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

12 In the Matter of:) DCLA LICENSE No.: 10370-99
13)
14 THE COMMISSIONER OF FINANCIAL) **SETTLEMENT AGREEMENT**
PROTECTION AND INNOVATION,)
15)
16 Complainant.)
17)
18 v.)
19)
LEWIS, MILLER & COMPANY, INC.,)
20)
Respondent.)

21
22 This Settlement Agreement is entered into between the Commissioner of Financial Protection
23 and Innovation (Complainant or Commissioner) and Respondent Lewis, Miller & Company, Inc.
24 (Respondent) and is made with respect to the following facts:

25 **I.**
26 **RECITALS**

27 A. The Commissioner has jurisdiction over the licensing and regulation of persons
28 engaged in the business of debt collection in California under the Debt Collection Licensing Act

1 (DCLA) (Cal. Fin. Code §§ 100000 – 100025) and the rules and regulations promulgated thereunder.

2 B. The Commissioner also has jurisdiction over the regulation of persons who engage,
3 have engaged, and propose to engage in offering or providing a consumer financial product or
4 service in California and affiliated service providers under the California Consumer Financial
5 Protection Law (CCFPL) (Cal. Fin. Code §§ 90000 – 90019).

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

9 D. A “covered person” is “[a]ny person that engages in offering or providing a consumer
10 financial product or service to a resident of this state.” (Cal. Fin. Code § 90005(f)(1)).

11 E. A “consumer financial product or service” is generally a “financial product or service
12 that is delivered, offered, or provided for use by consumers primarily for personal, family, or
13 household purposes.” (Cal. Fin. Code § 90005(e)(1)).

14 F. “Financial product or service” includes, among other things, “[c]ollecting debt
15 relating to a consumer financial product or service.” (Cal. Fin. Code § 90005(k)(10)).

16 G. “Financial product or service” also includes, among other things, [e]xtending credit
17 and servicing extensions of credit, including acquiring, purchasing, selling, brokering extensions of
18 credit, other than solely extending commercial credit to a person who originates consumer credit
19 transactions. (Cal. Fin. Code § 90005(k)(1)).

20 H. Respondent is a Delaware corporation.

21 I. Respondent has a principal place of business at 191 Lathrop Way, Suite J,
22 Sacramento, California 95815.

23 J. Respondent is licensed as a debt collector under the DCLA with license 10370-99.

24 K. Respondent collects debt related to a consumer financial product or service, including
25 but not limited to extensions of credit. (Cal. Fin. Code § 90005(k)(1), (10)).

26 L. Because Respondent collects debts relating to consumer financial products and
27 services, they are a covered person under the CCFPL (Cal. Fin. Code § 90005(f)).

28 M. California Financial Code section 100021(a) requires all DCLA licensees to file an

1 annual report with the Commissioner, on or before March 15, that contains all relevant information
2 that the Commissioner reasonably requires concerning the business and operations conducted by the
3 licensee in the state during the preceding calendar year, including information regarding collection
4 activity (Annual Report).

5 N. On September 11, 2023, the Commissioner notified all DCLA licensees via the
6 email listed under Primary Company Contact on the Nationwide Multistate Licensing System and
7 Registry (NMLS)¹ that they must establish an email for communications from the Commissioner
8 (Designated Email Address) pursuant to the Commissioner’s Order on Electronic Communications,
9 dated November 22, 2013.

10 O. On November 8, 2023, the Commissioner notified all DCLA licensees via email
11 listed under Primary Company Contact on NMLS that all debt collectors licensed prior to January
12 1, 2024 must file the Annual Report by March 15, 2024 through the DFPI Self-Service Portal, and
13 instructions for accessing the DFPI Self-Service Portal would be sent to the Designated Email
14 Address in December 2023.

15 P. On December 4, 2023, the Commissioner notified all DCLA licensees via the
16 Designated Email Address or email listed under Primary Company Contact on NMLS if a
17 Designated Email Address was not yet provided, that this was the last opportunity to provide a
18 Designated Email Address to receive the draft of the Annual Report. The DCLA licensee had one
19 week to complete the process for providing a Designated Email Address.

20 Q. On December 18, 2023, the Commissioner notified all DCLA licensees via the
21 Designated Email Address or email listed under Primary Company Contact on NMLS if they had
22 still not provided a Designated Email Address with a sample of the Annual Report stating that
23 detailed filing instructions and access to the Annual Report will be provided on January 2, 2024.
24 The email reminded DCLA licensees that if they were licensed as of December 31, 2023, they must
25 file the Annual Report via the DFPI Self-Service Portal by March 15, 2024.

26 _____
27 ¹ NMLS stands for Nationwide Multistate Licensing System & Registry and is the system of record for non-depository,
28 financial services licensing or registration in participating agencies, including the District of Columbia and U.S.
Territories of Puerto Rico, the U.S. Virgin Islands, and Guam. In these jurisdictions, NMLS is the official system for
companies and individuals seeking to apply for, amend, renew and surrender licenses authorities managed through
NMLS.

1 R. On January 2, 2024, the Commissioner notified all DCLA licensees via the
2 Designated Email Address or email listed under Primary Company Contact on NMLS if they had
3 still not provided a Designated Email Address that the Annual Report was accessible via the DFPI
4 Self-Service Portal and provided instructions for filing the Annual Report.

5 S. On February 12, 2024, the Commissioner reminded all DCLA licensees via the
6 Designated Email Address or email listed under Primary Company Contact on NMLS if they had
7 still not provided a Designated Email Address that all DCLA licensees who were licensed as of
8 December 31, 2023, must file the Annual Report by the deadline of March 15, 2024, and provided a
9 correction to the instructions for filing the Annual Report.

10 T. On March 1, 2024, the Commissioner again reminded all DCLA licensees via the
11 Designated Email Address or email listed under Primary Company Contact on NMLS if they had
12 still not provided a Designated Email Address that all DCLA licensees who were licensed as of
13 December 31, 2023, must file the Annual Report by the deadline of March 15, 2024, stating that
14 failure to file the Annual Report may subject the DCLA licensee to suspension, revocation,
15 penalties, or other enforcement action.

16 U. As of March 26, 2024, Respondent, who was licensed as of June 19, 2023, had not
17 filed its Annual Report with the Commissioner, in violation of California Financial Code section
18 100021(a). As a result, on April 4, 2024, the Commissioner issued a Notice of Failure to File
19 Annual Report by March 15, 2024 (Failure Notice) to Respondent via certified mail, U.S. mail, and
20 Designated Email Address or the email listed under a Company Contact on NMLS, notifying
21 Respondent that the Department will issue a Desist and Refrain Order and Order Assessing
22 Penalties under California Financial Code section 90015(c) and (d)(1) and will also move to revoke
23 Respondent’s DCLA license under California Financial Code sections 100003(b)(3) and
24 100003.3(b)(1) if the Annual Report is not filed before April 14, 2024.

25 V. As of April 14, 2024, or 10 calendar days after the Failure Notice, Respondent had
26 still not filed its Annual Report with the Commissioner, in continuing violation of California
27 Financial Code section 100021(a).

28 W. Therefore, on April 15, 2024, the Commissioner issued a Desist and Refrain Order

1 and Order Assessing Penalties pursuant to California Financial Code section 90015(c) and (d)(1)
2 (Desist and Refrain Order) and a Notice of Intention to Issue Order Revoking Debt Collection
3 Licensing Act License, Accusation, and accompanying documents pursuant to California Financial
4 Code sections 100003(b)(3) and 100003.3(b)(1) for DCLA license number 10370-99 (Accusation).

5 X. On April 15, 2024, Respondent filed its Annual Report. Pursuant to California
6 Financial Code section 90012(b)(8), a penalty may be imposed for any unlawful act or practice with
7 respect to consumer financial products or services in violation of California Financial Code sections
8 90003(a)(1), (a)(2), and 100021(a).

9 Y. On or around April 18, 2024, Respondent notified the Commissioner that Respondent
10 had received the Desist and Refrain Order and Accusation and wished to resolve them without a
11 hearing.

12 Z. The Commissioner finds that entering into this Settlement Agreement is in the public
13 interest and consistent with the purposes fairly intended by the policies and provisions of the CCFPL
14 and DCLA.

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. Finality of Desist and Refrain Order. Pursuant to California Financial Code section
22 90015(d), Respondent is hereby ordered to desist and refrain from engaging in unlawful acts and
23 practices with respect to consumer financial products or services in violation of the California
24 Financial Code section 90003(a)(1). Respondent is also hereby ordered to desist and refrain from
25 offering or providing to a consumer any financial product or service not in conformity with the
26 following consumer financial laws, including California Financial Code section 100021(a) of the
27 DCLA, in violation of California Financial Code section 90003(a)(2). This desist and refrain order is
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1 final and effective from the effective date of this Settlement Agreement, as defined in paragraph 26
2 (Effective Date).

3 3. Withdrawal of Notice of Intention to Revoke. The Commissioner hereby withdraws
4 the Notice of Intention to Issue Order Revoking Debt Collection Licensing Act License issued to
5 Respondent on April 15, 2024.

6 4. Administrative Penalty. Respondent shall pay an administrative penalty of \$1,500.00
7 no later than 30 days after the Effective Date of this Settlement Agreement as defined in paragraph
8 25. The penalty must be made payable in the form of a cashier’s check or Automated Clearing
9 House deposit to the Department of Financial Protection and Innovation and transmitted to the
10 attention of Accounting – Litigation, Department of Financial Protection and Innovation, 2101
11 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent
12 to Sophia C. Kim via e-mail at: Sophia.Kim@dfpi.ca.gov.

13 5. Failure to Pay Administrative Penalty. If Respondent fails to comply with paragraph
14 4, the Commissioner may summarily suspend Respondent from engaging in business under its
15 DCLA license until it provides evidence of compliance to the Commissioner’s satisfaction.
16 Respondent hereby waives any notice or hearing rights afforded under the Administrative Procedure
17 Act, including California Government Code section 11415.60(b); Code of Civil Procedure; or any
18 other provision of law to contest the summary suspension contemplated by this paragraph.

19 6. Waiver of Notice and Hearing Rights. Respondent acknowledges the Commissioner
20 is ready, willing, and able to proceed with a hearing on the Desist and Refrain Order and Accusation
21 on the charges contained therein. Respondent hereby waives the right to any hearings, and to any
22 reconsideration, appeal, or other right to review which may be afforded pursuant to the CCFPL,
23 DCLA, the California Administrative Procedure Act, the California Code of Civil Procedure, or any
24 other provision of law.

25 7. Full and Final Resolution. The parties hereby acknowledge and agree that this
26 Settlement Agreement is intended to constitute a full and final resolution of the violations described
27 herein, and that no further proceedings or actions will be brought by the Commissioner in connection
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1 with these matters except under the CCFPL or DCLA or any other provision of law, excepting
2 therefrom any proceeding to enforce compliance with the terms of this Settlement Agreement.

3 8. Failure to Comply with Settlement Agreement. Respondent agrees that if it fails to
4 comply with the terms of this Settlement Agreement, the Commissioner may, in addition to all other
5 available remedies it may invoke under the CCFPL or DCLA, summarily suspend/revoke the DCLA
6 license of Respondent until Respondent is in compliance. Respondent waives any notice and
7 hearing rights to contest such summary suspensions/revocations which may be afforded under the
8 CCFPL, DCLA, the California Administrative Procedure Act, the California Code of Civil
9 Procedure, or any other provision of law in connection therewith.

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

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

19 11. Assisting Other Agencies. Nothing in this Settlement Agreement limits the
20 Commissioner’s ability to assist any other government agency (city, county, state or federal) with
21 any prosecution, administrative, civil or criminal action brought by that agency against Respondent
22 or any other person based on any of the activities alleged in this matter or otherwise.

23 12. No Presumption Against Drafter. Each party acknowledges that it has had the
24 opportunity to draft, review, and edit the language of this Settlement Agreement. Accordingly, the
25 parties intend no presumption for or against the drafting party will apply in construing any part of
26 this Settlement Agreement. The parties waive the benefit of Civil Code section 1654 as amended or
27 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
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1 language of a contract should be interpreted most strongly against the party who caused the
2 uncertainty to exist.

3 13. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
4 has had the opportunity to receive independent advice from an attorney(s) and/or representatives
5 with respect to the advisability of executing this Settlement Agreement.

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

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

11 16. Reliance. Each of the parties represents, warrants, and agrees that in executing this
12 Settlement Agreement, it has relied solely on the statements set forth herein and the advice of its
13 own legal counsel, if represented. Each of the parties further represents, warrants, and agrees that in
14 executing this Settlement Agreement it has placed no reliance on any statement, representation, or
15 promise of any other party, or any other person or entity not expressly set forth herein, or upon the
16 failure of any party or any other person or entity to make any statement, representation, or disclosure
17 of anything whatsoever. The parties have included this clause: (1) to preclude any claim that any
18 party was in any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude
19 the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
20 Settlement Agreement.

21 17. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
22 this Settlement Agreement will be valid or binding unless it is in writing and signed by each of the
23 parties. The waiver of any provision of this Settlement Agreement will not be deemed a waiver of
24 any other provision. No waiver by either party of any breach of, or of compliance with, any
25 condition or provision of this Settlement Agreement by the other party will be considered a waiver
26 of any other condition or provision or of the same condition or provision at another time.

27 18. Full Integration. This Settlement Agreement is the final written expression and the
28 complete and exclusive statement of all the agreements, conditions, promises, representations, and

1 covenants between the parties with respect to the subject matter hereof, and supersedes all prior or
2 contemporaneous agreements, negotiations, representations, understandings, and discussions
3 between and among the parties, their respective representatives, and any other person or entity, with
4 respect to the subject matter covered hereby.

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

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

12 21. Effect Upon Future Proceedings. If Respondent applies for any license, permit or
13 qualification under the Commissioner’s current jurisdiction, or are the subject of any future action by
14 the Commissioner to enforce this Settlement Agreement, then the subject matter hereof shall be
15 admitted for the purpose of such application(s) or enforcement proceeding(s).

16 22. Voluntary Agreement. Respondent hereby enters into this Settlement Agreement
17 voluntarily and without coercion and acknowledges that no promises, threats, or assurances have
18 been made by the Commissioner or any officer, or agent thereof, about this Settlement Agreement.
19 The parties each represent and acknowledge that he, she or it is executing this Settlement Agreement
20 completely voluntarily and without any duress or undue influence of any kind from any source.

21 23. Notice. Any notice required under this Settlement Agreement shall be provided to
22 each party at the following addresses:

23 To Respondent: Lewis, Miller & Company, Inc.
24 Attn: Brian Miller, President
25 191 Lathrop Way, Suite J
26 Sacramento, CA 95815
27 Brian@lewismiller.com

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To the Commissioner: Sophia Kim, Senior Counsel
Department of Financial Protection and Innovation
320 West 4th Street, Suite 750.
Los Angeles, California 90013
Sophia.Kim@dfpi.ca.gov

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

25. Public Record. Respondent hereby acknowledges that the Settlement Agreement is and will be a matter of public record.

26. Effective Date. This Settlement Agreement shall become final and effective when signed by all parties and delivered by the Commissioner’s agent via e-mail to Respondent at the following email address: Brian@lewismiller.com.

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

Dated: April 25, 2024
Sacramento, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: April 25, 2024

LEWIS, MILLER & COMPANY, INC.

By _____
Brian Miller, President