

1 MARY ANN SMITH
Deputy Commissioner
2 DANIEL P. O'DONNELL
Assistant Chief Counsel
3 CHARLES CARRIERE (State Bar No. 285837)
Senior Counsel
4 Department of Business Oversight
5 One Sansome Street, Suite 600
6 San Francisco, California 94104-4448
Telephone: (415) 972-8544
7 Facsimile: (415) 972-8500

8
9 Attorneys for Complainant

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

13 In the Matter of:) CFL LICENSE NO.: 603I149, 603I568
14 THE COMMISSIONER OF BUSINESS) SETTLEMENT AGREEMENT
15 OVERSIGHT,)
16 Complainant,)
17 v.)
18 FERRARI FINANCIAL SERVICES, INC.,)
19 Respondent.)
20

21 This Settlement Agreement is entered into between the Commissioner of Business Oversight
22 (Complainant or Commissioner) and Respondent (Respondent or Ferrari Financial Services, Inc.)
23 and is made with respect to the following facts:

24 **I.**
25 **RECITALS**

26 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
27 entities engaged in the business of finance lending or brokering under the California Financing Law
28 (CFL) (Fin. Code, § 22000 et seq.).

1 B. Respondent is a corporation, with a principal place of business at 250 Sylvan Avenue,
2 Englewood Cliffs, New Jersey 07632.

3 C. Respondent is licensed as a finance lender under the CFL with main license number
4 603I149.

5 D. Respondent operates one branch office in Modena, Italy (CFL License No. 603I568).

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 March 5, 2019, the Commissioner notified CFL licensees of the March 15, 2019
9 deadline to file their annual reports by sending notice to the email address each CFL licensee
10 established pursuant to the Commissioner's Order on Electronic Communications, dated November
11 22, 2013. The notification warned that the Commissioner could assess penalties and summarily
12 revoke licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

13 G. As of March 29, 2019, Respondent had not filed its Annual Report with the
14 Commissioner. As a result, on April 3, 2019, the Commissioner issued an Order Summarily
15 Revoking California Finance Lenders License Pursuant to Financial Code Section 22715 for CFL
16 License Number 603I149 and another Order Summarily Revoking California Finance Lenders
17 License Pursuant to Financial Code Section 22715 for CFL License Number 603I568 (Summary
18 Revocation Orders).

19 H. Upon receiving the Summary Revocation Orders, Respondent timely notified the
20 Commissioner that Respondent was requesting a hearing on the Summary Revocation Orders.

21 I. On April 11, 2019, Respondent submitted its Annual Report, which was due on
22 March 15, 2019, 18 business days late. Pursuant to Financial Code Section 22715, the maximum
23 penalty that may be imposed for filing 18 business days late is \$7,000.00 (\$100 per business day for
24 the first five business days and \$500 per business day thereafter up to a maximum of \$25,000).

25 J. In connection with these proceedings, Respondent represented to the Commissioner
26 that it had taken no new applications under its license.

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

1 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
2 forth herein, the parties agree as follows:

3 **II.**

4 **TERMS AND CONDITIONS**

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

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

15 3. Order Rescinding Revocation Orders. The Commissioner hereby rescinds the
16 Summary Revocation Orders issued on April 3, 2019.

17 4. Administrative Penalty. Respondent shall pay an administrative penalty of \$3,000.00
18 no later than 30 days after the effective date of this Settlement Agreement as defined in paragraph
19 18. The penalty must be made payable in the form of a cashier's check or Automated Clearing
20 House deposit to the Department of Business Oversight and transmitted to the attention of
21 Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200,
22 Sacramento, California 95814. Notice of the payment must be concurrently sent Charles Carriere,
23 Senior Counsel, Department of Business Oversight, at One Sansome Street, Suite 600, San
24 Francisco, California 94104.

25 5. Failure to Pay Administrative Penalty. If Respondent fails to comply with paragraph
26 4, the Commissioner may summarily suspend it from engaging in business under its license until it
27 provides evidence of compliance to the Commissioner's satisfaction. Respondent hereby waives any
28 notice or hearing rights afforded under the Administrative Procedure Act, including Government

1 Code section 11415.60, subdivision (b); Code of Civil Procedure; or any other provision of law to
2 contest the summary suspension contemplated by this paragraph.

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

8 7. Commissioner's Duties. Nothing in this Settlement Agreement limits the
9 Commissioner's ability to assist any other government agency with any action brought by that
10 agency against Respondent, including an action based on any of the acts, omissions, or events
11 described in this Settlement Agreement.

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

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

25 10. Full Integration. This Settlement Agreement is the final written expression and the
26 complete and exclusive statement of all the agreements, conditions, promises, representations, and
27 covenants between the parties with respect to the subject matter hereof, and supersedes all prior or
28 contemporaneous agreements, negotiations, representations, understandings, and discussions

1 between and among the parties, their respective representatives, and any other person or entity, with
2 respect to the subject matter covered hereby. The parties have included this clause to preclude the
3 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
4 Settlement Agreement.

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

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

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

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

23 15. Public Record. Respondent acknowledges that the Settlement Agreement is public
24 record.

25 16. Headings. The headings to the paragraphs of this Settlement Agreement are inserted
26 for convenience only and will not be deemed a part hereof or affect the construction or interpretation
27 of the provisions hereof.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

18. Effective Date. This Settlement Agreement will become effective on the date it is signed by all parties and delivered by the Commissioner to Respondent by electronic mail at soren.packer@ferrari.com.

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

Dated: 4/26/19

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 4/26/19

FERRARI FINANCIAL SERVICES, INC.

By _____
KOBI ZALAIT
Director of Operations