

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 JUDY L. HARTLEY (State Bar No. 110628)
Senior Counsel
4 Department of Business Oversight
320 West 4th Street, Ste. 750
5 Los Angeles, California 90013-2344
Telephone: (213) 576-7604
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

10
11 In the Matter of:) OAH CASE NOS: 2015060097; 2015060270 &
) 2015060277
12 THE COMMISSIONER OF BUSINESS)
13 OVERSIGHT,) CRMLA LICENSE No.: 413-0876
)
14 Complainant,)
) SETTLEMENT AGREEMENT
15 v.)
)
16 POINT MORTGAGE CORPORATION doing)
17 business in California as POINT MORTGAGE)
18 FINANCIAL,)
)
19 Respondent.)

20 This Agreement is entered into between Respondent Point Mortgage Corporation doing
21 business in California as Point Mortgage Financial (“Point Mortgage”) and Complainant the
22 Commissioner of Business Oversight (“Commissioner”), and is made with respect to the following
23 facts:

24 **RECITALS**

25 A. Point Mortgage is corporation in good standing, duly formed and existing pursuant to
26 the laws of the State of Florida, and authorized to conduct business in the State of California.

27 B. Point Mortgage is a residential mortgage lender licensed by the Commissioner
28 pursuant to the California Residential Mortgage Lending Act ("CRMLA") (Financial Code §50000

1 et seq.). Point Mortgage has its principal place of business located at 864 Amena Court, Chula
2 Vista, California 91910. Point Mortgage currently has 9 branch office locations under its CRMLA
3 license located in California. Point Mortgage employs mortgage loan originators in its CRMLA
4 business.

5 C. The Department of Business Oversight (“Department”), through the Commissioner,
6 has jurisdiction over the licensing and regulation of persons and entities engaged in the business of
7 lending and/or servicing pursuant to the CRMLA, including mortgage loan originators.

8 D. On March 6, 2015, Point Mortgage was personally served by the Commissioner with
9 a Notice of Intention to Issue Order Suspending Residential Mortgage Lender Licenses and to Levy
10 Penalties, Accusation and accompanying documents dated March 4, 2015 (“Accusation”).

11 E. On March 6, 2015 and March 12, 2015, respectively, Point Mortgage was also
12 personally served by the Commissioner with an Order to Refund Excessive Per Diem Interest
13 Charges Pursuant to Financial Code Section 50504 dated March 6, 2015 (“Order to Refund”) and an
14 Order to Discontinue Violations Pursuant to Financial Code Section 50321; Statement of Facts In
15 Support of Order to Discontinue Violations Pursuant to Financial Code Section 50321 and Notice of
16 Intent to Make Order Final dated March 6, 2015 (“Order to Discontinue Violations”)(collectively
17 “Orders”).

18 F. Point Mortgage has filed with the Commissioner a Notice of Defense regarding the
19 Accusation and requests for hearing regarding the Orders. The Accusation and Orders are currently
20 scheduled to go to trial before the San Diego Office of Administrative Hearings on January 4 and 5,
21 2016.

22 G. The Commissioner hereby acknowledges that Point Mortgage has submitted
23 information demonstrating that it has adopted policies and procedures addressing the issues
24 described in the Accusation and Orders.

25 H. It is the intention and desire of the parties to resolve this matter without the necessity
26 of a hearing and/or other litigation.

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

TERMS AND CONDITIONS

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

4 2. Point Mortgage acknowledges its right to an administrative hearing under the
5 CRMLA in connection with the Accusation and/or Orders and hereby waives that right to a hearing,
6 and to any reconsideration, appeal, or other rights which may be afforded pursuant to the CRMLA,
7 the California Administrative Procedure Act, the California Code of Civil Procedure, or any other
8 provision of law in connection with these matters.

9 3. Point Mortgage hereby agrees that the Orders described in paragraph E above are
10 hereby deemed final orders. The Commissioner hereby acknowledges that Point Mortgage has
11 submitted information to the Commissioner documenting that Point Mortgage has completed all the
12 refunds, including interest at the rate of ten percent per annum, required by the Order to Refund.

13 4. Point Mortgage further agrees to pay to the Commissioner the sum of \$200,000.00 in
14 penalties. The sum of \$150,000.00 is due and payable upon execution of this Agreement. The
15 remaining \$50,000.00 is due and payable on or before January 31, 2016. The payments shall be
16 made by certified checks payable to the Department of Business Oversight and shall be sent to the
17 Department, attention Judy L. Hartley, Senior Corporations Counsel, 320 W. 4th Street, Los Angeles,
18 California 90013.

19 5. Point Mortgage also agrees to conduct quarterly audits designed to determine
20 compliance with Financial Code section 50204(o) and California Civil Code section 2948.5, by and
21 through an independent certified public accountant, for a period of 18 months to commence on
22 May 1, 2015. Each quarterly audit shall cover all California loans originated during that quarter.
23 Point Mortgage, by and through its independent certified public accountant, shall submit to the
24 Department the results of each quarterly audit (“audit report”) within 60 days of the completion of
25 each quarter, except for the first audit report, which would be due within 90 days of the completion
26 of the audit period as the first audit report will cover two quarters, i.e., all California loans originated
27 between May 1, 2015 and October 31, 2015. The remaining audit reports will be for the periods
28 November 1, 2015 through January 31, 2016; February 1, 2016 through April 30, 2016; May 1, 2016

1 through July 31, 2016; and August 1, 2016 through October 31, 2016. The audit reports shall be in
2 Microsoft Excel format, and include, at a minimum, the total number of loans made during this
3 period, the number of loans with per diem overcharges, and for each loan, the report shall list the
4 borrower loan number, name, address, loan amount, loan date, interest rate, disbursement date, date
5 per diem interest commenced, per diem charged, daily per diem interest amount, number of days per
6 diem interest charged, number of days per diem interest overcharged, overcharge amount (if
7 applicable), date of refund (if applicable), and proof of refund (if applicable). The audit reports shall
8 be sent to the Department, attention Judy L. Hartley, Senior Counsel, 320 W. 4th Street, Los Angeles,
9 California 90403.

10 6. Point Mortgage further agrees that it shall pay a penalty to the Commissioner, upon
11 submission of each quarterly audit report, equal to \$265.25 for each per diem interest overcharge
12 discovered during the quarterly audit and not refunded to the borrower within 30 days of loan
13 funding.

14 7. Point Mortgage agrees that if it fails to comply with any of the provisions set forth in
15 this Agreement, and 5 days following the issuance of a written notice of demand to cure the failure,
16 the Commissioner may, in addition to all other available remedies under the CRMLA, summarily
17 suspend the CRMLA licenses of Point Mortgage until such time as Point Mortgage comes into full
18 compliance. Point Mortgage hereby waives any notice and hearing rights to contest such summary
19 suspension which may be afforded under the CRMLA, the California Administrative Procedure Act,
20 the California Code of Civil Procedure, or any other provision of law in connection therewith.

21 8. In consideration of the information provided to the Commissioner by Point Mortgage
22 as described in paragraph G above and Point Mortgage's agreement to the finality of the Orders,
23 payment of penalties, and ongoing quarterly audits as provided for in paragraphs 3 - 5 above, the
24 Commissioner hereby agrees not to suspend the residential mortgage lender licenses of Point
25 Mortgage. Accordingly, this Agreement, which resolves the Accusation and Orders, does not affect
26 the licensing status of Point Mortgage set forth in paragraph B above.
27
28

1 9. This Agreement may be revoked and the Commissioner may pursue any and all
2 remedies available under law against Point Mortgage, if the Commissioner later finds out that Point
3 Mortgage knowingly or willfully withheld information used and relied upon in this Agreement.

4 10. This Agreement is binding on all heirs, assigns and/or successors in interest.

5 11. This Agreement does not create any private rights or remedies against Point
6 Mortgage, create any liability for Point Mortgage or limit defenses of Point Mortgage for any person
7 or entity not a party to this Agreement.

8 12. The parties hereby acknowledge and agree that this Agreement is intended to
9 constitute a full, final and complete resolution of the Accusation and Orders and that no further
10 proceedings or actions will be brought by the Commissioner in connection with these matters under
11 the CRMLA or any other provision of law, excepting therefrom any proceeding or action if such
12 proceeding or action is based upon facts not presently known to the Commissioner and which were
13 actively concealed from the Commissioner by Point Mortgage.

14 13. The parties further acknowledge and agree that nothing contained in this Agreement
15 shall operate to limit the Commissioner's ability to assist any other agency, (city, county, state or
16 federal) with any prosecution, administrative, civil or criminal, brought by any such agency against
17 Point Mortgage or any other person based upon any of the activities alleged in these matters or
18 otherwise.

19 14. Each of the parties represents, warrants, and agrees that it has received independent
20 advice from its attorney(s) and/or representatives with respect to the advisability of executing this
21 Agreement.

22 15. Each of the parties represents, warrants, and agrees that in executing this Agreement
23 it has relied solely on the statements set forth herein and the advice of its own counsel and/or
24 representative. Each of the parties further represents, warrants, and agrees that in executing this
25 Agreement it has placed no reliance on any statement, representation, or promise of any other party,
26 or any other person or entity not expressly set forth herein, or upon the failure of any party or any
27 other person or entity to make any statement, representation or disclosure of anything whatsoever.
28 The parties have included this clause: (1) to preclude any claim that any party was in any way

1 fraudulently induced to execute this Agreement; and (2) to preclude the introduction of parol
2 evidence to vary, interpret, supplement, or contradict the terms of this Settlement Agreement.

3 16. This Agreement is the final written expression and the complete and exclusive
4 statement of all the agreements, conditions, promises, representations, and covenants between the
5 parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous
6 agreements, negotiations, representations, understandings, and discussions between and among the
7 parties, their respective representatives, and any other person or entity, with respect to the subject
8 matter covered hereby.

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

15 18. The waiver of any provision of this Agreement shall not operate to waive any other
16 provision set forth herein, and any waiver, amendment and/or change to the terms of this Agreement
17 must be in writing signed by the parties.

18 19. This Agreement shall not become effective until signed and delivered by all parties.

19 20. This Agreement may be executed in one or more counterparts, each of which shall be
20 an original but all of which, together, shall be deemed to constitute a single document. This
21 Agreement may be executed by facsimile signature, and any such facsimile signature by any party
22 hereto shall be deemed to be an original signature and shall be binding on such party to the same
23 extent as if such facsimile signature were an original signature.

24 21. Any notice or report required under this Agreement shall be addressed as follows:

25 To Respondent: James W. Brody, Esq.
26 American Mortgage Law Group, PC
27 75 Rowland Way, Suite 350
28 Novato, California 94945

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

To the Commissioner: Judy L. Hartley, Esq.
Senior Counsel
Department of Business Oversight
320 W. 4th Street, Suite 750
Los Angeles, California 90013-2344

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

Dated: 11/24/15 JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 11/23/15 POINT MORTGAGE CORPORATION

By _____
JOHNNY MARGARINI, President

APPROVED AS TO FORM:
AMERICAN MORTGAGE LAW GROUP, PC

By _____
JAMES W. BRODY, ESQ. Attorneys for
POINT MORTGAGE CORPORATION

Commissioner of Business Oversight

By _____
JUDY L. HARTLEY
Senior Counsel