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8 Attorneys for Complainant

9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
10 OF THE STATE OF CALIFORNIA  
11

12	In the Matter of:	)	OAH CASE NO.: 2020070292
13		)	
14	THE COMMISSIONER OF FINANCIAL	)	CFL License Nos.: 603I452, 603J950
15	PROTECTION AND INNOVATION,	)	60DBO-59285, 60DBO-63778
16		)	SETTLEMENT AGREEMENT
17	Complainant,	)	
18	v.	)	Hearing Date: January 11-14, 2021
19		)	Hearing Time: 9:00 a.m.
20	NORTH AMERICAN FINANCIAL CORP,	)	Location: 320 West 4th Street, Suite 630
21	Respondent.	)	Los Angeles, CA 90013-2344
22		)	Judge: Eric C. Sawyer
23		)	
24		)	

25 This Settlement Agreement is entered into by and between the Commissioner of Financial  
26 Protection and Innovation (Commissioner) and Respondent North American Financial Corp  
27 (Settlement Agreement).

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I.

**RECITALS**

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

A. North American Financial Corp aka North American Financial WD Corp (North American) is a Nevada corporation incorporated in 2009 and has a principal place of business at 375 North Stephanie Street, Building 18, Henderson, Nevada 89014.

B. R. Gregory Ernst is the President of North American and is authorized to enter into this Settlement Agreement on behalf of North American.

C. The Department of Financial Protection and Innovation (Department), through the Commissioner, has jurisdiction over the licensing and regulation of persons and entities engaged in the business of finance lending and/or brokering pursuant to the California Financing Law (Fin. Code, § 22000, et seq.) (CFL).

D. On or about February 2, 2011, the Commissioner issued a CFL broker license number 603I452 to North American.

E. On or about February 22, 2018, the Department began a regulatory examination of North American. The examination revealed from July 1, 2014 through August 27, 2018, North American originated 319 loans.

F. From February 2, 2011, to August 27, 2018, North American did not hold a license to make loans under the CFL and was not otherwise exempt from the CFL.

G. On or around August 17, 2018, North American filed an application with the Department to amend its CFL broker license to add a CFL lenders license. North American did not disclose that it engaged in unlicensed finance lending in violation of Financial Code section 22100, from February 2, 2011 through August 27, 2018.

H. On or around August 28, 2018, the Commissioner issued an amended CFL license to North American to permit loan origination and brokering in California under CFL license numbers 603J950, 60DBO-59285, and 60DBO-63778.

I. Based on the above Findings, the Commissioner determined that North American engaged in the business of a finance lender without obtaining a license from the Commissioner and

1 without an applicable exemption from the CFL in violation of Financial Code section 22100,  
2 subdivision (a).

3 J. In accordance with Financial Code section 22159, CFL licensees must file an annual  
4 report with the Commissioner by March 15 of each year (Annual Report).

5 K. On January 16, 2018, the Commissioner notified CFL licensees of the March 15, 2018  
6 deadline to file the annual report by sending notice to the email address of each CFL licensee  
7 established pursuant to the Commissioner’s Order on Electronic Communications, dated November  
8 22, 2013.

9 L. On February 20, 2018, the Commissioner notified CFL licensees of the March 15,  
10 2018 deadline to file the Annual Report by sending notice to the email address each CFL licensee  
11 established pursuant to the Commissioner’s Order on Electronic Communications, dated November  
12 22, 2013.

13 M. North American did not file its Annual Report until March 28, 2018, 9 business days  
14 after the Annual Report was required to be filed on March 15, 2018.

15 N. On or around May 25, 2018, North American was served with an order imposing,  
16 penalties of \$2,500.00 pursuant to Financial Code section 22715, subdivision (b), for filing its 2017  
17 Annual Report, 9 business days late – as required by Financial Code section 22159 (Order).

18 O. North American did not pay the penalty imposed in the Order within five business  
19 days after the Order became a final order of the Commissioner.

20 P. Based on the above Findings, the Commissioner determined that North American has  
21 failed to comply with a demand, ruling, or requirement of the Commissioner made pursuant to and  
22 within the authority of the CFL.

23 Q. By this Settlement Agreement, North American and the Commissioner intend to  
24 resolve these matters amicably without the necessity of a hearing or other litigation.

25 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions  
26 contained herein, the Commissioner and North American (the Parties) agree as follows:

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1 II.

2 **TERMS AND CONDITIONS**

3 1. **Purpose.** This Settlement Agreement resolves the Findings in a manner that avoids  
4 the expense of a hearing and other possible court proceedings, protects consumers, is in the public  
5 interest, and is consistent with the purposes, policies, and provisions of the CFL.

6 2. **Final Desist and Refrain Order.** Pursuant to Financial Code section 22712, North  
7 American is hereby ordered to desist and refrain from violating Financial Code section 22100,  
8 subdivision (a), by engaging in the business of a finance lender without obtaining a license from the  
9 Commissioner or without an applicable exemption from the CFL. Pursuant to Financial Code section  
10 22159, North American is hereby ordered to desist and refrain from violating Financial Code section  
11 22159, subdivision (a), by failing to file an annual report with the commissioner, on or before March  
12 15th.

13 3. **Administrative Penalty.** Pursuant to Financial Code section 22713, North American  
14 shall pay an administrative penalty of \$75,000.00. Payment of the Penalty shall be made no more  
15 than 60 days after the Effective Date, as defined in Paragraph 24 below (Effective Date), and should  
16 be made in the form of a cashier’s check or Automated Clearing House deposit payable to the  
17 “Department of Financial Protection and Innovation” and transmitted to the attention of “Accounting  
18 – Litigation” at Department of Financial Protection and Innovation, 2101 Arena Boulevard,  
19 Sacramento, California 95834-2036. North American shall submit notice of payment to  
20 Commissioner’s attorneys of record: Vanessa Lu, Vanessa.Lu@dfpi.ca.gov, and Steven Vong,  
21 Steven.Vong@dfpi.ca.gov.

22 4. **Waiver of Hearing Rights.** North American acknowledges the Commissioner is  
23 ready, willing, and able to proceed with the filing of an enforcement action upon the Findings. North  
24 American hereby waives the right to any hearings, and to any reconsideration, appeal, or other right  
25 to review which may be afforded pursuant to the CFL, the California Administrative Procedure Act,  
26 the California Code of Civil Procedure, or any other provision of law. North American further  
27 expressly waives any requirement for the filing of any enforcement action or pleading pursuant to  
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1 Government Code section 11415.60, subdivision (b). By waiving such rights, North American  
2 effectively consents to this Settlement Agreement and the Desist and Refrain Order becoming final.

3 5. Full and Final Settlement. The Parties hereby acknowledge and agree that this  
4 Settlement Agreement is intended to constitute a full, final, and complete resolution of the violations  
5 as identified herein and the Desist and Refrain order. No further proceedings or actions will be  
6 brought by the Commissioner in connection with these matters under the CFL or any other provision  
7 of law, except therefrom any proceeding to enforce compliance with the terms of this Settlement  
8 Agreement.

9 6. Failure to Comply with Settlement Agreement. North American agrees that, if North  
10 American fails to comply with the terms of this Settlement Agreement, the Commissioner may,  
11 following 10 business days from North American's receipt of notice from the Commissioner of  
12 North American's failure to comply with the terms of this Settlement Agreement, invoke all other  
13 available remedies under the CFL. In such case, North American waives any notice and hearing  
14 rights to contest such remedies which may be afforded under the CFL, the California  
15 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of  
16 law in connection therewith.

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

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

26 9. Assisting Other Agencies. Nothing in this Settlement Agreement limits the  
27 Commissioner's ability to assist a government agency (whether city, county, state, or federal) with  
28 any administrative, civil or criminal prosecutions brought by that agency against North American or

1 any other person based upon any of the activities alleged in this matter or otherwise.

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

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

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

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

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

25 15. Full Integration. This Settlement Agreement is the final written expression and the  
26 complete and exclusive statement of all the agreements, conditions, promises, representations, and  
27 covenants between the Parties with respect to the subject matter hereof, and supersedes all prior or  
28 contemporaneous agreements, negotiations, representations, understandings, and discussions between

1 and among the Parties, their respective representatives, and any other person or entity, with respect to  
2 the subject matter covered hereby.

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

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

10 18. Effect Upon Future Proceedings. If North American applies for any license, permit or  
11 qualification under the Commissioner’s current or future jurisdiction, or is the subject of any future  
12 action by the Commissioner to enforce this Settlement Agreement, then the subject matter hereof  
13 shall be admitted for the purpose of such application(s) or proceeding(s).

14 19. Third Parties. This Settlement Agreement does not create or give rise to any private  
15 rights or remedies against North American, or any of its past, present, and future predecessors,  
16 successors, parents, subsidiaries, affiliates, and related entities, and each of their respective partners,  
17 employees, agents, attorneys, officers, directors, shareholders, members, partners, joint venturers,  
18 representatives and assigns, create any liability on the part of North American, or limit the defenses  
19 of North American for any person or entity not a party to this Settlement Agreement.

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

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

3 To the Commissioner:       Vanessa Lu, Counsel  
4                                   Steven Vong, Counsel  
5                                   Department of Financial Protection and Innovation  
6                                   Enforcement Division  
7                                   1455 Frazee Road, Suite 315  
8                                   San Diego, California 92108  
9                                   Vanessa.Lu@dfpi.ca.gov  
10                                  Steven.Vong@dfpi.ca.gov

11 To Respondent:               Ari Karen, Esq.  
12                                   Offit Kurman  
13                                   8171 Maple Lawn Boulevard, Suite 200  
14                                   Maple Lawn, MD 20759  
15                                   akaren@offitkurman.com

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

18           23.    Public Record. North American hereby acknowledges that this Settlement Agreement  
19 is and will be a matter of public record.

20           24.    Effective Date. This Settlement Agreement shall become final and effective when  
21 signed by all Parties and delivered by the Commissioner’s agent via e-mail to North American’s  
22 counsel, Ari Karen, Offit Kurman, at akaren@offitkurman.com.

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

26 Dated: December 10, 2020

MANUEL ALVAREZ  
Commissioner of Financial Protection and Innovation

27 By \_\_\_\_\_  
Mary Ann Smith  
Deputy Commissioner



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Dated: December 9, 2020

NORTH AMERICAN FINANCIAL CORP

By \_\_\_\_\_  
R. Gregory Ernst  
President

Approved as to form:

Dated: December 9, 2020

By: \_\_\_\_\_  
Ari Karen, Esq.  
NORTH AMERICAN FINANCIAL CORP