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7 Attorneys for Complainant

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

10
11 In the Matter of:)
) CFL LICENSE NO.: 603-H812
12 THE COMMISSIONER OF BUSINESS)
13 OVERSIGHT,) SETTLEMENT AGREEMENT
)
14 Complainant,)
)
15 v.)
)
16 EMPIRE MEDIA MARKETING, INC.,)
17)
18 Respondent.)
)

19
20 This Settlement Agreement is entered into between the Commissioner of Business Oversight
21 (Commissioner) and Respondent Empire Media Marketing, Inc. (Empire Media), and is made with
22 respect to the following facts:

23 **I.**

24 **Recitals**

25 A. The Department of Business Oversight, through the Commissioner, has jurisdiction
26 over the licensing and regulation of persons and entities engaged in the business of lending and/or
27 brokering pursuant to the California Financing Law¹ (Fin. Code § 22000, et seq.) (CFL).

28 ¹ Effective October 4, 2017, the name of the “California Finance Lenders Law” changed to the “California Financing Law.” (Assem. Bill No. 1284 (2017-2018 Reg. Sess.) § 4.) For purposes of this Consent Order, a reference to the

1 B. Empire Media is a corporation in good standing, duly formed and existing pursuant to
2 the laws of the State of California. Empire Media is a finance lender and broker licensed by the
3 Commissioner pursuant to the CFL with a main license number 603-H812. Empire Media has its
4 principal place of business located at 361 Railroad Canyon Road, #B, Lake Elsinore, California
5 92532. Empire Media does not currently have any CFL branch office licenses. Empire Media has
6 been approved to do business under its CFL license under the name Empire Title Loans.

7 C. Adrienne V. Fairfax (Fairfax) is the President of Empire Media. Fairfax is authorized
8 to enter into this Settlement Agreement on behalf of Empire Media.

9 D. On August 12, 2019, Empire Media was personally served by the Commissioner with
10 a Notice of Intention to Issue Order Suspending Revoking Finance Lender License, Accusation and
11 accompanying documents dated August 9, 2019 (Accusation). In the Accusation, the Commissioner
12 alleged that Empire Media committed the following violations of the CFL (Accusation Allegations):

- 13 i. understating the finance charge and the annual percentage rate (APR) in
14 excess of the .125% tolerance in the Truth in Lending disclosure in violation of Financial Code
15 section 22346(b) and 12 Code of Federal Regulations, sections 1026.18(d)(2) and 1026.22(a)(2); and
- 16 ii. charging borrowers third party DMV handling fees on loans of bona fide
17 principal amounts of less than \$5,000.00 in violation of Financial Code section 22306.

18 E. On August 14, 2019, Empire Media timely submitted a Notice of Defense to the
19 Commissioner denying the allegations of the Accusation and requesting an administrative hearing on
20 the allegations therein.

21 F. It is the intention of Empire Media and the Commissioner (the Parties) to resolve the
22 Accusation Allegations without the necessity of a hearing.

23 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
24 contained herein, the Parties agree as follows:

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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.)

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II.

Terms and Conditions

1. **Purpose.** This Settlement Agreement resolves the Accusation Allegations in a manner that avoids the expense of a hearing and other possible court proceedings, protects consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of the CFL.

2. **Desist and Refrain Order.** Pursuant to Financial Code section 22712, Empire Media Marketing, Inc. is hereby ordered to desist and refrain from:

(a) understating the finance charge and the APR in excess of the .125% tolerance in the Truth in Lending disclosure in violation of Financial Code section 22346(b) and 12 Code of Federal Regulations, sections 1026.18(d)(2) and 1026.22(a)(2); and

(b) charging borrowers third-party DMV handling fees in violation of Financial Code section 22306.

3. **Penalty.** Empire Media shall pay a penalty of \$15,000.00 to the Commissioner (Penalty). The Penalty is due within ten days of the Effective Date, as defined in Paragraph 27 below (Effective Date), and should be made payable in the form of a cashier’s check or Automated Clearing House deposit to the “Department of Business Oversight” and transmitted to the attention of: Accounting – Enforcement Division, Department of Business of Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice of such payment shall be forwarded to Judy L. Hartley, Senior Counsel, Department of Business Oversight, Enforcement Division, 320 West 4th Street, Suite 750, Los Angeles, California 90013.

4. **Refunds.** Empire Media represents that it has conducted self-audits regarding understating the APR and finance charges and third-party DMV handling fees and made the following refunds:

(a) The sum of \$75,805.00 representing a refund of administrative fees on 338 loans regarding understating the APR and finance charges; and

(b) The sum of \$6,425.00 representing a refund of third-party DMV handling fees on 257 loans.

1 5. Refund Reports. Empire Media has previously submitted reports to the
2 Commissioner detailing the refunds described in Paragraph 4, subparagraphs (a) and (b). The
3 Commissioner’s receipt of the refund reports does not constitute an approval that the refund reports
4 are correct and does not otherwise limit the Commissioner’s audit or examination rights under this
5 Settlement Agreement.

6 6. Evidence of Refunds. Empire Media has previously submitted evidence of refunds to
7 the Commissioner by way of copies of checks or credits to outstanding balances. Empire Media
8 shall escheat any unclaimed refunds to the California State Controller’s Office within the period
9 provided by Code of Civil Procedure section 1520 of the Unclaimed Property Law (Code of Civ.
10 Proc., section 1500, et seq.).

11 7. Proof of Compliance. Empire Media acknowledges that the Commissioner will
12 examine and review its compliance with Paragraphs 2 through 5 of this Settlement Agreement.
13 Empire Media agrees to provide, upon the Commissioner’s request, documentation satisfactory to
14 the Commissioner to determine compliance with Paragraphs 2 through 5.

15 8. Waiver of Hearing Rights. Empire Media acknowledges that the Commissioner is
16 ready, willing, and able to proceed with the administrative enforcement action described above in
17 Paragraph D. Empire Media hereby waives the right to a hearing, and to any reconsideration,
18 appeal, or other right to review which may be afforded pursuant to the CFL, the California
19 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law.
20 By waiving such rights, Empire Media effectively consents to this Settlement Agreement becoming
21 final.

22 9. Full and Final Settlement. The Parties hereby acknowledge and agree that this
23 Settlement Agreement is intended to constitute a full, final, and complete resolution of the
24 Accusation Allegations, and that no further proceedings or actions will be brought by the
25 Commissioner in connection with the Accusation Allegations under the CFL or any other provision
26 of law, excepting therefrom any proceeding to enforce compliance with the terms of this Settlement
27 Agreement.

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1 10. Failure to Comply with this Settlement Agreement. Empire Media agrees that if it
2 fails to comply with the terms of this Settlement Agreement, the Commissioner may, in addition to
3 all other available remedies it may invoke under the CFL, summarily suspend the CFL licenses of
4 Empire Media until Empire Media is in compliance. Empire Media waives any notice and hearing
5 rights to contest such summary suspensions which may be afforded under the CFL, the California
6 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law
7 in connection therewith.

8 11. Information Willfully Withheld or Misrepresented. This Settlement Agreement may
9 be revoked, and the Commissioner may pursue any and all remedies available under the law against
10 Empire Media, if the Commissioner discovers that Empire Media knowingly or willfully withheld
11 information used for and relied upon in this Settlement Agreement.

12 12. Future Actions by Commissioner. If Empire Media fails to comply with any terms of
13 this Settlement Agreement, the Commissioner may institute proceedings for any and all violations
14 otherwise resolved under this Settlement Agreement. The Commissioner reserves the right to bring
15 any future actions against Empire Media, or any of its partners, owners, officers, shareholders,
16 directors, employees or successors for any and all unknown violations of the CFL.

17 13. Assisting Other Agencies. Nothing in this Settlement Agreement limits the
18 Commissioner’s ability to assist any other government agency (city, county, state, or federal) with
19 any administrative, civil or criminal prosecutions brought by that agency against Empire Media or
20 any other person based upon any of the activities alleged in this matter or otherwise.

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

24 15. Binding. This Settlement Agreement is binding on all heirs, assigns, and/or
25 successors in interest.

26 16. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
27 Settlement Agreement it has relied solely on the statements set forth herein and the advice of its own
28 counsel. Each of the parties further represents, warrants, and agrees that in executing this Settlement

1 Agreement it has placed no reliance on any statement, representation, or promise of any other party,
2 or any other person or entity not expressly set forth herein, or upon the failure of any party or any
3 other person or entity to make any statement, representation or disclosure of anything whatsoever.
4 The Parties have included this clause: (1) to preclude any claim that any party was in any way
5 fraudulently induced to execute this Settlement Agreement; and (2) to preclude the introduction of
6 parol evidence to vary, interpret, supplement, or contradict the terms of this Settlement Agreement.

7 17. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
8 this Settlement Agreement will be valid or binding unless it is in writing and signed by each of the
9 Parties. The waiver of any provision of this Settlement Agreement will not be deemed a waiver of
10 any other provision. No waiver by either party of any breach of, or of compliance with, any
11 condition or provision of this Settlement Agreement by the other party will be considered a waiver
12 of any other condition or provision or of the same condition or provision at another time.

13 18. Full Integration. This Settlement Agreement is the final written expression and the
14 complete and exclusive statement of all the agreements, conditions, promises, representations, and
15 covenants between the parties with respect to the subject matter hereof, and supersedes all prior or
16 contemporaneous agreements, negotiations, representations, understandings, and discussions
17 between and among the parties, their respective representatives, and any other person or entity, with
18 respect to the subject matter covered hereby.

19 19. Governing Law. This Settlement Agreement will be governed by and construed in
20 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court,
21 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
22 forum to the maintenance of such action or proceeding in such court.

23 20. Counterparts. This Settlement Agreement may be executed in one or more separate
24 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
25 together constitute a single document.

26 21. Mandatory Disclosure in Future Applications. Empire Media agrees to disclose this
27 Settlement Agreement in any application for a license, permit or qualification under the
28 Commissioner’s current or future jurisdiction.

1 22. Effect Upon Future Proceedings. If Empire Media is the subject of any future action
2 by the Commissioner to enforce this Settlement Agreement, then the subject matter hereof shall be
3 admitted for the purpose of such action.

4 23. Voluntary Agreement. Empire Media enters into this Settlement Agreement
5 voluntarily and without coercion and acknowledges that no promises, threats or assurances have
6 been made by the Commissioner or any officer, or agent thereof, about this Settlement Agreement.
7 The Parties each represent and acknowledge that he, she or it is executing this Settlement Agreement
8 completely voluntarily and without any duress or undue influence of any kind from any source.

9 24. Notice. Any notice/report required under this Agreement shall be addressed as
10 follows:

To Empire Media	Rosana Davis, Director Empire Media Marketing, Inc. 361 Railroad Canyon Road, #B Lake Elsinore, California 92532 empiremedia@hotmail.com
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To the Commissioner:	Judy L. Hartley, Esq. Senior Counsel Department of Business Oversight 320 W. 4 th Street, Suite 750 Los Angeles, California 90013-2344 judy.hartley@dbo.ca.gov
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11 25. Signatures. A fax or electronic mail signature shall be deemed the same as an
12 original signature.

13 26. Public Record. Empire Media hereby acknowledges that this Settlement Agreement
14 is and will be a matter of public record.

15 27. Effective Date. This Settlement Agreement shall become final and effective when
16 signed by all parties and delivered by the Commissioner’s counsel via e-mail to Empire Media’s
17 director, Rosana Davis, at empiremedia@hotmail.com.

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28. Authority to Sign. Each signatory hereto covenants that he or she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement and undertake the obligations set forth herein.

Dated: 12/17/19

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____

MARY ANN SMITH
Deputy Commissioner

Dated: 12/16/19

EMPIRE MEDIA MARKETING, INC.

By _____

ADRIENNE V. FAIRFAX, President