

1 WHEREAS On March 31, 2009 the Division conducted a regularly scheduled examination of
2 Respondent's mortgage broker license books and records, pursuant to the authority in NRS 645B.060;
3 and

4 WHEREAS, the relevant findings of the examination were that the Respondent:

- 5 1. Failed to disclose the yield spread premiums on the good faith estimates to the
6 borrowers in three loans reviewed, this violation was also cited in the previous year's
7 report of examination;
- 8 2. Allowed a mortgage agent whose license had expired to conduct a loan origination on
9 behalf of the Respondent;
- 10 3. Failed to have supporting documentation in file substantiating that three borrowers'
11 ability to repay the loan had been determined; and
12

13 WHEREAS, after settlement negotiations, the parties herein mutually desire to resolve their
14 differences and disputes without further proceedings through this Stipulated Settlement Agreement
15 ("Agreement").
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17 NOW, THEREFORE, in consideration of the representations, covenants and conditions set forth
18 herein, IT IS HEREBY STIPULATED AND AGREED to by the Division and Respondent that the
19 purported violations found during the examinations of Respondent's books and records and referenced
20 herein, shall be settled on the following terms and conditions:

21 1. Respondent admits that Respondent failed to disclose yield spread premiums on the good
22 faith estimates provided to three borrowers. Respondent does not admit and is willing to defend all
23 other findings reported in the reports of examination and referenced herein.
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25 2. Respondent and the Division agree that while Respondent's above-described actions
26 violated NRS 645B, the violations were neither willful nor intentional.

27 3. Respondent shall pay a fine in the amount of five hundred dollars (\$500) to the Division
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1 within thirty (30) days from the date this Agreement is executed by the Commissioner.

2 4. Respondent shall pay \$240 for investigative costs and \$250 for attorney's fees incurred in
3 relationship to this Agreement within thirty (30) days of this Agreement being executed by the
4 Commissioner.

5 5. Respondent shall refund the following borrowers for yield spread premiums paid to the
6 Respondent but not disclosed to the borrowers on their good faith estimates. The refunds must be made
7 within thirty (30) days from the date this Agreement is executed by the Commissioner and the
8 Respondent must provide support acceptable to the Division demonstrating that the refunds have been
9 made.
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11 * Bill Honey, refund amount- One Thousand, Ninety-Eight Dollars (\$1,098)

12 * Vincent Scafariello, refund amount- Twelve Hundred, Twenty Dollars (\$1,220)

13 * Eleni Papas, refund amount- Three thousand, Six Hundred, Ninety-Six Dollars (\$3,696)
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15 6. Respondent shall immediately ensure borrowers are provided disclosures which are
16 compliant with state and federal regulations, that borrowers' ability to repay the debt is determined
17 through reasonable commercial mechanisms and that all associated mortgage agents hold an active license.

18 7. This Agreement is intended to resolve all issues related to the findings in the March 31,
19 2009 reports of examinations. However, this Agreement shall not prevent the Division from filing
20 administrative actions against Respondent in the future for new acts or allegations which may constitute
21 new violations whether or not the same or similar to those disposed of by this Agreement. In addition,
22 the Division may utilize the findings of the March 31, 2009 examination as well as this Agreement as
23 evidence in any future administrative actions.
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25 8. The parties hereto represent and warrant that the person executing this Agreement on
26 behalf of each party has full power and authority to enter into this Agreement and has the legal capacity
27 to conduct the legal obligations assigned to it under this Agreement.
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1 9. Except as described above in paragraph, 3, 4, and 5 each party shall pay its own costs
2 and fees with respect to this matter.

3 10. Respondent further acknowledges and agrees that the Division shall keep the original of
4 this Agreement.

5 11. This Agreement, as well as the rights and obligations of the parties hereto, shall be
6 interpreted, governed, and construed pursuant to the laws of the State of Nevada, and any action to
7 enforce the Agreement shall be brought in the Second Judicial District Court of the State of Nevada in
8 and for Washoe County.

9 12. If any action is brought to enforce the provisions of this Agreement, the State of Nevada,
10 if it is the prevailing party, shall be entitled to reasonable costs and attorney's fees. It is specifically
11 agreed that reasonable attorney's fees for the State-employed attorneys shall be \$125 per hour.
12

13 13. If any provision contained in this Agreement is held to be unenforceable by a court of
14 law or equity, this Agreement shall be construed as if such a provision(s) did not exist and the non-
15 enforceability of such provisions(s) shall not be held to render any other provision(s) of this Agreement
16 non-enforceable. Failure to declare a breach or the actual waiver of any particular breach of the instant
17 Agreement or its material terms, by either party, shall not operate as a waiver by such party of any of its
18 rights or remedies as to any other breach.
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20 14. In consideration for the execution of this Agreement, Respondent, for itself, its heirs,
21 executors, administrators, successors and assigns, hereby releases and forever discharges the State of
22 Nevada, the Division, the Nevada Attorney General, and each of their members, agents and employees
23 in their individual and representative capacities, from any and all manner of actions, causes of action,
24 suits, debts, judgments, executions, claims and demands whatsoever known or unknown, in law and
25 equity, that Respondent ever had, now has, may have or claim to have against any and all of the
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1 persons or entities named in this paragraph arising out of, or by reason of, the investigation of the
2 allegations in the examination referenced above, this action or any other matter relating thereto.

3 15. In consideration for the execution of this Agreement, Respondent hereby indemnifies and
4 holds harmless the State of Nevada, the Division, the Nevada Attorney General, and each of their
5 members, agents and employees in their individual and representative capacities, against any and all
6 claims, suits and actions, brought against any of the persons named in this paragraph by reason of the
7 examination referenced above, this action and all other matters relating thereto, and against any and all
8 expenses, damages, charges and costs, including court costs and attorney fees which may be sustained by
9 any of the persons and entities named in this paragraph as a result of said claims, suits and actions.
10

11 16. Respondent enters into this agreement freely and voluntarily. Respondent acknowledges
12 that this agreement is not the product of force, threats, or any other form of coercion or duress, but is the
13 product of discussions between Respondent and the Division and the attorney for the Division. This
14 Agreement constitutes the entire agreement of the parties, and it is intended as complete and exclusive
15 statement of the promises, representations, negotiations, and discussions of the parties. Unless otherwise
16 expressly authorized by its terms, this Agreement shall be binding upon the parties unless any
17 modification of the same is in writing, and signed by the respective parties hereto.
18

19 17. Respondent and the Division acknowledge that this agreement is made to avoid possible
20 administrative action and to economize resources.

21 18. **NOTICE TO RESPONDENT:** By executing this Agreement, you hereby agree that
22 you are waiving certain rights as set forth herein. As the Respondent, you are specifically informed that
23 you have the right to request that the Division file an administrative complaint against you, at any
24 hearing on such a complaint you have the right to appear and be heard in your defense, either personally
25 or through your counsel of choice. If the Division were to file a complaint, at the hearing, the Division
26 would have the burden of proving the allegations in the complaint and would call witnesses and present
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1 evidence against you. You would have the right to respond and to present relevant evidence and
2 argument on all issues involved. You would have the right to call and examine witnesses, introduce
3 exhibits, and cross-examine opposing witnesses on any matter relevant to the issues involved.

4 You would have the right to request that the Commissioner of the Division issue subpoenas to
5 compel witnesses to testify and/or evidence to be offered on your behalf. In making this request, you
6 may be required to demonstrate the relevance of the witness's testimony and/or evidence. Other
7 important rights you have are listed in NRS Chapter 645B and NRS Chapter 233B.
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9 19. The parties agree and understand this agreement is intended to operate as full and final
10 settlement of the above referenced issues related to the findings of the March 31, 2009 reports of
11 examinations for Respondent's mortgage broker license examination findings. The Respondent is
12 aware that it may retain an attorney at its own cost and expense to review this Agreement but has freely
13 and voluntarily chosen not to do so.
14

15 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and
16 intend to be legally bound thereby.

17 DATED this 8 day of ^{July}~~June~~ 2009

18 MALIBU FUNDING INC.

19 By: Jeffrey T. Barton
20 Jeffrey T. Barton, President/Owner

21 DATED this 13th day of ^{July}~~June~~ 2009

22 State of Nevada
23 Department of Business and Industry
24 Division of Mortgage Lending

25 By: Joseph L. Waltuch
26 Joseph L. Waltuch, Commissioner

27 **CERTIFICATE OF SERVICE**

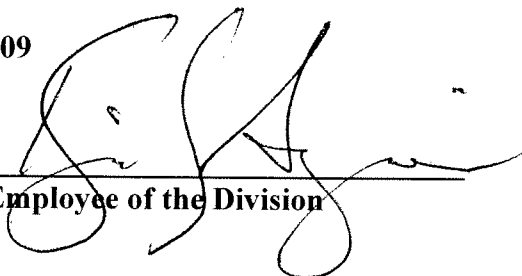
CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Mortgage Lending, and that on July 14, 2009, I deposited in the U.S. mail, postage prepaid via First Class Mail and Certified Return Receipt Requested, a true and correct copy of the foregoing, **FULLY EXECUTED STIPULATED SETTLEMENT AGREEMENT** for **MALIBU FUNDING INC.**, addressed as follows:

**Jeffery Barton
Malibu Funding Inc.
6837 Dome Drive
Malibu, CA 80265**

Certified Receipt Number: 7006 2760 0000 0876 2810

DATED this 14th day of July, 2009

By: 
Employee of the Division