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

11 In the Matter of:) OAH No. 2014070066
12)
13 THE COMMISSIONER OF BUSINESS) NMLS ID No. 2427
OVERSIGHT,)
14) SETTLEMENT AGREEMENT
15 Complainant,)
16 v.)
17)
18 GOLDEN EMPIRE MORTGAGE, INC.,)
19 Respondent.)
20)
21)

22 This Settlement Agreement (Settlement Agreement) is entered into between the
23 Commissioner of Business Oversight (Commissioner) and Golden Empire Mortgage, Inc. (GEM)
24 (collectively, the parties), and is made with respect to the following facts:

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RECITALS

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2 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
3 entities engaged in the business of lending and/or servicing residential mortgage loans pursuant to
4 the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.), including
5 mortgage loan originators.

6 B. GEM is a residential mortgage lender and loan servicer licensed by the Commissioner
7 since March 22, 2001 (CRMLA License No. 413-0360). GEM has its principal place of business
8 located at 1200 Discovery Drive, Suite 300, Bakersfield, California, 93309. GEM employs mortgage
9 loan originators and operates multiple branch offices in California doing business under other names.

10 C. Rick Roper is the President and a control person of GEM and, as such, is authorized
11 to enter into this Settlement Agreement on behalf of GEM.

12 D. During regulatory examinations of GEM conducted in 2009 and 2012, the
13 Commissioner discovered that GEM overcharged per diem interest to California borrowers in
14 violation of Financial Code section 50204, subdivision (o), and Civil Code section 2948.5. GEM did
15 not provide a response concerning these alleged violations that the Commissioner considered either
16 timely or satisfactory.

17 E. On May 29, 2014, the Commissioner issued the following to GEM: Accusation in
18 Support of Notice of Intent to Issue Order Suspending License and Imposing Penalties (Accusation);
19 Order to Refund Excessive Per Diem Interest Charges Pursuant to California Financial Code Section
20 50504 and Discontinue Violations Pursuant to California Financial Code Section 50321 (Order);
21 Statement of Facts In Support of Order to Discontinue Violations Pursuant to California Financial
22 Code Section 50321 and Refund Excessive Per Diem Interest Charges Pursuant to California
23 Financial Code Section 50504 and Notice of Intent to Make Order Final (Statement of Facts); and,
24 accompanying documents (collectively, Administrative Action).

25 F. GEM timely submitted to the Commissioner a Notice of Defense, requesting a hearing
26 regarding the Administrative Action, which has been set in this matter for July 13-17, 2015 in Los
27 Angeles, California.

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1 G. On or about June 30, 2014, GEM submitted a self-audit report to the Commissioner
2 identifying refunds of excess per diem interest it had issued for 852 loans funded during the period of
3 October 1, 2009 through April 30, 2014 (June 2014 Self-Audit Report).

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

6 I. GEM enters into this Settlement Agreement without admitting or denying any of the
7 findings contained within the Administrative Action.

8 J. The Commissioner finds that this action is appropriate, in the public interest, and
9 consistent with the purposes fairly intended by the policy and provisions of this law.

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

12 **TERMS AND CONDITIONS**

13 1. Purpose. The purpose of this Settlement Agreement is to resolve the charges alleged in the
14 Administrative Action in a manner that avoids the expense of a hearing and possible further court
15 proceedings, is in the public interest, protects consumers, and is consistent with the purposes,
16 policies, and provisions of the CRMLA.

17 2. Finality of Order. GEM hereby agrees to comply with the Commissioner's Order and,
18 further, stipulates that the Order is hereby deemed final.

19 3. Waiver of Hearing Rights. GEM acknowledges that the Commissioner is ready, willing,
20 and able to proceed to an administrative hearing on the charges contained in the Administrative
21 Action, and GEM hereby waives the right to a hearing, and to any reconsideration, appeal, or other
22 right to review which may be afforded pursuant to the CRMLA, the California Administrative
23 Procedure Act, the California Code of Civil Procedure, or any other provision of law; and by waiving
24 such rights, GEM effectively withdraws its hearing request and consents to the Settlement Agreement
25 becoming final.

26 4. Audit Reports. GEM agrees to conduct an internal audit of its loan information in order to
27 provide the reports set forth in Paragraph 5 of this Settlement Agreement, as follows:

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1 a. The first audit report shall cover all California loans originated by GEM from and
2 including May 1, 2014 through and including April 30, 2015, and shall be submitted to the
3 Commissioner no later than 30 calendar days after the execution of this Settlement Agreement, as
4 such date is defined in Paragraph 23.

5 b. The second audit report shall cover all California loans originated by GEM from May
6 1, 2015 through July 31, 2015, and shall be submitted to the Commissioner no later than October 31,
7 2015.

8 c. The third audit report shall cover all California loans originated by GEM from August
9 1, 2015 through October 31, 2015, and shall be submitted to the Commissioner no later than January
10 31, 2015.

11 d. The fourth audit report shall cover all California loans originated by GEM from
12 November 1, 2015 through January 31, 2016, and shall be submitted to the Commissioner no later
13 than April 30, 2016.

14 e. The fifth audit report shall cover all California loans originated by GEM from
15 February 1, 2016 through April 30, 2016, and shall be submitted to the Commissioner no later than
16 July 31, 2016.

17 5. Scope of Audit Reports. Each of the audit reports indicated in Paragraph 4 shall include, at
18 a minimum, the following: (i) the total number of loans originated by GEM during the periods
19 specified in Paragraph 4 above; (ii) the number of loans with per diem interest charges in excess of
20 the amount permitted by Financial Code section 50204, subdivision (o), and Civil Code section
21 2948.5; (iii) for each and every loan, the borrower loan number, name, property address, loan
22 amount, loan date, per diem interest charged, per diem interest that should have been charged under
23 Financial Code section 50204, subdivision (o), and Civil Code section 2948.5, overcharge amount (if
24 any), date of refund (if applicable), and evidence of refund (if applicable) in the form of a canceled
25 check and accompanying correspondence mailed to the borrower pursuant to Paragraph 6 below; and
26 (iv) identification of any refund payment that has been returned or remains outstanding for loans
27 originated during any prior audit period specified in Paragraph 4 above.

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1 6. Payment of Refunds. In compliance with the Commissioner’s Order, GEM agrees to
2 refund any amounts of per diem interest charged in excess of that permitted under Financial Code
3 section 50204, subdivision (o), and Civil Code section 2948.5 as follows:

4 a. GEM represents that it has made refunds of all overcharged amounts, plus interest at
5 the rate of 10 percent per annum, for a total of \$63,239.32 paid to the 852 borrowers identified in
6 GEM’s June 2014 Self-Audit Report;

7 b. For additional overcharges identified pursuant to the audit reports described in
8 Paragraphs 4 and 5 above, refunds shall be mailed to the last known address of each borrower no later
9 than 30 calendar days after the date of loan disbursement. For any overcharge identified pursuant to
10 this paragraph that is not mailed within 30 calendar days after the date of loan disbursement, GEM
11 shall pay the borrower interest on the amount of the refund at the rate of 10 percent per annum.

12 7. Outstanding Refunds. No later than 90 calendar days after the date of execution of the
13 Settlement Agreement, as such date is defined in Paragraph 23, GEM shall notify the Commissioner
14 of any refund payment that has been returned or remains outstanding for loans originated during the
15 period covered by GEM’s June 2014 Self-Audit Report. GEM shall be responsible for ensuring that
16 any outstanding refund payment owed to any borrower identified in the June 2014 Self-Audit Report
17 or any audit report required by Paragraph 4 above is escheated to the State of California pursuant to
18 the provisions of the California Unclaimed Property Law (Code of Civ. Proc., § 1500 et seq.).

19 8. Payment of Penalties. GEM shall pay the following penalties: (1) a penalty of
20 \$241,580.00 for violations of Financial Code sections 50204, subdivisions (e) and (o), and 50326,
21 and Civil Code section 2948.5; plus, (2) a penalty of \$165 for each loan reported pursuant to
22 Paragraph 4a above, where per diem interest was charged in excess of the amount permitted by
23 Financial Code section 50204, subdivision (o), and Civil Code section 2948.5 and a full refund of any
24 overcharged interest not mailed within 30 calendar days after the date of loan disbursement. The
25 total penalties set forth in this paragraph shall be due within 30 calendar days of the effective date of
26 this Settlement Agreement, as such date is defined in Paragraph 23, made payable in the form of a
27 cashier’s check to the “Department of Business Oversight,” and mailed to the attention of Douglas M.
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1 Gooding, Assistant Chief Counsel, Enforcement Division, at the Department of Business Oversight
2 located at One Sansome Street, Suite 600, San Francisco, California, 94104.

3 9. Declaration of Policies and Procedures. GEM shall submit to the Commissioner within 30
4 calendar days of the date of execution of this Settlement Agreement, as such date is defined in
5 Paragraph 23, a declaration under of penalty of perjury (Declaration” from an officer with personal
6 knowledge of GEM’s policies and procedures that sets forth all policies and procedures implemented
7 by GEM to ensure compliance with Financial Code sections 50204, subdivisions (e) and (o), and
8 50326, and Civil Code section 2948.5. In the event any of these policies and procedures are not
9 satisfactory to the Commissioner, the Commissioner shall so advise GEM in writing within 30
10 calendar days after receipt of the Declaration.

11 10. Effect of Settlement Agreement on License. In consideration of GEM's agreement to
12 provide the audit reports described in the paragraphs above, comply with the Commissioner’s Order,
13 and pay penalties required by Paragraph 8 hereof, the Commissioner hereby agrees that except as set
14 forth in this Settlement Agreement, she shall not suspend the residential mortgage lender or servicer
15 license of GEM or take any further action based on violation of the provisions cited in the
16 Administrative Action for the period of October 1, 2009 through the date of execution of this
17 Settlement Agreement, as such date is defined in Paragraph 23. Accordingly, this Settlement
18 Agreement, which resolves the Administrative Action, does not affect the licensing status of GEM.

19 11. Full and Final Settlement. The parties hereby acknowledge and agree that this Settlement
20 Agreement is intended to constitute a full, final, and complete resolution of the Administrative Action
21 and that no further proceedings or actions will be brought by the Commissioner in connection with
22 these matters either under the CRMLA, or any other provision of law, excepting therefrom any
23 proceeding or action if such proceeding or action is based upon discovery of new and further
24 violations of the CRMLA which do not form the basis for this Settlement Agreement or which were
25 knowingly concealed from the Commissioner by GEM.

26 12. Binding. This Settlement Agreement is binding on all heirs, assigns, and/or successors in
27 interest.

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1 13. Commissioner's Duties. The parties further acknowledge and agree that nothing
2 contained in this Settlement Agreement shall operate to limit the Commissioner's ability to assist any
3 other agency (city, county, state or federal) with any prosecution, administrative, civil or criminal,
4 brought by any such agency against GEM or any other person based upon any of the activities alleged
5 in these matters or otherwise.

6 14. Third Party Actions. It is the intent and understanding between the parties that this
7 Settlement Agreement does not create any private rights or remedies against GEM create any liability
8 for GEM or limit defenses of GEM for any person or entity not a party to this Settlement Agreement.

9 15. Future Actions by Commissioner. This Settlement Agreement may be revoked and the
10 Commissioner may pursue any and all remedies available under law against GEM if the
11 Commissioner later discovers that GEM knowingly or willfully withheld information used and relied
12 upon in this Settlement Agreement. Further, GEM agrees that this Settlement Agreement does not
13 resolve any penalties that may be assessed by the Commissioner upon discovery of new and further
14 violations of the CRMLA which do not form the basis for this Settlement Agreement.

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

18 17. Counterparts. The parties agree that this Settlement Agreement may be executed in one
19 or more separate counterparts, each of which when so executed, shall be deemed an original. A fax
20 signature shall be deemed the same as an original signature. Such counterparts shall together
21 constitute and be one and the same instrument.

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

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

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

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

20 22. Voluntary Agreement. GEM enters into this Settlement Agreement voluntarily and
21 without coercion and acknowledges that no promises, threats or assurances have been made by the
22 Commissioner or any officer, or agent thereof, about this Settlement Agreement.

23 23. Effective Date. This Settlement Agreement shall not become effective until signed by all
24 parties and delivered by the Commissioner's counsel by email to GEM's counsel at
25 Jon.Jaffe@klgates.com and mpfeifer@pfeiferlaw.com.

26 24. Public Record. Respondent acknowledges that this Settlement Agreement is a public
27 record.

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1 25. Authority to Execute. Each signator hereto covenants that he/she possesses all necessary
2 capacity and authority to sign and enter into this Settlement Agreement.

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4 Dated: 6/3/15 JAN LYNN OWEN
5 Commissioner of Business Oversight

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7 By _____
8 MARY ANN SMITH
9 Deputy Commissioner
 Enforcement Division

10 Dated: 6/2/15 GOLDEN EMPIRE MORTGAGE, INC.

11
12 By _____
13 RICK ROPER
14 President

15 APPROVED AS TO FORM AND CONTENT:

16
17 _____
18 JONATHAN D. JAFFE, Esq.
19 K&L Gates, LLP
20 Counsel for Golden Empire Mortgage, Inc.

21 APPROVED AS TO FORM AND CONTENT:

22
23 _____
24 MICHAEL R. PFEIFER, Esq.
25 Pfeifer & de la Mora, LLP
26 Counsel for Golden Empire Mortgage, Inc.