

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  
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7 Attorneys for Complainant

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

10  
11 In the Matter of: )  
12 THE COMMISSIONER OF BUSINESS ) CRMLA LICENSE NO.: 413-0238  
13 OVERSIGHT, )  
14 Complainant, ) SETTLEMENT AGREEMENT  
15 v. )  
16 SUNTRUST MORTGAGE, INC., )  
17 Respondent. )  
18

19  
20 This Settlement Agreement (Agreement) is entered into by and between SunTrust Bank  
21 (SunTrust Bank) as successor to Respondent SunTrust Mortgage, Inc. (SunTrust Mortgage) via  
22 merger and Complainant the Commissioner of Business Oversight (Commissioner), and is made  
23 with respect to the following facts:

24 **I.**

25 **RECITALS**

26 A. SunTrust Mortgage is a residential mortgage lender and servicer licensed by the  
27 Commissioner pursuant to the California Residential Mortgage Lending Act (CRMLA) (Fin. Code  
28 §50000 et seq.). SunTrust Mortgage has its principal place of business located at 901 Semmes

1 Avenue, Richmond, Virginia 23224. SunTrust Mortgage employed mortgage loan originators in its  
2 CRMLA business.

3 B. 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.

6 C. During a regulatory examination of SunTrust Mortgage commenced in May 2017, the  
7 Commissioner discovered that SunTrust Mortgage had overcharged borrowers per diem interest in 5  
8 of 41 funded loans reviewed, or approximately 12.2%, in violation of California Financial Code  
9 section 50204, subdivision (o).

10 D. On December 19, 2018, SunTrust Bank, as successor to SunTrust Mortgage, was  
11 personally served by the Commissioner with a Notice of Intention to Issue Order Revoking  
12 Residential Mortgage Lender and Servicer Licenses, Accusation and accompanying documents  
13 dated December 14, 2018 (Accusation). A Notice of Defense has been filed with the Commissioner  
14 regarding the Accusation.

15 E. The Commissioner hereby acknowledges that during the course of the regulatory  
16 examination, SunTrust Mortgage submitted information demonstrating that it had adopted policies  
17 and procedures addressing the issues described in the Accusation.

18 F. On August 6, 2018, SunTrust Mortgage ceased lending and servicing activities in the  
19 state of California under its CRMLA license when it merged with its parent company, SunTrust  
20 Bank. SunTrust Mortgage has a pending application to surrender its CRMLA license, but the  
21 surrender application had not been approved due to the findings of the May 2, 2017 regulatory  
22 examination and outstanding items necessary to complete the license surrender requirements.

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

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

27 ///

28 ///

II.

**TERMS AND CONDITIONS**

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2  
3 1. Purpose. This Agreement is entered into for the purpose of judicial economy and  
4 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

5 2. Waiver of Hearing Rights. SunTrust Bank, as successor to SunTrust Mortgage,  
6 acknowledges the right of SunTrust Mortgage to an administrative hearing under the CRMLA in  
7 connection with the Accusation and hereby waives SunTrust Mortgage’s right to a hearing, and to  
8 any reconsideration, appeal, or other rights which may be afforded pursuant to the CRMLA, the  
9 California Administrative Procedure Act, the California Code of Civil Procedure, or any other  
10 provision of law in connection with this matter.

11 3. Administrative Penalty. SunTrust Bank, as successor to SunTrust Mortgage, agrees  
12 to pay to the Commissioner the sum of \$210,000.00 in administrative penalties within 5 business  
13 days of the effective date of this Agreement as that date is defined in paragraph 22 herein. The  
14 payment shall be made by electronic fund transfer or cashiers’ check payable to the Department of  
15 Business Oversight and shall be sent to the Department, attention, Accounting-Litigation, 1515 K  
16 Street, Suite 200, Sacramento, CA 95814-4052.

17 4. April 15, 2013 through June 30, 2017 Audit. The parties acknowledge that SunTrust  
18 Mortgage conducted a self-audit of per diem interest charges for all loans originated between April  
19 15, 2013 and June 30, 2017 (audit). Pursuant to such audit, SunTrust Mortgage issued refunds plus  
20 interest at a rate of ten percent from the date of loan funding to 1,082 borrowers identified pursuant  
21 to the audit totaling \$139,015.43. SunTrust Mortgage submitted the audit report along with evidence  
22 of payment of borrower refunds to the Commissioner.

23 5. Outstanding Refunds. SunTrust Bank, as successor to SunTrust Mortgage, shall be  
24 responsible for ensuring that any outstanding refund payment owed to any borrower identified in the  
25 audit described in Paragraph 4 above shall be escheated to the State of California pursuant to the  
26 provisions of the California Unclaimed Property Law (Code Civ. Proc., § 1500 et seq.).

27 6. License Surrender. The parties hereby agree that the CRMLA license of SunTrust  
28 Mortgage shall be deemed surrendered upon completion of all the terms and conditions of this

1 Agreement. SunTrust Bank, as successor to SunTrust Mortgage, has complied with any remaining  
2 surrender requirements.

3 7. Failure to Comply. SunTrust Bank, as successor to SunTrust Mortgage, agrees that if  
4 it fails to comply with Paragraph 3, the Commissioner may summarily revoke the CRMLA license  
5 of SunTrust Mortgage. SunTrust Bank, as successor to SunTrust Mortgage, waives any notice and  
6 hearing rights to contest such summary suspension which may be afforded under the CRMLA, the  
7 California Administrative Procedure Act, the California Code of Civil Procedure, or any other  
8 provision of law in connection therewith.

9 8. Information Willfully Withheld. This Agreement may be revoked and the  
10 Commissioner may revoke the CRMLA license of SunTrust Mortgage, if the Commissioner later  
11 finds out that SunTrust Bank, as successor to SunTrust Mortgage, knowingly or willfully withheld  
12 information used and relied upon in this Agreement.

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

14 10. Third Party Actions. This Agreement does not create any private rights or remedies  
15 against SunTrust Bank, as successor to SunTrust Mortgage, create any liability for SunTrust Bank,  
16 as successor to SunTrust Mortgage, or limit defenses of SunTrust Bank, as successor to SunTrust  
17 Mortgage for any person or entity not a party to this Agreement.

18 11. Full and Final Settlement. The parties hereby acknowledge and agree that this  
19 Agreement is intended to constitute a full, final and complete resolution of the Accusation and that  
20 no further proceedings or actions will be brought by the Commissioner in connection with these  
21 matters either under the CRMLA, or any other provision of law, excepting therefrom any proceeding  
22 or action if such proceeding or action is based upon facts not presently known to the Commissioner  
23 and which were actively concealed from the Commissioner by SunTrust Bank, as successor to Sun  
24 Trust Mortgage.

25 12. Commissioner's Duties. The parties further acknowledge and agree that nothing  
26 contained in this Agreement shall operate to limit the Commissioner's ability to assist any other  
27 agency, (city, county, state or federal) with any prosecution, administrative, civil or criminal,  
28 brought by any such agency against SunTrust Bank, as successor to SunTrust Mortgage, or any other

1 person based upon any of the activities alleged in this matter or otherwise.

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

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

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

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

27 17. Waiver, Modification, and Qualified Integration. The waiver of any provision of this  
28 Agreement shall not operate to waive any other provision set forth herein. No waiver, amendment,

1 or modification of this Agreement shall be valid or binding to any extent unless it is in writing and  
2 signed by all of the parties affected by it.

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

7 19. Counterparts. This Agreement may be executed in one or more separate counterparts,  
8 each of which when so executed, shall be deemed an original. Such counterparts shall together  
9 constitute a single document.

10 20. Signatures. A signature delivered by facsimile or electronic mail will be deemed an  
11 original signature.

12 21. Voluntary Agreement. SunTrust Bank, as successor to SunTrust Mortgage, enters  
13 into this Agreement voluntarily and without any coercion and acknowledges that no promise, threats,  
14 or assurances about this Agreement have been made by the Commissioner or any of her officers or  
15 agents.

16 22. Effective Date. This Agreement shall not become effective until signed by all parties  
17 and a fully executed copy is delivered by counsel for the Commissioner via email to counsel for  
18 SunTrust Bank.

19 23. Notice. Any notice/report required under this Agreement shall be addressed as  
20 follows:

21 To SunTrust Bank: David J. Ferrera, Asst. General Counsel  
22 & Senior Vice President, Consumer Lending  
23 SunTrust Bank  
24 1001 Semmes Avenue  
25 Richmond, Virginia 23224  
26 [David.Ferrera@suntrust.com](mailto:David.Ferrera@suntrust.com)

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

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24. Public Record. SunTrust Bank, as successor to SunTrust Mortgage, acknowledges that this Agreement is a public record.

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

Dated: 3/18/19

JAN LYNN OWEN  
Commissioner of Business Oversight

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

Dated: 3/18/19

SUNTRUST BANK, AS SUCCESSOR TO  
SUNTRUST MORTGAGE, INC. VIA MERGER

By \_\_\_\_\_  
Todd Chamberlain  
Executive Vice President

APPROVED AS TO FORM:

By \_\_\_\_\_

DAVID J. FERRERA, ESQ. attorney for  
SUNTRUST BANK, AS SUCCESSOR TO  
SUNTRUST MORTGAGE, INC. VIA MERGER

Commissioner of Business Oversight

By \_\_\_\_\_

JUDY L. HARTLEY, ESQ.  
Senior Counsel