

1 MARY ANN SMITH  
Deputy Commissioner  
2 SEAN ROONEY  
Assistant Chief Counsel  
3 VANESSA T. LU (State Bar No. 295217)  
Counsel  
4 Department of Business Oversight  
320 West 4th Street, Suite 750  
5 Los Angeles, California 90013-2344  
Telephone: (213) 576-7632  
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

12 In the Matter of: ) CFL LICENSE NO.: 60DBO-87587  
13 )  
14 THE COMMISSIONER OF BUSINESS )  
OVERSIGHT, )  
15 ) SETTLEMENT AGREEMENT  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

20 This Settlement Agreement is entered into between the Commissioner of Business Oversight  
21 (Commissioner) and Respondent Span Capital LLC (Span Capital) and is made with respect to the  
22 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. Span Capital is a corporation, with a principal place of business located at 34591  
2 Calle Monte, Dana Point, California 92624.

3 C. Span Capital is licensed as a finance broker under the CFL main license number  
4 60DBO-87587.

5 D. Span Capital operates one main branch 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 2, 2019, the Commissioner notified Span Capital of the March 15, 2019  
9 deadline to file its annual report by sending notice to the email address designated by Span Capital  
10 pursuant to the Commissioner's Order on Electronic Communications, dated November 22, 2013.  
11 The email notification informed Span Capital that the Commissioner could assess penalties and  
12 summarily revoke Span Capital for untimely filing or failing to file its annual report pursuant to  
13 Financial Code section 22715.

14 G. On February 1, 2019 and again on March 5, 2019, the Commissioner notified Span  
15 Capital of the March 15, 2019 deadline to file its annual reports by sending notices to the email  
16 address designated by Span Capital. Both notifications again warned that the Commissioner could  
17 assess penalties and summarily revoke Span Capital for untimely filing or failing to file its annual  
18 report pursuant to Financial Code section 22715.

19 H. As of March 18, 2019, Span Capital had not filed its annual report with the  
20 Commissioner. As a result, the Commissioner issued a final notice to Span Capital to the email  
21 address designated by Span Capital, that Span Capital must file its annual report by or before March  
22 29, 2019 or its license would be summarily revoked pursuant to Financial Code section 22715.

23 I. On March 29, 2019, Span Capital had still not filed its annual report with the  
24 Commissioner as directed in the several notification emails referenced above. As a result, on April  
25 3, 2019, the Commissioner issued an Order Summarily Revoking California Finance Brokers  
26 License Pursuant to Financial Code Section 22715 for CFL License Number 60DBO-87587  
27 (Summary Revocation Order).

28 ///

1 J. Upon receiving the Summary Revocation Order, Span Capital timely requested a  
2 hearing on the Summary Revocation Order.

3 K. On April 17, 2019, Span Capital submitted its annual report, which was due on March  
4 15, 2019, 22 business days late. Pursuant to Financial Code Section 22715, the maximum penalty  
5 that may be imposed for filing an annual report 22 business days late is \$9,000.00 (\$100.00 per  
6 business day for the first five business days and \$500.00 per business day thereafter up to a  
7 maximum of \$25,000.00).

8 L. In connection with these proceedings, Span Capital has represented to the  
9 Commissioner that Span Capital has done no business for which a CFL license is required.

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

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

14 **II.**

15 **TERMS AND CONDITIONS**

16 **1. Purpose.** This Settlement Agreement resolves the issues before the Commissioner  
17 findings set forth in paragraphs A through M above, in a manner that avoids the expense of a hearing  
18 and other possible court proceedings, protects consumers, is in the public interest, and is consistent  
19 with the purposes, policies, and provisions of the CFL.

20 **2. Order Rescinding Revocation Order.** The Commissioner hereby rescinds the  
21 Summary Revocation Order, which had been issued against Span Capital on April 3, 2019.

22 **3. Administrative Penalty.** Span Capital shall pay an administrative penalty of  
23 \$4,500.00 no later than 30 days after the effective date of this Settlement Agreement as defined in  
24 paragraph 25. The penalty must be made payable in the form of a cashier's check or Automated  
25 Clearing House deposit to the Department of Business Oversight and transmitted to the attention of  
26 Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200,  
27 Sacramento, California 95814. Notice of the payment must be concurrently sent to Vanessa T. Lu,  
28

1 Counsel, Department of Business Oversight, 320 West 4th Street, Suite 750, Los Angeles, California  
2 90013-2344.

3 **4. Failure to Pay Administrative Penalty.** If Span Capital fails to comply with paragraph  
4 3, the Commissioner may summarily suspend it from engaging in business under its license until it  
5 provides evidence of compliance to the Commissioner's satisfaction. Span Capital hereby waives  
6 any notice or hearing rights afforded under the Administrative Procedure Act, including Government  
7 Code section 11415.60, subdivision (b); Code of Civil Procedure; or any other provision of law to  
8 contest the summary suspension contemplated by this paragraph.

9 **5. Waiver of Hearing Rights.** Span Capital acknowledges the Commissioner is ready,  
10 willing, and able to proceed with the filing of an administrative enforcement action on the charges  
11 contained in this Settlement Agreement. Span Capital hereby waives the right to any hearings, and  
12 to any reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL,  
13 the California Administrative Procedure Act, the California Code of Civil Procedure, or any other  
14 provision of law. Span Capital further expressly waives any requirement for the filing of an  
15 Accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such  
16 rights, Span Capital effectively consents to this Settlement Agreement and Order Rescinding  
17 Revocation Order becoming final.

18 **6. Full and Final Settlement.** The parties hereby acknowledge and agree that this  
19 Settlement Agreement is intended to constitute a full, final, and complete resolution of the violations  
20 described herein, and that no further proceedings or actions will be brought by the Commissioner in  
21 connection with these matters except under the CFL or any other provision of law, excepting  
22 therefrom any proceeding to enforce compliance with the terms of this Settlement Agreement.

23 **7. Failure to Comply with Settlement Agreement.** Span Capital agrees that if it fails to  
24 comply with the terms of this Settlement Agreement, the Commissioner may, in addition to all other  
25 available remedies it may invoke under the CFL, summarily suspend/revoke the CFL license of Span  
26 Capital until Span Capital is in compliance. Span Capital waives any notice and hearing rights to  
27 contest such summary suspensions/revocations which may be afforded under the CFL, the California  
28

1 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law  
2 in connection therewith.

3 **8. Information Willfully Withheld or Misrepresented.** This Settlement Agreement may  
4 be revoked, and the Commissioner may pursue any and all remedies available under law against  
5 Span Capital if the Commissioner discovers that Span Capital knowingly or willfully withheld or  
6 misrepresented information used for and relied upon in this Settlement Agreement.

7 **9. Future Actions by Commissioner.** If Span Capital fails to comply with any terms of  
8 the Settlement Agreement, the Commissioner may institute proceedings for any and all violations  
9 otherwise resolved under this Settlement Agreement. The Commissioner reserves the right to bring  
10 any future actions against Span Capital, or any of its partners, owners, officers, shareholders,  
11 directors, employees or successors for any and all unknown violations of the CFL.

12 **10. Assisting Other Agencies.** Nothing in this Settlement Agreement limits the  
13 Commissioner's ability to assist any other government agency (city, county, state, or federal) with  
14 any prosecution, administrative, civil or criminal brought by that agency against Span Capital or any  
15 other person based upon any of the activities alleged in this matter or otherwise.

16 **11. No Presumption Against Drafting Party.** Each party acknowledges that it has had the  
17 opportunity to draft, review, and edit the language of this Settlement Agreement. Accordingly, the  
18 parties intend that no presumption for or against the drafting party will apply in construing any part  
19 of this Settlement Agreement. The parties waive the benefit of Civil Code section 1654 as amended  
20 or corresponding provisions of any successor statute, which provide that in cases of uncertainty,  
21 language of a contract should be interpreted most strongly against the party that caused the  
22 uncertainty to exist.

23 **12. Independent Legal Advice.** Each of the parties represents, warrants, and agrees that it  
24 has received independent advice from its attorney(s) and/or representatives with respect to the  
25 advisability of executing this Settlement Agreement.

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

1           **14.    Binding.** This Settlement Agreement is binding on all heirs, assigns, and/or  
2 successors in interest.

3           **15.    Reliance.** Each of the parties represents, warrants, and agrees that in executing this  
4 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel.  
5 Each of the parties further represents, warrants, and agrees that in executing this Agreement it has  
6 placed no reliance on any statement, representation, or promise of any other party, or any other  
7 person or entity not expressly set forth herein, or upon the failure of any party or any other person or  
8 entity to make any statement, representation or disclosure of anything whatsoever. The parties have  
9 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to  
10 execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret,  
11 supplement, or contradict the terms of this Agreement.

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

18           **17.    Full Integration.** This Settlement Agreement is the final written expression and the  
19 complete and exclusive statement of all the agreements, conditions, promises, representations, and  
20 covenant between the parties with respect to the subject matter hereof, and supersedes all prior or  
21 contemporaneous agreements, negotiations, representations, understandings, and discussions  
22 between and among the parties, their respective representatives, and any other person or entity, with  
23 respect to the subject matter covered hereby.

24           **18.    Governing Law.** This Settlement Agreement will be governed by and construed in  
25 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court,  
26 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient  
27 forum to the maintenance of such action or proceeding in such court.

28 ///

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

4           **20.    Effect Upon Future Proceedings.** If Span Capital apply for any license, permit or  
5 qualification under the Commissioner's current or future jurisdiction, or are the subject of any future  
6 action by the Commissioner to enforce this Settlement Agreement, then the subject matter hereof  
7 shall be admitted for the purpose of such application(s) or enforcement proceedings(s).

8           **21.    Voluntary Agreement.** Span Capital enters into this Settlement Agreement  
9 voluntarily and without coercion and acknowledges that no promises, threats or assurances have  
10 been made by the Commissioner or any officer, or agent thereof, about this Settlement Agreement.  
11 The parties each represent and acknowledge that he, she or it is executing this Agreement completely  
12 voluntarily and without any duress or undue influence of any kind from any source.

13           **22.    Notice.** Any notice required under this Settlement Agreement be provided to each  
14 party at the following addresses:

15 To Span Capital LLC:           Span Capital LLC  
16   c/o John Farley, Principal  
17   34591 Calle Monte  
18   Dana Point, California 92624  
19   jfarley@spancapital.com

20 To the Commissioner:           Vanessa T. Lu, Counsel  
21   Department of Business Oversight  
22   320 West 4th Street, Suite 750  
23   Los Angeles, California 90013-2344  
24   Vanessa.Lu@dbo.ca.gov

25           **23.    Signatures.** A fax or electronic mail signature shall be deemed the same as an  
26 original signature.

27           **24.    Public Record.** Span Capital hereby acknowledges that this Settlement Agreement is  
28 and will be a matter of public record.

///

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

**25.** 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 Span Capital at jfarley@spancapital.com.

**26.** 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: 6/19/19 MANUEL P. ALVAREZ  
Commissioner of Business Oversight

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

Dated: 6/13/19 SPAN CAPITAL LLC

By \_\_\_\_\_  
JOHN FARLEY  
Principal