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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.: 6038162
13 THE COMMISSIONER OF BUSINESS) CONSENT ORDER
OVERSIGHT,)
14)
15 Complainant,)
16 v.)
17 ADVOCATE CAPITAL, INC.,)
18 Respondent.)
19)

20 This Consent Order is entered into between the Commissioner of Business Oversight
21 (Complainant or Commissioner) and Respondent Advocate Capital, Inc. (Respondent) and is made
22 with respect 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.).
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1 B. Respondent is a corporation, with a principal place of business at One Vantage Way
2 Suite C-200, Nashville, Tennessee 37228.

3 C. Respondent is licensed as a finance lender under the CFL with main license number
4 6038162.

5 D. Respondent operates no branch offices 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 December 16, 2019, the Commissioner notified CFL licensees of the March 15,
9 2020 deadline to file their annual reports by sending notice to the email address of each CFL
10 licensee established pursuant to the Commissioner's Order on Electronic Communications, dated
11 November 22, 2013. The notification admonished licensees that the Commissioner could assess
12 penalties for untimely filing or failing to file pursuant to Financial Code section 22715(b).

13 G. On January 29, 2020, the Commissioner again notified CFL licensees of the March
14 15, 2020 deadline to file their annual reports by sending notice to the email address each CFL
15 licensee established pursuant to the Commissioner's Order on Electronic Communications, dated
16 November 22, 2013. The notification again warned that the Commissioner could assess monetary
17 penalties for untimely filing or failing to file pursuant to Financial Code section 22715(b).

18 H. On March 2, 2020, the Commissioner again notified CFL licensees of the March 15,
19 2020 deadline to file their annual reports by sending notice to the email address each CFL licensee
20 established pursuant to the Commissioner's Order on Electronic Communications, dated November
21 22, 2013. The notification warned that the Commissioner could assess penalties and summarily
22 revoke licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

23 I. As of March 15, 2020, Respondent had not filed its Annual Report with the
24 Commissioner. As a result, the Commissioner issued a notice on March 18, 2020 to Respondent to
25 Respondent's email address established pursuant to the Commissioner's Order on Electronic
26 Communications, dated November 22, 2013, advising Respondent that it should file its annual report
27 by or before March 30, 2020 or else its license would be summarily revoked pursuant to Financial
28 Code section 22715 (Notice Email).

1 J. As of March 30, 2020, Respondent had not filed its Annual Report with the
2 Commissioner as directed in the Notice Email. As a result, on April 3, 2020, the Commissioner
3 issued an Order Summarily Revoking Finance Lender and/or Broker License(s) Pursuant to
4 Financial Code Section 22715 for CFL License Number 6038162 (Summary Revocation Order).

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

7 L. On May 7, 2020, Respondent submitted its Annual Report, which was due on March
8 15, 2020, 38 business days late. Pursuant to Financial Code Section 22715, the maximum penalty
9 that may be imposed for filing 38 business days late is \$17,000.00 (\$100 per business day for the
10 first five business days and \$500 per business day thereafter up to a maximum of \$25,000).

11 M. In connection with these proceedings, Respondent represented to the Commissioner
12 that it had taken new applications under its license.

13 N. The Commissioner finds that entering into this Consent Order is in the public interest
14 and consistent with the purposes fairly intended by the policies and provisions of the CFL.

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

17 **II.**

18 **TERMS AND CONDITIONS**

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

21 2. Order Rescinding Penalty Order. The Commissioner hereby rescinds the Summary
22 Revocation Order which had been issued on April 3, 2020.

23 3. Administrative Penalty. Respondent shall pay an administrative penalty of \$4,000.00
24 no later than 30 days after the effective date of this Consent Order as defined in paragraph 25. The
25 penalty must be made payable in the form of a cashier's check or Automated Clearing House deposit
26 to the Department of Business Oversight and transmitted to the attention of Accounting – Litigation,
27 at the Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814.
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1 Notice of the payment must be concurrently sent to Trevor Carroll, Counsel, Department of Business
2 Oversight, 1515 K Street, Suite 200, Sacramento, California 95814.

3 4. Failure to Pay Administrative Penalty. If Respondent fails to comply with paragraph
4 3, the Commissioner may summarily suspend Respondent from engaging in business under its
5 license until it provides evidence of compliance to the Commissioner's satisfaction. Respondent
6 hereby waives any notice or hearing rights afforded under the Administrative Procedure Act,
7 including Government Code section 11415.60, subdivision (b); Code of Civil Procedure; or any
8 other provision of law to contest the summary suspension contemplated by this paragraph.

9 5. Waiver of Hearing Rights. Respondent acknowledges the Commissioner is ready,
10 willing, and able to proceed with the filing of an administrative enforcement action on the charges
11 contained in this Consent Order. Respondent hereby waives the right to any hearings, and to any
12 reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the
13 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
14 provision of law. Respondent further expressly waives any requirement for the filing of an
15 Accusation pursuant to Government section 11415.60, subdivision (b). By waiving such rights,
16 Respondent effectively consents to this Consent Order and Order rescinding Penalty Order becoming
17 final.

18 6. Full and Final Resolution. The parties hereby acknowledge and agree that this
19 Consent Order is intended to constitute a full and final resolution of the violations described herein,
20 and that no further proceedings or actions will be brought by the Commissioner in connection with
21 these matters except under the CFL or any other provision of law, excepting therefrom any
22 proceeding to enforce compliance with the terms of this Consent Order.

23 7. Failure to Comply with Consent Order. Respondent agrees that if it fails to comply
24 with the terms of this Consent Order, the Commissioner may, in addition to all other available
25 remedies it may invoke under the CFL, summarily suspend/ revoke the CFL license of Respondent
26 until Respondent is in compliance. Respondent waives any notice and hearing rights to contest such
27 summary suspensions/revocations which may be afforded under the CFL, the California
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1 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law
2 in connection therewith.

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

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

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

16 11. No Presumption Against Drafter. Each party acknowledges that it has had the
17 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
18 intend no presumption for or against the drafting party will apply in construing any part of this
19 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
20 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
21 language of a contract should be interpreted most strongly against the party who caused the
22 uncertainty to exist.

23 12. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
24 has received independent advice from its attorney(s) and/or representatives with respect to the
25 advisability of executing this Consent Order.

26 13. Headings. The headings to the paragraphs of this Consent Order are inserted for
27 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
28 the provisions hereof.

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

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

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

18 17. Full Integration. This Consent Order is the final written expression and the complete
19 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
20 between the parties with respect to the subject matter hereof, and supersedes all prior or
21 contemporaneous agreements, negotiations, representations, understandings, and discussions
22 between and among the parties, their respective representatives, and any other person or entity, with
23 respect to the subject matter covered hereby.

24 18. Governing Law. This Consent Order will be governed by and construed in
25 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court
26 and thereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
27 forum to the maintenance of such action or proceeding in such court.
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1 19. Counterparts. This Consent Order may be executed in one or more separate
2 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
3 together constitute a single document.

4 20. Effect Upon Future Proceedings. If Respondent applies for any license, permit or
5 qualification under the Commissioner’s current jurisdiction, or are the subject of any future action by
6 the Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for
7 the purpose of such application(s) or enforcement proceeding(s).

8 21. Voluntary Agreement. Respondent hereby enters in this Consent Order voluntarily
9 and without coercion and acknowledges that no promises, threats, or assurances have been made by
10 the Commissioner or any officer, or agent thereof, about this Consent Order. The parties each
11 represent and acknowledge that he, she or it is executing this Consent Order completely voluntarily
12 and without any duress or undue influence of any kind from any source.

13 22. Notice. Any notice required under this Consent Order be provided to each party at
14 the following addresses:

15 To Advocate Capital, Inc.: Advocate Capital, Inc.
16 c/o Michael J. Swanson, CEO
17 One Vantage Way Suite C-200
18 Nashville, Tennessee 37228
19 mswanon@advocatecapital.com

20 D. Scott Holley, Esq.
21 Bass, Berry & Sims PLC
22 150 Third Avenue South, Suite 2800
23 Nashville, TN 37201
24 sholley@bassberry.com

25 To the Commissioner: Trevor J. Carroll, Counsel
26 Department of Business Oversight
27 1515 K Street, Suite 200
28 Sacramento, California 95814
 trevor.carroll@dbo.ca.gov

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

1 24. Public Record. Respondent hereby acknowledges that the 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 agent via e-mail to Respondent at the following
5 email address: mswanson@advocatecapital.com.

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

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10 Dated: May 22, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

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By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

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16 Dated: May 21, 2020

ADVOCATE CAPITAL, INC.

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By _____
MICHAEL J. SWANSON
CEO

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