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

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

File No.: 413-1117

SETTLEMENT AGREEMENT

14 Complainant,

15 vs.

16 CASTLE & COOKE MORTGAGE, LLC

17 Respondent
18

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20 This Settlement Agreement is entered into between Castle & Cooke Mortgage, LLC, (“Castle
21 & Cooke” or “Respondent”) and the Commissioner of Business Oversight of the State of California
22 (“Commissioner” or “Complainant”) and is made with respect to the following facts:

23 **RECITALS**

24 A. Castle & Cooke is a Delaware limited liability company with a principal place of
25 business at 2735 East Parley’s Way, Suite 305, Salt Lake City, Utah 84109. Castle & Cooke has a
26 number of California branches including a main office address of 4000 MacArthur Blvd. Suite 600,
27 Newport Beach, CA 92260.

28 B. Castle & Cooke is a residential mortgage lender and servicer and since January 6,
2006 has been licensed by the California Department of Business Oversight pursuant to the

1 California Residential Mortgage Act (“CRMLA”) (Fin. Code §§ 50000 et seq.). Under its CRMLA
2 license (#413-0740) Respondent currently employs mortgage loan originators.

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

6 D. On December 23, 2014 the Commissioner served Respondent through certified mail
7 the following documents: Notice of Intention to Issue Orders Suspending Residential Mortgage
8 Lender License and Imposing Penalties; Accusation in Support of Notice of Intent to Issue Orders
9 Suspending License and Imposing Penalties; Order to Discontinue Violations Pursuant to Financial
10 Code section 50321; Statement of Facts in Support of Order to Discontinue Violations Pursuant to
11 Financial Code section 50321 and Notice of Intent to Make Order Final. All of the above documents
12 were dated December 19, 2014 and the accompanying documents are collectively referred to as the
13 “Administrative Action.”

14 E. On December 31, 2015, Respondent submitted to the Commissioner timely Notice of
15 Defense and request for a hearing regarding the Administrative Action.

16 F. The Commissioner acknowledges that Respondent has submitted information
17 demonstrating that it has adopted policies and procedures addressing the issues described in the
18 Administrative Action and intending to prevent future violations set forth in the Administrative
19 Action.

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

22 H. The Commissioner finds that this Settlement Agreement is appropriate, in the public
23 interest, and consistent with the purposes fairly intended by the policy and provisions of this law.

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

26
27 **TERMS AND CONDITIONS**
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1 1. Purpose. The purpose of this Settlement Agreement is to resolve the charges alleged in
2 the Administrative Action in a manner that avoids the expense of a hearing and possible further court
3 proceedings, is in the public interest, protects consumers, and is consistent with the purposes,
4 policies and provisions of the CRMLA.

5 2. No Admission of Liability. Respondent enters into this Settlement Agreement without
6 admitting or denying any of the findings contained in the Administrative Action.

7 3. Finality of Order. Respondent hereby agrees to comply with the Commissioner's Order
8 to Discontinue Violations Pursuant to California Financial Code Section 50321 served on
9 Respondent by certified mail on December 23, 2014, and further stipulates that the Commissioner's
10 Order is hereby deemed final.

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

18 5. Payment of Penalties. Respondent agrees to pay a penalty of \$100,000.00 in
19 consideration for resolving violations of provisions of the CRMA as found upon examination,
20 including commingling of escrow funds with licensee funds in violation of Financial Code section
21 50202; trust asset accounts that did not reconcile to trust liability accounts, liability ledgers, and trust
22 bank balances in violation of California Code of Regulations, title 10, section 1950.314.1; and trust
23 fund imbalances in violation of California Code of Regulations, title 10, section 1950.314.6. The
24 penalties totaling \$100,000.00 shall be due within (20) calendar days of the effective date of this
25 Settlement Agreement, as such date is defined in Paragraph 20, made payable to the Department of
26 Business Oversight, sent to the attention of: Edward Kelly Shinnick, Senior Corporations Counsel,
27 Enforcement Division, at the California Department of Business Oversight, One Sansome Street,
28 Suite 600, San Francisco, CA 94104-4428.

1 6. Failure to Make Payment of Penalties. Respondent agrees that if it fails to meet the
2 deadline for payment of penalties set forth in Paragraph 4, Respondent’s CRMLA license number
3 413-0740 shall be suspended until penalty payments are made. Respondent hereby waives any
4 notice and hearing right to contest the suspension resulting from failure to comply with Paragraph 4
5 above which may be afforded under the Financial Code, the Administrative Procedure Act, the
6 Code of Civil Procedure, or any other legal provisions.

7 Declaration of Policies and Procedures. As part of this Settlement Agreement Respondent
8 has agreed to implement policies and procedures intended to correct and prevent the violations set
9 forth in the Administrative Action.7. Effect of Settlement Agreement on License. In consideration
10 of the information provided to the Commissioner by Respondent as described in the paragraphs
11 above and Respondent’s payment of penalties as provided herein, the Commissioner hereby agrees
12 that except as set forth in this Settlement Agreement, she shall not suspend the residential mortgage
13 lender or servicer license of Respondent or take any further action based on the violations cited in
14 this Settlement Agreement. Accordingly, this Settlement Agreement, which resolves the
15 Administrative Action, does not affect the licensing status of Respondent.

16 8. Full and Final Settlement. The parties hereby acknowledge and agree that this Settlement
17 Agreement is intended to constitute a full, final, and complete resolution of the Administrative
18 Action and that no further proceedings or actions will be brought by the Commissioner in connection
19 with these matters either under the CRMLA, or any other provision of law, excepting therefrom any
20 proceeding or action if such proceeding or action is based upon facts not presently known to the
21 Commissioner or which were knowingly concealed from the Commissioner by Respondent.

22 9. Binding. This Settlement Agreement is binding on all heirs, assigns and/or successors in
23 interest.

24 10. Commissioner’s Duties. The parties further acknowledge and agree that nothing
25 contained in this Settlement Agreement shall operate to limit the Commissioner’s ability to assist
26 any other agency, (city, county, state or federal) with any prosecution, administrative, civil or
27 criminal, brought by any such agency against Respondent or any other person based upon any of the
28 activities alleged in these matters or otherwise.

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

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

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

15 14. Counterparts. The parties agree that this Settlement Agreement may be executed in one
16 or more separate counterparts, each of which when so executed, shall be deemed an original. A copy
17 of a signature page shall be deemed the same as an original signature. Such counterparts shall
18 together constitute and be one and the same instrument.

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

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

27 17. Full Integration. Each of the parties represents, warrants, and agrees that in executing
28 this Settlement Agreement it has relied solely on the statements set forth herein and the advice of its

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

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

16 19. Voluntary Agreement. Respondent enters into this Settlement Agreement voluntarily
17 and without coercion and acknowledges that no promises, threats or assurances have been made by
18 the Commissioner or any officer, or agent thereof, about this Settlement Agreement.

19 20. Effective Date. This Settlement Agreement shall not become effective until signed by
20 all parties and delivered by the Commissioner’s counsel to Respondent’s counsel.

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21. 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: 8/24/15 JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 8/24/15 CASTLE & COOKE MORTGAGE, LLC

By _____
Adam Thorpe
TITLE: President

APPROVED AS TO FORM AND CONTENT:

Attorney Thomas J. Noto
Morrison & Foerster LLP
Counsel for CASTLE & COOKE MORTGAGE, LLC