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

11 In the Matter of THE COMMISSIONER OF) File No.: 413-0981
12 BUSINESS OVERSIGHT OF THE STATE OF)
13 CALIFORNIA,) SETTLEMENT AGREEMENT
14)
Complainant,)
15)
vs.)
16)
MANN MORTGAGE, LLC d.b.a.)
17 LIFE MORTGAGE,)
18 WESTCORP MORTGAGE GROUP,)
19 Respondent.)

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22 This Settlement Agreement is entered into between Mann Mortgage, LLC d.b.a. Life
23 Mortgage, Westcorp Mortgage Group (“Mann Mortgage”), and the Commissioner of Business
24 Oversight, formerly the Commissioner of Corporations (“Commissioner”),¹ and is made with
25 respect to the following facts:
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¹ As of July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to form the Department of Business Oversight.

RECITALS

1
2 A. Mann Mortgage is a limited liability company in good standing, duly formed and
3 existing pursuant to the laws of the State of Montana, and authorized to conduct business in the
4 State of California.

5 B. Mann Mortgage is a residential mortgage lender and loan servicer licensed by the
6 Commissioner pursuant to the California Residential Mortgage Lending Act (“CRMLA”)
7 (California Financial Code section 50000 et seq.). Mann Mortgage’s principal place of business is
8 1220 Whitefish Stage, Kalispell, MT 59901. Mann Mortgage employs mortgage loan originators.

9 C. The Department of Business Oversight (“Department”), through the Commissioner,
10 has jurisdiction over the licensing and regulation of persons and entities engaged in the business of
11 lending and/or servicing pursuant to the CRMLA, including mortgage loan originators.

12 D. On or around July 3, 2014, Mann Mortgage was served via certified mail by the
13 Commissioner with a Notice of Intention to Issue Orders Suspending License and Imposing
14 Penalties (“Notice of Intention”); Accusation in Support of Notice of Intention to Issue Orders
15 Suspending License and Imposing Penalties dated June 30, 2014 (“June 30, 2014 Accusation”);
16 Order to Discontinue Violations Pursuant to California Financial Code Section 50321 (“Order to
17 Discontinue Violations”); Statement of Facts in Support of Order to Discontinue Violations
18 Pursuant to California Financial Code Section 50321 dated June 30, 2014 (“June 30, 2014
19 Statement of Facts”); and Order to Refund Excessive Per Diem Interest Charges Pursuant to
20 California Financial Code section 50504(b) (“Order to Refund”).

21 E. On or around July 18, 2014, Mann Mortgage timely filed Notices of Defense with
22 the Commissioner regarding the June 30, 2014 Accusation, June 30, 2014 Statement of Facts, Order
23 to Discontinue Violations, and Order to Refund.

24 F. On or around July 22, 2014, the Commissioner issued an Amended Accusation in
25 Support of Notice of Intention to Issue Orders Suspending License and Imposing Penalties
26 (“Amended Accusation”), which supersedes the June 30, 2014 Accusation, and an Amended
27 Statement of Facts in Support of Order to Discontinue Violations Pursuant to California Financial
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1 Code Section 50321 (“Amended Statement of Facts”), which supersedes the June 30, 2014
2 Statement of Facts.

3 G. Mann Mortgage promptly replied to all requests for information from the
4 Department.

5 H. The Commissioner finds that this action is appropriate in the public interest and
6 consistent with the purposes fairly intended by the policy and provisions of this law.

7 I. It is the intention and desire of the parties to resolve this matter without the necessity
8 of a hearing and/or other litigation.

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

11
12 **TERMS AND CONDITIONS**

13 1. This Settlement Agreement is entered into for the purpose of judicial economy and
14 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

15 2. Mann Mortgage, by entering into this Settlement Agreement, does not admit or deny
16 any of the allegations set forth in the Amended Accusation, Amended Statement of Facts, Order to
17 Discontinue Violations, and Order to Refund (collectively, “Amended Accusation and Orders”).

18 3. Any information contained in this Settlement Agreement shall not be binding or
19 admissible against Mann Mortgage in any actions brought by third parties.

20 4. Mann Mortgage hereby agrees to comply with the Order to Discontinue Violations
21 and Order to Refund, which are hereby deemed final Orders.

22 5. Mann Mortgage acknowledges its right to an administrative hearing under the
23 CRMLA in connection with the Amended Accusation and Orders and hereby waives that right to a
24 hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant to the
25 CRMLA, the California Administrative Procedure Act, the California Code of Civil Procedure, or
26 any other provision of law in connection with these matters.

27 6. Mann Mortgage agrees to submit its draft policies and procedures ensuring
28 compliance with California Financial Code section 50204 to the Department for review within

1 thirty (30) days following execution of this Settlement Agreement. The Department shall review
2 and propose any changes, if necessary, within forty (40) days following execution of this Settlement
3 Agreement. Mann Mortgage agrees to make any material changes or corrections to such draft
4 policies and procedures suggested by the Department and submit finalized Per Diem Interest
5 Policies and Procedures, with date of implementation, by no later than sixty (60) days following
6 execution of this Settlement Agreement. The date of implementation of these finalized Per Diem
7 Interest Policies and Procedures shall not affect Mann Mortgage's requirement to comply with all
8 provisions of the CRMLA, the Order to Discontinue Violations, and the Order to Refund.

9 7. Mann Mortgage agrees to conduct a self-audit of all loans secured by property in
10 California originated from February 1, 2013 up until thirty (30) days following implementation of
11 its finalized Per Diem Interest Policies and Procedures. The self-audit report ("Report") shall
12 include, at a minimum, the following: (i) the total number of loans originated and funded by Mann
13 Mortgage from February 1, 2013 up until thirty (30) days following implementation of its finalized
14 Per Diem Interest Policies and Procedures; (ii) the number of loans with per diem interest charges
15 in excess of the amount permitted by California Financial Code section 50204(o) and California
16 Civil Code section 2948.5, overcharge amount (if any), date of refund (if applicable), and evidence
17 of refund (if applicable) in the form of a cancelled check and accompanying correspondence mailed
18 to the borrower. The Report shall be due to the Department within sixty (60) days following
19 implementation of its finalized Per Diem Interest Policies and Procedures.

20 8. Mann Mortgage agrees to refund the six (6) borrowers who were brought to its
21 attention on or around July 22, 2014 to require additional refunds as directed by the Department and
22 pursuant to the Order to Refund. Evidence of the refund in the form of a cancelled check and
23 accompanying correspondence mailed to the borrower shall be due to the Department within thirty
24 (30) days following execution of this Settlement Agreement.

25 9. Refunds owed to any borrower who cannot be reasonably located shall be escheated
26 by Mann Mortgage to the State of California pursuant to the provisions of the California Unclaimed
27 Property Law (Code of Civ. Proc. § 1500 et seq.).
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1 10. Mann Mortgage agrees to pay administrative penalties for violations of California
2 Financial Code section 50204(o) in the amount of \$19,000.00, due contemporaneously upon
3 execution of this Settlement Agreement, made payable to the Department of Business Oversight,
4 and sent to the attention of: Sophia C. Kim, Corporations Counsel, Enforcement Division, at the
5 Department’s Los Angeles office located at 320 West 4th Street, Suite 750, Los Angeles, California
6 90013.

7 11. In consideration of the information provided to the Commissioner by Mann
8 Mortgage as described in the paragraphs above and payment of administrative penalties as provided
9 herein, the Commissioner hereby agrees that except as set forth in this Settlement Agreement, she
10 shall not suspend the residential mortgage lender license of Mann Mortgage or take any further
11 action based on the violations cited in this Settlement Agreement. Accordingly, this Settlement
12 Agreement, which resolves the Amended Accusation and Orders, does not affect the licensing
13 status of Mann Mortgage.

14 12. Mann Mortgage agrees that if it fails to meet any deadline or any requirement in
15 Paragraph 6 (regarding revised per diem interest policies and procedures) or Paragraph 7 (regarding
16 self-audit report), Mann Mortgage shall immediately notify the Department of such failure and
17 cooperate with the Department to cause such failure to be rectified as soon as reasonably practicable
18 but by no later than thirty (30) days. Failure to abide by these terms shall result in Mann Mortgage
19 being suspended from lending under its CRMLA license until the requirement is met, and Mann
20 Mortgage hereby waives any notice and hearing rights to contest the suspension resulting therefrom
21 that may be afforded under the California Financial Code, the California Administrative Procedure
22 Act, the California Code of Civil Procedure, or any other legal provisions.

23 13. Mann Mortgage agrees that if it fails to meet any deadline or any requirement in
24 Paragraph 8 (regarding refunds to six (6) borrowers) or Paragraph 10 (regarding payment of
25 administrative penalties), Mann Mortgage shall be immediately suspended from lending under its
26 CRMLA license until the requirement is met. Mann Mortgage hereby waives any notice and
27 hearing rights to contest the immediate suspension from lending resulting from failure to comply
28 with Paragraphs 8 or 10 above that may be afforded under the California Financial Code, the

1 California Administrative Procedure Act, the California Code of Civil Procedure, or any other legal
2 provisions.

3 14. This Settlement Agreement is binding on all heirs, assigns and/or successors in
4 interest to the extent such heir, assign, and/or successor continues to operate under Mann
5 Mortgage’s CRMLA license.

6 15. The parties hereby acknowledge and agree that this Settlement Agreement is
7 intended to constitute a full, final and complete resolution of the Amended Accusation and Orders
8 and that no further proceedings or actions will be brought by the Commissioner in connection with
9 these matters either under the CRMLA or any other provision of law, excepting therefrom any
10 proceeding or action if such proceeding or action is based upon facts not presently known to the
11 Commissioner or which were knowingly concealed from the Commissioner by Mann Mortgage.
12 The parties further acknowledge and agree that nothing contained in this Settlement Agreement
13 shall operate to limit the Commissioner’s ability to assist any other agency (city, county, state or
14 federal) with any prosecution, administrative, civil or criminal, brought by any such agency against
15 Mann Mortgage or any other person based upon any of the activities alleged in these matters or
16 otherwise.

17 16. This Settlement Agreement does not create any private rights or remedies against
18 Mann Mortgage, create any liability for Mann Mortgage or limit defenses of Mann Mortgage for
19 any person or entity not a party to this Settlement Agreement.

20 17. This Settlement Agreement may be revoked and the Commissioner may pursue any
21 and all remedies available under law against Mann Mortgage if the Commissioner later discovers
22 that Mann Mortgage knowingly or willfully withheld information used and relied upon in this
23 Settlement Agreement.

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

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

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

8 20. This Settlement Agreement is the final written expression and the complete and
9 exclusive statement of all the agreements, conditions, promises, representations, and covenants
10 between the parties with respect to the subject matter hereof, and supersedes all prior or
11 contemporaneous agreements, negotiations, representations, understandings, and discussions
12 between and among the parties, their respective representatives, and any other person or entity, with
13 respect to the subject matter covered hereby.

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

21 22. Mann Mortgage enters into this Settlement Agreement voluntarily and without
22 coercion and acknowledges that no promises, threats or assurances have been made by the
23 Commissioner or any officer, or agent thereof, about this Settlement Agreement.

24 23. The waiver of any provision of this Settlement Agreement shall not operate to waive
25 any other provision set forth herein, and any waiver, amendment and/or change to the terms of this
26 Settlement Agreement must be in writing and signed by the parties.

27 24. This Settlement Agreement shall not become effective until signed and delivered by
28 all parties.

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25. The parties agree that this Settlement Agreement may be executed in one or more separate counterparts, each of which when so executed, shall be deemed an original. A fax signature shall be deemed the same as an original signature. Such counterparts shall together constitute and be one and the same instrument.

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

Dated: 11/12/14

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 11/4/14

MANN MORTGAGE, LLC d.b.a.
LIFE MORTGAGE,
WESTCORP MORTGAGE GROUP

By _____
JASON MANN
Chief Executive Officer

APPROVED AS TO FORM AND CONTENT:

JAMES C. MAGID, ESQ.
American Mortgage Law Group, P.C.
Counsel for Mann Mortgage, LLC d.b.a. Life Mortgage,
Westcorp Mortgage Group