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

12 In the Matter of:) OAH Case No.: 2019050991
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CRMLA LICENSE NO.: 413-1232
14) CFL LICENSE NO.: 603-E254
Complainant,) NMLS NO.: 148530
15 v.)
16 LHM FINANCIAL CORPORATION d/b/a) SETTLEMENT AGREEMENT
CNN MORTGAGE,)
17 Respondent.)
18)

19
20 This Settlement Agreement is entered into between the Commissioner of Business Oversight
21 (Commissioner) and LHM Financial Corporation d/b/a CNN Mortgage (LHM) (collectively the
22 Parties) and is made with respect to the following facts:

23 I.

24 Recitals

25 A. The Department of Business Oversight, through the Commissioner, is authorized to
26 administer and enforce the provisions of the California Residential Mortgage Lending Act (Fin.
27 Code, § 50000 et seq.) (CRMLA) and the rules issued under title 10 of the California Code of
28 Regulations (CCR) that regulate the business and activities of residential mortgage lenders.

1 B. LHM is a residential mortgage lender licensed by the Commissioner under the
2 CRMLA. LHM is also licensed as a finance lender and broker under the California Financing Law
3 (CFL) (formerly the California Finance Lenders Law) (Fin. Code, § 22000 et seq.). LHM's
4 principal place of business is 7025 East Greenway Parkway, Suite 100, Scottsdale, Arizona 85284.
5 LHM employs mortgage loan originators.

6 C. On or around August 6, 2018, the Commissioner, by and through staff, commenced a
7 regulatory examination of LHM's books and records under the CRMLA (2018 exam). Based on the
8 2018 exam, the Commissioner maintains that LHM: (1) failed to reconcile the appraisal trust
9 account ledger with the corresponding liability controlling account weekly in violation of CCR, title
10 10, section 1950.314.1, subdivision (b); (2) provided borrowers, in some instances, with a
11 disclosure document that inaccurately stated that borrowers' loans were made under the CFL when
12 the loans were made under the CRMLA in violation of Financial Code section 50204, subdivision
13 (i) and Business and Professions Code section 17200; and (3) provided Fair Lending Notices to
14 borrowers, in some instances, which failed to list the Department of Business Oversight as the
15 agency to contact for questions or complaints in violation of Financial Code section 50204,
16 subdivision (i) and Health and Safety Code section 35830.

17 D. The Commissioner finds that each of the violations discussed in Paragraph C were
18 repeat violations found during a previous regulatory examination conducted in 2014 (2014 exam).
19 Based on the 2014 exam, the Commissioner instructed LHM to take corrective action to ensure that
20 the violations did not recur.

21 E. On or around April 22, 2019, the Commissioner served LHM with a Notice of
22 Intention to Issue Orders Suspending Licenses and Imposing Penalties, Accusation, and
23 accompanying documents dated April 19, 2019 (Accusation), an Order to Discontinue Violations
24 Pursuant to Financial Code section 50321, and Statement of Facts in support thereof (collectively,
25 the Action).

26 F. On or around April 26, 2019, LHM timely filed a Notice of Defense with the
27 Commissioner regarding the Action. A hearing is currently scheduled for December 3 through 5,
28 2019, at the Office of Administrative Hearings in Los Angeles.

1
2 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
3 forth herein, the Parties agree as follows:

4 **II.**

5 **Terms and Conditions**

6 1. **Purpose.** This Settlement Agreement resolves the issues before the Commissioner
7 [findings of the 2018 exam set forth in paragraph C, above] in a manner that avoids the expense of a
8 hearing and other possible court proceedings, protects consumers, is in the public interest, and is
9 consistent with the purposes, policies, and provisions of the applicable law.

10 2. **Final Order to Discontinue Violations.** LHM hereby agrees that in accordance with
11 Financial Code section 50321, it will immediately discontinue the violations set forth herein. LHM
12 agrees that the Order to Discontinue Violations is hereby deemed a final order.

13 3. **Penalties.** LHM shall pay a penalty of \$49,000.00 for the violations discussed
14 herein. The Commissioner acknowledges receipt of payment of the penalty from LHM before or
15 contemporaneous with the execution of this Settlement Agreement.

16 4. **Policies and Procedures.** LHM submitted to the Commissioner procedures
17 implemented to correct and prevent the violations set forth in this Settlement Agreement.

18 5. **Waiver of Hearing Rights.** LHM acknowledges the Commissioner is ready, willing,
19 and able to proceed with the administrative enforcement action described in Paragraph F and LHM
20 hereby waives the right to a hearing, and to any reconsideration, appeal, or other right to review
21 which may be afforded pursuant to the CRMLA, the California Administrative Procedure Act, the
22 California Code of Civil Procedure, or any other provision of law; and by waiving such rights, LHM
23 effectively consents to this Settlement Agreement becoming final.

24 6. **Full and Final Settlement.** The Parties hereby acknowledge and agree that this
25 Settlement Agreement is intended to constitute a full, final, and complete resolution of the
26 violations described herein and that no further proceedings or actions will be brought by the
27 Commissioner in connection with these matters under the CRMLA or any other provision of law,
28 excepting therefrom any proceeding to enforce compliance with the terms of this Settlement

1 Agreement.

2 7. Failure to Comply with Settlement Agreement. LHM agrees that if it fails to comply
3 with the terms of this Settlement Agreement, the Commissioner may, in addition to all other
4 available remedies it may invoke under the CRMLA, summarily suspend/ revoke the CRMLA and
5 CFL licenses of LHM until LHM is in compliance. LHM waives any notice and hearing rights to
6 contest such summary suspensions which may be afforded under the CRMLA, CFL, the California
7 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law
8 in connection therewith.

9 8. Information Willfully Withheld or Misrepresented. This Settlement Agreement may
10 be revoked and the Commissioner may pursue any and all remedies available under the law against
11 LHM if the Commissioner discovers that LHM knowingly or willfully withheld or misrepresented
12 information used for and relied upon in this Settlement Agreement.

13 9. Future Actions by Commissioner. If LHM fails to comply with any term of the
14 Settlement Agreement, the Commissioner may institute proceedings for any and all violations
15 otherwise resolved under this Settlement Agreement. The Commissioner reserves the right to bring
16 any future actions against LHM, or any of its partners, owners, officers, shareholders, directors,
17 employees or successors for any and all unknown violations of the CRMLA.

18 10. Assisting Other Agencies. Nothing in this Settlement Agreement limits the
19 Commissioner’s ability to assist any other government agency (city, county, state, or federal) with
20 any prosecution, administrative, civil or criminal brought by that agency against LHM or any other
21 person based upon any of the activities alleged in this matter or otherwise.

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

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

27 13. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
28 Settlement Agreement it has relied solely on the statements set forth herein and the advice of its

1 own counsel. Each of the Parties further represents, warrants, and agrees that in executing this
2 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any
3 other Party, or any other person or entity not expressly set forth herein, or upon the failure of any
4 Party or any other person or entity to make any statement, representation or disclosure of anything
5 whatsoever. The Parties have included this clause: (1) to preclude any claim that any Party was in
6 any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude the
7 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
8 Settlement Agreement.

9 14. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
10 of this Settlement Agreement will be valid or binding unless it is in writing and signed by each of
11 the Parties. The waiver of any provision of this Settlement Agreement will not be deemed a waiver
12 of any other provision. No waiver by either Party of any breach of, or of compliance with, any
13 condition or provision of this Agreement by the other Party will be considered a waiver of any other
14 condition or provision or of the same condition or provision at another time.

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

21 16. Governing Law. This Settlement Agreement will be governed by and construed in
22 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such
23 court, and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an
24 inconvenient forum to the maintenance of such action or proceeding in such court.

25 17. Counterparts. This Settlement Agreement may be executed in one or more separate
26 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
27 together constitute a single document.

28 18. Effect Upon Future Proceedings. If Respondent applies for any license, permit, or

1 qualification under the Commissioner’s current or future jurisdiction, or is the subject of any future
 2 action by the Commissioner to enforce this Settlement Agreement, then the subject matter hereof
 3 shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

4 19. Voluntary Agreement. LHM enters this Settlement Agreement voluntarily and
 5 without coercion and acknowledges that no promises, threats or assurances have been made by the
 6 Commissioner or any officer, or agent thereof, about this Settlement Agreement. The Parties each
 7 represent and acknowledge that he, she or it is executing this Settlement Agreement completely
 8 voluntarily and without any duress or undue influence of any kind from any source.

9 20. Notice. Any notice required under this Settlement Agreement shall be provided to
 10 each Party at the following addresses:

11 To LHM: LHM Financial Corporation d/b/a CNN Mortgage
 12 7025 East Greenway Parkway, Suite 100
 13 Scottsdale, Arizona 85284

14 and

15 Mitchel H. Kider, Counsel for LHM
 16 kider@thewbkfirm.com

17 To the Commissioner: Danielle A. Stoumbos, Senior Counsel
 18 Department of Business Oversight
 19 320 West 4th Street Suite 750
 20 Los Angeles, California 90013
 21 Danielle.Stoumbos@dbo.ca.gov

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

26 22. Public Record. LHM acknowledges that this Settlement Agreement is and will be a
 27 matter of public record.

28 23. Effective Date. This Settlement Agreement shall become final and effective when
 signed by all Parties and delivered by the Commissioner’s agent via e-mail to LHM’s counsel,
 Mitchel H. Kider at kider@thewbkfirm.com.

1 24. Authority to Sign. Each signatory hereto covenants that he/she possesses all
2 necessary capacity and authority to sign and enter into this Settlement Agreement and undertake the
3 obligations set forth herein.

4 25. No Presumption Against Drafting Party. Each Party acknowledges that it has had
5 the opportunity to draft, review and edit the language of this Settlement Agreement. Accordingly,
6 the Parties intend that no presumption for or against the drafting Party will apply in construing any
7 part of this Settlement Agreement. The Parties waive the benefit of Civil Code section 1654 as
8 amended or corresponding provisions of any successor statute, which provide that in cases of
9 uncertainty, language of a contract should be interpreted most strongly against the Party who
10 caused the uncertainty to exist.

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

14
15 Dated: 11/26/19

MANUEL P. ALVAREZ
Commissioner of Business Oversight

16
17 By: _____
18 MARY ANN SMITH
19 Deputy Commissioner

20 Dated: 11/26/19

LHM FINANCIAL CORPORATION d/b/a/ CNN
MORTGAGE

21
22 By: _____
23 Ned C. Kneadler
24 Secretary/Treasurer