

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 ALEX M. CALERO (State Bar No. 238389)
4 Senior Counsel
5 California Department of Business Oversight
1350 Front Street, Room 2034
6 San Diego, California 92101
Telephone: (619) 525-4044
7 Facsimile: (619) 525-4045
8 Attorneys for Complainant

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

12 In the Matter of:) OAH Case No.: 2014080784
)
13 THE COMMISSIONER OF BUSINESS) CRMLA No.: 413-1017
OVERSIGHT,)
14) **SETTLEMENT AGREEMENT**
15 Complainant,)
)
16 vs.)
)
17 MOUNT OLYMPUS MORTGAGE)
18 COMPANY, doing business as MOMCO, INC.)
and TRU MORTGAGE,)
19)
20 Respondent.)
)

21 This Settlement Agreement is entered into between Mount Olympus Mortgage Company,
22 doing business as MOMCO, Inc. and Tru Mortgage (“Mount Olympus”), and the Commissioner of
23 Business Oversight, formerly the Commissioner of Corporations (“Commissioner”), collectively
24 (“the Parties”), and is made with respect to the following facts:

25 **RECITALS**

26 A. Mount Olympus, a California corporation, is a residential mortgage lender licensed
27 by the Commissioner pursuant to the California Residential Mortgage Lending Act (“CRMLA”)
28 (California Financial Code section 50000 et seq.), under license number 413-1017 since June 24,

1 2009. Mount Olympus has its principal place of business located at 2600 Michelson Drive, Suite
2 600, Irvine, CA 92612.

3 B. 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.

6 C. On August 4, 2014, Mount Olympus was served by personal service with the
7 following documents: Notice of Intention to Issue Orders Suspending Residential Mortgage Lender
8 License and Imposing Penalties, Accusation in Support of Notice of Intention to Issue Order
9 Suspending Residential Mortgage Lending Licenses and Imposing Penalties (“Accusation”), Order
10 to Discontinue Violations Pursuant to California Financial Code section 50321 (“Order to
11 Discontinue”), Statement of Facts In Support of Order to Discontinue Violations Pursuant to
12 California Financial Code Section 50321, Notice of Intent to Make Order Final, Order to Refund
13 Excessive Per Diem Interest Charges Pursuant to California Financial Code section 50504 (“Order to
14 Refund”) and accompanying documents (collectively “Administrative Actions”).

15 D. On August 7, 2014, Mount Olympus timely filed a Notice of Defense with the
16 Commissioner regarding the Accusation.

17 E. In or around June 2014, Mount Olympus submitted a self-audit report regarding per
18 diem interest for all loans made by Mount Olympus from the date of licensure to the audit. Mount
19 Olympus also submitted documentation of its reimbursement to borrowers of per diem interest
20 overcharges discovered as a result of the self-audit.

21 F. In or about June 2015, Mount Olympus submitted documentation of its revised
22 policies and procedures regarding per diem interest to adhere to Financial Code section 50204(o),
23 the Order to Discontinue and the Order to Refund. Mount Olympus has assured the Department that
24 these revised policies and procedures are now implemented.

25 G. It is the intention and desire of the parties to resolve this matter without the necessity
26 of a hearing and/or other litigation.

27 H. The Commissioner finds that this action is appropriate in the public interest and
28 consistent with the purposes fairly intended by the policy and provisions of this law.

1
2 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
3 forth herein, the parties agree as follows:

4 **TERMS AND CONDITIONS**

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

7 2. Each of the Parties represents, warrants, and agrees that it has received or been
8 advised to seek independent legal advice from its attorneys with respect to the advisability of
9 executing this Settlement Agreement.

10 3. Mount Olympus agrees to engage an independent certified public accountant(s) or
11 certified public accounting firm that is reasonably acceptable to the Department (in each case, the
12 “Independent Auditor”) to conduct an internal review of Mount Olympus’ loan information in order
13 to provide the report set forth in Paragraph 4 of this Settlement Agreement, as follows:

14 a. The first audit shall cover all California loans originated and funded
15 by Mount Olympus from June 24, 2009 through July 1, 2015, and the
16 second audit shall cover all California loans originated and funded by
17 Mount Olympus from July 1, 2015 through December 31, 2015, and
18 both shall be submitted concurrently to the Department by no later than
19 March 31, 2016; and

20 b. The third audit shall cover all California loans originated and funded
21 by Mount Olympus from January 1, 2016 through June 30, 2016, and
22 shall be submitted to the Department by no later than September 30, 2016.

23 4. Each report of the Independent Auditor shall include, at a minimum, the following:
24 (i) the total number of loans originated and funded by Mount Olympus during the periods specified
25 in Paragraph 3, subparagraphs (a) through (c) above; (ii) the number of loans with per diem interest
26 charges in excess of the amount permitted by California Financial Code section 50204(o) and
27 California Civil Code section 2948.5; and (iii) for each and every loan, the borrower loan number,
28 name, address, loan amount, loan date, per diem interest charged, per diem interest that should have

1 been charged under California Financial Code section 50204(o) and California Civil Code section
2 2948.5, overcharge amount (if any), date of refund (if applicable), and proof of refund (if
3 applicable).

4 5. Mount Olympus agrees to refund all of the borrowers covered by the internal self-
5 audit who were charged excessive per diem interest from the period of licensure to the date of the
6 audit. Mount Olympus agrees that if additional information comes to light necessitating further
7 refunds to borrowers, Mount Olympus shall immediately notify the Department and
8 contemporaneously make requisite refunds pursuant to the Orders. Mount Olympus agrees to mail
9 said refunds to borrowers within 30 days of receiving notice of the overcharges.

10 6. Mount Olympus agrees to pay an administrative fee in the total amount of
11 \$54,000.00. The administrative fee shall be made payable to the Department of Business Oversight
12 and sent to the attention of: Alex M. Calero, Senior Counsel, Enforcement Division at the
13 Department of Business Oversight's San Diego Office at 1350 Front Street, Room 2034, San Diego,
14 CA 92101 in 3 installments, as follows:

- 15 a. The first payment of \$18,000.00 shall be due to the Department by July 10,
16 2015;
- 17 b. The second payment of \$18,000.00 shall be due to the Department by
18 November 10, 2015; and
- 19 c. The third payment of \$18,000.00 shall be due to the Department by February
20 10, 2016.

21 7. Mount Olympus agrees to pay an additional administrative fee in the amount of
22 \$150.00 for each additional instance where a borrower was charged excessive per diem interest.
23 Mount Olympus agrees to pay the additional administrative fee (if any) within 60 days of receiving
24 notice of the overcharges. The administrative fee shall be made payable to the Department of
25 Business Oversight and sent to the attention of: Alex M. Calero, Senior Counsel, Enforcement
26 Division at the Department of Business Oversight's San Diego Office at 1350 Front Street, Room
27 2034, San Diego, CA 92101.

28 ///

1 8. Mount Olympus stipulates to the finality of the Order to Refund. Mount Olympus
2 acknowledges its right to a hearing under the California Financial Code in connection with the Order
3 to Refund, and hereby waives its right to a hearing and to any reconsideration, appeal, or other right
4 which may be afforded pursuant to the California Financial Code, the California Administrative
5 Procedure Act, the California Code of Civil Procedure or any other provision of law in connection
6 with this matter.

7 9. Mount Olympus stipulates to the finality of the Order to Discontinue. Mount
8 Olympus acknowledges its right to a hearing under California Financial Code section 50323 in
9 connection with the Order to Discontinue, and hereby waives its right to a hearing and any to
10 reconsideration, appeal, or other right which may be afforded pursuant to the California Financial
11 Code, the California Administrative Procedure Act, the California Code of Civil Procedure or any
12 other provision of law in connection with this matter.

13 10. In consideration of the terms described in the paragraphs above, the Commissioner
14 hereby agrees that except as set forth in this Settlement Agreement, she shall not suspend the
15 residential mortgage lender license of Mount Olympus nor take any further action based on the
16 specific instances of per diem interest overcharges cited in the Accusation and this Settlement
17 Agreement. Accordingly, this Settlement Agreement, which resolves the Accusation and Orders,
18 does not affect the licensing status of Mount Olympus.

19 11. Mount Olympus agrees that if it fails to meet any deadline or any requirement in
20 Paragraphs 5 – 7 (regarding refunds and payment of administrative fees), other than inadvertent and
21 isolated errors that are promptly corrected by Mount Olympus, Mount Olympus shall be
22 immediately suspended from lending under its CRMLA license number 413-1017 until the
23 requirement is met. Mount Olympus hereby waives any notice and hearing rights to contest the
24 immediate suspension from lending resulting from failure to comply with Paragraphs 5 – 7 above
25 that may be afforded under the California Financial Code, the California Administrative Procedure
26 Act, the California Code of Civil Procedure, or any other legal provisions.

27 12. Mount Olympus agrees that if it fails to meet any deadline or any requirement in
28 Paragraphs 3 or 4 (regarding the Independent Auditor and its reports), Mount Olympus shall

1 immediately notify the Department of such failure and cooperate with the Department to cause such
2 failure to be rectified as soon as reasonably practicable. If, however, the failure involves an
3 untimely or insufficient refund of per diem interest overcharges, then Mount Olympus shall have no
4 more than 30 calendar days to correct such failure. If Mount Olympus does not timely meet the
5 deadline of 30 calendar days to correct such failure, Mount Olympus shall be suspended from
6 lending under its CRMLA license number until the requirement is met.

7 13. This Settlement Agreement is binding on the Parties, all heirs, assigns and/or
8 successors in interest.

9 14. The Parties hereby acknowledge and agree that this Settlement Agreement is intended
10 to constitute a full, final and complete resolution of this matter. The Parties further acknowledge and
11 agree that nothing in this Settlement Agreement shall preclude the Commissioner, or her agents or
12 employees, to the extent authorized by law, from assisting or cooperating in any investigation and/or
13 action brought by any other federal, state or county agency.

14 15. Each of the Parties represents, warrants, and agrees that in executing this Settlement
15 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel.
16 Each of the Parties further represents, warrants, and agrees that in executing this Settlement
17 Agreement it has placed no reliance on any statement, representation, or promise of any other party,
18 or any other person or entity not expressly set forth herein, or upon the failure of any party or any
19 other person or entity to make any statement, representation or disclosure of anything whatsoever.
20 The Parties have included this clause: (1) to preclude any claim that any party was in any way
21 fraudulently induced to execute this Settlement Agreement; and (2) to preclude the introduction of
22 parol evidence to vary, interpret, supplement, or contradict the terms of this Settlement Agreement.

23 16. This Settlement Agreement is the final written expression and the complete and
24 exclusive statement of all the agreements, conditions, promises, representations, and covenants
25 between the Parties with respect to the subject matter hereof, and supersedes all prior or
26 contemporaneous agreements, negotiations, representations, understandings, and discussions
27 between and among the Parties, their respective representatives, and any other person or entity, with
28 respect to the subject matter covered hereby.

1 17. In that the Parties have had the opportunity to draft, review and edit the language of
2 this Settlement Agreement, no presumption for or against any party arising out of drafting all or any
3 part of this Settlement Agreement will be applied in any action relating to, connected to, or involving
4 this Settlement Agreement. Accordingly, the Parties waive the benefit of California Civil Code
5 section 1654 and any successor or amended statute, providing that in cases of uncertainty, language
6 of a contract should be interpreted most strongly against the party who caused the uncertainty to
7 exist.

8 18. This Settlement Agreement may be revoked and the Commissioner may pursue any
9 and all remedies available under law against Mount Olympus if the Commissioner later discovers
10 that Mount Olympus knowingly or willfully withheld information used and relied upon in this
11 Settlement Agreement.

12 19. Mount Olympus enters into this Settlement Agreement voluntarily and without
13 coercion and acknowledges that no promises, threats or assurances have been made by the
14 Commissioner or any officer, or agent thereof, about this Settlement Agreement.

15 20. The waiver of any provision of this Settlement Agreement shall not operate to waive
16 any other provision set forth herein, and any waiver, amendment and/or change to the terms of this
17 Settlement Agreement must be in writing signed by the Parties.

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

22 22. Each signator hereto covenants that he/she possesses all necessary capacity and
23 authority to sign and enter into this Settlement Agreement.

24 ///

25 ///

26 ///

27 ///

28 ///

