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

12 In the Matter of:) CRMLA License No.: 413-1054
) NMLS No.: 39179
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,)
14) AMENDED CONSENT ORDER
15 Complainant,)
)
16 v.)
)
17 MOVEMENT MORTGAGE, LLC,)
)
18 Respondent.)
19)

20
21 This Consent Order is entered between Movement Mortgage, LLC (Movement) and the
22 Commissioner of Business Oversight (Commissioner), and is made with respect to the following
23 facts:

24 **RECITALS**

- 25 A. Movement is a limited liability company formed in Delaware on July 26, 2007, with a
26 principal place of business at 8024 Calvin Hall Road, Indian Land, South Carolina 29707.
27 B. Movement is a residential mortgage lender licensed by the Commissioner since March 2,
28 2007 (License No. 413-1054), pursuant to the California Residential Mortgage Lending Act

1 (CRMLA) (Fin. Code, § 50000 et seq.).

2 C. The Commissioner has jurisdiction over the licensing and regulation of persons and entities
3 engaged in the business of lending and/or servicing residential mortgage loans under the CRMLA.

4 D. Casey Crawford is the President of Movement and, as such, is authorized to enter this Consent
5 Order on behalf of Movement.

6 E. During a regulatory examination of Movement in 2012, the Commissioner found that
7 Movement overcharged per diem interest to borrowers in violation of Financial Code section 50204,
8 subdivision (o), and Civil Code section 2948.5.

9 F. During a subsequent examination of Movement commencing on January 4, 2016, the
10 Commissioner found that Movement overcharged per diem interest to borrowers in violation of
11 Financial Code section 50204, subdivision (o), and Civil Code section 2948.5. The Commissioner
12 also found that Movement was servicing residential mortgage loans in violation of Financial Code
13 section 50002, subdivision (a).

14 G. On July 25, 2016, Movement submitted a self-audit report to the Commissioner identifying
15 refunds of excess per diem interest it had issued for 1,347 loans funded through the period of January
16 25, 2012 to July 17, 2016. However, the Commissioner sampled 150 of those loans and found
17 significant loans with refunds that were still owed to borrowers.

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

20 I. The Commissioner finds that this action is appropriate, in the public interest, and consistent
21 with the purpose fairly intended by the policy and provisions of the CRMLA.

22 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set forth
23 in this document, the parties agree as follows:

24 **TERMS AND CONDITIONS**

25 1. Purpose. The purpose of this Consent Order (Consent Order) is to resolve the matter
26 before the Commissioner in a manner that avoids the expense of a hearing and possible further court
27 proceedings, is in the public interest, protects consumers, and is consistent with the purposes,
28 policies, and provisions of the CRMLA.

1 2. Finality of Consent Order. Movement agrees to comply with the Consent Order and
2 stipulates that the Consent Order is hereby deemed final. The Consent Order resolves all matters
3 arising from the current and previous examinations of Movement by the Commissioner.

4 3. Order to Discontinue Violations. Movement stipulates, in accordance with Financial Code
5 section 50321, that Movement Mortgage, LLC immediately discontinues the violations set forth
6 above.

7 4. Servicing Authority. The Commissioner approved Movement’s residential mortgage loan
8 servicer application upon execution of the Consent Order executed on December 11, 2017.

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

17 6. Policies and Procedures. Movement has developed and implemented, and the
18 Commissioner has approved, policies and procedures as of March 20, 2018 that are designed to
19 prevent per diem overcharges. Movement shall provide these policies and procedures to the
20 Independent Auditor specified in Paragraph 7.

21 7. Independent Auditor. Movement engaged an independent certified public accountant or
22 certified public accounting firm that was acceptable to the Department (“Independent Auditor”) to
23 detect and report on violations of law as required by the Consent Order executed on December 11,
24 2017.

25 8. Audit of Past Loans and Refunds. Movement agrees to have the Independent Auditor
26 conduct an internal review of Movement’s loan files and records to determine whether its policies and
27 procedures to prevent per diem overcharges are effective. The audit shall commence no later than 30
28 calendar days from the effective date of the Consent Order executed on December 11, 2017. The

1 Independent Auditor shall submit an audit report to the Department no later than 120 calendar days
2 from the date of execution of this Consent Order by the parties. The audit report shall cover all
3 California loans originated and funded by Movement from August 1, 2014 to November 30, 2017.
4 The audit report, with respect to per diem charges, shall include, at a minimum, the following: (i) the
5 total number of loans originated and funded by Movement from August 1, 2014 to November 30,
6 2017; (ii) the number of loans with per diem interest charges in excess of the amount permitted by
7 Financial Code section 50204, subdivision (o), and Civil Code section 2948.5; and (iii) for each and
8 every loan, the borrower loan number, borrower name, address, loan amount, loan date, per diem
9 interest charged, per diem interest that should have been charged under Financial Code section
10 50204, subdivision (o) and Civil Code section 2948.5, overcharge amount (if any), date of refund (if
11 applicable), and proof of refund (if applicable). Movement agrees to refund with 10 percent interest
12 per annum all the borrowers identified by the audit report who were charged excessive per diem
13 interest. Movement agrees to mail all refunds no later than 10 business days following completion of
14 the audit. If the audit shows an overpayment of per diem interest plus 10 percent interest per annum
15 to any borrower based on a previous refund from Movement, then Movement agrees not to collect
16 that amount from the borrower. No later than 90 calendar days after the Independent Auditor submits
17 its report to the Department, Movement shall notify the Commissioner of any refund payment that
18 has been returned or remains outstanding. Movement shall be responsible for ensuring that any
19 outstanding refund payment owed to any borrower is escheated to the State of California pursuant to
20 the provisions of the California Unclaimed Property Law (Code Civ. Proc., § 1500 et seq.).

21 9. Audit of Prospective Loans and Reports on Overcharges. Movement agrees to have the
22 Independent Auditor conduct an internal review of Movement's loan files and records for loans
23 originated for a 12-month period. The audit shall cover all California loans originated and funded by
24 Movement from December 1, 2017 and continuing for a 12-month period. For the 12-month period,
25 the Independent Auditor shall submit audit reports on a quarterly basis as follows:

26 a. The first audit report shall cover all California loans originated by Movement from
27 December 1, 2017 to February 28, 2018, and shall be submitted to the Commissioner by April 30,
28 2018.

1 b. The second audit report shall cover all California loans originated by Movement from
2 March 1, 2018 to May 31, 2018, and shall be submitted to the Commissioner by July 31, 2018.

3 c. The third audit report shall cover all California loans originated by Movement from June 1,
4 2018 to August 31, 2018, and shall be submitted to the Commissioner by October 31, 2018.

5 d. The fourth audit report shall cover all California loans originated by Movement from
6 September 1, 2018 to November 30, 2018, and shall be submitted to the Commissioner by January
7 31, 2019.

8 The audit report shall describe at a minimum, the following: (i) the total number of loans
9 originated and funded by Movement; (ii) the number of loans with per diem interest charges in excess
10 of the amount permitted by Financial Code section 50204, subdivision (o), and Civil Code section
11 2948.5; and (iii) for each and every loan, the borrower loan number, borrower name, address, loan
12 amount, loan date, per diem interest charged, per diem interest that should have been charged under
13 Financial Code section 50204, subdivision (o) and Civil Code section 2948.5, overcharge amount (if
14 any), date of refund (if applicable), and proof of refund (if applicable).

15 10. Refunds. Movement agrees to refund with 10 percent interest per annum all the
16 borrowers identified by the Independent Audit report in Paragraphs 8 and 9 who were charged
17 excessive per diem interest. Movement agrees to mail the refunds no later than 10 business days
18 following receipt of the Independent Auditor's findings. No later than 90 calendar days after the
19 Independent Auditor report is submitted to the Department, Movement shall notify the Commissioner
20 of any refund payment that has been returned or remains outstanding. Movement shall be responsible
21 for ensuring that any outstanding refund payment owed to any borrower is escheated to the State of
22 California pursuant to the provisions of the California Unclaimed Property Law (Code Civ. Proc., §
23 1500 et seq.).

24 11. Administrative Penalty Based on Independent Audit Findings. Movement agrees to pay
25 an administrative penalty of \$125.00 for each violation involving a per diem overcharge identified by
26 the Independent Auditor pursuant to Paragraphs 8 and 9, exclusive of the loans referenced in
27 Paragraph G of the Consent Order executed on December 11, 2017 for which an additional penalty
28 shall not be due under this paragraph. With respect to per diem overcharges, all loans that are

1 compliant at closing, or compliant within 30 calendar days of closing, shall not be deemed to be new
2 violations. The payment for these penalties shall be made within 10 business days from the receipt of
3 the Independent Auditor's findings and made payable in the form of a cashier's check or Automated
4 Clearing House deposit to the "Department of Business Oversight," and transmitted to the attention
5 of: Accounting, at the Department of Business Oversight located at 1515 K Street, Suite 200,
6 Sacramento, California, 95814. Notice of the payment shall concurrently be sent to the attention of
7 Timothy L. Le Bas, Senior Counsel, Enforcement Division, 1515 K Street, Suite 200, Sacramento,
8 California 95814.

9 12. Administrative Penalty. Movement agrees to pay an administrative penalty of
10 \$1,000,000.00 to the Commissioner within 60 calendar days from the Effective Date of the Consent
11 Order executed on December 11, 2017. Movement shall pay the above penalty made payable in the
12 form of a cashier's check or Automated Clearing House deposit to the "Department of Business
13 Oversight," and transmitted to the attention of: Accounting at the Department of Business Oversight
14 located at 1515 K Street, Suite 200, Sacramento, California, 95814. Notice of the payment shall
15 concurrently be sent to the attention of Timothy L. Le Bas, Senior Counsel, Enforcement Division,
16 1515 K Street, Suite 200, Sacramento, California 95814.

17 13. Failure to Make Timely or Sufficient Refunds. Movement agrees that if it fails to meet
18 any deadline or any requirement in Paragraphs 8 and 10 above (regarding payment of refunds), other
19 than inadvertent and isolated errors that are promptly corrected by Movement within 30 calendar
20 days, Movement's CRMLA license number 413-1054 shall be immediately suspended until the
21 requirements are met. Movement hereby waives any notice and hearing rights to contest the
22 immediate suspension resulting from failure to comply with Paragraphs 8 and 10 above which may be
23 afforded under the California Financial Code, the California Administrative Procedure Act, the
24 California Code of Civil Procedure, or any other legal provisions. Movement expressly waives any
25 requirement for the filing of an Accusation that may be afforded by Government Code section
26 11415.60, subdivision (b), the California Administrative Procedure Act, the California Code of Civil
27 Procedure, or any other provisions of law, and by waiving such rights, Movement effectively
28 consents to this Consent Order becoming final.

1 14. Failure to File Timely or Complete Reports Concerning Audits or Refunds. Movement
2 agrees that if it fails to meet any deadline or any requirement in Paragraph 7 (regarding hiring the
3 auditor), Paragraph 8 (regarding the audit reports), Paragraph 9 (regarding the audit reports),
4 Movement shall immediately notify the Department of such failure and cooperate with the
5 Department to cause such failure to be rectified as soon as reasonably practicable but no later than 30
6 calendar days. Failure to abide by these terms shall result in the immediate suspension of
7 Movement's CRMLA license number 413-1054 until the requirements are met. Movement hereby
8 waives any notice and hearing rights to contest the suspension resulting from failure to comply with
9 Paragraphs 7, 8, and 9 above that may be afforded under the California Financial Code, the California
10 Administrative Procedure Act, the California Code of Civil Procedure, or any other legal provisions.
11 Movement expressly waives any requirement for the filing of an Accusation that may be afforded by
12 Government Code section 11415.60, subdivision (b), the California Administrative Procedure Act,
13 the California Code of Civil Procedure, or any other provisions of law, and by waiving such rights,
14 Movement effectively consents to this Consent Order becoming final.

15 15. Failure to Make Timely Payment of Penalties. Movement agrees that if it fails to meet
16 the deadline for payment of penalties set forth in Paragraphs 11 and 12, Movement's CRMLA license
17 number 413-1054 shall be immediately suspended until payment is received by the Commissioner.
18 Movement hereby waives any notice and hearing rights to contest the suspension resulting from
19 failure to comply with Paragraphs 11 and 12 above that may be afforded under the California
20 Financial Code, the California Administrative Procedure Act, the California Code of Civil Procedure,
21 or any other legal provision. Movement expressly waives any requirement for the filing of an
22 Accusation that may be afforded by Government Code section 11415.60, subdivision (b), the
23 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
24 provisions of law, and by waiving such rights, Movement effectively consents to this Consent Order
25 becoming final.

26 16. Full and Final Settlement. The parties hereby acknowledge and agree that this Consent
27 Order is intended to constitute a full, final, and complete resolution of the Administrative Action and
28 that no further proceedings or actions will be brought by the Commissioner in connection with these

1 matters either under the CRMLA, or any other provision of law, excepting therefrom any proceeding
2 or action if such proceeding or action is based upon discovery of new and further violations of the
3 CRMLA which do not form the basis for this Consent Order or which were knowingly concealed
4 from the Commissioner by Movement.

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

7 18. Commissioner's Duties. The parties further acknowledge and agree that nothing
8 contained in this Consent Order shall operate to limit the Commissioner's ability to assist any other
9 agency (city, county, state or federal) with any prosecution, administrative, civil or criminal, brought
10 by any such agency against Movement or any other person based upon any of the activities alleged in
11 these matters or otherwise.

12 19. Third Party Actions. It is the intent and understanding between the parties that this
13 Consent Order does not create any private rights or remedies against Movement create any liability
14 for Movement or limit defenses of Movement for any person or entity not a party to this Consent
15 Order.

16 20. Future Actions by Commissioner. This Consent Order may be revoked and the
17 Commissioner may pursue all remedies available under law or this Consent Order against Movement,
18 if the Commissioner later discovers that Movement knowingly or willfully withheld information used
19 and relied upon in this Consent Order. Further, Movement agrees that this Consent Order does not
20 resolve any remedies, including penalties that may be assessed by the Commissioner, upon discovery
21 of new and further violations of the CRMLA that occur after execution of this Consent Order, which
22 do not form the basis for this Consent Order.

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

26 22. Counterparts. The parties agree that this Consent Order may be executed in one or more
27 separate counterparts, each of which when so executed, shall be deemed an original. A fax signature
28 shall be deemed the same as an original signature. Such counterparts shall together constitute and be

1 one and the same instrument.

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

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

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

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

25 27. Voluntary Agreement. Movement enters this Consent Order voluntarily and without
26 coercion and acknowledges that no promises, threats or assurances have been made by the
27 Commissioner or any officer, or agent thereof, about this Consent Order.

28 28. Effective Date. This Consent Order shall not become effective and final until signed by

1 all parties and sent by the Commissioner's agent electronic mail to Casey Crawford at
2 Casey@movement.com.

3 29. Public Record. Respondent acknowledges that this Consent Order is a public record.

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

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7 Dated: March 23, 2018

Jan Lynn Owen
Commissioner of Business Oversight

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By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

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Dated: March 23, 2018

MOVEMENT MORTGAGE, LLC

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By _____
CASEY CRAWFORD
President

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