

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, CA 94104
5 Telephone: (415) 972-8570
Facsimile: (415) 972-8550
6 Attorneys for Complainant

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

11 In the Matter of)	File No.: 413-1117
12 THE COMMISSIONER OF BUSINESS)	
13 OVERSIGHT OF THE STATE OF)	STATEMENT OF FACTS IN SUPPORT OF
14 CALIFORNIA,)	ORDER TO DISCONTINUE VIOLATIONS
15 Complainant,)	PURSUANT TO CALIFORNIA FINANCIAL
16 vs.)	CODE SECTION 50321 AND NOTICE OF
17 NEW AMERICAN FUNDING)	INTENT TO MAKE ORDER FINAL
18 PERFORMANCE HOME LOANS dba)	
19 BROKER SOLUTIONS INC.)	
Respondent.)	

20
21 The Complainant is informed and believes and based upon such information and belief,
22 alleges and charges the Respondent as follows:

23 1. Broker Solutions, Inc. (“Broker Solutions” or “Respondent”) is a residential mortgage
24 lender licensed since March 29, 2011 by the Commissioner of Business Oversight (“Commissioner”
25 or “Complainant”) pursuant to the California Residential Mortgage Lending Act (CMRLA”
26 (California Financial Code sections 50000 et seq.). (As of July 1, 2013, the Department of
27 Corporations and the Department of Financial Institutions merged to form the Department of
28 Business Oversight or “the Department”.) Broker Solutions is a dba of New American Funding

1 Performance Home Loans at 14511 Myford Road, Suite 100, Tustin, CA 92780. The license
2 number of Broker Solutions is 413-1117. Broker Solutions employs mortgage loan originators.

3 2. On or about July 16, 2012, the Department commenced a regulatory examination of
4 the books and records of Respondent under the CRMLA (“2012 regulatory examination”). The
5 2012 regulatory examination disclosed that 46% of the funded loan files reviewed had per diem
6 interest overcharges. Respondent charged the borrowers per diem interest in excess of one day prior
7 to the date that the loan proceeds were disbursed from escrow, in violation of California Financial
8 Code (“FC”) section 50204, subdivision (o).

9 3. Due to the high percentage of overcharges noted in the examination, Broker Solutions
10 was requested to review all California loans originated from March 29, 2011 (the date their license
11 was approved) to the date of the request to determine and refund the amount of overcharges
12 collected from borrowers. Broker Solutions submitted to the Department a self-audit report that
13 identified seven hundred and sixty-six (766) loans that contained overcharges out of two thousand
14 six hundred and twenty-three (2623) files examined. Broker Solutions failed to issue refunds to
15 borrowers as instructed by the Department. The overcharges identified in this self-audit totaled
16 \$57,474.98. The Department concluded that this self-audit needed to be tested for accuracy.

17 4. The Department selected 100 files at random that had been included in the self-audit
18 conducted by Broker Solutions. Out of these 100 files it was revealed that per diem interest
19 overcharges had been incurred on 59 of the 100 loans reviewed. The total amount of these interest
20 charges was \$6005.73 The range of per diem overcharges found in this review of the 100 files
21 ranged between \$39.98 and \$186.37. The range of days that interest was overcharged was between
22 two and six days.

23 By reason of the foregoing, Respondent has violated FC section 50204, subdivision (o).

24 California Financial Code section 50321 provides in pertinent part:

25 If, after investigation, the commissioner has reasonable grounds to believe
26 that any licensee has violated its articles of incorporation or any law or
27 rule binding upon it, the commissioner shall, by written order addressed to
28 the licensee, direct the discontinuance of the violation. The order shall be
effective immediately, but shall not become final except in accordance
with the provisions of Section 50323.

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

California Financial Code section 50323 provides:

(a) No order issued pursuant to Section 50321 or 50322 may become final except after notice to the affected licensee of the commissioner's intention to make the order final and of the reasons for the finding. The commissioner shall also notify the licensee that upon receiving a request the matter will be set for hearing to commence within 15 business days after receipt. The licensee may consent to have the hearing commence at a later date. If no hearing is requested within 30 days after the mailing or service of the required notice, and none is ordered by the commissioner, the order may become final without hearing and the licensee shall immediately discontinue the practices named in the order. If a hearing is requested or ordered, it shall be held in accordance with the provisions of the Administrative Procedure Act (Chapter 5 (commencing with [Section 11500](#)) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all of the powers granted under that act. If, upon the hearing, it appears to the commissioner that the licensee is conducting business in an unsafe and injurious manner or is violating its articles of incorporation or any law of this state, or any rule binding upon it, the commissioner shall make the order of discontinuance final and the licensee shall immediately discontinue the practices named in the order.

(b) The licensee has 10 days after an order is made final to commence an action to restrain enforcement of the order. If the enforcement of the order is not enjoined within 10 days by the court in which the action is brought, the licensee shall comply with the order.

WHEREFORE, good cause showing, the Commissioner is issuing an Order to Discontinue Violations Pursuant to Financial Code section 50321 and notifying New American Funding Performance Home Loans dba Broker Solutions Inc. of her intention to make the order final.

Dated: November 17, 2014
San Francisco, California

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
John R. Drews
Corporations Counsel
Enforcement Division