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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.: 413-0476
13) NMLS ID: 168397
14 THE COMMISSIONER OF BUSINESS)
OVERSIGHT)
15)
16 Complainant,)
17 v.) CONSENT ORDER
18 NEVADA RMS & ASSOCIATES)
19 doing business as RMS & ASSOCIATES and)
RESIDENTIAL MORTGAGE SERVICES.)
20)
21 Respondent.)
_____)

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23 This Consent Order (Consent Order) is entered between the Commissioner of Business
24 Oversight (Commissioner) and Nevada RMS & Associates, doing business as RMS & Associates
25 and Residential Mortgage Services (Nevada RMS) (collectively, the parties), and is made with
26 respect to the following facts:

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I.
Recitals

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3 A. The Commissioner has jurisdiction over the licensing and regulation of persons and entities
4 engaged in the business of lending and servicing residential mortgage loans pursuant to the
5 California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.).

6 B. Nevada RMS is a residential mortgage lender licensed by the Commissioner since October
7 1, 2010 (CRMLA License No. 413-0476). Nevada RMS has its principal place of business located
8 at 3585 East Flamingo Road, Suite 103, Las Vegas, Nevada 89121.

9 C. Wayne Wasano is the President and a control person of Nevada RMS and, as such, is
10 authorized to enter this Consent Order on Nevada RMS's behalf.

11 D. During a regulatory examination of Nevada RMS conducted in 2017 ("2017 Exam"), the
12 Commissioner's staff identified the following violations of California law:

13 i. Nevada RMS failed to provide a borrower with a fair lending notice that disclosed
14 the address of the Department of Business Oversight, in violation of Health and Safety Code
15 section 35830 and California Code of Regulations, title 21, section 7114. This is a repeat
16 violation previously identified by the Commissioner after a 2012 exam.

17 ii. Nevada RMS failed to maintain books and records and conduct weekly
18 reconciliations of its trust accounts, in violation of California Code of Regulations, title 10,
19 section 1950.314.1.

20 iii. Nevada RMS overcharged a borrower for an appraisal fee, in violation of Financial
21 Code section 50204, subdivision (i).

22 E. The 2017 Exam reviewed loans originated between July 1, 2014 through November 30,
23 2016.

24 F. In 2018, the Commissioner informed Nevada RMS that she would commence an
25 administrative action to enforce Nevada RMS's compliance with the CRMLA, and seek remedies
26 for past violations. These remedies included seeking orders imposing penalties for past violations,
27 ordering Nevada RMS to correct its policies and procedures, and ordering the discontinuance of
28 violations pursuant to Financial Code section 50321 (collectively, Enforcement Action).

1 G. Upon being informed of the Commissioner’s intent to commence the Enforcement Action,
2 Nevada RMS responded by indicating that it would cooperate fully with the Commissioner to
3 correct and remedy any past violations, and agreed to the issuance of this Consent Order without the
4 need to commence filing an administrative action.

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

7 I. The Commissioner finds that this action is appropriate, in the public interest, and consistent
8 with the purposes fairly intended by the policies and provisions of this law.

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

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12 **II.**
Terms and Conditions

13 1. Purpose.

14 The purpose of this Consent Order is to resolve the Commissioner’s investigation into the
15 violations discovered during her examination of Nevada RMS in a manner that avoids the expense
16 of court proceedings and a hearing, is in the public interest, protects consumers, and is consistent
17 with the purposes, policies, and provisions of the CRMLA.

18 2. Finality of Consent Order.

19 Nevada RMS hereby agrees to comply with this Consent Order and, further, stipulates that
20 this Consent Order is hereby deemed a final and enforceable order issued pursuant to the
21 Commissioner’s authority under Financial Code sections 50321 and 50513.

22 3. Order to Discontinue.

23 Nevada RMS stipulates that in accordance with Financial Code section 50321, Nevada RMS
24 will immediately discontinue the violations set forth herein.

25 4. Waiver of Hearing Rights.

26 Nevada RMS acknowledges that the Commissioner is ready, willing, and able to proceed
27 with the filing of an administrative enforcement action on the charges contained in this Consent
28 Order, and Nevada RMS hereby waives the right to a hearing, and to any reconsideration, appeal, or

1 other right to review which may be afforded pursuant to the CRMLA. Nevada RMS further
2 expressly waives any requirement for the filing of an Accusation that may be afforded by
3 Government Code section 11415.60, subdivision (b), the Administrative Procedure Act, the Code of
4 Civil Procedure, or any other provision of law; and by waiving such rights, Nevada RMS effectively
5 consents to this Consent Order becoming final.

6 5. Payment of Refunds.

7 Nevada RMS issued a refund to the borrower who was overcharged an appraisal fee after the
8 Department notified Nevada RMS of this violation.

9 6. Payment of Penalty.

10 Within seven days of the Effective Date of this Order, as such date is defined by Paragraph
11 21, Nevada RMS shall pay a penalty of \$20,000 for the violations discussed herein, made payable in
12 the form of a cashier's check or Automated Clearing House deposit to the "Department of Business
13 Oversight," and mailed to the attention of: Accounting – Litigation, at the Department of Business
14 Oversight located at 1515 K Street, Suite 200, Sacramento, California 95814. Notice of payment
15 shall be sent to Charles Carriere, Counsel, Enforcement Division, at the Department of Business
16 Oversight located at One Sansome Street, Suite 600, San Francisco, California 94104.

17 7. Policies and Procedures.

18 Nevada RMS has submitted to the Commissioner a copy of its policies and procedures to
19 ensure compliance with the laws set forth herein. Nevada RMS agrees to continue implementing
20 those policies and procedures in the future.

21 8. Effect of Consent Order on License.

22 In consideration of Nevada RMS's agreement to the entry of this Consent Order, and to pay
23 penalties required by Paragraph 6 hereof, the Commissioner hereby agrees that except as set forth in
24 this Consent Order, she shall not suspend the residential mortgage lender license of Nevada RMS or
25 take any further action based on violation of the code provisions identified in this order for the
26 period of July 1, 2014 through November 30, 2016. Accordingly, this Consent Order does not
27 affect the licensing status of Nevada RMS.

28 9. Suspension of License for Failure to Comply with Order.

1 If Nevada RMS fails to meet any deadline or any requirement of this Order, other than
2 inadvertent and isolated errors that are promptly corrected by Nevada RMS, the Commissioner may
3 immediately suspend Nevada RMS's CRMLA license, unless and until Nevada RMS meets the
4 deadline or requirement. Nevada RMS hereby waives any further notice and hearing rights to
5 contest any immediate suspension from lending issued pursuant to the terms of this paragraph
6 afforded under the Financial Code, the Administrative Procedure Act, the Code of Civil Procedure,
7 or any other legal provisions.

8 10. Full and Final Settlement.

9 The parties hereby acknowledge and agree that this Consent Order is intended to constitute a
10 full, final, and complete resolution of the Commissioner's investigation of Nevada RMS and for
11 violations discovered during its examination and that no further proceedings or actions will be
12 brought by the Commissioner in connection with these matters either under the CRMLA, or any
13 other provision of law, excepting therefrom any proceeding to enforce compliance with the terms of
14 this Consent Order, or a proceeding or action based upon discovery of new and further violations of
15 the CRMLA which do not form the basis for this Consent Order or which Nevada RMS knowingly
16 concealed from the Commissioner.

17 11. Binding.

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

19 12. Commissioner's Duties.

20 The parties further acknowledge and agree that nothing contained in this Consent Order
21 shall operate to limit the Commissioner's ability to assist any other agency (city, county, state or
22 federal) with any prosecution, administrative, civil or criminal, brought by any such agency against
23 Nevada RMS or any other person based upon any of the activities alleged in this Consent Order or
24 otherwise.

25 13. Future Actions by Commissioner.

26 This Consent Order may be revoked, and the Commissioner may pursue all remedies
27 available under the law against Nevada RMS if the Commissioner later discovers that Nevada RMS
28 knowingly or willfully withheld information used for and relied upon in this Consent Order.

1 Further, Nevada RMS agrees that this Consent Order does not resolve any penalties that may be
2 assessed by the Commissioner upon discovery of new and further violations of the CRMLA.

3 14. Independent Legal Advice.

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

7 15. Counterparts.

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

11 16. Waiver, Modification, and Qualified Integration.

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

15 17. Headings and Governing Law.

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

20 18. Full Integration.

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

1 this Consent Order; and (2) to preclude the introduction of parol evidence to vary, interpret,
2 supplement, or contradict the terms of this Consent Order.

3 19. Presumption from Drafting.

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

10 20. Voluntary Agreement.

11 Nevada RMS enters this Consent Order voluntarily and without coercion and acknowledges
12 that no promises, threats or assurances have been made by the Commissioner or any officer, or
13 agent thereof, about this Consent Order.

14 21. Effective Date.

15 This Consent Order shall not become effective until signed by all parties and delivered by
16 the Commissioner’s counsel by email to Wayne Wasano at wayne.wasano@rmsfunding.com
17 (“Effective Date”).

18 22. Public Record.

19 Respondent acknowledges that this Consent Order is a public record.

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23. Authority to Execute.

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

Dated: 6/14/18

JAN LYNN OWEN
Commissioner of Business Oversight

By _____

MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 6/12/18

NEVADA RMS & ASSOCIATES

By _____

WAYNE WASANO
President