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

10
11 In the Matter of:)
) CRMLA LICENSE NO.: 413-0456
12 THE COMMISSIONER OF BUSINESS) CFL LICENSE NO.: 603-H857
13 OVERSIGHT,)
)
14 Complainant,) SETTLEMENT AGREEMENT
)
15 v.)
)
16 MORTGAGE SOLUTIONS OF COLORADO,)
17 LLC,)
)
18 Respondent.)

19
20 This Settlement Agreement is entered into between the Commissioner of Business Oversight
21 (Commissioner) and Respondent Mortgage Solutions of Colorado, LLC (Mortgage Solutions), and is
22 made with respect to the following facts:

23 **I.**

24 **Recitals**

25 A. The Department of Business Oversight, through the Commissioner, has jurisdiction
26 over the licensing and regulation of persons and entities engaged in the business of residential
27 mortgage lending and/or servicing pursuant to the California Residential Mortgage Lending Act
28 (CRMLA) (Fin. Code §50000 et seq.) and finance lending and/or brokering pursuant to the

1 California Financing Law (Fin. Code, section 22000, et seq.) (CFL).

2 B. Mortgage Solutions is a limited liability company in good standing, duly formed and
3 existing pursuant to the laws of the State of Colorado and is authorized to conduct business in the
4 State of California. Mortgage Solutions is a residential mortgage lender and servicer licensed by the
5 Commissioner pursuant to the CRMLA. Mortgage Solutions is also a finance lender licensed by the
6 Commissioner pursuant to the CFL. Mortgage Solutions has its principal place of business located
7 at 5455 North Union Boulevard, Colorado Springs, Colorado 80918. Mortgage Solutions currently
8 has 14 branch office locations under its CRMLA license and 1 branch office location under its CFL
9 license. Mortgage Solutions employs mortgage loan originators in its CRMLA and CFL businesses.

10 C. Robert James Clennan is the President of Mortgage Solutions and is authorized to
11 enter into this Settlement Agreement on behalf of Mortgage Solutions.

12 D. On July 2, 2019, Mortgage Solutions was personally served by the Commissioner
13 with a Notice of Intention to Issue Order Suspending Residential Mortgage Lender and Servicer and
14 Finance Lender Licenses and to Levy Penalties, Accusation and accompanying documents dated
15 June 25, 2019 (Accusation). In the Accusation, the Commissioner alleged that Mortgage Solutions
16 committed the following violations of the CRMLA and CFL (Accusation Allegations):

17 i. failed to properly reconcile certain of its trust accounts due to shortages and/or
18 overages in several of its trust accounts in violation of Financial Code section 50314 and California
19 Code of Regulations, title 10, section 1950.314.1;

20 ii. commingled operating funds with trust monies in violation of Financial Code
21 section 50202, subdivision (a);

22 iii. caused debit balances to exist in borrower impound accounts in violation of
23 California Code of Regulations, title 10, section 1950.314.6;

24 iv. overcharging per diem interest in violation of Financial Code sections 50204,
25 subdivision (o) and 22161, subdivision (a)(5); and

26 v. overcharging recording fees in violation of Financial Code section 50204,
27 subdivision (i) and Financial Code section 22336, subdivision (a).

28

1 E. On July 10, 2019, Mortgage Solutions timely submitted a Notice of Defense to the
2 Commissioner requesting an administrative hearing on the Accusation Allegations.

3 F. It is the intention of Mortgage Solutions and the Commissioner (the Parties) to
4 resolve the Accusation Allegations without the necessity of a hearing.

5 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
6 contained herein, the Parties agree as follows:

7 **II.**

8 **Terms and Conditions**

9 1. Purpose. This Settlement Agreement resolves the Accusation Allegations in a
10 manner that avoids the expense of a hearing and other possible court proceedings, protects
11 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions
12 of the CRMLA and CFL.

13 2. Order to Discontinue Violations (CRMLA). Pursuant to Financial Code section
14 50321, Mortgage Solutions of Colorado, LLC is hereby ordered to discontinue:

- 15 a. violating Financial Code section 50314 and California Code of Regulations,
16 title 10, section 1950.314.1 by failing to properly reconcile its trust accounts;
- 17 b. violating Financial Code section 50202, subdivision (a) by commingling
18 operating funds with trust funds;
- 19 c. violating California Code of Regulations, title 10, section 1950.314.6 by
20 causing debit balances to exist in borrower impound accounts;
- 21 d. violating Financial Code sections 50204, subdivision (o) by overcharging per
22 diem interest; and
- 23 e. violating Financial Code section 50204, subdivision (i) by overcharging
24 recording fees.

25 3. Desist and Refrain Orders. Pursuant to Financial Code section 22712, Mortgage
26 Solutions of Colorado, LLC is hereby ordered to desist and refrain from:

- 27 a. violating Financial Code section 22161, subdivision (a)(5) via violations of
28 Civil Code section 2948.5 by overcharging per diem interest; and

1 b. violating Financial Code section 22336, subdivision (a) by overcharging
2 recording fees.

3 4. Penalty. Mortgage Solutions shall pay to the Commissioner a penalty of
4 \$180,000.00 (Penalty). The Penalty is due within 5 business days of the Effective Date, as defined
5 in Paragraph 35 below (Effective Date), and should be made payable in the form of a cashier’s check
6 or Automated Clearing House deposit to the “Department of Business Oversight” and transmitted to
7 the attention of: Accounting – Enforcement Division, Department of Business of Oversight, 1515 K
8 Street, Suite 200, Sacramento, California 95814. Notice of such payment shall be forwarded to Judy
9 L. Hartley, Senior Counsel, Department of Business Oversight, Enforcement Division, 320 West 4th
10 Street, Suite 750, Los Angeles, California 90013.

11 5. Refunds – Per Diem Interest. Mortgage Solutions represents that it has conducted a
12 third-party compliance audit regarding per diem interest charges for the period commencing August
13 18, 2014 through September 5, 2018 and made refunds totaling \$51,971.00 on 463 loans.

14 6. Refunds – Recording Fees. Mortgage Solutions represents that it has conducted a
15 self-audit regarding recording fee charges for the period commencing August 18, 2014 through
16 September 5, 2018 and made refunds totaling \$9,029.52 on 219 loans.

17 7. Refund Reports. Mortgage Solutions has previously submitted reports to the
18 Commissioner detailing the findings of the audits described in Paragraphs 5 and 6. The
19 Commissioner’s receipt of the audit reports does not constitute an approval that the audit reports are
20 correct and does not otherwise limit the Commissioner’s audit or examination rights under this
21 Settlement Agreement.

22 8. Per Diem Interest Audit – September 6, 2018 through February 29, 2020. Mortgage
23 Solutions agrees to conduct an audit, by and through a certified public accountant (CPA) or third-
24 party compliance company, of per diem interest charges for all California loans originated by
25 Mortgage Solutions between September 6, 2018 and February 29, 2020 (per diem audit). Mortgage
26 Solutions, by and through its CPA or third-party compliance company, shall submit to the
27 Commissioner the results of the per diem audit (per diem audit report) within 120 days of the
28 Effective Date of this Settlement Agreement. The per diem audit report shall include, at a minimum,

1 the total number of loans made during this period, the number of loans with per diem interest
2 overcharges, and for each loan, the per diem audit report shall list the borrower loan number, name,
3 address, loan amount, loan date, interest rate, per diem interest charged, correct per diem interest,
4 overcharge amount (if applicable), date of refund (if applicable), and proof of refund (if applicable).
5 Mortgage Solutions further agrees that it shall pay an administrative penalty to the Commissioner,
6 upon submission of the per diem audit report, equal to \$200.00 for each per diem interest overcharge
7 discovered during the per diem audit that was not refunded to the borrower within 30 days of loan
8 funding.

9 9. Recording Fee Audit – September 6, 2018 through February 29, 2020. Mortgage
10 Solutions agrees to conduct an audit, by and through a CPA or third-party compliance company, of
11 recording fee charges for all California loans originated by Mortgage Solutions between September
12 6, 2018 and February 29, 2020 (recording fee audit). Mortgage Solutions, by and through its CPA or
13 third-party compliance company, shall submit to the Commissioner the results of the recording fee
14 audit (recording fee audit report) within 120 days of the Effective Date of this Settlement
15 Agreement. The recording fee audit report shall include, at a minimum, the total number
16 of loans made during this period, the number of loans with recording fee overcharges, and for each
17 loan, the report shall list the borrower loan number, name, address, loan amount, loan date, interest
18 rate, recording fees charged, actual recording fees, overcharge amount (if applicable), date of refund
19 (if applicable), and proof of refund (if applicable). Mortgage Solutions further agrees that it shall
20 pay an administrative penalty to the Commissioner, upon submission of the recording fee audit
21 report, equal to \$200.00 for each recording fee overcharge discovered during the recording fee audit
22 that was not refunded to the borrower within 90 days of recordation of the document.

23 10. Quarterly Audits for Per Diem Interest. Mortgage Solutions also agrees to conduct
24 quarterly audits, by and through a CPA or third-party compliance company, of per diem interest
25 charges for all California loans originated by Mortgage Solutions between March 1, 2020 and
26 February 28, 2021. Each quarterly audit must cover all California loans originated during that
27 quarter. Mortgage Solutions, by and through its CPA or third-party compliance company, will
28 submit to the Department the results of each quarterly audit (per diem quarterly audit report) within

1 45 days of the completion of each quarter. The per diem quarterly audit reports shall contain the
2 same or similar fields as in the per diem audit report discussed in paragraph 8 above. The first per
3 diem quarterly audit report shall be due on July 15, 2020 for the period of March 1, 2020 through
4 May 31, 2020. The second per diem quarterly audit report shall be due on October 15, 2020 for the
5 period of June 1, 2020 through August 31, 2020. The third per diem quarterly audit report shall be
6 due on January 15, 2021 for the period of September 1, 2020 through November 30, 2020. The
7 fourth and final per diem quarterly audit report shall be due on April 15, 2021 for the period of
8 December 1, 2020 through February 28, 2021. Mortgage Solutions further agrees that it shall pay an
9 administrative penalty to the Commissioner, upon submission of the per diem quarterly audit
10 report(s), equal to \$200.00 for each per diem interest overcharge discovered during the per diem
11 quarterly audit(s) unless such overcharge was refunded to the borrower within 30 days of loan
12 funding.

13 11 Quarterly Audits for Recording Fees. Mortgage Solutions further agrees to conduct
14 quarterly audits, by and through a CPA or third-party compliance company, of recording fee charges
15 for all California loans originated by Mortgage Solutions between March 1, 2020 and February 28,
16 2021. Each quarterly audit must cover all California loans originated during that quarter. Mortgage
17 Solutions, by and through its CPA or third-party compliance company, will submit to the
18 Department the results of each quarterly audit (recording fee quarterly audit report) within 45 days
19 of the completion of each quarter. The recording fee quarterly audit reports shall contain the same or
20 similar fields as in the recording fee audit report discussed in paragraph 9 above. The first recording
21 fee quarterly audit report shall be due on July 15, 2020 for the period of March 1, 2020 through May
22 31, 2020. The second recording fee quarterly audit report shall be due on October 15, 2020 for the
23 period of June 1, 2020 through August 31, 2020. The third recording fee quarterly audit report shall
24 be due on January 15, 2021 for the period of September 1, 2020 through November 30, 2020. The
25 fourth and final recording fee quarterly audit report shall be due on April 15, 2021 for the period of
26 December 1, 2020 through February 28, 2021. Mortgage Solutions further agrees that it shall pay an
27 administrative penalty to the Commissioner, upon submission of the recording fee quarterly audit
28 report(s), equal to \$200.00 for each recording fee overcharge discovered during the recording fee

1 quarterly audit(s) unless such overcharge was refunded to the borrower within 90 days of recordation
2 of the document.

3 12. Refunds. Mortgage Solutions shall make appropriate refunds to include interest at the
4 rate of 10 percent per annum from the date of loan funding for all overcharges found pursuant to the
5 audits described in Paragraphs 8-11. Refunds shall be mailed to the last known address of each
6 borrower prior to submission of the applicable report to the Commissioner. Borrower refunds made
7 pursuant to this Settlement Agreement shall be accompanied by a cover letter that states: "As a result
8 of an examination by the Department of Business Oversight, a refund or adjustment in the amount of
9 \$XXXX is being made for your benefit. If you have any questions concerning this refund, please
10 contact (lender) at (800) XXX-XXXX."

11 13. Unclaimed Refunds. Mortgage Solutions shall escheat any unclaimed refunds to the
12 California State Controller's Office within the period provided by Code of Civil Procedure section
13 1520 of the Unclaimed Property Law (Code of Civ. Proc., section 1500, et seq.).

14 14. Proof of Compliance. Mortgage Solutions acknowledges that the Commissioner will
15 examine and review its compliance with Paragraphs 2 through 13 of this Settlement Agreement.
16 Mortgage Solutions agrees to provide, upon the Commissioner's request, documentation satisfactory
17 to the Commissioner to determine compliance with Paragraphs 2 through 13.

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

25 16. Full and Final Settlement. The Parties hereby acknowledge and agree that this
26 Settlement Agreement is intended to constitute a full, final, and complete resolution of the
27 Accusation Allegations, and that no further proceedings or actions will be brought by the
28 Commissioner in connection with the Accusation Allegations under the CRMLA, CFL or any other

1 provision of law, excepting therefrom any proceeding to enforce compliance with the terms of this
2 Settlement Agreement.

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

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

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

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

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

27 22. Binding. This Settlement Agreement is binding on all heirs, assigns, and/or
28 successors in interest.

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

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

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

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

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

