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

11 In the Matter of:) CFL FILE NO.: 60DBO-67944
12 THE COMMISSIONER OF BUSINESS)
13 OVERSIGHT,) CONSENT ORDER
14 Complainant,)
15 v.)
16 BAM CAPITAL, LLC,)
17 Respondent.)

18
19 This Consent Order is entered into between the Commissioner of Business Oversight
20 (Commissioner) and BAM Capital, LLC (BAM Capital), and is made with respect to the following
21 facts:

22 **RECITALS**

23 A. The Department of Business Oversight, through the Commissioner, has jurisdiction
24 over the licensing and regulation of persons and entities engaged in the business of finance lending
25 or brokering under the California Financing Law (CFL) (Fin. Code, § 22000 et seq.).¹

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28 ¹ Effective October 4, 2017, the name of the California Finance Lenders Law changed to the California
Financing Law. (Assem. Bill No. 1284 (2017-2018 Reg. Sess.) § 4.) For purposes of this document, a reference to the
California Financing Law means the California Finance Lenders Law before October 4, 2017, and the California
Financing Law on and after that date. (Fin. Code, § 22000.)

1 B. Under the CFL, the Commissioner has authority to issue orders to desist and refrain
2 from violations of the CFL; to deny, suspend, or revoke licenses pending or issued under the CFL;
3 and to assess penalties.

4 C. The purpose of the CFL is to ensure an adequate supply of credit to borrowers in
5 California; to simplify, clarify, and modernize the law governing loans made by finance lenders; to
6 foster competition among finance lenders; to protect borrowers against unfair practices by some
7 lenders, having due regard for the interests of legitimate and scrupulous lenders; to permit and
8 encourage the development of fair and economically sound lending practices; and to encourage and
9 foster a sound economic climate in this state. (Fin. Code, § 22001, subd. (a).)

10 D. BAM Capital is a Georgia limited liability company with its principal place of
11 business at 3475 Piedmont Road Northeast, Suite 975, Atlanta, Georgia 30305. BAM Capital has
12 never been licensed under the CFL.

13 E. On February 27, 2017, BAM Capital filed an application for licensure as a finance
14 lender under the CFL under file number 60DBO-67944.

15 F. During review of the application, BAM Capital disclosed that it had engaged in
16 accounts-receivable financing, also known as factoring, in California. BAM Capital characterized
17 its factoring transactions as purchases of accounts receivable based upon the structure of its
18 agreements.

19 G. During review of the application, the Commissioner made the following contentions:

20 i. Beginning in September 2014, BAM Capital engaged in factoring
21 transactions in California.

22 ii. BAM Capital’s factoring contracts contained recourse provisions that gave
23 BAM Capital the ability to charge back or require the customer to repurchase any account
24 determined by BAM Capital in its sole discretion to be an unacceptable credit risk, including an
25 account remaining unpaid after a certain time or an account from a debtor that had become insolvent
26 or had generally stopped paying its debts.

1 H. Based on these findings, the Commissioner asserts that from September 4, 2014, to
2 January 31, 2018, BAM Capital made 20,635 consumer or commercial loans and engaged in the
3 business of a finance lender in violation of Financial Code section 22100, subdivision (a).

4 I. As of January 31, 2018, BAM Capital amended and re-executed its factoring
5 contracts with its California customers. Under the amended contracts, BAM Capital’s purchasing of
6 accounts is without right of recourse, or non-recourse, on the condition that BAM Capital gives
7 “written credit approval” for the accounts to the seller before purchasing them.

8 J. BAM Capital represents that since January 31, 2018, it has engaged in only non-
9 recourse factoring transactions with its California customers.

10 K. The Commissioner finds that entering into this Consent Order is in the public
11 interest and consistent with the purposes fairly intended by the policy and provisions of the CFL.

12 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
13 contained herein, the parties agree as follows:

14 **TERMS AND CONDITIONS**

15 1. Purpose. This Consent Order is entered into for the purpose of judicial economy and
16 to avoid the expense and uncertainty of a hearing or other litigation.

17 2. Finality of Consent Order. Without admitting or denying the factual matters and
18 alleged violations described in paragraphs F, G, and H, BAM Capital agrees to the terms of this
19 Consent Order.

20 3. Desist and Refrain Order. In accordance with Financial Code section 22712, BAM
21 Capital stipulates that it is ordered to desist and refrain from violating Financial Code section
22 22100, subdivision (a).

23 4. Waiver of Hearing Rights. BAM Capital acknowledges that the Commissioner is
24 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
25 charges contained in this Consent Order. BAM Capital hereby waives the right to any hearings and
26 to any reconsideration, appeal, or other right to review which may be afforded under the CFL,
27 Administrative Procedure Act, Code of Civil Procedure, or any other provision of law. BAM
28 Capital further expressly waives any requirement for the filing of an accusation pursuant to

1 Government Code section 11415.60, subdivision (b). By waiving such rights, BAM Capital
2 consents to the finality of this Consent Order and the desist-and-refrain order in it.

3 5. Refund Calculation. BAM Capital shall calculate refunds to certain factoring clients
4 as follows.

5 (a) BAM Capital shall audit its files and identify all transactions from September
6 4, 2014, to January 31, 2018, conducted under its factoring contracts with California-based clients
7 in which BAM Capital advanced an amount of money to the client (Refund Population).

8 (b) For each loan in the Refund Population, BAM Capital shall determine the
9 amount of fees, expenses, and costs charged in excess of the 10-percent annual interest permitted
10 under article XV, section 1 of the California Constitution (Usurious Overcharge). BAM Capital is
11 not required to include in this calculation any administrative fee that BAM Capital collected on
12 behalf of its parent company and that was defined in a separate agreement between the client and
13 that parent company to be payment for a service provided by that parent company.

14 (c) For each loan in the Refund Population, the amount BAM Capital shall
15 refund to the borrower (Refund Amount) is the Usurious Overcharge.

16 (d) No later than 30 days after the effective date of this Consent Order as defined
17 in paragraph 27, BAM Capital shall submit a report to the Commissioner detailing the Refund
18 Population and Refund Amounts. The estimated total of Refund Amounts is \$129,501.00.

19 6. Refund Payments. BAM Capital shall make the refunds described in paragraph 5 as
20 follows.

21 (a) BAM Capital shall make the refunds no later than 60 days after the effective
22 date of this Consent Order as defined in paragraph 27.

23 (b) BAM Capital shall apply each refund as follows:

24 i. for a current factoring client whose account has an outstanding
25 balance that is greater than the Refund Amount, BAM Capital shall reduce the account's principal
26 balance by the Refund Amount or, alternatively, pay the Refund Amount to the factoring client with
27 a check sent by mail to the client's last known address or with a wire or Automated Clearing House
28 (ACH) transfer to the client's bank account on record with BAM Capital;

1 ii. for a current factoring client whose account has an outstanding
2 balance that is less than the Refund Amount, BAM Capital shall reduce the account’s principal
3 balance to zero dollars and mail to the factoring client’s last known address a check for the
4 difference between the outstanding balance and Refund Amount or, alternatively, pay the Refund
5 Amount to the factoring client with a wire or ACH transfer to the client’s bank account on record
6 with BAM Capital;

7 iii. for a former factoring client whose account was paid in full and who
8 does not have any factoring transactions from BAM Capital with an outstanding balance, BAM
9 Capital shall mail to the factoring client’s last known address a check for the Refund Amount;

10 iv. for a factoring client whose factoring transaction was charged off and
11 retained for internal collection, BAM Capital shall reduce the charged-off balance by the Refund
12 Amount; and

13 v. for a factoring client whose factoring transaction was charged off and
14 assigned for outside collection, BAM Capital shall direct the assignee to reduce the outstanding
15 balance by the Refund Amount. BAM Capital shall notify the factoring client of the reduced
16 outstanding balance by electronic mail or U.S. mail at the borrower’s last known address.

17 (c) No later than 90 days after the effective date of this Consent Order as defined
18 in paragraph 27, BAM Capital shall submit evidence of payment of the Refund Amounts to the
19 Commissioner.

20 (d) BAM Capital shall escheat any unclaimed refunds to the California State
21 Controller’s Office within the period provided by Code of Civil Procedure section 1520 of the
22 Unclaimed Property Law (Code of Civ. Proc., § 1500 et seq.).

23 7. Fee. BAM Capital shall pay an administrative fee of \$25,000.00 no later than 30
24 days after the effective date of this Consent Order as defined in paragraph 27. The payment must be
25 by cashier’s check or Automated Clearing House deposit and made payable to the Department of
26 Business Oversight and transmitted to the attention of Accounting – Litigation, at the Department of
27 Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice of payments
28

1 must be sent to Samuel J. Park, Counsel, 320 West 4th Street, Suite 750, Los Angeles, California
2 90013.

3 8. Treatment of Factoring Transactions. If BAM Capital receives a finance lender
4 license under the CFL, it shall do the following unless it receives written approval from the
5 Commissioner to do otherwise:

6 (a) report its California factoring transactions as CFL activity in all statutorily
7 required reports to the Commissioner;

8 (b) ensure that its California factoring transactions comply with the CFL;

9 (c) not dispute, in any examination of, investigation of, or action against BAM
10 Capital by the Commissioner, that its California factoring transactions are subject to the CFL; and

11 (d) submit its California factoring transactions to the Commissioner for review
12 during any examination or investigation of BAM Capital.

13 9. CFL Application. No later than five business days after determining that BAM
14 Capital has met all conditions for licensure, the Commissioner agrees to approve BAM Capital's
15 pending application and issue a finance lender license. In consideration of BAM Capital's
16 stipulation to the issuance of this Consent Order, the Commissioner agrees not to consider the
17 findings described in paragraphs F, G, and H in determining whether BAM Capital has met all
18 conditions for licensure.

19 10. Proof of Compliance. The Commissioner may periodically review BAM Capital's
20 compliance with paragraphs 5 through 8 and may request proof of such compliance. In response to
21 any such request, BAM Capital shall promptly provide evidence of compliance to the
22 Commissioner's satisfaction.

23 11. Failure to Comply. If BAM Capital fails to comply with any of the terms of this
24 Consent Order, other than through inadvertent and isolated errors that BAM Capital corrects no
25 later than 10 business days after discovering such errors and that BAM Capital reports to the
26 Commissioner no later than 10 business days after such corrections, the Commissioner may
27 summarily suspend BAM Capital from engaging in business under a CFL license until it provides
28 evidence of compliance to the Commissioner's satisfaction. BAM Capital hereby waives any notice

1 or hearing rights afforded under the Administrative Procedure Act, including Government Code
2 section 11415.60, subdivision (b); Code of Civil Procedure; or any other provision of law to contest
3 the summary suspension.

4 12. Full and Final Resolution. Except as provided in paragraph 11, this Consent Order is
5 intended to constitute a full and final resolution of the findings described in paragraphs F, G, and H.
6 The Commissioner will not bring any further action or proceeding concerning those findings unless
7 she discovers new and further violations by BAM Capital that do not form the basis for this
8 Consent Order, including violations knowingly or willfully concealed from the Commissioner. If
9 the Commissioner discovers that BAM Capital knowingly or willfully withheld information used
10 and relied on in this Consent Order, the Commissioner may rescind this Consent Order and pursue
11 all remedies available under law against BAM Capital.

12 13. Commissioner’s Duties. Nothing in this Consent Order limits the Commissioner’s
13 ability to assist any other government agency with any action brought by that agency against BAM
14 Capital, including an action based on any of the acts, omissions, or events described in this Consent
15 Order.

16 14. Independent Legal Advice. Each party represents that it has received independent
17 advice from its counsel or representatives regarding the advisability of executing this Consent
18 Order.

19 15. Reliance. Each party represents that in executing this Consent Order it has relied
20 solely on the statements in the Consent Order and on the advice of its counsel or representatives.
21 Each party also represents that it has not relied on any statement or promise not contained in this
22 Consent Order from any other person or on the failure of such person to make a statement or
23 promise. The parties have included this clause to preclude any claim that a party was fraudulently
24 induced to execute this Consent Order.

25 16. Third-Party Liability. The parties intend that this Consent Order does not create any
26 private rights or remedies against BAM Capital, create any liability for BAM Capital, or limit BAM
27 Capital’s rights or defenses against any person or entity not a party to this Consent Order.
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1 17. Integration. This Consent Order is the final written expression and the complete and
2 exclusive statement of all the agreements, conditions, promises, representations, and covenants
3 between the parties concerning its subject matter and supersedes all discussion regarding such
4 subject matter between the parties, their representatives, and any other person. The parties have
5 included this clause to preclude the introduction of parol evidence to vary, interpret, supplement, or
6 contradict the terms of this Consent Order.

7 18. No Presumption Against Drafting Party. Each party acknowledges that it has had the
8 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
9 intend that no presumption for or against the drafting party will apply in construing any part of this
10 Consent Order. The parties waive the benefit of Civil Code section 1654 and corresponding
11 provisions of any successor statute, which provide that in cases of uncertainty, language of a
12 contract should be interpreted most strongly against the party that caused the uncertainty to exist.

13 19. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
14 this Consent Order will be valid or binding unless it is in writing and signed by all parties affected
15 by it. Waiver of a provision of this Consent Order will not be deemed a waiver of any other
16 provision.

17 20. Headings. The headings in this Consent Order are for convenience only and do not
18 affect its meaning.

19 21. Governing Law. This Consent Order will be governed by and construed in
20 accordance with California law.

21 22. Authority to Sign. Each party represents that the person signing this Consent Order
22 on its behalf has the authority and capacity to do so.

23 23. Voluntary Agreement. BAM Capital enters into this Consent Order voluntarily and
24 without coercion and acknowledges that no promises, threats, or assurances about this Consent
25 Order have been made by the Commissioner or any of the Commissioner’s officers or agents.

26 24. Public Record. BAM Capital acknowledges that this Consent Order is a public
27 record.
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1 25. Counterparts. This Consent Order may be executed in any number of counterparts,
2 each of which will be deemed an original when executed. All counterparts together will be deemed
3 to constitute a single document.

4 26. Signatures. A signature delivered by facsimile or electronic mail will be deemed an
5 original signature.

6 27. Effective Date. This Consent Order will become effective on the date it is signed by
7 all parties and delivered by the Commissioner to BAM Capital’s counsel, Steven N. Kurtz, by
8 electronic mail at skurtz@laklawyers.com.

9 28. Notice. Any notice required under this Consent Order must be sent by mail to
10 Samuel J. Park, Counsel, at 320 West 4th Street, Suite 750, Los Angeles, California 90013 and
11 contemporaneously by electronic mail to samuel.park@dbo.ca.gov, or to Steven N. Kurtz, Levinson
12 Arshonsky & Kurtz, LLP, 15303 Ventura Boulevard, Suite 1650, Sherman Oaks, California 91403
13 and contemporaneously by electronic mail to skurtz@laklawyers.com.

14
15 Dated: 2/12/19

JAN LYNN OWEN
Commissioner of Business Oversight

16
17 By: _____
18 MARY ANN SMITH
19 Deputy Commissioner

20 Dated: 2/11/19

BAM CAPITAL, LLC

21 By: _____
22 TODD PATRICK EHRLICH
23 Chief Executive Officer
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