

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 SOPHIA C. KIM (CA BAR NO. 265649)
Corporations Counsel
4 Department of Corporations
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7594
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

11 In the Matter of THE COMMISSIONER OF) File No. 413-0427
12 CORPORATIONS OF THE STATE OF)
CALIFORNIA,)
13)
14 Complainant,)
15 vs.)
16) SETTLEMENT AGREEMENT
17 GUIDANCE RESIDENTIAL, LLC,)
18 Respondent.)
19)
20)
21)

22
23 This Settlement Agreement is entered into between Guidance Residential, LLC (“Guidance”),
24 and the Commissioner of Business Oversight, formerly the Commissioner of Corporations
25 (“Commissioner” or “Complainant”), and is made with respect to the following facts:

26 **RECITALS**

27 A. Guidance is a residential home finance provider and servicer licensed since September
28 11, 2002 by the Commissioner pursuant to the California Residential Mortgage Lending Act

1 (“CRMLA”) (California Financial Code sections 50000 et seq.). Guidance has its principal place of
2 business located at 11107 Sunset Hills Road, Suite 200, Reston, Virginia 20190. Guidance employs
3 mortgage loan originators and has developed and/or offers a home finance program all subject to the
4 CRMLA.

5 B. On or about June 11, 2012, the Commissioner commenced a regulatory examination
6 of the books and records of Guidance under the CRMLA (“2012 regulatory examination”). The 2012
7 regulatory examination disclosed that for six of 30 loans, or approximately 20% of the loans
8 reviewed, Guidance was charging the borrower per diem interest in excess of one day prior to the
9 date that the loan proceeds are disbursed from escrow, in violation of California Financial Code
10 section 50204, subdivision (o).

11 C. On or about August 3, 2012, the Commissioner made written demand on Guidance to
12 complete the following: (i) conduct a self-audit regarding per diem interest for all loans originated
13 from the date of the last regulatory examination on or about January 22, 2008 through the present; (ii)
14 make appropriate refunds in the amount of the overcharge plus 10 percent per annum; and (iii) submit
15 a response to the Department of Corporations, now the Department of Business Oversight
16 (“Department”) within 30 calendar days from August 3, 2012 detailing the findings of the self-audit
17 and the refunds made (“self-audit report”) and the corrective actions implemented to prevent any
18 recurrences of these violations of the CRMLA. The self-audit report was to include information
19 regarding *all* loans from January 22, 2008 through the present, including the total amount of the
20 refund due to the borrowers (overcharge plus interest at the rate of 10% per annum), and the date the
21 borrowers were refunded.

22 D. On or about November 6, 2012, Guidance submitted a written response claiming it had
23 completed a self-audit of a total of 556 loans representing all loans originated since January 22, 2008
24 through the present. However, the self-audit report listed details for only the 73 loans which
25 reportedly required refunds because of per diem interest overcharges. Guidance did not provide any
26 information regarding the remaining 483 loan files that were reportedly self-audited but did not
27 require refunds. Moreover, one of the six per diem interest overcharges brought to the attention of
28

1 Guidance during the 2012 regulatory examination was not captured in its self-audit as requiring a
2 refund or being refunded.

3 E. On or about January 7, 2013, the Department sent Guidance a follow-up letter via
4 regular U.S. mail demanding that Guidance submit the following: (i) a self-audit report regarding per
5 diem interest for *all* loans originated from the date of the last regulatory examination on or about
6 January 22, 2008 through the present, including the one loan that was brought to the attention of
7 Guidance during the 2012 regulatory examination but was not captured in its self-audit; and (ii)
8 documentation of the corrective actions claimed to have been taken to prevent any recurrences of the
9 violations of FC section 50204, subdivision (o). Guidance was to submit its response within 15 days
10 from the date of the letter, or by January 22, 2013. By June 19, 2013, Guidance had not submitted
11 any response to the Commissioner's January 7, 2013 follow-up letter.

12 F. On June 19, 2013, the Commissioner issued and sent via certified mail to Guidance
13 the following documents: Notice of Intention to Issue Orders Suspending License and Imposing
14 Penalties, Accusation in Support of Notice of Intent to Issue Orders Suspending License and
15 Imposing Penalties ("Accusation"), Order to Discontinue Violations, Statement of Facts in Support of
16 Order to Discontinue Violations and Notice of Intent to Make Order Final, and accompanying
17 documents (collectively, "Administrative Actions").

18 G. On June 25, 2013, Guidance responded that it had received the Administrative Actions
19 and stated that it had never received the Commissioner's January 7, 2013 follow-up letter mentioned
20 in Paragraph E above.

21 H. Regardless, on June 26, 2013, Guidance set out to correct the violations contained in
22 the Administrative Actions by submitting to the Commissioner the following: (1) the complete self-
23 audit report regarding per diem interest for the period between January 22, 2008 and August 3, 2012;
24 (2) documentation of the new policies and procedures implemented by Guidance to prevent further
25 violations of Financial Code section 50204(o); and (3) a complete self-audit report for the period
26 from August 4, 2012 through June 26, 2013 demonstrating the efficacy of these new policies and
27 procedures. In addition, Guidance notified the Commissioner of one additional file that had been
28 overcharged per diem interest and required a refund that was not previously captured in its self-audit,

1 and submitted proof of the refund (overcharge plus interest at the rate of 10% per annum) made to the
2 borrower.

3 I. On July 9, 2013, the Department examined 20 random files from the complete self-
4 audit report for the period between January 22, 2008 and August 3, 2012, and found two additional
5 files that had been overcharged per diem interest in violation of Financial Code section 50204,
6 subdivision (o). On July 15, 2013, Guidance provided documentation showing that the two
7 borrowers were refunded the requisite overcharge plus interest at the rate of 10% per annum.

8 J. On July 10, 2013, the Department examined 11 random files from the complete self-
9 audit report for the period between August 4, 2013 and June 26, 2013 to test the efficacy of the new
10 policies and procedures implemented to prevent further violations of Financial Code section
11 50204(o), and found no per diem interest overcharges in the sampling.

12 K. As of the July 15, 2013, Guidance has provided documentation that it has made the
13 requisite refunds in order to correct the 77 known violations of Financial Code section 50204,
14 subdivision (o).

15 L. On July 23, 2013, Guidance provided additional documentation of changes in closing
16 procedures and instructions to settlement companies to prevent further violations of Financial Code
17 section 50204, subdivision (o).

18 M. Guidance timely submitted Notices of Defense and requests for hearing for the
19 Administrative Actions.

20 N. 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 O. The Commissioner finds that this action is appropriate in the public interest and
23 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 **TERMS AND CONDITIONS**

27 1. This Settlement Agreement is entered into for the purpose of judicial economy and
28 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

1 2. Each of the parties represents, warrants, and agrees that it has received or been advised
2 to seek independent legal advice from its attorneys with respect to the advisability of executing this
3 Settlement Agreement.

4 3. Guidance agrees to pay penalties in the total amount of \$77,000 for the 77 known
5 violations of Financial Code section 50204(o) as described in Paragraphs A through O above. The
6 penalties, made payable to the Department of Business Oversight, will be due within 15 days of the
7 full execution of this Settlement Agreement and shall be sent to the attention of: Sophia C. Kim,
8 Corporations Counsel, Enforcement Division, at the Department’s Los Angeles office located at 320
9 West 4th Street, Suite 750, Los Angeles, California 90013.

10 4. Guidance stipulates to the finality of the Order to Discontinue Violations. Guidance
11 acknowledges its right to a hearing under California Financial Code section 50323 in connection with
12 the Order to Discontinue Violations, and hereby waives its right to a hearing and to any
13 reconsideration, appeal, or other right which may be afforded pursuant to the California Financial
14 Code, the California Administrative Procedure Act, the California Code of Civil Procedure or any
15 other provision of law in connection with this matter.

16 5. Failure to comply with the deadline for the payment of penalties set forth in Paragraph
17 3 above will result in automatic suspension of Guidance’s residential mortgage lender license,
18 License No. 413-0427, until the payment has been made as stipulated. Guidance hereby waives any
19 notice and hearing rights to contest the suspension resulting from failure to comply with Paragraph 3
20 above that may be afforded under the California Financial Code, the California Administrative
21 Procedure Act, the California Code of Civil Procedure, or any other legal provisions.

22 6. The parties hereby acknowledge and agree that this Settlement Agreement is intended
23 to constitute a full, final and complete resolution of this matter. The parties further acknowledge and
24 agree that nothing in this Settlement Agreement shall preclude the Commissioner, or her agents or
25 employees, to the extent authorized by law, from assisting or cooperating in any investigation and/or
26 action brought by any other federal, state or county agency.

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

1 Each of the parties further represents, warrants, and agrees that in executing this Settlement
2 Agreement it has placed no reliance on any statement, representation, or promise of any other party,
3 or any other person or entity not expressly set forth herein, or upon the failure of any party or any
4 other person or entity to make any statement, representation or disclosure of anything whatsoever.

5 The parties have included this clause: (1) to preclude any claim that any party was in any way
6 fraudulently induced to execute this Settlement Agreement; and (2) to preclude the introduction of
7 parol evidence to vary, interpret, supplement, or contradict the terms of this Settlement Agreement.

8 8. This Settlement Agreement is the final written expression and the complete and
9 exclusive statement of all the agreements, conditions, promises, representations, and covenants
10 between the parties with respect to the subject matter hereof, and supersedes all prior or
11 contemporaneous agreements, negotiations, representations, understandings, and discussions between
12 and among the parties, their respective representatives, and any other person or entity, with respect to
13 the subject matter covered hereby.

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

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

24 11. Guidance and the Commissioner agree that this Settlement Agreement may be
25 executed in one or more separate counterparts, each of which when so executed, shall be deemed an
26 original. A fax signature shall be deemed the same as an original signature. Such counterparts shall
27 together constitute and be one and the same instrument.

28 12. Each signator hereto covenants that he/she possesses all necessary capacity and

1 authority to sign and enter into this Settlement Agreement.

2

3 Dated: ____8/12/13____

JAN LYNN OWEN
Commissioner of Business Oversight

4

5

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

6

7

8

9

10 Dated: ____8/12/13____

GUIDANCE RESIDENTIAL, LLC

11

By _____
KALED ELSAYED
President

12

13

14 **APPROVED AS TO FORM AND CONTENT:**

15

16

THOMAS GAINOR
Counsel for Guidance Residential, LLC

17

18

19

20

21

22

23

24

25

26

27

28