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8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA
11

12 In the Matter of:) CRMLA LICENSE NO.: 413-0016
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
14 Complainant,)
15 v.)
16 GUILD MORTGAGE COMPANY,)
17 Respondent.)
18

19 This Consent Order is entered between the Department of Business Oversight (Department)
20 through the Commissioner of Business Oversight (Commissioner) and Guild Mortgage
21 Company(Guild) (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 mortgage loans pursuant to the
26 California Residential Mortgage Lending Act (Fin. Code, § 50000 et seq.) (CRMLA).
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28

1 B. Guild is a residential mortgage lender licensed by the Commissioner since April 5,
2 1996 (CRMLA License No. 413-0016). Guild has a principal place of business located at 5898
3 Copley Drive, Suite 300, San Diego, California 92111.

4 C. Between February 3, 2014 and July 1, 2015, the Department conducted a regulatory
5 examination of Guild’s business, pursuant to Financial Code section 50302. During this examination,
6 the Department learned that Guild unlawfully charged borrowers more interest than allowed prior to
7 the mortgage loan funds’ disbursement in violation of Financial Code section 50204, subdivision (o)
8 and Civil Code section 2984.5, subdivision (a)(1). The Department notified Guild of this violation by
9 way of a report of regulatory examination on April 23, 2015.

10 D. On or about June 22, 2015, Guild conceded that it had over-collected per diem interest
11 from two borrowers identified during the 2014-2015 regulatory examination. Guild informed the
12 Department that it had established a process to monitor, audit, and reconcile as needed, the collection
13 of per diem interest on a monthly basis to ensure that per diem interest overcharges are promptly
14 reimbursed to borrowers. Based on Guild’s representations, the Department closed the examination
15 without further action.

16 E. Beginning January 22, 2018, the Department conducted a new regulatory examination
17 of Guild’s business pursuant to Financial Code section 50302. During this examination, the
18 Department again discovered that three borrowers were overcharged per diem interest in violation of
19 Financial Code section 50204, subdivision (o) and Civil Code section 2984.5, subdivision (a)(1).
20 Specifically, the Department found that borrowers were overcharged per diem interest in 2015 and
21 2017.

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

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

1 II.

2 **Terms and Conditions**

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

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

9 3. **Order to Discontinue Violations.** Guild 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.** Guild shall pay to the Commissioner a penalty in the amount
12 of \$7,500.00 no later than 10 days after the Effective Date of this Consent Order. In the event the
13 payment due date falls on a weekend or holiday, the payment shall be due the next business day. The
14 penalty payment shall be made payable in the form of a cashier’s check or Automated Clearing
15 House deposit to the “Department of Business Oversight,” and transmitted to the attention of:

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

20 Notice of payment shall be sent to:

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

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

27 5. **Waiver of Hearing Rights.** Guild acknowledges that the Commissioner is ready,
28 willing, and able to proceed with the filing of an administrative enforcement action on the violations
contained in this Consent Order. Guild is aware of its rights to a hearing and appeal in this matter if
the Commissioner had formally commenced an enforcement action to request the relief specified

1 under this Consent Order. Guild expressly and permanently waives any right to a hearing and
2 appeal, including those rights under the CRMLA and Financial Code, the California Administrative
3 Procedures Act (Gov. Code, § 11400 et seq.), and the Code of Civil Procedure with respect to the
4 issuance of the Order to Discontinue Violation, the Order Levying Penalty, and the Failure to
5 Comply remedy specified in Paragraphs 3, 4, and 6. Guild consents to this Consent Order
6 becoming final.

7 6. Failure to Comply. Guild agrees that if it fails to pay the penalty payment as provided
8 for in Paragraph 4, above, the Commissioner may, in her discretion, summarily revoke Guild's
9 CRMLA license; and Guild waives any rights to review or hearing in accordance therewith.

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

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

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

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

4 11. 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 covenants
6 between the parties with respect to the subject matter hereof, and supersedes all prior or
7 contemporaneous agreements, negotiations, representations, understandings, and discussions between
8 and among the Parties, their respective representatives, and any other person or entity, with respect to
9 the subject matter covered hereby.

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

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

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

24 15. Terms, Headings and Governing Law. All terms used, but not defined herein, shall
25 have the meaning assigned to them by the CRMLA and the Financial Code. The headings to the
26 paragraphs of this Consent Order are inserted for convenience only and will not be deemed a part
27 hereof or affect the construction or interpretation of the provisions hereof. This Consent Order shall
28 be construed and enforced in accordance with, and governed by, the laws of the State of California.

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

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

9 18. Public Record. Guild acknowledges that this Consent Order is a public record. Guild
10 further understands and agrees to not make any statement or representation that is inconsistent with
11 the Consent Order.

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

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

18 Dated: 6/1/18

JAN LYNN OWEN
Commissioner of Business Oversight

20 By: _____

MARY ANN SMITH
Deputy Commissioner
Enforcement Division

GUILD MORTGAGE COMPANY

25 Dated: 5/31/18

By: _____

LISA KLIKA
Chief Compliance Officer