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8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA

11
12 In the Matter of:) CFL FILE NO.: 603K504
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
14)
15 Complainant,)
16 v.)
17 ELITE AUTO FINANCE, INC.,)
18 Respondent.)
19)
20)
21)

22 This Consent Order is entered into by and between the Commissioner of Business Oversight
23 and Elite Auto Finance, Inc. (Consent Order).

24 **RECITALS**

25 This Consent Order is made with reference to the following facts:

26 A. Elite Auto Finance, Inc. (Elite Auto) is a California corporation organized in 2011
27 with its principal place of business at 746 North Mountain Avenue, Ontario, California 91762. Elite
28 Auto does business as All Star Title Loans. Elite Auto is licensed as a finance lender under the

1 California Financing Law¹ (Fin. Code, § 22000, et seq.)² (CFL) with the license number 603K504.

2 B. Yossi Gabay is the Chief Executive Officer and owner of Elite Auto. Yossi Gabay is
3 authorized to enter into this Consent Order on behalf of Elite Auto.

4 C. The Department of Business Oversight, through the Commissioner of Business
5 Oversight (Commissioner), has jurisdiction over the licensing and regulation of persons and entities
6 engaged in the business of lending and brokering pursuant to the CFL.

7 D. On or about December 29, 2015, the Commissioner commenced an examination of
8 Elite Auto under the CFL (2015 Exam). During the 2015 Exam, the Commissioner determined the
9 following (2015 Findings):

- 10 i. Elite Auto understated loans' annual percentage rates and finance charges due to
11 omission of the loans' administrative fees in violation of sections 1026.18(d)(2)
12 and 1026.22(a)(2) of Title 12 of the Code of Federal Regulations, Part 1026
13 (Regulation Z), a regulation promulgated under the federal Truth in Lending Act
14 (15 U.S.C. § 1601 et seq.), and Financial Code section 22346, subdivision (d).
- 15 ii. Elite Auto charged administrative fees in excess of the amount allowed by Section
16 22305 in violation of Section 22306.
- 17 iii. Elite Auto collected or received from borrowers amounts greater than the statutory
18 fee paid by Elite Auto to the California Department of Motor Vehicles (DMV) for
19 filing or recording an instrument securing the loan provided for by Section 22336,
20 subdivision (a) (Lien Fee), in violation of Section 22306.
- 21 iv. Elite Auto separately charged borrowers a "vehicle inspection fee" in violation of
22 Section 22306.
- 23 v. Elite Auto overcharged borrowers due to improperly computed loan charges under
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25 _____
26 ¹ Effective October 4, 2017, the name of the "California Finance Lenders Law" changed to the "California Financing
27 Law." (Assem. Bill No. 1284 (2017-2018 Reg. Sess.) § 4.) For purposes of this Consent Order, a reference to the
28 California Financing Law means the California Finance Lenders Law before October 4, 2017 and the California
Financing Law on and after that date. (Fin. Code, § 22000.)

² Hereinafter, all references to "Section" or "Sections" are to the Financial Code, unless otherwise stated.

1 Section 22307 and Section 22400, subdivision (a), in violation of Section 22306.

2 E. On or about June 23, 2016, the Commissioner delivered the 2015 Findings to Elite
3 Auto by mail and requested that Elite Auto make appropriate refunds to borrowers to resolve the
4 2015 Findings.

5 F. On or about July 23, 2016, the Commissioner received a letter in response to the 2015
6 Findings from Elite Auto (2016 Letter). Elite Auto's letter represented that it had "issued"
7 \$85,495.72 in refunds in connection with over 755 loans, as requested by the Commissioner, "either
8 by refund check or credit applied to open account." Elite Auto further represented that "[c]ustomers
9 have been notified via letter or credit and status of their loan."

10 G. Based upon the representations in the 2016 Letter, the Commissioner closed the 2015
11 Exam and did not take further actions under the CFL to address the violative conduct at issue in the
12 2015 Findings. Reflecting this decision, on or about August 29, 2016, the Commissioner mailed a
13 letter to Elite Auto stating that the Commissioner "completed our review of your response letter
14 received on July 23, 2016 [and] . . . [b]ased on the . . . representation(s) your company has made in
15 the response, no further information is needed at this time and the examination is considered closed."

16 H. About two years later, on April 11, 2018, the Commissioner commenced another
17 examination of Elite Auto under the CFL (2018 Exam). During the 2018 Exam, the Commissioner
18 discovered the following (2018 Findings):

- 19 i. Elite Auto did not make the refunds in accordance with the representations in the
20 2016 Letter. Instead, Elite Auto made the refunds one to two years later than
21 represented. As a result, the Commissioner concluded that Elite Auto's 2016
22 Letter was made in violation of Section 22170, subdivision (a).
- 23 ii. Elite Auto separately charged borrowers credit card, debit card and DMV-related
24 "processing fees" (Processing Fees) in violation of Section 22306.
- 25 iii. Elite Auto overcharged borrowers interest and administrative fees in violation of
26 Section 22306 as a result of failing to exclude the Processing Fees and other fees
27 paid to the DMV by Elite Auto out of borrowers' loan proceeds in accordance with
28 Section 22251, subdivision (c).

1 I. It is the intention of the Commissioner and Elite Auto (collectively, the Parties) to
2 resolve the 2015 Findings and the 2018 Findings without the necessity of a hearing.

3 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
4 contained herein, the Commissioner and Elite Auto agree as follows:

5 **TERMS AND CONDITIONS**

6 1. **Purpose.** This Consent Order resolves the 2015 Findings and the 2018 Findings in
7 a manner that avoids the expense of a hearing and other possible court proceedings, protects
8 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of
9 the CFL.

10 2. **Desist and Refrain Orders.** Pursuant to Financial Code section 22712, Elite Auto
11 Finance, Inc. is hereby ordered to desist and refrain from:

12 (a) Understating loans' annual percentage rates and finance charges in violation of
13 sections 1026.18(d)(2) and 1026.22(a)(2) of Regulation Z and Financial Code section 22346,
14 subdivision (d);

15 (b) Knowingly making false statements to the Commissioner with the intent to
16 influence the enforcement of the CFL in violation of Section 22170, subdivision (a);

17 (c) Charging administrative fees in excess of the amount allowed by Section
18 22305 in violation of Section 22306;

19 (d) Collecting or receiving from borrowers amounts greater than the Lien Fee in
20 violation of Section 22306;

21 (e) Separately charging borrowers fees not expressly allowed under the CFL, such
22 as "vehicle inspection fees" or Processing Fees, in violation of Section 22306;

23 (f) Overcharging borrowers due to improperly computed loan charges under
24 Section 22307 and Section 22400, subdivision (a), in violation of Section 22306; and

25 (g) Overcharging borrowers interest and administrative fees in violation of Section
26 22306 as a result of failing to exclude the charges or fees specified in Section 22251, subdivision (c).

27 3. **Penalty.** Elite Auto shall pay a penalty of \$50,000.00 to the Commissioner (Penalty).
28 The Penalty shall be paid in four installments of \$12,500.00. The first installment payment shall be

1 due on or by November 1, 2019. The second installment payment shall be due on or by February 1,
2 2020. The third installment payment shall be due on or by May 1, 2020. The fourth and final
3 installment payment shall be due on or by August 1, 2020. Each installment payment shall be made
4 payable in the form of a cashier's check or Automated Clearing House deposit to the "Department of
5 Business Oversight" and transmitted to the attention of: Accounting – Enforcement Division,
6 Department of Business of Oversight, 1515 K Street, Suite 200, Sacramento, California 95814.
7 Notice of each payment shall be forwarded to Adam Wright, Senior Counsel, Department of Business
8 Oversight, Enforcement Division, 320 West 4th Street, Suite 750, Los Angeles, California 90013.

9 4. **Refunds.** Elite Auto shall make \$169,481.58 in refunds or credits (Refunds, or
10 individually, Refund) to certain borrowers as follows:

11 (a) In connection with the 2015 Findings, Elite Auto shall make \$85,495.72 in
12 refunds.

13 (b) Elite Auto shall refund the \$15,558.96 in Processing Fees it charged to
14 consumers in connection with at least 386 loans during the period covered by the 2018 Exam.

15 (c) Elite Auto shall refund the \$68,426.90 in interest and administrative fees that it
16 overcharged consumers in connection with at least 79 loans during the period covered by the 2018
17 Exam.

18 (d) Elite Auto represents to the Commissioner that it has already made some of the
19 Refunds contemplated by this Consent Order.

20 (e) The Refund amounts provided in this paragraph are based solely on
21 representations and reports made by Elite Auto during the 2015 Exam and the 2018 Exam. If the
22 Commissioner later determines that Elite Auto's representations and reports did not include all loans
23 covered by the 2015 Findings and the 2018 Findings, thereby causing the Refund amounts to be
24 understated, Elite Auto will be deemed to have failed to comply with the terms of this Consent Order
25 and shall make additional Refunds as necessary to make its representations and reports accurate, in
26 addition to being subject to any remedies available to the Commissioner under Paragraph 10 below.

27 5. **Refund Payments.** Elite Auto shall pay the Refunds as follows:

28 (a) Elite Auto shall make the Refunds no later than 300 days after the Effective

1 Date.

2 (b) Elite Auto shall submit an electronic report and evidence of such payments to
3 the Commissioner no later than 330 days after the Effective Date. Such evidence must include a
4 copy of the refund checks, loan balances, and, for assignees and borrowers of charged-off loans
5 assigned to outside collections, advisements of outstanding-balance reductions for each loan on
6 which a Refund is made, as applicable.

7 (c) Elite Auto shall apply each Refund as follows:

8 i. for current borrowers with open loans which have an outstanding
9 balance of more than the Refund, by reducing the loan's outstanding balance by the Refund amount;

10 ii. for current borrowers whose loans have an outstanding balance of less
11 than the Refund, by reducing the loan's principal balance to zero dollars (\$0.00) and mailing a check
12 for the remaining Refund amount to the borrower;

13 iii. for former borrowers who repaid their loans in full and do not have any
14 loans from Elite Auto with an outstanding balance, by mailing a check for the Refund amount; or

15 iv. for borrowers whose loans were charged off, by reducing the charged-
16 off balance by the Refund amount. As to charged-off loans, Elite Auto shall apply the reduction
17 directly to any loan it retained for collection. For loans assigned for collection, Elite Auto shall
18 advise the assignee of the reduced outstanding balance. Elite Auto shall also advise each borrower of
19 a charged-off loan that has been assigned for collection of the reduction in outstanding balance by
20 sending notice electronically to the borrower's last known email address in Elite Auto's records or, if
21 the borrower has opted out of receiving electronic communications from Elite Auto, by sending
22 notice by U.S. mail to the borrower's last known mailing address in Elite Auto's records.

23 (d) Elite Auto shall escheat any unclaimed refunds to the California State
24 Controller's Office within the period provided by Code of Civil Procedure section 1520 of the
25 Unclaimed Property Law (Code of Civ. Proc., section 1500, et seq.).

26 6. **Compliance.** Elite Auto shall ensure that any loans made under its CFL license that
27 do not comply with the regulatory rate provisions of Sections 22303 and 22304 have a bona fide
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1 principal amount that is equal to or higher than the sum of \$2,500.00 and any portion of borrower
2 loan proceeds that are withheld by Elite Auto for transmission to the DMV.

3 7. **Proof of Compliance.** Elite Auto acknowledges that the Commissioner will examine
4 and review its compliance with Paragraphs 4 through 6 of this Settlement Agreement. Elite Auto
5 agrees to provide, upon the Commissioner’s request, documentation satisfactory to the Commissioner
6 to determine compliance with Paragraphs 4 through 6.

7 8. **Waiver of Hearing Rights.** Elite Auto acknowledges that the Commissioner is
8 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
9 2015 Findings and the 2018 Findings. Elite Auto hereby waives the right to any hearings, and to any
10 reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the
11 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
12 provision of law. Elite Auto further expressly waives any requirement for the filing of an Accusation
13 or a Statement of Issues pursuant to Government Code section 11415.60, subdivision (b). By
14 waiving such rights, Elite Auto effectively consents to this Consent Order becoming final.

15 9. **Full and Final Settlement.** The Parties hereby acknowledge and agree that this
16 Consent Order is intended to constitute a full, final, and complete resolution of the 2015 Findings and
17 the 2018 Findings, and that no further proceedings or actions will be brought by the Commissioner in
18 connection with the 2015 Findings and the 2018 Findings under the CFL or any other provision of
19 law, excepting therefrom any proceeding to enforce compliance with the terms of this Consent Order.

20 10. **Failure to Comply with Consent Order.** Elite Auto agrees that, if it fails to comply
21 with the terms of this Consent Order, the Commissioner may, in addition to all other available
22 remedies it may invoke under the CFL, summarily suspend Elite Auto’s CFL license until Elite Auto
23 is in compliance. Elite Auto waives any notice and hearing rights to contest such summary
24 suspension which may be afforded under the CFL, the California Administrative Procedure Act, the
25 California Code of Civil Procedure, or any other provision of law in connection therewith.

26 11. **Information Willfully Withheld or Misrepresented.** This Consent Order may be
27 revoked, and the Commissioner may pursue any and all remedies available under the law against
28 Elite Auto, if the Commissioner discovers that Elite Auto knowingly or willfully withheld

1 information relied upon by the Commissioner in entering into this Consent Order.

2 12. **Future Actions by Commissioner.** If Elite Auto fails to comply with any terms of
3 this Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
4 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
5 against Elite Auto, or any of its partners, owners, officers, shareholders, directors, employees or
6 successors for any and all unknown violations of the CFL.

7 13. **Assisting Other Agencies.** Nothing in this Consent Order limits the Commissioner’s
8 ability to assist any other government agency (city, county, state, or federal) with any administrative,
9 civil or criminal prosecutions brought by that agency against Elite Auto or any other person based
10 upon any of the activities alleged in the 2015 Findings and the 2018 Findings or otherwise.

11 14. **Headings.** The headings to the paragraphs of this Consent Order are for convenience
12 only and will not be deemed a part hereof or affect the construction or interpretation of the provisions
13 hereof.

14 15. **Binding.** This Consent Order is binding on all heirs, assigns, and/or successors in
15 interest.

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

25 17. **Waiver, Amendments, and Modifications.** No waiver, amendment, or modification
26 of this Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.
27 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
28 provision. No waiver by either party of any breach of, or of compliance with, any condition or

1 provision of this Consent Order by the other party will be considered a waiver of any other condition
2 or provision or of the same condition or provision at another time.

3 18. **Full Integration.** This Consent Order is the final written expression and the complete
4 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
5 between the parties with respect to the subject matter hereof, and supersedes all prior or
6 contemporaneous agreements, negotiations, representations, understandings, and discussions between
7 and among the parties, their respective representatives, and any other person or entity, with respect to
8 the subject matter covered hereby.

9 19. **Governing Law.** This Consent Order will be governed by and construed in
10 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,
11 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
12 forum to the maintenance of such action or proceeding in such court.

13 20. **Counterparts.** This Consent Order may be executed in one or more separate
14 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
15 together constitute a single document.

16 21. **Effect Upon Future Proceedings.** If Elite Auto applies for any license, permit or
17 qualification under the Commissioner’s current or future jurisdiction, or is the subject of any future
18 action by the Commissioner to enforce this Consent Order, then the subject matter hereof, including
19 the 2015 Findings and 2018 Findings, shall be admitted by Elite Auto and cannot be contested by
20 Elite Auto for the purpose of such application or proceeding.

21 22. **Voluntary Agreement.** Elite Auto enters into this Consent Order voluntarily and
22 without coercion and acknowledges that no promises, threats or assurances have been made by the
23 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
24 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
25 without any duress or undue influence of any kind from any source.

26 23. **Signatures.** A fax or electronic mail signature shall be deemed the same as an
27 original signature.

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1 24. **Public Record.** Elite Auto hereby acknowledges that this Consent Order is and will
2 be a matter of public record.

3 25. **Effective Date.** This Consent Order shall become final and effective when signed by
4 all parties and delivered by the Commissioner’s counsel via e-mail to Yossi Gabay at
5 yossi@eliteautofinance.com.

6 26. **Authority to Sign.** Each signatory hereto covenants that he or she possesses all
7 necessary capacity and authority to sign and enter into this Consent Order and undertake the
8 obligations set forth herein.

9
10 Dated: 9/12/19 MANUEL P. ALVAREZ
11 Commissioner of Business Oversight

12 By _____
13 Mary Ann Smith
14 Deputy Commissioner

15 Dated: 9/11/19 ELITE AUTO FINANCE, INC.

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17 By _____
18 Yossi Gabay
19 Chief Executive Officer
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