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8

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

11 In the Matter of:) OAH NO.: 2016010392
12) CRMLA NO.: 4130946
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) SETTLEMENT AGREEMENT
14)
Complainant,)
15)
v.)
16)
PEOPLE’S HOME EQUITY, INC.,)
17)
Respondent.)
18)

19 This Settlement Agreement is entered into between People’s Home Equity, Inc. (“PHE”) and the
20 Commissioner of Business Oversight of the State of California (“Commissioner”), hereinafter collectively
21 referred to as the “Parties.” This Settlement Agreement is made with respect to the following facts:

22 **I.**

23 **RECITALS**

- 24 1. PHE is a corporation in good standing, duly formed and existing pursuant to the laws of the
25 State of Tennessee.
- 26 2. PHE is a residential mortgage lender licensed by the Commissioner of the Department of
27 Business Oversight (“Department”) pursuant to the California Residential Mortgage Lending Act (Cal. Fin.
28

1 Code § 50000 et seq.) (“CRMLA”).¹ PHE has its principal place of business located at 5205 Maryland
2 Way, Suite 100, Brentwood, Tennessee 37027.

3 3. The Department, through the Commissioner, has jurisdiction over the licensing and
4 regulation of persons and entities engaged in the business of lending and/or servicing residential mortgage
5 loans pursuant to the CRMLA, including mortgage loan originators.

6 4. On November 30, 2015, the Commissioner served PHE with an Order to Discontinue
7 Violations Pursuant to Financial Code Section 50321 (“Order”); a Notice of Intention to Make Order Final;
8 a Statement of Facts in Support of Order to Discontinue Violations Pursuant to California Financial Code
9 section 50321; a Notice of Intention to Issue Order Suspending Residential Mortgage Lender License and
10 Imposing Penalties; an Accusation in Support of Notice of Intention to Issue Order Suspending Residential
11 Mortgage Lending License and Imposing Penalties; and an Order to Refund Excessive Per Diem Interest
12 Charges Pursuant to California Financial Code section 50504 (hereinafter, collectively the “Action”).

13 5. PHE timely filed a Notice of Defense and requested a hearing. The Action is currently set
14 to be heard at the Office of Administrative hearings on October 3, 4, and 5, 2016.

15 6. The Order and the Notice of Intent to Issue Order Suspending License and Imposing
16 Penalties allege that PHE has violated Financial Code section 50204, subdivision (o) and Civil Code section
17 2948.5 by charging interest on loans for a period in excess of one day prior to the date that the loan proceeds
18 were distributed from escrow (“per diem overcharges”).

19 7. The Commissioner hereby acknowledges that PHE has demonstrated that it has adopted
20 policies and procedures addressing the issues described in the November 30, 2015, Notices and Orders.

21 8. The Commissioner further acknowledges that PHE has fully cooperated with the
22 Commissioner with respect to resolving the issues described in the November 30, 2015, Notices and Orders.

23 9. The Parties mutually desire to fully and finally resolve the Action pertaining to the issues
24 described in this document, to avoid further controversy and the time, expense and uncertainty of a hearing
25 or other proceeding.

26 10. In consideration of the foregoing and the terms and conditions set out below, the Parties

27 _____
28 ¹ All subsequent statutory references are to the Financial Code, unless otherwise noted.

1 agree as follows:

2 **II.**

3 **TERMS AND CONDITIONS**

4 11. **Finality of Order:** PHE hereby agrees to comply with the Commissioner’s November 30,
5 2015, Orders to Discontinue Violations Pursuant to California Financial Code section 50321 and to Refund
6 Excessive Per Diem Interest Charges Pursuant to California Financial Code section 50504 and, further,
7 stipulates that said Orders are deemed final.

8 12. **Penalties:** PHE agrees to pay the Commissioner penalties totaling \$77,500.00, plus an
9 additional \$150.00 for each violation from January 1, 2016, to the date of this Settlement Agreement
10 discovered by the independent auditor and included in the report described in paragraph 16 of this
11 Settlement Agreement (“Penalties”). The initial payment of \$77,500.00 in penalties shall be paid by PHE
12 and received by the Commissioner within 10 days of the execution of this Settlement Agreement. A second
13 payment will be made following the report of the independent auditor for all 2016 violations at \$150.00 per
14 violation within thirty (30) days after the report of the independent auditor is completed and provided to the
15 Commissioner. Thereafter, penalty payments of \$150 for each per diem violation discovered by the
16 independent auditor will be due thirty days from the receipt of each compliance report, as described in
17 paragraph 16, a., b., c., and d. With respect to violations, all loans that are compliant at closing, or
18 compliant within 30 calendar days of disbursement of funds to the borrower, shall not be deemed
19 to be new violations. Each check shall be made payable to “The Department of Business Oversight,” and
20 shall be sent to the following address: Erik Brunkal, Senior Counsel, Department of Business Oversight,
21 1515 K Street, Suite 200, Sacramento, California, 95814. In the event the payment due date falls on a
22 weekend or a holiday, the payment shall be due the next business day. PHE acknowledges that failure to
23 timely pay the Penalties in this Settlement Agreement shall be a breach of this Settlement Agreement.
24 Failure to abide by these terms shall result in PHE being immediately suspended from lending under its
25 CRMLA license number 4130946 until the requirement is met. PHE hereby waives any notice and hearing
26 rights afforded under the California Financial Code, the California Administrative Procedure Act, the
27 California Code of Civil Procedure, or any other legal provisions which would give PHE the right to contest
28 the immediate suspension from lending resulting from failure to timely pay the penalties described above.

1 13. **Waiver of Hearing Rights:** PHE acknowledges its right to a hearing under the CRMLA in
2 connection with the Action and requested a hearing under the CRMLA. PHE acknowledges that it has
3 voluntarily entered into this Settlement Agreement and that pursuant to this Settlement Agreement PHE
4 hereby waives that right to a hearing, and to any reconsideration, appeal, or other right to review with regard
5 to the Action which may be afforded pursuant to the CRMLA, the California Administrative Procedure Act,
6 the Code of Civil Procedure, or any other provision of law.

7 14. **Certification:** PHE agrees to undertake all appropriate steps to assure full compliance
8 with California law in the conduct of its business. In accordance with this Agreement, PHE has previously
9 provided the Commissioner with the policies and procedures PHE has implemented to ensure that it is
10 charging only a single day's interest prior to the date loan proceeds are distributed from escrow as required
11 by Financial Code section 50204, subdivision (o) and Civil Code section 2948.5. PHE has and will continue
12 to utilize these policies and procedures. The policies and procedures should prevent any further per diem
13 overcharges.

14 15. **Independent Auditor:** PHE agrees to engage an independent auditing firm that is
15 reasonably acceptable to the Department (in each case, the "Independent Auditor") to conduct an internal
16 audit of PHE's loan files in order to provide the reports set forth in Paragraph 16 of this Settlement
17 Agreement. The Independent Auditor will provide each report to the Commissioner, to the attention of Erik
18 Brunkal, Senior Counsel, Department of Business Oversight, 1515 K St., Suite 200, Sacramento, California
19 95814, pursuant to the time table set out in Paragraph 17.

20 16. **Independent Auditor Reports:** The reports of the Independent Auditor shall address two
21 concerns:

22 First, the independent auditor will review all loan files with disbursement dates between January 1,
23 2016, and the effective date of this agreement for any per diem overcharges. The independent
24 auditor will provide a report to the Commissioner, within 90 days of the effective date of this
25 agreement regarding any per diem interest overcharges discovered during his/her review.

26 Second, the independent auditor will provide quarterly compliance reports to the
27 Commissioner for a period of 12 months following the effective date of this agreement regarding
28 the effectiveness of the new Policies and Procedures PHE has adopted to eliminate per diem interest

1 overcharges. Each of the reports shall include, at a minimum, the following: (i) the total number of
2 loans originated by PHE during the periods specified in Paragraph 4 above; (ii) the number of loans
3 with per diem interest charges in excess of the amount permitted by Financial Code section 50204,
4 subdivision (o), and Civil Code section 2948.5; (iii) for each and every loan, the borrower loan
5 number, name, property address, loan amount, loan date, per diem interest charged, per diem
6 interest that should have been charged under Financial Code section 50204, subdivision (o), and
7 Civil Code section 2948.5, overcharge amount (if any), date of refund (if applicable), and evidence
8 of refund (if applicable) in the form of a canceled check and accompanying correspondence mailed
9 to the borrower. The reports shall be due on the following schedule:

- 10 a. The first compliance report shall include all California loans originated by PHE from and
11 including September 1, 2016 through and including November 30, 2016, and shall be
12 submitted to the Commissioner no later than January 31, 2017.
- 13 b. The second compliance report shall include all California loans originated by PHE from
14 December 1, 2016, through February 28, 2017, and shall be submitted to the Commissioner
15 no later than April 30, 2017.
- 16 c. The third compliance report shall include all California loans originated by PHE from
17 March 1, 2017, through May 31, 2017, and shall be submitted to the Commissioner no later
18 than July 31, 2017.
- 19 d. The fourth compliance report shall include all California loans originated by PHE from June
20 1, 2016 through August 31, 2017, and shall be submitted to the Commissioner no later than
21 October 31, 2017.

22 17. **Failure to File Timely or Complete Audit Report.** PHE agrees that if it fails to meet any
23 deadline or any requirement in Paragraph 16 above, PHE shall immediately notify the Department of such a
24 failure and cooperate with the Department to cause such failure to be rectified as soon as reasonably
25 practicable but no later than thirty (30) calendar days. Failure to abide by these terms shall result in PHE
26 being immediately suspended from lending under its CRMLA license number 4130946 until the
27 requirement is met. PHE hereby waives any notice and hearing rights to contest the immediate suspension
28 from lending resulting from failure to comply with Paragraph 16, above, that may be afforded under the

1 California Financial Code, the California Administrative Procedure Act, the California Code of Civil
2 Procedure, or any other legal provisions.

3 18. **Full and Final Settlement.** The Parties hereby acknowledge and agree that this Settlement
4 Agreement is intended to constitute a full, final, and complete resolution of the Action and that no further
5 proceedings or actions will be brought by the Commissioner in connection with the Action or related
6 matters either under the CRMLA, or any other provision of law, excepting therefrom any proceeding or
7 action if such proceeding or action is based upon facts not presently known to the Commissioner or which
8 were knowingly concealed from the Commissioner by PHE. The Parties agree that the findings in this
9 Settlement Agreement are solely for this administrative action and cannot be used in any third-party action.

10 19. **Binding.** This Settlement Agreement is binding on all heirs, assigns and/or successors in
11 interest.

12 20. **Commissioner’s Duties.** The Parties further acknowledge and agree that nothing contained
13 in this Settlement Agreement shall operate to limit the Commissioner’s ability to assist any other agency,
14 (city, county, state or federal) with any prosecution, administrative, civil or criminal, brought by any such
15 agency against PHE or any other person based upon any of the activities alleged in these matters or
16 otherwise.

17 21. **Third Party Actions.** It is the intent and understanding between the Parties that this
18 Settlement Agreement does not create any private rights or remedies, including rights as a third party
19 beneficiary, against PHE, create any liability for PHE or limit defenses of PHE for any person or entity not a
20 party to this Settlement Agreement.

21 22. **Future Actions by Commissioner.** This Settlement Agreement may be revoked and the
22 Commissioner may pursue any and all remedies available under law against PHE if the Commissioner later
23 discovers that PHE knowingly or willfully withheld information used and relied upon in this Settlement
24 Agreement. Further, PHE agrees that this Settlement Agreement does not resolve any penalties that may be
25 assessed by the Commissioner upon discovery of new and further violations of the CRLMA which do not
26 form the basis for the current Action.

27 23. **Independent Legal Advice.** Each of the Parties represents, warrants, and agrees that it has
28 received independent advice from its attorney(s) and/or representatives with respect to the advisability of

1 executing this Settlement Agreement.

2 24. **Counterparts.** The Parties agree that this Settlement Agreement may be executed in one or
3 more separate counterparts, each of which when so executed, shall be deemed an original. A fax or
4 electronic signature shall be deemed the same as an original signature. Such counterparts shall together
5 constitute and be one and the same instrument.

6 25. **Waiver, Modification, and Qualified Integration.** The waiver of any provision of this
7 Settlement Agreement shall not operate to waive any other provision set forth herein. No waiver,
8 amendment, or modification of this Settlement Agreement shall be valid or binding to any extent unless it is
9 in writing and signed by the Parties affected by it.

10 26. **Headings and Governing Law.** The headings to the paragraphs of this Settlement
11 Agreement are inserted for convenience only and will not be deemed a part hereof or affect the construction
12 or interpretation of the provisions hereof. This Settlement Agreement shall be construed and enforced in
13 accordance with and governed by California law.

14 27. **Full Integration.** Each of the Parties represents, warrants, and agrees that in executing this
15 Settlement Agreement it has relied solely on the statements set forth herein and the advice of its own
16 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Settlement
17 Agreement it has placed no reliance on any statement, representation, or promise of any other party, or any
18 other person or entity not expressly set forth herein, or upon the failure of any party or any other person or
19 entity to make any statement, representation or disclosure of anything whatsoever. The Parties have
20 included this clause: (1) to preclude any claim that either Party was in any way fraudulently induced to
21 execute this Settlement Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret,
22 supplement, or contradict the terms of this Settlement Agreement.

23 28. **Presumption from Drafting.** The Parties have had the opportunity to draft, review and
24 edit the language of this Settlement Agreement, and no presumption for or against any party arising out of
25 drafting all or any part of this Settlement Agreement will be applied in any action relating to, connected to,
26 or involving this Settlement Agreement. Accordingly, the Parties waive the benefit of California Civil Code
27 section 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a
28 contract should be interpreted most strongly against the party who caused the uncertainty to exist.

1 29. **Voluntary Agreement.** PHE enters into this Settlement Agreement voluntarily and
2 without coercion and acknowledges that no promises, threats or assurances have been made by the
3 Commissioner or any officer, or agent thereof, about this Settlement Agreement.

4 30. **Effective Date.** This Settlement Agreement shall not become effective until signed and
5 delivered by all Parties.

6 31. **Public Record.** PHE acknowledges that this Settlement Agreement is a public record.

7 32. **Authority to Execute.** Each signatory hereto covenants that he/she possesses all necessary
8 capacity and authority to sign and enter into this Settlement Agreement.

9
10 Dated: 9/27/16

JAN LYNN OWEN
Commissioner of Business Oversight

11 By _____
12 Mary Ann Smith
13 Deputy Commissioner
14 Enforcement Division

15 Dated: 9/27/16

Peoples Home Equity, Inc.

16 By _____
17 Aaron Wimsatt
18 President

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

20
21 _____
22 Haydn Richards, Jr.
23 Counsel for Peoples Home Equity, Inc.
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