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Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 JUDY L. HARTLEY (State Bar No. 110628)
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4 Department of Business Oversight
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7 Attorneys for Complainant

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

10
11 In the Matter of:) CRMLA LICENSE No.: 415-0081
THE COMMISSIONER OF BUSINESS)
12 OVERSIGHT,) CFLL LICENSE Nos.: 605-3971; 603-H992;
13) 603-I486; and 603-K754
Complainant,)
14) SETTLEMENT AGREEMENT
v.)
15)
16 PACIFIC UNION FINANCIAL, LLC,)
Respondent.)
17)
18)
19)

20 This Agreement is entered into between Respondent Pacific Union Financial, LLC (“Pacific
21 Union”) and Complainant the Commissioner of Business Oversight (“Commissioner”), and is made
22 with respect to the following facts:

23 **RECITALS**

24 A. Pacific Union is a limited liability company in good standing, duly formed and
25 existing pursuant to the laws of the State of California, and authorized to conduct business in the
26 State of California.

27 B. Pacific Union is a residential mortgage lender and loan servicer licensed by the
28 Commissioner pursuant to the California Residential Mortgage Lending Act ("CRMLA") (Financial

1 Code §50000 et seq.). Pacific Union has its principal place of business located at 8900 Freeport
2 Parkway, Suite 150, Irving, Texas 75063. Pacific Union currently has 14 branch office locations
3 under its CRMLA license located in California, and other states. Pacific Union employs mortgage
4 loan originators in its CRMLA business.

5 C. Pacific Union is also licensed by the Commissioner as a finance lender and broker
6 pursuant to the California Finance Lenders Law ("CFLL") (Financial Code §22000 et seq.). Pacific
7 Union has its principal place of business under the CFLL also located at 8900 Freeport Parkway,
8 Suite 150, Irving, Texas 75063. Pacific Union has 3 branch office locations under its CFLL license
9 located in California and Texas. Pacific Union has been approved to do business under its CFLL
10 licenses under the names ClearVision Funding and Liberty Mortgage Bankers.

11 D. The Department of Business Oversight ("Department"), through the Commissioner,
12 has jurisdiction over the licensing and regulation of persons and entities engaged in the business of
13 lending and/or servicing pursuant to the CRMLA and lending and/or brokering pursuant to the
14 CFLL, including mortgage loan originators.

15 E. On May 19, 2015, Pacific Union was personally served by the Commissioner with a
16 Notice of Intention to Issue Order Suspending Finance Lender/Broker Licenses and Residential
17 Mortgage Lender/Service Licenses and to Levy Penalties, Accusation and accompanying
18 documents dated May 18, 2015. Pacific Union has filed a Notice of Defense with the Commissioner
19 regarding the Accusation.

20 F. On May 19, 2015, Pacific Union was also personally served by the Commissioner
21 with an Order to Discontinue Violations Pursuant to Financial Code Section 50321 and Statement of
22 Facts In Support of Order to Discontinue Violations Pursuant to Financial Code Section 50321 and
23 Notice of Intent to Make Order Final dated May 18, 2015 ("Order to Discontinue Violations") and
24 an Order to Refund Excessive Per Diem Interest Charges Pursuant to Financial Code Section 50504
25 dated May 18, 2015 ("Order to Refund")(collectively "Orders"). Pacific Union has filed requests for
26 hearing with the Commissioner regarding the Orders.

27 G. The Commissioner hereby acknowledges that Pacific Union has submitted
28 information demonstrating that it has adopted policies and procedures addressing the issues

1 described in the Accusation and Orders.

2 H. The Commissioner further acknowledges the cooperation Pacific Union has extended
3 with respect to resolving this matter and the regular updates it provided the Department of Business
4 Oversight (“Department”) subsequent to its receipt of the regulatory examination report.

5 I. It is the intention and desire of the parties to resolve this matter without the necessity
6 of a hearing and/or other litigation.

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

9 **TERMS AND CONDITIONS**

10 1. This Agreement is entered into for the purpose of judicial economy and expediency,
11 and to avoid the expense of a hearing, and possible further court proceedings.

12 2. Pacific Union, by entering into this Agreement, does not admit or deny any of the
13 allegations set forth in the Accusation and/or Orders.

14 3. Pacific Union acknowledges its right to an administrative hearing under the CRMLA
15 and/or the CFLL in connection with the Accusation and/or Orders and hereby waives that right to a
16 hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant to the
17 CRMLA, the CFLL, the California Administrative Procedure Act, the California Code of Civil
18 Procedure, or any other provision of law in connection with these matters.

19 4. Pacific Union hereby agrees that the Orders described in paragraph F above are
20 hereby deemed final orders.

21 5. Pacific Union further agrees to pay to the Commissioner the sum of \$715,000.00 in
22 administrative fees, payable 5 business days after execution of this Agreement or July 8, 2015,
23 whichever is later.

24 6. Pacific Union acknowledges that it has commenced issuing refunds equal to 2 days
25 per diem interest to the borrower(s) in the loans that Pacific Union has been unable to obtain
26 disbursement date information, which it expects to complete no later than July 17, 2015. Pacific
27 Union further acknowledges that evidence of such refunds will be submitted to the Commissioner on
28 or before July 30, 2015.

1 7. In consideration of the Commissioner extending the provisions of paragraph 14 below
2 through to the present, Pacific Union agrees to perform a self-audit designed to determine
3 compliance with Financial Code section 50204(o) and California Civil Code section 2948.5 of all
4 California loans originated between September 10, 2014; the ending date of the prior self-audit,
5 through June 30, 2015, and make appropriate refunds. This self-audit shall be completed within 90
6 days of the date of execution of this Agreement. Within 15 days of completion, Pacific Union shall
7 submit a report of the self-audit to the Commissioner, which report shall include at a minimum, the
8 total number of loans made during this period, the number of loans with per diem overcharges, and
9 for each loan, the report shall list the borrower loan number, name, address, loan amount, loan date,
10 interest rate, disbursement date, date per diem interest commenced, per diem charged, daily per diem
11 interest amount, number of days per diem interest charged, number of days per diem interest
12 overcharged, overcharge amount (if applicable), date of refund (if applicable), and proof of refund
13 (if applicable). Pacific Union further agrees that it shall pay an administrative fee to the
14 Commissioner, upon submission of the self-audit report, equal to \$160.00 for each per diem interest
15 overcharge discovered during this self-audit unless such overcharge was refunded to the borrower
16 within 30 days of loan funding.

17 8. It is agreed, and Pacific Union acknowledges and understands, that the Commissioner
18 will test the results of the self-audit described in paragraph 7 above to ensure its accuracy. Pacific
19 Union agrees to engage an independent certified public accountant to repeat this self-audit in the
20 event the Commissioner’s testing discloses that the self-audit is inaccurate.

21 9. Pacific Union also agrees to conduct quarterly audits designed to determine
22 compliance with Financial Code section 50204(o) and California Civil Code section 2948.5 by and
23 through an independent certified public accountant, for a period of 12 months to commence
24 July 1, 2015. Each quarterly audit shall cover all California loans originated during that quarter.
25 Pacific Union, by and through its independent certified public accountant, shall submit to the
26 Commissioner the results of each quarterly audit (“audit report”) within sixty (60) days of the
27 completion of each quarter, i.e., the first audit report would be due on or about November 30, 2015
28 for the quarter July 1, 2015 through September 30, 2015. The audit report shall include the same

1 information required in the self-audit described in paragraph 7 above. Pacific Union further agrees
2 that it shall pay an administrative fee to the Commissioner, upon submission of each quarterly audit
3 report, equal to \$160.00 for each per diem interest overcharge discovered during the quarterly audit
4 and not refunded to the borrower within 30 days of loan funding.

5 10. In consideration of the information provided to the Commissioner by Pacific Union as
6 described in paragraph G above and Pacific Union’s agreement to the finality of the Orders and
7 payment of administrative fees as provided for in paragraphs 4 and 5 above, the Commissioner
8 hereby agrees not to suspend the residential mortgage lender and loan servicer licenses or finance
9 lender and/or broker licenses of Pacific Union. Accordingly, this Agreement, which resolves the
10 Accusation and Orders, does not affect the licensing status of Pacific Union set forth in paragraphs B
11 and C above and the licenses of Pacific Union are in good standing.

12 11. This Agreement may be revoked and the Commissioner may pursue any and all
13 remedies available under law against Pacific Union, if the Commissioner later finds out that Pacific
14 Union knowingly or willfully withheld information used and relied upon in this Agreement.

15 12. This Agreement is binding on all heirs, assigns and/or successors in interest.

16 13. This Agreement does not create any private rights or remedies against Pacific Union,
17 create any liability for Pacific Union or limit defenses of Pacific Union for any person or entity not a
18 party to this Agreement.

19 14. The parties hereby acknowledge and agree that this Agreement is intended to
20 constitute a full, final and complete resolution of the Accusation and Orders and that no further
21 proceedings or actions will be brought by the Commissioner in connection with these matters either
22 under the CRMLA, CFLL, or any other provision of law, to include per diem interest charges on all
23 California loans originated through June 30, 2015, excepting therefrom any proceeding or action if
24 such proceeding or action is based upon facts not presently known to the Commissioner and which
25 were actively concealed from the Commissioner by Pacific Union.

26 15. The parties further acknowledge and agree that nothing contained in this Agreement
27 shall operate to limit the Commissioner's ability to assist any other agency, (city, county, state or
28 federal) with any prosecution, administrative, civil or criminal, brought by any such agency against

1 Pacific Union or any other person based upon any of the activities alleged in these matters or
2 otherwise.

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

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

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

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

27 20. The waiver of any provision of this Agreement shall not operate to waive any other
28 provision set forth herein, and any waiver, amendment and/or change to the terms of this Agreement

1 must be in writing signed by the parties.

2 21. This Agreement shall not become effective until signed and delivered by all parties.

3 22. This Agreement may be executed in one or more counterparts, each of which shall be
4 an original but all of which, together, shall be deemed to constitute a single document. This
5 Agreement may be executed by facsimile signature, and any such facsimile signature by any party
6 hereto shall be deemed to be an original signature and shall be binding on such party to the same
7 extent as if such facsimile signature were an original signature.

8 23. Any notice or report required under this Agreement shall be addressed as follows:

9 To Respondent: Haydn J. Richards, Jr., Esq.
10 Bradley Arant Boult Cummings LLP
11 1615 L Street, N.W., Suite 1350
12 Washington, DC 20036

13 To the Commissioner: Judy L. Hartley, Esq.
14 Senior Corporations Counsel
15 Department of Business Oversight
16 320 W. 4th Street, Suite 750
17 Los Angeles, California 90013-2344

18 24. Each signatory hereto covenants that he/she possesses all necessary capacity and
19 authority to sign and enter into this Agreement.

20 Dated: 7/1/15 JAN LYNN OWEN
21 Commissioner of Business Oversight

22 By _____
23 MARY ANN SMITH
24 Deputy Commissioner

25 Dated: 7/1/15 PACIFIC UNION FINANCIAL, LLC

26 By _____
27 RICK WALTER SKOGG, Chief Executive Officer

28 (signatures continued on the next page)

1 APPROVED AS TO FORM:
2 BRADLEY ARANT BOULT CUMMINGS LLP
3 By _____
4 HAYDN J. RICHARDS, JR., ESQ. Attorneys for
5 PACIFIC UNION FINANCIAL, LLC

6 Commissioner of Business Oversight

7
8 By _____
9 JUDY L. HARTLEY
10 Senior Counsel

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