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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.: 2019110758
12)
13 THE COMMISSIONER OF BUSINESS) CRMLA LICENSE NO.: 41DBO-40950
OVERSIGHT,) CFL LICENSE NO.: 603-H883
14)
15 Complainant,) SETTLEMENT AGREEMENT
16)
17 v.) Hearing Dates: April 1 – 3, 2020
18) Hearing Time: 9:00 a.m.
19 WYNDHAM CAPITAL MORTGAGE, INC.,) Location: 320 W. 4th Street, 6th Floor, Suite 630
20) Los Angeles, California 90013-2344
Respondent.) ALJ: Unassigned
21)
22)
23)

24 The Commissioner of Business Oversight (Commissioner) and Wyndham Capital Mortgage,
25 Inc. (Wyndham), (collectively, the Parties), enter into this Settlement Agreement (the Settlement
26 Agreement) with respect to the following facts:

27 **I.**

28 **Recitals**

A. The Commissioner has jurisdiction over the licensing and regulation of persons and
entities engaged in the business of lending and servicing residential mortgages under the California

1 Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.). The Commissioner is
2 authorized to administer the CRMLA and the rules and regulations promulgated in title 10 of the
3 California Code of Regulations (CCR).

4 B. Financial Code section 22000 et seq. authorizes the Commissioner to administer and
5 enforce the provisions of the California Financing Law (CFL) and the rules and regulations
6 promulgated in the CCR that regulate the business and activities of finance lenders and brokers.

7 C. Wyndham is a residential mortgage lender licensed by the Commissioner under the
8 CRMLA, license number 41DBO-40950. Wyndham employs or employed mortgage loan originators
9 under its CRMLA license.

10 D. Wyndham holds a finance lender and broker license under the CFL, license number
11 603-H883. Wyndham employs mortgage loan originators under its CFL license.

12 E. Wyndham has its principal place of business located at 6115 Park South Drive, Suite
13 200, Charlotte, North Carolina.

14 F. Jeff Douglas is Wyndham's CEO and, as such, authorized to enter this Settlement
15 Agreement on Wyndham's behalf.

16 G. Wyndham sought to surrender to the Commissioner its CRMLA license on May 14,
17 2019. But before the Commissioner may accept a licensee's surrender under the CRMLA, the
18 licensee must satisfy the requirements of section 50123 of the Financial Code, which requires it
19 submit a plan of surrender. Wyndham has yet to file its plan of surrender with the Commissioner and
20 the Commissioner has not accepted the surrender of Wyndham's residential mortgage lender's
21 license under the CRMLA.

22 H. On October 15, 2019, the Commissioner issued Wyndham an Accusation
23 (Accusation) to suspend the company's CRMLA and CFL licenses and impose penalties as a result of
24 violations identified during the Commissioner's March 5, 2019 examination (the Examination
25 Findings), as follows:

26 i. Failing to submit background and fingerprint checks for its officers under its
27 CRMLA license in violation of Financial Code section 50121 and CCR sections 1950.122.2 and
28 1950.122.4.

1 any rights to a hearing regarding the license revocation and to any reconsideration, appeal, or other
2 rights which may be afforded under the CRMLA, the Administrative Procedure Act (APA) (Gov.
3 Code, § 11340 et seq.), the Code of Civil Procedure (CCP) (Code Civ. Proc., § 1 et seq.), or any
4 other provision of law in connection therewith are expressly waived, provided that the
5 Commissioner give Wyndham 10 days' notice of the failure to satisfy the conditions set forth above
6 and an opportunity to cure. Wyndham further expressly waives any requirement for the filing of an
7 accusation under Government Code section 11415.60, subdivision (b), in connection with the
8 Commissioner's revocation of its residential mortgage lender's license under this provision.

9 8. Waiver of Hearing Rights. Wyndham agrees that the Settlement Agreement shall
10 have the effect of withdrawing its request for an administrative hearing on the Accusation.
11 Wyndham acknowledges its right to an administrative hearing under the CRMLA and CFL in
12 connection with the Accusation and Order and hereby waives its right to a hearing and to any
13 reconsideration, appeal, or other rights which may be afforded it under the CRMLA, CFL, APA,
14 CCP, or any other provision of law in connection with this matter.

15 9. Processing of Surrender. The Commissioner agrees to process Wyndham's Plan of
16 Surrender filed with the Commissioner in an expeditious manner, which shall include prompt notice
17 to Wyndham of any deficiency in the completeness of the Plan of Surrender.

18 10. Dismissal of the Accusation. Except as provided in the Settlement Agreement,
19 Wyndham agrees that the Settlement Agreement shall have the effect of dismissing that portion of
20 the Accusation relating to the suspension of Wyndham's CRMLA license. The dismissal shall
21 become effective upon the Commissioner's acceptance of the Plan of Surrender as described in
22 paragraph 6., above.

23 11. Full and Final Settlement. The Parties hereby acknowledge and agree that the
24 Settlement Agreement is intended to constitute a full, final, and complete resolution of the
25 Accusation and that no further proceedings or actions will be brought by the Commissioner in
26 connection with the Accusation, either under the CRMLA or CFL or any other provision of law,
27 excepting any proceeding to enforce compliance with the terms of the Settlement Agreement.

28 12. Information Willfully Withheld. The Settlement Agreement may be revoked, and the

1 Commissioner may pursue any and all remedies under the CRMLA or CFL against Wyndham if the
2 Commissioner discovers Wyndham knowingly or willfully withheld information used for and relied
3 upon in the Settlement Agreement.

4 13. Future Actions by Commissioner. If Wyndham fails to comply with any term of the
5 Settlement Agreement, the Commissioner may institute proceedings for any and all violations
6 otherwise resolved under the Settlement Agreement. The Commissioner reserves the right to bring
7 any future actions against Wyndham, or any of its partners, owners, officers, shareholders, directors,
8 employees, or successors for any and all unknown violations of the CRMLA or CFL.

9 14. Assisting Other Agencies. The Parties further acknowledge and agree that nothing in
10 the Settlement Agreement shall limit the Commissioner's ability to assist any other agency (city,
11 county, state, or federal) with any prosecution, administrative, civil, or criminal, brought by any
12 such agency against Wyndham or any other person based upon any of the activities alleged in this
13 matter or otherwise.

14 15. Binding. The Settlement Agreement is binding on all heirs, assigns, or successors in
15 interest.

16 16. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that
17 they have received independent advice from their attorney(s) or representative(s) with respect to the
18 advisability of executing the Settlement Agreement.

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

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

26 19. Headings and Governing Law. The headings to the paragraphs of the Settlement
27 Agreement are inserted for convenience only and will not be deemed a part hereof or affect the
28 construction or interpretation of the provisions hereof. The Settlement Agreement shall be construed

1 and enforced in accordance with and governed by California law.

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

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

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

23 23. Voluntary Agreement. Wyndham enters into the Settlement Agreement voluntarily
24 and without coercion and acknowledges that no promises, threats, or assurances have been made by
25 the Commissioner, or any officer or agent thereof, about the Settlement Agreement.

26 24. Effective Date. The Settlement Agreement shall become final and effective once
27 signed by all parties and delivered by the Commissioner's agent via e-mail to Wyndham's counsel
28 at kider@thewbfirm.com (the Effective Date).

1 25. Notice. Any notices required under the Settlement Agreement shall be provided to
2 each party at the following addresses:

3 If to Wyndham: Jeff Douglas, CEO
4 Wyndham Capital Mortgage, Inc.
5 6115 Park South, Suite 200
 Charlotte, North Carolina 28210

6 With copy to: Mitchel H. Kider, Esq.
7 Weiner Brodsky Kider PC
8 1300 19th Street NW 5th Floor
 Washington D.C. 20036

9 If to the Commissioner: Blaine A. Noblett, Senior Counsel
10 Department of Business Oversight
11 320 West 4th Street, Suite 750
 Los Angeles, California 90013-2344

12 26. Public Record. Wyndham acknowledges that the Settlement Agreement is a public
13 record.

14 27. Authority to Execute. Each signatory hereto covenants that he/she possesses all
15 necessary capacity and authority to sign and enter into the Settlement Agreement.

16 [signature page follows]

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

MANUEL P. ALVAREZ
Commissioner of Business Oversight

Dated: 2/28/20

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

WYNDHAM MORTGAGE, INC.

Dated: 2/26/20

By _____
JEFF DOUGLAS, CEO
On behalf of Wyndham Mortgage, Inc.

Approved as to Form:

By _____
Mitchel H. Kider, Esq.
Weiner Brodsky Kider PC
Attorneys on behalf of Wyndham Mortgage, Inc.