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7 Attorneys for Complainant

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

11 In the Matter of:)	OAH CASE NO.: 2019020139
)	
12 THE COMMISSIONER OF BUSINESS)	CRMLA LICENSE NO.: 413-0364
13 OVERSIGHT,)	
)	SETTLEMENT AGREEMENT
14 Complainant,)	
)	Hearing Date: July 11, 2019
15 v.)	Hearing Time: 9:00 a.m.
)	Hearing Location: OAH, Los Angeles
)	320 W. 4th Street, Suite 630
16 DHI MORTGAGE COMPANY, LTD., L.P.,)	Los Angeles, CA 90013
)	Judge: Unassigned
17 Respondent.)	
)	
)	
)	
)	

22 This Settlement Agreement (the Settlement Agreement) is entered into between the
23 Commissioner of Business Oversight, Manuel P. Alvarez, (Commissioner) and DHI Mortgage
24 Company, Ltd., L.P. (DHI) and is made with respect to the following facts:

25 **RECITALS**

26 A. The Commissioner has jurisdiction over the licensing and regulation of

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1 persons and entities engaged in the business of lending under the California Residential Mortgage
2 Lending Act (Fin. Code, § 50000 et seq.) (CRMLA).

3 B. DHI is a Texas corporation, authorized to conduct business in California, with its
4 principal place of business located at 10700 Pecan Park Boulevard, Suite 450, Austin, Texas. DHI is
5 a residential mortgage lender licensed under the CRMLA and it employs mortgage loan originators.

6 C. Sonya Luechauer is DHI's president and, as such, is authorized to enter into the
7 Settlement Agreement on behalf of DHI.

8 D. During the June 5, 2017 examination of DHI, the Commissioner determined the
9 following (the Examination Findings):

10 i. In five out of 21 funded loan files the Commissioner's staff reviewed, DHI
11 overcharged borrowers per diem interest in excess of one day prior to the disbursement of loan
12 proceeds in violation of Financial Code section 50204, subdivision (o). The per diem interest
13 overcharges varied between \$99.64 and \$376.71, and DHI overcharged borrowers per diem interest
14 from between three to five days.

15 ii. The Commissioner previously found DHI had overcharged a borrower per
16 diem interest in one out of 20 loan files reviewed during the Commissioner's May 13, 2013
17 regulatory examination of the business.

18 E. On the basis of the Commissioner's determination that DHI had violated the
19 CRMLA as described in the Examination Findings above, on January 9, 2019 the Commissioner
20 personally served DHI with the Accusation, Notice of Intention to Issue Orders Suspending
21 Residential Mortgage Lender License and to Levy Penalties and accompanying documents dated
22 January 9, 2019 (collectively, the Accusation).

23 F. Based upon the Examination Findings described above, on January 9, 2019 the
24 Commissioner personally served DHI with the Order to Discontinue Violations Under Financial
25 Code section 50321, Statement of Facts in Support of Order to Discontinue Violations Under
26 Financial Code section 50321 and Notice of Intent to Make Order Final dated January 9, 2019
27 (collectively, the Order to Discontinue Violations).

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1 G. DHI timely filed its Notice of Defense under section 11506 of the Government Code
2 for the purpose of requesting an administrative hearing on the allegations set forth in the Accusation
3 and Order to Discontinue Violations. The administrative hearing is currently set to begin trial before
4 the Office of Administrative Hearings on July 11, 2019.

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

7 **TERMS AND CONDITIONS**

8 1. Purpose. The Settlement Agreement resolves the issues before the Commissioner
9 under the Examination Findings, set forth above, in a manner that avoids the expense of a hearing
10 and other possible court proceedings, protects consumers, is in the public interest, and is consistent
11 with the purposes, policies, and provisions of the CRMLA.

12 2. Order to Discontinue Violations. Pursuant to Financial Code section 50321, DHI is
13 hereby ordered to immediately discontinue violations of the California Residential Mortgage
14 Lending Act, set forth herein.

15 3. Final Order to Discontinue Violations. DHI agrees that the Order to Discontinue
16 Violations described above in paragraph F. is hereby deemed a final order.

17 4. Administrative Penalty. As part of the Settlement Agreement, DHI agrees to pay to
18 the Commissioner an administrative penalty of \$18,000.00 (the Penalty). The Penalty shall be due
19 within three business days from the Effective Date of the Settlement Agreement and made payable
20 in the form of a cashier's check or Automated Clearing House deposit to the "Department of
21 Business Oversight," and transmitted to the attention of Accounting – Enforcement Division,
22 Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice
23 of all payments shall be sent to Blaine A. Noblett, Senior Counsel, Department of Business
24 Oversight, 320 West 4th Street, Suite 750, Los Angeles, California 90013-2344 or by e-mail at
25 blaine.noblett@dbo.ca.gov.

26 5. Waiver of Hearing Rights. DHI acknowledges that the Commissioner is ready,
27 willing, and able to proceed with the administrative hearing to enforce the Accusation and Order to
28 Discontinue Violations described in paragraphs E. and F., above, and DHI hereby waives its right to

1 a hearing, and to any reconsideration, appeal, or other rights which may be afforded it under the
2 CRMLA, the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.), the Code of Civil
3 Procedure (CCP) (Code Civ. Proc., § 1 et seq.), or any other provision of law; and by waiving such
4 rights, DHI effectively consents to the Settlement Agreement becoming final.

5 6. Full and Final Settlement. The parties hereby acknowledge and agree that the
6 Settlement Agreement is intended to constitute a full, final, and complete resolution of the
7 Examination Findings set forth in the Accusation and Order to Discontinue Violations and that no
8 further proceedings or actions will be brought by the Commissioner in connection with these
9 matters, either under the CRMLA or any other provision of law, excepting any proceeding to
10 enforce compliance with the terms of the Settlement Agreement.

11 7. Failure to Comply with the Settlement Agreement. DHI agrees that if it fails to
12 comply with any term of the Settlement Agreement, the Commissioner may, in addition to all other
13 available remedies he may invoke under the CRMLA, summarily suspend DHI's CRMLA lenders
14 license until it is in compliance. DHI hereby waives any notice and hearing rights that may be
15 afforded under the CRMLA, APA, CCP, or any other provision of law to contest immediate
16 suspension.

17 8. Information Willfully Withheld. The Settlement Agreement may be revoked, and the
18 Commissioner may pursue any and all remedies under the CRMLA against DHI if the
19 Commissioner discovers DHI knowingly or willfully withheld information used for and relied upon
20 in the Settlement Agreement.

21 9. Future Actions by Commissioner. If DHI fails to comply with any term of the
22 Settlement Agreement, the Commissioner may institute proceedings for any and all violations
23 otherwise resolved under the Settlement Agreement. The Commissioner reserves the right to bring
24 any future actions against DHI, or any of its partners, owners, officers, shareholders, directors,
25 employees or successors for any and all unknown violations of the CRMLA.

26 10. Assisting Other Agencies. The parties further acknowledge and agree that nothing in
27 the Settlement Agreement shall limit the Commissioner's ability to assist any other agency (city,
28 county, state, or federal) with any prosecution, administrative, civil, or criminal, brought by any

1 such agency against DHI or any other person based upon any of the activities alleged in this matter
2 or otherwise.

3 11. Headings. The headings to the paragraphs of this Settlement Agreement are inserted
4 for convenience only and will not be deemed a part hereof or affect the construction or
5 interpretation of the provisions hereof.

6 12. Binding. The Settlement Agreement is binding on all heirs, assigns, or successors in
7 interest.

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

18 14. Counterparts. The parties agree that the Settlement Agreement may be executed in
19 one or more separate counterparts, each of which shall be deemed an original when so executed.
20 Such counterparts shall together constitute and be one and the same instrument.

21 15. Waiver, Modification, and Qualified Integration. No waiver, amendment, or
22 modification of the Settlement Agreement shall be valid or binding to any extent unless it is in
23 writing and signed by all the parties affected by it. The waiver of any provision of the Settlement
24 Agreement shall not operate to waive any other provision.

25 16. Governing Law. The Settlement Agreement shall be construed and enforced in
26 accordance with and governed by California law.

27 17. Full Integration. The Settlement Agreement is the final written expression and the
28 complete and exclusive statement of all the agreements, conditions, promises, representations, and

1 covenants between the parties with respect to the subject matter hereof, and supersedes all prior or
2 contemporaneous agreements, negotiations, representations, understandings, and discussions
3 between and among the parties, their respective representatives, and any other person or entity with
4 respect to the subject matter covered hereby.

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

12 19. Effect Upon Future Proceedings. If DHI applied for any license, permit or
13 qualification under the Commissioner's current or future jurisdiction, or is the subject of any future
14 action by the Commissioner to enforce this Settlement Agreement, then the subject matter hereof
15 shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

16 20. Voluntary Agreement. DHI enters into the Settlement Agreement voluntarily and
17 without coercion and acknowledges that no promises, threats, or assurances have been made by the
18 Commissioner, or any officer or agent thereof, about the Settlement Agreement. The parties each
19 represent and acknowledge that he, she or it is executing this Settlement Agreement completely
20 voluntarily and without any duress or undue influence of any kind from any source.

21 21. Effective Date. The Settlement Agreement shall become final and effective when
22 signed by all parties and delivered by the Commissioner's agent via e-mail to DHI's counsel at
23 kider@thewbkfirm.com.

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

27 23. Notice. Any notices required under the Settlement Agreement shall be provided to
28 each party at the following addresses:

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If to Respondent to: Sonya Luechauer, President
DHI Mortgage Company, Ltd., L.P.
10700 Pecan Park Boulevard, Suite 450
Austin, Texas 78750

If to the Commissioner to: Blaine A. Noblett, Senior Counsel
Department of Business Oversight
320 West 4th Street, Suite 750
Los Angeles, California 90013-2344

24. Public Record. DHI acknowledges that the Settlement Agreement is a public record.

25. Signatures. This Settlement Agreement may be executed by facsimile or scanned signature, and any such facsimile or scanned signature by any party hereto shall be deemed to be an original signature and shall be binding on such party to the same extent as if such facsimile or scanned signature were an original signature.

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

IN WITNESS WHEREOF, the parties hereto have approved and executed the Settlement Agreement on the dates set forth opposite their respective signatures.

Dated: 6/10/19

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

DHI MORTGAGE COMPANY, LTD., L.P.

Dated: 6/6/19

By _____
SONYA LUECHAUER, President
On behalf of DHI Mortgage Company, Ltd., L.P.

1 Approved as to Form and Content

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3 By _____

4 Mitch Kider, Esq.

5 Weiner, Brodsky, Kider, PC

6 Attorneys on behalf of DHI Mortgage Company, Ltd., L.P.

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