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7 Attorneys for Complainant

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

11 In the Matter of: )  
12 THE COMMISSIONER OF FINANCIAL ) CRMLA LICENSE No.: 413-1205  
13 PROTECTION AND INNOVATION, )  
14 Complainant, ) SETTLEMENT AGREEMENT  
15 v. )  
16 ANGEL OAK HOME LOANS LLC, )  
17 Respondent. )

18 This Settlement Agreement is entered into by and between the Commissioner of Financial  
19 Protection and Innovation formerly the Commissioner of Business Oversight (Commissioner) and  
20 Angel Oak Home Loans LLC (Angel Oak), and is made with respect to the following facts:  
21

22 **I.**

23 **Recitals**

24 A. The Department of Financial Protection and Innovation formerly the Department of  
25 Business Oversight (Department), through the Commissioner, has jurisdiction over the licensing and  
26 regulation of persons and entities engaged in the business of residential mortgage lending and/or  
27 servicing pursuant to the California Residential Mortgage Lending Act (Fin. Code §50000 et seq.)  
28 (CRMLA).

1 B. Angel Oak is a limited liability company in good standing, duly formed and existing  
2 pursuant to the laws of the State of Georgia and is authorized to conduct business in the State of  
3 California. Angel Oak is a residential mortgage lender and servicer licensed by the Commissioner  
4 pursuant to the CRMLA. Angel Oak has its principal place of business located at 980 Hammond  
5 Drive, Suite 200, Atlanta, Georgia 30328. Angel Oak currently has 14 branch office locations under  
6 its CRMLA license. Angel Oak employs mortgage loan originators in its CRMLA business.

7 C. Steven G. Schwalb is a managing member of Angel Oak and is authorized to enter  
8 into this Settlement Agreement on behalf of Angel Oak.

9 D. On October 23, 2020, Angel Oak was personally served by the Commissioner with a  
10 Notice of Intention to Issue Order Suspending Residential Mortgage Lender and Servicer and to Levy  
11 Penalties, Accusation and accompanying documents dated October 15, 2020 (Accusation). In the  
12 Accusation, the Commissioner alleged that Angel Oak overcharged per diem interest in violation of  
13 Financial Code sections 50204, subdivision (o) (Accusation Allegations).

14 E. On November 3, 2020, Angel Oak timely submitted a Notice of Defense to the  
15 Commissioner requesting an administrative hearing on the Accusation Allegations.

16 F. It is the intention of Angel Oak and the Commissioner (the Parties) to resolve the  
17 Accusation Allegations without the necessity of a hearing.

18 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions  
19 contained herein, the Parties agree as follows:

20 **II.**

21 **Terms and Conditions**

22 1. **Purpose.** This Settlement Agreement resolves the Accusation Allegations in a  
23 manner that avoids the expense of a hearing and other possible court proceedings, protects  
24 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of  
25 the Escrow Law.

26 2. **Order to Discontinue Violations (CRMLA).** Pursuant to Financial Code section  
27 50321, Angel Oak Home Loans LLC. is hereby ordered to discontinue overcharging per diem interest  
28 in violation of Financial Code section 50204, subdivision (o).

1           3.       **Penalty.** Angel Oak shall pay to the Commissioner a penalty of \$18,600.00 (Penalty).  
2 The Penalty is due within 30 days of the Effective Date, as defined in Paragraph 30 below (Effective  
3 Date) and should be made payable in the form of a cashier’s check or Automated Clearing House  
4 deposit to the “Department of Financial Protection and Innovation” and transmitted to the attention  
5 of: Accounting – Enforcement Division, Department of Financial Protection and Innovation, 2101  
6 Arena Boulevard, Sacramento, California 95834. Notice of such payment shall be forwarded to Judy  
7 L. Hartley, Senior Counsel, Department of Financial Protection and Innovation, Enforcement  
8 Division, 320 West 4th Street, Suite 750, Los Angeles, California 90013.

9           4.       **Refunds.** Angel Oak represents that it has conducted self-audits regarding per diem  
10 interest charges for the period commencing November 22, 2016 through September 30, 2020 and  
11 made refunds totaling \$18,102.04 on 90 loans.

12           5.       **Refund Reports.** Angel Oak has previously submitted reports to the Commissioner  
13 detailing the findings of the audits described in Paragraph 4 above. The Commissioner’s receipt of  
14 the audit reports does not constitute an approval that the audit reports are correct and does not  
15 otherwise limit the Commissioner’s audit or examination rights under this Settlement Agreement.

16           6.       **Quarterly Audits for Per Diem Interest.** Angel Oak also agrees to conduct  
17 quarterly self-audits of per diem interest charges for all California loans originated by Angel Oak  
18 between October 1, 2020 and December 31, 2021 (quarterly self-audits). Angel Oak shall submit to  
19 the Commissioner the results of the quarterly audits (quarterly self-audit report) within 45 days of the  
20 completion of the quarter. The quarterly self-audit reports shall be submitted in Microsoft Excel  
21 format on a template to be provided by the Department of Financial Protection and Innovations  
22 (Department), and shall contain the information set forth in template for all loans made during the  
23 relevant quarter. Angel Oak further agrees that it shall pay an administrative penalty to the  
24 Commissioner, upon submission of the quarterly self-audit report, equal to \$200.00 for each per diem  
25 interest overcharge discovered during the quarterly self-audit that was not refunded to the borrower  
26 within 30 days of loan closing. The first quarterly self-audit report shall be due on February 15, 2021  
27 for the period of October 1, 2020 through December 31, 2020. The second quarterly self-audit report  
28 shall be due on May 15, 2021 for the period of January 1, 2021 through Mach 31, 2021. The third

1 quarterly self-audit report shall be due on August 15, 2021 for the period of April 1, 2021 through  
2 June 30, 2021. The fourth quarterly self-audit report shall be due on November 15, 2021 for the  
3 period of July 1, 2021 through September 30, 2021. The fifth and final quarterly self-audit report  
4 shall be due on February 15, 2021 for the period of October 1, 2021 through December 31, 2021.

5 7. **Quarterly Audit Accuracy Testing.** Angel Oak acknowledges the Commissioner  
6 shall perform accuracy testing on the quarterly self-audit reports. Angel Oak agrees to cooperate  
7 with the Commissioner’s testing by providing any and all documentation requested by the  
8 Commissioner for such purposes. Angel Oak further agrees its quarterly self-audit(s) shall be  
9 conducted anew (re-audit) by and through a third-party compliance provider for any quarterly self-  
10 audit report that the Commissioner’s testing reveals more than a 10 percent error rate as to additional  
11 overcharges of per diem interest or refunds due to consumers. In the event a re-audit is required,  
12 Angel Oak, by and through its third-party compliance provider, shall submit to the Commissioner the  
13 results of the re-audit (re-audit report) within 45 days of the date Angel Oak is notified in writing by  
14 the Commissioner that a re-audit is required. The re-audit report shall be submitted to the  
15 Commissioner on the Microsoft Excel template described in Paragraph 6 above. Angel Oak further  
16 agrees that it shall pay an administrative penalty to the Commissioner, upon submission of the re-  
17 audit report, equal to \$250.00 for each per diem interest overcharge discovered during the re-audit  
18 that (i) was not previously reported in the applicable quarterly self-audit report, and (ii) was not  
19 refunded to the borrower within 30 days of loan closing.

20 8. **Quarterly Audit Refunds.** Angel Oak shall make appropriate refunds to include  
21 interest at the rate of 10 percent per annum from the date of loan closing for all overcharges found  
22 pursuant to the audits described in Paragraphs 6 and 7. Refunds shall be mailed to the last known  
23 address of each borrower prior to submission of the applicable report to the Commissioner. Borrower  
24 refunds made pursuant to this Settlement Agreement shall be accompanied by a cover letter that  
25 states: “As a result of an examination by the Department of Financial Protection and Innovation, a  
26 refund or adjustment in the amount of \$XXXX is being made for your benefit. If you have any  
27 questions concerning this refund, please contact (lender) at (800) XXX-XXXX.”

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1           9.       **Unclaimed Refunds.** Angel Oak shall escheat any unclaimed refunds to the  
2 California State Controller’s Office within the period provided by Code of Civil Procedure section  
3 1520 of the Unclaimed Property Law (Code of Civ. Proc., section 1500, et seq.).

4           10.       **Waiver of Hearing Rights.** Angel Oak acknowledges the Commissioner is ready,  
5 willing, and able to proceed with the administrative enforcement action described in Paragraph D  
6 above. Angel Oak hereby waives its right to any hearing, and to any reconsideration, appeal, or other  
7 right to review which may be afforded pursuant to the CRMLA, the California Administrative  
8 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection  
9 herewith. Angel Oak further waives any right to an administrative hearing under Financial Code  
10 section 50321 in connection with the Order to Discontinue Violations agreed to herein. By waiving  
11 such rights, Angel Oak effectively consents to this Settlement Agreement and the Order to  
12 Discontinue Violations becoming final.

13           11.       **Consideration.** Except as otherwise set forth herein, in consideration of Angel Oak’s  
14 agreement to the issuance of an Order to Discontinue Violations, submission of quarterly per diem  
15 interest self-audits, and payment of penalties as provided for in paragraphs 2, 3, 6 and 7 above, the  
16 Commissioner hereby agrees not to suspend the CRMLA license(s) of Angel Oak as a result of this  
17 action.

18           12.       **Failure to Comply.** Angel Oak agrees that if it fails to comply with the provisions of  
19 this Settlement Agreement and no cure is made by Angel Oak within 10 days’ written notice from the  
20 Commissioner of Angel Oak’s failure to comply, the Commissioner may, in addition to all other  
21 available remedies under the CRMLA, summarily suspend the CRMLA license of Angel Oak until  
22 Angel Oak is in compliance. Upon failure to cure within the 10 days’ written notice period, Angel  
23 Oak waives any notice and hearing rights to contest such summary suspension which may be  
24 afforded under the CRMLA, the Administrative Procedure Act, the Code of Civil Procedure, or any  
25 other provision of law in connection therewith.

26           13.       **Full and Final Settlement.** The Parties hereby acknowledge and agree that this  
27 Settlement Agreement is intended to constitute a full, final, and complete resolution of the  
28 Accusation, and that no further proceedings or actions will be brought by the Commissioner in

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

3 14. **Information Willfully Withheld or Misrepresented.** This Settlement Agreement  
4 may be revoked, and the Commissioner may pursue any and all remedies available under the law  
5 against Angel Oak if the Commissioner discovers that Angel Oak knowingly or willfully withheld  
6 information used for and relied upon in this Settlement Agreement.

7 15. **Assisting Other Agencies.** Nothing in this Settlement Agreement limits the  
8 Commissioner’s ability to assist any other government agency (city, county, state, or federal) with  
9 any administrative, civil or criminal prosecutions brought by that agency against Angel Oak or any  
10 other person based upon any of the activities alleged in this matter or otherwise.

11 16. **Headings.** The headings to the paragraphs of this Settlement Agreement are for  
12 convenience only and will not be deemed a part hereof or affect the construction or interpretation of  
13 the provisions hereof.

14 17. **Binding.** This Settlement Agreement is binding on all heirs, assigns, and/or  
15 successors in interest.

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

25 19. **Waiver, Amendments, and Modifications.** No waiver, amendment, or modification  
26 of this Settlement Agreement will be valid or binding unless it is in writing and signed by each of the  
27 Parties. The waiver of any provision of this Settlement Agreement will not be deemed a waiver of  
28 any other provision. No waiver by either party of any breach of, or of compliance with, any

1 condition or provision of this Settlement Agreement by the other party will be considered a waiver of  
2 any other condition or provision or of the same condition or provision at another time.

3 20. **Full Integration.** This Settlement Agreement is the final written expression and the  
4 complete and exclusive statement of all the agreements, conditions, promises, representations, and  
5 covenants between the Parties with respect to the subject matter hereof, and supersedes all prior or  
6 contemporaneous agreements, negotiations, representations, understandings, and discussions between  
7 and among the Parties, their respective representatives, and any other person or entity, with respect to  
8 the subject matter covered hereby.

9 21. **Governing Law.** This Settlement Agreement will be governed by and construed in  
10 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,  
11 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient  
12 forum to the maintenance of such action or proceeding in such court.

13 22. **Counterparts.** This Settlement Agreement may be executed in one or more separate  
14 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall  
15 together constitute a single document.

16 23. **Mandatory Disclosure in Future Applications.** Angel Oak agrees to disclose this  
17 Settlement Agreement in any application for a license, permit, registration, or qualification under  
18 the Commissioner's current or future jurisdiction.

19 24. **Effect Upon Future Proceedings.** If Angel Oak is the subject of any future action by  
20 the Commissioner to enforce this Settlement Agreement, then the subject matter hereof shall be  
21 admitted for the purpose of such action.

22 25. **Third Parties.** This Settlement Agreement does not create or give rise to any private  
23 rights or remedies against Angel Oak, create any liability for Angel Oak, or limit the defenses of  
24 Angel Oak for any person or entity not a party to this Settlement Agreement.

25 26. **Voluntary Agreement.** Angel Oak enters into this Settlement Agreement voluntarily  
26 and without coercion and acknowledges that no promises, threats or assurances have been made by  
27 the Commissioner or any officer, or agent thereof, about this Settlement Agreement. The Parties  
28 each represent and acknowledge that he, she, or it is executing this Settlement Agreement completely

1 voluntarily and without any duress or undue influence of any kind from any source.

2 27. **Notice.** Any notice/report required under this Settlement Agreement shall be  
3 addressed as follows:

4 To Angel Oak: Clinton R. Rockwell, Esq.  
5 Buckley LLP  
6 100 Wilshire Boulevard, Suite 1000  
7 Santa Monica, California 90401  
8 crockwell@buckleyfirm.com

9 To the Commissioner: Judy L. Hartley, Esq.  
10 Senior Counsel  
11 Department of Financial Protection and Innovation  
12 320 W. 4<sup>th</sup> Street, Suite 750  
13 Los Angeles, California 90013-2344  
14 judy.hartley@dfpi.ca.gov

15 28. **Signatures.** A fax or electronic mail signature shall be deemed the same as an  
16 original signature.

17 29. **Public Record.** Angel Oak hereby acknowledges that this Settlement Agreement is  
18 and will be a matter of public record.

19 30. **Effective Date.** This Settlement Agreement shall become final and effective when  
20 signed by all Parties and delivered by the Commissioner’s counsel via e-mail to the Angel Oak’s  
21 counsel, Clinton R. Rockwell at crockwell@buckleyfirm.com.

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

25 Dated: January 7, 2021

MANUEL P. ALVAREZ  
Commissioner of Financial Protection and Innovation

26 By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner

27 Dated: January 7, 2021

ANGEL OAK HOME LOANS LLC

28 By \_\_\_\_\_  
STEVEN G. SCHWALB, Managing Member



1 APPROVED AS TO FORM:

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3 By \_\_\_\_\_  
4 CLINTON R. ROCKWELL, ESQ. attorney for  
5 ANGEL OAK HOME LOANS LLC

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