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4 Department of Business Oversight
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7 Attorneys for Complainant

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

10
11 In the Matter of:)
)
12 THE COMMISSIONER OF BUSINESS) CRMLA LICENSE NO.: 413-1083
13 OVERSIGHT,)
) CONSENT ORDER
14 Complainant,)
)
15 v.)
)
16 IMPAC MORTGAGE CORP.,)
17)
18 Respondent.)
)

19
20 This Consent Order (Consent Order) is entered into by and between the Commissioner of
21 Business Oversight (Commissioner) and IMPAC Mortgage Corp. (IMPAC) (collectively the
22 parties), and is made with respect to the following facts:

23 **I**

24 **Recitals**

25 A. IMPAC is a corporation in good standing, duly formed and existing pursuant to the
26 laws of the State of California, and authorized to conduct business in California.

27 B. IMPAC is a residential mortgage lender licensed by the Commissioner pursuant to the
28 California Residential Mortgage Lending Act (CRMLA) (Fin. Code § 50000 et seq.). IMPAC has

CONSENT ORDER

1 its principal place of business located at 19500 Jamboree Road, Irvine, California 92612. IMPAC
2 currently has 3 branch office locations under its CRMLA license located in California, and other
3 states. IMPAC employs mortgage loan originators in its CRMLA business. IMPAC has been
4 approved to do business under its CRMLA licenses under the name CashCall Mortgage.

5 C. The Department of Business Oversight (Department), through the Commissioner, has
6 jurisdiction over the licensing and regulation of persons and entities engaged in the business of
7 lending and/or servicing pursuant to the CRMLA, including mortgage loan originators.

8 D. William S. Ashmore is the president of IMPAC, and, as such, is authorized to enter
9 into this Consent Order on behalf of IMPAC.

10 E. During a regulatory examination of IMPAC commenced in 2014, the Commissioner
11 discovered that IMPAC had charged borrowers excessive per diem interest in violation of Financial
12 Code section 50204, subdivision (o) and Civil Code section 2948.5.

13 F. The Commissioner acknowledges that IMPAC has submitted information
14 demonstrating that it has adopted new policies and procedures addressing excessive per diem
15 interest. The Commissioner has reviewed this information, and has determined that these new
16 policies and procedures address the excessive per diem interest issue.

17 G. It is the intention and desire of the parties to resolve this matter without the necessity
18 of a hearing and/or other litigation.

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

21 **II**

22 **Terms and Conditions**

23 1. Purpose. This Consent Order is intended to resolve the findings of the 2014
24 regulatory examination of IMPAC described in paragraph E above in a manner that avoids the
25 expense of a hearing, and possible further court proceedings, is in the public interest, protects
26 consumers, and is consistent with the purposes, policies, and provisions of the CRMLA.

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

1 3. Final Order to Discontinue Violations: In accordance with Financial Code section
2 50321, IMPAC stipulates that it is ordered to immediately discontinue charging borrowers per diem
3 interest in excess of the amount(s) allowed under Financial Code section 50204, subdivision (o) and
4 Civil Code section 2948.5.

5 4. Administrative Penalty. IMAPC agrees to pay an administrative penalty in the
6 amount of \$320,150.00 within 5 business days of the effective date of this Consent Order as such
7 date is defined in paragraph 24 herein. The payment shall be made by electronic fund transfer or
8 cashiers' check payable to the Department of Business Oversight and shall be sent to the
9 Department, attention, Accounting-Litigation, 1515 K Street, Suite 200, Sacramento, CA 95814-
10 4052.

11 5. Waiver of Hearing Rights. IMPAC acknowledges that the Commissioner is ready,
12 willing, and able to proceed with the filing of an administrative enforcement action on the charges
13 contained in this Consent Order. IMPAC hereby waives the right to any hearings, and to any
14 reconsideration, appeal, or other right to review which may be afforded pursuant to the CRMLA, the
15 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
16 provision of law. IMPAC further expressly waives any requirement for the filing of an Accusation
17 pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights, IMPAC
18 effectively consents to this Consent Order and Order to Discontinue Violations becoming final.

19 6. January 1, 2013 through December 31, 2016 Self-Audits. The parties acknowledge
20 that IMPAC has conducted self-audits of per diem interest charges for all loans originated between
21 January 1, 2013 and December 31, 2016. The Commissioner has tested the self-audit results for per
22 diem interest charges for all loans originated between January 1, 2013 and December 31, 2014
23 (2013/2014 self-audit) for accuracy and found the 2013/2014 self-audit to be accurate. IMPAC
24 acknowledges the Commissioner has yet to perform accuracy testing on the self-audit for per diem
25 interest charges for all loans originated between January 1, 2015 and December 31, 2016 (2015/2016
26 self-audit). IMPAC agrees to cooperate with the Commissioner's testing by providing any and all
27 documentation requested by the Commissioner for such purposes. IMPAC further agrees to have its
28 2015/2016 self-audit conducted anew (re-audit) by and through an independent certified public

1 accountant (CPA) if the Commissioner’s testing reveals more than a 10 percent error rate as to
2 additional overcharges of per diem interest or refunds due to consumers. In the event a re-audit is
3 required, IMPAC, by and through its CPA, shall submit to the Commissioner the results of the re-
4 audit (re-audit report) within 180 days of the date of IMPAC is notified in writing by the
5 Commissioner that a re-audit is required. The Commissioner agrees to extend the 180-day period a
6 further 60 days if requested in writing by IMPAC and IMPAC can evidence to the Commissioner
7 that it has exercised due diligence in attempting to meet the initial 180-day time-period. The re-audit
8 report shall include at a minimum, the total number of loans made during the period, the number of
9 loans with per diem interest 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 per diem
11 interest commenced, per diem interest charged, daily per diem interest amount, number of days per
12 diem interest charged, number of days per diem interest overcharged (if applicable), overcharge
13 amount (if applicable), date of refund (if applicable), proof of refund (if applicable), and whether the
14 overcharge was previously reported in the 2015/2016 self-audit. IMPAC further agrees that it shall
15 pay an administrative penalty to the Commissioner, upon submission of the re-audit report, equal to
16 \$250.00 for each per diem interest overcharge discovered during the re-audit that (i) was not
17 previously reported in the 2015/2016 self-audit, and (ii) was not refunded to the borrower within 30
18 days of loan funding.

19 7. Quarterly Self-Audits – January 1, 2017 through December 31, 2017. IMPAC also
20 agrees to conduct quarterly self-audits of per diem interest charges for all loans originated during the
21 quarter for a period of one year to commence on January 1, 2017 (quarterly self-audits). IMPAC
22 shall submit to the Commissioner the results of the quarterly audits (quarterly self-audit report)
23 within 90 days of the completion of the quarter, except for the first and second quarterly self-audit
24 reports covering January 1 through June 30, 2017, which shall be due within 90 days of the effective
25 date of this Consent Order as such date is defined in paragraph 24 herein. The quarterly self-audit
26 reports shall include the same information required in the re-audit report described in paragraph 6
27 above, except whether the overcharge was previously reported in the self-audit. IMPAC further
28 agrees that it shall pay an administrative penalty to the Commissioner, upon submission of each

1 quarterly audit report, equal to \$250.00 for each per diem interest overcharge discovered during the
2 quarterly audit(s) that was not refunded to the borrower within 30 days of loan funding.

3 8. Payment of Refunds: Borrower refunds made pursuant to paragraphs 6 and 7 shall
4 include interest at the rate of 10 percent per annum from the date of overcharge, and shall be mailed
5 to the last known address of each borrower prior to submission of the applicable report to the
6 Commissioner. Borrower refunds made pursuant to this Consent Order shall be accompanied by a
7 cover letter that states: “As a result of an examination by the Department of Business Oversight, a
8 refund or adjustment in the amount of \$XXXX is being made for your benefit. If you have any
9 questions concerning this refund, please contact (lender) at (800) XXX-XXXX.”

10 9. Prior Refunds. IMPAC shall submit to the Commissioner within 30 days of
11 execution of this Consent Order evidence of the borrower refunds disclosed in the 2013/2014 and
12 2015/2016 self-audit reports.

13 10. Outstanding Refunds. IMPAC shall be responsible for ensuring that any outstanding
14 refund payment owed to any borrower identified in the self-audit reports described in paragraphs 6
15 and 7 above shall be escheated to the State of California pursuant to the provisions of the California
16 Unclaimed Property Law (Code Civ. Proc., § 1500 et seq.).

17 11. Effect of Consent Order on License. In consideration of the information provided to
18 the Commissioner by IMPAC as described in paragraph F above and IMPAC’s agreement to the
19 entry of this Consent Order and payment of penalties as provided for in paragraphs 2-4 above, the
20 Commissioner hereby agrees that, except as otherwise set forth in this Consent Order, she shall not
21 suspend and/or revoke the residential mortgage lender licenses of IMPAC. Accordingly, this
22 Consent Order does not affect the licensing status of IMPAC.

23 12. Information Willfully Withheld. This Consent Order may be revoked and the
24 Commissioner may pursue any and all remedies available under law against IMPAC if the
25 Commissioner later discovers that IMPAC knowingly or willfully withheld information used for and
26 relied upon in this Consent Order.

27 13. Failure to Comply with Consent Order. IMPAC agrees that if it fails to comply with
28 the terms of this Consent Order within five business days after written notice of demand, the

1 Commissioner may, in addition to all other available remedies under the CRMLA, summarily
2 suspend the CRMLA licenses of IMPAC until IMPAC is in compliance. IMPAC waives any notice
3 and hearing rights to contest such summary suspensions which may be afforded under the CRMLA,
4 the California Administrative Procedure Act, the California Code of Civil Procedure, or any other
5 provision of law in connection therewith.

6 14. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
7 interest.

8 15. Third Party Actions. This Consent Order does not create any private rights or
9 remedies against IMPAC, create any liability for IMPAC or limit defenses of IMPAC for any person
10 or entity not a party to this Consent Order.

11 16. Full and Final Settlement. The parties hereby acknowledge and agree that this
12 Consent Order is intended to constitute a full, final, and complete resolution of the findings of the
13 2014 regulatory examination described in paragraph E. above, up to and including through the
14 effective date of this Consent Order, as such date is defined in paragraph 24 herein, and that no
15 further proceedings or actions will be brought by the Commissioner in connection with these matters
16 under the CRMLA, or any other provision of law, excepting therefrom any proceeding to enforce
17 compliance with the terms of this Consent Order.

18 17. Commissioner’s Duties: The parties acknowledge and agree that nothing contained
19 in this Consent Order shall operate to limit the Commissioner’s ability to assist any other agency
20 (city, county, state or federal) with any prosecution, administrative, civil or criminal, brought by any
21 such agency against IMPAC or any other person based upon any of the activities alleged in these
22 matters or otherwise.

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

26 19. Reliance. Each of the parties represents, warrants, and agrees that in executing this
27 Consent Order it has relied solely on the statements set forth herein and the advice of its own counsel
28 and/or representative. Each of the parties further represents, warrants, and agrees that in executing

1 this Consent Order it has placed no reliance on any statement, representation, or promise of any
2 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
3 party or any other person or entity to make any statement, representation or disclosure of anything
4 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
5 any way fraudulently induced to execute this Consent Order, and (2) to preclude the introduction of
6 parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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

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

20 22. Waiver, Modification, and Qualified Integration. The waiver of any provision of this
21 Consent Order shall not operate to waive any other provision set forth herein. No waiver,
22 amendment, or modification of this Consent Order shall be valid or binding to any extent unless it is
23 in writing and signed by all of the parties affected by it.

24 23. Headings and Governing Law. The headings to the paragraphs of this Consent Order
25 are inserted for convenience only and will not be deemed a part hereof or affect the construction or
26 interpretation of the provisions hereof. This Consent Order shall be construed and enforced in
27 accordance with and governed by California law.

28 24. Effective Date. This Consent Order shall not become effective until signed by all

1 parties and a fully executed copy is delivered by counsel for the Commissioner via email to counsel
2 for IMPAC.

3 25. Counterparts. This Consent Order may be executed in one or more separate
4 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
5 together constitute a single document.

6 26. Notice. Any notice required under this Consent Order shall be addressed as follows:

7 To IMPAC Mortgage Corp.: Jonathan D. Jaffe, Esq.
8 Mayer Brown LLP
9 Two Palo Alto Square, Suite 300
10 3000 El Camino Real
11 Palo Alto, California 94306-2112
12 jjaffe@mayerbrown.com

13 Ron Morrison, Esq.
14 EVP General Counsel
15 IMPAC Mortgage Corp.
16 19500 Jamboree Road
17 Irvine, California 92612
18 Ron.Morrison@impacmail.com

19 To the Commissioner: Judy L. Hartley, Esq.
20 Senior Counsel
21 Department of Business Oversight
22 320 W. 4th Street, Suite 750
23 Los Angeles, California 90013-2344
24 judy.hartley@dbo.ca.gov

25 27. Public Record. IMPAC acknowledges that this Consent Order is a public record.

26 28. Settlement Authority. Each signatory hereto covenants that he/she possesses all
27 necessary capacity and authority to sign and enter into this Consent Order.

28 Dated: 10/2/17

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 10/2/17

IMPAC MORTGAGE CORP.

By _____
WILLIAM S. ASHMORE, President

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APPROVED AS TO FORM:
MAYER BROWN LLP
By _____
JONATHAN D. JAFFE, ESQ. attorney for
IMPAC MORTGAGE CORP.

Commissioner of Business Oversight

By _____
JUDY L. HARTLEY, ESQ.
Senior Counsel