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

12 In the Matter of:) CRMLA NO.: 4150027
13)
14 THE COMMISSIONER OF BUSINESS) SETTLEMENT AGREEMENT
OVERSIGHT,)
15)
Complainant,)
16)
v.)
17)
RMR Financial, LLC,)
18)
19 Respondent.)
20 _____)

21 This Settlement Agreement is entered into between RMR Financial, LLC (“RMR”) and the
22 Commissioner of Business Oversight of the State of California (“Commissioner”), hereinafter
23 collectively referred to as the “Parties.” This Settlement Agreement is made with respect to the
24 following facts:

25 **I.**

26 **RECITALS**

27 1. Respondent RMR Financial, LLC, (“RMR”) is a residential mortgage lender licensed by the
28 California Commissioner of Business Oversight (“Commissioner”) of the Department of Business

1 Oversight (“Department”) pursuant to the California Residential Mortgage Lending Act (Cal. Fin.
2 Code § 50000 et seq.) (“CRMLA”).¹ RMR has its principal place of business located at 16780
3 Lark Avenue, Los Gatos, California 95032.

4 2. The Department has jurisdiction over the licensing and regulation of persons and entities
5 engaged in the business of lending and/or servicing residential mortgage loans pursuant to the
6 CRMLA, including mortgage loan originators.

7 3. On January 5, 2016, the Commissioner issued to and served on RMR an Order to
8 Discontinue Violations Pursuant to Financial Code Section 50321 (“Order”); a Notice of Intention
9 to Make Order Final; a Statement of Facts in Support of Order to Discontinue Violations Pursuant
10 to California Financial Code section 50321; a Notice of Intention to Issue Order Suspending
11 Residential Mortgage Lender License and Imposing Penalties; and, an Accusation in Support of
12 Notice of Intention to Issue Order Suspending Residential Mortgage Lending License and
13 Imposing Penalties. (hereinafter, collectively the “Action”).

14 4. After an agreed upon extension of time within which to file a Notice of Defense, on January
15 26, 2015, RMR filed a Notice of Defense and timely requested a hearing. The Action is currently
16 set to be heard at the Office of Administrative hearings on June 15-16, 2016.

17 5. The Order and the Notice of Intent to Issue Order Suspending License and Imposing
18 Penalties allege that RMR has failed to implement procedures to ensure that it is properly
19 reconciling its books and records with reference to its trust accounts so as to avoid any trust
20 shortages and/or overages in violation of the CRMLA, specifically Financial Code section 50202
21 and title 10, California Code of Regulations sections 1950.314.1 and 1950.314. 6.

22 6. RMR has discussed these allegations with the Commissioner and has taken and/or is
23 committed to taking corrective actions and measures to enhance the reconciliation of its trust
24 accounts books and records.

25 7. The parties seek to resolve each and every aspect of the Action in consideration of the terms and
26 conditions described below.

27 _____
28 ¹ All subsequent statutory references are to the Financial Code, unless otherwise noted.

1 8. In consideration of the terms and conditions contained herein, the Parties agree as follows:

2 ///

3 **II.**

4 **TERMS AND CONDITIONS**

5 8. **Issuance of Final Order Pursuant to Financial Code Section 50321.** The Parties
6 hereby agree to the issuance of the Final Order Issued Pursuant to Financial Code Section 50321
7 (hereinafter “Final Order”) to become effective upon the execution of this Agreement. A true and
8 correct copy of the Final Order is attached hereto and incorporated herein by reference as **Exhibit**

9 **1.**

10 9. **Penalties.** RMR agrees to pay the Commissioner penalties totaling \$50,000.00
11 (“penalties”). Said penalties shall be paid by RMR and received by the Commissioner within 10
12 days of the execution of this Settlement Agreement. The check shall be made payable to “The
13 Department of Business Oversight,” and shall be sent to the following address: Erik Brunkal,
14 Senior Counsel, Department of Business Oversight, 1515 K Street, Suite 200, Sacramento,
15 California, 95814. In the event the payment due date falls on a weekend or a holiday, the payment
16 shall be due the next business day. RMR acknowledges that failure to timely pay the penalties in
17 this Settlement Agreement shall be a breach of this Settlement Agreement. Failure to abide by
18 these terms shall result in RMR being immediately suspended from lending under its CRMLA
19 license number 4150027 until the requirement is met. RMR hereby waives any notice and hearing
20 rights afforded under the California Financial Code, the California Administrative Procedure Act,
21 the California Code of Civil Procedure, or any other legal provisions which would give RMR the
22 right to contest the immediate suspension from lending resulting from failure to timely pay the
23 penalties described above.

24 10. **Waiver of Hearing Rights.** RMR acknowledges its right to a hearing under the
25 CRMLA in connection with the Action and requested a hearing under the CRMLA. RMR
26 acknowledges that it has voluntarily entered into this Settlement Agreement and that pursuant to
27 this Settlement Agreement RMR hereby waives that right to a hearing, and to any
28 reconsideration, appeal, or other right to review with regard to the Action which may be

1 afforded pursuant to the CRMLA, the California Administrative Procedure Act, the Code of
2 Civil Procedure, or any other provision of law.

3 11. **Declaration of Policies and Procedures.** RMR shall submit to the Department
4 contemporaneously upon execution of this Settlement Agreement a declaration, under penalty
5 of perjury, from an officer with personal knowledge of RMR's policies and procedures,
6 referred to in the following paragraph, setting forth all policies and procedures implemented by
7 RMR to correct and prevent the violations alleged in the Action, and ensure compliance with
8 the CRMLA. RMR agrees to make any changes or corrections to such policy within ten (10)
9 business days following written request by the Department.

10 12. **Certification.** RMR agrees to undertake all appropriate steps to assure full compliance
11 with California law in the conduct of its business. In accordance with this Agreement, RMR has
12 previously provided the Commissioner with the policies and procedures RMR has implemented to
13 ensure that it is properly reconciling its books and records with reference to its trust accounts so as
14 to avoid any trust shortages or overages, as required by Financial Code section 50202 and title 10
15 California Code of Regulations sections 1950.314.1 and 1950.314.6. RMR has and will continue
16 to utilize these procedures in its trust account reconciliation process which it will implement to
17 verify that the trust bank balances reconcile to the trust liability controlling account and subsidiary
18 ledgers. The policies and procedures should prevent 1) debit balances; 2) excess of monies in the
19 trust accounts; and 3) trust shortages.

20 13. **Independent Auditor.** RMR agrees to engage an independent auditing firm that is
21 reasonably acceptable to the Department (in each case, the "Independent Auditor") to conduct an
22 internal audit of RMR's trust account information in order to provide the reports set forth in
23 Paragraph 14 of this Settlement Agreement. The Independent Auditor will provide each report to
24 the Commissioner, to the attention of Erik Brunkal, Senior Counsel, pursuant to the time table set
25 out in Paragraph 14.

26 14. **Independent Auditor Report.** The report of the Independent Auditor shall include an
27 analysis of the effectiveness of the newly adopted policies and procedures with respect to the daily,
28 weekly and monthly duties and responsibilities contained therein to prevent any overages or

1 shortages within the trust accounts used by RMR in the course of its business. At a minimum, the
2 report shall include the following agreed upon procedures:

3 (1) A report analyzing RMR's funding and selling procedures addressing or including the
4 following: a summary of the application of the funding policies and procedures; the timing for trust
5 fund liability recognition and deposit of the trust funds into the trust account; if applicable, the
6 handling of trust funds for loan cancellation; the handling of borrower's interim payment(s);
7 RMR's procedures for transferring trust funds to a new investor or servicer; and an explanation of
8 how a trust fund debit balance is handled. Said report shall be due along with the final monthly
9 report (see, item 4, below);

10 (2) Five reports covering each of the first five loans made under the new policies and procedures
11 following the execution of the Settlement Agreement from funding through the sale of the loan,
12 including a step-by-step, detailed explanation of the funding and liability process and the timing of
13 the movement of monies; said report shall be due along with the monthly report (see, item 4,
14 below) for the month in which the loan was sold;

15 (3) Four reports, corresponding to four consecutive weeks within the first month following the
16 execution of the Settlement Agreement, showing how the liability sub-ledger is being reconciled to
17 the control account on a weekly basis for any and all trust accounts. Said reports shall be due
18 within seven days from the close of business for each consecutive week (e.g., Week-1's report will
19 be due by close of business for Week-2, and so on); and,

20 (4) Three reports covering the first three consecutive calendar months' worth of trust account
21 reconciliations following the execution of this Settlement Agreement showing how the new
22 controls are affecting the trust account balances on a monthly basis. If applicable, provide an
23 explanation for any movement of a significant amount of monies in or out of the trust account(s)
24 before the monthly reconciliation was completed. Said reports shall be due 15 days following the
25 end of each calendar month referred to in this paragraph. If that date lands on a weekend or
26 Holiday, the report shall be due the first business day, thereafter.

27 15. **Failure to File Timely or Complete Audit Report.** RMR agrees that if it fails to meet any
28 deadline or any requirement in Paragraph 14, above, RMR shall immediately notify the Department

1 of such failure and cooperate with the Department to cause such failure to be rectified as soon as
2 reasonably practicable but no later than thirty (30) calendar days. Failure to abide by these terms
3 shall result in RMR being immediately suspended from lending under its CRMLA license number
4 4150027 until the requirement is met. RMR hereby waives any notice and hearing rights to contest
5 the immediate suspension from lending resulting from failure to comply with Paragraph 14, above,
6 that may be afforded under the California Financial Code, the California Administrative Procedure
7 Act, the California Code of Civil Procedure, or any other legal provisions.

8 16. **Full and Final Settlement**. The parties hereby acknowledge and agree that this Settlement
9 Agreement is intended to constitute a full, final, and complete resolution of the Action and that no
10 further proceedings or actions will be brought by the Commissioner in connection with these
11 matters either under the CRMLA, or any other provision of law, excepting therefrom any
12 proceeding or action if such proceeding or action is based upon facts not presently known to the
13 Commissioner or which were knowingly concealed from the Commissioner by RMR. The parties
14 agree that the findings in this Settlement Agreement are solely for this administrative action and
15 cannot be used in any third-party action.

16 17. **Binding**. This Settlement Agreement is binding on all heirs, assigns and/or successors in
17 interest.

18 18. **Commissioner's Duties**. The parties further acknowledge and agree that nothing contained
19 in this Settlement Agreement shall operate to limit the Commissioner's ability to assist any other
20 agency, (city, county, state or federal) with any prosecution, administrative, civil or criminal,
21 brought by any such agency against RMR or any other person based upon any of the activities
22 alleged in these matters or otherwise.

23 19. **Third Party Actions**. It is the intent and understanding between the parties that this
24 Settlement Agreement does not create any private rights or remedies, including rights as a third
25 party beneficiary, against RMR, create any liability for RMR or limit defenses of RMR for any
26 person or entity not a party to this Settlement Agreement.

27 20. **Future Actions by Commissioner**. This Settlement Agreement may be revoked and the
28 Commissioner may pursue any and all remedies available under law against RMR if the

1 Commissioner later discovers that RMR knowingly or willfully withheld information used and
2 relied upon in this Settlement Agreement. Further, RMR agrees that this Settlement Agreement
3 does not resolve any penalties that may be assessed by the Commissioner upon discovery of new
4 and further violations of the CRLMA which do not form the basis for the current Action.

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

8 22. **Counterparts.** The parties agree that this Settlement Agreement may be executed in one or
9 more separate counterparts, each of which when so executed, shall be deemed an original. A fax or
10 electronic signature shall be deemed the same as an original signature. Such counterparts shall
11 together constitute and be one and the same instrument.

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

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

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

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

10 27. **Voluntary Agreement.** RMR enters into this Settlement Agreement voluntarily and
11 without coercion and acknowledges that no promises, threats or assurances have been made by the
12 Commissioner or any officer, or agent thereof, about this Settlement Agreement.

13 28. **Effective Date.** This Settlement Agreement shall not become effective until signed and
14 delivered by all parties.

15 29. **Public Record.** RMR acknowledges that this Settlement Agreement is a public record.

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

18
19 Dated: 6/1/16

JAN LYNN OWEN
Commissioner of Business Oversight

21 By _____
22 MARY ANN SMITH
23 Deputy Commissioner
Enforcement Division

24
25 Dated: 6/1/16

RMR Financial, LLC

26 By _____
27 Senior Vice President

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APPROVED AS TO FORM AND CONTENT:

Mark Aldrich
Counsel for RMR Financial, LLC