1	MARY ANN SMITH Deputy Commissioner		
2	DOUGLAS GOODING Assistant Chief Counsel		
3	JOHN R. DREWS (CA BAR NO. 69595) Corporations Counsel		
4	One Sansome Street, Suite 600 San Francisco, California 94104		
5	Telephone: (415) 972-8570 Facsimile: (415) 972-8550		
6	Attorneys for Complainant		
7	BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT OF THE STATE OF CALIFORNIA		
8			
9			
10	In the Matter of the Accusation of) File No.: 413-1117	
11	THE COMMISSIONER OF BUSINESS)	
12	OVERSIGHT OF THE STATE OF CALIFORNIA,) ACCUSATION IN SUPPORT OF NOTICE OF) INTENT TO ISSUE ORDERS SUSPENDING	
13	Complainant,) LICENSE AND IMPOSING PENALTIES	
14	Complaniant,)	
15	vs. NEW AMERICAN FUNDING)	
16	PERFORMANCE HOME LOANS d.b.a.)	
17	BROKER SOLUTIONS INC.,)	
18	Respondent.)	
19		_/	
20			
21			
22	The Complainant is informed and believes and based upon such information and belief,		
23	I 1. New American Funding Performance Home Loans d.b.a. Broker Solutions Inc. ("Broker		
24			
25			
26		nortgage lender licensed since March 29, 2011 by	
27	the Commissioner of Business Oversight ("Commissioner" or "Complainant") pursuant to the California Residential Mortgage Lending Act ("CRMLA") (California Financial Code sections		
28			
		1	

50000 et seq.). Broker Solutions has its principal place of business at 14511 Myford Road, Suite 100, Tustin, CA 92780. Broker Solutions employs mortgage loan originators.

2. On or about July 16, 2012, the Department of Business Oversight ("Department") commenced a regulatory examination of the books and records of Respondent under the CRMLA ("2012 regulatory examination"). The 2012 regulatory examination disclosed that 46% of the funded loan files reviewed had per diem interest overcharges. Respondent charged the borrowers per diem interest in excess of one day prior to the date that the loan proceeds were disbursed from escrow, in violation of California Financial Code ("FC") section 50204, subdivision (o).

Ш

- 3. Due to the high percentage of overcharges noted in the examination, Broker Solutions was requested to review all California loans originated from March 20, 2011 (the date their license was approved) to Sept. 9, 2014 to determine and refund the amount of overcharges collected from borrowers. California Financial Code section 50124(a)(3) requires a licensee to file with the commissioner any report required under law or by rule or order of the commissioner. Broker Solutions submitted to the Department a self-audit report that identified seven hundred and sixty-six (766) loans that contained overcharges out of the two thousand six hundred and twenty-three (2623) files examined. The overcharges identified in this self-audit totaled \$57,474.98. The Department concluded that this self-audit needed to be tested for accuracy.
- 4. The Department selected 100 files at random that had been included in the self-audit conducted by Broker Solutions. Out of these 100 files the Department's review revealed that per diem interest overcharges had been incurred on 59 of the 100 loans reviewed. The 59 files with overcharges were completely missed in the self-audit. The total amount of these interest overcharges was \$6005.73. The range of per diem overcharges found in this review of the 100 files ranged between \$39.98 and \$186.37. The range of days that interest was overcharged was between two and six days.

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

1

2

3

5. Broker Solutions overcharged the per diem interest and/or understated the per diem interest credit. The company's per diem interest self-audit report failed to identify all per diem interest overcharges and failed to refund the overcharges in violation of California Financial Code section 50204 (o), and Civil Code section 2948.5.

IV

- 6. California Financial Code section 50327 provides in pertinent part:
 - (a) The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license, if the commissioner finds that:
 (1) the licensee has violated any provision of this division or rule or order of the commissioner thereunder; or (2) any fact or condition exists that, if it had existed at the time of the original application for license, reasonably

would have warranted the commissioner in refusing to issue the license

- originally.
- 7. California Financial Code section 50513 provides in pertinent part:
 - (a) The commissioner may do one or more of the following:

. . .

(4) Impose fines on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).

. . .

- (b) The commissioner may impose a civil penalty on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.
- (c) The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).
- (d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

	6
111	7
31S12	8
5	9
11033	10
Dusi	11
101	12
ШСП	13
paru	14
7	15
- IIIa	16
10111	17
, Ca	18
	19
216	20
	21
	22
	23
	24
	25
	26
	27
	28

1

2

3

4

5

V

- 8. The Commissioner finds that, by reason of the foregoing, New American Funding Home Loans dba Broker Solutions Inc. has violated Financial Code section 50204 of the CRMLA. Therefore, grounds exist to:
- (1) suspend the CRMLA residential mortgage lender license of New American Funding Home Loans dba Broker Solutions Inc. pursuant to Financial Code section 50327, and
- (2) levy penalties against New American Funding Home Loans dba Broker Solutions Inc. pursuant to Financial Code section 50513(b).

WHEREFORE, IT IS PRAYED that:

- 1. Pursuant to Financial Code section 50327, the residential mortgage lender license of New American Funding Performance Home Loans dba Broker Solutions Inc. be suspended for up to 12 months; and
- 2. Pursuant to Financial Code section 50513(b), penalties be levied against New American Funding Performance Home Loans dba Broker Solutions for at least 825 violations of Financial Code section 50204(o), whereby Broker Solutions Inc. overcharged borrowers per diem interest during the period from March 29, 2011 to September 9, 2014 in an amount of at least \$1,000 per violation, for a total amount of penalties of at least \$825,000, or according to proof.

Dated: November 17, 2014 San Francisco, California

JAN LYNN OWEN
Commissioner of Business Oversight

By______
John R. Drews
Corporations Counsel
Enforcement Division