

1 PRESTON DUFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Deputy Commissioner
3 MARISA I. URTEAGA-WATKINS (SBN236398)
4 Corporations Counsel
1515 K Street, Suite 200
5 Sacramento, California 95814
6 Telephone: (916) 445-9626
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Attorneys for Complainant

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9
10 BEFORE THE DEPARTMENT OF CORPORATIONS
11 OF THE STATE OF CALIFORNIA
12

13 THE CALIFORNIA CORPORATIONS)
14 COMMISSIONER,)

) File No.: 413-0110

15 Complainant,)

) **SETTLEMENT AGREEMENT**

16)
17 v.)

18 FIELDSTONE MORTGAGE COMPANY.)
19 Respondent.)

20
21 This Settlement Agreement is entered into between Fieldstone Mortgage Company
22 (“Fieldstone”) and the California Corporations Commissioner (“Commissioner”) (together, the
23 “Parties”), and is made with respect to the following facts.
24

25 **RECITALS**

26
27 A. Fieldstone is a residential mortgage lender and mortgage loan servicer licensed by the
28 Commissioner pursuant to the California Residential Mortgage Lending Act (California Financial

1 Code, § 50000 *et seq.*) ("CRMLA"). Fieldstone has its principal place of business located at 11000
2 Broken Land Parkway, Suite 900 Columbia, MD 21044.

3 B. In or about August, 2007, Fieldstone ceased its mortgage lending and servicing
4 operations. All loans and their related servicing rights were then sold or transferred to third parties
5 by August 28, 2007. Fieldstone did not hold custodial funds on behalf of borrowers.

6 C. On or about August 1, 2007, Fieldstone informed the Commissioner that it was not
7 accepting loan applications and outlined a plan of how it would work with borrowers who might
8 contact Fieldstone to refinance loans with adjustable rate mortgages which were about to reset or
9 which had recently reset, in order to help them find financing that might be better suited to their
10 current needs and financial situation.

11 D. On or about October 19, 2007 Fieldstone informed the Commissioner of the departure
12 of most of its officers.

13 E. On or about November 26, 2007, Fieldstone informed and confirmed with the
14 Commissioner the following: (1) it had filed a voluntary petition for relief under Chapter 11 of the
15 United States Bankruptcy Code; (2) there were no loans in Fieldstone's pipeline or held on its
16 balance sheet; (3) it had ceased originating loans in August, 2007; (4) it had sold all of the loans it
17 had originated prior to August, 2007; and (5) it had informed consumers that they should seek
18 financing elsewhere.

19 F. On or about March 3, 2008 Fieldstone filed a 2007 Report of Principal Amount of
20 Loans Originated and Aggregate Amount of Loans Serviced with the Commissioner. On or about
21 March 17, 2008 Fieldstone filed a 2007 Residential Mortgage Loan Report Exemption Form. In or
22 about March 2008, Fieldstone provided the Commissioner with surety bond riders reflecting its
23 change of address.

24 G. In or about June 2008, Fieldstone informed the Commissioner that they were no
25 longer HUD approved.

26 H. Fieldstone did not engage auditors after November 23, 2007, the date of filing for
27 Chapter 11 Bankruptcy protection. Fieldstone was no longer engaged in mortgage lending or
28 servicing activity and was winding up its business under the supervision of the bankruptcy court after

1 November 23, 2007. Fieldstone did not engage auditors after November 23, 2007 to prepare and
2 submit to the Commissioner audited financial statements for fiscal year ending December 31, 2007 as
3 required by California Financial Code section 50200 (“Audited Report”). Fieldstone, in good faith,
4 provided its un-audited balance sheet and income statement for 2007 to the Commissioner on or
5 about April 10, 2008.

6 I. Fieldstone was unable to surrender its License issued by the Commissioner pursuant to
7 the CRMLA because it was not in compliance with the CRMLA as it did not submit its Audited
8 Report while under the supervision of the bankruptcy court after November 23, 2007.

9 J. On May 22, 2009, the Commissioner issued to Fieldstone a Notice of Intention to
10 Issue Order Revoking Residential Mortgage Lender and Loan Servicer License; Accusation and
11 accompanying documents (collectively, the “Notice”). Copies of the Notice are attached and
12 incorporated herein as “Exhibit 1”.

13 K. Fieldstone issued a Notice of Defense and an administrative hearing request to the
14 Commissioner in or about June, 2009.

15 L. It is the intention of the Parties to resolve this matter without the necessity of an
16 administrative hearing or any other litigation.

17 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
18 forth herein, the Parties agree as follows:

19
20 **TERMS AND CONDITIONS**
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22 1. This Agreement is entered into for the purpose of judicial economy and expediency.

23 2. Fieldstone acknowledges its right to a hearing under the CRMLA in connection with
24 the Commissioner’s Notice referenced herein, and it hereby waives the right to any appeal, or other
25 right to review, if any, which may be afforded pursuant to the CRMLA, the California Administrative
26 Procedure Act, the California Code of Civil Procedure, or any other provision of law, and by waiving
27 such rights, it consents to the Agreement as final.
28

1 3. Each of the Parties represents, warrants, and agrees that it has received or been
2 advised to seek independent legal advice from an attorney with respect to the advisability of
3 executing this Agreement. Fieldstone acknowledges that it has willingly and knowingly decided to
4 not seek the advice of legal counsel prior to entering into this Agreement.

5 4. Section 50123 of the California Residential Mortgage Lending Act sets forth the
6 license surrender process, which includes the filing of a plan for the withdrawal from regulated
7 business. The plan must include a timetable for the disposition of the business and a closing audit,
8 review or other agreed upon procedures performed by an independent certified public accountant.

9 5. Despite the fact that Fieldstone did not conduct mortgage business after August 28,
10 2007, it acknowledges that its Residential Mortgage Lender and Loan Servicer License remained in
11 effect during that time period and that it was, under California law, responsible for preparing and
12 filing an Audited Report as required by California Financial Code section 50200.

13 6. Due to Fieldstone's failure to comply with the license surrender process (namely, an
14 inability to be in compliance with the CRMLA due to a failure to prepare and submit an Audited
15 Report while under the Chapter 11 bankruptcy protection), and to satisfy all filing and reporting
16 obligations imposed upon Fieldstone as a licensee during 2007 and 2008 (i.e., the Audited Report),
17 the Commissioner is unable to accept surrender of Fieldstone's license. The Parties have agreed that,
18 as part of a complete and final resolution of the matters set forth in the Notice as well as the other
19 issues noted herein, Fieldstone's Residential Mortgage Lender and Mortgage Loan Servicer license
20 will be revoked in the form as attached as Exhibit 2.

21 7. The Commissioner reserves the right to bring any future actions against Fieldstone, or
22 any of its officers, employees or successors for any and all unknown or future violations of the
23 CRMLA. This Agreement shall not serve to exculpate Fieldstone or any of its partners, employees,
24 or successors from liability for any and all unknown or future violations of the CRMLA. If it is
25 found, after the execution of this Agreement, that Fieldstone has at any time violated any provision of
26 the California Financial Code, the Commissioner reserves the right to take further action against
27 Fieldstone including but not limited to, imposing penalties and requesting restitution of all CRMLA
28 transactions originated in breach of this Agreement.

1 8. The Parties hereby acknowledge and agree that this Agreement is intended to
2 constitute a full, final and complete resolution of all matters which were or could have been raised -in
3 the Commissioner's Notice against Fieldstone, dated on or about May 22, 2008. The Parties further
4 acknowledge and agree that nothing contained in this Agreement shall operate to limit the
5 Commissioner's ability to assist any other agencies with any administrative, civil or criminal
6 prosecution brought by any such agency against Fieldstone based upon any of the activities alleged in
7 this matter or otherwise. This Agreement shall not become effective until signed and delivered by the
8 Parties. Fieldstone represents, warrants, and agrees that in executing this Agreement it has relied
9 solely on the statements set forth herein and has placed no reliance on any statement, representation,
10 or promise of any other party, or any other person or entity not expressly set forth herein, or upon the
11 failure of any party or any other person or entity to make any statement, representation or disclosure
12 of anything whatsoever. The Parties have included this clause: (1) to preclude any claim that any
13 party was in any way fraudulently induced to execute this Agreement; and (2) to preclude the
14 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
15 Agreement.

16 9. This Agreement, including the attached Exhibits, is the final written expression and
17 the complete and exclusive statement of all the Agreements, conditions, promises, representations,
18 and covenants between the Parties with respect to the subject matter hereof, and supercedes all prior
19 or contemporaneous Agreements, negotiations, representations, understandings, and discussions
20 between and among the Parties, their respective representatives, and any other person or entity.

21 10. In that the Parties have had the opportunity to draft, review and edit the language of
22 this Agreement, no presumption for or against any party arising out of drafting all or any part of this
23 Agreement will be applied in any action relating to, connected, to, or involving this Agreement.
24 Accordingly, the Parties waive the benefit of California Civil Code section 1654 and any successor or
25 amended statute, providing that in cases of uncertainty, language of a contract should be interpreted
26 most strongly against the party who caused the uncertainty to exist.

27 11. This Agreement shall not be effective until executed by all Parties. The
28 Commissioner shall file this Agreement with the Office of Administrative Hearings five (5) business

1 days after execution by all Parties.

2 12. This Agreement may be executed in any number of counterparts by the Parties and when
3 each party has signed and delivered at least one such counterpart to the other party, each counterpart
4 shall be deemed an original and taken together shall constitute one and the same Agreement.

5 13. No amendment, change or modification of this Agreement shall be valid or binding to
6 any extent unless it is in writing and signed by all of the Parties affected by it.

7 14. The headings to the paragraphs of this Agreement are inserted for convenience only and
8 will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof.
9 This Agreement shall be construed and enforced in accordance with and governed by California law.

10 15. Each party covenants that they possess all necessary capacity
11 and authority to sign and enter into this Agreement. Each party warrants and represents that such party
12 is fully entitled and duly authorized to enter into and deliver this Agreement. In particular, and without
13 limiting the generality of the foregoing, each party warrants and represents that it is fully entitled to enter
14 into the covenants, and undertake the obligations set forth herein.

15 16. Fieldstone acknowledges that this Agreement is a public record.

16 17. The Parties each represent and acknowledge that it is executing this Agreement
17 completely voluntarily and without any duress or undue influence of any kind from any source.

18 18. Notice shall be provided to each party at the following addresses:

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20 If to Respondent to:

21 Dennis E. Neubert
22 Fieldstone Mortgage Company
23 2300 North Barrington Road
24 Suite 100
25 Hoffman Estates, Illinois 60305
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If to the Commissioner to:

Ms. Marisa I. Urteaga-Watkins, Esq.
Department of Corporations
1515 K Street, Suite 200
Sacramento, California 95814

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

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Agreement on the dates set forth opposite their respective signatures.

Dated: 11/17/09 PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
ALAN S. WEINGER
Deputy Commissioner
Enforcement Division

Dated: 09/11/09 By _____
Fieldstone Mortgage Company