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

11 In the Matter of:) CFL LICENSE NO.: 603A596
12 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
13)
14 Complainant,)
15 v.)
16 MILBERG FACTORS OF CALIFORNIA, INC.,)
17 Respondent.)
18 _____)

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21 This Consent Order is entered into between the Commissioner of Business Oversight
22 (Commissioner) and Milberg Factors of California, Inc. (Milberg) and is made with respect to the
23 following facts:

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I.

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RECITALS

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A. The Commissioner has jurisdiction over the licensing and regulation of persons and
27 entities engaged in the business of making consumer and commercial loans pursuant to the
28 California Financing Law (CFL) (Fin. Code, § 22000 et seq.).

1 B. Milberg is a finance lender that was licensed by the Commissioner from November 16,
2 2004, to December 29, 2019 (CFL License No. 603A596). Milberg's main office is located at
3 99 Park Avenue, New York, New York 10016.

4 C. Milberg operates no branch locations in California.

5 D. David J. Milberg is a Senior Vice President of Milberg and, as such, is authorized to
6 enter into this Consent Order on Milberg's behalf.

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

14 F. On September 30, 2019, the Commissioner sent Milberg an Assessment Notice per
15 invoice number CF2129. The notice stated that the annual assessment would become delinquent if
16 not paid by October 31, 2019.

17 G. As of October 31, 2019, Milberg had not paid its annual assessment. The failure to pay
18 the annual assessment on or before October 31, 2019 is a violation of Financial Code section 22107.

19 H. As of November 6, 2019, Milberg still had not paid its annual assessment. As a result,
20 on November 6, 2019, the Commissioner sent Milberg a Notice of Unpaid Assessment. This notice
21 warned that failure to pay the assessment would result in summary revocation of Milberg's license.
22 Milberg did not respond to the Commissioner's notice.

23 I. As of December 6, 2019, Milberg still had not paid its annual assessment. As a result,
24 on December 6, 2019, the Commissioner issued an Order Summarily Revoking California Financing
25 Law License Pursuant to Financial Code Section 22107 for CFL License Number 603A596
26 (Revocation Order). The Department mailed the Revocation Order to Milberg along with notice that
27 the Revocation Order would become effective December 30, 2019 unless payment of the annual
28 assessment was received by close of business on December 27, 2019.

1 J. As of December 27, 2019, the assessment remained unpaid. Accordingly, the
2 Revocation Order became effective December 30, 2019.

3 K. In connection with these proceedings, Milberg represented to the Commissioner that it
4 had conducted lending activity in California after its license had been revoked. As such, the
5 Commissioner finds that Milberg engaged in the business of a finance lender in violation of Financial
6 Code section 22100.

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

9 M. 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 **II.**

14 **TERMS AND CONDITIONS**

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

19 2. Desist and Refrain Order(s). Pursuant to Financial Code section 22712, Milberg is
20 hereby ordered to desist and refrain from violating any provision of the CFL or regulation
21 thereunder, including Financial Code sections 22100 and 22107 as set forth above.

22 3. Order Rescinding Revocation Order(s). The Commissioner hereby rescinds the
23 Revocation Order, which was issued on December 6, 2019, and became effective on December 30,
24 2019.

25 4. Order to Pay Annual Assessment. Pursuant to Financial Code section 22107, the
26 Commissioner hereby orders Milberg to pay \$250.00 to the Department of Business Oversight for
27 the 2019 – 2020 annual assessment. The annual assessment shall be paid to the Commissioner
28 within 30 days of the Effective Date of this Consent Order as defined in paragraph 23. The annual

1 assessment payment shall be labeled “2019 – 2020 annual assessment” and must be made payable in
2 the form of a cashier’s check or Automated Clearing House deposit to the Department of Business
3 Oversight and transmitted to the attention of Accounting – Litigation, at the Department of Business
4 Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice of the payment of the
5 annual assessment must be concurrently sent to Taylor Steinbacher, Counsel, Department of
6 Business Oversight, 320 West 4th Street, Suite 750, Los Angeles, California 90013-2344.

7 5. Administrative Fines and Penalties. Milberg shall pay administrative fines and
8 penalties in the amount of \$7,000.00 for the violations of the CFL enumerated herein. Milberg shall
9 pay those fines and penalties no later than 30 days after the effective date of this Consent Order as
10 defined in paragraph 23. Payment must be made payable in the form of a cashier’s check or
11 Automated Clearing House deposit to the Department of Business Oversight and transmitted to the
12 attention of Accounting – Litigation, at the Department of Business Oversight, 1515 K Street,
13 Suite 200, Sacramento, California 95814. Notice of the payment of the fines and penalties must be
14 concurrently sent to Taylor Steinbacher, Counsel, Department of Business Oversight, 320 West 4th
15 Street, Suite 750, Los Angeles, California 90013-2344.

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

25 7. Failure to Comply with Consent Order. Milberg agrees that if it fails to comply with
26 the terms of this Consent Order, the Commissioner may, in addition to all other available remedies it
27 may invoke under the CFL, summarily suspend or revoke Milberg’s CFL license until Milberg is in
28 compliance. Milberg waives any notice and hearing rights to contest such summary suspension or

1 revocation which may be afforded under the CFL, the California Administrative Procedure Act, the
2 California Code of Civil Procedure, or any other provision of law 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 Milberg if the Commissioner discovers that Milberg knowingly or willfully withheld or
6 misrepresented information used for and relied upon in this Consent Order.

7 9. Future Actions by the Commissioner. If Milberg fails to comply with any terms of
8 the 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 Milberg, 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 Commissioner's
13 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
14 administrative, civil or criminal brought by that agency against Milberg or any other person based
15 upon any of the activities alleged in this matter or otherwise.

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

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

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

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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
10 and 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
16 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court,
17 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
18 forum to the maintenance of such action or proceeding in such court.

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

22 18. Effect Upon Future Proceedings. If Milberg 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. Milberg 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
4 the following addresses:

5 To Respondent Milberg: Milberg Factors of California, Inc.
6 c/o David J. Milberg, Senior Vice President
7 99 Park Avenue, New York, New York 10016
8 DJMilberg@milfac.com

9 Jeffrey Kapor, Esq.
10 Buchalter
11 1000 Wilshire Boulevard, Suite 1500
12 Los Angeles, California A 90017-1730
13 JKAPOR@buchalter.com

14 To the Commissioner: Taylor Steinbacher, Counsel
15 Department of Business Oversight
16 320 West 4th Street, Suite 750
17 Los Angeles, California 90013-2344
18 Taylor.Steinbacher@dbo.ca.gov

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

21 22. Public Record. Milberg hereby acknowledges that this Consent Order is and will be a
22 matter of public record.

23 23. Effective Date. This Consent Order shall become final and effective when signed by
24 all parties and delivered by the Commissioner's agent via email to Milberg's representative, at
25 JKAPOR@buchalter.com.

26 [continued on next page]

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

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6 Dated: August 12, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

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9 By _____
10 MARY ANN SMITH
11 Deputy Commissioner
12 Enforcement Division

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15 Dated: August 12, 2020

MILBERG FACTORS OF CALIFORNIA, INC.

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18 By _____
19 DAVID J. MILBERG
20 Senior Vice President
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