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

12 In the Matter of THE COMMISSIONER OF) File Nos.: 413-0266 and 603-E734
13 BUSINESS OVERSIGHT OF THE STATE OF)
14 CALIFORNIA,) SETTLEMENT AGREEMENT
15)
16 Complainant,)
17)
18 vs.)
19)
20 PROSPECT MORTGAGE, LLC,)
21)
22 Respondent.)
23)
24)

25 This Settlement Agreement is entered into between Prospect Mortgage, LLC (“Prospect”),
26 and the Commissioner of Business Oversight, formerly the Commissioner of Corporations
27 (“Commissioner” or “Complainant”),¹ and is made with respect to the following facts:

28 _____
¹ As of July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to form the Department of Business Oversight.

RECITALS

1
2 A. Prospect is a limited liability company in good standing, duly formed and existing
3 pursuant to the laws of the State of Delaware, and authorized to conduct business in the State of
4 California.

5 B. Prospect is a residential mortgage lender and loan servicer licensed by the
6 Commissioner pursuant to the California Residential Mortgage Lending Act (“CRMLA”)
7 (California Financial Code Section 50000 et seq.). Prospect’s principal place of business is 15301
8 Ventura Blvd., Suite D300, Sherman Oaks, CA 91403. Prospect currently has 71 branch office
9 locations under its CRMLA license located in California, and other states. Prospect employs
10 mortgage loan originators in its CRMLA business.

11 C. Prospect is also licensed by the Commissioner as a finance lender and broker
12 pursuant to the California Finance Lenders Law (“CFL”) (California Financial Code Section
13 22000 et seq.). Prospect’s principal place of business under the CFL is also 15301 Ventura Blvd.,
14 Suite D300, Sherman Oaks, CA 91403. Prospect holds only one license under the CFL.

15 D. The Department of Business Oversight (“Department”), through the Commissioner,
16 has jurisdiction over the licensing and regulation of persons and entities engaged in the business of
17 lending and/or servicing pursuant to the CRMLA and lending and/or brokering pursuant to the
18 CFL, including mortgage loan originators.

19 E. On or around December 2, 2013, Prospect was served via certified mail by the
20 Commissioner with a Notice of Intention to issue Orders, Accusation, and accompanying
21 documents dated November 26, 2013 (“Accusation”); and an Order to Discontinue Violations
22 Pursuant to California Financial Code Section 50321 dated November 26, 2013, and an Order to
23 Refund Excessive Per Diem Interest Charges Pursuant to California Financial Code section
24 50504(b) dated November 26, 2013 (“Orders”).

25 F. On December 5, 2013 Prospect timely filed Notices of Defense with the
26 Commissioner regarding the Accusation and Orders.

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1 G. On or around December 5, 2013, Prospect submitted a self-audit report regarding per
2 diem interest for the total population of loans reviewed during the period of August 10, 2006
3 through June 28, 2013.

4 H. On January 8, 2014, Prospect submitted the following: (1) a revised self-audit report
5 regarding per diem interest correcting the deficiencies that were noted by the Department and
6 disclosing a total of 3,150 loans with missing documentation; (2) documentation of its revised
7 policies and procedures regarding trust account reconciliations to ensure compliance with California
8 Code of Regulations, title 10, sections 1950.314.1 and 1950.314.6 of the CRMLA; (3)
9 documentation of its revised policies and procedures regarding per diem interest to adhere to
10 Financial Code section 50204(o) and the Orders; and (4) reports of internal self-audits for the
11 periods of August, 2013 through October, 2013 showing initial results of its revised policies and
12 procedures regarding per diem interest.

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

15 J. It is the intention and desire of the parties to resolve this matter without the necessity
16 of a hearing and/or other litigation.

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

19
20 **TERMS AND CONDITIONS**

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

23 2. Prospect, by entering into this Settlement Agreement, does not admit or deny any of
24 the allegations set forth in the Accusation and Orders.

25 3. Prospect hereby agrees to comply with the Orders. The Orders are hereby deemed
26 final Orders.

27 4. Prospect acknowledges its right to an administrative hearing under the CRMLA and
28 the CFLL in connection with the Accusation and Orders and hereby waives that right to a hearing,

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

4 5. Prospect agrees to engage an independent certified public accountant(s) or certified
5 public accounting firm that is reasonably acceptable to the Department (in each case, the
6 “Independent Auditor”) to conduct an internal review of Prospect's loan information in order to
7 provide the report set forth in Paragraph 6 of this Settlement Agreement, as follows:

- 8 a. The first audit shall cover all California loans originated and funded by
9 Prospect from July 10, 2013 through January 31, 2014, and shall be
10 submitted to the Department by no later than 90 days after the execution of
11 this Settlement Agreement.
- 12 b. The second audit shall cover all California loans originated and funded by
13 Prospect from February 1, 2014 through May 31, 2014, and shall be
14 submitted to the Department by no later than August 31, 2014.
- 15 c. The third audit shall cover all California loans originated and funded by
16 Prospect from June 1, 2014 through September 30, 2014, and shall be
17 submitted to the Department by no later than December 31, 2014.
- 18 d. The fourth audit shall cover all California loans originated and funded by
19 Prospect from October 1, 2014 through January 31, 2015, and shall be
20 submitted to the Department by no later than April 30, 2015.

21 6. Each report of the Independent Auditor shall include, at a minimum, the following:
22 (i) the total number of loans originated and funded by Prospect during the periods specified in
23 Paragraph 5, subparagraphs (a) through (d) above; (ii) the number of loans with per diem interest
24 charges in excess of the amount permitted by California Financial Code section 50204(o) and
25 California Civil Code section 2948.5; and (iii) for each and every loan, the borrower loan number,
26 name, address, loan amount, loan date, per diem interest charged, per diem interest that should have
27 been charged under California Financial Code section 50204(o) and California Civil Code section
28

1 2948.5, overcharge amount (if any), date of refund (if applicable), and proof of refund (if
2 applicable).

3 7. Prospect agrees to refund all of the borrowers covered by the January 8, 2014
4 internal self-audit who were charged excessive per diem interest during the period of August 10,
5 2006 through June 28, 2013 (which refunds include (without limitation) refunds to approximately
6 3,150 borrowers for whom documentation was missing or incomplete) in the aggregate amount of
7 approximately \$1.33 million. The Department has approved that total refund amount. Prospect
8 agrees to mail said refunds by no later than ten (10) business days following the execution of this
9 Settlement Agreement. Prospect agrees that if additional information comes to light necessitating
10 further refunds to borrowers for the period of August 10, 2006 through June 28, 2013, Prospect
11 shall immediately notify the Department and contemporaneously make requisite refunds pursuant to
12 the Orders.

13 8. Prospect agrees to pay the following:

- 14 a. An administrative fee of \$1,750,000 for violations of Financial Code section
15 50204(o) (per diem interest overcharges);
- 16 b. \$25,000 for violating California Code of Regulations, title 10, section
17 1950.314.6 (trust account debit balance);
- 18 c. \$10,000 for violating California Code of Regulations, title 10, section
19 1950.314.1 (failure to reconcile escrow liability ledgers);
- 20 d. \$25,000 for violating California Code of Regulations, title 10, section
21 1950.314.1 (failure to keep loan documents) and Financial Code section 50314
22 (failure to keep documents and records that would properly enable the
23 Commissioner to determine whether Prospect complied with the CRMLA); and
- 24 e. \$1,000 for violating Financial Code section 50326 (failure to make reports by the
25 extended deadline).

26 9. The total amount of administrative fees totaling \$1,811,000 shall be due within ten
27 (10) business days of the execution of this Settlement Agreement and made payable to the
28 Department of Business Oversight, sent to the attention of: Sophia C. Kim, Corporations Counsel,

1 Enforcement Division, at the Department's Los Angeles office located at 320 West 4th Street, Suite
2 750, Los Angeles, California 90013.

3 10. Prospect shall submit to the Department contemporaneously upon execution of this
4 Settlement Agreement a revised records retention policy that is designed to address the issue of
5 missing loan documents and to prevent further violations of California Code of Regulations, title
6 10, section 1950.314.1 and Financial Code section 50314. Prospect agrees to make any changes or
7 corrections to such policy within ten (10) business days following written request by the
8 Department.

9 11. In consideration of the information provided to the Commissioner by Prospect as
10 described in the paragraphs above and Prospect's payment of administrative fees as provided herein,
11 the Commissioner hereby agrees that except as set forth in this Settlement Agreement, she shall not
12 suspend the residential mortgage lender license or finance lender and/or broker license of Prospect
13 nor take any further action based on the violations cited in this Settlement Agreement. Accordingly,
14 this Settlement Agreement, which resolves the Accusation and Orders, does not affect the licensing
15 status of Prospect set forth in paragraphs B and C above.

16 12. Prospect agrees that if it fails to meet any deadline or any requirement in Paragraphs
17 7 – 9 (regarding refunds and payment of administrative fees), other than inadvertent and isolated
18 errors that are promptly corrected by Prospect, Prospect shall be immediately suspended from
19 lending under its CRMLA license number 413-0266 and CFLL license number 603-E734 until the
20 requirement is met. Prospect hereby waives any notice and hearing rights to contest the immediate
21 suspension from lending resulting from failure to comply with Paragraphs 7 – 9 above that may be
22 afforded under the California Financial Code, the California Administrative Procedure Act, the
23 California Code of Civil Procedure, or any other legal provisions.

24 13. Prospect agrees that if it fails to meet any deadline or any requirement in Paragraphs
25 5 or 6 (regarding the independent certified public accountant's internal audit), Prospect shall
26 immediately notify the Department of such failure and cooperate with the Department to cause such
27 failure to be rectified as soon as reasonably practicable. If, however, the failure involves an
28 untimely or insufficient refund of per diem interest overcharges, then Prospect shall have no more

1 than thirty (30) calendar days to correct such failure. If Prospect does not timely meet the deadline
2 of thirty (30) calendar days to correct such failure, Prospect shall be suspended from lending under
3 its CRMLA or CFLL license numbers until the requirement is met.

4 14. This Settlement Agreement is binding on all heirs, assigns and/or successors in
5 interest.

6 15. The parties hereby acknowledge and agree that this Settlement Agreement is
7 intended to constitute a full, final and complete resolution of the Accusation and Orders and that no
8 further proceedings or actions will be brought by the Commissioner in connection with these
9 matters either under the CRMLA, CFLL, or any other provision of law, excepting therefrom any
10 proceeding or action if such proceeding or action is based upon facts not presently known to the
11 Commissioner or which were knowingly concealed from the Commissioner by Prospect. The
12 parties further acknowledge and agree that nothing contained in this Settlement Agreement shall
13 operate to limit the Commissioner’s ability to assist any other agency, (city, county, state or federal)
14 with any prosecution, administrative, civil or criminal, brought by any such agency against Prospect
15 or any other person based upon any of the activities alleged in these matters or otherwise.

16 16. This Settlement Agreement does not create any private rights or remedies against
17 Prospect, create any liability for Prospect or limit defenses of Prospect for any person or entity not a
18 party to this Settlement Agreement.

19 17. It is the intent and understanding between the parties that this Settlement Agreement,
20 and particularly any admissions or denials herein shall not be binding or admissible against
21 Prospect in any action(s) brought against Prospect by third parties.

22 18. This Settlement Agreement may be revoked and the Commissioner may pursue any
23 and all remedies available under law against Prospect if the Commissioner later discovers that
24 Prospect knowingly or willfully withheld information used and relied upon in this Settlement
25 Agreement.

26 19. Each of the parties represents, warrants, and agrees that it has received independent
27 advice from its attorney(s) and/or representatives with respect to the advisability of executing this
28 Settlement Agreement.

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

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

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

23 23. Prospect enters into this Settlement Agreement voluntarily and without coercion and
24 acknowledges that no promises, threats or assurances have been made by the Commissioner or any
25 officer, or agent thereof, about this Settlement Agreement.

26 24. The waiver of any provision of this Settlement Agreement shall not operate to waive
27 any other provision set forth herein, and any waiver, amendment and/or change to the terms of this
28 Settlement Agreement must be in writing signed by the parties.

1 25. This Settlement Agreement shall not become effective until signed and delivered by
2 all parties.

3 26. The parties agree that this Settlement Agreement may be executed in one or more
4 separate counterparts, each of which when so executed, shall be deemed an original. A fax
5 signature shall be deemed the same as an original signature. Such counterparts shall together
6 constitute and be one and the same instrument.

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

9
10 Dated: ___2/12/14___ JAN LYNN OWEN
11 Commissioner of Business Oversight

12 By _____
13 MARY ANN SMITH
14 Deputy Commissioner
15 Enforcement Division

16
17 Dated: ___2/12/14___ PROSPECT MORTGAGE, LLC

18 By _____
19 RONALD LEE BERGUM
20 Chief Executive Officer

21 **APPROVED AS TO FORM AND CONTENT:**

22
23
24 _____
25 DAVID SANDS
26 Sheppard Mullin Richter & Hampton LLP
27 Counsel for Prospect Mortgage, LLC
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