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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION

16 MAUDER and ALICE CHAO;
17 DEOGENESO and GLORINA PALUGOD;
18 and
19 MARITZA PINEL,
20 individually and on behalf of all others similarly
21 situated,

Plaintiffs,

22 vs.

23 AURORA LOAN SERVICES, LLC,
24 Defendant.
25

No. 10-cv-03118-SBA

**AMENDED SETTLEMENT
AGREEMENT AND RELEASE**

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1 AMENDED CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

2 1. This Amended Settlement Agreement and Release is entered into by and among
3 Plaintiffs Mauder and Alice Chao, Deogeneso and Glorina Palugod, and Maritza Pinel,
4 individually and on behalf of all Settlement Class Members as defined below, and Defendant
5 Aurora Loan Services, LLC (“Aurora”), subject to the approval of the Court.

6 DEFINITIONS

7 2. As used in this Settlement Agreement, the following terms shall have the
8 following meanings:

9 a. “Action” means the above-captioned lawsuit (No.10cv3118 (N.D. Cal.)),
10 which was consolidated with Case No. 10cv3383 (N.D. Cal.).

11 b. “Agreement” or “Settlement Agreement” or “Settlement” means this
12 Amended Settlement Agreement and Release.

13 c. “Aurora” or “Defendant” means Aurora Loan Services, LLC.

14 d. “Claims Administrator” means Gilardi & Co., LLC.

15 e. “Class Counsel” means Hagens Berman Sobol Shapiro LLP; Law Office of
16 Andrew Oldham; Richardson, Patrick, Westbrook & Brickman, LLC; and Abtahi Law Firm.

17 f. “Class Data” means the data and information produced by Aurora in this
18 Action relating to Settlement Class Members and their loans serviced by Aurora.

19 g. “Class Notice” or “Notice of Settlement” means the Notice of Class Action
20 Settlement as approved by the Court in its Preliminary Approval Order.

21 h. “Class Notice Date” means the date that the Class Notice is mailed to the
22 Settlement Class Members.

23 i. “Effective Date” means either: (a) the date of the Final Approval Order of
24 this Agreement by the Court if no objections are timely filed; (b) the expiration date of the time
25 for filing notice of any appeal from the Final Approval Order by the Court if any timely
26 objections are filed but no appeal is filed; or (c) if an appeal is filed, the latest of (i) the date of
27 final affirmance of that Order, (ii) the expiration of the time for a petition for writ of certiorari to
28 review the Order if affirmed and, if the certiorari is granted, the date of final affirmance of the

1 Order following review pursuant to that grant; or (iii) the date of final dismissal of any appeal
2 from the Order or the final dismissal of any proceeding on certiorari to review the Order that has
3 the effect of confirming the Order.

4 j. "Eligible Restitution Settlement Class Members" means Restitution
5 Settlement Class Members who do not timely opt out of this Settlement.

6 k. "Eligible Rosenthal Act Settlement Class Members" means Rosenthal Act
7 Settlement Class Members who do not timely opt out of this Settlement.

8 l. "Eligible Settlement Class Members" means Eligible Restitution
9 Settlement Class Members and Eligible Rosenthal Act Settlement Class Members.

10 m. "Excess Payment Settlement Subclass" or "Excess Payment Settlement
11 Subclass Members" means:

12 All members of the Restitution Settlement Class who made
13 additional payments to Aurora after the term of the Workout
14 Agreement had expired.

15 n. "Final Approval Hearing" means the hearing to be requested by the Parties
16 and conducted by the Court, following appropriate notice to the Settlement Class and an
17 opportunity for Settlement Class Members to exclude themselves from the Settlement Class, at
18 which time Plaintiffs will request the Court to finally approve the fairness, reasonableness and
19 adequacy of the terms and conditions of this Agreement and to enter a Final Approval Order.

20 o. "Final Approval Motion" or "Motion for Final Approval" means Plaintiffs'
21 motion seeking final approval of this Agreement.

22 p. "Final Approval Order" means the order and judgment that the Court enters
23 upon granting the Final Approval Motion.

24 q. "Gross Settlement Fund" means the total amount of funds that Aurora shall
25 pay to resolve the Released Claims by the Named Plaintiffs and the Settlement Class Members.
26 The Gross Settlement Fund shall be the sum of Five Million, Two Hundred Fifty Thousand
27 Dollars (\$5,250,000.00). Aurora's responsibility to pay any amounts in settlement, including
28 payments to the Named Plaintiffs, to Settlement Class Members, for attorneys' fees or costs, and

1 any fees or costs of the Claims Administrator, shall not exceed the amount of the Gross
2 Settlement Fund.

3 r. "Net Settlement Fund" means the settlement funds that are available for
4 distribution to the Eligible Rosenthal Act Class Members and Eligible Restitution Class
5 Members, and specifically constitutes the Gross Settlement Fund less: (a) the service awards
6 addressed in Paragraph 32 below for the Named Plaintiffs for their efforts in bringing and
7 prosecuting this matter; (b) the payment of attorneys' fees to Class Counsel, not to exceed thirty
8 percent (30%) of the Gross Settlement Fund, as set forth in Paragraph 33 below; (c) Class
9 Counsel's costs of suit, as set forth in Paragraph 33 below; and (d) the Claims Administrator's
10 fees and costs of the administration of this Settlement, as addressed in Paragraph 34 below.

11 s. "Opt-Out Deadline" means the date sixty (60) days after the Class Notice
12 Date.

13 t. "Parties" means the Named Plaintiffs and Aurora.

14 u. "Plaintiffs" or "Named Plaintiffs" means Mauder and Alice Chao,
15 Deogeneso and Glorina Palugod, and Maritza Pinel.

16 v. "Preliminary Approval Date" means the date of the Preliminary Approval
17 Order.

18 w. "Preliminary Approval Motion" or "Motion for Preliminary Approval"
19 means Plaintiffs' motion seeking preliminary approval of this Agreement, which shall include a
20 copy of this Settlement Agreement.

21 x. "Preliminary Approval Order" means the Court's Order preliminarily
22 approving this Agreement, certifying the Settlement Class, setting a date for the Final Approval
23 Hearing, and providing for notice of the Settlement Agreement to be sent to the Settlement Class
24 Members.

25 y. "Released Claims" has the meaning specified in Paragraphs 56 and 57 of
26 this Agreement.

27 z. "Released Parties" has the meaning specified in Paragraph 54 of this
28 Agreement.

1 on fraudulent inducement); (2) Rescission and Restitution (based on failure of consideration); (3)
2 Breach of Contract; (4) Breach of the Implied Covenant of Good Faith and Fair Dealing; (5)
3 Unjust Enrichment; (6) Unfair Debt Collection Practices (“Rosenthal Act”), Cal. Civil Code
4 §§ 1788, *et seq.*; and (7) the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code
5 §§ 17200, *et seq.* Among other things, Plaintiffs alleged that Aurora’s Workout Agreements
6 fraudulently induced Plaintiffs and the Settlement Class to make payments to Aurora under the
7 false hope that Aurora would provide an opportunity for Settlement Class Members to cure the
8 arrearages on their mortgage loans with Aurora.

9 5. The case was vigorously litigated for over three years. The Named Plaintiffs were
10 each deposed and produced extensive discovery. Aurora’s Rule 30(b)(6) witnesses were deposed
11 and Aurora produced hundreds of thousands of pages of discovery, all of which was reviewed by
12 Plaintiffs. Motions practice included four separate Rule 12 motions, numerous discovery motions
13 and disputes, contested motions for leave to amend, motions to strike, and class certification
14 motions. There were many telephonic meet and confer sessions between the parties.

15 6. In discovery, Aurora: (a) responded to numerous written discovery requests made
16 by Plaintiffs and produced extensive written discovery to Plaintiffs; (b) produced the Class Data
17 to Plaintiffs concerning its customers who were sent Workout Agreements during the Class
18 Period (*i.e.*, the Settlement Class Members); and (c) produced Rule 30(b)(6) witnesses for
19 deposition on certain key topics.

20 7. In particular, the Class Data contained detailed information regarding, *inter alia*,
21 Settlement Class Members’ Workout Agreements with Aurora, including: (a) the date of Workout
22 Agreements sent to Settlement Class Members; (b) the amount of any payments made to Aurora
23 under Workout Agreements; (b) the amount of any payments made after the term of a Workout
24 Agreement had expired; and (c) whether the property underlying the loan associated with a
25 Workout Agreement was foreclosed, as well as additional data.

26 8. The Court has not yet certified any classes. Plaintiffs filed a renewed Motion for
27 class certification, which the Court has held in abeyance.

28 9. On November 19, 2013, by order of Court, the Parties and their counsel

1 participated in a Settlement Conference before United States Magistrate Judge Nathaniel Cousins
2 (the "Settlement Conference Process"). In reaching this Agreement, Class Counsel cooperated
3 with each other and coordinated their efforts and resources to further the best interests of the
4 Settlement Class Members.

5 10. The Settlement Conference Process has continued to the present. The Parties did
6 not reach an agreement in the initial all-day mediation session with Magistrate Judge Cousins, but
7 continued their discussions thereafter. The Parties eventually reached an agreement and, on
8 December 20, 2013, executed a Memorandum of Understanding with respect to certain material
9 terms. As a result of this Settlement Conference Process, the analysis of the extensive discovery
10 and Class Data produced by Aurora, and subsequent negotiations between the Parties with respect
11 to the terms and conditions of this Agreement, the Parties have agreed to settle this Action
12 according to the terms of this Agreement.

13 11. At all times, the Parties and their counsel have negotiated vigorously with each
14 other and at arm's length. The Parties have investigated the facts relating to the claims alleged in
15 the Named Plaintiffs' original Complaints and the Second Consolidated Amended Complaint, and
16 have made a thorough study of the legal principles applicable to the claims asserted against
17 Defendant. Based upon Class Counsel's investigation, legal evaluation and taking into account
18 the contested legal and factual issues involved, including the Parties' assessment of the
19 uncertainties of litigation and the relative benefits conferred upon the potential Settlement Class
20 Members pursuant to this Agreement, Class Counsel have concluded that the Settlement with
21 Defendant on the terms set forth in this Agreement is fair, reasonable, adequate and in the best
22 interests of the Plaintiffs and the Settlement Class Members.

23 12. The Parties recognize that notice to the Settlement Class Members of the material
24 terms of this Agreement, as well as Court approval of the Agreement, are required to effectuate
25 the Agreement, and that the Agreement will not become operative until the Court grants final
26 approval of it and the Agreement becomes effective.

27 13. Aurora has asserted or would assert numerous defenses to the claims alleged in the
28 Second Consolidated Amended Complaint and expressly denies each of the claims and

1 allegations asserted against it and any and all liability arising out of the conduct alleged in this
2 Action. Aurora asserts that its Workout Agreement policies and procedures that were in place
3 during the Class Period were not unlawful or improper in any manner, and denies that either the
4 Named Plaintiffs or Settlement Class Members suffered any cognizable injury as a result of
5 Aurora's conduct. By entering into this Agreement, Aurora does not admit any wrongdoing and
6 this Agreement shall not constitute an admission of wrongdoing or liability by Aurora. Aurora
7 has defended the matter vigorously, but has agreed to enter into this Agreement to avoid the
8 further expense, inconvenience, and distraction of burdensome and protracted litigation.

9 14. Aurora disputes that a class would be manageable and that a litigation class
10 properly could be certified on the claims asserted in the Action. However, solely for purposes of
11 avoiding the risks, expense, inconvenience, and distraction of further litigation, Aurora does not
12 oppose the certification for settlement purposes only of the Rosenthal Act Settlement Class and
13 Restitution Settlement Class pursuant to FED. R. CIV. P. 23(b)(3) as defined above in Paragraph
14 1(bb) and 1(cc). The certification of the Settlement Class shall not be deemed a concession that
15 certification of a litigation class is appropriate, nor would Aurora be precluded from challenging
16 class certification in further proceedings in the Action or in any other action if the Settlement is
17 not finalized or finally approved. If the Settlement is not finally approved by the Court for any
18 reason whatsoever, the certification of the Settlement Class will be void. No agreements made by
19 or entered into by Aurora in connection with the Settlement may be used by Plaintiffs, any person
20 in the Settlement Class or any other person to establish any of the elements of class certification
21 in any litigated certification proceedings, whether in the Action or any other judicial or regulatory
22 proceeding.

23 15. This Agreement is not, and may not be construed or used by anyone as an
24 admission or concession against any Party on any point or fact of law, or of any alleged fault,
25 wrongdoing or liability whatsoever. The same is true of any document referred to or prepared in
26 connection with this Agreement or any action taken to effectuate this Agreement.

27 16. NOW THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN the
28 undersigned Parties, that this Action shall be settled, subject to the approval of the Court,

1 pursuant to the following terms and conditions:

2 **MONETARY RELIEF TO ELIGIBLE CLASS MEMBERS**

3 17. Establishment of Gross Settlement Fund. In consideration of the settlement and
4 release set forth herein, within fifteen (15) business days after the Preliminary Approval Date,
5 Aurora shall wire the entirety of the Gross Settlement Fund to the Claims Administrator, which
6 shall be immediately deposited (that same day) by the Claims Administrator into a Qualified
7 Settlement Fund pursuant to Internal Revenue Code Section 1.468B-1 with a federally-chartered
8 national bank to be selected by Class Counsel. Also within fifteen (15) business days after the
9 Preliminary Approval Date, Aurora shall execute an election statement provided by the Claims
10 Administrator which shall be affixed to the initial tax return of the Qualified Settlement Fund in
11 order to establish the start date of the Qualified Settlement Fund. The Gross Settlement Fund
12 shall thereafter be administered and distributed as set forth in this Agreement. Accordingly, the
13 Claims Administrator shall be responsible for any and all federal, state, local and non-US tax
14 filings related to the establishment, ongoing maintenance and distributions made from the
15 Qualified Settlement Fund (including, without limitation, the solicitation of relevant tax
16 documentation from any parties receiving distributions from the Qualified Settlement Fund as
17 well as the preparation of income tax returns for the fund and tax withholding and tax reporting
18 for distributions made by the fund). All interest with respect to the Gross Settlement Fund shall
19 accrue to the benefit of the Settlement Class. The monetary relief to the Settlement Class, any
20 payments to the Named Plaintiffs, Class Counsels' attorneys' fees and expenses, all fees and
21 expenses of the Claims Administrator, and any and all taxes arising out of any interest or other
22 income derived from the Gross Settlement Fund shall be paid from the Gross Settlement Fund.
23 No portion of the Gross Settlement Fund shall revert to Defendant at any time.

24 18. Order of Payments. Following the Effective Date, and subject to the Court's Final
25 Approval Order, the Claims Administrator shall make payments from the Gross Settlement Fund
26 for: (a) the service awards for the Named Plaintiffs for their efforts in bringing and prosecuting
27 this matter; (b) the attorneys' fees and costs to Class Counsel awarded by the Court; and (c) the
28 costs of administration of this Settlement by the Claims Administrator. Once the payments

1 designated above have been made, the balance remaining shall constitute the Net Settlement Fund
2 from which Settlement Payments to Eligible Rosenthal Act Settlement Class Members and
3 Restitution Settlement Class Members shall be calculated.

4 19. Payments to Settlement Class Members. Distribution of the Net Settlement Fund
5 to the Settlement Class Members shall be on a claims-paid basis. Within thirty (30) days of the
6 Effective Date or as soon as reasonably practicable, the Claims Administrator shall distribute the
7 Net Settlement Fund to the Settlement Class Members in accordance with the provisions below.

8 20. Production of Class List. Subject to the Protective Order in the Action, Aurora has
9 already produced the following information to Class Counsel:

- 10 a. Loan numbers for all Settlement Class Members;
- 11 b. Dates that Workout Agreements were sent to Settlement Class Members;
- 12 c. Payments made to Aurora by Restitution Settlement Class Members
13 pursuant to Workout Agreements;
- 14 d. Payments made to Aurora by Excess Payment Subclass Members after the
15 term of their Workout Agreements expired; and
- 16 e. Other applicable information and data.

17 21. The Parties shall jointly request that the Court modify the Protective Order in the
18 Action to add the Claims Administrator as a person to whom “Confidential” and “Highly
19 Confidential” materials can be disclosed. Within ten (10) business days after the Preliminary
20 Approval Date, Aurora shall provide the Claims Administrator and Class Counsel with a final
21 Class List, designated “Highly Confidential,” in electronic format, to the extent reasonably
22 available, which shall supplement the above information and include for Settlement Class
23 Members (except for social security numbers which are addressed below):

- 24 a. Settlement Class Members’ names;
- 25 b. Settlement Class Members’ last-known billing address;
- 26 c. Settlement Class Members’ last known telephone numbers;
- 27 d. Settlement Class Members’ last known email addresses; and
- 28 e. Settlement Class Members’ social security numbers (but only upon request

1 by the Settlement Administrator for those Settlement Class Members
2 whose mailings under this Agreement are returned as undeliverable).

3 Notwithstanding the foregoing, Aurora shall have no obligation to provide the Claims
4 Administrator any Class List information or Class Data unless and until the Court modifies the
5 Protective Order as set forth herein and the Claims Administrator agrees in writing to be bound
6 by that Order.

7 22. Distribution of Net Settlement Fund. The Net Settlement Fund shall be distributed
8 to Eligible Class Members as follows:

9 a. The Net Settlement Fund shall be divided into the “Rosenthal Act Net
10 Settlement Fund” and the “Restitution Net Settlement Fund.”

11 b. Rosenthal Act classwide damages are capped by statute at \$500,000. As a
12 result, the Rosenthal Act Net Settlement Fund shall be \$500,000 multiplied by
13 the ratio of the Net Settlement Fund to the Gross Settlement Fund. By way of
14 example only, if the Net Settlement Fund is \$3,600,000, then the Rosenthal
15 Act Net Settlement Fund would be $\$500,000 * (\$3,600,000/\$5,250,000) =$
16 $\$342,857$.

17 c. The Restitution Net Settlement Fund shall be the Net Settlement Fund less the
18 Rosenthal Act Net Settlement Fund. By way of example only, and carrying
19 forward the assumptions immediately above, if the Net Settlement Fund is
20 \$3,600,000 and the Rosenthal Act Net Settlement fund is \$342,857, then the
21 Restitution Net Settlement Fund would be $\$3,600,000 - \$342,857 = \$3,257,143$.

22 d. “Rosenthal Act Settlement Damages” for Eligible Rosenthal Act Settlement
23 Class Members shall be an equal share of the Rosenthal Act Net Settlement
24 Fund. By way of example only, if the Rosenthal Act Net Settlement Fund is
25 \$342,857 and there are 12,000 Eligible Rosenthal Act Settlement Class
26 Members, then Rosenthal Act Settlement Damages shall be $\$342,857 / 12,000$
27 $= \$28.57$.

28 e. “Restitution Settlement Damages” for Eligible Restitution Settlement Class

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Members shall be based *pro rata* upon each Eligible Restitution Settlement Class Members' payments to Aurora under their Workout Agreement, and (for Excess Payment Subclass Members) following the term of their Workout Agreement. By way of example only, if the Restitution Net Settlement Fund is \$3,257,143, and an Eligible Restitution Settlement Class member made \$12,500 of payments to Aurora under their Workout Agreement, and \$12,500 of payments to Aurora following their Workout Agreement, and the total of all payments to Aurora by Eligible Restitution Settlement Class Members was \$25,000,000, then that Eligible Restitution Settlement Class Member would have Restitution Settlement Damages of:

$$((\$12,500+\$12,500)/\$25,000,000)*\$3,257,143= \$3,257.14.$$

f. Settlement Damages for each Settlement Class Member shall be the sum of their Rosenthal Act Settlement Damages and their Restitution Settlement Damages (if applicable).

23. Calculation. Class Counsel shall calculate the Settlement Damages for all Eligible Settlement Class Members based on the Class Data by the date of Plaintiffs' Final Approval Motion, and shall determine the amount owed to each Eligible Settlement Class Member. Class Counsel shall provide the completed damages calculations to Aurora and the Claims Administrator.

24. No Offset for NMS or Other Settlements. There shall be no offset to any payments received by any Eligible Settlement Class Members under this Agreement to account for any payments to Eligible Settlement Class Members under the National Mortgage Settlement ("NMS") or any other settlement between Aurora and any governmental or private entity, including the United States Department of Treasury's Office of the Comptroller of the Currency (the "OCC").

25. Distribution of Settlement Payments. All Settlement Payments to Eligible Settlement Class Members shall be distributed in the form of a check sent via first class mail in a distinctive envelope stating, on the outside in large bold letters: "**Settlement Payment Pursuant**

1 **to Class Action Settlement Approved by the Court.”** For purposes of this mailing, the Claims
2 Administrator shall use the addresses that were used to send the Notice of Settlement, subject to
3 appropriate updating by the Claims Administrator prior to mailing, which shall consist of the
4 following:

5 a. The Claims Administrator will check each address against the United
6 States Post Office National Change of Address (“NCOA”) Database;

7 b. The Claims Administrator will conduct reasonable searches to locate valid
8 address information for Eligible Settlement Class Members whose previous Notices of Settlement
9 were returned as undeliverable;

10 c. The Claims Administrator shall update addresses based on forwarding
11 information received from the United States Post Office; and

12 d. The Claims Administrator will update addresses based on any requests
13 received from Settlement Class Members or Class Counsel.

14 26. Re-Mailing of Returned Settlement Payments. Any Settlement Payments that are
15 returned as non-deliverable with a forwarding address shall be re-mailed by the Claims
16 Administrator to such forwarding address within five (5) business days. To the extent that any
17 Settlement Payments are returned as non-deliverable without a forwarding address, the Claims
18 Administrator shall conduct reasonable searches to locate valid address information for the
19 intended recipients of such Settlement Payments, and shall, within five (5) business days, re-mail
20 the Settlement Payment, as applicable, to any Eligible Class Members for whom new address
21 information is identified.

22 27. Time Period to Accept Payment. Eligible Settlement Class Members shall have
23 120 days from the date of their Settlement Payments to cash their check. Eligible Settlement
24 Class Members may request new checks to be issued by the Claims Administrator during this
25 time period, if they lose or misplace their original check, however, the time period for cashing the
26 check will be the same as the original time period set forth above.

27 28. Second Payment if Applicable. Within ten (10) business days after the conclusion
28 of the time period for Eligible Settlement Class Members to cash their checks, the Claims

1 Administrator shall determine the amount of money remaining in the Rosenthal Act Net
2 Settlement Fund and the Restitution Net Settlement Fund as the result of voided or undeliverable
3 checks. If, following this process, the amount of money remaining in either such fund exceeds
4 five percent (5%) of the original amount in such fund, the Claims Administrator shall prepare and
5 send Class Counsel and counsel for Aurora a Cashed Settlement Check List that identifies all
6 Eligible Class Members who cashed the settlement checks, and within ten (10) business days after
7 the calculation of the Cashed Settlement Check List, the Claims Administrator shall send them a
8 further payment allocated on a *pro rata* basis based on each eligible Class Members' Settlement
9 Damages in proportion to the total amount remaining in the Rosenthal Act Net Settlement Fund
10 and/or the Restitution Net Settlement, which can be paid via check.

11 29. Unclaimed Monies. All unclaimed monies in the Rosenthal Act Net Settlement
12 Fund and/or Restitution Class Net Settlement Fund after the second distribution (as set forth in
13 Paragraph 28), or if, after the first distribution, there is less than five percent (5%) of such funds
14 remaining, shall be escheated to the State of California. No unclaimed funds will revert to
15 Aurora. Class Counsel and the Claims Administrator shall be responsible for administering the
16 escheat of any funds to the State of California.

17 30. Final Accounting. No later than thirty (30) days after all Settlement Payments are
18 issued to Eligible Class Members, the Claims Administrator shall provide a final accounting to
19 the Parties. The Claims Administrator shall also provide declarations to the Parties to be filed
20 with the Court, concerning the status of the administration process, at the request of Class
21 Counsel or Aurora at any time.

22 31. No person shall have any claim against Aurora, Aurora's counsel, the Named
23 Plaintiffs, the Settlement Class, Class Counsel, or the Claims Administrator based on
24 distributions or payments made in accordance with this Settlement Agreement.

25 **ADDITIONAL SETTLEMENT PAYMENTS**

26 32. Service Awards to Named Plaintiffs. Subject to the Court's approval, the Named
27 Plaintiffs Alice and Mauder Chao, Deogeneso and Glorina Palugod, and Maritza Pinel shall each
28 receive a service award not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) for their

1 time and efforts in bringing and prosecuting this matter. Within three (3) business days after the
2 Effective Date, the Claims Administrator shall deduct from the Settlement Fund and pay to the
3 Named Plaintiffs the amounts approved by the Court.

4 33. Attorneys' Fees and Expenses. At least 60 days prior to the Final Fairness
5 Hearing, Class Counsel shall file a Motion for Attorneys' Fees and Expenses to be paid from the
6 Gross Settlement Fund in accordance with FED. R. CIV. P. 23(h). Class Counsel's Motion for
7 Attorneys' Fees and Expenses is to be considered separately by the Court from its consideration
8 of the fairness and adequacy of this Settlement Agreement, and any order with respect to this
9 separate Motion shall not affect or delay the approval of this Settlement Agreement. Class
10 Counsels' attorneys' fees shall not exceed thirty percent (30%) of the Gross Settlement Fund, plus
11 Class Counsels' actual expenses, and Aurora shall not object to Class Counsels' request for
12 attorneys' fees and expenses so long as it is consistent with this paragraph. These amounts will
13 compensate Class Counsel for the three years of contentious litigation work already performed in
14 this case and all of the work remaining to be performed in this case, including but not limited to
15 documenting the Settlement, securing Court approval of the Settlement, making sure that the
16 Settlement is fairly administered and implemented, and obtaining dismissal of the Action. Within
17 three (3) business days after the Effective Date, the Claims Administrator shall deduct from the
18 Gross Settlement Fund and pay to Class Counsel the amounts approved by the Court for
19 attorneys' fees and expenses. This Settlement Agreement shall remain in full force even if the
20 Court declines to award attorneys' fees and costs or awards a lesser amount than applied for or if
21 the Court declines to award Plaintiffs a service award, as described in Paragraph 32, or awards a
22 lesser amount than applied for.

23 34. Costs of Settlement Administration. All fees and expenses of the Claims
24 Administrator shall be paid from the Gross Settlement Fund. The Claims Administrator shall
25 provide the Parties with an estimate of its fees and expenses of settlement administration, which
26 shall be filed as an exhibit to Plaintiffs' Motion for Preliminary Approval, and the amount paid to
27 the Claims Administrator in connection with this Settlement shall not exceed that amount. Ten
28 (10) business days prior to the Final Fairness Hearing, the Claims Administrator shall also

1 provide the Parties with a declaration detailing its fees and expenses related to the settlement
2 administration process, which shall be filed with the Court. The Parties agree to cooperate in the
3 settlement administration process and to make all reasonable efforts to control and minimize the
4 expenses incurred in the administration of the Settlement.

5 **NOTICE OF SETTLEMENT**

6 35. Notice of this settlement shall be provided to the Settlement Class Members. The
7 Parties will request that the Court determine that the proposed procedures for notice set forth
8 below constitute the best practicable notice to Settlement Class Members.

9 36. The Claims Administrator shall be responsible for preparing, printing and mailing
10 to all Settlement Class Members the Class Notice, as directed and approved by the Court in its
11 Preliminary Approval Order.

12 37. Within ten (10) business days after the Preliminary Approval Date, Aurora shall
13 transmit the Class List set forth in Paragraph 20, above, to the Claims Administrator and Class
14 Counsel.

15 38. Aurora shall provide contact information for Settlement Class Members based
16 upon its regularly maintained mortgage banking business records. The Claims Administrator
17 shall take reasonable measures to verify and update the Class List with respect to the contact
18 information, and before mailing the Class Notice, will run the list of Settlement Class Members
19 through the Lexis/Nexis Accurint database.

20 39. As soon as reasonably practicable within thirty (30) days after receiving the Class
21 List, the Claims Administrator shall mail the Court-approved Class Notice to all Settlement Class
22 Members, which shall provide instructions and information to Settlement Class Members
23 concerning the Settlement and their right to receive a share of the Net Settlement Fund, as well as
24 their objection rights and opt-out rights. In addition, that same day, the Claims Administrator
25 shall email the Class Notice to all Settlement Class Members for whom it has obtained email
26 addresses.

27 40. Effective on the Class Notice Date, the Claims Administrator shall also arrange for
28 a telephone call center facility with a 1-800 number to be active until such time as all distributions

1 of Settlement Payments are completed to Eligible Class Members, in order to respond to
2 questions from Settlement Class Members.

3 41. Effective on the Class Notice Date, the Claims Administrator shall also make
4 active a website (www.auroraworkoutagreementsettlement.com) describing the terms of the
5 Settlement and from which Settlement Class Members can download relevant forms such as the
6 Class Notice; the Settlement Agreement; the Court's Preliminary Approval Order; and Class
7 Counsel's Motion for Final Approval and Motion for Attorneys' Fees and Expenses. The website
8 shall include the 1-800 number applicable to this Settlement as set forth in Paragraph 40, above,
9 and shall remain active until such time as distributions of Settlement Payments are completed to
10 Eligible Class Members.

11 42. Any Class Notice returned to the Claims Administrator as non-delivered before the
12 deadline for opting out of the Settlement shall be sent to the forwarding address affixed thereto.
13 If no forwarding address is provided, then the Claims Administrator shall perform a standard skip
14 trace to attempt to determine the most current mailing address and perform address searches using
15 public and proprietary electronic resources which collect their data from various sources such as
16 utility records, property tax records, motor vehicle registration records (where allowed) and credit
17 bureaus, and shall resend the Class Notice to that address(es). The undelivered Class Notices
18 shall be resent within five (5) business days after the Claims Administrator receives notice that
19 the Class Notice was undeliverable. The opt-out deadline and objection deadline shall not be
20 extended for Settlement Class Members whose original Class Notices are re-mailed pursuant to
21 this paragraph.

22 43. The Claims Administrator will update addresses based on any forwarding address
23 received and/or requests to do so received from Settlement Class Members or Class Counsel.

24 44. If, after the database searches and remailings described above, there are more than
25 1,000 Rosenthal Class members or more than 50 Restitution Class members whose addresses and
26 whereabouts remain unknown to the Claims Administrator, the Claims Administrator shall
27 propose a publication notice procedure designed to reach as many such undeliverable class
28 members as possible using a budget not to exceed 25% of the value of the Settlement Damages

1 that would otherwise have been available to such class members.

2 45. No later than fourteen (14) days prior to the Final Approval Hearing, the Claims
3 Administrator shall provide counsel for the Parties with a declaration setting forth: (a) due
4 diligence and proof of mailing of the Class Notice; (b) the total number of Settlement Class
5 Members who were sent the Class Notice; and (c) the total number of Settlement Class Members
6 who sent timely requests for exclusion or objections to the Settlement, along with the complete
7 copies of all requests for exclusion and objections received, including the postmark dates for each
8 request for exclusion or objection. Co-Lead Counsel shall file such declaration with the Court.

9 **OPT-OUTS AND OBJECTIONS**

10 46. Requests for Exclusion: The Class Notice shall provide that Settlement Class
11 Members who wish to exclude themselves from the Settlement must submit a written statement
12 requesting exclusion from the Settlement (“opt-out”), postmarked no later than the Opt-Out
13 Deadline. Such written request for exclusion must contain the name, address, telephone number,
14 and email address of the Settlement Class Member requesting exclusion, and be personally signed
15 by the Settlement Class Member who seeks to opt out. No opt-out request may be made on
16 behalf of a group of Settlement Class Members. The opt-out request must be sent by mail to the
17 Claims Administrator and must be timely postmarked as set forth above. The postmark date of
18 the mailing envelope shall be the exclusive means used to determine whether an opt-out has been
19 timely submitted. The Claims Administrator shall provide the parties with copies of all opt-out
20 requests on a weekly basis. If the number of Settlement Class Members who file opt-out requests
21 equal or exceed seven percent (7%) of the total number of all Settlement Class Members, then
22 Aurora, in its sole discretion, may, at any time prior to ten (10) business days after the Opt-Out
23 Deadline, notify Plaintiffs’ counsel that it seeks to terminate the Settlement Agreement. Any
24 Settlement Class Member who requests exclusion from (opts out of) the Settlement will not be
25 entitled to any Settlement Award and will not be bound by the Settlement Agreement or have any
26 right to object, appeal or comment thereon.

27 47. Objections: The Class Notice shall provide that any Settlement Class Members
28 who wish to object to the Settlement Agreement must mail a written statement of objection to the

1 Claims Administrator postmarked no later than the Opt-Out Deadline. The Notice of Objection
2 must state the basis for the objection. Such objection must contain the name, address, telephone
3 number, and email address of the Settlement Class Member making the objection, and be
4 personally signed by the Settlement Class Member. In addition, the objecting Settlement Class
5 Member must identify any previously filed objections filed by the Settlement Class member or
6 his or her counsel in any state or federal court. This listing must contain (a) the name of the case;
7 (b) the case number; and (c) the court in which the objection was filed. The objection must be
8 sent by mail to the Claims Administrator and must be timely postmarked as set forth above. The
9 postmark date of the mailing envelope shall be the exclusive means used to determine whether an
10 objection has been timely submitted. The Claims Administrator shall provide the Parties with
11 copies of all objections on a weekly basis. Settlement Class Members who fail to make
12 objections in the manner specified above shall be deemed to have waived any objections and
13 shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement
14 Agreement.

15 **FINAL APPROVAL AND JUDGMENT ORDER**

16 48. Final Approval Motion. At least fourteen (14) days before the Final Approval
17 Hearing, Plaintiffs shall file a motion requesting that the Court grant final approval of the
18 Settlement Agreement, with Class Counsel filing a memorandum of points and authorities in
19 support of the motion, and addressing any timely submitted objections to the Settlement.

20 49. Matters to Be Considered at Final Approval Hearing. At the Final Approval
21 Hearing, the Court will consider and determine whether the provisions of this Agreement should
22 be approved, whether the Settlement should be finally approved as fair, reasonable, and adequate,
23 whether any objections to the Settlement should be overruled, whether Class Counsel's motion
24 for attorneys' fees and costs should be approved, and whether a Final Approval Order should be
25 entered.

26 50. This Agreement is subject to and conditioned upon the issuance by the Court of a
27 Final Approval Order which grants final approval of this Agreement and:
28

- 1 a. this Agreement shall be considered null and void; all of Aurora's obligations
2 under the Settlement shall cease to be of any force and effect; the amounts in
3 the Settlement Fund shall be returned to Aurora; and the Parties shall return to
4 the status quo ante in the Action as if the Parties had not entered into this
5 Agreement;
- 6 b. all of the Parties' respective pre-Settlement claims and defenses will be
7 preserved, including, but not limited to, the Named Plaintiffs' right to seek
8 class certification and Aurora's right to oppose class certification;
- 9 c. no party shall use this Settlement Agreement or documents or communications
10 implementing or relating to its creation for any purpose in the renewed class
11 litigation; and
- 12 d. the Claims Administrator shall return the Gross Settlement Fund to Aurora
13 within seven days of termination, less any money that the Gross Settlement
14 Fund has already paid, or incurred an obligation to pay, in accordance with the
15 terms of this Agreement.

16 **RELEASES**

17 54. The "Released Parties" are: Aurora Loan Services LLC and each of its past,
18 present and future parents, subsidiaries, members, divisions, affiliates, affiliated companies and
19 corporations, joint venturers, directors, officers, managers, employees, general partners, limited
20 partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, legal
21 representatives, consultants, representatives, predecessors, successors, independent contractors, or
22 related entities, and each and all of their executors, predecessors, successors and assigns. The
23 Released Parties include, by way of example but not limitation: Aurora Loan Services, LLC,
24 Aurora Commercial Corp., and Aurora Bank FSB.

25 55. The "Releasing Parties" are: the Named Plaintiffs and each Settlement Class
26 Member (except those who timely opt out of the Settlement) and his or her assigns, heirs,
27 successors and personal representatives.

28 56. The "Released Claims" are: any and all liabilities, rights, claims, actions, causes of

1 action, demands, damages, costs, attorneys' fees, losses, and remedies, whether known or
2 unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal,
3 statutory, or equitable, that result from, arise out of, are based upon, or relate to the conduct,
4 omissions, duties or matters from the beginning of time up through and including Preliminary
5 Approval Date that were or could have been asserted or alleged in the Action, including, without
6 limitation, any claims, actions, causes of action, demands, damages, losses, or remedies relating
7 to, based upon, resulting from, arising out of or in any way related to Aurora's use of, or policies
8 and practices in connection with, Aurora's Workout Agreements or Special Forbearance
9 Agreements.

10 57. The Released Claims include, by way of example but not limitation, any and all
11 claims concerning: (a) whether Aurora provided or had any obligation to provide Settlement
12 Class Members an opportunity to cure in connection with the Workout Agreement; (b) whether
13 Aurora rendered or had any obligation to render a modification decision during the term of the
14 Workout Agreement; (c) whether Aurora provided or had any obligation to provide cure
15 information, including reinstatement or pay off figures, to Settlement Class Members in
16 connection with the Workout Agreement; (d) whether Aurora notified or had any obligation to
17 notify Settlement Class Members at least five days before the foreclosure sale that their request
18 for a loan modification or other workout plan was denied; (e) whether Aurora provided or had
19 any obligation to provide Settlement Class Members a loan modification or other workout option
20 at the conclusion of a Workout Agreement; (f) whether Aurora told or had any obligation not to
21 tell Settlement Class Members to continue making payments after the end of the Workout
22 Agreements; (g) fees charged by Aurora in connection with Workout Agreements; (h) whether
23 Aurora complied with California's deficiency judgment statute (*e.g.*, Cal. Code Civ. Proc. § 580b)
24 in connection with Workout Agreements; (i) whether Aurora complied with California law
25 concerning postponing and scheduling foreclosure sales (*e.g.*, Cal. Civ. Code § 2994g), in
26 connection with Workout Agreements; (j) whether Aurora complied with the California
27 Rosenthal Fair Debt Collection Practices ("Rosenthal Act"), Cal. Civil Code §§ 1788, *et seq.* in
28 connection with Workout Agreements; (k) whether Aurora complied with the California Unfair

1 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.* in connection with Workout
2 Agreements; (l) whether Aurora “dual tracked” Settlement Class Members in connection with
3 Workout Agreements; and (m) whether Workout Agreements are fraudulent, unconscionable, or
4 violate any California law, whether statutory, common law, or any other.

5 58. Class Release. Upon the Effective Date, the Releasing Parties shall automatically
6 be deemed to have fully and irrevocably released, resolved, relinquished, and forever discharged
7 the Released Parties of and from the Released Claims, provided, however, that Releasing Parties
8 who are only members of the Rosenthal Act Settlement Class (i.e., are not members of the
9 Restitution Settlement Class) shall only release, resolve, relinquish and forever discharge their
10 right and ability to bring claims under or based on the California Rosenthal Act against the
11 Released Parties.

12 59. The Releasing Parties further agree that they will never hereafter institute or
13 continue any action or cause of action (in law, in equity, administratively, or otherwise), suits,
14 debts, liens, or claims, known or unknown, fixed or contingent, which they may have or claim to
15 have in state or federal court, or with any state, federal or local government agency or with any
16 administrative or advisory body, asserting the Released Claims.

17 60. In addition to any other defenses Aurora may have at law, in equity, or otherwise,
18 to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to,
19 and may be used as the basis for an injunction against, any action, suit or other proceeding that
20 may be instituted, prosecuted, attempted, or continued by a Settlement Class Member in breach of
21 this Agreement or the releases contained herein.

22 61. The Releasing Parties may hereafter discover facts other than or different from
23 those that he/she knows or believes to be true with respect to the subject matter of the claims
24 released pursuant to the terms of this Agreement, or the law applicable to such claims may
25 change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date,
26 he/she shall have automatically and irrevocably waived and fully, finally, and forever settled and
27 released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or
28 unliquidated, contingent or non-contingent claims with respect to the Released Claims. Further,

1 each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement,
2 including by the releases contained in this Agreement, and that all of their claims in the Action
3 shall be dismissed with prejudice and released, whether or not such claims are concealed or
4 hidden; without regard to subsequent discovery of different or additional facts and subsequent
5 changes in the law; and even if he/she does not receive actual notice of the Settlement or does not
6 receive a distribution of funds from the Settlement.

7 62. Waiver of California Civil Code Section 1542. Without limiting the foregoing, the
8 Released Claims specifically extend to claims that Settlement Class Members do not know or
9 suspect to exist in their favor at the time that the Settlement, and the releases contained therein,
10 becomes effective. This paragraph constitutes a waiver of, without limitation to any other
11 applicable law, all rights under California Civil Code Section 1542 with respect to the Released
12 Claims. Section 1542 provides:

13 A general release does not extend to claims which the creditor does not
14 know or suspect to exist in his or her favor at the time of executing the
15 release, which if known by him or her must have materially affected his or
16 her settlement with the debtor.

17 As such, the Participating Class Members understand and agree that they are providing the
18 Released parties with a full and complete release with respect to the Released Claims.

19 **MISCELLANEOUS**

20 63. Acknowledgment. Each of the Parties acknowledges and represents that such
21 Party: (a) has fully and carefully read this Agreement prior to execution; (b) has been fully
22 apprised by counsel of the legal effect and meaning of the terms of this Agreement; (c) has had
23 the opportunity to undertake whatever investigation or inquiry is necessary or appropriate in
24 connection with this Agreement; (d) has been afforded the opportunity to negotiate any and all
25 terms of this Agreement; and (e) is executing this Agreement voluntarily and free from any undue
26 influence, coercion, or duress of any kind.

27 64. Agreement to Cooperate. The Parties and their respective counsel will cooperate
28 with each other and use their reasonable and good faith efforts to effect the implementation of the

1 Agreement. In the event that the Parties are unable to reach agreement on the form or content of
2 any document needed to implement the Agreement, or on any supplemental provisions that may
3 become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance
4 of the Court to resolve such disagreement after meeting and conferring with each other in good
5 faith to attempt to resolve the dispute.

6 65. Authority. Each person executing this Settlement Agreement on behalf of any of
7 the Parties represents that such person has the authority to execute this Agreement.

8 66. Binding Upon Successors and Assigns. This Agreement shall be binding upon,
9 and inure to the benefit of, the successors or assigns of the Released Parties and the Parties, as
10 previously defined.

11 67. Construction. The Parties believe that the terms of this Agreement are a fair,
12 adequate and reasonable settlement of this Action, and have arrived at this Settlement Agreement
13 in arms-length negotiations and with the assistance of a United States Magistrate Judge, taking
14 into account all relevant factors, present and potential. This Agreement has been drafted jointly
15 by counsel for the Parties. Hence, in any construction or interpretation of this Agreement, the
16 same shall not be construed against any of the Parties.

17 68. Counterparts. This Agreement may be executed in one or more counterparts. All
18 executed copies of this Agreement and photocopies thereof (including facsimile and/or emailed
19 copies of the signature pages), shall have the same force and effect and shall be as legally binding
20 and enforceable as the original.

21 69. Defense Fees and Costs. All of Aurora's own attorneys' fees and legal costs and
22 expenses incurred in the Action (and in the original proceedings initiated by the Named Plaintiffs)
23 shall be borne by Aurora and not from the Gross Settlement Fund.

24 70. Entire Agreement. This Agreement constitutes the entire fully-integrated
25 agreement among the Parties relating to the Settlement. All prior or contemporaneous
26 agreements, understandings and statements, whether oral or written, and whether by a party or its
27 counsel, are merged herein. No oral or written representations, warranties or inducements of any
28 kind have been made to any Party concerning this Agreement, other than as set forth herein.

1 71. Governing Law. This Agreement shall be governed by the laws of the State of
2 California.

3 72. Headings and Captions. The headings and captions in this Agreement are for
4 convenience only and in no way define, limit, or otherwise describe the scope or intent of this
5 Agreement, or any term of this Agreement. Each term of this Agreement is contractual and is not
6 merely a recital.

7 73. No Oral Modifications. This Agreement may be amended or modified only by a
8 written instrument signed by counsel for all Parties or their successors-in-interest. No rights
9 hereunder may be waived except in writing. No oral amendment or modification shall be
10 permitted or effective.

11 74. Press Conferences. Plaintiffs and their counsel shall not hold a press conference
12 regarding the Action or this Settlement Agreement. With prior approval of content by Defendant,
13 not to be unreasonably withheld, Plaintiffs and their counsel may issue a press release that
14 announces the Settlement Agreement and its terms, but shall not disparage Aurora or any of the
15 Released Parties regarding the subject matter of this action. Class Counsel and Aurora and its
16 counsel may identify the Action and this Settlement Agreement on their websites or in other
17 communications and truthfully represent and describe the terms of this Settlement Agreement.

18 75. Notices. Unless otherwise agreed in writing, all notices to the Parties or counsel
19 required by the Agreement shall be made in writing and communicated by first class mail and
20 email to the following:

21 If to the Named Plaintiffs or Class Counsel:

22 **HAGENS BERMAN SOBOL SHAPIRO LLP**

23 Thomas E. Loeser
24 1918 Eighth Avenue
25 Suite 3300
26 Seattle, WA 98101
27 Telephone (206) 623-7292
28 Fax: (206) 623-0594
 Email: toml@hbsslw.com

 If to Defendants or Defendants' Counsel:

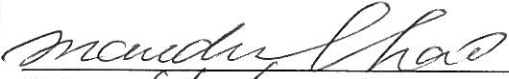
ARNOLD & PORTER LLP

David B. Bergman
Ian S. Hoffman
555 Twelfth Street, NW
Washington, D.C. 20004-1206
Tel: (202) 942-5000
Fax: (202) 942-5999
Email: david.bergman@aporter.com
Email: ian.hoffman@aporter.com

76. Retention of Jurisdiction. The Court shall retain jurisdiction to interpret, implement and enforce this Settlement Agreement. The Parties consent to jurisdiction for this purpose.

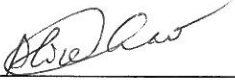
Mauder Chao

Aurora Loan Services, LLC


Date: 5/7/2014

By: _____
Title _____
Date: _____

Alice Chao


Date: 5/7/2014

Deogeneso Palugod

Date:

Glorina Palugod

Date:

Maritza Pinel

Date:

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Mauder Chao

Aurora Loan Services, LLC

Date:

By: _____

Alice Chao

Title _____

Date: _____

Date: 5/07/2014

Deogeneso Palugod

Deogeneso P. Palugod
Date: 05/07/2014

Glorina Palugod

Glorina Palugod
Date:

Maritza Pinel

Date:

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Date:

By: _____

Alice Chao

Title _____

Date: _____

Date:

Deogeneso Palugod

Date:

Glorina Palugod

Date:

Maritza Pinel



Date:

5/10/14

ARNOLD & PORTER LLP

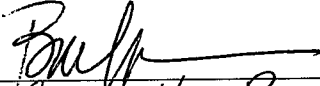
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Mauder Chao

Aurora Loan Services, LLC

Date:

By: 
Title: Senior Vice President
Date: May 13, 2014

Alice Chao

Date:

Deogeneso Palugod

Date:

Glorina Palugod

Date:

Maritza Pinel

Date:

1 **APPROVED AS TO FORM AND CONTENT:**

2 **FOR PLAINTIFFS**

3 

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Class Counsel for Plaintiffs

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