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8 Attorneys for Complainant

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10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) CRMLA LICENSE NO.: 41DBO-189007
13 THE COMMISSIONER OF FINANCIAL) CONSENT ORDER
PROTECTION AND INNOVATION,)
14 Complainant,)
15 v.)
16 ADVISORS MORTGAGE GROUP, LLC,)
17 Respondent.)
18)
19)

20 This Consent Order is entered into between the Commissioner of Financial Protection and
21 Innovation (Commissioner) of the Department of Financial Protection and Innovation (Department)
22 and Respondent Advisors Mortgage Group LLC (AMG) and is made with respect to the following
23 facts:

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25 **I.**
26 **RECITALS**

27 A. The Commissioner has jurisdiction over the licensing and regulation of entities
28 engaged in the business of a residential mortgage lender and servicer under the California
Residential Mortgage Lending Act, commencing at Fin. Code, § 50000 et seq. (CRMLA).

1 B. AMG is a residential mortgage lender and servicer licensed by the Commissioner
2 pursuant to the CRMLA with license number 41DBO-189007.

3 C. AMG's principal place of business is located at 1411 Highway 35, Ocean, NJ 07712.

4 D. On or about May 14, 2018, the Commissioner commenced a regulatory examination
5 of the books and records of AMG pursuant to section 50302 of the CRMLA covering the period
6 from April 1, 2015 to March 31, 2018 (2018 Regulatory Exam).

7 E The 2018 Regulatory Exam revealed that AMG committed several violations of the
8 CRMLA, including:

9 i. Conducting unlicensed servicing activity for the period January 1, 2014 to August
10 14, 2015, in violation of Financial Code section 50002(a) and Financial Code
11 section 50130(a).

12 ii. Failing to properly reconcile the Company's trust bank accounts in violation of
13 Financial Code section 50202(a) and California Code of Regulations section
14 1950.314.1.

15 iii. Failing to accurately report in the CRMLA Annual Report and NMLS Mortgage
16 Call Report in violation of Financial Code section 50307 and Financial Code
17 section 50401.

18 F. On or around December 3, 2021, the Commissioner commenced another regulatory
19 examination of the books and records of AMG pursuant to Section 50302 of the CRMLA covering
20 the period from June 1, 2018 to June 30, 2021 (2021 Regulatory Exam).

21 G. The Regulatory Exam disclosed that in 8 out of 21 loan files reviewed (38%), AMG
22 charged borrowers per diem interest in excess of one day prior to the date that the loan proceeds
23 were disbursed from escrow, in violation of Financial Code section 50204, subdivision (o) and Civil
24 Code section 2948.5.

25 H. On or around March 9, 2022, the Department directed AMG to conduct a self-audit of
26 all loans originated in California from May 14, 2018 to March 9, 2022 to determine the number and
27 amount of per diem interest overcharges, including but not limited to: the borrower loan number,
28 name, loan amount, interest rate, date funds were disbursed by the settlement agent, interest start

1 date, interest end date, amount of interest collected, correct amount of interest, interest overcharged,
2 10% interest, amount of refund check, date refunded, and first payment due date (self-audit report).

3 I. On or about June 7, 2022, AMG submitted a self-audit report that disclosed 34 out of
4 104 loan files (31%) in which AMG overcharged borrowers per diem interest, in violation of
5 Financial Code section 50204(o) and Civil Code section 2948.5. Pursuant to Financial Code section
6 50504 (b), between on or around January 17, 2022, and May 23, 2022, AMG issued refunds to 34
7 borrowers identified in the self-audit report in the amount of the overcharge plus interest at the rate
8 of 10% per annum from the date of the overcharge.

9 J. In addition to the violation outlined above, the 2021 Regulatory Exam revealed the
10 following repeat violations of the CRMLA, which were also noted in the 2018 Regulatory Exam:

- 11 i. Failing to properly reconcile the Company’s trust bank accounts in violation
12 of Financial Code section 50202(a) and California Code of Regulations
13 section 1950.314.1.
- 14 ii. Failing to accurately report in the CRMLA Annual Report and Nationwide
15 Multistate Licensing System & Registry (NMLS) Mortgage Call Report in
16 violation of Financial Code section 50307 and Financial Code section 50401.

17 K. The Commissioner finds that entering into this Consent Order is in the public interest
18 and consistent with the purposes fairly intended by the policies and provisions of the CRMLA.

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

21 **II.**

22 **TERMS AND CONDITIONS**

23 1. Purpose. This Consent Order resolves the issues before the Commissioner set forth in
24 Paragraphs A through K above in a manner that avoids the expense of a hearing and other possible
25 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes,
26 policies, and provisions of the CRMLA.

27 2. Order to Discontinue Violations. AMG hereby agrees that in accordance with
28 Financial Code sections 50321 and 50323, it will immediately discontinue violating Financial Code

1 sections 50124, subdivision (a)(2) and 50204, subdivision (o); Financial Code section 50307;
2 Financial Code section 50401 subdivision (a); Financial Code section 50002 subdivision (a);
3 Financial Code section 50130(a); California Code of Regulations, title 10, section 1950.314,
4 subdivision (d)(5)(D); and Civil Code section 2948.5.

5 3. Independent Audit.

6 a. AMG shall engage at its own expense an independent third-party auditor
7 (Auditor) that is reasonably acceptable to the Department to conduct an internal review of AMG's
8 California loans regarding per diem interest (Financial Code section 50204, subdivision (o) and Civil
9 Code section 2948.5) and trust fund reconciliations (Financial Code section 50202(a) and California
10 Code of Regulations section 1950.314.1).

11 b. AMG shall contract with the Auditor for the services described herein within
12 thirty (30) calendar days of the Effective Date of this Consent Order as defined in Paragraph 28.

13 c. The Auditor shall conduct an examination of AMG's loan originations from
14 March 10, 2022, through a twelve-month period after the Effective Date of this Consent Order, in
15 order to conduct an independent audit and produce compliance reports (Independent Audit Reports)
16 containing the information specified in paragraph 4. The Independent Audit Reports shall be
17 submitted to the Department to the attention of Jari Binder at Jari.Binder@dfpi.ca.gov according to
18 the schedule specified in paragraph 3(d) below.

19 d. The audit shall commence no later than sixty (60) calendar days from the
20 Effective Date of this Consent Order. The Independent Auditor shall submit audit reports on a
21 quarterly basis as follows:

- 22 i. The first audit report shall cover all California loans originated and funded
23 by AMG from and including March 10, 2022 through and including
24 December 31, 2022 and shall be submitted to the Department by no later
25 than four (4) months after the Effective Date of this Consent Order
26 (January 5, 2025).
- 27 ii. The second audit shall cover all California loans originated and funded by
28 AMG from January 1, 2023 through October 31, 2023, and shall be

1 submitted to the Department no later than eight (8) months after the
2 Effective Date of this Consent Order (May 5, 2025).

3 iii. The third audit shall cover all of California loans originated and funded by
4 AMG from November 1, 2023 through August 31, 2024, and shall be
5 submitted to the Department no later than 12 months after the Effective
6 Date of this Consent Order (September 5, 2025).

7 iv. The fourth audit shall cover all of California loans originated and funded
8 by AMG from September 1, 2024 through the end of the twelve-month
9 period identified in paragraph 3(c), and shall be submitted to the
10 Department no later than 16 months after the Effective Date of this
11 Consent Order (January 5, 2026).

12 e. AMG agrees to refund with ten (10) percent interest (per annum) all of the
13 borrowers identified by the Independent Audit reports who were charged excessive per diem interest.
14 AMG agrees to mail the refunds no later than ten (10) business days following receipt of the
15 Independent Auditor’s findings. No later than ninety (90) calendar days after the Independent
16 Auditor submits a report to the Department, AMG shall notify the Commissioner of any refund
17 payment that has been returned or remains outstanding. AMG shall be responsible for ensuring that
18 any outstanding refund payment owed to any borrower is escheated to the State of California
19 pursuant to the provisions of the California Unclaimed Property law (Code of Civ. Pro., § 1500 et
20 seq.).

21 f. AMG shall also pay an administrative penalty of the following amounts for
22 each new violation found by the Independent Auditor: (i) one thousand dollars (\$1,000) per violation
23 for each violation involving a per diem overcharge; and (ii) twenty-five thousand dollars (\$25,000)
24 for each violation involving a trust fund shortage. The payment for these penalties shall be made
25 withing ten (10) business days from the receipt of the respective Independent Auditor report and
26 made payable to the Department according to the payment instructions in paragraph 7 below.

27 4. Scope of Audit Reports. All Reports shall include, at a minimum, and unless
28 otherwise defined herein, the following information:

1 a. The total number of loans originated and/or serviced by AMG in California.

2 b. With respect to per diem charges, an accounting of all per diem fees
3 associated with all California loans originated and/or funded by AMG, identifying each and every
4 loan with any per diem overcharge to the borrower. For each identified overcharge, provide, if
5 applicable, the borrower's loan number, borrower name, address, loan amount, loan origination
6 and/or funding date, interest rate, disbursement date, date per diem interest charged, number of days
7 per diem interest overcharged, overcharge amount, date of refund, proof of refund, and whether the
8 overcharge was previously reported. Provide an accounting of all refunds made by AMG for
9 identified overcharges.

10 c. With respect to trust account records, a summary of the review of all trust
11 fund accounting for California loans and whether any trust fund shortages were found, including the
12 following: a summary of the application of the funding policies and procedures; the timing for trust
13 fund liability recognition and deposit of trust funds into the trust account; if applicable, the handling
14 of trust funds for loan cancellation; the handling of borrower's interim payment(s); and an
15 explanation of how trust fund debit balances are being handled.

16 5. Payment of Refunds. AMG affirms that to date it has made refunds for Per Diem
17 Interest Overcharges totaling \$3,778.68 based on the self-audit covering the period May 14, 2018 to
18 March 9, 2022 per paragraph H.

19 6. Declaration of Policies and Procedures. AMG has submitted to the Commissioner the
20 policies and procedures that have been implemented as of the date of this Consent Order by AMG to
21 ensure compliance with the violations listed in paragraph 2. The Commissioner has reviewed and
22 determined that the policies and procedures are satisfactory. AMG agrees to continue implementing
23 those policies and procedures in the future.

24 7. Penalties. AMG shall pay a penalty in the amount of \$80,000.00 for the violations set
25 forth in Paragraph E through J above no later than 30 days after the Effective Date of this Consent
26 Order as defined in Paragraph 28 below. The penalty shall be made payable in the form of a
27 cashier's check or Automated Clearing House deposit to the Department of Financial Protection and
28 Innovation and transmitted to the attention of Accounting – Litigation, at the Department of

1 Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95814-2306.
2 Notice of the payment must be concurrently sent to Jari Binder via e-mail at:
3 Jari.Binder@dfpi.ca.gov.

4 8. Waiver of Hearing Rights. AMG acknowledges that the Commissioner is ready,
5 willing, and able to proceed with the filing of an administrative enforcement action on the charges
6 contained in this Consent Order. AMG hereby waives the right to any hearings, and to any
7 reconsiderations, appeal, or other right to review which may be afforded pursuant to the CRMLA,
8 the California Administrative Procedure Act, the California Code of Civil Procedure, or any other
9 provision of law. AMG further expressly waives any requirement for the filing of an Accusation
10 pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights, AMG
11 effectively consents to this Consent Order and Order to Discontinue Violations becoming final.

12 9. Failure to Comply with Consent Order. AMG agrees that if it fails to comply with
13 the terms of this Consent Order, the Commissioner may, in addition to all other available remedies
14 she may invoke under the CRMLA, deny any application and/or summarily suspend or revoke any
15 license granted by the Commissioner to AMG until AMG is in compliance. AMG waives any notice
16 and hearing rights to contest such denial or summary suspension or revocation concerning its failure
17 to comply with the terms of the Consent Order, which may be afforded under the CRMLA, the
18 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
19 provision of law in connection therewith.

20 10. Information Willfully Withheld or Misrepresented. This Consent Order may be
21 revoked and the Commissioner may pursue any and all remedies available under law against AMG if
22 the Commissioner discovers that AMG knowingly or willfully withheld or misrepresented
23 information used for and relied upon in this Consent Order.

24 11. Future Actions by Commissioner. If AMG fails to comply with any terms of the
25 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
26 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
27 against AMG, or any of their partners, owners, officers, shareholders, directors, employees or
28 successors for any and all unknown violations of the CRMLA and Financial Code.

1 12. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
2 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
3 administrative, civil or criminal brought by that agency against AMG or any other person based
4 upon any of the activities alleged in this matter or otherwise.

5 13. Headings. The headings to the paragraphs of this Consent Order are inserted for
6 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
7 the provisions hereof.

8 14. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
9 interest.

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

19 16. No Presumption Against Drafting Party. Each party acknowledges that it has had the
20 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
21 intend that no presumption for or against the drafting party will apply in construing any part of this
22 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
23 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
24 language of a contract should be interpreted most strongly against the party that caused the
25 uncertainty to exist.

26 17. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
27 has received independent advice from its attorney(s) and/or representatives with respect to the
28 advisability of executing this Consent Order.

1 18. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
2 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
3 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
4 provision. No waiver by either party of any breach of, or of compliance with, any condition or
5 provision of this Consent Order by the other party will be considered a waiver of any other condition
6 or provision or of the same condition or provision at another time.

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

13 20. Governing Law. This Consent Order shall be construed and enforced in accordance
14 with and governed by California law. Each of the parties hereto consents to the jurisdiction of such
15 court in California, administrative or otherwise, best suited to handle any action or proceeding under
16 this Consent Order, and hereby irrevocably waives, to the fullest extent permitted by law, the
17 defense of an inconvenient forum to the maintenance of such action or proceeding in such court.

18 21. Counterparts. This Consent Order may be executed in one or more separate
19 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
20 together constitute a single document.

21 22. Effect Upon Future Proceedings. If AMG applies for any license, permit or
22 qualification under the Commissioner’s current or future jurisdiction, or are the subject of any future
23 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
24 admitted for the purpose of such application(s) or enforcement proceeding(s).

25 23. Voluntary Agreement. AMG enters into this Consent Order voluntarily and without
26 coercion and acknowledges that no promises, threats or assurances have been made by the
27 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
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1 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
2 without any duress or undue influence of any kind from any source.

3 24. Notice. Any notice required under this Consent Order shall be provided to each party
4 at the following addresses:

5 To AMG:

6 Annmarie Weber, 1411 Highway 35, Ocean, NJ 07712;

7 aweber@advisorsmortgage.com

8 To the Commissioner:

9 Jari Binder, Counsel, Enforcement Division, Department of Financial Protection and

10 Innovation, 320 West 4th Street, Suite 750, Los Angeles, California 90013;

11 Jari.Binder@dfpi.ca.gov

12 26. Signatures. A fax or electronic mail signature shall be deemed the same as an
13 original signature.

14 27. Public Record. AMG hereby acknowledges that this Consent Order is and will be a
15 matter of public record.

16 28. Effective Date. This Consent Order shall become final and effective when signed by
17 all parties and delivered by the Commissioner's counsel via e-mail to AMG at
18 dcasseres@mitchellsandler.com.

19 29. Authority to Sign. Each signatory hereto covenants that he/she possesses all
20 necessary capacity and authority to sign and enter into this Consent Order and undertake the
21 obligations set forth herein.

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23 Dated: September 17, 2024

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

24
25
26 By _____
27 MARY ANN SMITH
28 Deputy Commissioner
Enforcement Division

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Dated: September 16, 2024

ADVISORS MORTGAGE GROUP, LLC.

By _____
Steven Meyer
President