

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 JUDY L. HARTLEY (State Bar No. 110628)
Senior Counsel
4 Department of Business Oversight
320 West 4th Street, Ste. 750
5 Los Angeles, California 90013-2344
Telephone: (213) 576-7604
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

10
11 In the Matter of:) CRMLA LICENSE NO.: 413-0680
)
12 THE COMMISSIONER OF BUSINESS) SETTLEMENT AGREEMENT
13 OVERSIGHT,)
)
14 Complainant,)
)
15 v.)
)
16 DRAPER AND KRAMER MORTGAGE)
17 CORP.,)
)
18 Respondent.)

19
20 This Settlement Agreement (Agreement) is entered into between Respondent Draper and
21 Kramer Mortgage Corp. (Draper) and Complainant the Commissioner of Business Oversight
22 (Commissioner), and is made with respect to the following facts:

23 **RECITALS**

24 A. Draper is a corporation in good standing, duly formed and existing pursuant to the
25 laws of the State of Delaware and is authorized to conduct business in the State of California.

26 B. Draper is a residential mortgage lender and servicer licensed by the Commissioner
27 pursuant to the California Residential Mortgage Lending Act (CRMLA) (Fin. Code Section §50000
28 et seq.). Draper has its principal place of business located at 701 E. 22nd Street, Suite 125. Lombard,

1 Illinois 60148. Draper has 19 branch locations under its CRMLA license in California and
2 elsewhere. Draper employs mortgage loan originators in its CRMLA business.

3 C. The Department of Business Oversight (Department), through the Commissioner, has
4 jurisdiction over the licensing and regulation of persons and entities engaged in the business of
5 lending and/or servicing pursuant to the CRMLA.

6 D. On May 11, 2018, Draper was personally served by the Commissioner with a Notice
7 of Intention to Issue Orders Suspending Residential Mortgage Lender and/or Servicer Licenses and
8 to Levy Penalties, Accusation and accompanying documents dated May 10, 2018 (Accusation).
9 Draper has filed a Notice of Defense with the Commissioner regarding the Accusation.

10 E. On May 11, 2017, Draper was also personally served by the Commissioner with an
11 Order to Discontinue Violations Pursuant to Financial Code Section 50321 and Statement of Facts in
12 Support of Order to Discontinue Violations Pursuant to Financial Code Section 50321 and Notice of
13 Intent to Make Order Final dated October 4, 2017 (Order to Discontinue Violations) and an Order to
14 Refund Excessive Per Diem Interest Charges Pursuant to Financial Code Section 50504 dated
15 May 10, 2017 (Order to Refund) (collectively Orders). Draper has filed requests for hearing with the
16 Commissioner regarding the Orders.

17 G. The Commissioner hereby acknowledges that Draper has submitted information
18 demonstrating that it has adopted policies and procedures addressing the issues described in the
19 Accusation and Orders.

20 H. It is the intention and desire of the parties to resolve this matter without the necessity
21 of a hearing and/or other litigation.

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

24 **TERMS AND CONDITIONS**

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

27 2. Waiver of Hearing Rights. Draper acknowledges its right to an administrative
28 hearing under the CRMLA in connection with the Accusation and/or Orders and hereby waives that

1 right to a hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant
2 to the CRMLA, the California Administrative Procedure Act, the California Code of Civil
3 Procedure, or any other provision of law in connection with these matters.

4 3. Final Orders. Draper hereby agrees that the Orders described in Paragraph E above
5 are hereby deemed final orders.

6 4. Administrative Penalty. Draper agrees to pay to the Commissioner the sum of
7 \$50,000.00 in administrative penalties upon execution of this Agreement. The payment shall be
8 made by cashiers' check payable to the Department of Business Oversight and shall be sent to the
9 Department, attention, Accounting-Litigation, 1515 K Street, Suite 200, Sacramento, CA 95814-
10 4052.

11 5. May 15, 2018 through August 31, 2018 Self-Audit. Draper must conduct a self-audit
12 of per diem interest charges for all California loans originated from May 15, 2018 through August
13 31, 2018 (May–August 2018 self-audit). Draper shall submit to the Department the results of the
14 audit (May–August 2018 self-audit report) within 90 days of the effective date of this Agreement as
15 that date is defined in Paragraph 23. The May–August 2018 self-audit report must be submitted in
16 Microsoft Excel format that contains the total number of loans made during the period, the number
17 of loans with per diem interest overcharges, and for each loan, the report shall list the borrower loan
18 number, name, address, loan amount, loan date, interest rate, disbursement date, date per diem
19 interest commenced, per diem interest charged, daily per diem interest amount, number of days per
20 diem interest charged, number of days per diem interest overcharged (if applicable), overcharge
21 amount (if applicable), date of refund (if applicable), and proof of refund (if applicable). Draper
22 further agrees that it shall pay an administrative penalty to the Commissioner, upon submission of
23 the May–August 2018 self-audit report, equal to \$200.00 for each per diem interest overcharge
24 discovered during the May–August 2018 self-audit unless such overcharge was refunded to the
25 borrower within 30 days of loan funding.

26 6. Quarterly Audits. Draper also agrees to conduct quarterly self-audits of per diem
27 interest charges for all California loans for a period of one year commencing on September 1, 2018.
28 Each quarterly audit must cover all California loans originated during that quarter. Draper will

1 submit to the Department the results of each quarterly audit (quarterly audit report) within 60 days of
2 the completion of each quarter. The first quarter is September 1 through November 30, 2018 with
3 the quarterly audit report due on or before January 31, 2019. The remaining quarterly audit reports
4 are due as follows: April 30, 2019 for the second quarter of December 1, 2018 through February 28,
5 2019; July 31, 2019 for the third quarter of March 1 through May 31, 2019; and October 31, 2019
6 for the fourth quarter of June 1 through August 31, 2019. The quarterly audit report(s) shall contain
7 the same or similar fields as in the May-August 2018 audit report discussed in paragraph 5 above.
8 Draper further agrees that it shall pay an administrative penalty to the Commissioner, upon
9 submission of the quarterly audit report(s), equal to \$200.00 for each per diem interest overcharge
10 discovered during the quarterly audit(s) unless such overcharge was refunded to the borrower within
11 30 days of loan funding.

12 7. Re-Audit(s). Draper acknowledges and understands that the Commissioner will test
13 for accuracy of the May–August 2018 and quarterly self-audits. Draper agrees to cooperate with the
14 Commissioner’s testing by providing all documentation requested by the Commissioner for such
15 purposes. Draper further agrees to have its May-August 2018 and/or quarterly self-audit(s)
16 conducted anew (re-audit) by and through an independent certified public accountant (CPA) if the
17 Commissioner’s testing reveals more than a 10 percent error rate as to additional overcharges of per
18 diem interest or refunds due to consumers. In the event a re-audit is required for the May–August
19 2018 self-audit or any of the quarterly self-audits, Draper, by and through its CPA, shall submit to
20 the Commissioner the results of the re-audit (re-audit report) within 90 days of the date of Draper is
21 notified in writing by the Commissioner that a re-audit is required. The re-audit report shall include
22 at a minimum, the total number of loans made during the period, the number of loans with per diem
23 interest overcharges, and for each loan, the report shall list the borrower loan number, name, address,
24 loan amount, loan date, interest rate, disbursement date, date per diem interest commenced, per diem
25 interest charged, daily per diem interest amount, number of days per diem interest charged, number
26 of days per diem interest overcharged (if applicable), overcharge amount (if applicable), date of
27 refund (if applicable), proof of refund (if applicable), and whether the overcharge was previously
28 reported in the self-audit report. Draper further agrees that it shall pay an administrative penalty to

1 the Commissioner, upon submission of the re-audit report, equal to \$200.00 for each per diem
2 interest overcharge discovered during the re-audit that (i) was not previously reported in the May-
3 August self-audit report and/or any of the quarterly self-audit reports, and (ii) was not refunded to
4 the borrower within 30 days of loan funding.

5 8. Payment of Refunds: Borrower refunds made pursuant to Paragraphs 5-7 shall
6 include interest at the rate of 10 percent per annum from the date of overcharge and shall be mailed
7 to the last known address of each borrower prior to submission of the applicable report to the
8 Commissioner. Borrower refunds made pursuant to this Agreement shall be accompanied by a cover
9 letter that states: “As a result of an examination by the Department of Business Oversight, a refund
10 or adjustment in the amount of \$XXXX is being made for your benefit. If you have any questions
11 concerning this refund, please contact (lender) at (800) XXX-XXXX.”

12 9. Outstanding Refunds. Draper shall be responsible for ensuring that any outstanding
13 refund payment owed to any borrower identified in the May-August 2018 self-audit and quarterly
14 self-audit reports described in Paragraphs 5-7 above shall be escheated to the State of California
15 pursuant to the provisions of the California Unclaimed Property Law (Code Civ. Proc., § 1500 et
16 seq.).

17 10. Effect of Agreement on Licenses. In consideration of the information provided to the
18 Commissioner by Draper as described in Paragraph G above and the agreement of Draper to the
19 entry of the finality of the Orders and payment of penalties as provided for in Paragraphs 3 and 4
20 above, the Commissioner hereby agrees that, except as otherwise set forth in this Agreement, she
21 shall not suspend and/or revoke the residential mortgage lender and servicer licenses of Draper.
22 Accordingly, this Agreement does not affect the licensing status of Draper.

23 11. Information Willfully Withheld. This Agreement may be revoked, and the
24 Commissioner may pursue any and all remedies available under law against Draper, if the
25 Commissioner later finds out that Draper knowingly or willfully withheld information used and
26 relied upon in this Agreement.

27
28

1 12. Failure to Comply with Agreement. Draper agrees that if it fails to comply with the
2 terms of this Agreement within five business days after written notice of demand, the Commissioner
3 may, in addition to all other available remedies under the CRMLA, summarily suspend the CRMLA
4 licenses of Draper until Draper is in compliance. Draper waives any notice and hearing rights to
5 contest such summary suspensions which may be afforded under the CRMLA, the California
6 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law
7 in connection therewith.

8 13. Binding. This Agreement is binding on all heirs, assigns and/or successors in interest.

9 14. Third Party Actions. This Agreement does not create any private rights or remedies
10 against Draper, create any liability for Draper or limit defenses of Draper for any person or entity not
11 a party to this Agreement.

12 15. Full and Final Settlement. The parties hereby acknowledge and agree that this
13 Agreement is intended to constitute a full, final and complete resolution of the Accusation and
14 Orders and that no further proceedings or actions will be brought by the Commissioner in connection
15 with these matters either under the CRMLA, or any other provision of law, excepting therefrom any
16 proceeding or action if such proceeding or action is based upon facts not presently known to the
17 Commissioner and which were actively concealed from the Commissioner by Draper.

18 16. Commissioner’s Duties. The parties further acknowledge and agree that nothing
19 contained in this Agreement shall operate to limit the Commissioner's ability to assist any other
20 agency, (city, county, state or federal) with any prosecution, administrative, civil or criminal,
21 brought by any such agency against Draper or any other person based upon any of the activities
22 alleged in these matters or otherwise.

23 17. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
24 has received independent advice from its attorney(s) and/or representatives with respect to the
25 advisability of executing this Agreement.

26 18. Reliance. Each of the parties represents, warrants, and agrees that in executing this
27 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel
28 and/or representative. Each of the parties further represents, warrants, and agrees that in executing

1 this Agreement it has placed no reliance on any statement, representation, or promise of any other
2 party, or any other person or entity not expressly set forth herein, or upon the failure of any party or
3 any other person or entity to make any statement, representation or disclosure of anything
4 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
5 any way fraudulently induced to execute this Agreement; and (2) to preclude the introduction of
6 parol evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

7 19. Full Integration. This Agreement is the final written expression and the complete and
8 exclusive statement of all the agreements, conditions, promises, representations, and covenants
9 between the parties with respect to the subject matter hereof, and supersedes all prior or
10 contemporaneous agreements, negotiations, representations, understandings, and discussions
11 between and among the parties, their respective representatives, and any other person or entity, with
12 respect to the subject matter covered hereby.

13 20. No Presumption from Drafting. In that the parties have had the opportunity to draft,
14 review and edit the language of this Agreement, no presumption for or against any party arising out
15 of drafting all or any part of this Agreement will be applied in any action relating to, connected, to,
16 or involving this Agreement. Accordingly, the parties waive the benefit of California Civil Code
17 section 1654 and any successor or amended statute, providing that in cases of uncertainty, language
18 of a contract should be interpreted most strongly against the party who caused the uncertainty to
19 exist.

20 21. Waiver, Modification, and Qualified Integration. The waiver of any provision of this
21 Agreement shall not operate to waive any other provision set forth herein. No waiver, amendment,
22 or modification of this Agreement shall be valid or binding to any extent unless it is in writing and
23 signed by all of the parties affected by it.

24 22. Headings and Governing Law. The headings to the paragraphs of this Agreement are
25 inserted for convenience only and will not be deemed a part hereof or affect the construction or
26 interpretation of the provisions hereof. This Agreement shall be construed and enforced in
27 accordance with and governed by California law.
28

1 23. Effective Date. This Agreement shall not become effective until signed by all parties
2 and a fully executed copy is delivered by counsel for the Commissioner via email to counsel for
3 Draper.

4 24. Counterparts. This Agreement may be executed in one or more separate counterparts,
5 each of which when so executed, shall be deemed an original. Such counterparts shall together
6 constitute a single document.

7 25. Notice. Any notice/report required under this Agreement shall be addressed as
8 follows:

9 To Draper and Kramer Mortgage Corp. Tracey Batey, Esq.
10 OffitKurman.com
11 10 East 40th Street, 25th Floor
12 New York, NY 10016
tbatey@offitkurman.com

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

17 26. Public Record. Draper acknowledges that this Agreement is a public record.

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

20
21 Dated: 9/21/18

JAN LYNN OWEN
Commissioner of Business Oversight

22
23 By _____
24 MARY ANN SMITH
Deputy Commissioner

25
26 Dated: 9/17/18

DRAPER AND KRAMER MORTGAGE CORP.

27 By _____
28 PAUL JEROME LUEKEN, JR. President

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM:

By _____
TRACEY BATEY, ESQ. attorney for
DRAPER AND KRAMER MORTGAGE CORP.

Commissioner of Business Oversight

By _____
JUDY L. HARTLEY, ESQ.
Senior Counsel