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9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:) SETTLEMENT AGREEMENT
12 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
13)
Complainant,)
14 v.)
15 FANFAIRE, INC,)
16 Respondent.)
17)

18
19 This Settlement Agreement is entered into between the Commissioner of Financial
20 Protection and Innovation (Commissioner) and Fanfaire, Inc. (Fanfaire) (collectively, the Parties).

21 **I.**

22 **Recitals**

23 ***Legal Background***

24 A. The Commissioner has jurisdiction over the regulation of persons engaged in
25 offering or providing a consumer financial product or service in California and affiliated service
26 providers under the California Consumer Financial Protection Law (CCFPL), Cal. Fin. Code,
27 § 90000 *et seq.* A “covered person” is “[a]ny person that engages in offering or providing a
28 consumer financial product or service to a resident of this state.” Cal. Fin. Code § 90005(f)(1).

1 B. Under the CCFPL, it is unlawful for a “covered person” to “[e]ngage, have engaged,
2 or propose to engage in any unlawful, unfair, deceptive, or abusive act or practice with respect to
3 consumer financial products or services.” Cal. Fin. Code § 90003(a)(1).

4 C. A “consumer financial product or service” is defined to include a “financial product
5 or service that is delivered, offered, or provided for use by consumers primarily for personal,
6 family, or household purposes.” Cal. Fin. Code § 90005(e)(1).

7 D. The CCFPL defines “Financial product or service” to mean “[e]xtending credit and
8 servicing extensions of credit, including acquiring, purchasing, selling, brokering extensions of
9 credit, other than solely extending commercial credit to a person who originates consumer credit
10 transactions.” Cal. Fin. Code § 90005(k)(1).

11 E. The CCFPL defines “credit” as “the right granted by a person to another person to
12 defer payment of a debt, incur debt and defer its payment or purchase property or services and defer
13 payment for those purchases.” Cal. Fin. Code § 90005(g).

14 F. The CCFPL defines “debt” as “any obligation of a person to pay another person
15 money regardless of whether the obligation is absolute or contingent, has been reduced to judgment,
16 is fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured and includes
17 any obligation that gives rise to right of an equitable remedy for breach of performance if the breach
18 gives rise to a right to payment.” Cal. Fin. Code § 90005(h).

19 G. California’s Unruh Act, Cal. Civ. Code § 1801, *et seq.*, governs extensions of credit
20 made through retail installment sales contracts. Under Civil Code section 1806.3, purchasers in a
21 retail installment sale may pay the entire indebtedness without penalty. Moreover, in the event the
22 purchaser makes a prepayment on a simple interest contract, “the amount required to prepay the
23 contract shall be the outstanding contract balance as of that date, including any earned finance
24 charges which are unpaid as of that date, and provided further that in cases where the finance charge
25 or a portion thereof is determined on the 360-day basis, the payments theretofore received will be
26 assumed to have been received on their respective due dates regardless of the actual dates on which
27 those payments were received.”

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1 ***Commissioner’s Findings and Conclusions of Law***

2 H. Following an investigation by the Commissioner, the Commissioner made the
3 following findings of fact (Findings):

4 i. Fanfaire, Inc. is a Delaware corporation with its principal place of business at
5 336 Via de la Paz, Pacific Palisades, California, 90272.

6 ii. Fanfaire manages fan clubs for fans of the Los Angeles Rams football team.
7 It sells stadium seat licenses (SSLs) for football games and events in SoFi stadium. Some license
8 purchasers chose to finance their purchase of SSLs over time. These financing agreements are made
9 with Fanfaire using simple interest retail installment contracts.

10 iii. The Department of Financial Protection and Innovation (Department) received
11 a complaint from a Los Angeles Rams SSL holder which alleged that the complainant had
12 encountered difficulties in prepaying the remaining balance on the retail installment contract that
13 financed the purchase of their SSLs and that the payoff amount the complainant was quoted by
14 Fanfaire did not appear to be correct. Nevertheless, the complainant paid the quoted payoff amount
15 to Fanfaire.

16 iv. Fanfaire responded to this complaint, indicating that it had miscalculated the
17 payoff amount the complainant owed, resulting in an overcharge. Fanfaire later discovered that this
18 error affected 36 SSL holders, including the complainant, resulting in overcharges totaling over
19 \$769.53. Fanfaire contends that this error was caused by an inadvertent mistake in a formula, which
20 only occurred in limited circumstances. Specifically, this overcharge only occurred if (and only if)
21 the customer’s payoff date was between February 24 and February 28.

22 v. Immediately upon discovering these overcharges, Fanfaire issued refunds to
23 the affected customers.

24 I. Based on the above, the Commissioner is of the opinion that Fanfaire has violated
25 the Unruh Act, specifically Civil Code section 1806.3, by overcharging customers for prepayment
26 of simple interest retail installment sales contracts.

27 J. Based on the above, the Commissioner is of the opinion that Fanfaire is a “covered
28 person” under the CCFPL because it has engaged in offering or providing consumer financial

1 products or services to California residents, to wit, extensions of credit and servicing of extensions
2 of credit. Cal. Fin. Code § 90005(k)(1).

3 K. Based on the above, the Commissioner is of the opinion that Fanfaire has engaged in
4 unlawful acts or practices (through its above-stated violations of the Unruh Act) with respect to
5 consumer financial products or services in violation of Financial Code section 90003(a)(1).

6 L. The Commissioner finds that entering into this Settlement Agreement is in the public
7 interest and consistent with the purposes and provisions of the CCFPL.

8 M. Fanfaire neither admits nor denies the Commissioner’s Findings and Conclusions of
9 Law above. Fanfaire enters into this Settlement Agreement in an effort to compromise and to
10 further the interests of its loyal fans and customers.

11 NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set
12 forth herein, the Parties agree as follows.

13 **II.**

14 **Terms and Conditions**

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

19 2. Consumer Refunds. Fanfaire has represented to the Commissioner that it has already
20 issued full refunds of all the overcharged amounts it collected (each, a Refund), along with written
21 notice to each overcharged licensee of the error and the Refund. No later than 10 calendar days
22 after the Effective Date, notice of the refund payments shall be sent to the Commissioner at the
23 Notice address provided below. With its notice, Fanfaire shall provide a report containing the
24 customer’s name, the date the refund was issued, the amount of the refund, and an indication of
25 whether the refund payment was accepted by the customer’s bank, or the check cashed, as
26 applicable. Fanfaire further agrees that, to the extent it discovers additional customers affected by
27 retail installment contract overcharges, it shall provide a full Refund to those customers and shall
28 provide Notice to the Commissioner at the Notice address provided below.

1 3. No Consumer Waiver. Payment to a consumer of the Refunds under this Settlement
2 Agreement shall not be conditioned on a consumer waiving any right.

3 4. Handling of Unclaimed Refunds. Fanfaire shall escheat any returned or unclaimed
4 Refunds to the State Controller’s Office within the time period provided under Code of Civil
5 Procedure section 1519.5 of the Unclaimed Property Law (Code of Civ. Proc., § 1500 et seq.).

6 5. The Settlement Amount. Under Financial Code section 90012(c), Fanfaire shall pay
7 the Commissioner \$37,000.00 (the Settlement Amount) prior to or concurrent with the execution of
8 this Settlement Agreement. The Settlement Amount shall be paid by ACH transfer, under the
9 instructions which shall be separately provided, and payable to the Department of Financial
10 Protection and Innovation, Accounting – Enforcement Division, Department of Financial Protection
11 & Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice of such payment shall
12 be sent concurrently the Commissioner at the Notice address provided below. Fanfaire shall
13 relinquish all dominion, control, and title to the Refunds and the Settlement Amount to the fullest
14 extent permitted by law and no part of the Refunds or Settlement Amount shall be returned to
15 Fanfaire.

16 6. Full and Final Settlement. The Parties hereby acknowledge and agree that this
17 Settlement Agreement is intended to constitute a full, final, and complete resolution of the Findings,
18 and that no further proceedings or actions will be brought by the Commissioner in connection with
19 the Findings under the CCFPL, or any other provision of law, excepting therefrom any proceeding
20 to enforce compliance with the terms of this Settlement Agreement. The recitals and terms of this
21 Settlement Agreement shall not be construed as an admission of liability or wrongdoing by
22 Fanfaire.

23 7. Waiver of Hearing Rights. Fanfaire acknowledges that the Commissioner is ready,
24 willing, and able to proceed with the filing of an administrative enforcement action on the Findings
25 described in the recitals above. Fanfaire hereby waives the right to any hearings and to any
26 reconsideration, appeal, or other right to review which may be afforded by the CCFPL, California
27 Administrative Procedure Act (APA), California Code of Civil Procedure (CCP), or any other

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1 provision of law with respect to the Findings of Fact and Conclusions of Law in the Recitals above.
2 By waiving such rights, Fanfaire effectively consents to the finality of this Settlement Agreement.

3 8. Failure to Comply with Settlement Agreement. Fanfaire agrees that if it fails to
4 comply with the terms of this Settlement Agreement, the Commissioner may pursue any remedies
5 available under the CCFPL, or any other provision of law, until Fanfaire is in compliance.
6 Notwithstanding the foregoing, Fanfaire shall be afforded a fourteen (14) day opportunity to cure
7 any claimed non-compliance with the Settlement Agreement.

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

12 10. Future Actions by Commissioner. If Fanfaire fails to comply with any terms of this
13 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 Fanfaire for any and all unknown violations of the CCFPL.

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

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

23 13. Binding. This Settlement Agreement is binding on all heirs, assigns, or successors in
24 interest.

25 14. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
26 Settlement Agreement it has relied solely on the statements set forth herein and the advice of its
27 own counsel. Each of the Parties further represents, warrants, and agrees that in executing this
28 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any

1 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
2 party or any other person or entity to make any statement, representation, or disclosure of anything
3 whatsoever. The Parties have included this clause: (1) to preclude any claim that any party was in
4 any way fraudulently induced to execute this Settlement Agreement and (2) to preclude the
5 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
6 Settlement Agreement.

7 15. 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 16. 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 17. Third Parties. This Settlement Agreement does not create or give rise to any private
20 rights or remedies against Fanfaire, or any of its past, present, and future predecessors, successors,
21 parents, subsidiaries, affiliates, and related entities, and each of their respective partners, employees,
22 agents, attorneys, officers, directors, shareholders, members, partners, joint venturers,
23 representatives and assigns (Fanfaire Parties), create any liability on the part of Fanfaire or the
24 Fanfaire Parties, or limit the defenses of Fanfaire or the Fanfaire Parties for any person or entity not
25 a party to this Settlement Agreement.

26 18. Governing Law. This Settlement Agreement will be governed by and construed in
27 accordance with California law.

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1 19. Counterparts. This Settlement Agreement may be executed in one or more separate
2 counterparts, each of which will be deemed an original when so executed. Such counterparts
3 together will be deemed to constitute a single document.

4 20. Mandatory Disclosure in Future Applications. Fanfaire agrees to disclose this
5 Settlement Agreement in any application for a license, permit, or qualification under the
6 Commissioner’s current or future jurisdiction.

7 21. Effect Upon Future Proceedings and Future Application. If Fanfaire applies for any
8 license, permit, or qualification under the Commissioner’s current or future jurisdiction or is the
9 subject of any future action by the Commissioner to enforce this Settlement Agreement, then the
10 subject matter hereof shall be admissible for the purpose of such application or action.

11 22. Voluntary Agreement. Fanfaire enters into this Settlement Agreement voluntarily and
12 without coercion and acknowledges that no promises, threats, or assurances have been made by the
13 Commissioner or any officer or agent thereof about this Settlement Agreement. The Parties each
14 represent and acknowledge that he, she, or it is executing this Settlement Agreement completely
15 voluntarily and without any duress or undue influence of any kind from any source.

16 23. Notice. Any notice required under this Settlement Agreement shall be provided to
17 Fanfaire’s counsel at Casey McCracken, Gibson, Dunn & Crutcher LLP, 3161 Michelson Drive,
18 Irvine, CA 92612-4412 and CMcCracken@gibsondunn.com, as well as to Christopher Chorba,
19 300 S. Grand Ave., Los Angeles, CA 90071-3197 and CChorba@gibsondunn.com, or to the
20 Commissioner at Taylor Steinbacher, Department of Financial Protection and Innovation, 320 West
21 4th Street, Suite 750, Los Angeles, California 90013 and taylor.steinbacher@dfpi.ca.gov.

22 24. Signatures. A scanned or electronic mail signature shall be deemed an original
23 signature.

24 25. Public Record. Fanfaire hereby acknowledges that this Settlement Agreement is and
25 will be a matter of public record.

26 26. Effective Date. This Settlement Agreement shall become final and effective when
27 signed by all Parties and delivered by the Commissioner’s agent via electronic mail to Respondent’s
28 counsel at CMcCracken@gibsondunn.com.

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

4 Dated: December 12, 2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

6 By: _____
7 MARY ANN SMITH
8 Deputy Commissioner

9 Dated: December 7, 2022

FANFAIRE, INC.

10 By: _____
11 ALAN B. BORNSTEIN
12 CEO