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Deputy Commissioner
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Senior Counsel
4 Department of Business Oversight
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5 Los Angeles, California 90013-2344
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7 Attorneys for Complainant

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

11	In the Matter of:)	OAH NO.: 2017040545
12)	
13	THE COMMISSIONER OF BUSINESS)	CRMLA LICENSE No.: 413-0382
14	OVERSIGHT,)	
15)	CFLA LICENSE No.: 603-H996
16	Complainant,)	
17)	SETTLEMENT AGREEMENT
18	v.)	
19)	
20	AMWEST FUNDING CORP.,)	
21)	
22	Respondent.)	
23)	

20 This Settlement Agreement (Agreement) is entered into between Respondent AmWest
21 Funding Corp. (AmWest) and Complainant the Commissioner of Business Oversight
22 (Commissioner), and is made with respect to the following facts:

23 **RECITALS**

24 A. AmWest is a corporation in good standing, duly formed and existing pursuant to the
25 laws of the State of California, and authorized to conduct business in the State of California.

26 B. AmWest is a residential mortgage lender and loan servicer licensed by the
27 Commissioner pursuant to the California Residential Mortgage Lending Act (CRMLA) (Fin. Code
28 §50000 et seq.). AmWest has its principal place of business located at Six Pointe Drive, Suite 150,

1 Brea, California 92821. AmWest currently has one branch office location under its CRMLA license
2 located in Georgia. AmWest employs mortgage loan originators in its CRMLA business.

3 C. AmWest is also licensed by the Commissioner as a finance lender and broker
4 pursuant to the California Finance Lenders Law (CFLL) (Fin. Code §22000 et seq.). AmWest has
5 its principal place of business under the CFLL also located at Six Pointe Drive, Suite 150, Brea,
6 California 92821.

7 D. The Department of Business Oversight (Department), through the Commissioner, has
8 jurisdiction over the licensing and regulation of persons and entities engaged in the business of
9 lending and/or servicing pursuant to the CRMLA and lending and/or brokering pursuant to the
10 CFLL, including mortgage loan originators.

11 E. On February 3, 2017, AmWest was personally served by the Commissioner with a
12 Notice of Intention to Issue Orders Suspending Residential Mortgage Lender and/or /Servicer
13 Licenses and Finance Lender and/or Broker Licenses and to Levy Penalties, Accusation and
14 accompanying documents dated January 30, 2017. AmWest has filed a Notice of Defense with the
15 Commissioner regarding the Accusation.

16 F. On February 3, 2017, AmWest was also personally served by the Commissioner with
17 an Order to Discontinue Violations Pursuant to Financial Code Section 50321 and Statement of
18 Facts In Support of Order to Discontinue Violations Pursuant to Financial Code Section 50321 and
19 Notice of Intent to Make Order Final dated January 30, 2017 (Order to Discontinue Violations) and
20 an Order to Refund Excessive Per Diem Interest Charges Pursuant to Financial Code Section 50504
21 dated January 30, 2017 (Order to Refund)(collectively Orders). AmWest has filed requests for
22 hearing with the Commissioner regarding the Orders.

23 G. The Accusation and Orders are currently scheduled for trial before the Los Angeles
24 Office of Administrative Hearings for November 13 and 14, 2017.

25 H. The Commissioner hereby acknowledges that AmWest has submitted information
26 demonstrating that it has adopted policies and procedures addressing the issues described in the
27 Accusation and Orders.
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1 I. It is the intention and desire of the parties to resolve this matter without the necessity
2 of a hearing and/or other litigation.

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

5 **TERMS AND CONDITIONS**

6 1. Purpose. This Agreement is entered into for the purpose of judicial economy and
7 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

8 2. Waiver of Hearing Rights. AmWest acknowledges its right to an administrative
9 hearing under the CRMLA and/or the CFLL in connection with the Accusation and/or Orders and
10 hereby waives that right to a hearing, and to any reconsideration, appeal, or other rights which may
11 be afforded pursuant to the CRMLA, the CFLL, the California Administrative Procedure Act, the
12 California Code of Civil Procedure, or any other provision of law in connection with these matters.

13 3. Final Orders. AmWest hereby agrees that the Orders described in Paragraph F above
14 are hereby deemed final orders.

15 4. Administrative Penalty. AmWest agrees to pay to the Commissioner the sum of
16 \$339,000.00 in administrative penalties with an initial payment of \$150,000.00 to be paid within 30
17 days of the effective date of this Agreement as that date is defined in Paragraph 23, followed by six
18 monthly installments of \$31,500.00. Each subsequent monthly payment shall be due 30 days after
19 the due date of the previous payment. The payments shall be made by cashiers' check payable to the
20 Department of Business Oversight and shall be sent to the Department, attention, Accounting-
21 Litigation, 1515 K Street, Suite 200, Sacramento, CA 95814-4052.

22 5. July 1, 2015 through July 31, 2017 CPA Audit. AmWest must conduct an audit, by
23 and through an independent certified public accountant, in accordance with procedures agreed upon
24 by the parties, of per diem interest charges for all California loans originated from July 1, 2015
25 through July 31, 2017 where disbursement occurred on a Monday or a day following a bank holiday.
26 AmWest, by and through its independent certified public accountant, will submit to the Department
27 the results of the audit (audit report) within 90 days of the effective date of this Agreement as that
28 date is defined in Paragraph 23. The audit report must be submitted in Microsoft Excel format that

1 contains the total number of qualifying loans made during this period and the number of loans with
2 per diem overcharges, and for each loan, the report shall list the borrower loan number, name,
3 address, loan amount, loan date, interest rate, disbursement date, date per diem interest commenced,
4 per diem charged, daily per diem interest amount, number of days per diem interest charged, number
5 of days per diem interest overcharged, overcharge amount (if applicable), date of refund (if
6 applicable), and proof of refund (if applicable). AmWest further agrees that it shall pay an
7 administrative penalty to the Commissioner, upon submission of the audit report, equal to \$200.00
8 for each per diem interest overcharge discovered during the audit unless such overcharge was
9 refunded to the borrower within 30 days of loan funding.

10 6. Quarterly Audits. AmWest also agrees to conduct quarterly audits, by and through an
11 independent certified public accountant, in accordance with procedures agreed upon by the parties,
12 of per diem interest charges for all California loans where disbursement occurred on a Monday or a
13 day following a bank holiday for a period of one year commencing on August 1, 2017. Each
14 quarterly audit must cover all qualifying California loans originated during that quarter. AmWest, by
15 and through its independent certified public accountant, will submit to the Department the results of
16 each quarterly audit (quarterly audit report) within 60 days of the completion of each quarter. The
17 quarterly audit report would contain the same or similar fields as in the audit report discussed in
18 paragraph 5 above. AmWest further agrees that it shall pay an administrative penalty to the
19 Commissioner, upon submission of the quarterly audit report(s), equal to \$200.00 for each per diem
20 interest overcharge discovered during the quarterly audit(s) unless such overcharge was refunded to
21 the borrower within 30 days of loan funding.

22 7. Payment of Refunds: Borrower refunds made pursuant to Paragraphs 5 and 6 shall
23 include interest at the rate of 10 percent per annum from the date of overcharge, and shall be mailed
24 to the last known address of each borrower prior to submission of the applicable report to the
25 Commissioner. Borrower refunds made pursuant to this Agreement shall be accompanied by a cover
26 letter that states: "As a result of an examination by the Department of Business Oversight, a refund
27 or adjustment in the amount of \$XXXX is being made for your benefit. If you have any questions
28 concerning this refund, please contact (lender) at (800) XXX-XXXX."

1 8. Outstanding Refunds. AmWest shall be responsible for ensuring that any outstanding
2 refund payment owed to any borrower identified in the audit and quarterly audit reports described in
3 Paragraphs 5 and 6 above shall be escheated to the State of California pursuant to the provisions of
4 the California Unclaimed Property Law (Code Civ. Proc., § 1500 et seq.).

5 9. NMLS Renewal. The Commissioner hereby agrees to renew AmWest in the National
6 Mortgage Licensing System through 2017 within five business days of the effective date of this
7 Agreement as that date is defined in Paragraph 23.

8 10. Effect of Agreement on Licenses. In consideration of the information provided to the
9 Commissioner by AmWest as described in Paragraph H above and AMWest’s agreement to the
10 entry of the finality of the Orders and payment of penalties as provided for in Paragraphs 3 and 4
11 above, the Commissioner hereby agrees that, except as otherwise set forth in this Agreement, she
12 shall not suspend and/or revoke the residential mortgage lender and loan servicer licenses or finance
13 lender and/or broker licenses of AmWest. Accordingly, this Agreement does not affect the licensing
14 status of AmWest.

15 11. Information Willfully Withheld. This Agreement may be revoked and the
16 Commissioner may pursue any and all remedies available under law against AmWest, if the
17 Commissioner later finds out that AmWest knowingly or willfully withheld information used and
18 relied upon in this Agreement.

19 12. Failure to Comply with Agreement. AmWest agrees that if it fails to comply with the
20 terms of this Agreement within five business days after written notice of demand, the Commissioner
21 may, in addition to all other available remedies under the CRMLA and/or CFLL, summarily suspend
22 the CRMLA and/or CFLL licenses of AmWest until AmWest is in compliance. AmWest waives
23 any notice and hearing rights to contest such summary suspensions which may be afforded under the
24 CRMLA, the CFLL, the California Administrative Procedure Act, the California Code of Civil
25 Procedure, or any other provision of law in connection therewith.

26 13. Binding. This Agreement is binding on all heirs, assigns and/or successors in interest.
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1 14. Third Party Actions. This Agreement does not create any private rights or remedies
2 against AmWest, create any liability for AmWest or limit defenses of AmWest for any person or
3 entity not a party to this Agreement.

4 15. Full and Final Settlement. The parties hereby acknowledge and agree that this
5 Agreement is intended to constitute a full, final and complete resolution of the Accusation and
6 Orders and that no further proceedings or actions will be brought by the Commissioner in connection
7 with these matters either under the CRMLA, CFLL, or any other provision of law, to include per
8 diem interest charges on all California loans originated through June 30, 2015, excepting therefrom
9 any proceeding or action if such proceeding or action is based upon facts not presently known to the
10 Commissioner and which were actively concealed from the Commissioner by AmWest.

11 16. Commissioner’s Duties. The parties further acknowledge and agree that nothing
12 contained in this Agreement shall operate to limit the Commissioner's ability to assist any other
13 agency, (city, county, state or federal) with any prosecution, administrative, civil or criminal,
14 brought by any such agency against AmWest or any other person based upon any of the activities
15 alleged in these matters or otherwise.

16 17. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
17 has received independent advice from its attorney(s) and/or representatives with respect to the
18 advisability of executing this Agreement.

19 18. Reliance. Each of the parties represents, warrants, and agrees that in executing this
20 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel
21 and/or representative. Each of the parties further represents, warrants, and agrees that in executing
22 this Agreement it has placed no reliance on any statement, representation, or promise of any other
23 party, or any other person or entity not expressly set forth herein, or upon the failure of any party or
24 any other person or entity to make any statement, representation or disclosure of anything
25 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
26 any way fraudulently induced to execute this Agreement; and (2) to preclude the introduction of
27 parol evidence to vary, interpret, supplement, or contradict the terms of this Agreement.
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1 19. Full Integration. This Agreement 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 with respect to the subject matter hereof, and supersedes all prior or
4 contemporaneous agreements, negotiations, representations, understandings, and discussions
5 between and among the parties, their respective representatives, and any other person or entity, with
6 respect to the subject matter covered hereby.

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

14 21. Waiver, Modification, and Qualified Integration. The waiver of any provision of this
15 Agreement shall not operate to waive any other provision set forth herein. No waiver, amendment,
16 or modification of this Agreement shall be valid or binding to any extent unless it is in writing and
17 signed by all of the parties affected by it.

18 22. Headings and Governing Law. The headings to the paragraphs of this Agreement are
19 inserted for convenience only and will not be deemed a part hereof or affect the construction or
20 interpretation of the provisions hereof. This Agreement shall be construed and enforced in
21 accordance with and governed by California law.

22 23. Effective Date. This Agreement shall not become effective until signed by all parties
23 and a fully executed copy is delivered by counsel for the Commissioner via email to counsel for
24 AmWest.

25 24. Counterparts. This Agreement may be executed in one or more separate counterparts,
26 each of which when so executed, shall be deemed an original. Such counterparts shall together
27 constitute a single document.
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25. Notice. Any notice/report required under this Agreement shall be addressed as follows:

To AmWest Funding Corp.: Jonathan D. Jaffe, Esq.
Mayer Brown LLP
Two Palo Alto Square, Suite 300
3000 El Camino Real
Palo Alto, California 94306-2112
jjaffe@mayerbrown.com

To the Commissioner: Judy L. Hartley, Esq.
Senior Counsel
Department of Business Oversight
320 W. 4th Street, Suite 750
Los Angeles, California 90013-2344
judy.hartley@dbo.ca.gov

26. Public Record. AmWest acknowledges that this Agreement is a public record.

27. Settlement Authority. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Agreement.

Dated: 10/10/17 JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 10/9/17 AMWEST FUNDING CORP.

By _____
RYAN KIM, President

APPROVED AS TO FORM:

MAYER BROWN LLP

By _____
JONATHAN D. JAFFE, ESQ. attorney for
AMWEST FUNDING CORP.

Commissioner of Business Oversight

By _____
JUDY L. HARTLEY, ESQ., Senior Counsel