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

Dated: 6/25/19 OPENGATE LOANS INC.

By \_\_\_\_\_  
Amy Tran  
President