

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 AFSANEH EGHBALDARI (State Bar No. 250107)
4 Counsel
5 Department of Business Oversight
1350 Front Street, Room 2034
6 San Diego, California 92101
Telephone: (619) 645-3166
7 Facsimile: (619) 525-4045

8 Attorneys for Complainant

9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) CRMLA LICENSE NO. 413-1123
13)
14 THE COMMISSIONER OF BUSINESS) OAH NO.: 2016060064
OVERSIGHT,)
15)
16 Complainant,) SETTLEMENT AGREEMENT
17 v.)
18 NETWORK FUNDING, LP,)
19 Respondent.)
20)

21 This Settlement Agreement (“Settlement Agreement”) is entered into between the
22 Commissioner of Business Oversight (“Commissioner”) and Respondent Network Funding, LP
23 (“Network”) (collectively, “the parties”), and is made with respect to the following facts:

24 **RECITALS**

25 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
26 entities engaged in the business of lending and/or servicing residential mortgage loans pursuant to
27 the California Residential Mortgage Lending Act (CRMLA) (Cal. Fin. Code, § 50000 et seq.),
28 including mortgage loan originators.

1 B. Network is a residential mortgage lender licensed by the Commissioner, pursuant to
2 the CRMLA (CRMLA License No. 413-1123). Network has its principal place of business located
3 at 9700 Richmond Ave., Suite 320, Houston, TX 77042.

4 C. Matt Kiker is the President of Network and, as such, is authorized to enter into this
5 Settlement Agreement on behalf of Network.

6 D. The Commissioner discovered that Network had violated the CRMLA during the
7 2013 regulatory examination of Network.

8 E. On or about May 17, 2016, the Commissioner served the following on Network:
9 Accusation in Support of Order Suspending Residential Mortgage Lender License and Imposing
10 Penalties; Order to Refund Excessive Per Diem Interest Charges; Order to Discontinue Violations;
11 Statement of Facts In Support of Order to Discontinue Violations; Notice of Intent to Make Order
12 Final; Desist and Refrain Order; and accompanying documents (collectively, “Administrative
13 Enforcement Actions”).

14 F. Network timely submitted to the Commissioner a Notice of Defense, requesting a
15 hearing regarding the Administrative Enforcement Actions. The hearing, in this matter, has been set
16 for September 1, 2016 in San Diego, California.

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

19 H. The Commissioner finds that these actions are appropriate, in the public interest, and
20 consistent with the purposes fairly intended by the policy and provisions of this law.

21 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
22 forth herein, the parties agree as follows:

23 **TERMS AND CONDITIONS**

24 1. Purpose. The purpose of this Settlement Agreement is to resolve the charges alleged in the
25 Administrative Enforcement Actions in a manner that avoids the expense of a hearing and possible
26 further court proceedings, is in the public interest, protects consumers, and is consistent with the
27 purposes, policies, and provisions of the CRMLA.

28 ///

1 2. Finality of Order. Network hereby waives any objection, without any other waiver, except
2 as explicitly set forth herein, to entry of the Commissioner's Order to Refund Excessive Per Diem
3 Interest Charges, Order to Discontinue Violations, and Desist and Refrain Order ("Orders") that were
4 served on Network on or about May 17, 2016, and further acknowledges that the Commissioner's
5 Orders are hereby deemed final.

6 3. Waiver of Hearing Rights. Network acknowledges that the Commissioner is ready,
7 willing, and able to proceed with the filing of the Administrative Enforcement Actions on the charges
8 contained in these Orders, and Network hereby waives the right to a hearing, and to any
9 reconsideration, appeal, or other right to review which may be afforded pursuant to the CRMLA,
10 Network further expressly waives any requirement for the filing of an Accusation that may be
11 afforded by Government Code section 11415.60 (b); the California Administrative Procedure Act, the
12 California Code of Civil Procedure, or any other provision of law; and by waiving such rights,
13 Network effectively consents to the Orders becoming final, without any other waiver.

14 4. Payment of Refunds. In compliance with the Commissioner's Order to Refund Excessive
15 Per Diem Interest Charges, pursuant to California Financial Code section 50504, Network represents
16 that it has made refunds of all overcharged amounts, plus interest at the rate of 10 percent per annum,
17 to borrowers identified in Network's December 2014 self-audit report.

18 5. Settlement Payment. Network shall pay a settlement payment in the amount of
19 \$72,500.00. The total payment of \$72,500.00 shall be due within 30 calendar days upon execution of
20 this Settlement Agreement, and shall be made payable in the form of a cashier's check to the
21 "Department of Business Oversight," and mailed to the attention of Affi Eghbaldari, Counsel,
22 Enforcement Division, at the Department of Business Oversight located at 1350 Front Street, Room
23 2034, San Diego, California, 92101.

24 6. Effect of Settlement Agreement on Licenses. In consideration of Network's agreement
25 described in Paragraph 5, above, the Commissioner hereby agrees that except as set forth in this
26 Settlement Agreement, she shall not suspend the residential mortgage lender license of Network or
27 take any further action based on violations of the provisions cited in the Administrative Enforcement
28 Actions, or based on any other information that was obtained by the Department in the course of the

1 2013 regulatory examination. Accordingly, this Settlement Agreement, which resolves the
2 Administrative Enforcement Actions, does not affect the lending licensing status of Network. The
3 Commissioner further agrees to approve Network's servicing application within 30 calendar days
4 upon execution of this Settlement Agreement, unless Network revises and/or adds any information or
5 document to its servicing application, which will require further review and consideration by the
6 Commissioner.

7 7. Failure to Comply. Network agrees that if it fails to comply with the terms of this
8 Settlement Agreement, Network shall be immediately suspended from lending and servicing under its
9 CRMLA licenses until the terms are met. Network hereby waives any notice and hearing rights to
10 contest the immediate suspension.

11 8. Full and Final Settlement. The parties hereby acknowledge and agree that this Settlement
12 Agreement is intended to constitute a full, final, and complete resolution of the Administrative
13 Enforcement Actions and that no further proceedings or actions will be brought by the Commissioner
14 in connection with these matters either under the CRMLA, or any other provision of law, excepting
15 therefrom any proceeding or action if such proceeding or action is based upon discovery of new and
16 further violations of the CRMLA which (a) do not form the basis for this Settlement Agreement, (b)
17 are not related to violations contained in the Administrative Enforcement Actions, or (c) which were
18 knowingly concealed from the Commissioner by Network.

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

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

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

1 Settlement Agreement.

2 12. Future Actions by Commissioner. This Settlement Agreement may be revoked and the
3 Commissioner may pursue any and all remedies available under the law against Network if the
4 Commissioner later discovers that Network knowingly or willfully withheld information used and
5 relied upon in this Settlement Agreement. Further, Network agrees that this Settlement Agreement
6 does not resolve any payments that may be assessed by the Commissioner upon discovery of new and
7 further violations of the CRMLA which do not form the basis for either the Administrative
8 Enforcement Actions or this Settlement Agreement.

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

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

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

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

24 17. Full Integration. Each of the parties represents, warrants, and agrees that in executing
25 this Settlement Agreement it has relied solely on the statements set forth herein and the advice of its
26 own counsel. Each of the parties further represents, warrants, and agrees that in executing this
27 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any
28 other party, or any other person or entity not expressly set forth herein, or upon the failure of any

1 party or any other person or entity to make any statement, representation or disclosure of anything
2 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
3 any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude the
4 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
5 Settlement Agreement.

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

13 19. Voluntary Agreement. Network enters into this Settlement Agreement voluntarily and
14 without coercion and acknowledges that no promises, threats or assurances have been made by the
15 Commissioner or any officer, or agent thereof, about this Settlement Agreement.

16 20. Effective Date. This Settlement Agreement shall not become effective until signed by all
17 parties and delivered by the Commissioner's counsel by email to Network's counsel at
18 London@thewbkfirm.com.

19 21. Public Record. Network acknowledges that this Settlement Agreement is a public
20 record.

21 22. Authority to Execute. Each signator hereto covenants that he/she possesses all necessary
22 capacity and authority to sign and enter into this Settlement Agreement.

23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

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

Dated: August 2, 2016

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: August 2, 2016

NETWORK FUNDING, LP,

By _____
MATT KIKER
President of Network Funding, LP

APPROVED AS TO FORM AND CONTENT:

Aldys London, Esq.
Weiner Brodsky Kider PC
Counsel for Network Funding, LP