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7 Attorneys for Complainant

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

11	In the Matter of:	)	CFL LICENSE NOS.: 603I740, 6054380,
		)	6073351, and 6073459
12	THE COMMISSIONER OF BUSINESS	)	
13	OVERSIGHT,	)	CONSENT ORDER
		)	
14	Complainant,	)	
		)	
15	v.	)	
		)	
16	SUMMIT FUNDING, INC. dba	)	
17	BLUE ADOBE MORTGAGE; SUMMIT	)	
18	FUNDING; GREENWOOD LENDING; FIRST	)	
19	HAWAIIAN MORTGAGE ASSOCIATION;	)	
20	SUMMIT FUNDING ENTERPRISES, INC.;	)	
	and GOLDEN MORTGAGE,	)	
		)	
21	Respondent.	)	

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23  
24 This Consent Order relating to the settlement and resolution of examination issues pending  
25 before the Commissioner of Business Oversight (Commissioner) is entered into between the  
26 Commissioner and Summit Funding, Inc. dba Blue Adobe Mortgage, Summit Funding, Greenwood  
27 Lending, First Hawaiian Mortgage Association, Summit Funding Enterprises, Inc., and Golden  
28 Mortgage (Summit Funding), and is made with respect to the following facts:

**RECITALS**

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2           A.       The Department of Business Oversight (Department), through the Commissioner,  
3 has jurisdiction over the licensing and regulation of entities engaged in the business of lending and  
4 servicing in the State of California pursuant to the California Financing Law<sup>1</sup> (Fin. Code, § 22000  
5 *et seq.*) (CFL).

6           B.       At all relevant times, Summit Funding was a finance lender and broker licensed by  
7 the Commissioner pursuant to the CFL with 44 active licensed locations, including but not limited  
8 to a main office with license number 6072526 located at 2241 Harvard Street, Suite 200,  
9 Sacramento, California 91202.

10          C.       At all relevant times, Summit Funding operated branch locations, including but not  
11 limited to the following branch license numbers: 603I740, 6054380, 6073351, and 6073459.

12          D.       Pursuant to the Commissioner’s authority under Financial Code section 22701, the  
13 Department commenced regulatory examinations of Summit Funding, including branch  
14 examinations for the following locations on or around the following dates: 603I740 (March 1,  
15 2013); 6054380 (August 1, 2013); 6073351 (October 1, 2013); and 6073459 (October 1, 2013)  
16 (Branch Examinations).

17          E.       The Branch Examinations disclosed that Summit Funding directly or indirectly  
18 charged or contracted for appraisal fees to borrowers who were denied loans for reasons other than  
19 those provided in Financial Code section 22301, subdivision (b). Financial Code section 22301,  
20 subdivision (a) prohibits a licensee from directly or indirectly charging, contracting for, or receiving  
21 any interest or charge of any nature with respect to a loan of five thousand dollars (\$5,000) or more  
22 unless the loan is made, or the reason for denial is listed under subdivision (b). On or around  
23 February 20, 2015, the Department directed Summit Funding to review all loan applications for all  
24 locations from April 1, 2011 to the present that were denied for reasons other than those listed in  
25 Financial Code section 22301, subdivision (b) but in which appraisal fees were collected in advance  
26 and not refunded.

27  
28 \_\_\_\_\_  
<sup>1</sup> Effective October 4, 2017, the name of the “California Finance Lenders Law” changed to the “California Financing Law.” (Assem. Bill No. 1284 (2017-2018 Reg. Sess.) § 4.) For purposes of this document, a reference to the California Financing Law means the California Finance Lenders Law before October 4, 2017 and the California Financing Law on and after that date. (Fin. Code, § 22000.)

1 F. On or around December 2, 2016 Summit Funding disclosed that in four out of 2,852  
2 loans, Summit Funding charged borrowers appraisal fees and did not refund them despite denying  
3 the loan for reasons other than those specified in Financial Code section 22301, subdivision (b). On  
4 or around December 2, 2016, Summit Funding refunded those four borrowers their appraisal fees,  
5 contemporaneously submitting proof of refunds to the Department.

6 G. The Branch Examinations disclosed that in 2012 and 2013 Summit Funding solicited  
7 applications from potential borrowers by advertising, “\$500 Off Closing Costs On-Time Closing  
8 Guarantee . . . Our Commitment to you – We guarantee that any home purchase loan we approve  
9 will CLOSE ON TIME or we will pay \$500 toward closing costs . . . .” (On-Time Closing  
10 Guarantee). Summit Funding did not provide evidence of honoring its On-Time Closing  
11 Guarantee. On or around February 2, 2015, the Department directed Summit Funding to review all  
12 Home Purchase loans made from June 2012 through in or around December 2013 that resulted from  
13 the On-Time Closing Guarantee, and provide refunds to borrowers who were owed \$500.00.

14 H. On or around December 2, 2016, Summit Funding disclosed that out of 306 Home  
15 Purchase loans made from June 2012 through in or around December 2013 that resulted from the  
16 On-Time Closing Guarantee, Summit Funding failed to provide 30 borrowers with the guaranteed  
17 \$500.00 toward closing costs. Financial Code section 22161, subdivision (a)(1) prohibits any false  
18 or misleading representations to a borrower about the terms or conditions of a loan when making or  
19 brokering a loan, and Financial Code section 22161, subdivision (a)(2) prohibits false or misleading  
20 statements in an advertisement. On or around December 5, 2016, Summit Funding issued checks  
21 for \$500.00 to each of 30 affected borrowers, submitting proof of refunds to the Department on or  
22 around December 19, 2016.

23 I. The Commissioner finds that this action is appropriate, in the public interest, and  
24 consistent with the purposes fairly intended by the policies and provisions of the CFL.

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

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**TERMS AND CONDITIONS**

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2 1. Purpose. This Consent Order is to resolve the issues described above in a manner  
3 that avoids the expense of a hearing and possible further court proceedings, is in the public interest,  
4 protects consumers, and is consistent with the purposes, policies, and provisions of the CFL.

5 2. Finality of Order. Summit Funding hereby agrees to comply with this Consent  
6 Order and stipulates that this Consent Order is deemed a final and enforceable order issued pursuant  
7 to the Commissioner’s authority under Financial Code sections 22712 and 22707.5.

8 3. Desist and Refrain Order. Summit Funding stipulates that in accordance with  
9 Financial Code section 22712 it will desist and refrain from violating Financial Code section  
10 22301(a) and Financial Code section 22161(a) and (b).

11 4. Administrative Penalty. Summit Funding stipulates that in accordance with  
12 Financial Code section 22707.5 it shall pay \$5,000.00 on the Effective Date as provided in  
13 paragraph 17 below payable to the Commissioner in the form of a cashier’s check or Automated  
14 Clearing House deposit to the “Department of Business Oversight,” and transmitted to: Accounting  
15 – Enforcement Division, Department of Business Oversight, 1515 K Street, Suite 200, Sacramento,  
16 California 95814, contemporaneously with notice of transmittal to Sophia C. Kim at  
17 Sophia.Kim@dbo.ca.gov.

18 5. Waiver. Summit Funding acknowledges that the Commissioner is ready, willing,  
19 and able to proceed with the filing of an administrative action on the charges contained in this  
20 Consent Order, and hereby waives the right to a hearing, and to any reconsideration, appeal, or  
21 other right to review that may be afforded pursuant to the CFL. Summit Funding expressly waives  
22 any requirement for the filing of an Accusation that may be afforded by Government Code section  
23 11415.60, subdivision (b), the Administrative Procedure Act, the Code of Civil Procedure, or any  
24 other provision of law; and by waiving such rights, Summit Funding consents to this Consent Order  
25 becoming final.

26 6. Full and Final Settlement. The parties hereby acknowledge and agree that this  
27 Consent Order is intended to constitute a full, final and complete resolution of the violations noted  
28 in the Branch Examinations described herein and that no further proceedings or actions will be

1 brought by the Commissioner in connection with the Branch Examinations under the CFL or any  
2 other provision of law, excepting therefrom any proceeding or action if such proceeding or action is  
3 based upon facts not presently known to the Commissioner and which were actively concealed from  
4 the Commissioner by Summit Funding.

5 7. Commissioner’s Duties. The parties hereby acknowledge and agree that nothing  
6 contained in this Consent Order shall operate to limit the Commissioner’s ability to assist any other  
7 agency (city, county, state or federal) with any prosecution, administrative, civil or criminal,  
8 brought by any such agency against Summit Funding or any other person based upon any of the  
9 activities alleged in the Consent Order or otherwise.

10 8. Independent Legal Advice. Each of the parties represents, warrants, and agrees that  
11 it has received independent advice from its attorney(s) and/or representatives with respect to the  
12 advisability of executing this Consent Order.

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

23 10. Final Agreement. This Consent Order is the final written expression and the  
24 complete and exclusive statement of all the agreements, conditions, promises, representations, and  
25 covenants 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           11.    Binding. This Consent Order is binding on all heirs, assigns and/or successors in  
2 interest.

3           12.    Third Party Actions. This Consent Order does not create any private rights or  
4 remedies against Summit Funding, create any liability for Summit Funding, or limit defenses of  
5 Summit Funding for any person or entity not a party to this Consent Order.

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

13           14.    Voluntary Agreement. Summit Funding enters into this Consent Order voluntarily  
14 and without coercion and acknowledges that no promises, threats or assurances have been made by  
15 the Commissioner or any officer, or agent thereof, about this Consent Order.

16           15.    Waiver, Modification, and Qualified Integration. The waiver of any provision of this  
17 Consent Order shall not operate to waive any other provision set forth herein, and any waiver,  
18 amendment and/or modification to the terms of this Consent Order must be in writing and signed by  
19 all of the parties affected by it.

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

24           17.    Effective Date. This Consent Order shall not become effective until signed by all  
25 parties and delivered by the Commissioner’s counsel via email to Summit Funding’s counsel at  
26 Scott.Bruggemann@summitfunding.net.

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1           18.    Counterparts. The parties agree that this Consent Order may be executed in one or  
2 more separate counterparts, each of which when so executed, shall be deemed an original. Such  
3 counterparts shall together constitute and be one and the same instrument.

4           19.    Public Record. Summit Funding acknowledges that this Consent Order is a public  
5 record.

6           20.    Authority to Execute. Each signatory hereto covenants that he/she possesses all  
7 necessary capacity and authority to sign and enter into this Consent Order.

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9 Dated:   3/27/18  

JAN LYNN OWEN  
Commissioner of Business Oversight

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11 By \_\_\_\_\_  
12 MARY ANN SMITH  
13 Deputy Commissioner  
14 Enforcement Division

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16 Dated:   3/19/18  

SUMMIT FUNDING, INC. dba  
BLUE ADOBE MORTGAGE; SUMMIT FUNDING;  
GREENWOOD LENDING; FIRST HAWAIIAN  
MORTGAGE ASSOCIATION; SUMMIT FUNDING  
ENTERPRISES, INC.; and GOLDEN MORTGAGE

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20 By \_\_\_\_\_  
JEFF COOKE  
Executive Vice President for Administration

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