

**SETTLEMENT AGREEMENT  
BETWEEN THE UNITED STATES OF AMERICA AND  
PHH MORTGAGE CORPORATION**

**I. INTRODUCTION**

1. This Settlement Agreement (“Agreement”) is entered into between the United States of America (“the United States”), through the Department of Justice, and PHH Mortgage Corporation (“PHH”), through its authorized representatives. The United States and PHH are referred to herein as the “Parties.”

**II. RECITALS**

2. This Agreement resolves the allegations contained in the United States’ lawsuit, *United States v. PHH Mortgage Corp.*, Civil No. 19-cv-4767, filed in the United States District Court for the District of New Jersey against PHH on February 6, 2019 (hereinafter “Civil Action”).
3. The Civil Action alleges that PHH engaged in violations of the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. §§ 3901-4043, by conducting foreclosures, without a court order or valid waiver of SCRA rights, of real property owned by SCRA-protected servicemembers.

4. The United States alleges in the Civil Action that, between January 1, 2010 and April 4, 2012, PHH initiated and completed six foreclosures, without court orders or valid waivers of SCRA rights, of real property owned by SCRA-protected servicemembers. The United States alleges that, at the time of the foreclosures, the individuals who owned the foreclosed properties were servicemembers who were in military service, as defined by 50 U.S.C. § 3911(1) and (2), had completed a period of military service within the past year (or nine months for foreclosures before February 2, 2013), *see* 50 U.S.C. § 3953(c), or were members of a reserve component who had been ordered to report for military service, as defined by 50 U.S.C § 3917(a).
5. PHH is a New Jersey corporation with a principal place of business at 1 Mortgage Way, Mount Laurel, New Jersey.
6. This Agreement resolves all DOJ claims related to alleged violations of Section 3953 of the SCRA by PHH, or any subsidiaries, predecessors, acquired companies, or successor entities, from January 1, 2010 to September 24, 2018 (the “Covered Conduct”).
7. PHH has cooperated fully with the United States’ investigation in this matter. During the course of the investigation, PHH has produced, among other things, a list of its non-judicial foreclosures nationwide

covering the period from January 1, 2010 to September 24, 2018. PHH has also produced its policies and procedures related to the SCRA and has agreed to compensate each of the servicemembers in each of the six foreclosures identified by the DOJ, as set forth more fully below.

8. The Parties agree, and the United States believes that it is in the public's best interest, that the Civil Action should be resolved amicably and without further litigation.
9. To avoid the delay, uncertainty, inconvenience and expense of protracted litigation of the United States' claims, and in consideration of the mutual promises and obligations set forth below, the Parties agree and covenant to the following material terms and conditions:

### **III. STATEMENT OF CONSIDERATION**

10. The Parties agree that, to avoid the time and expense of litigation, the claims against PHH should be resolved without further proceedings or a trial. Therefore, the United States and PHH agree to this Settlement Agreement (the "Agreement"). This Agreement constitutes full resolution of the United States' claims against PHH related to the Covered Conduct.
11. In consideration of, and consistent with, the terms of this Agreement, the Parties will jointly move for dismissal of the lawsuit entitled *United*

*States v. PHH Mortgage Corp.*, Civil No. 19-cv-4767, as set forth in Paragraph 37. The Parties agree and acknowledge that this consideration is adequate and sufficient.

12. Subject to the exceptions in Paragraph 34 below, and conditioned upon PHH's compliance with this Agreement, the United States releases PHH and its successors from any civil claim the United States has for the Covered Conduct.
13. PHH enters into this Agreement solely for the purpose of resolving a dispute with the United States over the allegations that it violated SCRA and neither admits nor denies any wrongdoing, allegations or implications of fact, or violations of SCRA. This Agreement is made without any trial, adjudication, or finding of any issue of fact or law.

#### **IV. TERMS AND CONDITIONS**

##### **A. COMPLIANCE WITH THE SCRA AND SCRA POLICIES AND PROCEDURES**

14. PHH has produced and the United States has reviewed PHH's mortgage foreclosure policies and procedures for compliance with Section 3953 of the SCRA, 50 U.S.C. § 3953. No modifications to PHH's SCRA policies and procedures are required by this Agreement.
15. If, at any time during the term of this Agreement, PHH proposes to materially change its policies and procedures as they relate to

compliance with the SCRA, it shall first provide a copy of the proposed changes to counsel for the United States.<sup>1</sup> If the United States does not deliver written objections to PHH within thirty (30) calendar days of receiving the proposed changes, the changes may be implemented. If the United States objects to any part of PHH's changes, the Parties shall confer to resolve their differences. Any dispute as to the content of PHH's policies and procedures will be resolved pursuant to the provisions of Paragraphs 38-40.

## **B. TRAINING**

16. Within thirty (30) calendar days of the execution of this agreement, PHH shall provide to the United States the curriculum, instructions, and any written materials included in the training required by Paragraphs 17-18. The United States shall have thirty (30) calendar days from receipt of these documents to raise any objections to PHH's training materials, and, if it raises any, the Parties shall confer to resolve their

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<sup>1</sup> All materials required by this Agreement to be sent to counsel for the United States shall be sent by private business carrier (non-USPS) delivery service addressed as follows: Chief, Housing & Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 1800 G Street, N.W., Suite 7002, Washington, DC 20006, Attn: DJ 216-48-2. A copy of the materials should also be sent to: Chief, Civil Rights Unit, U.S. Attorney's Office, District of New Jersey, 970 Broad Street, Suite 700, Newark, NJ 07102. Correspondence shall also be sent via electronic mail to the U.S. Department of Justice, care of the undersigned counsel for the United States.

differences. Any dispute as to the content of the training will be resolved pursuant to the provisions of Paragraphs 38-40.

17. Within forty-five (45) calendar days after PHH's training program is approved by the United States pursuant to Paragraph 16, PHH shall provide SCRA compliance training to any employee who has not yet already received such training and who: (a) provides customer service to borrowers in connection with their residential mortgages, or (b) has significant involvement in foreclosure proceedings. PHH shall provide to each such covered employee: (a) training on the terms of the SCRA with respect to foreclosures; and (b) training on PHH's policies and procedures as they relate to the SCRA (both those referenced in Paragraph 14, and all others adopted by PHH) specific to the employee's responsibilities associated with that employee's position.
18. Thereafter, PHH shall provide annual SCRA training, with the same content as described in Paragraph 17, to covered employees with respect to their responsibilities and obligations under the SCRA and PHH's policies and procedures as they relate to the SCRA.
19. PHH shall secure a signed statement in the form attached as Appendix A from each covered employee at the training required by Paragraphs 16-18. In this signed statement, each covered employee shall

acknowledge that he or she has received, read, and understands the Agreement and PHH's policies and procedures as they relate to the SCRA specific to the employee's responsibilities associated with the loan being serviced, has had the opportunity to have his or her questions about these documents answered, and agrees to abide by them. For the duration of this Agreement, copies of those signed statements shall be provided to the United States upon request. PHH shall also certify in writing to counsel for the United States that the covered employees successfully completed the training required by Paragraphs 16-18.

### **C. COMPENSATION**

20. The United States has identified six nonjudicial foreclosures completed by PHH between January 1, 2010 and April 4, 2012, that it alleges were conducted in violation of Section 3953 of the SCRA, 50 U.S.C. § 3953. A list of such foreclosures has been provided to PHH by the United States.
21. For each of the six foreclosures identified pursuant to Paragraph 20, PHH shall compensate the servicemember borrowers (i.e., any SCRA-protected individual(s) who signed the note with respect to a foreclosed

property) who execute the Declaration at Appendix B and Release at Appendix C in the amount of \$125,000.<sup>2</sup>

22. The United States will undertake efforts to locate and notify the six identified servicemembers, and to obtain a signed Declaration and Release from each servicemember. Within twenty-one (21) calendar days of notification by the United States that a Declaration and Release have been received, PHH shall deliver to counsel for the United States a check payable to the aggrieved person.
23. When counsel for the United States has received a check from PHH payable to an aggrieved person and a signed Declaration and Release and IRS Form W-9 from the aggrieved person, counsel for the United States shall deliver the check to the aggrieved person and the original, signed Declaration and Release and IRS Form W-9 to counsel for PHH. No aggrieved person shall be paid until he or she has signed and delivered a Declaration and Release and IRS Form W-9 to counsel for the United States.

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<sup>2</sup> PHH represents that it has reviewed publically available information and historical automated valuation model data for each of the foreclosures at issue and has determined that none of the foreclosed properties had any equity, as calculated by subtracting any amounts owed by the borrowers (i.e., outstanding principal, interest due or past due, and other amounts due or past due), any junior liens at the time of foreclosure, and any disbursements made to the servicemember or a third party other than a junior lien holder from the proceeds of the foreclosure.



24. Any uncashed checks will be reported by PHH in accordance with state unclaimed property laws.
25. The identified servicemembers shall have six (6) months after issuance to cash or deposit their compensation checks. PHH shall, upon the request of the United States, reissue any checks that are not cashed or deposited prior to their expiration.
26. Within fourteen (14) days of the effective date of this Agreement, PHH shall deposit \$750,000 into an interest-bearing escrow account for the purpose of fulfilling its obligations under Paragraph 21. PHH shall provide written verification of the deposit to the United States within three (3) business days of depositing the funds described in this Paragraph. Any taxes, costs, or other fees incurred on the escrow funds shall be paid by PHH. PHH shall add funds to the escrow account as necessary to meet its obligations under Paragraph 21.
27. Any amounts remaining in the escrow account that have not been distributed to aggrieved persons or a state fund for unclaimed property within three years of the date of this Agreement shall be paid to the United States Treasury in the form of an electronic funds transfer pursuant to written instructions to be provided by the United States.

28. No individual may obtain review by the Parties of the identifications made, and amount of payments disbursed, pursuant to Paragraphs 20-25.

**D. OTHER RELIEF**

29. Concurrent with providing financial compensation to the aggrieved servicemembers, PHH must request that all credit bureaus to which it reports remove negative entries for the servicemembers and any co-borrowers attributable to the foreclosure.

**E. ADDITIONAL REPORTING AND RECORD-KEEPING REQUIREMENTS**

30. For the duration of this Agreement, PHH shall retain all records relating to its obligations hereunder, including its records with respect to all six loans at issue, loans for which it obtains a foreclosure without a court order during the term of this Agreement, and all records relating to compliance activities under this Agreement. The United States shall have the right to review and copy any such records, including electronic data, upon reasonable request.
31. During the term of this Agreement, PHH shall notify counsel for the United States in writing within fifteen (15) days of receipt of any written SCRA complaint or any other written complaint from a customer that claims a violation of, or claims a failure to properly

extend benefits under, the SCRA by PHH. PHH shall provide a copy of any such complaint with the notification to counsel for the United States. The notification to the United States shall include the full details of the complaint, including the complainant's name, address, and telephone number, and the full details of all actions PHH took to resolve the complaint. PHH shall also promptly provide the United States all information it may request concerning any such complaint. If the United States raises any objections to PHH's actions, the Parties shall meet and confer to consider appropriate steps to address any concerns raised by the United States.

#### **V. SCOPE OF SETTLEMENT AGREEMENT**

32. The provisions of this Agreement shall apply to PHH and any subsidiaries, predecessors, acquired companies, or successor entities. It shall also apply to the officers, employees, agents, representatives, assigns, successors-in-interest, and all persons and entities in active concert or participation with all of those entities, including with respect to any foreclosures it conducted from January 1, 2010 to September 24, 2018.
33. In the event that PHH is acquired by or merges with another entity, PHH shall, as a condition of such acquisition or merger, obtain the

written agreement of the acquiring or surviving entity to be bound by any obligations remaining under this Agreement for the remaining term of this Agreement.

34. This Agreement releases only the claims for violations of the SCRA addressed in the Complaint or identified in this Agreement. This Agreement does not release any other claims that may be held or are currently under investigation by any federal agency against PHH or any of its affiliated entities.
35. Nothing in this Agreement will excuse PHH's noncompliance with any currently or subsequently effective provision of law or order of a regulator with authority over PHH that imposes additional obligations on it.

## **VI. IMPLEMENTATION AND ENFORCEMENT**

36. The United States may review compliance with this Agreement at any time. PHH agrees to cooperate with the United States in any review of compliance with this Agreement. Upon reasonable notice, PHH shall permit counsel for the United States to inspect and copy all non-privileged records pertinent to this Agreement.
37. Within fourteen (14) days after the deposit of escrow funds as set forth in Paragraph 26, the Parties shall jointly move the Court for dismissal

of the underlying Civil Action, subject to reinstatement as set forth in Paragraph 38.

38. Should PHH materially breach any provision of this Agreement, the Parties agree that upon any such claim of breach as made by the United States, the United States may move to restore the Civil Action to the active docket of this Court for purposes of resolving any such claim of breach. In the event such a claim of breach is made by the United States, PHH consents to and agrees not to contest the United States' motion to restore the Civil Action to the Court's active docket.
- Alternatively, the United States may bring a civil action for breach of this Agreement or any provision thereof, in the United States District Court for the District of New Jersey. The United States may in such action seek to have the Court impose any remedy authorized at law or equity. The District of New Jersey shall serve as the exclusive jurisdiction and venue for any dispute concerning this Agreement.
- PHH consents to and agrees not to contest the exercise of personal jurisdiction over PHH by the United States District Court for the District of New Jersey. The Parties further acknowledge that venue in the District of New Jersey is appropriate and agree not to raise any challenge on this basis.

39. Before taking the steps outlined in Paragraph 37, the United States shall first provide PHH notice of any breach in writing and shall afford it fifteen (15) days from the date of mailing to cure the default.
40. The Parties shall endeavor in good faith to resolve informally any differences regarding interpretation of, or compliance with, this Agreement prior to initiating any court action.
41. In the event the United States reinstates the Civil Action as contemplated by Paragraph 38, above, or commences any other civil action to remedy breach of this Agreement, the United States may seek the following: (1) an order mandating specific performance of any term or provision in this Agreement, without regard to whether monetary relief would be adequate; (2) an award of reasonable attorneys' fees and costs incurred; and (3) any additional relief that may be authorized by law or equity. If the Civil Action is reinstated or any other such civil action is filed, Defendant expressly agrees not to count the time during which this Agreement is in place, or use the terms or existence of this Agreement, to plead, argue or otherwise raise any defenses under theories of claim preclusion, issue preclusion, statute of limitations, estoppel, laches, or similar defenses.

42. Failure by the United States to enforce any provision of this Agreement shall not operate as a waiver of the United States' right or ability to enforce any other provision of this Agreement.

#### **VII. TERMINATION OF LITIGATION HOLD**

43. The Parties agree that, as of the date of the dismissal of the Civil Action, litigation is not anticipated concerning the matters described in the United States' Complaint. To the extent that any Party previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described above, the Party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves any Party of any other obligations imposed by this Agreement.

#### **VIII. DURATION, EXECUTION, AND OTHER TERMS**

44. This Agreement is effective on the date of signature of the last signatory to the Agreement. The Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

45. The duration of this Agreement shall be for a period of two (2) years from the date of execution, except that the obligations in Paragraphs 21-27 shall continue until PHH has distributed all of the funds in the escrow account required by Paragraph 26.
46. Each Party shall bear its own legal and other costs incurred in connection with this litigation, including the preparation and performance of this Agreement, except as set forth in Paragraph 41.
47. This Agreement, including the Appendices, constitutes the complete agreement between the Parties. No prior or contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provision herein or in any other proceeding.
48. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion. The Parties agree that each Party and its representatives have acted consistent with the duties of good faith and fair dealing.
49. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.



50. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.
51. Except where this Agreement expressly conditions or predicates performance of a duty or obligation upon the performance of a duty or obligation by another Party, the performance of one Party's duties or obligations under this Agreement shall not be discharged or excused by the actual or alleged breach of the duties and obligations by another Party.
52. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.
53. The Parties agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is illegal or invalid.

54. This Agreement may be modified only with the written consent of the Parties. Any modifications must be in writing and signed by the Parties through their authorized representatives.
55. This Agreement is a public document. Both Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.
56. This agreement is binding on the Parties and their transferees, heirs, and assigns.
57. This Agreement is governed by and shall be interpreted under the laws of the United States.

*For the United States of America:*

Dated: ~~2/6/16~~ 2/6/19

CRAIG CARPENITO  
United States Attorney



MICHAEL E. CAMPION  
Chief, Civil Rights Unit  
CHRISTOPHER AMORE  
Assistant U.S. Attorney  
United States Attorney's Office

ERIC S. DREIBAND  
Assistant Attorney General  
Civil Rights Division



SAMEENA SHINA MAJEED  
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*For PHH Mortgage Corporation:*

Dated: FEBRUARY 6, 2019



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Justin Walker, Vice President, Legal  
On Behalf of PHH Mortgage Corporation

## APPENDIX A

### EMPLOYEE ACKNOWLEDGMENT

I acknowledge that on [INSERT DATE], I was provided training regarding Servicemembers Civil Relief Act (“SCRA”) compliance and copies of PHH Mortgage Corp.’s policies and procedures as they relate to the SCRA applicable to my duties. I have read and understand these documents and have had my questions about these documents and the SCRA answered. I understand my legal responsibilities and shall comply with those responsibilities.

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[PRINT NAME]

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[SIGNATURE]

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[JOB TITLE]

## APPENDIX B

### DECLARATION FOR FORECLOSURES UNDER SECTION 3953 OF THE SERVICEMEMBERS CIVIL RELIEF ACT, 50 U.S.C. § 3953

I, [INSERT FULL LEGAL NAME], do hereby declare and state as follows:

1. I owned a property at [INSERT STREET ADDRESS, CITY, STATE, AND ZIP CODE] that went to foreclosure on about [INSERT FORECLOSURE DATE].

2. I signed the note and mortgage or deed of trust for this property on about [INSERT LOAN ORIGINATION DATE]. At that time, I WAS NOT in any of the following types of military service:

- a) Full-time active duty with the armed forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard);
- b) A period of active service with the National Guard: (i) authorized by the President or the Secretary of Defense; (ii) longer than thirty (30) consecutive days; (iii) under orders issued under Section 502(f) of Title 32 of the United States Code; and (iv) for the purpose of responding to a national emergency declared by the President and supported by federal funds;
- c) Active service as a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration; or
- d) A period of time during which I was a servicemember absent from duty on account of sickness, wounds, leave, or other lawful cause.

3. On the above stated foreclosure date: (1) I WAS in one of the following types of military service; **OR** (2) I WAS a member of a reserve component and had received orders to report for one of the following types of military service, and I had not yet reported for that service (and those orders had not been revoked); **OR** (3) I HAD BEEN in at least one of the following types of military service within the NINE MONTHS preceding my foreclosure date:

- a) Full-time active duty with the armed forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard);
- b) A period of active service with the National Guard: (i) authorized by the President or the Secretary of Defense; (ii) longer than thirty (30) consecutive days; (iii) under orders issued under Section 502(f) of Title 32 of the United States Code; and (iv) for the purpose of responding to a national emergency declared by the President and supported by federal funds;
- c) Active service as a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration;

- d) A period of time during which I was a servicemember absent from duty on account of sickness, wounds, leave, or other lawful cause; or
- e) A member of a reserve component who had received orders to report for one of the forms of military service listed above.

4. Please consider the following additional information (if any) in support of this Declaration:

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I declare under penalty of perjury that the foregoing is true and correct.

Signature: \_\_\_\_\_

Print full legal name: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX C**

**RELEASE**

In consideration for the parties' agreement to the terms of the Settlement Agreement resolving United States v. PHH Mortgage Corp., Case No. 19-cv-4767 (D.N.J.), and PHH Mortgage Corp.'s payment to me of \$125,000.00, pursuant to the Settlement Agreement, I hereby release and forever discharge all claims, arising prior to the date of this Release, related to the facts at issue in the litigation referenced above and related to the alleged violations of Section 3953 of the Servicemembers Civil Relief Act, that I may have against PHH Mortgage Corp., all related entities, parents, predecessors, successors, subsidiaries, and affiliates, and all of its past and present directors, officers, agents, managers, supervisors, shareholders, and employees and its heirs, executors, administrators, successors or assigns. I also agree this Release resolves any complaints I have or could have made to any state or federal government entity regarding matters subject to this Release.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[PRINT NAME]

\_\_\_\_\_  
[SIGNATURE]