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8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA
11

12 In the Matter of:) OAH CASE NO.: 2018020570
13)
14 THE COMMISSIONER OF BUSINESS) CRMLA LICENSE NO.: 413-1127
OVERSIGHT,)
15) SETTLEMENT AGREEMENT
Complainant,)
16) Hearing Date: August 13, 2018
v.) Hearing Time: 9:00 a.m.
17) Judge: Unassigned
18)
19 KWIK MORTGAGE CORPORATION)
20)
Respondent.)
21)

22 This Settlement Agreement (Settlement Agreement) is entered into between the
23 Commissioner of Business Oversight (Commissioner) and Kwik Mortgage Corporation (Kwik) and
24 is made with respect to the following facts:

25 RECITALS

26 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
27 entities engaged in the business of lending and servicing residential mortgage loans under the
28 California Residential Mortgage Lending Act (Fin. Code, § 50000 et seq.) (CRMLA).

1 B. Kwik is a New Jersey corporation, authorized to conduct business in California, with
2 its principal place of business located at Southfield Center, One Cragwood Road, Suite 103-A,
3 Plainfield, New Jersey. Kwik is a residential mortgage lender licensed under the CRMLA and
4 employs mortgage loan originators.

5 C. Rantideo J. Parikh is Kwik’s chief executive officer and, as such, is authorized to
6 enter into this Settlement Agreement on behalf of Kwik.

7 D. Civil Code section 2948.5 and Financial Code section 50204, subdivision (o)
8 prohibit a lender from charging interest for more than one day from the date the loan proceeds are
9 disbursed from escrow, unless the borrower voluntarily elects to have the proceeds disbursed on a
10 Monday or a day immediately following a bank holiday, and the lender discloses the amount of per
11 diem interest the borrower will pay as a result of the election (typically in the form of a California
12 Additional Per Diem Interest Charge Disclosure or other disclosure document, which sets forth the
13 amount of daily interest charged under the loan).

14 E. During an examination of Kwik under the CRMLA commencing on November 1,
15 2016, the Commissioner determined the following (Examination Findings):

16 i. Borrowers were provided and signed California Additional Per Diem Interest
17 Charge Disclosure forms in which they elected to have their loan proceeds disbursed on a Monday or
18 a day immediately following a bank holiday, but the documents Kwik had borrowers sign failed to
19 include the amount of daily per diem interest to be charged under the loan in violation of the
20 CRMLA. Financial Code section 50204, subdivision (e) prohibits licensees from obtaining or
21 inducing an agreement or other instrument in which blanks are left to be filled in after execution.

22 ii. The Commissioner previously cited Kwik for violating Financial Code section
23 50204, subdivision (e) during the Department’s December 2012 regulatory examination of the
24 company.

25 F. On the basis of the Commissioner’s determination that Kwik had violated the
26 CRMLA, the Commissioner issued an accusation and notice of intention to issue order imposing
27 penalties against Kwik (collectively, Accusation) on January 10, 2018.

28

1 G. Kwik timely filed its notice of defense under section 11506 of the Government Code
2 for the purpose of requesting an administrative hearing on the allegations in the Accusation. The
3 administrative hearing is currently set for trial before the Office of Administrative Hearings on
4 August 13, 2018.

5 H. The Commissioner finds that entering into this Settlement Agreement is in the public
6 interest, protects consumers, and is consistent with the purposes fairly intended by the policies and
7 provisions of the CRMLA.

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

10 TERMS AND CONDITIONS

11 1. Purpose. It is the intention and desire of the parties to resolve this matter amicably
12 without the necessity of a hearing or other litigation for the purpose of judicial economy and
13 expediency and to avoid the expense of a hearing and possible further court proceedings.

14 2. Acknowledgment. Kwik acknowledges that the Commissioner issued an Accusation
15 dated January 10, 2018, in which the Commissioner alleged the company violated Financial Code
16 section 50204, subdivision (e) as described in the Examination Findings above.

17 3. Administrative Penalty. As part of this Settlement Agreement Kwik agrees to pay an
18 administrative penalty of \$5,000.00 (the Penalty). The Penalty shall be due within 48 hours of the
19 Effective Date of this Settlement Agreement, as defined in paragraph 18., and made payable in the
20 form of a cashier's check or Automated Clearing House deposit to the "Department of Business
21 Oversight," and transmitted to the attention of Accounting – Enforcement Division, Department of
22 Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice of all
23 payments shall be sent to Blaine A. Noblett, Senior Counsel, Department of Business Oversight,
24 320 West 4th Street, Suite 750, Los Angeles, California 90013-2344 or by e-mail at
25 blaine.noblett@dbo.ca.gov.

26 4. Order to Discontinue Violations. Kwik agrees to the issuance of an Order to
27 Discontinue Violations under Financial Code section 50321 (the Order). A true and correct copy of
28 the Order is attached and incorporated herein as Exhibit A. Kwik agrees to comply with the Order

1 and further stipulates that the Order is a final and enforceable order issued under the
2 Commissioner's authority as set forth in Financial Code section 50321.

3 5. Waiver of Hearing Rights. Kwik agrees that this Settlement Agreement shall have
4 the effect of withdrawing its request for an administrative hearing on the matters described herein.
5 Kwik acknowledges its right to an administrative hearing under the CRMLA in connection with the
6 Accusation and Order, and hereby waives such right to a hearing and to any reconsideration, appeal,
7 or other rights which may be afforded it under the CRMLA, the Administrative Procedure Act
8 (APA) (Gov. Code, § 11370 et seq.), the Code of Civil Procedure (CCP) (Code Civ. Proc., § 1 et
9 seq.), or any provision of law in connection with these matters.

10 6. Remedies for Breach. Kwik agrees that, following 10 business days from the receipt
11 of notice from the Commissioner of Kwik's failure to comply with any term of this Settlement
12 Agreement, Kwik may be suspended from engaging in business under its CRMLA license upon the
13 issuance of an order from the Commissioner until it provides evidence satisfactory to the
14 Commissioner that the terms are met. Kwik hereby waives any notice and hearing rights that may be
15 afforded under the CRMLA, APA, CCP, or any other provision of law to contest immediate
16 suspension. Kwik further acknowledges that its failure to comply with Paragraph 3. of this
17 Settlement Agreement shall constitute a failure to comply with this Settlement Agreement and be
18 subject to this paragraph.

19 7. Consideration. Except as set forth in Paragraph 6. of this Settlement Agreement, in
20 consideration of Kwik's agreement to pay the Penalty, and other relief as provided in this Settlement
21 Agreement, the Commissioner hereby agrees that she will take no further action against Kwik's
22 CRMLA license because of this action. Accordingly, this Settlement Agreement does not affect the
23 licensing status of Kwik set forth in Paragraph B. of the above Recitals.

24 8. Full and Final Settlement. The parties hereby acknowledge and agree that this
25 Settlement Agreement is intended to constitute a full, final, and complete resolution of the
26 Examination Findings and that no further proceedings or actions will be brought by the
27 Commissioner in connection with the Examination Findings, either under the CRMLA or any other
28 provision of law, excepting any proceeding to enforce compliance with the terms of this Settlement

1 Agreement or action if such proceeding is based upon discovery of new and further violations of the
2 CRMLA which do not form the basis for this Settlement Agreement or which Kwik knowingly
3 concealed from the Commissioner.

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

9 10. Binding. This Settlement Agreement is binding on all heirs, assigns, or successors in
10 interest.

11 11. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
12 has received independent advice from its attorney(s) or representative(s) with respect to the
13 advisability of executing this Settlement Agreement.

14 12. Counterparts. The parties agree that this Settlement Agreement may be executed in
15 one or more separate counterparts, each of which shall be deemed an original when so executed.
16 Such counterparts shall together constitute and be one and the same instrument.

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

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

25 15. Full Integration. Each of the parties represents, warrants, and agrees that in executing
26 this Settlement Agreement it has relied solely on the statements set forth herein and the advice of its
27 own counsel. Each of the parties further represents, warrants, and agrees that in executing this
28 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any

1 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
2 party or any other person or entity to make any statement, representation, or disclosure of anything
3 whatsoever. The parties have included this clause (1) to preclude any claim that any party was in
4 any way fraudulently induced to execute this Settlement Agreement and (2) to preclude the
5 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
6 Settlement Agreement.

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

14 17. Voluntary Agreement. Kwik enters into this Settlement Agreement voluntarily and
15 without coercion and acknowledges that no promises, threats, or assurances have been made by the
16 Commissioner, or any officer or agent thereof, about this Settlement Agreement.

17 18. Effective Date. This Settlement Agreement shall become final and effective when
18 signed by all parties and delivered by the Commissioner's agent via e-mail to Kwik's counsel at
19 Wwatkinson@offitkurman.com.

20 19. Notice. Any notices required under this Settlement Agreement shall be provided to
21 each party at the following addresses:

22 If to Respondent to: Rantideo J. Parikh, CEO
23 Kwik Mortgage Corporation
24 Southfield Center
25 One Cragwood Road, Suite 103-A
Plainfield, New Jersey 07080

26 If to the Commissioner to: Blaine A. Noblett, Senior Counsel
27 Department of Business Oversight
320 West 4th Street, Suite 750
28 Los Angeles, California 90013-2344

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

IN WITNESS WHEREOF, the parties hereto have approved and executed this Settlement Agreement on the dates set forth opposite their respective signatures.

Dated: 5/25/18

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

KWIK MORTGAGE CORPORATION

Dated: 5/25/18

By _____
RANTIDEO J. PARIKH, CEO,
On behalf of Kwik Mortgage Corporation

Approved as to Form and Content

By _____
Wayne A. Watkinson, Esq.
Offit Kurman, P.A.
Attorneys on behalf of Kwik Mortgage Corporation