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

12 In the Matter of:) CFL License No.: 60DBO-51316
13 THE COMMISSIONER OF BUSINESS)
14 OVERSIGHT,) CONSENT ORDER
15 Complainant,)
16 v.)
17 ATHENA ART FINANCE CORP.,)
18 Respondent.)
19 _____)

21 The Commissioner of Business Oversight (Commissioner) and Athena Art Finance Corp.
22 (Athena), (collectively, Parties), enter into this Consent Order with respect to the following facts:

23 RECITALS

- 24 A. The Commissioner has jurisdiction over the licensing and regulation of persons and entities
25 engaged in the business of making consumer and commercial loans pursuant to the California
26 Financing Law (CFL) (Fin. Code, § 22000 et seq.).
27 B. Athena is a finance lender that was licensed by the Commissioner from October 5, 2016 to
28 December 29, 2019 (CFL License No. 60DBO-51316). Athena has its principal office located at 300

1 Park Avenue, 15th Floor, New York, New York 10022.

2 C. Athena has no branch locations in California.

3 D. Cynthia E. Sachs is the chief investment officer and a control person of Athena and, as such,
4 is authorized to enter into this Consent Order on Athena's behalf.

5 E. In accordance with Financial Code section 22107, each finance lender, broker, or program
6 administrator licensee shall pay to the Commissioner its pro rata share of all costs and expenses,
7 including the costs and expenses associated with the licensing of mortgage loan originators it
8 employs, reasonably incurred in the administration of this division, as estimated by the
9 Commissioner, for the ensuing year and any deficit actually incurred or anticipated in the
10 administration of the program in the year in which the assessment is made. CFL licensees must pay
11 the annual assessment on or before the 31st day of October each year.

12 F. Pursuant to Financial Code section 22153, a licensee is required to submit a change of address
13 form 10 days prior to an address change.

14 G. On September 30, 2019, the Commissioner sent Athena the Assessment Notice per invoice
15 number CF0378. The notice was mailed to the address Athena registered with the Department
16 (Registered Address): 400 Park Avenue, 12th Floor, New York, New York 10022. The notice stated
17 that the annual assessment would become delinquent if not paid by October 31, 2019.

18 H. As of October 31, 2019, Athena had not paid its annual assessment. The failure to pay the annual
19 assessment on or before October 31, 2019 represents a violation of Financial Code section 22107.

20 I. As of November 6, 2019, Athena had not paid its annual assessment. As a result, the
21 Commissioner sent to Athena's Registered Address a Notice of Unpaid Assessment on November 6,
22 2019. The notice warned that failure to pay the assessment would result in summary revocation of
23 Athena's license. Athena did not respond to the Commissioner's notice.

24 J. As of December 6, 2019, Athena had not paid its annual assessment. As a result, on December
25 6, 2019, the Commissioner issued an Order Summarily Revoking California Financing Law License
26 Pursuant to Financial Code Section 22107 for CFL License Number 60DBO-51316 (Revocation
27 Order). The Department mailed the Revocation Order to Athena's Registered Address along with
28 notice that it would become effective December 30, 2019 unless payment of the annual assessment

1 was received by close of business on December 27, 2019.

2 K. As of December 27, 2019, the assessment remained unpaid. As such, the Revocation Order
3 became effective December 30, 2019.

4 L. Athena stated that it did not receive the notices or the Revocation Order because it failed to
5 properly notify the Commissioner that it had changed its place of business to a street address other than
6 that designated on its license, as required by Financial Code section 22153.

7 M. Athena admits to the jurisdiction of the Commissioner and it is the intention of the parties to
8 resolve this matter without the necessity of a hearing and/or other litigation.

9 N. The Commissioner finds that entering into this Consent Order is in the public interest and
10 consistent with the purposes fairly intended by the CFL.

11 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
12 forth herein, the Parties agree as follows:

13 TERMS

14 1. Purpose. This Consent Order resolves the issues before the Commissioner described
15 above in a manner that avoids the expense of a hearing and other possible court proceedings,
16 protects consumers, is in the public interest, and is consistent with the purposes, policies, and
17 provisions of the CFL.

18 2. Desist and Refrain Order. Pursuant to Financial Code section 22712, Athena is hereby
19 ordered to desist and refrain from failing to timely pay the annual assessment in violation of
20 Financial Code section 22107.

21 3. Order Rescinding Revocation Order(s). The Commissioner hereby rescinds the
22 Revocation Order, which was issued on December 6, 2019, and became effective on December 30,
23 2019, as of the effective date of revocation.

24 4. Order to Pay Annual Assessment. Pursuant to Financial Code section 22107, the
25 Commissioner hereby orders Athena to pay \$250.00 to the Department of Business Oversight for the
26 2019 – 2020 annual assessment. The annual assessment shall be paid to the Commissioner within 30
27 days of the Effective Date of this Consent Order as defined in paragraph 23. The annual assessment
28 shall be labeled “2019 – 2020 annual assessment” and made payable in the form of a cashier’s check

1 or Automated Clearing House deposit to the “Department of Business Oversight,” and transmitted to
2 the attention of:

3 ATTN: Accounting
4 Department of Business Oversight
5 1515 K Street, Suite 200
6 Sacramento, California 95814

7 Notice of payment shall be made via email to Trevor Carroll, Counsel at Department of
8 Business Oversight, at trevor.carroll@dbo.ca.gov.

9 5. Administrative Penalties and Fines. Athena shall pay administrative fines and penalties in
10 the amount of \$3,000.00 for the violation of the CFL enumerated herein. All fines and penalties shall
11 be labeled “fines and penalties” and made payable in the form of a cashier’s check or Automated
12 Clearing House deposit to the “Department of Business Oversight,” and transmitted to the attention
13 of:

14 ATTN: Accounting – Litigation
15 Department of Business Oversight
16 1515 K Street, Suite 200
17 Sacramento, California 95814

18 Notice of payment shall be made via email to Trevor Carroll, Counsel at Department of
19 Business Oversight, at trevor.carroll@dbo.ca.gov.

20 6. Waiver of Hearing Rights. Athena acknowledges that the Commissioner is ready,
21 willing, and able to proceed with the filing of an administrative enforcement action on the charges
22 contained in this Consent Order. Athena hereby waives the right to any hearings, and to any
23 reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the
24 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
25 provision of law. Athena further expressly waives any requirement for the filing of an Accusation
26 pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights, Athena
27 effectively consents to this Consent Order and Desist and Refrain Order becoming final.

28 7. Failure to Comply with Consent Order. Athena agrees that if it fails to comply with the
29 terms of this Consent Order, the Commissioner may, in addition to all other available remedies it
30 may invoke under the CFL, summarily suspend or revoke the CFL license of Athena until Athena is

1 in compliance. Athena waives any notice and hearing rights to contest such summary suspension
2 which may be afforded under the CFL, the California Administrative Procedure Act, the California
3 Code of Civil Procedure, or any other provision of law in connection therewith.

4 8. Information Willfully Withheld or Misrepresented. This Consent Order may be revoked
5 and the Commissioner may pursue any and all remedies available under law against Athena if the
6 Commissioner discovers that Athena knowingly or willfully withheld or misrepresented information
7 used for and relied upon in this Consent Order.

8 9. Future Actions by the Commissioner. If Athena fails to comply with any terms of the
9 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
10 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
11 against Athena, or any of its partners, owners, officers, shareholders, directors, employees or
12 successors for any and all unknown violations of the CFL.

13 10. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
14 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
15 administrative, civil or criminal brought by that agency against Athena or any other person based
16 upon any of the activities alleged in this matter or otherwise.

17 11. Headings. The headings to the paragraphs of this Consent Order are inserted for
18 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
19 the provisions hereof.

20 12. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
21 interest.

22 13. Reliance. Each of the parties represents, warrants, and agrees that in executing this
23 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel.
24 Each of the parties further represents, warrants, and agrees that in executing this Agreement it has
25 placed no reliance on any statement, representation, or promise of any other party, or any other
26 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
27 entity to make any statement, representation or disclosure of anything whatsoever. The parties have
28 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to

1 execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret,
2 supplement, or contradict the terms of this Agreement.

3 14. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
4 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
5 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
6 provision. No waiver by either party of any breach of, or of compliance with, any condition or
7 provision of this Consent Order by the other party will be considered a waiver of any other condition
8 or provision or of the same condition or provision at another time.

9 15. Full Integration. This Consent Order is the final written expression and the complete and
10 exclusive statement of all the agreements, conditions, promises, representations, and covenant
11 between the parties with respect to the subject matter hereof, and supersedes all prior or
12 contemporaneous agreements, negotiations, representations, understandings, and discussions
13 between and among the parties, their respective representatives, and any other person or entity, with
14 respect to the subject matter covered hereby.

15 16. Governing Law. This Consent Order will be governed by and construed in accordance
16 with California law. Each of the parties hereto consents to the jurisdiction of such court, and hereby
17 irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to
18 the maintenance of such action or proceeding in such court.

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

22 18. Effect Upon Future Proceedings. If Athena applies for any license, permit, or
23 qualification under the Commissioner's current or future jurisdiction, or is the subject of any future
24 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
25 admitted for the purpose of such application(s) or enforcement proceedings(s).

26 19. Voluntary Agreement. Athena enters this Consent Order voluntarily and without
27 coercion and acknowledges that no promises, threats or assurances have been made by the
28 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent

1 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
2 without any duress or undue influence of any kind from any source.

3 20. Notice. Any notice required under this Consent Order be provided to each party at the
4 following addresses:

5 To Athena Art Finance Corp.:

6 Cynthia E. Sachs, Chief Investment Officer
7 Athena Art Finance Corp.
8 300 Park Avenue, 15th Floor
9 New York, New York 10022
csachs@athena-art.com

10 To the Commissioner:

11 Trevor J. Carroll, Counsel
12 Department of Business Oversight
13 Enforcement Division
14 1515 K Street, Suite 200
15 Sacramento, California 95814
16 trevor.carroll@dbo.ca.gov

17 21. Signatures. A fax or electronic mail signature shall be deemed the same as an original
18 signature.

19 22. Public Record. Athena hereby acknowledges that this Consent Order is and will be a
20 matter of public record.

21 23. Effective Date. This Consent Order shall become final and effective when signed by all
22 parties and delivered by the Commissioner's agent via email to Athena's representative, at
csachs@athena-art.com.

23 24. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary
24 capacity and authority to sign and enter into this Consent Order and undertake the obligations set
25 forth herein.

26 Dated: February 10, 2020

27 MANUEL P. ALVAREZ
28 Commissioner of Business Oversight

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By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: February 10, 2020

By _____
ATHENA ART FINANCE CORP.
