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8
9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:)
THE COMMISSIONER OF FINANCIAL) OAH CASE NO. TBA
12 PROTECTION AND INNOVATION,) FILE NO.: 60DBO-111188
13 Complainant,)
14 v.) SETTLEMENT AGREEMENT
15 SECURITY AMERICA MORTGAGE, INC.,)
16 Respondent.)
17)
18)

19
20 The Commissioner of Financial Protection and Innovation, Manuel P. Alvarez,
21 (Commissioner) and Security America Mortgage, Inc. (SAMI) enter this Settlement Agreement
22 (Agreement) with respect to the following facts:

23 **I.**
24 **Recitals**

25 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
26 entities engaged in the business of finance lending under the Financing Law (Fin. Code, § 22000 et
27 seq.) (CFL).
28

1 B. On February 29, 2020, SAMI, located at 7514 Shady Villa Lane, Suite A, Houston,
2 Texas, 77055, filed an application for a CFL license with the Commissioner. (Application). The
3 Application was submitted to the Commissioner through the Nationwide Mortgage Licensing
4 System and Registry (NMLS).

5 C. In the process of reviewing the Application, the Department of Financial Protection and
6 Innovation (Department) identified that on December 13, 2019, the Commissioner revoked SAMI's
7 Department CRMLA license number 413-1191 for the following reasons: (1) SAMI did not meet the
8 tangible net worth requirements in violation of Financial Code section 50201; (2) A control person
9 named in NMLS did not file fingerprints in violation of Financial Code section 50121 and Code of
10 Regulations section 1950.122.2; (3) SAMI provided borrowers with incorrect disclosures noting that
11 loans were made pursuant to the CFL in violation of Financial Code sections 50314 and 50503,
12 subdivision (a)(2), and Code of Regulations section 1950.314; (4) SAMI's website failed to state
13 "Licensed by the Department of Business Oversight under the California Residential Mortgage
14 Lending Act" in violation of Code of Regulation section 1950.204.3; (5) SAMI was to employ an
15 independent auditor to test the anti-fraud program but did not, in violation of Code of Federal
16 Regulations section 1029.210; and (6) SAMI was not a federally approved lender in violation of
17 Financial Code section 50003.

18 D. In reviewing the Application, the Commissioner found that SAMI had violated a
19 regulatory scheme of the State of California, the CRMLA, that is similar to the CFL, which
20 constitutes grounds for denial of a CFL license application pursuant to Financial Code section
21 22109(a)(3).

22 E. On June 3, 2020, the Department issued a Statement of Issues, Notice of Intention to
23 Deny License Application (Notice) and accompanying documents (collectively, Denial Action).
24 SAMI received the Denial Action on July 8, 2020. The Department was contacted by SAMI's
25 counsel on July 27, 2020 stating that SAMI had missed the hearing deadline due to Covid-related
26 reasons. SAMI submitted a written hearing request and statutory time waiver to the Commissioner
27 also on July 27, 2020. The Department granted SAMI's hearing request and the hearing is
28 scheduled for February 21, 2021.

1 F. In the meantime, SAMI, through its newly retained counsel, reached out to the
2 Department, representing that if given the chance, SAMI could become a model CFL licensee; and
3 proposed a settlement of this matter, according to the terms set forth, below.

4 G. The Commissioner finds that this Agreement is appropriate, in the public interest, and
5 consistent with the purposes fairly intended by the policy and provisions of this law.

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

8 **II.**
9 **Terms and Conditions**

10 1. Purpose. The Settlement Agreement resolves the issues before the Commissioner
11 described in the Recitals above, in a manner that avoids the expense of a hearing and other possible
12 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes,
13 policies, and provisions of the CFL.

14 2. Administrative Fee. SAMI shall pay to the Commissioner the amount of \$3,000
15 (Administrative Fee) within ten calendar days of the Effective Date of this Agreement as defined in
16 Paragraph 21. SAMI shall remit the Administrative Fee to the Commissioner via cashier's check or
17 Automated Clearing House deposit to the Department of Financial Protection and Innovation,
18 Accounting, 2101 Arena Blvd. Sacramento California 95834. Failure to timely pay the
19 Administrative Fee constitutes a breach of this Agreement.

20 3. Consideration and Requirements. In consideration of SAMI's consent to this
21 Agreement, and SAMI's fulfillment of all requirements set forth herein, the Commissioner hereby
22 agrees to withdraw its issuance of the Denial Action and agrees to review SAMI's CFL license
23 (License) application in accordance with Financial Code section 22109, subdivision (c). This
24 Agreement shall not be the sole basis of denial of any future application. SAMI hereby understands
25 and agrees that retention of the License is predicated upon SAMI's compliance with the following
26 requirements (Requirements):

27 a. Education. Both the chief operating officer and chief executive officers of SAMI
28 shall each annually complete at least eight hours of continuing education offered by a Department-

1 approved vendor for a period of three years, commencing on the Effective Date of this Agreement as
2 defined in Paragraph 21.

3 b. Tangible Net Worth Requirement. SAMI shall maintain a minimum tangible net
4 worth of at least \$50,000 at all times while a License holder. This amount is required by and in
5 compliance with CFL section 22101, subdivision c. SAMI shall submit annual balance sheets and
6 accounting documents to establish to the Department that SAMI has fulfilled this requirement
7 annually from the date of the Effective Date of this Agreement as defined in Paragraph 21. SAMI
8 shall remit these annual tangible net worth requirement documents to the Department CFL Program
9 Division at Department of Financial Protection and Innovation, 2101 Arena Blvd. Sacramento
10 California 95834.

11 c. Bond. SAMI shall always maintain a surety bond of at least \$50,000, while a
12 License holder. SAMI shall provide to the Department audited financial statements by March 31st of
13 each year to ensure compliance with this Bond requirement. SAMI shall remit the audited financial
14 statements to the attention of the Department CFL Program Division at Department of Financial
15 Protection and Innovation, Accounting, 2101 Arena Blvd. Sacramento California 95834.

16 d. Examination Fees and Costs. SAMI shall pay all annual examination fees and
17 costs due to the Department during their License tenure. SAMI shall pay all fees and costs within
18 fifteen business days from the date of notice, invoice, or billing to SAMI.

19 SAMI shall provide notice of compliance and/or completion with the Requirements annually
20 for a period of three years from the Effective Date of this Agreement. Notice shall be sent to the
21 Department of Financial Protection and Innovation, Attn. Marisa I. Urteaga-Watkins, Counsel, 2101
22 Arena Blvd. Sacramento, California 95834.

23 4. Waiver of Hearing Rights. SAMI agrees to withdraw its request for an
24 administrative hearing made on July 27, 2020. SAMI understands and acknowledges its right to an
25 administrative hearing under the CFL in connection with the Application. SAMI hereby waives its
26 right to a hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant
27 to the CFL, the Administrative Procedure Act, the Code of Civil Procedure, or any other provision
28 of law in connection with these matters. SAMI consents to the Agreement becoming final.

1 5. Failure to Comply with Settlement Agreement. Any one of the following shall be
2 grounds for summary revocation of the License: (1) SAMI’s failure to fulfill each and every
3 Requirement in the manner set forth in the Agreement; (2) a finding by the Commissioner that
4 SAMI has violated or is violating any provision of the CFL, or any state or federal law relating to his
5 employment as a CFL licensee; and, (3) any conviction of any felony or a misdemeanor involving an
6 act of fraud, dishonesty or deceit. SAMI also understands and hereby waives all notice and hearing
7 rights to contest an immediate revocation of its License initiated pursuant to this provision, which
8 may be afforded under the CFL, the Administrative Procedure Act, the Code of Civil Procedure, or
9 any other provision of law in connection with these matters.

10 6. Full and Final Agreement. The parties hereby acknowledge and agree that this
11 Agreement is intended to constitute a full, final and complete resolution of the Denial Action and
12 that no further proceedings or actions will be brought by the Commissioner in connection with these
13 matters either under the CFL or any other provision of law, excepting therefrom any proceeding or
14 action if such proceeding or action is based upon facts not presently known to the Commissioner or
15 which were concealed from the Commissioner by SAMI.

16 7. Information Willfully Withheld or Misrepresented. This Agreement may be revoked,
17 and the Commissioner may pursue any and all remedies available under the law against SAMI if the
18 Commissioner discovers that SAMI knowingly or willfully withheld information used for and relied
19 upon in this Agreement.

20 8. Future Actions by Commissioner. If SAMI fails to comply with any terms of the
21 Agreement, the Commissioner may institute proceedings for any and all violations otherwise
22 resolved under this Agreement. The Commissioner reserves the right to bring any future actions
23 against Agreement, or any of its partners, owners, officers, shareholders, directors, employees or
24 successors for any and all unknown violations of the CFL.

25 9. Assisting Other Agencies. Nothing in this Agreement limits the Commissioner’s
26 ability to assist any other government agency (city, county, state, or federal) with any administrative,
27 civil or criminal prosecutions brought by that agency against SAMI or any other person based upon
28 any of the activities alleged in this matter or otherwise.

1 10. Headings. The headings to the paragraphs of the Agreement are inserted for
2 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
3 the provisions hereof.

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

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

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

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

25 15. Governing Law. This Agreement shall be construed and enforced in accordance with
26 and governed by California law.

27 16. Counterparts. The parties agree that this Agreement may be executed in one or more
28 separate counterparts, each of which when so executed, shall be deemed an original. A fax signature

1 shall be deemed the same as an original signature. Such counterparts shall together constitute and be
2 one and the same instrument.

3 17. Effect Upon Future Proceedings. If SAMI applies for any license, permit or
4 qualification under the Commissioner's current or future jurisdiction, or is the subject of any future
5 action by the Commissioner to enforce this Agreement, then the subject matter hereof shall be
6 admitted for the purpose of such application or proceeding.

7 18. Voluntary Agreement. SAMI enters into this Agreement voluntarily and without
8 coercion and acknowledges that no promises, threats or assurances have been made by the
9 Commissioner or any officer, or agent thereof, about this Agreement. The parties each represent and
10 acknowledge that he, she or it is executing this Agreement completely voluntarily and without any
11 duress or undue influence of any kind from any source.

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

14 20. Public Record. SAMI hereby acknowledges that this Agreement is and will be a
15 matter of public record.

16 21. Effective Date. This Agreement shall become final and effective when signed by all
17 parties and delivered by the Commissioner's counsel via e-mail to SAMI's counsel at
18 mmoggull@aol.com.

19 22. Authority to Sign. Each signatory hereto covenants that he or she possesses all
20 necessary capacity and authority to sign and enter into this Agreement and undertake the obligations
21 set forth herein.

22 23. Notice. Any notices required under this Agreement shall be provided to each party at
23 the following addresses:

24 If to Respondent to: E. Robert Levy, Esq.
25 Offit Kurman Attorneys At Law
26 99 Wood Avenue South, Suite 302
Iselin, New Jersey 08830

27 If to the Commissioner to: Marisa I. Urteaga-Watkins, Counsel
28 Department of Financial Protection and Innovation

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2101 Arena Blvd.
Sacramento, California 95834

Dated: October 21, 2020

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: October 20, 2020

By _____

For SECURITY AMERICA MORTGAGE, INC.,
GARRETT PUCKETT, chief executive officer

Dated: October 19, 2020

By _____

For SECURITY AMERICA MORTGAGE, INC.,
JASON NOBLE, chief operating officer