

1 CLOTHILDE V. HEWLETT  
Commissioner  
2 MARY ANN SMITH  
Deputy Commissioner  
3 AMY J. WINN  
Assistant Chief Counsel  
4 UCHE L. ENENWALI (State Bar No. 235832)  
Senior Counsel  
5 Department of Financial Protection and Innovation  
320 West 4<sup>th</sup> Street, Suite 750  
6 Los Angeles, California 90013  
Telephone: (213) 503-4203  
7 Facsimile: (213) 576-7181

8 Attorneys for Complainant

9  
10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
11 OF THE STATE OF CALIFORNIA

12 In the Matter of: ) CRMLA LICENSE NO. 41DBO-45971  
13 )  
14 THE COMMISSIONER OF FINANCIAL ) CONSENT ORDER  
PROTECTION AND INNOVATION, )  
15 )  
Complainant, )  
16 v. )  
17 DAS ACQUISITION COMPANY, LLC, an )  
individual, )  
18 )  
Respondent. )  
19 )  
20 )

21 I.

22 **RECITALS**

23 A. The Commissioner of Financial Protection and Innovation (Commissioner) and DAS  
24 Acquisition Company, LLC (Respondent or DAS) (collectively the Parties), enter this Consent Order  
25 with respect to the following facts:

26 B. At all relevant times, DAS is, or was, a Missouri limited liability company with a  
27 business address at 12140 Woodcrest Executive Drive, Ste. 150, St. Louis, Missouri 63141.

28 C. Linda Pring is DAS' chief executive officer.

1 D. DAS is a residential mortgage lender licensed by the Commissioner on September 14,  
2 2015, pursuant to the California Residential Mortgage Lending Act (CRMLA) (California Financial  
3 Code Section 50000 et seq.). DAS currently operates 16 active branch office locations in California  
4 and employs mortgage loan originators under its CRMLA license.

5 E. The Commissioner finds that since at least November 9, 2020, DAS was engaged in  
6 the business of a residential mortgage lender as defined under the CRMLA.

7 F. On November 9, 2020, the Commissioner commenced a regulatory examination of  
8 the books and records of DAS at its branch office located at 12140 Woodcrest Executive Drive, Ste.  
9 150, St. Louis, Missouri 63141 (the 2020 regulatory examination).

10 G. Before the 2020 regulatory examination, on March 20, 2019, the Commissioner  
11 conducted a regulatory examination of the books and records of DAS at 12140 Woodcrest Executive  
12 Drive, Ste. 150, St. Louis, Missouri 63141 (the 2019 regulatory examination).

13 H. The 2019 and 2020 regulatory examinations disclosed that DAS conducted business  
14 as a residential mortgage lender unlawfully by overcharging borrowers per diem interest in violation  
15 of Financial Code section 50204(o) and Civil Code section 2948.5. DAS was previously cited for  
16 overcharging per diem interest in the 2019 regulation examination.

17 I. Financial Code section 50204(o) and Civil Code section 2948.5 prohibit lenders from  
18 requiring a borrower to pay interest for more than one day prior to the disbursement of loan proceeds  
19 from an escrow. California Code of Regulation section 1457(d) states that “charges on a loan  
20 secured by real property may be collected and received only from the date of closing of the escrow,  
21 when the loan proceeds are disbursed by the escrow holders, except as provided by Civil Code  
22 section 2948.5.”

23 J. The 2020 regulatory examination revealed that DAS overcharged per diem interest to  
24 borrowers in two out of seventeen originated loan files reviewed, or 11.76%.

25 K. On October 14, 2022, the Commissioner directed DAS to conduct an internal audit  
26 covering the period from November 1, 2018, to October 2022, and provide an audit report showing  
27 (a) the number of transactions with per diem interest overcharges; (b) documents showing that  
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1 refunds of the per diem interest overcharges were issued to borrowers and (c) evidence that DAS has  
2 implemented policies and procedures to prevent future overcharge of per diem interests.

3 L. DAS submitted to the Commissioner an initial audit report detailing the findings of  
4 the audits described in paragraph K above. DAS' audit report failed to show the date of  
5 disbursement in 35 loan files, or that DAS properly refunded excess per diem interest to borrowers.  
6 DAS refunded per diem interest overcharges with a flat rate of 10% instead of refunding borrowers  
7 10% interest per annum as required under section 50504. Further, DAS failed to provide evidence  
8 satisfactory to the Commissioner showing it has implemented adequate policies and procedures to  
9 prevent future violations.

10 M. DAS produced a supplemental audit report (Supplemental Audit) covering the period,  
11 October 31, 2022, to November 24, 2023, showing it allegedly issued refunds in 179 loan files. DAS  
12 provided proof of the refunds for some of the loans only. A review of sampled 35 loan files  
13 referenced in DAS' Supplemental Audit showed DAS issued full refunds totaling \$3,791.03 in 25  
14 instead of 179 loan files within 30 days of their respective disbursement dates. DAS refunded per  
15 diem overcharges totaling \$29,490.17 in 154 loan files after the Commissioner directed it to conduct  
16 a self-audit. DAS failed to fully refund excess charges totaling \$14.45 in four loans. The  
17 Commissioner determined that DAS has implemented adequate quality control measures to ensure  
18 excess per diem overcharges do not recur.

19 N. The Commissioner's receipt of the audit report does not constitute an approval that  
20 the audit reports are correct and does not otherwise limit the Commissioner's audit or examination  
21 rights under this Consent Order.

22 O. It is the intention and desire of the Parties to resolve this matter without the necessity  
23 of a hearing and/or other litigation.

24 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set  
25 forth herein, the Parties agree as follows:

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**II.**

**TERMS AND CONDITIONS**

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

2. Finality of Consent Order. DAS agrees to comply with this Consent Order and stipulates this Consent Order is hereby deemed final.

3. Order to Discontinue Violations. DAS hereby agrees, and the Commissioner orders, that in accordance with Financial Code section 50321, DAS Acquisition Company, LLC, will immediately discontinue the violations set forth herein.

4. Penalties. DAS shall pay to the Commissioner penalties in the amount of \$240,000.00 no later than 30 days after the Effective Date set forth in Paragraph 35. The penalties must be made payable in the form of a cashier’s check or Automated Clearing House deposit transmitted to the attention of Accounting – Litigation, at the Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent to Uche Enenwali, Senior Counsel, Enforcement Division, via electronic mail at uche.enenwali@dfpi.ca.gov.

5. Investigative Cost. DAS shall pay the Commissioner’s Investigative Costs (Costs) in the amount of \$10,000.00 no later than 30 days after the Effective Date set forth in Paragraph 35. The investigative costs must be made payable in the form of a cashier’s check or Automated Clearing House deposit transmitted to the attention of Accounting – Litigation, at the Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent to Uche Enenwali, Senior Counsel, Enforcement Division, via electronic mail at uche.enenwali@dfpi.ca.gov.

6. Independent Audit Reports: DAS agrees to engage (at its own expense) an independent certified public accountant(s) or certified public accounting firm, or compliance

1 auditing firm, approved by the Commissioner, (Independent Auditor) to conduct an Independent  
2 Audit for from November 1, 2022, to December 31, 2024, as follows:

- 3 (i) The first audit shall cover the period from November 1, 2022, through  
4 November 30, 2023, and will be due December 31, 2024.
- 5 (ii) The second audit: will cover the period from December 1, 2023, through  
6 December 31, 2024, and will be due on January 31, 2025.

7 Each report of the Independent Auditor shall be electronically mailed to the Commissioner's agent  
8 at: uche.enenwali@dfpi.ca.gov.

9 7. Scope of Audit Reports. For the report under paragraph 6 above, each report of the  
10 Independent Auditor shall include, at a minimum, the following:

- 11 a. The total number of California loans originated and funded by DAS for the  
12 periods specified in paragraph 6.
- 13 b. the number of California loans with per diem interest in excess of the amount  
14 permitted by California Financial Code sections 50204(0) and California Civil  
15 Code section 2948.5. For each loan, the borrower loan number, name, address,  
16 loan amount, loan date, per diem interest charged, per diem interest that should  
17 have been charged under California Financial Code sections 50204(0) and  
18 California Civil Code section 2948.5, overcharge amount (if any), date of refund  
19 (if applicable), and proof of refund (if applicable).

20 8. Customer Refunds. Pursuant to Financial Code section 50504(b), DAS agrees to  
21 refund any amounts of per diem interest charged in excess of that permitted under Financial Code  
22 section Financial Code section 50204(o) and Civil Code section 2948.5 as follows:

- 23 (i) DAS shall issue refunds for all excess per diem overcharges it collected from  
24 California customers in violation of Financial Code section 50204(o), and  
25 Civil Code section 2948.5(b)(2), from date of loan closing through the  
26 Effective Date, and which DAS had not already provided a consumer refund,  
27 by no later than 60 calendar days after the Effective Date (Refunds). The  
28 refunds shall include interest at the rate of 10 percent per annum from the date

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of loan closing for all overcharges found pursuant to the audits described in Paragraphs 6 and 7.

(ii) All Refunds shall be paid via credit chargeback to the California customer’s credit/bank account of record listed in DAS’ records. Should the credit chargeback be rejected or otherwise fails to process within 15 business days, DAS, directly or through an agent, shall send a refund check by first class mail to the California customer’s last known postal mail address listed in DAS’ records, unless new address information has been provided by the customer pursuant to Paragraph 32. Each Refund check shall be mailed with a request for address correction on the outside of each envelope. DAS, directly or through an agent, shall re-send all Refund checks returned by the United States Postal Service with a forwarding or corrected address.

(iii) No later than 70 calendar days after the Effective Date, notice of the refund payments shall be sent to the Commissioner at the Notice address in Paragraph 32. With this notice, DAS shall also provide a report containing the customer’s name, address, and amount of the refund.

9. Notice to Consumers. At least 14 business days before the issuance of the Refunds, DAS shall send a notice to each customer owed a refund for which DAS has such contact information (Consumer Notice). Such Consumer Notice shall be sent to the customer’s last known e-mail address. The Customer Notice shall say:

Pursuant to a settlement with the California Department of Financial Protection and Innovation, DAS is issuing you a refund of per diem interest it overcharged you in excess of the amount permitted under Financial Code section 50204(o), and Civil Code section 2948.5(b)(2). This refund will be credited to your credit or debit card account on file with DAS. If this refund cannot be successfully processed within fifteen (15) business days, we will send the refund by check via U.S. Mail to the address you provided to DAS. If you do not receive the refund via your credit or debit account or need to update your credit/debit account information or address or to confirm your existing address information, please contact us immediately at PHONE NUMBER or via e-mail at dploch@dasacquisition.com.

1 The Consumer Notice shall not be accompanied by any other documents or text when emailed to  
2 consumers unless first approved by the Commissioner.

3 10. No Consumer Waiver. Payment of a refund to any consumer under this Consent  
4 Order may not be conditioned on that consumer waiving any right.

5 11. Handling of Uncashed Checks. DAS shall escheat any returned or unclaimed refunds  
6 to the California State Controller's Office within the period provided by the Code of Civil Procedure  
7 section 1520 of the Unclaimed Property Law (Cal. Civ. Proc. §§ 1500-1582). In the event of escheat,  
8 notice shall be sent within five business days to the Commissioner at the Notice address in Paragraph  
9 32 and shall include a copy of any escheatment report(s) submitted to the California State Controller.

10 12. Declaration of Policies and Procedures. DAS agrees to submit to the Commissioner a  
11 declaration under the penalty of perjury (Declaration) satisfactory to the Commissioner from an  
12 officer with personal knowledge of DAS' policies and procedures that sets forth all policies and  
13 procedures that have been implemented as of the date of this Oder by DAS to ensure compliance  
14 with Financial Code sections 50204(o), and California Civil Code section 2948.5.

15 13. Failure to File Timely or Complete Reports Concerning Audits or Refunds. DAS  
16 agrees that if it fails to meet any deadline or any requirement in Paragraphs 6 through 11 (regarding  
17 the independent auditor's internal review and refunds), DAS shall immediately notify the  
18 Department of such failure and cooperate with the Department to cause such failure to be rectified as  
19 soon as reasonably practicable, but no later than thirty (30) calendar days after notice is provided by  
20 DAS. DAS agrees that failure to abide by these terms shall constitute grounds for immediate  
21 suspension of its CRMLA license number 41DBO-45971 in accordance with the provisions set forth  
22 in Paragraph 17 of this Consent Order. DAS hereby waives any notice and hearing rights to contest  
23 the immediate suspension resulting from failure to comply with Paragraphs 6 through 11 above that  
24 may be afforded under the Financial Code, the Administrative Procedure Act, the Code of Civil  
25 Procedure, or any other legal provisions.

26 14. Failure to make Timely or Sufficient Refunds. DAS agrees that if it fails to meet any  
27 deadline or any requirement in Paragraphs 6 and 11 above (regarding payment of outstanding  
28 refunds), other than inadvertent and isolated errors that are promptly corrected by DAS within thirty

1 (30) calendar days, its CRMLA license number 41DBO-45971 shall be immediately suspended in  
2 accordance with the provisions set forth in Paragraph 17 of this Consent Order. DAS hereby waives  
3 any notice and hearing rights to contest the immediate suspension resulting from failure to comply  
4 with Paragraph 8 above that may be afforded under the Financial Code, the Administrative  
5 Procedure Act, the Code of Civil Procedure, or any other legal provisions.

6 15. Waiver of Hearing Rights. DAS acknowledges the Commissioner is ready, willing,  
7 and able to proceed with the filing of an administrative action on the charges contained in this  
8 Consent Order. DAS waives the right to any hearings, and to any reconsideration, appeal, or other  
9 right to review which may be afforded pursuant to the CSL, the California Administrative Procedure  
10 Act, the California Code of Civil Procedure, or any other provision of law; and by waiving such  
11 rights, DAS effectively consents to this Consent Order becoming final, including those rights under  
12 CRMLA, the California Administrative Procedure Act, the California Code of Civil Procedure, or  
13 any other provision of law, and to judicial review of this matter pursuant to California Code of Civil  
14 Procedure section 1094.5 with respect to the issuance of this Consent Order and the order to  
15 discontinue violations, order assessing penalties contained herein.

16 16. Full and Final Settlement. The parties hereby acknowledge and agree that this  
17 Consent Order is intended to constitute a full, final, and complete resolution of the violations  
18 described herein, and that no further proceedings or actions will be brought by the Commissioner in  
19 connection with these matters except under CRMLA or any other provision of law, excepting  
20 therefrom any proceeding to enforce compliance with the terms of this Consent Order.

21 17. Failure to Comply with Consent Order. DAS agrees that if it fails to comply with the  
22 terms of this Consent Order, the Commissioner may, in addition to all other available remedies it  
23 may invoke under the CRMLA, summarily suspend/revoke the CRMLA licenses of DAS until DAS  
24 is in compliance. DAS waives any notice and hearing rights to contest such summary suspensions  
25 which may be afforded under the CRMLA, the California Administrative Procedure Act, the  
26 California Code of Civil Procedure, or any other provision of law in connection therewith.

27 18. Information Willfully Withheld or Misrepresented. Notwithstanding paragraph 23  
28 this Consent Order may be revoked, and the Commissioner may pursue any and all remedies



1 available under law against DAS if the Commissioner discovers that DAS knowingly or willfully  
2 withheld or misrepresented material information.

3 19. Future Actions by Commissioner. If DAS fails to comply with any terms of the  
4 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise  
5 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions  
6 against DAS, or any of its partners, owners, officers, shareholders, directors, employees or  
7 successors for any and all unknown violations of the CRMLA.

8 20. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's  
9 ability to assist any other government agency (city, county, state, or federal) with any prosecution,  
10 administrative, civil or criminal brought by that agency against DAS or any other person based upon  
11 any of the activities alleged in this matter or otherwise.

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

15 22. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in  
16 interest.

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

26 24. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of  
27 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.  
28 The waiver of any provision of this Consent Order will not be deemed a waiver of any other

1 provision. No waiver by either party of any breach of, or of compliance with, any condition or  
2 provision of this Consent Order by the other party will be considered a waiver of any other condition  
3 or provision or of the same condition or provision at another time.

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

10 26. No Presumption Against Drafting Party. Each party acknowledges that it has had the  
11 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the Parties  
12 intend that no presumption for or against the drafting party will apply in construing any part of this  
13 Consent Order. The Parties waive the benefit of California Civil Code section 1654 as amended or  
14 corresponding provisions of any successor statute, which provide that in cases of uncertainty,  
15 language of a contract should be interpreted most strongly against the party that caused the  
16 uncertainty to exist.

17 27. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that it  
18 has received, or had the opportunity to receive, independent advice from its or his or her attorney(s)  
19 and/or representatives with respect to the advisability of executing this Consent Order.

20 28. Governing Law. This Consent Order will be governed by and construed in  
21 accordance with California law. Each of the parties hereto consent to the jurisdiction of such court,  
22 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient  
23 forum to the maintenance of such action or proceeding in such court.

24 29. Effect Upon Future Proceedings. If DAS applies for any license, permit or  
25 qualification under the Commissioner's current or future jurisdiction or are the subject of any future  
26 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be  
27 admitted for the purpose of such application(s) or enforcement proceedings(s).

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1           30.    Voluntary Agreement. DAS enters this Consent Order voluntarily and without  
2 coercion and acknowledges that no promises, threats or assurances have been made by the  
3 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent  
4 and acknowledge that they are executing this Consent Order completely voluntarily and without any  
5 duress or undue influence of any kind from any source.

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

9           32.    Notice. Any notice required under this Consent Order shall be provided to each party  
10 at the following addresses:

11           To Respondents                                   Dani Ploch, Chief Operating Officer  
12    DAS Acquisition Company, LLC  
13    12140 Woodcrest Executive Drive, Ste 150,  
14    Saint Louis, MO 63141  
15    dploch@dasacquisition.com

16           To the Commissioner:                               Uche L. Enenwali, Senior Counsel  
17    Department of Financial Protection and Innovation  
18    320 West 4th Street, Suite 750  
19    Los Angeles, California 90013  
20    Uche.Enenwali@dfpi.ca.gov.

21           33.    Signatures. A fax or electronic mail signature shall be deemed the same as an original  
22 signature.

23           34.    Public Record. DAS hereby acknowledges that this Consent Order is a matter of  
24 public record.

25           35.    Effective Date. This Consent Order shall become final and effective when signed by  
26 all parties and delivered by the Commissioner's agent via e-mail to Dani Ploch at  
27 dploch@dasacquisition.com.  
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36. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: October 25, 2024  
Los Angeles, California

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

DAS ACQUISITION COMPANY, LLC

Dated: October 25, 2024

By \_\_\_\_\_  
DANI PLOCH  
Chief Operating Officer  
On behalf of DAS Acquisition Company, LLC