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9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA
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12 In the Matter of:) CRMLA LICENSE NO.: 413-0338
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
14 Complainant,)
15 v.)
16 GUARDHILL FINANCIAL CORP.,)
17 Respondent.)
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19 This Consent Order is entered between the Department of Business Oversight (Department)
20 through the Commissioner of Business Oversight (Commissioner) and Guardhill Financial Corp.
21 (Guardhill) (collectively, the Parties), and is made with respect to the following:

22 I.

23 Recitals

24 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
25 entities engaged in the business of lending and/or servicing residential loans pursuant to the
26 California Residential Mortgage Lending Act (Fin. Code, § 50000 et seq.) (CRMLA).
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1 B. Guardhill is a residential mortgage lender licensed by the Commissioner since August
2 28, 2000 (CRMLA License No. 413-0338). Guardhill has a principal place of business located at 140
3 East 45th Street, 31st Floor, New York, New York 10017.

4 C. Between August 2013 and June 2014, the Department conducted a regulatory
5 examination of Guardhill's business, pursuant to Financial Code section 50302. During this
6 examination, the Department learned that Guardhill unlawfully charged borrowers more interest than
7 allowed prior to the mortgage loan funds' disbursement in violation of Financial Code section 50204,
8 subdivision (o) and Civil Code section 2984.5, subdivision (a)(1). The Department notified Guardhill
9 of this violation by way of a report of regulatory examination on June 6, 2014.

10 D. On or about July 1, 2014, Guardhill conceded that it had over-collected per diem
11 interest from the borrower identified during the 2013-2014 regulatory examination. Guardhill
12 informed the Department that it had miscalculated the starting date for charging per diem interest.
13 Based on Guardhill's representations, the Department closed the examination without further action.

14 E. Beginning August 28, 2017, the Department conducted a new regulatory examination
15 of Guardhill's business pursuant to Financial Code section 50302. During this examination, the
16 Department again discovered that borrowers were overcharged per diem interest in violation of
17 Financial Code section 50204, subdivision (o) and Civil Code section 2984.5, subdivision (a)(1).
18 Specifically, the Department found that borrowers were overcharged per diem interest in a collective
19 amount of \$1,300.09 between 2014 and 2017.

20 F. Guardhill admits to paragraphs A through E of this Recital, admits to the jurisdiction
21 of the Commissioner with respect to the subject matter hereof, and agrees to the execution of this
22 Consent Order as a resolution of the matter without the need to initiate litigation.

23 G. The Commissioner finds this Consent Order is appropriate, in the public interest, for
24 the protection of investors, and consistent with the purposes fairly intended by the policy and
25 provisions of the CRMLA.

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

28 **II.**

Terms and Conditions

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2 1. Purpose. The purpose of this Consent Order is to resolve the foregoing issues in a
3 manner that avoids the expense of a hearing and possible other court proceeding, is in the public
4 interest, protects consumers, and is consistent with the purposes, policies, and provisions of the
5 CRMLA.

6 2. Finality of the Consent Order. Guardhill hereby agrees to comply with this Consent
7 Order and, further stipulates that this Consent Order is hereby deemed a final and enforceable order
8 issued pursuant to the Commissioner’s authority Financial Code sections 50321, 50504 and 50513.

9 3. Order to Discontinue Violations. Guardhill hereby agrees that in accordance with
10 Financial Code section 50321, it will immediately discontinue the violations set forth herein.

11 4. Order Levying Penalty. Guardhill shall pay to the Commissioner a penalty in the
12 amount of \$20,000.00 no later than 10 days after the Effective Date of this Consent Order. In the
13 event the payment due date falls on a weekend or holiday, the payment shall be due the next business
14 day. The penalty payment shall be made payable in the form of a cashier’s check or Automated
15 Clearing House deposit to the “Department of Business Oversight,” and transmitted to the attention
16 of:

17 ATTN: Accounting – Litigation
18 Department of Business Oversight
19 1515 K Street, Suite 200
20 Sacramento, California, 95814

21 Notice of payment shall be sent to:

22 Kenny V. Nguyen
23 Senior Counsel, Enforcement Division
24 Department of Business Oversight
25 1515 K Street, Suite 200
26 Sacramento, California 95814

27 E-mail: Kenny.Nguyen@dbo.ca.gov

28 5. Third-Party Audit. Guardhill agrees to conduct an audit (the Third-Party Audit), by
and through an independent certified public accountant, in accordance with procedures agreed upon
by the parties, of per diem interest charges for all California loans for the period January 6, 2014

1 through to the Effective Date of this Consent Order, as defined in paragraph 23. The Third-Party
2 Audit must cover all California loans originated during that period and must identify any borrower
3 who was overcharged per diem interest during that period. Guardhill further agrees to refund any
4 per diem interest overcharge, together with 10-percent interest from the date of disbursement until
5 the date the refund check is cut (Refund or Refunds).

6 (a) **Audit Report.** Guardhill, by and through its independent certified public
7 accountant, will submit to the Department the results of the audit (the Audit Report) within 90 days
8 from the Effective Date of this Consent Order, as defined in paragraph 23. The Audit
9 Report shall include, at a minimum, the total number of loans made during the period, the number
10 of loans with per diem interest overcharges, and for each loan, the report shall list the borrower's
11 loan number, name, address, loan amount, loan date, interest rate, disbursement date, date per diem
12 interest commenced, per diem interest charged, daily per diem interest amount, number of days per
13 diem interest charged, number of days per diem interest overcharged (if applicable), overcharge
14 amount (if applicable), date of refund (if applicable), proof of refund (if applicable).

15 (b) **Administrative Penalty.** Guardhill further agrees that it will pay a penalty
16 to the Commissioner, upon submission of the audit report, equal to \$200.00 for each per diem
17 interest overcharge violation identified during the Third-Party Audit, which was not refunded to the
18 borrower within 30 days of the loan disbursement. This penalty is separate from the penalty
19 ordered in Paragraph 4, and no additional penalty shall be paid for the 8 loans already identified by
20 the Department and Guardhill, with the following loan numbers: (1) 2015000432, (2) 2016000769;
21 (3) 2016000963; (4) 2016001161; (5) 2016001717; (6) 2016001878; (7) 2017000039; and
22 (8) 2017001117.

23 6. **Payment of Refunds.** Guardhill shall apply each Refund identified through the Third-
24 Party Audit as follows:

25 (a) Guardhill agrees to make Refunds (with 10-percent interest per annum) to all of the
26 borrowers who were charged excessive per diem interest, as identified in the Audit Report. Guardhill
27 agrees to mail each Refund to the applicable borrower's last known address, no later than 10 business
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1 days following completion of the Audit Report. If the Audit Report shows Guardhill refunded
2 excessive per diem interest plus 10-percent interest within 30 days of loan disbursement, Guardhill
3 shall not be obligated to make any further refund. If the audit report shows an overpayment of per
4 diem interest plus 10-percent interest per annum to any borrower based on a previous refund from
5 Guardhill, then Guardhill agrees not to collect that amount from the borrower.

6 (b) Any Refund made under this Consent Order shall be accompanied by a
7 cover letter addressed to the affected borrower that states “As a result of an examination by the
8 Department of Business Oversight, a refund or adjustment in the amount of \$XXXX is being made
9 for your benefit. If you have any questions concerning this refund, please contact (lender) at (800)
10 XXX-XXXX,” provided however that such notice shall not be required of refunds made prior to the
11 date of this Consent Order.

12 (c) Guardhill shall escheat all unclaimed Refunds to the California State
13 Controller’s Office within the period provided by and in accordance with Code of Civil Procedure
14 section 1519.5 of the Unclaimed Property Law. (Code of Civ. Proc., § 1500 et seq.)

15 7. Revised Policies and Procedures. Within 15 days from the Effective Date of this
16 Consent Order, as defined in paragraph 23, Guardhill agrees to provide the Commissioner with its
17 updated policies and procedures designed to ensure compliance with the CRMLA’s per diem
18 interest requirements for the Commissioner’s review and approval. If the Commissioner or her staff
19 determines that any of the policies or procedures are deficient, Guardhill agrees to revise the
20 policies and procedures to the Commissioner’s satisfaction. If the Commissioner determines that
21 the policies and procedures are acceptable if followed, the Commissioner will inform Guardhill of
22 that fact.

23 8. Waiver of Hearing Rights. Guardhill acknowledges that the Commissioner is ready,
24 willing, and able to proceed with the filing of an administrative enforcement action on the violations
25 contained in this Consent Order. Guardhill is aware of its rights to a hearing and appeal in this
26 matter if the Commissioner had formally commenced an enforcement action to request the relief
27 specified under this Consent Order. Guardhill expressly and permanently waives any right to a
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1 hearing and appeal, including those rights under the CRMLA and Financial Code, the California
2 Administrative Procedures Act (Gov. Code, § 11400 et seq.), and the Code of Civil Procedure with
3 respect to the issuance of the Order to Discontinue Violation, the Order Levying Penalty, and the
4 Failure to Comply remedy specified in Paragraphs 3, 4, and 8. Guardhill consents to this Consent
5 Order becoming final.

6 9. Failure to Comply. Guardhill agrees that if it fails to pay the penalty payment as
7 provided for in Paragraph 4, to conduct the Third-Party Audit, to prepare an Audit Report, and to Pay
8 Additional Penalties and Refunds, and to revise its policies and procedures provided for in
9 Paragraphs 5 through 7, above, the Commissioner may, in her discretion, summarily revoke
10 Guardhill's CRMLA license; and Guardhill waives any rights to review or hearing in accordance
11 therewith.

12 10. Future Actions by the Commissioner. The Parties acknowledge and agree that nothing
13 contained in this Consent Order shall limit the ability of the Commissioner to bring any
14 administrative or civil action to enforce compliance with this Consent Order or to seek penalties for
15 its violation. Further, the Commissioner reserves the right to bring any future action(s) against
16 Guardhill or any of the managers, officers, directors, shareholders or employees of Guardhill for all
17 unknown or future violations of the CRMLA and Financial Code.

18 11. Independent Legal Advice. Guardhill represents, warrants, and agrees that it has had
19 the opportunity to seek independent advice from legal counsel and/or representative with respect to
20 the advisability of executing this Consent Order.

21 12. No Other Representation. Each of the Parties represents, warrants, and agrees that in
22 executing this Consent Order each has relied solely on the statements set forth herein and the advice
23 of its own counsel and/or representative. Each of the Parties further represents, warrants, and agrees
24 that in executing this Consent Order it has placed no reliance on any statement, representation, or
25 promise of any other party, or any other person or entity not expressly set forth herein, or upon the
26 failure of any party or any other person or entity to make any statement, representation or disclosure
27 of anything whatsoever. The Parties have included this clause: (1) to preclude any claim that any
28 party was in any way fraudulently induced to execute this Consent Order; and (2) to preclude the

1 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Consent
2 Order.

3 13. Modifications and Qualified Integration. No amendment, change, or modification to
4 this Consent Order shall be valid or binding to any extent unless it is in writing and signed by all the
5 parties affected by it.

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

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

19 16. Effect Upon Future Proceedings. If Guardhill applies for any license, permit or
20 qualification under the Commissioner's current or future jurisdiction, or if Guardhill is the subject of
21 any future action by the Commissioner to enforce this Consent Order, then the subject matter hereof
22 shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

23 17. Counterparts. This Consent Order may be executed in one or more counterparts, each
24 of which shall be an original but all of which, together, shall be deemed to constitute a single
25 document.

26 18. Terms, Headings and Governing Law. All terms used, but not defined herein, shall
27 have the meaning assigned to them by the CRMLA and the Financial Code. The headings to the
28 paragraphs of this Consent Order are inserted for convenience only and will not be deemed a part

1 hereof or affect the construction or interpretation of the provisions hereof. This Consent Order shall
2 be construed and enforced in accordance with, and governed by, the laws of the State of California.

3 19. Authority to Execute. Each party warrants and represents that such party is fully
4 entitled and duly authorized to enter into and deliver this Consent Order. In particular, and without
5 limiting the generality of the foregoing, each party warrants and represents that it is fully entitled to
6 enter into the covenants, and undertake the obligations set forth herein.

7 20. Signatures. This Consent Order may be executed by facsimile or scanned signature,
8 and any such facsimile or scanned signature by any party hereto shall be deemed to be an original
9 signature and shall be binding on such party to the same extent as if such facsimile or scanned
10 signature were an original signature.

11 21. Public Record. Guardhill acknowledges that this Consent Order is a public record.
12 Guardhill further understands and agrees to not make any statement or representation that is
13 inconsistent with the Consent Order.

14 22. Voluntary Agreement. The Parties each represent and acknowledge that in executing
15 this Consent Order, each does so completely voluntarily and without any duress or undue influence of
16 any kind from any source.

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23. Effective Date: This Consent Order shall not become effective until signed by all parties and delivered by the Commissioner’s counsel by email at: Kenny.Nguyen@dbo.ca.gov.

Dated: 7/31/18

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____

MARY ANN SMITH
Deputy Commissioner
Enforcement Division

GUARDHILL FINANCIAL CORP.

Dated: 7/31/18

By: _____

ALAN ROSENBAUM
President