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

11 In the Matter of:) CRMLA License No.: 413-1034
12)
13 THE COMMISSIONER OF BUSINESS) **CONSENT ORDER**
OVERSIGHT,)
14)
Complainant,)
15)
16 vs.)
17 MEMBER FIRST MORTGAGE, LLC)
18)
Respondent.)

19
20 This Consent Order (Order) is entered into between the Commissioner of Business
21 Oversight (“Commissioner”) and Member First Mortgage, LLC (“Member First Mortgage”)
22 (collectively, the parties), and is made with respect to the following facts:

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
26 the California Residential Mortgage Lending Act (CRMLA) (Fin. Code § 50000 et seq.)
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1 B. Member First Mortgage is a residential mortgage lender and loan servicer licensed
2 by the Commissioner since May 20, 2010 (CRMLA License No. 413-1034.) Member First
3 Mortgage has its principal place of business located at 616 44th Street SE, Grand Rapids, MI 49548.

4 C. John Worthington is the chief financial officer of Member First Mortgage and a
5 control person of Member First Mortgage and, as such, is authorized to enter into this Consent
6 Order on behalf of Member First Mortgage.

7 D. During a regulatory examination of Member First Mortgage conducted in 2012, and
8 a second examination conducted in 2016, the Commissioner discovered that Member First
9 Mortgage: (i) failed to properly reconcile its escrow liability ledger to the control account at least
10 once each week and to the bank statement at least once each month in violation of Financial Code
11 section 50202 and California Code of Regulations, title 10, section 1950.314.1; (ii) failed to file
12 fingerprints and/or form MBLs (Mortgage Bankers Law) 1950.122.2 of at least one of its officers as
13 required under Financial Code section Financial Code section 50121 and California Code of
14 Regulations, title 10, section 1950.122.2; and (iii) failed to provide adequate license disclosure on
15 its website in violation of California Code of Regulations, title 10, section 1950.204.3(b) and
16 Business and Profession Code section 17539.4.

17 E. In or about June 2016, the Enforcement Division of the Department of Business
18 Oversight (DBO) notified Member First Mortgage of its intention to initiate an administrative
19 action to enforce Member First Mortgage’s compliance with the Financial Code, and seek remedies
20 for past violations. These remedies the DBO indicated it would seek included an Order imposing
21 penalties for past violations pursuant to Financial Code section 50513(b); and an Order requiring
22 the discontinuance of violations pursuant to California Financial Code section 50321 (collectively,
23 Enforcement Action).

24 F. Upon being informed of the DBO’s intent to commence the Enforcement Action,
25 Member First Mortgage stated it would cooperate fully with the Commissioner, and agree to the
26 issuance of this Consent Order without the need to commence filing the Enforcement Action first.
27 Member First Mortgage expressed its intent and desire to correct and remedy any past violations.
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1 G. It is the intention and desire of the parties to resolve this matter without the necessity
2 of a hearing and/or other litigation.

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

5 I. NOW, THEREFORE, in consideration of the foregoing, and the terms and
6 conditions set forth herein, the parties agree as follows:

7 TERMS AND CONDITIONS

8 1. Purpose

9 The purpose of this Consent Order is to resolve the DBO’s Enforcement Action and
10 investigation into the violations discovered during its examinations of Member First Mortgage in a
11 manner that avoids the expense of court proceedings and a hearing, is in the public interest, protects
12 consumers, and is consistent with the purposes, policies, and provisions of the CRMLA.

13 2. Finality of Order

14 Member First Mortgage hereby agrees to comply with the Consent Order and, further,
15 stipulates that this Consent Order is hereby deemed a final and enforceable order issued pursuant to
16 the Commissioner’s authority under Financial Code Sections 50321 and 50513.

17 3. Order to Discontinue Violations

18 Member First Mortgage stipulates that in accordance with Financial Code section 5032, it
19 agrees to comply with the CRMLA including but not limited, to immediately discontinue the
20 violations set forth below:

21 a) Failing to timely reconcile its escrow liability ledgers to its control account at least
22 once each week and to the bank statement balance at least once each month in violation of section
23 50202 of the Financial Code and Section 1950.314.1(b) of the California Code of Regulation;

24 b) Failing to file fingerprints and/or form MBL (Mortgage Bankers Law) 1950.122.2 of
25 at least one of its officers as required by Financial Code section 50121 and California Code of
26 Regulations, title 10, section 1950.122.2.; and

27 c) Failing to provide adequate disclosure on its website that states it is “Licensed by the
28 Department of Business Oversight under the California Residential Mortgage Lending Act” in

1 violation of California Code of Regulations, title 10, section 1950.204.3(b) and Business and
2 Profession Code section 17539.4.

3 4. Waiver of Hearing Rights

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

13 5. Payment of Penalties

14 Pursuant to Financial Code section 50513(b), Member First Mortgage shall pay a penalty in
15 the amount of \$30,000.00 due within 30 calendar days of the effective date of this Consent Order,
16 as such date is defined in paragraph 21, made payable in the form of a cashier’s check to the
17 “Department of Business Oversight” and mailed to the attention of:

18 Uche Enenwali, Senior Counsel
19 Enforcement Division
20 The California Department of Business Oversight
21 320 West Fourth Street, Suite 750
22 Los Angeles, California 90013

22 6. Declaration of Policies and Procedures

23 Member First Mortgage has submitted to the Commissioner a declaration under the penalty
24 of perjury (Declaration) from an officer with personal knowledge of Member First Mortgage’s
25 policies and procedures that sets forth all policies and procedures that have been implemented as of
26 the date of this Order by Member First Mortgage to ensure compliance with Financial Code
27 sections 50121 and 50202, and California Code of Regulations, title 10, sections 1950.314.1;
28 1950.122.2; and 1950.204.3(b) and Business and Profession Code section 17539.4.

1 The Commissioner has reviewed the Declaration and deemed the policies and procedures
2 contained therein as satisfactory. Member First Mortgage agrees to continue implementing those
3 policies and procedures in the future.

4 7. Effect of Consent Order on License

5 In consideration of Member First Mortgage’s agreement to the entry of this Consent Order,
6 and to pay penalties required by Paragraph 5 hereof, the Commissioner hereby agrees that except as
7 set forth in this Consent Order, she shall not take any further action based on violation of the code
8 provisions cited in this Consent Order for the period of January 2012 through the date of execution
9 of this Consent Order, as such date is defined in Paragraph 21. Accordingly, this Consent Order
10 does not affect the licensing status of Member First Mortgage.

11 8. Suspension of License for Failure to Comply with Order

12 Member First Mortgage agrees that if it fails to comply with the terms of this Consent
13 Order, Member First Mortgage shall be immediately suspended from lending and servicing under
14 its CRMLA license until the terms are met. Member First Mortgage hereby waives any notice and
15 hearing rights to contest the immediate suspension.

16 9. Full and Final Settlement

17 The parties hereby acknowledge and agree that this Consent Order is intended to constitute a
18 full, final, and complete resolution of the Enforcement Action and the DBO’s investigation of
19 Member First Mortgage and for violations discovered during its examination and that no further
20 proceedings or actions will be brought by the Commissioner in connection with these matters either
21 under the CRMLA, or any other provision of law, excepting therefrom any proceeding to enforce
22 compliance with the terms of this Consent Order, or action if such proceeding or action is based
23 upon discovery of new and further violations of the CRMLA which do not form the basis for this
24 Consent Order or which were knowingly concealed from the Commissioner by Member First
25 Mortgage.

26 10. Binding

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

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1 11. Commissioner’s Duties

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

7 12. Third Party Actions

8 It is the intent and understanding between the parties that this Consent Order does not create
9 any private rights or remedies against Member First Mortgage, create any liability for Member First
10 Mortgage or limit defenses of Member First Mortgage for any person or entity not a party to this
11 Consent Order.

12 13. Future Actions by Commissioner

13 This Consent Order may be revoked and the Commissioner may pursue any and all
14 remedies available under law against Member First Mortgage if the Commissioner later discovers
15 that Member First Mortgage knowingly or willfully withheld information used for and relied upon
16 in this Consent Order. Further, Member First Mortgage agrees that this Consent Order does not
17 resolve any penalties that may be assessed by the Commissioner upon discovery of new and further
18 violations of the CRMLA.

19 14. Independent Legal Advice

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

23 15. Counterparts

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

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1 16. Waiver, Modification, and Qualified Integration

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

5 17. Headings and Governing Law

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

10 18. Full Integration

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

20 19. Presumption from Drafting

21 In that the parties have had the opportunity to draft, review and edit the language of this
22 Consent Order, no presumption for or against any party arising out of drafting all or any part of this
23 Consent Order will be applied in any action relating to, connected to, or involving this Consent
24 Order. Accordingly, the parties waive the benefit of Civil Code section 1654 and any successor or
25 amended statute, providing that in cases of uncertainty, language of a contract should be interpreted
26 most strongly against the party who caused the uncertainty to exist.

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20. Voluntary Agreement

Member First Mortgage enters into this Consent Order voluntarily and without coercion and acknowledges that no promises, threats or assurances have been made by the Commissioner or any officer, or agent thereof, about this Consent Order.

21. Effective Date

This Consent Order shall not become effective until signed by all parties and delivered by the Commissioner’s counsel by email to Member First Mortgage’s chief financial officer at john.worthington@memberfirstmortgage.com.

22. Public Record

Respondent acknowledges that this Consent Order is a public record.

23. Authority to Execute

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

Dated: September 27, 2016

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: September 27, 2016

MEMBER FIRST MORTGAGE,

By _____
John Worthington, Chief Financial Officer