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

13 In the Matter of:) OAH Case No.: 2016040686
14 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CRMLA License No. 413-0960
15) NMLS No. 142084
16 Complainant,)
17 v.) CONSENT ORDER
18 ALLIANCE FINANCIAL RESOURCES, LLC,)
19 Respondent.)

21 This Consent Order (“Consent Order”) is entered into between the California Commissioner
22 of Business Oversight (the “Commissioner”) and Alliance Financial Resources, LLC (“Alliance”)
23 (collectively, the “Parties”), and is made with respect to the following facts:

24 I.

25 **RECITALS**

26 A. Alliance is a limited liability company in good standing, duly formed and existing
27 pursuant to the laws of the State of Arizona, and authorized to conduct business in California.

28 B. Alliance is a residential mortgage lender licensed by the Commissioner under the

1 California Residential Mortgage Lending Act (“CRMLA”) (Fin. Code, § 50000 et seq.), license
2 number 413-0960 (Nationwide Mortgage Licensing System (“NMLS”) No. 142084). Alliance’s
3 principal place of business is located at 5410 East High Street, Suite 200, Phoenix, Arizona 85054.
4 Alliance employs mortgage loan originators.

5 C. At all relevant times, Jamie Korus (“Korus”) is and was Alliance’s founder, sole
6 owner, and President.

7 D. John Richter (“Richter”) is and was Alliance’s Chief Executive Officer (“CEO”) from
8 June 2012 to the present.

9 E. From at least January 1, 2014 to September 20, 2016, Piero Aviles (“Aviles”) was
10 Alliance’s Chief Financial Officer (“CFO”). On or around September 20, 2016, Alliance appointed
11 James L. Hagen to replace Aviles as its CFO.

12 F. The Department of Business Oversight through the Commissioner has jurisdiction
13 over the licensing and regulation of persons and entities engaged in the business of lending and/or
14 servicing pursuant to the CRMLA, including mortgage loan originators.

15 **The 2010 Regulatory Examination**

16 G. On or about October 12, 2010, the Commissioner commenced a regulatory
17 examination of Alliance (“2010 exam”). The examination revealed numerous violations of the
18 CRMLA, including the following:

- 19 (a) Commingling Borrower Trust Funds With Operating Funds. Alliance deposited
20 borrower trust funds into its company operating account. As a result, Alliance
21 commingled borrower trust funds with company operating funds in violation of
22 Financial Code section 50202, subdivision (a).
- 23 (b) Per Diem Interest Overcharges. Alliance charged borrowers per diem interest in
24 excess of one day prior to the date that the loan proceeds were disbursed from escrow,
25 in violation of Financial Code section 50204, subdivision (o), in at least 5 loans. The
26 overcharges ranged from \$30.36 to \$151.14.

27 H. While the 2010 exam was pending, on or around February 17, 2011, Alliance
28 transferred \$7,230.13 from its company operating account to a Wells Fargo trust account ending in

1 0466 to correct the debit balance caused by Alliance's commingling of borrower trust funds with
2 company operating funds.

3 I. On or around April 18, 2011, the Commissioner notified Alliance of its violations of
4 Financial Code sections 50202, subdivision (a), and 50204, subdivision (o), and directed Alliance to
5 refund the interest overcharged on the 5 listed loans.

6 J. On or around August 22, 2011, Alliance provided-written proof that Alliance refunded
7 per diem interest overcharges in the amount of \$568.91 to six borrowers, consisting of the five
8 borrowers cited by the Commissioner plus one additional borrower detected after the 2010 exam.

9 **The 2013 Regulatory Examination**

10 K. Alliance hired Richter as the company's CEO in June 2012. Richter was unaware of
11 the October 2010 regulatory examination and its results until the January 2013 regulatory
12 examination began.

13 L. On or around January 4, 2013, the Commissioner commenced a regulatory
14 examination of Alliance ("2013 exam"). The 2013 exam revealed numerous CRMLA violations,
15 including the following repeat violations:

16 (a) Commingling Borrower Trust Funds With Operating Funds. Alliance deposited
17 borrower trust funds into its company operating account. As a result, Alliance
18 commingled borrower trust funds with company operating funds in violation of
19 Financial Code section 50202, subdivision (a).

20 (b) Per Diem Interest Overcharges. Alliance charged borrowers per diem interest in
21 excess of one day prior to the date that the loan proceeds were disbursed from escrow,
22 in violation of Financial Code section 50204, subdivision (o), in 4 out of 18 (or 22%)
23 of the loan files sampled. The overcharges ranged from \$11.24 to \$79.56.

24 M. While the 2013 exam was pending, on or around March 29, 2013, Alliance opened
25 Wells Fargo trust account ending in 8946 and transferred approximately \$28,584.22 from its
26 company operating account to the trust account to correct the debit balance caused by Alliance's
27 commingling of borrower trust funds with company operating funds.

28 N. On or around February 3, 2014, the Commissioner notified Alliance of its violations of

1 Financial Code sections 50202, subdivision (a), and 50204, subdivision (o), both repeat violations
2 from the 2010 exam, in addition to other violations of the CRMLA. The Commissioner instructed
3 Alliance to conduct a self-audit of all loans originated from January 1, 2011 through February 3,
4 2014 and refund all borrowers the amount of per diem interest overcharged plus interest at the rate of
5 10 percent per annum.

6 O. On or around April 17, 2014, Alliance submitted its self-audit showing that from
7 December 28, 2011 to December 31, 2013, Alliance overcharged 118 borrowers per diem interest in
8 the amount of \$10,073.87. Alliance submitted proof that it made refunds to these borrowers plus
9 interest in the cumulative amount of \$11,462.20.

10 P. By reason of the forgoing, Alliance has violated Financial Code sections 50202,
11 subdivision (a) and 50204, subdivision (o).

12 **Commissioner's Accusation and Order to Discontinue**

13 Q. On or around March 7, 2016, the Commissioner served Alliance with the Notice of
14 Intention to Issue Order Suspending Residential Mortgage Lender License and to Levy Penalties,
15 Accusation, and accompanying documents dated February 26, 2016 ("Accusation"), an Order to
16 Discontinue Violations Pursuant to Financial Code section 50321 ("Order to Discontinue"), and
17 Statement of Facts in support thereof (collectively, the "Action").

18 R. On or around March 22, 2016, Alliance filed a Notice of Defense with the
19 Commissioner regarding the Action. A hearing on the Accusation and Order to Discontinue are
20 currently scheduled for October 4 through 6, 2016.

21 **Alliance's Violation of the Order to Discontinue and Failure to Reconcile the Trust Account**

22 S. On June 14, 2016, the Commissioner learned that from approximately January 1, 2015
23 to June 1, 2016, Alliance failed to deposit California borrower funds into its trust account daily, and
24 therefore continued to commingle borrower trust fund with Alliance's operating funds in violation of
25 Alliance's policies and procedures, Financial Code section 50202, subdivision (a), and the
26 Commissioner's Order to Discontinue Violations.

27 T. Korus and Richter, on behalf of Alliance, presented declarations, signed under penalty
28 of perjury, regarding the cause of the violations to the Commissioner. According to Korus and

1 Richter, Aviles, Alliance’s CFO at all relevant times, deviated from Alliance’s policies and
2 procedures, resulting in Alliance’s repeat violations of Financial Code section 50202, subdivision (a)
3 and Alliance’s violation of the Order to Discontinue. Korus and Richter state that Aviles should have
4 transferred borrower trust funds from Alliance’s operating account to the California trust account
5 daily. However, Aviles failed to do so, despite representing to Korus and Richter that the funds were,
6 in fact, transferred contemporaneously upon receipt.

7 U. Korus and Richter failed to independently review Alliance’s trust account statements
8 from 2014-2016 to ensure compliance with Alliance’s policies and procedures, Financial Code
9 section 50202, subdivision (a), and the Commissioner’s Order to Discontinue Violations.

10 V. On or around July 26, 2016, the Commissioner determined that Alliance failed to
11 properly reconcile the trust account from July 2014 to April 30, 2016, resulting in trust account
12 shortages, in violation of Financial Code section 50202, and Title 10 California Code of Regulations,
13 section 1950.314.6.

14 W. Alliance cooperated fully and completely with the Commissioner’s investigation
15 following service of the Action, including voluntarily producing all documentation requested by the
16 Commissioner, and immediately amending its policies to address all of the Commissioner’s concerns.

17 X. The Commissioner finds that this action is appropriate, in the public interest, and
18 consistent with the purposes fairly intended by the policy and provisions of this law.

19 Y. It is the intention and desire of the Parties to resolve this matter without the necessity
20 of litigation.

21 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
22 contained herein, the Parties agree as follows:

23 **II.**

24 **TERMS AND CONDITIONS**

25 1. **Purpose.** This Consent Order is entered into for the purpose of judicial economy and
26 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

27 2. **Admission of Liability.** Alliance admits to the factual allegations stated herein and
28 admits that Alliance violated the Order to Discontinue from March 7, 2016 through June 1, 2016.

1 3. **Finality of Order to Discontinue Violations.** Alliance hereby agrees that the Order to
2 Discontinue Violations issued Pursuant to Financial Code section 50321 on February 26, 2016 shall
3 become a final order upon the execution of this Consent Order. Alliance further agrees to comply
4 with the Order to Discontinue and this Consent Order and further stipulates that this Consent Order is
5 hereby deemed a final and enforceable order issued pursuant to the Commissioner’s authority under
6 Financial Code sections 50321 and 50513.

7 4. **Waiver of Hearing Rights.** Alliance acknowledges that the Commissioner is
8 ready, willing, and able to proceed with the hearing under the CRMLA in connection with the
9 Order to Discontinue and Accusation. Alliance withdraws its Notice of Defense and waives the right
10 to a hearing, and to any reconsideration, appeal, or other rights to review which may be afforded
11 pursuant to the CRMLA, the California Administrative Procedure Act, the Code of Civil Procedure,
12 or any other provision of law, and by waiving such rights, Alliance effectively consents to this
13 Consent Order becoming final.

14 5. **Administrative Penalties.** Alliance agrees to pay to the Commissioner penalties
15 totaling \$465,000.00 (“Penalties”). The Penalties shall be paid and received by the Commissioner as
16 follows: (1) \$165,000.00 within ten (10) days of the execution of this Consent Order; and (2)
17 \$100,000.00 each 30 days after execution of this Consent Order until satisfied. The check shall be
18 made payable to “The Department of Business Oversight,” and shall be sent to the following address:

19 Danielle A. Stoumbos, Esq.
20 Senior Counsel
21 Department of Business Oversight
22 320 West 4th Street, Suite 750
23 Los Angeles, CA 90013

24 In the event the payment due date falls on a weekend or holiday, the payment shall be due the
25 next business day. Alliance acknowledges that failure to timely pay the Penalties in this Consent
26 Order shall be a breach of this Consent Order and shall be cause for the Commissioner to
27 immediately revoke any licenses held by, and/or deny any pending application(s) of Alliance, its
28 successors and assigns, by whatever names they might be known. Alliance hereby waives any notice
and hearing rights to contest such revocations and/or denial(s) which may be afforded under the

1 Financial Code, the California Administrative Procedure Act, the California Code of Civil Procedure,
2 or any other provision of law in connection therewith.

3 6. **Declaration of Policies and Procedures.** Alliance submitted to the Commissioner all
4 policies and procedures implemented by Alliance to correct and prevent the violations set forth in the
5 Action and Consent Order and ensure compliance with the CRMLA and any applicable regulations.
6 Alliance has implemented these policies and procedures which are in effect as of the date of the
7 Consent Order. Alliance shall provide these policies and procedures to the Independent Auditor
8 specified in Paragraph 7. Alliance shall submit any proposed changes or modifications to the policies
9 and procedures to the Commissioner before any changes or modifications are made.

10 7. **Independent Audit.** Alliance agrees to engage (at its own expense) an independent
11 certified public accountant or certified public accounting firm approved by the Commissioner.
12 Alliance agrees to submit a list with at least three qualified proposed reviewers to the Commissioner
13 within fifteen (15) days of the effective date of this Consent Order, subject to the Commissioner's
14 approval. The independent certified public accountant or certified public accounting firm approved
15 by the Commissioner will conduct an Independent Audit and will provide quarterly reports to the
16 Commissioner as set forth in Paragraph 8 of this Consent Order ("Independent Audit Reports"), for a
17 period of one year from the date of the execution of this Consent Order. Alliance shall provide
18 quarterly Independent Audit Reports to the Commissioner as to all new loans originated and/or
19 funded by Alliance in California during that period to determine compliance with Financial Code
20 sections 50202, 50204, subdivision (o), California Civil Code section 2948.5, and Title 10 California
21 Code of Regulations sections 1950.314.1 and 1950.314.6.

22 8. **Independent Audit Reports.** The Independent Audit Reports shall be submitted
23 quarterly, and within 60 days of the completion of each quarter, i.e., the first audit report would be
24 due on or about February 28, 2017 for the quarter September 30, 2016 through December 31, 2016.
25 Each audit report required herein shall be sent to the Commissioner, attention Danielle A. Stoumbos,
26 Senior Counsel, Enforcement Division, 320 West Fourth Street, Suite 750, Los Angeles, CA 90013,
27 and shall be submitted as follows:

28 (a) **Commingling Borrower Trust Funds with Operating Funds.** Alliance agrees to have

1 the Independent Auditor conduct a quarterly audit of Alliance's operating and trust
2 account statements to determine whether its policies and procedures to prevent
3 commingling of borrower trust funds with Alliance's operating funds are effective.
4 The report shall also include a discussion of whether any additional commingling of
5 funds has occurred and any steps taken to correct any such commingling of funds.

6 (b) Per Diem Interest Overcharges. The per diem interest overcharge audit report shall be
7 submitted in a format approved by the Commissioner, in Microsoft Excel, and include,
8 at a minimum, the total number of loans made during this period, the number of loans
9 with per diem overcharges, and for each loan, the report shall list the borrower loan
10 number, name, address, loan amount, loan date, interest rate disbursement date, date
11 per diem interest commenced, per diem charged, daily per diem interest amount,
12 number of days per diem interest charged, number of days per diem interest
13 overcharged, overcharge amount (if applicable), date of refund (if applicable), and
14 proof of refund (if applicable).

15 (c) Trust Account Reconciliations. The trust account reconciliation report shall include an
16 analysis of the effectiveness of the newly adopted policies and procedures with respect
17 to the daily, weekly, and monthly duties and responsibilities contained therein to
18 prevent any overages or shortages within the trust accounts used by Alliance in the
19 course of its business. At a minimum the report shall include an analysis of Alliance's
20 funding and selling procedures addressing or including the following: a summary of
21 the application of the funding policies and procedures; the timing for trust fund
22 liability recognition and deposit of trust funds into the trust account; if applicable, the
23 handling of trust funds for loan cancellation; the handling of borrower interim
24 payment(s); Alliance's procedures for transferring or selling trust funds to a new
25 investor or servicer; and an explanation of how a trust fund debit balance is handled.
26 The report shall also include a discussion of whether any additional trust account
27 shortages were found and steps taken to correct any such shortages.

28 9. Payment of Refunds. For any additional overcharges identified pursuant to the

1 Independent Audit Reports described in Paragraph 8 above, refunds shall be mailed to the last known
2 address of each borrower no later than 30 calendar days of the date the overcharge is identified , in
3 the amount of the refund plus interest at the rate of 10 percent per annum. Alliance shall ensure that
4 any outstanding refund payment owed to any borrower is escheated to the State of California
5 pursuant to the provisions of the California Unclaimed Property Law (Code of Civ. Proc., § 1500 et
6 seq.).

7 10. **Administrative Penalty Based on Audit Findings**. Alliance agrees to pay an
8 administrative penalty of the following amounts for each new violation found by the Independent
9 Auditor: (i) twenty five thousand dollars (\$25,000.00) for each violation involving commingling
10 borrower trust funds with Alliance’s operating funds; (ii) twenty five thousand (\$25,000.00) for each
11 violation involving a trust fund shortage; and (iii) one-thousand dollars (\$1,000.00) for each violation
12 involving a per diem overcharge. The payment for these penalties shall be made within ten (10)
13 business days from the receipt of the Independent Auditor’s findings and made payable to the
14 Department of Business Oversight, sent to the attention of Danielle A. Stoumbos, Senior Counsel,
15 Enforcement Division, 320 West Fourth Street, Suite 750, Los Angeles, CA 90013.

16 11. **Suspension of License for Failure to Comply with Consent Order**. Alliance agrees
17 that if it fails to comply with any of the provisions set forth in this Consent Order, Alliance shall be
18 immediately suspended from lending under its license until it presents the Commissioner with
19 substantial evidence that the terms are met. Alliance hereby waives any notice and hearing rights to
20 contest the immediate suspension that may be afforded under the Financial Code, the California
21 Administrative Procedures Act, the California Code of Civil Procedure, or any other legal provisions.

22 12. **Alliance’s License Status**. In consideration of Alliance’s agreement to comply with
23 the Order to Discontinue, provide the independent audit reports described in paragraphs 7 and 8,
24 stipulation to the entry of this Consent Order, and payment of the administrative penalties as required
25 in paragraph 5, the Commissioner hereby agrees that except as set forth in this Consent Order, she
26 shall not suspend Alliance’s residential mortgage lender license or take any further action against
27 Alliance based on the violations cited in the Accusation, Order to Discontinue, or this Consent Order.

28 13. **Future Actions by the Commissioner Against Alliance**. The Commissioner

1 reserves the right to bring any future action(s) against Alliance for any and all unknown or future
2 violations of the CRMLA.

3 14. **Effective Date.** This Consent Order shall not become effective until signed, and
4 delivered by the Parties.

5 15. **Consent Order Coverage.** The Parties hereby acknowledge and agree that this
6 Consent Order is intended to constitute a full, final, and complete resolution of the Action and all
7 allegations asserted therein. The Parties further acknowledge and agree that nothing contained in this
8 Consent Order shall operate to limit the Commissioner's ability to assist any other agency, county,
9 state or federal, with any prosecution, administrative, civil or criminal, brought by any such agency
10 against Alliance based upon any of the activities alleged in this matter or otherwise. This Consent
11 Order may be revoked and the Commissioner may pursue any and all remedies available under law
12 against Alliance if the Commissioner later discovers that Alliance knowingly or willfully withheld
13 information used and relied upon in reaching this Consent Order.

14 16. **Independent Legal Advice.** Each of the Parties represents, warrants, and agrees that
15 it has received or been advised to seek independent legal advice from its attorneys with respect to the
16 advisability of executing this Consent Order.

17 17. **No Other Representation.** Each of the Parties represents, warrants, and agrees that
18 in executing this Consent Order it has relied solely on the statements set forth herein and the advice
19 of its own counsel. Each of the Parties further represents, warrants, and agrees that in executing this
20 Consent Order, it has placed no reliance on any statement, representation, or 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 18. **Modifications and Qualified Integration.** No amendment, change or modification of
27 this Consent Order shall be valid or binding to any extent unless it is in writing and signed by both
28 Parties.

1 19. **Full Integration.** This Consent Order is the final written expression and the complete
2 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
3 between the parties with respect to the subject matter hereof, and supersedes all discussions between
4 and among the Parties, their respective representatives, and any other person or entity, with respect to
5 the subject matter covered hereby.

6 20. **No Presumption From Drafting.** In that the Parties have had the opportunity to
7 draft, review and edit the language of this Consent Order, no presumption for or against any party
8 arising out of drafting all or any part of this Consent Order will be applied in any action relating to,
9 connected to, or involving this Consent Order. Accordingly, the Parties waive the benefit of Civil
10 Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,
11 language of a contract should be interpreted most strongly against the party who caused the
12 uncertainty to exist.

13 21. **Signatures.** A fax signature or e-mail scanned signature of this Consent Order shall
14 be as effective as an original ink signature.

15 22. **Counterparts.** This Consent Order may be executed in any number of counter-parts
16 by the Parties, and when each party has signed and delivered at least one such counterpart to the other
17 party, each counterpart shall be deemed an original and taken together shall constitute one and the
18 same Consent Order.

19 23. **Headings and Governing Law.** The headings to the paragraphs of this Consent
20 Order are inserted for convenience only and will not be deemed a part hereof or affect the
21 construction or interpretation of the provisions hereof. This Consent Order shall be construed and
22 enforced in accordance with, and governed by, the laws of the State of California.

23 24. **Authority For Consent Order.** Each party warrants and represents that such party is
24 fully entitled and duly authorized to enter into and deliver this Consent Order. In particular, and
25 without limiting the generality of the foregoing, each party warrants and represents that it is fully
26 entitled to enter into the covenants, and undertake the obligations set forth herein.

27 25. **Public Record.** Alliance hereby acknowledges that this Consent Order will be a
28 matter of public record.

