

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 UCHE L. ENENWALI (State Bar No. 235832)
Senior Counsel
4 Department of Business Oversight
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7586
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

11 In the Matter of:) OAH Case No. 2020020581
)
12 THE COMMISSIONER OF BUSINESS) Agency Case No. 60DBO-91707
13 OVERSIGHT,) SETTLEMENT AGREEMENT
)
14 Complainant,) Hearing Date: July 14, 2020
15 v.) Hearing Time: 9:00 a.m.
) Location: OAH - Los Angeles
16 APEXLEND, LLC,) 320 West 4th Street, Suite 630
) Los Angeles, CA 90013
17 Respondents.) Judge: Unassigned
)

18
19 In consideration of the application filed by Apexlend, LLC, for a lending license under the
20 California Financing Law (Fin. Code, § 22000, et seq.) (CFL), this Settlement Agreement is entered
21 into by and between the Commissioner of Business Oversight (Commissioner) and Apexlend, LLC
22 (Apexlend) (collectively, Parties.)

23 **I.**

24 **Recitals**

25 This Settlement Agreement is made with reference to the following facts:

26 A. Apexlend is a limited liability company with its principal place of business located at
27 56 Forest Lake Drive, West Harrison, New York 60604.
28

1 B. At all relevant times, Pavan Shunker Agarwal (Agarwal) is, or was, a direct owner of
2 Apexlend.

3 C. The Department of Business Oversight, through the Commissioner of Business
4 Oversight (Commissioner), has jurisdiction over the licensing and regulation of persons and entities
5 engaged in the business of lending and brokering pursuant to the CFL.

6 D. On October 23, 2018, Apexlend filed with the Commissioner an application for
7 licensure as a lender and broker under the CFL. (CFL File No. 60DBO-91707) (Application). The
8 Application identified Agarwal as an owner of 50% or more shares of Apexlend. Agarwal verified
9 the Application as correct and true under penalty of perjury.

10 E. The Commissioner investigates each CFL license application it receives. The
11 Department's investigation of Apexlend's application disclosed that on August 19, 2014, the state of
12 Georgia's Department of Banking and Finance (DBF) issued a Notice of Intent to Revoke Annual
13 License (Notice) to Sun West Mortgage Company, Inc. (Sun West). The Notice identified Agarwal
14 as the chief executive officer and director of Sun West, alleging among other things, that Sun West
15 employed nine convicted felons in violation of state of Georgia's laws.

16 F. On August 19, 2014, Georgia's DBF issued proposed Orders to Cease and Desist to
17 Sun West, Agarwal, and Hari S. Agarwal based on the violations referenced in the Notice.

18 G. On September 18, 2014, Georgia's DBF and Sun West entered into a Settlement
19 Agreement dated September 18, 2014 (Agreement) wherein Sun West agreed to, among other terms,
20 surrender its licenses and never apply for a Georgia mortgage broker or Georgia mortgage lender
21 license. The DBF's Agreement further prohibits Sun West's officers, including Agarwal from
22 making an application for a Georgia mortgage loan originator's license, a Georgia mortgage broker's
23 license, or a Georgia mortgage lender's license, either in their individual capacities or as the owners
24 or officers of a corporation, partnership or limited liability company. DBF's Agreement assessed
25 fines totaling \$45,500.00 against Sun West in connection with the violations that formed the basis of
26 the Notice.

27 ///

28

1 H. In support of its application and as required under the CFL, Apexlend submitted a
2 Statement of Identity and Questionnaire (SIQ) which contains the following question: “Question 3.
3 Have you ever been named in any order, judgment or decree of any court or any governmental
4 agency or administrator, temporarily or permanently restraining or enjoining you from engaging in
5 or continuing any conduct, practice or employment....” Question 3 of the SIQ further states: “if the
6 answer is “Yes,” give details.”

7 I. Agarwal responded “Yes” to Question 3 of the SIQ, and disclosed the DBF’s
8 Agreement, admitting that he was ordered to refrain from making any future applications for a
9 Georgia mortgage loan originator’s license or mortgage broker’s license, in either his individual
10 capacity or as owner or officer of a corporation, partnership or LLC.

11 J. California Financial Code section 22109, subdivision (a), grants the Commissioner
12 discretion to deny the application for a finance lender or broker license on the basis that “The
13 applicant or an officer, director, general partner, person responsible for the applicant's lending
14 activities in this state, or person owning or controlling, directly or indirectly, 10 percent or more of
15 the outstanding interests or equity securities of the applicant has violated any provision of this
16 division or the rules thereunder or any similar regulatory scheme of the State of California or a
17 foreign jurisdiction.”

18 K. Based on the information disclosed in Apexlend’s Application, the Commissioner
19 determined that there are grounds to deny Apexlend licensure pursuant to Financial Code section
20 22109 (a) (3) on the basis that Agarwal who owns directly or indirectly, 10 percent or more of the
21 outstanding interests or equity securities of Apexlend has violated a similar regulatory scheme of the
22 state of California or a foreign jurisdiction by employing convicted felons in violation of state of
23 Georgia’s laws.

24 L. On November 19, 2019, the Commissioner issued a Statement of Issues in Support of
25 Notice of Intention to Issue Order Denying Application for a California Finance Lender License,
26 along with other supporting pleadings against Apexlend seeking to deny Apexlend’s Application.
27 (collectively, Enforcement Action).

28

1 M. Apexlend timely filed a Notice of Defense and request for hearing on the
2 Enforcement Action with the Commissioner, and the matter is currently set for a one-day hearing on
3 July 14, 2020, at 9:00 a.m., before the Office of Administrative Hearings, located at 320 West Fourth
4 Street, Suite 600, Los Angeles, California 90013.

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

7 **II.**

8 **Terms and Conditions**

9 1. Purpose. This Settlement Agreement resolves the issues before the Commissioner’s
10 findings set forth in paragraphs A through M above, in a manner that avoids the expense of a hearing
11 and other possible court proceedings, protects consumers, is in the public interest, and is consistent
12 with the purposes, policies, and provisions of the CFL.

13 2. Administrative Cost. Apexlend shall pay an administrative cost of \$2,000.00 to the
14 Commissioner. The administrative cost is due within 30 days of the Effective Date, as defined in
15 Paragraph 27 below (Effective Date), and should be made payable in the form of a cashier’s check or
16 Automated Clearing House deposit to the “Department of Business Oversight” and transmitted to the
17 attention of: Accounting – Enforcement Division, Department of Business of Oversight, 1515 K
18 Street, Suite 200, Sacramento, California 95814. Notice of such payment shall be forwarded to
19 Uche Enenwali, Senior Counsel, Department of Business Oversight, Enforcement Division, 320
20 West 4th Street, Suite 750, Los Angeles, California 90013.

21 3. Consideration. In consideration of Apexlend’s agreement and execution of this
22 Settlement Agreement, and Apexlend’s payment of the administrative cost referenced in paragraph 2
23 above, the Commissioner hereby agrees to continue reviewing Apexlend’s Application in
24 accordance with Financial Code section 22109, subdivision (c).

25 4. Reporting Requirement. During the 24-month period from the Effective Date of the
26 Settlement Agreement, Apexlend shall report to the Commissioner within 30 days any disciplinary
27 investigations or actions against it by any licensing agencies, any criminal investigations,
28

1 prosecutions, or convictions, or any civil judgments against Apexlend. Traffic citations are excluded.

2 5. Revocation of License. Apexlend agrees that for the 24-month period from the
3 Effective Date of this Agreement, in the event Apexlend fails to comply with the terms of this
4 Consent Order, the Commissioner, in his sole discretion, may give Apexlend written notice of such
5 breach (Notice) and the opportunity to cure the breach (Cure). The Cure must be completed to the
6 satisfaction of the Commissioner within five business days after the day the Notice has been sent via
7 email to Apexlend at Apexlend’s email address at hpeak@apexlend.com, unless another date for
8 receipt of Cure is agreed to in writing by the Commissioner’s counsel, Uche Enenwali. Proof of
9 Cure, satisfactory to the Commissioner, shall be sent to Uche L. Enenwali, Senior Counsel,
10 Department of Business Oversight, Enforcement Division, 320 West 4th Street, Suite 750, Los
11 Angeles, California 90013, and by via email at Uche.enenwali@dbo.ca.gov.

12 6. Apexlend’s License Application: The Commissioner agrees that it shall process
13 Apexlend’s CFL license application and shall not deny such application on the sole basis of
14 Financial Code section 22109(a)(3) as alleged in the Statement of Issues, subject to the conditions
15 set forth in this Settlement Agreement.

16 7. Waiver of Hearing Rights. Apexlend acknowledges the Commissioner is ready,
17 willing, and able to proceed with the filing of an administrative enforcement action on the charges
18 contained in this Settlement Agreement. Apexlend hereby waives the right to any hearings, and to
19 any reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the
20 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
21 provision of law. Apexlend further expressly waives any requirement for the filing of an Accusation
22 pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights, Apexlend
23 effectively consents to this Settlement Agreement becoming final.

24 8. Full and Final Settlement. The parties hereby acknowledge and agree that this
25 Settlement Agreement is intended to constitute a full, final, and complete resolution of the violations
26 described herein, and that no further proceedings or actions will be brought by the Commissioner in
27
28

1 connection with these matters except under the CFL or any other provision of law, excepting
2 therefrom any proceeding to enforce compliance with the terms of this Settlement Agreement.

3 9. Failure to Comply with Settlement Agreement. Apexlend agrees that if it fails to
4 comply with the terms of this Settlement Agreement, the Commissioner may, in addition to all other
5 available remedies it may invoke under the CFL, summarily suspend/ revoke the CFL license of
6 Apexlend until Apexlend is in compliance. Apexlend waives any notice and hearing rights to
7 contest such summary suspensions/ revocations which may be afforded under the CFL, the
8 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
9 provision of law in connection therewith.

10 10. Information Willfully Withheld or Misrepresented. This Settlement Agreement may
11 be revoked, and the Commissioner may pursue any and all remedies available under law against
12 Apexlend if the Commissioner discovers that Apexlend knowingly or willfully withheld or
13 misrepresented information used for and relied upon in this Settlement Agreement.

14 11. Future Actions by Commissioner. If Apexlend fails to comply with any terms of the
15 Settlement Agreement, the Commissioner may institute proceedings for any and all violations
16 otherwise resolved under this Settlement Agreement. The Commissioner reserves the right to bring
17 any future actions against Apexlend, or any of its partners, owners, officers, shareholders, directors,
18 employees or successors for any and all unknown violations of the CFL.

19 12. Assisting Other Agencies. Nothing in this Settlement Agreement limits the
20 Commissioner's ability to assist any other government agency (city, county, state, or federal) with
21 any prosecution, administrative, civil or criminal brought by that agency against Apexlend or any
22 other person based upon any of the activities alleged in this matter or otherwise.

23 13. No Presumption Against Drafting Party. Each party acknowledges that it has had the
24 opportunity to draft, review, and edit the language of this Settlement Agreement. Accordingly, the
25 parties intend that no presumption for or against the drafting party will apply in construing any part
26 of this Settlement Agreement. The parties waive the benefit of Civil Code section 1654 as amended
27 or corresponding provisions of any successor statute, which provide that in cases of uncertainty,
28

1 language of a contract should be interpreted most strongly against the party that caused the
2 uncertainty to exist.

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

6 15. Headings. The headings to the paragraphs of this Settlement Agreement are inserted
7 for convenience only and will not be deemed a part hereof or affect the construction or interpretation
8 of the provisions hereof.

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

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

20 18. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
21 this Settlement Agreement will be valid or binding unless it is in writing and signed by each of the
22 parties. The waiver of any provision of this Settlement Agreement will not be deemed a waiver of
23 any other provision. No waiver by either party of any breach of, or of compliance with, any
24 condition or provision of this Settlement Agreement by the other party will be considered a waiver
25 of any other condition or provision or of the same condition or provision at another time.

26 19. Full Integration. This Settlement Agreement is the final written expression and the
27 complete and exclusive statement of all the agreements, conditions, promises, representations, and
28

1 covenant between the parties with respect to the subject matter hereof, and supersedes all prior or
2 contemporaneous agreements, negotiations, representations, understandings, and discussions
3 between and among the parties, their respective representatives, and any other person or entity, with
4 respect to the subject matter covered hereby.

5 20. Governing Law. This Settlement Agreement will be governed by and construed in
6 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court,
7 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
8 forum to the maintenance of such action or proceeding in such court.

9 21. Counterparts. This Settlement Agreement may be executed in one or more separate
10 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
11 together constitute a single document.

12 22. Effect Upon Future Proceedings. If Apexlend applies for any license, permit or
13 qualification under the Commissioner's current or future jurisdiction, or are the subject of any future
14 action by the Commissioner to enforce this Settlement Agreement, then the subject matter hereof
15 shall be admitted for the purpose of such application(s) or enforcement proceedings(s).

16 23. Voluntary Agreement. Apexlend enters into this Settlement Agreement voluntarily
17 and without coercion and acknowledges that no promises, threats or assurances have been made by
18 the Commissioner or any officer, or agent thereof, about this Settlement Agreement. The parties
19 each represent and acknowledge that he, she or it is executing this Agreement completely voluntarily
20 and without any duress or undue influence of any kind from any source.

21 24. Notice. Any notice required under this Settlement Agreement shall be provided to
22 each party at the following addresses:

23 If to Respondent: Hyung Myung Peak, Manager
24 Apexlend, LLC
25 56 Forest Lake Drive
West Harrison, New York 60604

26 If to the Commissioner: Uche Enenwali, Senior Counsel
27 Department of Business Oversight
320 W. 4th Street, Suite 750
28 Los Angeles, California 90013-2344

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

25. Signatures. A fax or electronic mail signature shall be deemed the same as an original signature.

26. Public Record. Apexlend hereby acknowledges that this Settlement Agreement is and will be a matter of public record.

27. Effective Date. This Settlement Agreement shall become final and effective when signed by all parties and delivered by the Commissioner's agent via e-mail to Apexlend at hpeak@apexlend.com.

28. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement and undertake the obligations set forth herein.

Dated: June 11, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: June 11, 2020

APEXLEND, LLC

By _____
HYUNG MYUNG PEAK
Manager