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

12 In the Matter of) CRMLA License No.: 413-1090
13) NMLS ID: 375602
14 THE COMMISSIONER OF BUSINESS)
OVERSIGHT)
15)
16 Complainant,) CONSENT ORDER
17 v.)
18 DIRECTORS MORTGAGE, INC.)
19 doing business as USA DIRECT FUNDING,)
20 Respondent.)

21
22 This Consent Order (Consent Order) is entered between the Commissioner of Business
23 Oversight (Commissioner) and Directors Mortgage, Incorporated, doing business as USA Direct
24 Funding (Directors) (collectively, the parties), and is made with respect to the following facts:

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I.
Recitals

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3 A. The Commissioner has jurisdiction over the licensing and regulation of persons and entities
4 engaged in the business of lending and servicing residential mortgage loans pursuant to the
5 California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.).

6 B. Directors is a residential mortgage lender licensed by the Commissioner since January 6,
7 2011 (CRMLA License No. 413-1090). Directors has its principal place of business located at 4550
8 Southwest Kruse Way, Suite 275, Lake Oswego, Oregon 97035.

9 C. Mark Hanna is the Chief Executive Officer and a control person of Directors and, as such, is
10 authorized to enter this Consent Order on Directors' behalf.

11 D. During a regulatory examination of Directors conducted in 2016 ("2016 Exam"), the
12 Commissioner discovered that Directors overcharged per diem interest to California borrowers (14
13 borrowers, were overcharged, Borrower A: \$25.05, Borrower B: \$26.71, Borrower C: \$44.01,
14 Borrower D: \$47.18, Borrower E: \$57.75, Borrower F: \$73.02, Borrower G: \$73.97, Borrower H:
15 \$79.15, Borrower I: \$87.05, Borrower J: \$114.76, Borrower K: \$122.59, Borrower L: \$124.17,
16 Borrower M: \$145.66, Borrower N: \$155.34, which is a total of \$1,176.42). This is in violation of
17 Financial Code section 50204, subdivision (o), and Civil Code section 2948.5. This finding was a
18 repeat violation previously identified by the Commissioner after a 2012 exam.

19 E. The 2016 Exam also found that Directors violated:

20 i. Health and Safety Code section 35830 and California Code of Regulations, title 21,
21 section 7114, by failing to provide borrowers with a fair lending notice that disclosed the
22 address of the Department of Business Oversight (Department). This is a repeat violation
23 previously identified by the Commissioner after a 2012 exam.

24 ii. Financial Code section 50307, by submitting an inaccurate 2014 annual report. This
25 is a repeat violation previously identified by the Commissioner after a 2012 exam.

26 F. In 2017, the Commissioner informed Directors that she would commence an administrative
27 action to enforce Directors' compliance with the CRMLA, and seek remedies for past violations.
28 These remedies included seeking orders imposing penalties for past violations, ordering Directors to

1 correct its policies and procedures, and ordering the discontinuance of violations pursuant to
2 Financial Code section 50321 (collectively, Enforcement Action).

3 G. Upon being informed of the Commissioner’s intent to commence the Enforcement Action,
4 Directors responded by indicating that it would cooperate fully with the Commissioner to correct
5 and remedy any past violations, voluntarily agreed to have a third-party auditing firm monitor for
6 violations on an ongoing basis, and agreed to the issuance of this Consent Order without the need to
7 commence filing an administrative action.

8 H. It is the intention and desire of the parties to resolve this matter without the necessity of a
9 hearing and/or other litigation.

10 I. The Commissioner finds that this action is appropriate, in the public interest, and consistent
11 with the purposes fairly intended by the policies and provisions of this law.

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

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15 **II.**
Terms and Conditions

16 1. Purpose.

17 The purpose of this Consent Order is to resolve the Commissioner’s investigation into the
18 violations discovered during her examination of Directors in a manner that avoids the expense of
19 court proceedings and a hearing, is in the public interest, protects consumers, and is consistent with
20 the purposes, policies, and provisions of the CRMLA.

21 2. Finality of Consent Order.

22 Directors hereby agrees to comply with this Consent Order and, further, stipulates that this
23 Consent Order is hereby deemed a final and enforceable order issued pursuant to the
24 Commissioner’s authority under Financial Code sections 50321, 50504 and 50513.

25 3. Order to Discontinue.

26 Directors stipulates that in accordance with Financial Code section 50321, Directors will
27 immediately discontinue the violations set forth herein.
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1 4. Waiver of Hearing Rights.

2 Directors acknowledges that the Commissioner is ready, willing, and able to proceed with
3 the filing of an administrative enforcement action on the charges contained in this Consent Order,
4 and Directors hereby waives the right to a hearing, and to any reconsideration, appeal, or other right
5 to review which may be afforded pursuant to the CRMLA. Directors, further expressly waives any
6 requirement for the filing of an Accusation that may be afforded by Government Code section
7 11415.60, subdivision (b), the Administrative Procedure Act, the Code of Civil Procedure, or any
8 other provision of law; and by waiving such rights, Directors effectively consents to this Consent
9 Order becoming final.

10 5. Independent Audit Report - Timing.

11 Directors agrees to engage a certified public accountant(s), certified accounting firm, or
12 compliance auditing firm (Third-Party Auditor), reasonably acceptable to the Commissioner. The
13 Third-Party Auditor shall conduct an examination of Directors' loan information to conduct an
14 Independent Audit and provide a compliance report (Independent Audit Report) to the Department
15 containing the information required in Paragraph 6. The Independent Audit Report shall cover all
16 California loans originated and/or funded by Directors from May 1, 2016 to the date six months
17 following the Effective Date of this Order, as defined herein in Paragraph 25, and shall be submitted
18 to the Department no later than eight months following the Effective Date of this Order.

19 6. Independent Audit Report – Contents.

20 The Independent Audit Report shall include, at a minimum, the following information:

- 21 (i) the total number of loans originated and funded by Directors during the period
22 specified in Paragraph 5;
- 23 (ii) the number of loans with per diem interest charges in excess of the amount permitted
24 by Financial Code section 50204, subdivision (o), and Civil Code section 2948.5;
- 25 (iii) for each and every loan, the borrower's loan number, name, address, loan amount,
26 loan date, per diem interest charged, maximum per diem interest allowed under Financial
27 Code section 50204, subdivision (o), and Civil Code section 2948.5, overcharge amount (if
28 any), date of refund (if applicable), and proof of refund (if applicable); and,

1 (iv) the total number of loans for which Directors failed to include in the loan file the
2 required documentation of the actual disbursement date of the loan proceeds needed to
3 determine if excess per diem interest was charged.

4 For each of the files identified pursuant to section (iv) above, the Independent Audit Report will use
5 the title recordation date in place of the missing disbursement date to calculate and report the
6 amount of per diem interest overcharged, if any. Directors will then be required to refund that
7 amount to each of those borrowers under the same requirements provided in Paragraph 7 below for
8 overcharges. However, Directors will not be required to pay an additional \$500.00 penalty pursuant
9 to Paragraph 9, subsection (ii), for any overcharges found on such loans, since such loans will be
10 assessed a penalty pursuant to Paragraph 9, subsection (iii), for lacking required documentation.

11 7. Payment of Refunds.

12 In compliance with the Commissioner’s Consent Order, Directors agrees to refund any
13 amounts of per diem interest charged exceeding charges permitted under Financial Code section
14 50204, subdivision (o), and Civil Code section 2948.5 as follows:

15 a. Directors represents that it has already sent refunds to all borrowers that were
16 overcharged per diem interest that were disclosed in the exam, plus interest at the rate of 10 percent
17 per annum.

18 b. For any additional overcharges identified pursuant to the Independent Audit Report
19 described in Paragraphs 5 and 6 above, refunds plus interest at the rate of 10 percent per annum
20 shall be mailed to the last known address of each borrower no later than 30 calendar days after the
21 submission of the Independent Audit Report to the Commissioner.

22 8. Outstanding Refunds.

23 No later than 90 calendar days after the submission of the Independent Audit Report
24 referred to in Paragraphs 5 and 6 above, Directors shall notify the Commissioner of any refund
25 payment that has been returned or remains outstanding for loans originated during the period
26 covered by the Independent Audit Report. Directors shall be responsible for ensuring that any
27 outstanding refund payment owed to any borrower identified in the Independent Audit Report
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1 required by Paragraphs 5 and 6 above is escheated to the State of California pursuant to the
2 provisions of the California Unclaimed Property Law (Code Civ. Proc., § 1500 et seq.).

3 9. Payment of Penalties.

4 Directors shall pay the following penalties:

- 5 (i) A penalty of \$35,000.00 for the violations discussed herein;
- 6 (ii) A penalty of \$500 for each additional loan reported by the Independent Audit Report
7 as described in Paragraphs 5 and 6 above, where per diem interest was charged in
8 excess of the amount permitted by Financial Code section 50204, subdivision (o),
9 and Civil Code section 2948.5 of more than one dollar and the excess per diem
10 interest charges were not refunded to the borrower within 30 days of the
11 disbursement date; and,
- 12 (iii) A penalty of \$500.00 for each additional loan that is reported in the Independent
13 Audit Report for which Directors lacked required documentation in the loan file to
14 verify the actual disbursement date of the loan to determine if excess per diem
15 interest had been charged.

16 10. Timing of Penalty Payments.

17 The payment of the \$35,000 in penalties set forth in Paragraph 9 shall be due in three
18 installments of \$11,666.67, \$11,666.67 and \$11,666.66, paid within 30, 60, and 90 calendar days of
19 the Effective Date of this Consent Order, as such date is defined in Paragraph 25, made payable in
20 the form of a cashier's check or Automated Clearing House deposit to the "Department of Business
21 Oversight," and mailed to the attention of: Accounting – Litigation, at the Department of Business
22 Oversight located at 1515 K Street, Suite 200, Sacramento, California 95814. Notice of all
23 payments shall be sent to Charles Carriere, Counsel, Enforcement Division, at the Department of
24 Business Oversight located at One Sansome Street, Suite 600, San Francisco, California 94104.
25 The penalties for any additional violations discovered by the Independent Audit Report as set forth
26 in Paragraphs 5 and 6 above will be paid within 30 days of the submission of the Independent Audit
27 Report in the same manner and location as indicated above.

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1 11. Policies and Procedures.

2 Directors has submitted to the Commissioner a copy of its policies and procedures to ensure
3 compliance with the laws set forth herein. The Commissioner has reviewed the policies and
4 procedures and determined that they are satisfactory. Directors agrees to continue implementing
5 those policies and procedures in the future.

6 12. Effect of Consent Order on License.

7 In consideration of Directors' agreement to provide the audit reports described in the
8 paragraphs above, to the entry of this Consent Order, and to pay penalties required by Paragraph 9
9 hereof, the Commissioner hereby agrees that except as set forth in this Consent Order, she shall not
10 suspend the residential mortgage lender or servicer license of Directors or take any further action
11 based on violation of the code provisions identified in this order for the period of July 1, 2014
12 through the Effective Date of this Order. Accordingly, this Consent Order does not affect the
13 licensing status of Directors.

14 13. Suspension of License for Failure to Comply with Order.

15 If Directors fails to meet any deadline or any requirement of this Order, other than
16 inadvertent and isolated errors that are promptly corrected by Directors, the Commissioner may
17 immediately suspend Directors' CRMLA license, unless and until Directors meets the deadline or
18 requirement. Directors hereby waives any further notice and hearing rights to contest any
19 immediate suspension from lending issued pursuant to the terms of this paragraph afforded under
20 the Financial Code, the Administrative Procedure Act, the Code of Civil Procedure, or any other
21 legal provisions.

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1 14. Full and Final Settlement.

2 The parties hereby acknowledge and agree that this Consent Order is intended to constitute a
3 full, final, and complete resolution of the Commissioner’s investigation of Directors and for
4 violations discovered during its examination and that no further proceedings or actions will be
5 brought by the Commissioner in connection with these matters either under the CRMLA, or any
6 other provision of law, excepting therefrom any proceeding to enforce compliance with the terms of
7 this Consent Order, or a proceeding or action based upon discovery of new and further violations of
8 the CRMLA which do not form the basis for this Consent Order or which Directors knowingly
9 concealed from the Commissioner.

10 15. Binding.

11 This Consent Order is binding on all heirs, assigns, and/or successors in interest.

12 16. Commissioner’s Duties.

13 The parties further acknowledge and agree that nothing contained in this Consent Order
14 shall operate to limit the Commissioner’s ability to assist any other agency (city, county, state or
15 federal) with any prosecution, administrative, civil or criminal, brought by any such agency against
16 Directors or any other person based upon any of the activities alleged in these matters or otherwise.

17 17. Future Actions by Commissioner.

18 This Consent Order may be revoked and the Commissioner may pursue all remedies
19 available under the law against Directors if the Commissioner later discovers that Directors
20 knowingly or willfully withheld information used for and relied upon in this Consent Order.
21 Further, Directors agrees that this Consent Order does not resolve any penalties that may be
22 assessed by the Commissioner upon discovery of new and further violations of the CRMLA.

23 18. Independent Legal Advice.

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

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1 19. Counterparts.

2 The parties agree that this Consent Order may be executed in one or more separate
3 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
4 together constitute and be one and the same instrument.

5 20. Waiver, Modification, and Qualified Integration.

6 The waiver of any provision of this Consent Order shall not operate to waive any other
7 provision set forth herein. No waiver, amendment, or modification of this Consent Order shall be
8 valid or binding to any extent unless it is in writing and signed by all the parties affected by it.

9 21. Headings and Governing Law.

10 The headings to the paragraphs of this Consent Order are inserted for convenience only and
11 will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof.
12 This Consent Order shall be construed and enforced in accordance with and governed by California
13 law.

14 22. Full Integration.

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

24 23. Presumption from Drafting.

25 In that the parties have had the opportunity to draft, review and edit the language of this
26 Consent Order, no presumption for or against any party arising out of drafting all or any part of this
27 Consent Order will be applied in any action relating to, connected to, or involving this Consent
28 Order. Accordingly, the parties waive the benefit of Civil Code section 1654 and any successor or

1 amended statute, providing that in cases of uncertainty, language of a contract should be interpreted
2 most strongly against the party who caused the uncertainty to exist.

3 24. Voluntary Agreement.

4 Directors enters this Consent Order voluntarily and without coercion and acknowledges that
5 no promises, threats or assurances have been made by the Commissioner or any officer, or agent
6 thereof, about this Consent Order.

7 25. Effective Date.

8 This Consent Order shall not become effective until signed by all parties and delivered by
9 the Commissioner’s counsel by email to Directors’ counsel david.wiles@directorsmortgage.net
10 (“Effective Date”).

11 26. Public Record.

12 Respondent acknowledges that this Consent Order is a public record.

13 27. Authority to Execute.

14 Each signatory hereto covenants that he/she possesses all necessary capacity and authority to
15 sign and enter this Consent Order.

16 Dated: 2/2/18

JAN LYNN OWEN
Commissioner of Business Oversight

18 By _____

19 MARY ANN SMITH
20 Deputy Commissioner
21 Enforcement Division

22 Dated: 2/1/18

DIRECTORS MORTGAGE INC.

24 By _____

25 MARK HANNA
26 Chief Executive Officer

27 APPROVED AS TO FORM AND CONTENT:

28 _____
David Wiles, Counsel for Directors Mortgage, Inc.