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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
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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.: 413-0009
THE COMMISSIONER OF BUSINESS)
12 OVERSIGHT,) SETTLEMENT AGREEMENT
13)
Complainant,)
14)
v.)
15)
16 FIRST MORTGAGE CORPORATION,)
Respondent.)
17)
18)

19 This Agreement is entered into between Respondent First Mortgage Corporation (“FMC”) and Complainant the Commissioner of Business Oversight (“Commissioner”), and is made with respect to the following facts:

22 **RECITALS**

- 23 A. FMC is a corporation in good standing, duly formed and existing pursuant to the laws of the State of California, and authorized to conduct business in the State of California.
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25 B. FMC is a residential mortgage lender and loan servicer licensed by the Commissioner pursuant to the California Residential Mortgage Lending Act ("CRMLA") (Financial Code §50000 et seq.). FMC has its principal place of business located at 1131 W. 6th Street, Ontario, California
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1 91762. FMC currently has 2 branch office locations under its CRMLA license. FMC employs
2 mortgage loan originators in its CRMLA business.

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

6 D. On September 3, 2015, FMC was served by the Commissioner with a Notice of
7 Intention to Issue Order Suspending Residential Mortgage Lender/Servicer Licenses and to Levy
8 Penalties, Accusation and accompanying documents dated September 2, 2015 (“Accusation”). FMC
9 has filed a Notice of Defense with the Commissioner regarding the Accusation.

10 E. The Commissioner hereby acknowledges that FMC has submitted information
11 demonstrating that it has adopted policies and procedures addressing the issues described in the
12 Accusation.

13 F. It is the intention and desire of the parties to resolve this matter without the necessity
14 of a hearing and/or other litigation.

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

17 **TERMS AND CONDITIONS**

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

20 2. FMC, by entering into this Agreement, does not admit or deny any of the allegations
21 set forth in the Accusation described in paragraph D above and/or the Orders described in
22 paragraphs 3 and 4 below.

23 3. FMC hereby agrees to the immediate issuance by the Commissioner of an Order to
24 Discontinue Violations Pursuant to Financial Code Section 50321 (“Order to Discontinue
25 Violations”). FMC waives issuance of a statement of facts pursuant to Financial Code section 50323
26 in connection therewith. A copy of the Order to Discontinue Violations is attached and incorporated
27 as Exhibit A.
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1 4. FMC also agrees to the immediate issuance by the Commissioner of an Order to
2 Refund Excessive Per Diem Interest Charges Pursuant to Financial Code Section 50504 (“Order to
3 Refund”). A copy of the Order to Refund is attached and incorporated as Exhibit B. The
4 Commissioner hereby acknowledges that FMC has submitted information to the Commissioner
5 documenting that FMC has completed all the refunds, including interest at the rate of ten percent per
6 annum, required by the Order to Refund.

7 5. FMC further agrees to pay to the Commissioner the sum of \$750,000.00 in
8 administrative fees, payable 30 days after execution of this Agreement. The payment shall be made
9 by certified check payable to the Department of Business Oversight and shall be sent to the
10 Department, attention Judy L. Hartley, Senior Counsel, 320 W. 4th Street, Los Angeles, California
11 90403.

12 6. FMC acknowledges its right to an administrative hearing under the CRMLA in
13 connection with the Accusation and/or Orders and hereby waives that right to a hearing, and to any
14 reconsideration, appeal, or other rights which may be afforded pursuant to the CRMLA, the
15 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
16 provision of law in connection with these matters.

17 7. FMC additionally agrees to conduct quarterly audits designed to determine
18 compliance with Financial Code section 50204(o) and California Civil Code section 2948.5 by and
19 through an independent certified public accountant, for a period of 12 months to commence
20 September 1, 2015. Each quarterly audit shall cover all California loans originated during that
21 quarter. FMC, by and through its independent certified public accountant, shall submit to the
22 Commissioner the results of each quarterly audit (“audit report”) within 60 calendar days of the
23 completion of each quarter, i.e., the first audit report would be due on or about January 31, 2016 for
24 the quarter September 1, 2015 through November 30, 2015. The audit reports shall be in Microsoft
25 Excel format, and include, at a minimum, the total number of loans made during this period, the
26 number of loans with per diem overcharges, and for each loan, the report shall list the borrower loan
27 number, name, address, loan amount, loan date, interest rate, disbursement date, date per diem
28 interest commenced, per diem charged, daily per diem interest amount, number of days per diem

1 interest charged, number of days per diem interest overcharged, overcharge amount (if applicable),
2 date of refund (if applicable), and proof of refund (if applicable). The audit reports shall be sent to
3 the Department, attention Judy L. Hartley, Senior Counsel, 320 W. 4th Street, Los Angeles,
4 California 90403.

5 8. FMC agrees that if it fails to comply with any of the provisions set forth in this
6 Agreement, and 5 days following the issuance of a written notice of demand, the Commissioner
7 may, in addition to all other available remedies under the CRMLA, summarily suspend the CRMLA
8 license of FMC until such time as FMC comes into full compliance. FMC hereby waives any notice
9 and hearing rights to contest such summary suspension which may be afforded under the CRMLA,
10 the California Administrative Procedure Act, the California Code of Civil Procedure, or any other
11 provision of law in connection therewith.

12 9. Except as set forth in paragraph 8 above, in consideration of the information provided
13 to the Commissioner by FMC as described in paragraph E above and FMC's agreement to the
14 issuance of the Orders and payment of penalties as provided for in paragraphs 3-5 above, the
15 Commissioner hereby agrees not to suspend the residential mortgage lender and loan servicer license
16 of FMC. Accordingly, this Agreement, which resolves the Accusation, does not affect the licensing
17 status of FMC set forth in paragraph B above.

18 10. This Agreement may be revoked and the Commissioner may pursue any and all
19 remedies available under law against FMC, if the Commissioner later finds out that FMC knowingly
20 or willfully withheld information used and relied upon in this Agreement.

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

22 12. This Agreement does not create any private rights or remedies against FMC, create
23 any liability for FMC or limit defenses of FMC for any person or entity not a party to this
24 Agreement.

25 13. The parties hereby acknowledge and agree that this Agreement is intended to
26 constitute a full, final and complete resolution of the Accusation. However, the parties acknowledge
27 and agree that nothing contained in this Agreement shall operate to limit the Commissioner's ability
28 to assist any other agency, (city, county, state or federal) with any prosecution, administrative, civil

1 or criminal, brought by any such agency against FMC or any other person based upon any of the
2 activities alleged in this matter or otherwise.

3 14. Each of the parties represents, warrants, and agrees that it has received independent
4 advice from its attorney(s) and/or representatives with respect to the advisability of executing this
5 Agreement.

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

15 16. This Agreement is the final written expression and the complete and exclusive
16 statement of all the agreements, conditions, promises, representations, and covenants between the
17 parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous
18 agreements, negotiations, representations, understandings, and discussions between and among the
19 parties, their respective representatives, and any other person or entity, with respect to the subject
20 matter covered hereby.

21 17. In that the parties have had the opportunity to draft, review and edit the language of
22 this Agreement, no presumption for or against any party arising out of drafting all or any part of this
23 Agreement will be applied in any action relating to, connected, to, or involving this Agreement.
24 Accordingly, the parties waive the benefit of California Civil Code section 1654 and any successor
25 or amended statute, providing that in cases of uncertainty, language of a contract should be
26 interpreted most strongly against the party who caused the uncertainty to exist.

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1 18. The waiver of any provision of this Agreement shall not operate to waive any other
2 provision set forth herein, and any waiver, amendment and/or change to the terms of this Agreement
3 must be in writing signed by the parties.

4 19. This Agreement shall not become effective until signed and delivered by all parties.

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

10 21. Any notice or report required under this Agreement shall be addressed as follows:

11 To FMC: Michael R. Pfeifer, Esq.
12 Pfeifer & de la Mora, LLP
13 765 The City Drive South, Suite 380
14 Orange, California 92868

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

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

22 Dated: 9/18/15 JAN LYNN OWEN
23 Commissioner of Business Oversight

24 By _____
25 MARY ANN SMITH
26 Deputy Commissioner

27 Dated: 9/15/15 FIRST MORTGAGE CORPORATION

28 By _____
CLEMENT ZIROLI, JR., President

1 APPROVED AS TO FORM:
2 PFEIFER & DE LA MORA, LLP
3 By _____
4 MICHAEL R. PFEIFER, ESQ. Attorneys for
5 FIRST MORTGAGE CORPORATION

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7 JAN LYNN OWEN
8 Commissioner of Business Oversight

9 By _____
10 JUDY L. HARTLEY
11 Senior Counsel

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