

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 JUDY L. HARTLEY (State Bar No. 110628)
Senior Counsel
4 Department of Business Oversight
320 West 4th Street, Ste. 750
5 Los Angeles, California 90013-2344
Telephone: (213) 576-7604
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

10
11 In the Matter of:)
)
12 THE COMMISSIONER OF BUSINESS) CRMLA LICENSE NO.: 413-0571
13 OVERSIGHT,)
)
14 Complainant,) SETTLEMENT AGREEMENT
)
15 v.)
)
16 UNITED MORTGAGE CORP. authorized to do)
17 business in California as UMC MORTGAGE)
18 COMPANY,)
)
19 Respondent.)
)

20
21 This Settlement Agreement (Agreement) is entered into by and between United Mortgage
22 Corp. authorized to do business in California as UMC Mortgage Company (UMC) and Complainant
23 the Commissioner of Business Oversight (Commissioner), and is made with respect to the following
24 facts:

25 I.

26 **RECITALS**

27 A. UMC is a residential mortgage lender and servicer licensed by the Commissioner
28 pursuant to the California Residential Mortgage Lending Act (CRMLA) (Fin. Code §50000 et seq.).

1 UMC has its principal place of business located at 25 Melville Park Road, Suite 100, Melville, New
2 York 11747. UMC currently has 6 branch office locations under its CRMLA license located in
3 California and elsewhere. UMC employs mortgage loan originators in its CRMLA business.

4 B. The Department of Business Oversight (Department), through the Commissioner, has
5 jurisdiction over the licensing and regulation of persons and entities engaged in the business of
6 lending and/or servicing pursuant to the CRMLA.

7 C. During a regulatory examination of UMC commenced in May 2018, the
8 Commissioner discovered that UMC (i) had failed to properly reconcile certain of its trust accounts
9 in violation of Financial Code section 50314 and California Code of Regulations, title 10, section
10 1950.314.1 due to a shortage in three of its trust accounts in violation of California Code of
11 Regulations, title 10, section 1950.314.6; (ii) had caused a shortage to exist in a borrower impound
12 account in violation of California Code of Regulations, title 10, section 1950.314.6; and (iii)
13 provided a California Financing Law Statement of Loan to borrowers incorrectly stating that the
14 loans had been made under the California Financing Law (CFL) in violation of Financial Code
15 section 50314.

16 D. On October 30, 2018, UMC was personally served by the Commissioner with a
17 Notice of Intention to Issue Orders Suspending Residential Mortgage Lender and Servicer License
18 and to Levy Penalties, Accusation and accompanying documents dated October 29, 2018
19 (Accusation). A Notice of Defense has been filed with the Commissioner regarding the Accusation.

20 E. On October 30, 2018, UMC was also personally served by the Commissioner with an
21 Order to Discontinue Violations Pursuant to Financial Code Section 50321 and Statement of Facts in
22 Support of Order to Discontinue Violations Pursuant to Financial Code Section 50321 and Notice of
23 Intent to Make Order Final dated October 29, 2018 (Order to Discontinue Violations). A Hearing
24 Request has been filed with the Commissioner regarding the Order to Discontinue Violations.

25 F. It is the intention and desire of the parties to resolve this matter without the necessity
26 of a hearing and/or other litigation.

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

II.

TERMS AND CONDITIONS

1
2
3 1. Purpose. This Agreement resolves the issues before the Commissioner of the
4 findings of the May 2018 regulatory examination of UMC set forth in in paragraphs C – E above in a
5 manner that avoids the expense of a hearing and other possible court proceedings, protects
6 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of
7 the CRMLA.

8 2. Final Order. UMC agrees that the Order to Discontinue Violations described in
9 Paragraph E above is hereby deemed a final order.

10 3. Administrative Penalty. UMC agrees to pay to the Commissioner the sum of
11 \$25,000.00 in administrative penalties within 5 business days of the effective date of this Agreement
12 as that date is defined in paragraph 22 herein. The payment shall be made by electronic fund
13 transfer or cashiers’ check payable to the Department of Business Oversight and shall be sent to the
14 Department, attention, Accounting-Litigation, 1515 K Street, Suite 200, Sacramento, CA 95814-
15 4052.

16 4. Policies and Procedures. UMC shall submit to the Commissioner, within 30 days of
17 the effective date of this Agreement as that date is defined in paragraph 22 herein, its new policies
18 and procedures implemented by UMC to correct and prevent shortages in the trust account(s),
19 including at the borrower level, in order to ensure proper reconciliation of trust accounts and
20 compliance with the CRMLA. UMC agrees to make any changes or corrections to such policy
21 within 10 business days following written request by the Commissioner.

22 5. Waiver of Hearing Rights. UMC acknowledges that the Commissioner is ready,
23 willing, and able to proceed with the administrative enforcement action described in Paragraphs D
24 and E above, and hereby waives its right to a hearing, and to any reconsideration, appeal, or other
25 right to review which may be afforded pursuant to the CRMLA, the California Administrative
26 Procedure Act, the California Code of Civil Procedure, or any other provision of law; and by
27 waiving such rights, UMC effectively consents to this Agreement becoming final.
28

1 6. Full and Final Settlement. The parties hereby acknowledge and agree that this
2 Agreement is intended to constitute a full, final and complete resolution of the violations described
3 herein, and that no further proceedings or actions will be brought by the Commissioner in connection
4 with these matters either under the CRMLA, or any other provision of law, excepting therefrom any
5 proceeding to enforce compliance with the terms of this Agreement.

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

12 8. Information Willfully Withheld. This Agreement may be revoked and the
13 Commissioner may pursue and any and all remedies available under law against UMC if the
14 Commissioner discovers that UMC knowingly or willfully withheld information used and relied
15 upon in this Agreement.

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

21 10. Assisting Other Agencies. Nothing in this Agreement limits the Commissioner's
22 ability to assist any other governmental agency, (city, county, state or federal) with any prosecution,
23 administrative, civil or criminal, brought by any such agency against UMC, or any other person
24 based upon any of the activities alleged in this matter or otherwise.

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

26 12. Third Party Actions. This Agreement does not create any private rights or remedies
27 against UMC, create any liability for UMC, or limit defenses of UMC for any person or entity not a
28 party to this Agreement.

1 13. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
2 has received independent advice from its attorney(s) and/or representatives with respect to the
3 advisability of executing this Agreement.

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

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

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

26 17. Waiver, Modification, and Qualified Integration. The waiver of any provision of this
27 Agreement shall not operate to waive any other provision set forth herein. No waiver, amendment,
28

1 or modification of this Agreement shall be valid or binding to any extent unless it is in writing and
2 signed by all of the parties affected by it.

3 18. Headings and Governing Law. The headings to the paragraphs of this Agreement are
4 inserted for convenience only and will not be deemed a part hereof or affect the construction or
5 interpretation of the provisions hereof. This Agreement shall be construed and enforced in
6 accordance with and governed by California law.

7 19. Counterparts. This Agreement may be executed in one or more separate counterparts,
8 each of which when so executed, shall be deemed an original. Such counterparts shall together
9 constitute a single document.

10 20. Signatures. A signature delivered by facsimile or electronic mail will be deemed an
11 original signature.

12 21. Voluntary Agreement. UMC enters into this Agreement voluntarily and without any
13 coercion and acknowledges that no promise, threats, or assurances about this Agreement have been
14 made by the Commissioner or any of her officers or agents.

15 22. Effective Date. This Agreement shall not become effective until signed by all parties
16 and a fully executed copy is delivered by counsel for the Commissioner via email to counsel for
17 UMC.

18 23. Notice. Any notice/report required under this Agreement shall be addressed as
19 follows:

20 To UMC: Howard Greenberg
21 General Counsel
22 United Mortgage Corp.
23 25 Melville Park Road, Suite 100
24 Melville, New York 11747
25 hgreenberg@unitedmortgage.com

26 To the Commissioner: Judy L. Hartley, Esq.
27 Senior Counsel
28 Department of Business Oversight
320 W. 4th Street, Suite 750
Los Angeles, California 90013-2344
judy.hartley@dbo.ca.gov

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

24. Public Record. UMC acknowledges that this Agreement is a public record.

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

Dated: 5/29/19 MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 5/29/19 UNITED MORTGAGE CORP. authorized to do business
in California as UMC MORTGAGE COMPANY

By _____
Mark Rosenbloom, President

APPROVED AS TO FORM:

By _____
HOWARD GREENBERG, ESQ. attorney for
UNITED MORTGAGE CORP. authorized to do business
in California as UMC MORTGAGE COMPANY

Commissioner of Business Oversight

By _____
JUDY L. HARTLEY, ESQ.
Senior Counsel