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

12 In the Matter of: ) CFL LICENSE NO.: 60DBO-41890  
13 THE COMMISSIONER OF BUSINESS ) SETTLEMENT AGREEMENT  
OVERSIGHT, )  
14 )  
15 Complainant, )  
16 v. )  
17 ECF FUNDING LLC, )  
18 Respondent. )  
19 )

20 This Settlement Agreement is entered into between the Commissioner of Business Oversight  
21 (Complainant or Commissioner) and Respondent (Respondent or ECF Funding LLC) 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.).  
28

1 B. Respondent is a limited liability company, with a principal place of business at 2441  
2 Warrenville Road, Suite 310, Lisle, Illinois 60532.

3 C. Respondent is licensed as a finance lender under the CFL with main license number  
4 60DBO-41890.

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 January 16, 2018, the Commissioner notified CFL licensees of the March 15,  
9 2018 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 and summarily revoke CFL license(s) for untimely filing or failing to file pursuant to  
13 Financial Code section 22715.

14 G. On February 20, 2018, the Commissioner again notified CFL licensees of the March  
15 15, 2018 deadline to file their annual reports by sending notice to the email address each CFL  
16 licensee established pursuant to the Commissioner's Order on Electronic Communications, dated  
17 November 22, 2013. The notification again warned that the Commissioner could assess penalties and  
18 summarily revoke licenses for untimely filing or failing to file pursuant to Financial Code section  
19 22715.

20 H. As of March 19, 2018, Respondent had not filed its Annual Report with the  
21 Commissioner. As a result, the Commissioner issued a notice letter to Respondent on March 19,  
22 2018, advising Respondent that it should file its annual report by or before April 6, 2017 or else its  
23 license would be summarily revoked pursuant to Financial Code section 22715 (Notice Letter).  
24 Respondent did not receive the Notice Letter due to an address change.

25 I. As of April 6, 2018, Respondent had not filed its Annual Report with the  
26 Commissioner as directed in the Notice Letter. As a result, on April 11, 2018, the Commissioner  
27 issued Orders Summarily Revoking California Finance Lenders License Pursuant to Financial Code  
28 Section 22715 for CFL License Numbers 60DBO-41890 (Summary Revocation Orders).

1 J. Upon receiving the Summary Revocation Orders, Respondent timely notified the  
2 Commissioner that Respondent was requesting a hearing on the Summary Revocation Order(s).

3 K. On May 5, 2018, Respondent submitted its Annual Report, which was due on March  
4 15, 2018, 36 business days late. Pursuant to Financial Code Section 22715, the maximum penalty  
5 that may be imposed for filing 36 business days late is \$16,000.00 (\$100 per business day for the  
6 first five business days and \$500 per business day thereafter up to a maximum of \$25,000).

7 L. In connection with these proceedings, Respondent represented to the Commissioner  
8 that it had taken no new applications under its license.

9 M. The Commissioner finds that entering into this Settlement Agreement is in the public  
10 interest and consistent with the purposes fairly intended by the policies and provisions of the CFL.

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

17 2. Waiver of Hearing Rights. Respondent hereby agrees to withdraw its request for an  
18 administrative hearing on the Summary Revocation Orders. Respondent acknowledges its right  
19 under the CFL to an administrative hearing on the Summary Revocation Orders and hereby waives  
20 such right to a hearing and to any reconsideration, appeal, injunction or other review that may be  
21 afforded under the Financial Code; Administrative Procedure Act, including Government Code  
22 section 11415.60, subdivision (b); Code of Civil Procedure; or any other provision of law. By  
23 waiving such rights, Respondent effectively consents to the finality of the Summary Revocation  
24 Orders.

25 3. Order Rescinding Revocation Orders. The Commissioner hereby rescinds the  
26 Summary Revocation Orders, which had been issued on April 11, 2018.

27 4. Administrative Penalty. Respondent shall pay an administrative penalty of \$3,000.00  
28 no later than 30 days after the effective date of this Settlement Agreement as defined in paragraph

1 18. The penalty must be made payable in the form of a cashier’s check or Automated Clearing  
2 House deposit to the Department of Business Oversight and transmitted to the attention of  
3 Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200,  
4 Sacramento, California 95814. Notice of the payment must be concurrently sent to Paul Yee, Senior  
5 Counsel, Department of Business Oversight, One Sansome Street, Suite 600, San Francisco,  
6 California 94104.

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

13 6. Full and Final Resolution. Except as stated in paragraph 5, this Settlement  
14 Agreement is intended to constitute a full and final resolution of the matter described in it. The  
15 Commissioner will not bring any further action or proceeding concerning the matter unless she  
16 discovers violations by Respondent that do not form the basis for this Settlement Agreement,  
17 including violations knowingly concealed from the Commissioner.

18 7. Commissioner’s Duties. Nothing in this Settlement Agreement limits the  
19 Commissioner’s ability to assist any other government agency with any action brought by that  
20 agency against Respondent, including an action based on any of the acts, omissions, or events  
21 described in this Settlement Agreement.

22 8. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it  
23 has had an opportunity to seek independent advice from its attorney(s) and/or representatives with  
24 respect to the advisability of executing this Settlement Agreement.

25 9. Reliance. Each of the parties represents, warrants, and agrees that in executing this  
26 Settlement Agreement it has relied solely on the statement set forth herein and has had the  
27 opportunity to seek the legal advice of its own counsel. Each of the parties further represents,  
28 warrants, and agrees that in executing this Settlement Agreement it has placed no reliance on any

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

7       10.     Full Integration. This Settlement Agreement is the final written expression and the  
8 complete and exclusive statement of all the agreements, conditions, promises, representations, and  
9 covenants between the parties with respect to the subject matter hereof, and supersedes all prior or  
10 contemporaneous agreements, negotiations, representations, understandings, and discussions  
11 between and among the parties, their respective representatives, and any other person or entity, with  
12 respect to the subject matter covered hereby. The parties have included this clause to preclude the  
13 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this  
14 Settlement Agreement.

15       11.     No Presumption Against Drafter. In that the parties have had the opportunity to draft,  
16 review, and edit the language of this Settlement Agreement, no presumption for or against any party  
17 arising out of drafting all or any part of this Settlement Agreement will be applied in any action  
18 relating to, connected to, or involving this Settlement Agreement. Accordingly, the parties waive the  
19 benefit of Civil Code section 1654 and any successor or amended statutes, providing that in cases of  
20 uncertainty, language of a contract should be interpreted most strongly against the party who caused  
21 the uncertainty to exist.

22       12.     Voluntary Agreement. Respondent hereby enters in this Settlement Agreement  
23 voluntarily and without coercion and acknowledges that no promises, threats, or assurances have  
24 been made by the Commissioner or any officer, or agent thereof, about this Settlement Agreement.

25       13.     Waiver, Amendments, and Modifications. No waiver, amendment, or modification of  
26 this Settlement Agreement will be valid or binding unless it is in writing and signed by all parties  
27 affected by it. Waiver of a provision of this Settlement Agreement will not be deemed a waiver of  
28 any other provision.

1           14.    Counterparts. The parties agree that this Settlement Agreement may be executed in  
2 one or more separate counterparts, each of which when so executed, shall be deemed an original. A  
3 fax or electronic mail signature shall be deemed the same as an original signature. Such counterparts  
4 shall together constitute and be one and the same instrument.

5           15.    Public Record. Respondent acknowledges that the Settlement Agreement is public  
6 record.

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

10          17.    Governing Law. This Settlement Agreement shall be construed and enforced in  
11 accordance with and governed by California law.

12          18.    Effective Date. This Settlement Agreement will become effective on the date it is  
13 signed by all parties and delivered by the Commissioner to Respondent by electronic mail at  
14 jcasimiro@engsfinance.com.

15          19.    Settlement Authority. Each party represents that the person signing this Settlement  
16 Agreement on its behalf has the authority and capacity to do so.

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18 Dated: 6/8/18

JAN LYNN OWEN  
Commissioner of Business Oversight

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By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

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25 Dated: 6/8/18

ECF FUNDING LLC

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By \_\_\_\_\_  
JOHN VANDE MOORE  
Chief Finance Officer

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