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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:	)	CRMLA License No. 413-0421
12	THE COMMISSIONER OF BUSINESS	)	
13	OVERSIGHT,	)	SETTLEMENT AGREEMENT
14	Complainant,	)	
15	v.	)	
16	SUMMIT MORTGAGE CORPORATION,	)	
17	Respondent.	)	

18  
19 This Settlement Agreement (“Settlement Agreement”) is entered into between the  
20 Commissioner of Business Oversight (“Commissioner”) and Summit Mortgage Corporation  
21 (“Summit Mortgage”) (collectively, “the parties”), and is made with respect to the following facts:

22 **RECITALS**

23 A. The Commissioner has jurisdiction over the licensing and regulation of persons and  
24 entities engaged in the business of lending and/or servicing residential mortgage loans pursuant to the  
25 California Residential Mortgage Lending Act (“CRMLA”) (Fin. Code, § 50000 et seq.), including  
26 mortgage loan originators.

27 B. Summit Mortgage is a residential mortgage lender and servicer licensed by the  
28 Commissioner since April 24, 2003 (CRMLA License No. 413-0421) pursuant to the CRMLA and

1 employs mortgage loan originators. Summit Mortgage is a Minnesota corporation located at 13355  
2 10<sup>th</sup> Avenue N., Suite 100, Plymouth, Minnesota 55441, with a registered agent for service in  
3 California located at 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California 95833.

4 C. Robert L. Carter is the President of Summit Mortgage and, as such, is authorized to  
5 enter into this Settlement Agreement on behalf of Summit Mortgage.

6 D. On January 6, 2016, the Commissioner issued the following to Summit Mortgage:  
7 Notice of Intention to Issue Orders Suspending Licenses and Levying Penalties; Accusation  
8 (“Accusation”) Supporting Notice of Intention to Issues Orders Suspending License and Levying  
9 Penalties; Order to Discontinue Violations Pursuant to California Financial Code Section 50321  
10 (“Order to Discontinue Violations”); Statement of Facts In Support of Order to Discontinue  
11 Violations Pursuant to California Financial Code Section 50321; Notice of Intent to Make Order  
12 Final; and, accompanying documents (collectively, “Administrative Action”).

13 E. In the Accusation, the Commissioner found that during one or both regulatory  
14 examinations of Summit Mortgage on or about May 17, 2011 and April 2, 2013, the Commissioner  
15 discovered (1) per diem overcharges in violation of Financial Code section 50204, subdivision (o)  
16 and Civil Code section 2948.5, (2) trust account violations including failing to reconcile in violation  
17 of California Code of Regulations, title 10, section 1950.314.1, failing to maintain books and records  
18 in violation of Financial Code section 50314 and California Code of Regulations, title 10, section  
19 1950.314.2, and having shortages of trust funds in violation of California Code of Regulations, title  
20 10, section 1950.314.6.

21 F. The Accusation also sets forth the Commissioner’s findings that the per diem interest  
22 overcharges and failure by Summit Mortgage to properly reconcile its trust account are repeat  
23 violations and that, as a result of the 2011 and 2013 regulatory examinations, Summit Mortgage was  
24 required to perform an audit each time and has since refunded borrowers the per diem overcharges  
25 plus interest at a rate of 10 percent per annum. The amount refunded for per diem overcharges in the  
26 2011 examination was \$10,660.79 and the amount refunded for per diem overcharges in the 2013  
27 examination was \$501.59 for 16 loans.

28 G. Summit Mortgage timely submitted to the Commissioner notices of defense,

1 requesting a hearing to challenge the Administrative Action and preserve its rights in the event a  
2 settlement could not be reached.

3 H. It is the intention and desire of the parties to resolve this matter without the necessity  
4 of a hearing and/or other litigation.

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

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

9 **TERMS AND CONDITIONS**

10 1. Purpose. The purpose of this Settlement Agreement is to resolve the Administrative  
11 Action in a manner that avoids the expense of a hearing, uncertainty of litigation, and possible further  
12 court proceedings; it is in the public interest, protects consumers, and is consistent with the purposes,  
13 policies, and provisions of the CRMLA.

14 2. Order to Discontinue. Summit Mortgage hereby agrees to comply with the  
15 Commissioner's January 6, 2016 Order to Discontinue Violations and, further, stipulates that said  
16 order is deemed final.

17 3. Waiver of Hearing Rights: An administrative hearing is currently set in this matter on  
18 December 6, 2016. Summit Mortgage acknowledges that the Commissioner is ready, willing, and  
19 able to proceed to an administrative hearing on the findings and allegations contained in the  
20 Administrative Action. Summit Mortgage hereby waives the right to a hearing, and to any  
21 reconsideration, appeal, or other right to review which may be afforded to Summit Mortgage  
22 pursuant to the CRMLA, the California Administrative Procedure Act, the Code of Civil Procedure,  
23 or any other provision of law; and to effect its waiver of such rights, Summit Mortgage will withdraw  
24 its hearing request within two calendar days of the effective date of this Settlement Agreement, as  
25 such date is defined in Paragraph 20, with the consent of the Commissioner.

26 4. Payment of Refunds. Summit Mortgage represents that it has refunded all amounts of per  
27 diem interest charged in excess of that permitted under Financial Code section 50204 and Civil Code  
28 section 2948.5, plus interest at the rate of 10 percent per annum, for a total of \$510.59 paid to the 16

1 borrowers identified from the April 2, 2013 regulatory examination;

2       5. Payment to the Commissioner. Summit Mortgage shall pay a sum to the Commissioner in  
3 the amount of \$68,000.00, which shall be due within 20 calendar days of the effective date of this  
4 Settlement Agreement, as such date is defined in Paragraph 20, made payable to the “Department of  
5 Business Oversight” in the form of a cashier’s check mailed to the attention of Lindsay Herrick,  
6 Counsel, Enforcement Division, at the Department of Business Oversight located at 1515 K St., Suite  
7 200, Sacramento, California, 95814, or by wire transfer to such bank account of the Department of  
8 Business Oversight as advised by the Commissioner in writing to Respondent’s counsel. If Summit  
9 Mortgage fails to timely pay as delineated in this paragraph, then the Commissioner reserves the right  
10 to revoke or suspend Summit Mortgage’s license(s) under Financial Code sections 50325 and 50327.

11       6. Adoption of Effective Policies and Procedures. In response to the Commissioner’s  
12 findings made during the 2011 and 2013 regulatory exams, Summit Mortgage adopted policies and  
13 procedures to ensure future regulatory compliance. These policies and procedures were provided to  
14 the Commissioner. Summit Mortgage represents that it now has policies and procedures in place to  
15 reasonably prevent the collection of excess per diem interest, to ensure proper reconciliation of trust  
16 accounts and maintenance of books and records, and to prevent trust fund shortages. Summit  
17 Mortgage represents to the Commissioner that it will continue to adhere to the adopted policies and  
18 procedures. If these policies and procedures prove to be ineffective, Summit Mortgage agrees to  
19 adopt further policies and procedures to maintain regulatory compliance.

20       7. Effect of Settlement Agreement on License. In consideration of Summit Mortgage's  
21 agreement to comply with the Commissioner’s Order to Discontinue Violations, and to pay the  
22 amounts required by Paragraph 5 hereof, the Commissioner hereby agrees, except as set forth in this  
23 Settlement Agreement, to not suspend the residential mortgage lender or servicer license of Summit  
24 Mortgage or take any further action based on violation of the provisions cited in the Administrative  
25 Action and through the date of execution of this Settlement Agreement, as such date is defined in  
26 Paragraph 20. Accordingly, this Settlement Agreement, which resolves the Administrative Action,  
27 does not affect the licensing status of Summit Mortgage.

28       8. Full and Final Settlement. The parties hereby acknowledge and agree that this Settlement

1 Agreement is intended to constitute a full, final, and complete resolution of the Administrative Action  
2 and that no further proceedings or actions will be brought by the Commissioner in connection with  
3 these matters either under the CRMLA, or any other provision of law, excepting therefrom any  
4 proceeding or action if such proceeding or action is based upon discovery of new and further  
5 violations of the CRMLA which do not form the basis for this Settlement Agreement or which were  
6 knowingly concealed from the Commissioner by Summit Mortgage.

7 9. Binding. This Settlement Agreement is binding on all heirs, assigns, and/or successors in  
8 interest.

9 10. Commissioner's Duties. The parties further acknowledge and agree that nothing  
10 contained in this Settlement Agreement shall operate to limit the Commissioner's ability to assist any  
11 other agency (city, county, state or federal) with any prosecution, administrative, civil or criminal,  
12 brought by any such agency against Summit Mortgage or any other person based upon any of the  
13 activities alleged in these matters or otherwise.

14 11. Third Party Actions. It is the intent and understanding between the parties that this  
15 Settlement Agreement does not create any private rights or remedies against Summit Mortgage,  
16 create any liability for Summit Mortgage, or limit defenses of Summit Mortgage for any person or  
17 entity not a party to this Settlement Agreement.

18 12. Future Actions by Commissioner. This Settlement Agreement may be revoked and the  
19 Commissioner may pursue any and all remedies available under law against Summit Mortgage if the  
20 Commissioner later discovers that Summit Mortgage knowingly or willfully withheld information  
21 used and relied upon in this Settlement Agreement. Further, Summit Mortgage agrees that this  
22 Settlement Agreement does not resolve any penalties that may be assessed by the Commissioner  
23 upon discovery of new and further violations of the CRMLA which do not form the basis for this  
24 Settlement Agreement.

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

28 14. Counterparts. The parties agree that this Settlement Agreement may be executed in one

1 or more separate counterparts, each of which when so executed, shall be deemed an original. A fax  
2 signature shall be deemed the same as an original signature. Such counterparts shall together  
3 constitute and be one and the same instrument.

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

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

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

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

1 19. Voluntary Agreement. Summit Mortgage enters into this Settlement Agreement  
2 voluntarily and without coercion and acknowledges that no promises, threats or assurances have been  
3 made by the Commissioner or any officer, or agent thereof, about this Settlement Agreement other  
4 than as set forth herein.

5 20. Effective Date. This Settlement Agreement shall not become effective until signed by all  
6 parties and delivered by the Commissioner’s counsel by email to Summit Mortgage’s counsel at  
7 MPfeifer@pfeiferlaw.com.

8 21. Public Record. Respondent acknowledges that this Settlement Agreement is a public  
9 record.

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

12 Dated: 11/22/16 JAN LYNN OWEN  
13 Commissioner of Business Oversight

14 By \_\_\_\_\_  
15 MARY ANN SMITH  
16 Deputy Commissioner  
17 Enforcement Division

18 Dated: 11/21/16 SUMMIT MORTGAGE CORPORATION

19 By \_\_\_\_\_  
20 ROBERT CARTER, President

21 APPROVED AS TO FORM AND CONTENT:

22 \_\_\_\_\_  
23 MICHAEL R. PFEIFER, Esq.  
24 Pfeifer & de la Mora, LLP  
25 Counsel for Summit Mortgage Corporation  
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