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4 Department of Business Oversight
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7 Attorneys for Complainant

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

11	In the Matter of:)	OAH NO.: 2017110161
12	THE COMMISSIONER OF BUSINESS)	CRMLA LICENSE No.: 413-1076
13	OVERSIGHT,)	
14	Complainant,)	CFLA LICENSE No.: 603-8205
15	v.)	SETTLEMENT AGREEMENT
16	TOTAL MORTGAGE SERVICES, LLC,)	
17	Respondent.)	

19 This Settlement Agreement (Agreement) is entered into between Respondent Total Mortgage
20 Services, LLC (Total Mortgage) and Complainant the Commissioner of Business Oversight
21 (Commissioner), and is made with respect to the following facts:

22 **RECITALS**

23 A. Total Mortgage is a limited liability company in good standing, duly formed and
24 existing pursuant to the laws of the State of Connecticut and is authorized to conduct business in the
25 State of California.

26 B. Total Mortgage is a residential mortgage lender licensed by the Commissioner
27 pursuant to the California Residential Mortgage Lending Act (CRMLA) (Fin. Code §50000 et seq.).
28 Total Mortgage has its principal place of business located at 185 Plains Road, 3rd Floor, Milford,

1 Connecticut 06461. Total Mortgage has five branch locations under its CRMLA license in
2 California and elsewhere. Total Mortgage employs mortgage loan originators in its CRMLA
3 business.

4 C. Total Mortgage is also licensed by the Commissioner as a finance lender and broker
5 pursuant to the California Financing Law (CFL) (Fin. Code §22000 et seq.). Total Mortgage has its
6 principal place of business under the CFL also located at 185 Plains Road, 3rd Floor, Milford,
7 Connecticut 06461. Total Mortgage does not currently have any branch office locations under its
8 CFL

9 D. The Department of Business Oversight (Department), through the Commissioner, has
10 jurisdiction over the licensing and regulation of persons and entities engaged in the business of
11 lending and/or servicing pursuant to the CRMLA and lending and/or brokering pursuant to the CFL,
12 including mortgage loan originators.

13 E. On October 11, 2017, Total Mortgage was personally served by the Commissioner
14 with a Notice of Intention to Issue Orders Suspending Residential Mortgage Lender and/or Servicer
15 Licenses and Finance Lender and/or Broker Licenses and to Levy Penalties, Accusation and
16 accompanying documents dated October 4, 2017 (Accusation). Total Mortgage has filed a Notice of
17 Defense with the Commissioner regarding the Accusation.

18 F. On October 11, 2017, Total Mortgage was also personally served by the
19 Commissioner with an Order to Discontinue Violations Pursuant to Financial Code Section 50321
20 and Statement of Facts In Support of Order to Discontinue Violations Pursuant to Financial Code
21 Section 50321 and Notice of Intent to Make Order Final dated October 4, 2017 (Order to
22 Discontinue Violations) and an Order to Refund Excessive Per Diem Interest Charges Pursuant to
23 Financial Code Section 50504 dated October 4, 2017 (Order to Refund)(collectively Orders). Total
24 Mortgage has filed requests for hearing with the Commissioner regarding the Orders.

25 G. The Accusation and Orders are currently scheduled for trial before the Los Angeles
26 Office of Administrative Hearings for May 30 and 31, 2018.

27 H. The Commissioner hereby acknowledges that Total Mortgage has submitted
28 information demonstrating that it has adopted policies and procedures addressing the issues

1 described in the Accusation and Orders.

2 I. It is the intention and desire of the parties to resolve this matter without the necessity
3 of a hearing and/or other litigation.

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

6 **TERMS AND CONDITIONS**

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

9 2. Waiver of Hearing Rights. Total Mortgage acknowledges its right to an
10 administrative hearing under the CRMLA and/or the CFL in connection with the Accusation and/or
11 Orders and hereby waives that right to a hearing, and to any reconsideration, appeal, or other rights
12 which may be afforded pursuant to the CRMLA, the CFL, the California Administrative Procedure
13 Act, the California Code of Civil Procedure, or any other provision of law in connection with these
14 matters.

15 3. Final Orders. Total Mortgage hereby agrees that the Orders described in Paragraph F
16 above are hereby deemed final orders.

17 4. Administrative Penalty. Total Mortgage agrees to pay to the Commissioner the sum
18 of \$70,000.00 in administrative penalties upon execution of this Agreement. The payment shall be
19 made by cashiers' check payable to the Department of Business Oversight and shall be sent to the
20 Department, attention, Accounting-Litigation, 1515 K Street, Suite 200, Sacramento, CA 95814-
21 4052.

22 5. February 8, 2013 through December 31, 2017 Self-Audit. The parties acknowledge
23 that Total Mortgage has conducted a self-audit of per diem interest charges for all loans originated
24 between February 8, 2013 and December 31, 2017 (self-audit), and that pursuant to such self-audit,
25 Total Mortgage has already issued refunds plus per diem interest at a rate of ten percent to borrowers
26 identified pursuant to the self-audit. Total Mortgage acknowledges the Commissioner has yet to
27 perform accuracy testing on the self-audit. Total Mortgage agrees to cooperate with the
28 Commissioner's testing by providing any and all documentation requested by the Commissioner for

1 such purposes. Total Mortgage further agrees to have its self-audit conducted anew (re-audit) by and
2 through an independent certified public accountant (CPA), in accordance with procedures agreed
3 upon by the parties, if the Commissioner's testing reveals more than a 10 percent error rate as to
4 additional overcharges of per diem interest or refunds due to consumers. In the event a re-audit is
5 required, Total Mortgage, by and through its CPA, shall submit to the Commissioner the results of
6 the re-audit (re-audit report) within 180 days of the date of Total Mortgage is notified in writing by
7 the Commissioner that a re-audit is required. The re-audit report shall include at a minimum, the
8 total number of loans made during the period, the number of loans with per diem interest
9 overcharges, and for each loan, the report shall list the borrower loan number, name, address, loan
10 amount, loan date, interest rate, disbursement date, date per diem interest commenced, per diem
11 interest charged, daily per diem interest amount, number of days per diem interest charged, number
12 of days per diem interest overcharged (if applicable), overcharge amount (if applicable), date of
13 refund (if applicable), proof of refund (if applicable), and whether the overcharge was previously
14 reported in the self-audit. Total Mortgage further agrees that it shall pay an administrative penalty to
15 the Commissioner, upon submission of the re-audit report, equal to \$200.00 for each per diem
16 interest overcharge discovered during the re-audit that (i) was not previously reported in the self-
17 audit, and (ii) was not refunded to the borrower within 30 days of loan funding.

18 6. Quarterly Audits. Total Mortgage also agrees to conduct quarterly audits, by and
19 through an independent certified public accountant, in accordance with procedures agreed upon by
20 the parties, of per diem interest charges for all California loans for a period of one year commencing
21 on January 1, 2018. Each quarterly audit must cover all California loans originated during that
22 quarter. Total Mortgage, by and through its independent certified public accountant, will submit to
23 the Department the results of each quarterly audit (quarterly audit report) within 45 days of the
24 completion of each quarter. The quarterly audit report would contain the same or similar fields as in
25 the audit report discussed in paragraph 5 above. Total Mortgage further agrees that it shall pay an
26 administrative penalty to the Commissioner, upon submission of the quarterly audit report(s), equal
27 to \$200.00 for each per diem interest overcharge discovered during the quarterly audit(s) unless such
28 overcharge was refunded to the borrower within 30 days of loan funding.

1 7. Payment of Refunds: Borrower refunds made pursuant to Paragraphs 5 and 6 shall
2 include interest at the rate of 10 percent per annum from the date of overcharge and shall be mailed
3 to the last known address of each borrower prior to submission of the applicable report to the
4 Commissioner. Borrower refunds made pursuant to this Agreement shall be accompanied by a cover
5 letter that states: “As a result of an examination by the Department of Business Oversight, a refund
6 or adjustment in the amount of \$XXXX is being made for your benefit. If you have any questions
7 concerning this refund, please contact (lender) at (800) XXX-XXXX.” The Department
8 acknowledges Total Mortgage has refunded the overcharges plus interest to borrowers identified in
9 the self-audit and will require the above language for any additional refunds moving forward.”

10 8. Outstanding Refunds. Total Mortgage shall be responsible for ensuring that any
11 outstanding refund payment owed to any borrower identified in the audit and quarterly audit reports
12 described in Paragraphs 5 and 6 above shall be escheated to the State of California pursuant to the
13 provisions of the California Unclaimed Property Law (Code Civ. Proc., § 1500 et seq.).

14 9. Effect of Agreement on Licenses. In consideration of the information provided to the
15 Commissioner by Total Mortgage as described in Paragraph H above and the agreement of Total
16 Mortgage to the entry of the finality of the Orders and payment of penalties as provided for in
17 Paragraphs 3 and 4 above, the Commissioner hereby agrees that, except as otherwise set forth in this
18 Agreement, she shall not suspend and/or revoke the residential mortgage lender licenses or finance
19 lender and/or broker licenses of Total Mortgage. Accordingly, this Agreement does not affect the
20 licensing status of Total Mortgage.

21 10. The Commissioner hereby acknowledges that the mortgage loan servicer application
22 filed by Total Mortgage on or about January 4, 2014 is ready to be approved, and the Commissioner
23 hereby agrees to approve Total Mortgage’s residential mortgage loan servicer application upon
24 execution of this Agreement.

25 11. Information Willfully Withheld. This Agreement may be revoked and the
26 Commissioner may pursue any and all remedies available under law against Total Mortgage, if the
27 Commissioner later finds out that Total Mortgage knowingly or willfully withheld information used
28 and relied upon in this Agreement.

1 12. Failure to Comply with Agreement. Total Mortgage agrees that if it fails to comply
2 with the terms of this Agreement within five business days after written notice of demand, the
3 Commissioner may, in addition to all other available remedies under the CRMLA and/or CFL,
4 summarily suspend the CRMLA and/or CFL licenses of Total Mortgage until Total Mortgage is in
5 compliance. Total Mortgage waives any notice and hearing rights to contest such summary
6 suspensions which may be afforded under the CRMLA, the CFL, the California Administrative
7 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection
8 therewith.

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

10 14. Third Party Actions. This Agreement does not create any private rights or remedies
11 against Total Mortgage, create any liability for Total Mortgage or limit defenses of Total Mortgage
12 for any person or entity not a party to this Agreement.

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

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

25 17. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
26 has received independent advice from its attorney(s) and/or representatives with respect to the
27 advisability of executing this Agreement.

28 18. Reliance. Each of the parties represents, warrants, and agrees that in executing this

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

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

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

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

26 22. Headings and Governing Law. The headings to the paragraphs of this Agreement are
27 inserted for convenience only and will not be deemed a part hereof or affect the construction or
28 interpretation of the provisions hereof. This Agreement shall be construed and enforced in

1 accordance with and governed by California law.

2 23. Effective Date. This Agreement shall not become effective until signed by all parties
3 and a fully executed copy is delivered by counsel for the Commissioner via email to counsel for
4 Total Mortgage.

5 24. Counterparts. This Agreement may be executed in one or more separate counterparts,
6 each of which when so executed, shall be deemed an original. Such counterparts shall together
7 constitute a single document.

8 25. Notice. Any notice/report required under this Agreement shall be addressed as
9 follows:

10 To Total Mortgage Services, LLC: Erin Regan, Esq.
11 Compliance Counsel
12 Total Mortgage Services, LLC
13 185 Plains Road, 3rd Floor
14 Milford, Connecticut 06461
15 eregan@totalmortgage.com

16 To the Commissioner: Judy L. Hartley, Esq.
17 Senior Counsel
18 Department of Business Oversight
19 320 W. 4th Street, Suite 750
20 Los Angeles, California 90013-2344
21 judy.hartley@dbo.ca.gov

22 26. Public Record. Total Mortgage acknowledges that this Agreement is a public record.

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

25 Dated: 4/11/18 JAN LYNN OWEN
26 Commissioner of Business Oversight

27 By _____
28 MARY ANN SMITH
Deputy Commissioner

Dated: 4/11/18 TOTAL MORTGAGE SERVICES, LLC

By _____
SCOTT TIMOTHY PENNER, Chief Executive Officer

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APPROVED AS TO FORM:

By _____
ERIN REGAN, ESQ. attorney for
TOTAL MORTGAGE SERVICES, LLC

Commissioner of Business Oversight

By _____
JUDY L. HARTLEY, ESQ., Senior Counsel