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Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 JUDY L. HARTLEY (CA BAR NO. 110628)
Senior Corporations Counsel
4 Department of Business Oversight
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5 Los Angeles, California 90013-2344
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6 Attorneys for Complainant
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9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA

11 In the Matter of the Accusation of THE) File No.: 603-D787 & 603-J384
12 COMMISSIONER OF CORPORATIONS OF)
13 THE STATE OF CALIFORNIA,) SETTLEMENT AGREEMENT
14 Complainant,)
15 vs.)
16 NETWORK CAPITAL FUNDING)
17 CORPORATION and TRI MINH NGUYEN,)
18 Respondents.)

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20 This Settlement Agreement is entered into between Respondents Network Capital Funding
21 Corporation (“Network Capital”) and Tri Minh Nguyen (“Nguyen”) on the one hand, and
22 Complainant the Commissioner of Business Oversight formerly known as the Commissioner of
23 Corporations of the State of California (“Commissioner”) on the other hand, and is made with
24 respect to the following facts:

25 **RECITALS**

- 26 A. Network Capital is a corporation in good standing, duly formed and existing pursuant
27 to the laws of the State of Nevada, and authorized to conduct business in the State of California.
28 B. Network Capital is a finance lender and broker licensed by the Commissioner
pursuant to the California Finance Lending Law (California Financial Code § 22000 et seq.)

1 (“CFLL”). Network Capital has its principal place of business located at 5 Park Plaza, Suite 800,
2 Irvine, California 92614. Network Capital also has a branch license, which is also currently held at 5
3 Park Plaza, Suite 800, Irvine, California 92614. Network Capital’s initial CFLL license was issued
4 on October 30, 2006 and its branch office license was issued on February 6, 2012.

5 C. Nguyen is, and was at all times relevant herein, the president and sole shareholder of
6 Network Capital. Nguyen is also a mortgage loan originator licensed in the State of California. The
7 National Mortgage Licensing System and Registry (“NMLS”) records indicate that Nguyen has been
8 licensed as a mortgage loan originator (“MLO”) in California since June 15, 2010.

9 D. Network Capital and Nguyen are hereby collectively known as “Respondents”.

10 E. The Department of Business Oversight formerly known as the Department of
11 Corporations (“Department”), through the Commissioner, has jurisdiction over the licensing and
12 regulation of persons and entities engaged in the business of lending and/or brokering pursuant to the
13 CFLL, including mortgage loan originators.

14 F. Pursuant to the CFLL, the Commissioner has authority to issue orders to desist and
15 refrain from violations of the CFLL, to deny, suspend, or revoke licenses pending or issued under
16 the CFLL, and to assess penalties.

17 G. On February 27, 2013, Network Capital and Nguyen were personally served by the
18 Commissioner with a Notice of Intention to (1) Issue Order Suspending Finance lender and/or
19 Broker Licenses; (2) Issue Order Pursuant to California Financial Code section 22169 (Bar from
20 Employment, Management or Control of Any Finance Lender and/or Broker); and (3) Issue Order
21 Suspending Mortgage Loan Originator License, Accusation and accompanying documents dated
22 February 26, 2013 (“Accusation”). Network Capital and Nguyen have filed Notices of Defense with
23 the Commissioner on the above-referenced matter.

24 H. The Commissioner acknowledges that Network Capital has submitted information
25 demonstrating that it has adopted policies and procedures and employed further compliance
26 personnel, which are still in place, to ensure that the violations described in the Accusation do not
27 recur.

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

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

5 **TERMS AND CONDITIONS**

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

8 2. Respondents, by entering into this Settlement Agreement, do not admit or deny any of
9 the allegations set forth in the Accusation.

10 3. Respondents hereby agree to the immediate issuance by the Commissioner of an
11 order requiring Respondents to desist and refrain from violating Financial Code section 22100,
12 subsections (b) and (d), Financial Code section 22170, subsections (a) and (b), and Financial Code
13 section 22156. A copy of the Stipulated Desist and Refrain Order is attached and incorporated
14 herein as Exhibit A.

15 4. Respondents acknowledge their right to an administrative hearing under Financial
16 Code section 22172 in connection with the Desist and Refrain order and hereby waive that right to a
17 hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant to the
18 CFLL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any
19 other provision of law in connection with this matter herein.

20 5. Respondents, jointly and severally, agree to pay to the Commissioner the sum of
21 \$85,000.00 in administrative penalties. Such penalties shall be paid in five (5) installments of
22 \$14,166.00 and one (1) installments of \$14,170.00. The first installment is due upon execution of
23 this Settlement Agreement. Thereafter, payments shall be made on or before the 5th day of each
24 month to commence on September 5, 2103. The payments shall be made payable to the Department
25 of Business Oversight and shall be sent to the Department, attention Judy L. Hartley, Senior
26 Corporations Counsel, 320 W. 4th Street, Los Angeles, California 90403. Respondents acknowledge
27 that failure to timely pay any such installment shall cause the entire unpaid balance to become
28 immediately due and payable, and further agree that if payment of the entire unpaid balance is not

1 tendered to the Commissioner within five (5) days after written notice of demand, the Commissioner
2 may, in addition to all other available remedies under the CFLL, summarily suspend the finance
3 lender and broker license of Network Capital and the mortgage loan originator license of Nguyen
4 until payment is made in full. Respondents waive any notice and hearing rights to contest such
5 summary suspensions which may be afforded under the CFLL, the California Administrative
6 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection
7 therewith.

8 6. In consideration of the information provided to the Commissioner by Respondents as
9 described in paragraph H above and Respondents' agreement to the issuance of a desist and refrain
10 order and payment of penalties as provided for in paragraphs 3 and 5 above, the Commissioner
11 hereby agrees that she shall not suspend the finance lender and/or broker license of Network Capital
12 and she shall not suspend the mortgage loan originator license of Nguyen or Nguyen's ability to be
13 employed, manage or control a finance lender and/or broker as a result of this action. Accordingly,
14 this Settlement Agreement does not affect the licensing status of Respondents set forth in paragraphs
15 B and C of the above Recitals. Nothing contained in this paragraph 6 shall affect the provisions set
16 forth in paragraph 5 above.

17 7. This Settlement Agreement may be revoked as to any Respondent and the
18 Commissioner may pursue any and all remedies available under law against such Respondent(s), if
19 the Commissioner later finds out that such Respondent(s) knowingly or willfully withheld
20 information used and relied upon in this Settlement Agreement.

21 8. This Settlement Agreement is binding on all heirs, assigns and/or successors in
22 interest.

23 9. This Settlement Agreement does not create any private rights or remedies against the
24 Respondents, create any liability for the Respondents or limit defenses of Respondents for any
25 person or entity not a party to this Settlement Agreement.

26 10. The parties hereby acknowledge and agree that this Settlement Agreement is intended
27 to constitute a full, final and complete resolution of this matter, including any claim that was raised
28 or could have been raised based upon the examination that led to this matter or the subsequent

1 examination of lending activities engaged in prior to and including May 31, 2012, excepting
2 therefrom any claim if such claim is based upon facts not presently known to the Commissioner and
3 which were actively concealed from the Commissioner by Respondents . The parties further
4 acknowledge and agree that nothing contained in this Settlement Agreement shall operate to limit the
5 Commissioner's ability to assist any other agency, (county, state or federal) with any prosecution,
6 administrative, civil or criminal, brought by any such agency against Network Capital and/or
7 Nguyen or any other person based upon any of the activities alleged in this matter or otherwise.

8 11. Each of the parties represents, warrants, and agrees that it has received independent
9 advice from its attorney(s) and/or representatives with respect to the advisability of executing this
10 Settlement Agreement.

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

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

27 14. In that the parties have had the opportunity to draft, review and edit the language of
28 this Settlement Agreement, no presumption for or against any party arising out of drafting all or any

1 part of this Settlement Agreement will be applied in any action relating to, connected, to, or
2 involving this Settlement Agreement. Accordingly, the parties waive the benefit of California Civil
3 Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,
4 language of a contract should be interpreted most strongly against the party who caused the
5 uncertainty to exist.

6 15. This Settlement Agreement shall not become effective until signed and delivered by
7 all parties.

8 16. This Settlement Agreement may be executed in one or more counterparts, each of
9 which shall be an original but all of which, together, shall be deemed to constitute a single
10 document. This Settlement Agreement may be executed by facsimile signature, and any such
11 facsimile signature by any party hereto shall be deemed to be an original signature and shall be
12 binding on such party to the same extent as if such facsimile signature were an original signature.

13 17. Any notice required under this Settlement Agreement shall be addressed as follows:

14 To Respondents: Joseph L. Barloon, Esq.
15 Skadden, Arps, Slate, Meagher & Flom, LLP
16 1440 New York Avenue, N.W.
17 Washington, D.C. 20005-2111

18 To the Commissioner: Judy L. Hartley, Esq.
19 Senior Corporations Counsel
20 Department of Business Oversight
21 320 W. 4th Street, Suite 750
22 Los Angeles, California 90013-2344

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

25 Dated: 8/27/13

JAN LYNN OWEN
Commissioner of Business Oversight

26 By _____
27 MARY ANN SMITH
28 Deputy Commissioner

Dated: 8/27/13

NETWORK CAPITAL FUNDING CORPORATION

By _____
TRI MINH NGUYEN, President

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Dated: 8/27/13 By TRI MINH NGUYEN, an individual

APPROVED AS TO FORM:

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

By _____
JOSEPH L. BARLOON, ESQ. Attorney for NETWORK CAPITAL
FUNDING CORPORATION and TRI MINH NGUYEN

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
JUDY L. HARTLEY
Senior Corporations Counsel