

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice (“DOJ”) and on behalf of the United States Department of Housing and Urban Development (“HUD,” with DOJ the “United States”) and James B. Nutter & Company, d/b/a/ Nutter Home Loans (“Nutter”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. Nutter was a Direct Endorsement mortgage lender (“DE” Lender) based in Kansas City, Missouri, that underwrote Home Equity Conversion Mortgages (“HECMs”), a reverse mortgage product insured by the Federal Housing Administration (“FHA”), a component of HUD.

B. On October 31, 2022, Nutter announced it was winding down its business operations. As of September 29, 2023, Nutter is no longer an FHA-approved “mortgagee,” as defined under 12 U.S.C. § 1708(c)(7).

C. On September 25, 2020, the United States filed an action in the United States District Court for the District of Columbia captioned *United States v. Nutter*, No. 1:20-cv-02742 (the “Civil Action”). On October 20, 2020, the Civil Action was transferred to the United States District Court for the Western District of Missouri, No. 4:20-cv-00874-RK.

D. In the Civil Action, the United States asserted certain civil claims against Nutter based on alleged false statements and certifications to HUD. The United States alleged that Nutter did not comply with certain HUD underwriting requirements for

HECMs during the period from January 1, 2007, through December 31, 2010, and that as a result Nutter submitted or caused the submission of claims on or before June 30, 2023, for payment on those HECMs. This conduct is hereby referred to below as the “Covered Conduct.”

E. This Settlement Agreement is neither an admission of liability by Nutter nor a concession by the United States that its claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

#### TERMS AND CONDITIONS

1. Nutter shall pay to the United States \$2.4 million (the “Settlement Amount”), by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice no later than 5 business days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below and subject to Paragraph 7 (concerning bankruptcy) below, and conditioned upon the United States’ receipt of the Settlement Amount, the United States releases Nutter from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”), 12 U.S.C. § 1833a; and the common law theories of breach of contract and breach of fiduciary duty.



3. Notwithstanding the release given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals; and,
- g. Any liability for personal injury or property damage.

4. Nutter waives and shall not assert any defenses Nutter may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

5. Nutter fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and

expenses of every kind and however denominated) that Nutter has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Nutter, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (i) the matters covered by this Agreement;
  - (ii) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
  - (iii) Nutter's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
  - (iv) the negotiation and performance of this Agreement;
  - (v) the payment Nutter makes to the United States pursuant to this Agreement,
- are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Nutter, and Nutter shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.



c. Treatment of Unallowable Costs Previously Submitted for Payment:

Within 90 days of the Effective Date of this Agreement, Nutter shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Nutter or any of its subsidiaries or affiliates from the United States. Nutter agrees that the United States, at a minimum, shall be entitled to recoup from Nutter any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Nutter's books and records and to disagree with any calculations submitted by Nutter or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Nutter, or the effect of any such Unallowable Costs on the amount of such payments.

7. In exchange for valuable consideration provided in this Agreement, Nutter acknowledges the following:

a. Nutter has reviewed its financial situation and warrants that it is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the United States of the Settlement Amount.

b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Nutter, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

d. The Parties do not intend to hinder, delay, or defraud any entity to which Nutter was or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

e. If any of Nutter's payments or obligations under this Agreement are avoided for any reason (including but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full, Nutter or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Nutter's debts, or to adjudicate Nutter as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Nutter or for all or any substantial part of Nutter's assets:

(i) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Nutter for the claims that would otherwise be covered by the releases provided in Paragraph 2 above;

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against Nutter in the amount of \$47.48 million less any payments received pursuant to Paragraph 1 of this Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by a receiver, trustee, creditor, custodian, or similar official.



f. Nutter agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 7.e is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police and regulatory power. Nutter shall not argue or otherwise contend that the United States' claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Nutter waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to Nutter that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on September 25, 2020.

8. This Agreement is intended to be for the benefit of the Parties only.

9. No later than (14) fourteen days following receipt of the payment described in Paragraph 1, above, the Parties shall sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

10. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

11. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

12. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the District of the Western District of Missouri. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and

shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

13. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

14. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

15. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

16. This Agreement is binding on Nutter's successors, transferees, heirs, and assigns.

17. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

18. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "Effective Date" of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.



THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Christopher R. B. Reimer  
Kelly E. Phipps  
Wilma Metcalf  
Attorneys  
U.S. Department of Justice, Civil Division  
Consumer Litigation Branch, Fraud Section

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

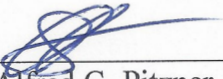
Lucinda S. Wooley  
Assistant United States Attorney  
U.S. Attorney's Office for the  
Western District of Missouri


DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Benton Peterson  
Assistant United States Attorney  
U.S. Attorney's Office for the  
District of Columbia

JAMES B. NUTTER & COMPANY

DATED: 9.17.24 BY:   
Alfred G. Pitzner  
Senior Vice President, Chief Compliance Officer  
James B. Nutter & Company

DATED: 9/18/2024 BY:   
Edward T. Kang  
Kelley C. Barnaby  
Brian D. Frey  
ALSTON & BIRD LLP  
Counsel for James B. Nutter & Company