

1 MARY ANN SMITH  
Deputy Commissioner  
2 SEAN M. ROONEY  
Assistant Chief Counsel  
3 JUDY L. HARTLEY (State Bar No. 110628)  
Senior Counsel  
4 Department of Business Oversight  
320 West 4<sup>th</sup> Street, Ste. 750  
5 Los Angeles, California 90013-2344  
Telephone: (213) 576-7604  
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

10  
11 In the Matter of: ) CRMLA LICENSE No.: 413-0449  
 )  
12 THE COMMISSIONER OF BUSINESS ) SETTLEMENT AGREEMENT  
13 OVERSIGHT, )  
 )  
14 Complainant, )  
 )  
15 v. )  
 )  
16 SWBC MORTGAGE CORPORATION, )  
17 )  
18 Respondent. )  
 )

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20 This Settlement Agreement (Agreement) is entered into between Respondent SWBC  
21 Mortgage Corporation (SWBC) and Complainant the Commissioner of Business Oversight  
22 (Commissioner), and is made with respect to the following facts:

23 **RECITALS**

24 A. SWBC is a corporation in good standing, duly formed and existing pursuant to the  
25 laws of the State of Texas and is authorized to conduct business in the State of California.

26 B. SWBC is a residential mortgage lender and loan servicer licensed by the  
27 Commissioner pursuant to the California Residential Mortgage Lending Act (CRMLA) (Fin. Code  
28 §50000 et seq.). SWBC has its principal place of business located at 9311 San Pedro, Suite 100, San

1 Antonio, Texas 78216. SWBC has five branch locations under its CRMLA license in California and  
2 elsewhere. SWBC employs mortgage loan originators in its CRMLA business.

3 C. The Department of Business Oversight (Department), through the Commissioner, has  
4 jurisdiction over the licensing and regulation of persons and entities engaged in the business of  
5 lending and/or servicing pursuant to the CRMLA and lending and/or brokering pursuant to the  
6 CFLL, including mortgage loan originators.

7 D. On October 12, 2017, SWBC was personally served by the Commissioner with a  
8 Notice of Intention to Issue Orders Suspending Residential Mortgage Lender and/or /Servicer  
9 Licenses and to Levy Penalties, Accusation and accompanying documents dated October 2, 2017  
10 (Accusation). SWBC has filed a Notice of Defense with the Commissioner regarding the  
11 Accusation.

12 E. On October 12, 2017, SWBC was also personally served by the Commissioner with  
13 an Order to Discontinue Violations Pursuant to Financial Code Section 50321 and Statement of  
14 Facts In Support of Order to Discontinue Violations Pursuant to Financial Code Section 50321 and  
15 Notice of Intent to Make Order Final dated October 2, 2017 (Order to Discontinue Violations).  
16 SWBC has filed a request for a hearing with the Commissioner regarding the Order to Discontinue  
17 Violations.

18 F. The Commissioner hereby acknowledges that SWBC has submitted information  
19 demonstrating that it has adopted policies and procedures addressing the issues described in the  
20 Accusation and Orders.

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

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

25 **TERMS AND CONDITIONS**

26 1. Purpose. This Agreement is entered into for the purpose of judicial economy and  
27 expediency, and to avoid the expense of a hearing, and possible further court proceedings.  
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2. Waiver of Hearing Rights. SWBC acknowledges its right to an administrative hearing under the CRMLA in connection with the Accusation and/or Order to Discontinue Violations and hereby waives that right to a hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant to the CRMLA, the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection with these matters.

3. Final Order. SWBC hereby agrees that the Order to Discontinue Violations described in Paragraph E above is hereby deemed a final order.

4. Administrative Penalty. SWBC agrees to pay to the Commissioner the sum of \$100,000.00 in administrative penalties upon execution of this Agreement. The payment shall be made by cashiers' check payable to the Department of Business Oversight and shall be sent to the Department, attention, Accounting-Litigation, 1515 K Street, Suite 200, Sacramento, CA 95814-4052.

5. May 5, 2017 through February 28, 2018 Self-Audit. SWBC must conduct a self-audit of per diem interest charges for all California loans originated from May 5, 2017 through February 28, 2018. SWBC shall submit to the Department the results of the audit (audit report) on or before May 31, 2018. The audit report must be submitted in Microsoft Excel format that contains the total number of loans made during this period and the number of loans with per diem overcharges, and for each loan, the report shall list the borrower loan number, name, address, loan amount, loan date, interest rate, disbursement date, date per diem interest commenced, per diem charged, daily per diem interest amount, number of days per diem interest charged, number of days per diem interest overcharged, overcharge amount (if applicable), date of refund (if applicable), and proof of refund (if applicable). SWBC further agrees that it shall pay an administrative penalty to the Commissioner, upon submission of the audit report, equal to \$250.00 for each per diem interest overcharge discovered during the audit unless such overcharge was refunded to the borrower within 30 days of loan funding.

1           6.       Quarterly Audits. SWBC also agrees to conduct quarterly audits, by and through an  
2 independent certified public accountant, in accordance with procedures agreed upon by the parties,  
3 of per diem interest charges for all California loans for a period of one year commencing on March  
4 1, 2018. Each quarterly audit must cover all California loans originated during that quarter. SWBC,  
5 by and through its independent certified public accountant, will submit to the Department the results  
6 of each quarterly audit (quarterly audit report) within 60 days of the completion of each quarter. The  
7 quarterly audit report would contain the same or similar fields as in the audit report discussed in  
8 paragraph 5 above. The first quarter is March 1 through May 31, 2018 with the quarterly audit  
9 report due on or before July 31, 2018. The remaining quarterly audit reports are due as follows:  
10 October 31, 2018 for the second quarter of June 1 through August 31, 2018; January 31, 2019 for the  
11 third quarter of September 1 through November 30, 2018; and April 30, 2019 for the fourth quarter  
12 of December 1, 2018 through February 28, 2019. SWBC further agrees that it shall pay an  
13 administrative penalty to the Commissioner, upon submission of the quarterly audit report(s), equal  
14 to \$250.00 for each per diem interest overcharge discovered during the quarterly audit(s) unless such  
15 overcharge was refunded to the borrower within 30 days of loan funding.

16           7.       Payment of Refunds: Borrower refunds made pursuant to Paragraphs 5 and 6 shall  
17 include interest at the rate of 10 percent per annum from the date of overcharge and shall be mailed  
18 to the last known address of each borrower prior to submission of the applicable report to the  
19 Commissioner. Borrower refunds made pursuant to this Agreement shall be accompanied by a cover  
20 letter that states: "As a result of an examination by the Department of Business Oversight, a refund  
21 or adjustment in the amount of \$XXXX is being made for your benefit. If you have any questions  
22 concerning this refund, please contact (lender) at (800) XXX-XXXX."

23           8.       Outstanding Refunds. SWBC shall be responsible for ensuring that any outstanding  
24 refund payment owed to any borrower identified in the audit and quarterly audit reports described in  
25 Paragraphs 5 and 6 above shall be escheated to the State of California pursuant to the provisions of  
26 the California Unclaimed Property Law (Code Civ. Proc., § 1500 et seq.).  
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1           9.       Effect of Agreement on Licenses. In consideration of the information provided to the  
2 Commissioner by SWBC as described in Paragraph F above and SWBC’s agreement to entry of the  
3 finality of the Order to Discontinue Violations and payment of penalties as provided for in  
4 Paragraphs 3 and 4 above, the Commissioner hereby agrees that, except as otherwise set forth in this  
5 Agreement, she shall not suspend and/or revoke the residential mortgage lender and loan servicer  
6 licenses of SWBC. Accordingly, this Agreement does not affect the licensing status of SWBC.

7           10.       Information Willfully Withheld. This Agreement may be revoked and the  
8 Commissioner may pursue any and all remedies available under law against SWBC, if the  
9 Commissioner later finds out that SWBC knowingly or willfully withheld information used and  
10 relied upon in this Agreement.

11           11.       Failure to Comply with Agreement. SWBC agrees that if it fails to comply with the  
12 terms of this Agreement within five business days after written notice of demand, the Commissioner  
13 may, in addition to all other available remedies under the CRMLA, summarily suspend the CRMLA  
14 licenses of SWBC until SWBC is in compliance. SWBC waives any notice and hearing rights to  
15 contest such summary suspensions which may be afforded under the CRMLA, the California  
16 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law  
17 in connection therewith.

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

19           13.       Third Party Actions. This Agreement does not create any private rights or remedies  
20 against SWBC, create any liability for SWBC or limit defenses of SWBC for any person or entity  
21 not a party to this Agreement.

22           14.       Full and Final Settlement. The parties hereby acknowledge and agree that this  
23 Agreement is intended to constitute a full, final and complete resolution of the Accusation and  
24 Orders and that no further proceedings or actions will be brought by the Commissioner in connection  
25 with these matters either under the CRMLA, or any other provision of law, excepting therefrom any  
26 proceeding or action if such proceeding or action is based upon facts not presently known to the  
27 Commissioner and which were actively concealed from the Commissioner by SWBC.  
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1           15.    Commissioner’s Duties. The parties further acknowledge and agree that nothing  
2 contained in this Agreement shall operate to limit the Commissioner's ability to assist any other  
3 agency, (city, county, state or federal) with any prosecution, administrative, civil or criminal,  
4 brought by any such agency against SWBC or any other person based upon any of the activities  
5 alleged in these matters or otherwise.

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

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

18           18.    Full Integration. This Agreement is the final written expression and the complete and  
19 exclusive statement of all the agreements, conditions, promises, representations, and covenants  
20 between the parties with respect to the subject matter hereof, and supersedes all prior or  
21 contemporaneous agreements, negotiations, representations, understandings, and discussions  
22 between and among the parties, their respective representatives, and any other person or entity, with  
23 respect to the subject matter covered hereby.

24           19.    No Presumption from Drafting. In that the parties have had the opportunity to draft,  
25 review and edit the language of this Agreement, no presumption for or against any party arising out  
26 of drafting all or any part of this Agreement will be applied in any action relating to, connected, to,  
27 or involving this Agreement. Accordingly, the parties waive the benefit of California Civil Code  
28 section 1654 and any successor or amended statute, providing that in cases of uncertainty, language

1 of a contract should be interpreted most strongly against the party who caused the uncertainty to  
2 exist.

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

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

11 22. Effective Date. This Agreement shall not become effective until signed by all parties  
12 and a fully executed copy is delivered by counsel for the Commissioner via email to counsel for  
13 SWBC.

14 23. Counterparts. This Agreement may be executed in one or more separate counterparts,  
15 each of which when so executed, shall be deemed an original. Such counterparts shall together  
16 constitute a single document.

17 24. Notice. Any notice/report required under this Agreement shall be addressed as  
18 follows:

19 To SWBC Mortgage Corporation: Haydn J. Richards, Esq.  
20 Bradley Arant Boult Cummings LLP  
21 1615 L Street N.W., Ste. 1350  
22 Washington, DC 20036  
[hrichards@bradley.com](mailto:hrichards@bradley.com)

23 To the Commissioner: Judy L. Hartley, Esq.  
24 Senior Counsel  
25 Department of Business Oversight  
26 320 W. 4<sup>th</sup> Street, Suite 750  
27 Los Angeles, California 90013-2344  
[judy.hartley@dbo.ca.gov](mailto:judy.hartley@dbo.ca.gov)

28 25. Public Record. SWBC acknowledges that this Agreement is a public record.

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

Dated: 3/8/18

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner

Dated: 2/26/18

SWBC MORTGAGE CORPORATION

By \_\_\_\_\_  
SUSAN TOTTEN STEWART, President

APPROVED AS TO FORM:

BRADLEY ARANT BOULT CUMMINGS LLP

By \_\_\_\_\_  
HAYDN J. RICHARDS, ESQ. attorney for  
SWBC MORTGAGE CORPORATION

Commissioner of Business Oversight

By \_\_\_\_\_  
JUDY L. HARTLEY, ESQ., Senior Counsel