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10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA
12

13	In the Matter of:)	CRMLA LICENSE NO.: 417-0050
14	THE COMMISSIONER OF BUSINESS)	NMLS NO.: 37408
15	OVERSIGHT,)	
16	Complainant,)	SETTLEMENT AGREEMENT
17	v.)	
18	VITEK REAL ESTATE INDUSTRIES)	
19	GROUP, INC.,)	
20	Respondent.)	
21	_____)		

22
23 This Settlement Agreement (Agreement) is entered into between Vitek Real Estate Industries
23 Group, Inc. (Vitek) and the Commissioner of Business Oversight (Commissioner), and is made with
25 respect to the following facts:

26 **RECITALS**

27 A. Vitek is a corporation in good standing, duly formed and existing pursuant to the laws of the
28 State of California, and authorized to conduct business in California. Vitek has its principal place of

1 business at 2882 Prospect Park Drive, Suite 100, Rancho Cordova, California 95670.

2 B. Vitek is a residential mortgage lender and servicer licensed by the Commissioner since
3 December 15, 2010 (License No. 417-0050), pursuant to the California Residential Mortgage
4 Lending Act (CRMLA) (Fin. Code, § 50000 et seq.).

5 C. The Commissioner has jurisdiction over the licensing and regulation of persons and entities
6 engaged in the business of lending and/or servicing residential mortgage loans under the CRMLA.

7 D. Harry L. Duncan is the President of Vitek and, as such, is authorized to enter into this
8 Agreement on behalf of Vitek.

9 **The 2011 Regulatory Examination**

10 E. On or about December 12, 2011, the Commissioner commenced a regulatory examination of
11 Vitek (2011 exam). The examination revealed numerous violations of the CRMLA, including the
12 following:

13 (a) Vitek failed to provide loan brokerage agreements to borrowers in violation of Financial
14 Code section 50701.

15 (b) Vitek provided a Fair Lending Notice Disclosure that contained multiple contact agencies
16 to borrowers in violation of Financial Code section 50204, subdivision, (i); Health and
17 Safety Code section 35830; and California Code of Regulations, title 21, section 7114.

18 F. On or about August 15, 2012, Vitek sent the Commissioner a letter stating it implemented
19 corrective actions to prevent future violations.

20 **The 2014 Regulatory Examination**

21 G. On or about August 18, 2014, the Commissioner commenced a regulatory examination of
22 Vitek (2014 examination). The examination revealed numerous violations of the CRMLA, including
23 the following:

24 (a) Vitek failed to provide loan brokerage agreements to borrowers in violation of Financial
25 Code section 50701.

26 (b) Vitek provided a Fair Lending Notice Disclosure that contained multiple contact agencies
27 to borrowers in violation of Financial Code section 50204, subdivision, (i); Health and Safety Code
28 section 35830; and California Code of Regulations, title 21, section 7114.

1 (c) Vitek failed to timely provide the Fair Lending Notice Disclosure to borrowers in violation
2 of Financial Code section 50204, subdivision, (i); Health and Safety Code section 35830; and
3 California Code of Regulations, title 21, section 7114.

4 **Commissioner’s Accusation**

5 H. On April 17, 2017, the Commissioner issued an Accusation supporting a license suspension
6 for up to 12 months and administrative penalties of \$1,000.00 per violation to Vitek (Enforcement
7 Action). Vitek timely submitted a request for hearing which is currently scheduled for December 5-6,
8 2017, at the Office of Administrative Hearings, 2349 Gateway Oaks, Suite 200, Sacramento,
9 California, 95833.

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

12 J. The Commissioner finds that this action is appropriate, in the public interest, and consistent
13 with the purpose fairly intended by the policy and provisions of the CRMLA.

14 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set forth
15 in this document, the parties agree as follows:

16 **TERMS AND CONDITIONS**

17 1. Purpose. The purpose of this Agreement is to resolve the matter before the Commissioner
18 in a manner that avoids the expense of a hearing and possible further court proceedings, is in the
19 public interest, protects consumers, and is consistent with the purposes, policies, and provisions of
20 the CRMLA.

21 2. Finality of Agreement. Vitek agrees to comply with the Agreement and stipulates that the
22 Agreement is hereby deemed final. The Agreement resolves all matters arising from the 2011 and
23 2014 examinations of Vitek by the Commissioner.

24 3. Order to Discontinue Violations. In accordance with Financial Code section 50321, Vitek
25 stipulates that it is ordered to immediately discontinue the violations alleged in the Enforcement
26 Action.

27 4. Penalties. Vitek agrees to pay a penalty of \$25,000.00, due and payable within 10 business
28 days from the date of execution of this Agreement as described in Paragraph 23, made payable in the

1 form of a cashier's check or Automated Clearing House deposit to the "Department of Business
2 Oversight," and transmitted to the attention of: Accounting, at the Department of Business Oversight
3 located at 1515 K Street, Suite 200, Sacramento, California, 95814. Notice of the payment shall
4 concurrently be sent to the attention of Vanessa T. Lu, Counsel, Enforcement Division, 320 West 4th
5 Street, Suite 750, Los Angeles, California 90013-2344.

6 In the event the payment due date falls on a weekend or holiday, the payment shall be due the
7 next business day. Vitek acknowledges that failure to timely pay the penalties in this Agreement
8 shall be a breach of this Agreement and shall be cause for the Commissioner, within 15 calendar days
9 after written notice from the Commissioner, to immediately suspend Vitek's license until the
10 requirement is met. Vitek hereby waives any notice and hearing rights to contest the immediate
11 suspension which may be afforded under the California Financial Code, the California Administrative
12 Procedure Act, the California Code of Civil Procedure, or any other legal provisions

13 5. Waiver of Hearing Rights. Vitek acknowledges its right to an administrative hearing under
14 the CRMLA in connection with the Accusation and hereby agrees that the hearing currently set for
15 December 5-6, 2017 will be removed from the calendar. Vitek waives any reconsideration, appeal,
16 or other rights which may be afforded pursuant to the CRMLA, the California Administrative
17 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection
18 with these matters.

19 6. Policies and Procedures. Vitek will submit to the Commissioner its policies and
20 procedures within 10 business days from the date of execution of this Agreement as described in
21 Paragraph 23, that are designed to prevent the violations set forth in the Enforcement Action and this
22 Agreement. Vitek shall provide the policies and procedures to the Independent Auditor once retained
23 by Vitek.

24 7. Independent Auditor. Within 30 calendar days following the effective date of this
25 Agreement as defined in Paragraph 23, Vitek agrees to engage an independent auditor that is
26 reasonably acceptable to the Department (Independent Auditor) to detect and report on violations of
27 law as required by Paragraph 8 of this Agreement.

28 8. Independent Audit of Brokered Loans and Fair Lending Notice Disclosures. Vitek agrees

1 to have the Independent Auditor conduct an internal review of Vitek’s loan files and records to
2 determine whether its policies and procedures are effective to prevent violations set forth in the
3 Enforcement Action and this Agreement. The audit shall commence no later than 30 calendar days
4 from the date of engagement of the Independent Auditor. The audit shall cover all California loans
5 originated, brokered, and funded by Vitek from date of engagement of the Independent Auditor and
6 continuing for a 12-month period. For the 12-month period, the Independent Auditor shall submit
7 audit reports on a quarterly basis as follows:

8 a. The first audit report shall cover all California loans originated and brokered by Vitek from
9 January 30, 2018 to April 30, 2018, and shall be submitted to the Commissioner by June 30, 2018.

10 b. The second audit report shall cover all California loans originated and brokered by Vitek
11 from May 1, 2018 to July 30, 2018, and shall be submitted to the Commissioner by September 30,
12 2018.

13 c. The third audit report shall cover all California loans originated and brokered by Vitek from
14 August 1, 2018 to October 30, 2018, and shall be submitted to the Commissioner by December 30,
15 2018.

16 d. The fourth audit report shall cover all California loans originated and brokered by Vitek
17 from November 1, 2018 to January 30, 2019, and shall be submitted to the Commissioner by March
18 30, 2019.

19 e. The audit reports shall describe at a minimum, the following: (i) the total number of loans
20 originated, brokered, and funded by Vitek; (ii) the number of loans where Vitek failed to provide a
21 loan brokerage agreement in violation of Financial Code section 50701; (iii) the number of loans
22 where Vitek failed to timely provide a Fair Lending Notice Disclosure to borrowers in violation of
23 Health and Safety Code section 35380; and California Code of Regulations, title 21, section 7114;
23 (iv) the number of loans where Vitek provided borrowers a Fair Lending Notice Disclosure with
25 multiple contact agencies; (v) each and every loan, the borrower loan number, borrower name,
26 address, loan amount, and loan date, wherein a loan brokerage agreement should have been provided
27 under Financial Code section 50701; and (vi) each and every loan, the borrower loan number,
28 borrower name, address, loan amount, loan date, and the date Fair Lending Notice was provided for

1 all loans in which the Independent Auditor finds that the Fair Lending Notice was provided untimely
2 to the borrower or contained multiple contact agencies.

3 9. Administrative Penalty Based on Audit Findings. Vitek agrees to pay an administrative
4 penalty of \$125.00 for each violation identified by the Independent Auditor payable within 10
5 business days from Vitek's receipt of the Independent Auditor's quarterly report and made payable in
6 the form of a cashier's check or Automated Clearing House deposit to the "Department of Business
7 Oversight," and transmitted to the attention of: Accounting, at the Department of Business Oversight
8 located at 1515 K Street, Suite 200, Sacramento, California, 95814. Notice of the payment shall
9 concurrently be sent to the attention of Vanessa T. Lu, Counsel, Enforcement Division, 320 West 4th
10 Street, Suite 750, Los Angeles, California 90013-2344.

11 10. Suspension of License for Failure to Comply. Vitek agrees that if it fails to meet any
12 deadline or any requirement in Paragraphs 4 and 6-9 above, other than inadvertent and isolated errors
13 that are promptly corrected by Vitek, within 15 calendar days after written notice from the
14 Commissioner, Vitek's CRMLA license number 417-0050 shall be immediately suspended until the
15 requirements are met. Vitek hereby waives any notice and hearing rights to contest the immediate
16 suspension which may be afforded under the California Financial Code, the California Administrative
17 Procedure Act, the California Code of Civil Procedure, or any other legal provisions. Except as
18 otherwise set forth in the Agreement, the Commissioner will not suspend or revoke the residential
19 mortgage lender and loan servicer licenses of Vitek or take any further action based on violation of
20 any provisions cited in the Enforcement Action. Accordingly, this Agreement, which resolves the
21 Enforcement Action, does not affect the licensing status of Vitek.

22 11. Full and Final Order. The parties hereby acknowledge and agree that this Agreement is
23 intended to constitute a full, final, and complete resolution of the Enforcement Action and that no
23 further proceedings or actions will be brought by the Commissioner in connection with these matters
25 either under the CRMLA, or any other provision of law, excepting therefrom any proceeding or
26 action if such proceeding or action is based upon discovery of new and further violations of the
27 CRMLA which do not form the basis for this Agreement or which were knowingly concealed from
28 the Commissioner by Vitek.

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

2 13. Commissioner's Duties. The parties further acknowledge and agree that nothing
3 contained in this Agreement shall operate to limit the Commissioner's ability to assist any other
4 agency (city, county, state or federal) with any prosecution, administrative, civil or criminal, brought
5 by any such agency against Vitek or any other person based upon any of the activities alleged in these
6 matters or otherwise.

7 14. Third Party Actions. It is the intent and understanding between the parties that this
8 Agreement does not create any private rights or remedies against Vitek create any liability for Vitek
9 or limit defenses of Vitek for any person or entity not a party to this Agreement.

10 15. Future Actions by Commissioner. This Agreement may be revoked and the
11 Commissioner may pursue any and all remedies available under law or this Agreement against Vitek,
12 if the Commissioner later discovers that Vitek knowingly or willfully withheld information used and
13 relied upon in this Agreement. Further, Vitek agrees that this Agreement does not resolve any
14 remedies, including penalties that may be assessed by the Commissioner, upon discovery of new and
15 further violations of the CRMLA that occur after execution of this Agreement, which do not form the
16 basis for this Agreement.

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

20 17. Counterparts. The parties agree that this Agreement may be executed in one or more
21 separate counterparts, each of which when so executed, shall be deemed an original. A fax signature
22 shall be deemed the same as an original signature. Such counterparts shall together constitute and be
23 one and the same instrument.

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

28 19. Headings and Governing Law. The headings to the paragraphs of this Agreement are

1 inserted for convenience only and will not be deemed a part hereof or affect the construction or
2 interpretation of the provisions hereof. This Agreement shall be construed and enforced in
3 accordance with and governed by California law.

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

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

19 22. Voluntary Agreement. Vitek enters into this Agreement voluntarily and without coercion
20 and acknowledges that no promises, threats or assurances have been made by the Commissioner or
21 any officer, or agent thereof, about this Agreement.

22 23. Effective Date. This Agreement shall not become effective and final until signed by all
23 parties and sent by electronic mail to Harry L. Duncan at hduncan@teamvitek.com.

23 23. Public Record. Respondent acknowledges that this Agreement is a public record.

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

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Dated: November 20, 2017

Jan Lynn Owen
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: November 20, 2017

VITEK REAL ESTATE INDUSTRIES GROUP, INC.

By _____
HARRY L. DUNCAN
President

APPROVED AS TO FORM AND CONTENT:

Dated: November 20, 2017

By _____
JOSHUA A. ROSENTHAL
Medlin & Hargrave
Counsel for Vitek Real Estate Industries Group, Inc.