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

9 In the Matter of the Accusation of
10 THE COMMISSIONER OF BUSINESS
OVERSIGHT OF THE STATE OF
11 CALIFORNIA,

File No.: 413-1117

SETTLEMENT AGREEMENT

12 Complainant,

13 vs.
14

15 BROKER SOLUTIONS, INC.

16 Respondent.

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18 This Settlement Agreement is entered into between Broker Solutions, Inc. also doing
19 business as New American Funding (hereafter “Broker Solutions” or “Respondent”) and the
20 Commissioner of Business Oversight of the State of California (“Commissioner” or “Complainant”) and is made with respect to the following facts:
21

22 **RECITALS**

23 A. Broker Solutions, also doing business as New American Funding, is a California
24 corporation in good standing, duly formed, and existing pursuant to the laws of the State of
25 California with its principal place of business at 14511 Myford Road, Suite 100, Tustin, California,
26 92780.

27 B. Respondent is a residential mortgage lender and servicer licensed by the California
28 Department of Business Oversight (“Department”) pursuant to the California Residential Mortgage

1 Act (“CRMLA”) (Fin. Code §§ 50000 et seq.). Under its CRMLA license (#413-1117) Respondent
2 currently employs mortgage loan originators in its CRMLA business.

3 C. The Department, through the Commissioner, has jurisdiction over the licensing and
4 regulation of persons and entities engaged in the business of lending and/or servicing residential
5 mortgage loans pursuant to the CRMLA, including mortgage loan originators.

6 D. In an exam commencing July 16, 2012, it was noted that 46% of funded loan files
7 reviewed showed per diem interest overcharges. Due to the high percentage of overcharges noted in
8 the examination, Respondent was requested to review all California loans originated from March 29,
9 2011 to January 16, 2013. Respondent submitted to the Department a self-audit report that identified
10 six hundred seventy eight (678) loans overcharged out of a sampling of two thousand six hundred
11 thirty two (2632) for a total amount of \$49,093.69. The Department selected one hundred (100) files
12 included in Respondent’s self-audit report to validate the report’s accuracy. The review of the
13 additional loan files revealed per diem interest overcharges of fifty-six (56) loans for a total amount
14 of \$6005.63. The self-audit report of Respondent did not identify the additional per diem interest
15 overcharges and therefore Respondent did not issue refunds to borrowers, as instructed. A
16 comparison of the interest computed from the starting date per HUD-1 Statement and Disbursement
17 date from the disbursement documentation, showed that Respondent commenced charging
18 borrowers per diem interest several days in excess of the one day grace period, prior to the
19 disbursement of loan proceeds.

20 E. On November 20, 2014, the Commissioner served Respondent through certified mail
21 the following documents: Notice of Intent to Issue Orders and Accusation in Support of Notice of
22 Intention to Issue Orders Suspending Residential Mortgage Lender and Servicer License and
23 Imposing Penalties; Order to Discontinue Violations Pursuant to Financial Code section 50321;
24 Order to Refund Excessive Per Diem Interest Charges Pursuant to Financial Code section 50504;
25 and Statement of Facts in Support of Order to Discontinue Violations Pursuant to Financial Code
26 section 50321 and Notice of Intent to Make Order Final. All of the above documents were dated
27 November 17, 2014 and the accompanying documents are collectively referred to as the
28 “Administrative Action.”

1 F. On November 21, 2014, Respondent timely submitted to the Commissioner a Notice
2 of Defense, requesting a hearing regarding the Administrative Action.

3 G. It is the intention and desire of the parties to resolve this matter without the necessity
4 of a hearing and/or other litigation.

5 H. Respondent enters into this Settlement Agreement without admitting or denying any
6 of the findings contained in the Administrative Action.

7 I. The Commissioner finds that this action is appropriate, in the public interest, and
8 consistent with the purposes fairly intended by the policy and provisions of this law.

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

11 **TERMS AND CONDITIONS**

12
13 1. Purpose. The purpose of this Settlement Agreement is to resolve the charges alleged in
14 the Administrative Action in a manner that avoids the expense of a hearing and possible further court
15 proceedings, is in the public interest, protects consumers, and is consistent with the purposes,
16 policies and provisions of the CRMLA.

17 2. Finality of Order. Respondent hereby agrees to comply with the Commissioner's Orders
18 that were served on Respondent by certified mail on November 18, 2014, and further stipulates that
19 the Commissioner's Orders are hereby deemed final. The first Order was an Order to Refund
20 Excessive Per Diem Interest Charges Pursuant to Financial Code Section 50504; and the second
21 Order was an Order to Discontinue Violations Pursuant to California Financial Code Section 50321.

22 3. Waiver of Hearing Rights. Respondent acknowledges that the Commissioner is ready
23 willing and able to proceed to an administrative hearing on the charges contained in the
24 Administrative Action, and Respondent hereby waives the right to a hearing, and to any
25 reconsideration, appeal, or other right to review which may be afforded pursuant to the CRMLA, the
26 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
27 provision of law; and by waiving such rights, Respondent effectively withdraws its hearing request
28 and consents to the Settlement Agreement becoming final.

1 4. Third Party Auditor. Respondent agrees to engage (at its own expense) a certified public
2 accountant(s) or certified accounting firm, or compliance auditing firm approved by the Department
3 (“Third Party Auditor”), subject to the approval of the Department, which approval shall not be
4 unreasonably withheld. The Third Party Auditor shall conduct an internal audit of Respondent’s
5 loan information in order to provide the report set forth in Paragraph 5 of this Settlement Agreement,
6 as follows:

7 a. The first audit report shall cover all California loans originated and funded by
8 Respondent from March 29, 2011 to January 16, 2013, and shall be submitted to the Department no
9 later than 90 calendar days after the execution of this Settlement Agreement.

10 b. The second audit report shall cover all California loans originated and funded by
11 Respondent from January 17, 2013 to November 30, 2014 and shall be submitted to the Department
12 no later than December 31, 2015.

13 c. The third audit report shall cover all California loans originated and funded by
14 Respondent from December 1, 2014 through February 28, 2015 and shall be submitted to the
15 Department no later than March 31, 2016.

16 d. The fourth audit report shall cover all California loans from March 1, 2015 to May
17 31, 2015 and shall be submitted to the Department no later than June 30, 2016.

18 e. The fifth audit report shall cover all California loans originated and funded by
19 Respondent from June 1, 2015 to August 31, 2015 and shall be submitted to the Department no later
20 than September 30, 2016.

21 5. Third Party Auditor Reports. Each report of the Third Party Auditor shall include, at a
22 minimum, the following: (i) the total number of loans originated and funded by Respondent during
23 the periods specified in Paragraph 4 above; (ii) the number of loans with per diem interest charges in
24 excess of the amount permitted by Financial Code section 50204(o) and Civil Code section 2948.5;
25 and (iii) for each and every loan, the borrower’s loan number, name, address, loan amount, loan date,
26 per diem interest charged, per diem interest that should have been charged under Financial Code
27 section 50504(o) and Civil Code section 2948.5, overcharge amount (if any), date of refund (if
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1 applicable), and evidence of refund (if applicable) in the form of a check and accompanying
2 correspondence mailed to the borrower pursuant to Paragraph 6 below.

3 6. Payment of Refunds. Respondent agrees to refund any amount collected in excess of
4 amounts permitted by the CRMLA, plus interest at the rate of 10 percent per annum (10%) as
5 follows, provided however that Respondent shall not be required to make any identified refund that
6 is less than one dollar (\$1.00):

7 (a) Refunds shall be mailed to all of the 678 overcharged borrowers identified in
8 Respondent’s self-audit of March 29, 2011 through January 16, 2013, including without limitation
9 any borrowers for whom documentation was missing or incomplete, no later than thirty (30)
10 business days after the effective date of this Settlement Agreement, as such date is defined in
11 Paragraph 26;

12 (b) For additional overcharges identified pursuant to the Third Party Auditor’s reports
13 described in Paragraph 4, subdivisions (a) through (e) above, refunds shall be sent by certified mail
14 to the last known address of each borrower no later than thirty (30) business days following the
15 respective due date for each report.

16 7. Outstanding Refunds. On December 31, 2015, June 30, 2016, and September 30, 2016,
17 Respondent shall notify the Department of any refund payments that have been returned or remain
18 outstanding for loans originated during the period of March 29, 2011 through the funding date
19 covered by each respective report. Payment owed to any borrower that cannot be reasonably located
20 shall be escheated by Respondent to the State of California pursuant to the provisions of the
21 California Unclaimed Property Law (Code Civ. Proc., §§ 1500 et seq.).

22 8. Payment of Penalties. Respondent agrees to pay a penalty of three hundred sixty seven
23 thousand dollars(\$367,000 in consideration for resolving known violations of California Financial
24 Code section 50204(o) and California Civil Code section 2948.5 (per diem interest overcharges) and
25 further resolving any subsequently discovered violations that are to be fully refunded in compliance
26 with Paragraph 6 above. The amount of \$183,500 shall be due within (20) calendar days of the
27 effective date of this Settlement Agreement, as such date is defined in Paragraph 26, made payable
28 to the Department of Business Oversight, sent to the attention of: Douglas M. Gooding, Assistant

1 Chief Counsel, Enforcement Division, at the California Department of Business Oversight, One
2 Sansome Street, Suite 600, San Francisco, CA 94104-4428. The remaining amount of \$183,500
3 shall be due and payable in the same manner within 90 days of the effective date of this Settlement
4 Agreement.

5 9. Declaration of Policies and Procedures. Respondent shall submit to the Department,
6 contemporaneously upon execution of this Settlement Agreement a declaration, under penalty of
7 perjury, from an officer with personal knowledge of Respondent's policies and procedures that sets
8 forth all policies and procedures implemented by Respondent to correct and prevent the violations
9 set forth in the Administrative Action and ensure compliance with the CRMLA. Respondent agrees
10 to make any changes or corrections to such policy within thirty (30) business days following written
11 request by the Department.

12 10. Effect of Settlement Agreement on License. In consideration of the information provided
13 to the Commissioner by Respondent as described in the paragraphs above and Respondent's
14 payment of penalties as provided herein, the Commissioner hereby agrees that except as set forth in
15 this Settlement Agreement, she shall not suspend the residential mortgage lender or servicer license
16 of Respondent or take any further action based on the violations of the provisions cited in the
17 Administrative Action for the period of March 29, 2011 through the date of execution of this
18 Settlement Agreement, as such date is described in Paragraph 26. Accordingly, this Settlement
19 Agreement, which resolves the Administrative Action, does not affect the licensing status of
20 Respondent.

21 11. Failure to File Timely or Complete Reports Concerning Audits or Refunds. Respondent
22 agrees that if it fails to meet any deadline or any requirement in Paragraphs 4 or 5 (regarding the
23 independent auditor's internal review) or Paragraph 7 (regarding outstanding refunds), Respondent
24 shall immediately notify the Department of such failure and cooperate with the Department to cause
25 such failure to be rectified as soon as reasonably practicable, but no later than thirty (30) calendar
26 days after notice is provided by Respondent. Failure to abide by these terms shall result in the
27 revocation of Respondent's CRMLA license number 413-1117. Respondent hereby waives any
28 notice and hearing rights to contest the revocation resulting from failure to comply with Paragraphs

1 4, 5, and 7 above that may be afforded under the Financial Code, the Administrative Procedure Act,
2 the Code of Civil Procedure, or any other legal provisions.

3 12. Failure to Make Timely or Sufficient Refunds. Respondent agrees that if it fails to meet
4 any deadline or any requirement in Paragraph 6 above (regarding payment of funds), other than
5 inadvertent and isolated errors that are promptly corrected by Respondent within thirty (30) calendar
6 days, Respondent’s CRMLA license number 413-1117 shall be revoked. Respondent hereby waives
7 any notice and hearing right to contest the revocation result from failure to comply with Paragraph 6
8 above which may be afforded under the Financial Code, the Administrative Procedure Act, the Code
9 of Civil Procedure, or any other legal provisions.

10 13. Failure to Make Payment of Penalties. Respondent agrees that if it fails to meet the
11 deadline for payment of penalties set forth in Paragraph 8, Respondent’s CRMLA license number
12 413-1117 shall be revoked. Respondent hereby waives any notice and hearing right to contest the
13 revocation result from failure to comply with Paragraph 8 above which may be afforded under the
14 Financial Code, the Administrative Procedure Act, the Code of Civil Procedure, or any other legal
15 provisions.

16 14. Full and Final Settlement. The parties hereby acknowledge and agree that this
17 Settlement Agreement is intended to constitute a full, final, and complete resolution of the
18 Administrative Action and that no further proceedings or actions will be brought by the
19 Commissioner in connection with these matters either under the CRMLA, or any other provision of
20 law, excepting therefrom any proceeding or action if such proceeding or action is based upon
21 discovery of new violations of the CRMLA which do not form the basis for this Settlement
22 Agreement and which are not related to violations of either California Civil Code section 2948.5 or
23 California Financial Code section 50204(0), or which were knowingly concealed from the
24 Commissioner by Respondent.

25 15. Binding. This Settlement Agreement is binding on all heirs, assigns and/or successors in
26 interest.

27 16. Commissioner’s Duties. The parties further acknowledge and agree that nothing
28 contained in this Settlement Agreement shall operate to limit the Commissioner’s ability to assist

1 any other agency, (city, county, state or federal) with any prosecution, administrative, civil or
2 criminal, brought by any such agency against Respondent or any other person based upon any of the
3 activities alleged in these matters or otherwise.

4 17. Third Party Actions. It is the intent and understanding between the parties that this
5 Settlement Agreement does not create any private rights or remedies against Respondent, create any
6 liability for Respondent or limit defenses of Respondent for any person or entity not a party to this
7 Settlement Agreement.

8 18. Future Actions by Commissioner. This Settlement Agreement may be revoked and the
9 Commissioner may pursue any and all remedies available under law against Respondent if the
10 Commissioner later discovers that Respondent knowingly or willfully withheld information used and
11 relied upon in this Settlement Agreement. Further, Respondent agrees that this Settlement
12 Agreement does not resolve any penalties that may be assessed by the Commissioner upon discovery
13 of new and further violations of the CRMLA which do not form the basis for the current
14 Administrative Action.

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

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

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

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

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

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

20 25. Voluntary Agreement. Respondent enters into this Settlement Agreement voluntarily
21 and without coercion and acknowledges that no promises, threats or assurances have been made by
22 the Commissioner or any officer, or agent thereof, about this Settlement Agreement.

23 26. Effective Date. This Settlement Agreement shall not become effective until signed by
24 all parties and delivered by the Commissioner's counsel to Respondent's counsel at
25 Ken.Block@nafinc.com.

26 27. Public Record. Respondent acknowledges that this Settlement Agreement is a public
27 record.
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28. Authority to Execute. Each signator hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement.

Dated: 7/21/15

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 7/16/15

BROKER SOLUTIONS, INC., ALSO DOING
BUSINESS AS NEW AMERICAN FUNDING

By _____
[_____]
TITLE

APPROVED AS TO FORM AND CONTENT:

Jonathan D. Jaffe
Counsel for Broker Solutions, Inc.
Also doing business as New American Funding