

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 UCHE ENENWALI (SBN: 235832)
Senior Corporations Counsel
4 Department of Business Oversight
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7586
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

10
11 In the Matter of:) CRMLA License: 417-0030
)
12 THE COMMISSIONER OF BUSINESS)
OVERSIGHT)
13) **CONSENT ORDER**
14 Complainant,)
)
15 vs.)
)
16 OPEN MORTGAGE, LLC,)
17)
18 Respondent.)

19 The Commissioner of Business Oversight (“Commissioner”) and Open Mortgage, LLC (“the
20 Parties”), stipulate and consent to entry of this Consent Order as settlement of the issues contained in
21 this Consent Order, as follows:

22 **JURISDICTION AND VENUE**

23 1. The Commissioner, as the head of the Department of Business Oversight
24 (“Department”), is authorized to administer and enforce the provisions of the California Residential
25 Mortgage Lending Act (“CRMLA”) (Fin. Code § 50000 et seq.) and the regulations thereunder at
26 California Code of Regulations, title 10.

27 2. The Commissioner brings this action pursuant to the provisions of the Financial Code
28 section 50504.

1 3. Open Mortgage, LLC admits to the jurisdiction of the Department and the subject
2 matter of these proceedings and consents to entry of this Consent Order.

3 **STATEMENT OF FACTS**

4 4. Open Mortgage, LLC is a residential mortgage lender licensed by the Commissioner
5 pursuant to the California Residential Mortgage Lending Act ("CRMLA") (California Financial
6 Code Section 50000 et seq.). Open Mortgage has its principal place of business located at 14101 W.
7 Hwy 290, Suite #1300, Austin, TX 78737. Open Mortgage, LLC currently has 17 branch office
8 locations under its CRMLA license located in California, and other states. Open Mortgage, LLC
9 employs mortgage loan originators in its CRMLA business.

10 5. On or about October 2008 and February 2012, the Commissioner commenced a
11 regulatory examination of Open Mortgage, LLC. The examination revealed that Open Mortgage,
12 LLC, among other things:

13 a) Failed to reconcile all trust liability ledgers to its control account at least once each
14 week and to the bank statement balance at least once each month in violation of Financial Code
15 section 50202 and California Code of Regulations, title 10, section 1950.314.1(b);

16 b) Overcharged borrowers appraisal fees, credit report fees, and per diem interest in at
17 least four funded loans in violation of Financial Code sections 50203(a)(1); 50204(c), (i) and (k);
18 50204(o), and Civil Code section 2948.5. Open Mortgage was noted to have refunded the borrowers
19 the overcharged amount;

20 c) Failed to provide notices and disclosures to at least 7 borrowers in violation Health &
21 Safety Code section 35830 and California Code of Regulations title 21, section 7114. Further, Open
22 Mortgage provided inadequate Disclosures to at least 5 other borrowers in violation of Health &
23 Safety Code section 35830 and California Code of Regulations title 21, section 7114;

24 d) Failed to maintain information evidencing the "disbursement date" of loan proceeds
25 in 1 out of 30 loan files reviewed in violation of Financial Code section 50314;

26 e) Failed to provide documentation showing that it first obtained written brokerage
27 agreements with borrowers before providing brokerage services in connection with least 1 loan in
28 violation of Financial Code section 50701;

1 f) Failed to retain in its files, The Notice of Assignment, Sale, or Transfer as required
2 pursuant to 12 Code of Federal Regulation part 1024.21(d) (2011);

3 g) Caused its trust account to be placed in an interest bearing account in violation of
4 Financial Code section 50202(b); and

5 h) Caused debit balances to exist in its escrow accounts in violation of California Code
6 of Regulations, title 10, section 1950.314.6.

7 6. On January 9, 2015, the Commissioner served Open Mortgage, LLC, by personal
8 delivery, the following documents: Accusation in Support of Notice of Intent to Issue Orders
9 Suspending Licenses and Imposing Penalties; Statement of Facts in Support of Order to Discontinue
10 Violations Pursuant to California Financial Code section 50321 and Notice of Intent to Make Order
11 Final; Order to Discontinue Violations Pursuant to California Financial Code section 50321; Order
12 to Refund Excess Credit Report Fees Pursuant to California Financial Code section 50504(a); Order
13 to Refund Excessive Appraisal Fees Pursuant to California Financial Code section 50504(a); Order
14 to Refund Excessive Per Diem Interest Charges Pursuant to California Financial Code section
15 50504(b); Government Code sections 11507.5, 11507.6 and 11507.7 relating to discovery; and
16 Notice of Defense. All of the above documents were dated January 6, 2015, and the accompanying
17 documents are collectively referred to as the “Administrative Action.”

18 7. On or about January 22, 2015, Open Mortgage, LLC timely submitted a Notice of
19 Defense to the Commissioner requesting a hearing regarding the Administrative Action.

20 8. On or about August 12, 2015, the parties entered into a Stipulation wherein Open
21 Mortgage, LLC agreed to engage (at its own expense), an independent third-party auditor to perform
22 an audit of all California loans originated and funded by Open Mortgage, LLC from 2008 through
23 the date of settlement of this matter, dating back three years to the date of the last entry on the record
24 as established by the CRMLA. Further, the parties stipulated that Open Mortgage, LLC will provide
25 to the Commissioner, a report from the third-party auditor identifying the number of loans with per
26 diem interest overcharges, credit report fees, and appraisal fees that exceed the amount allowed
27 under the Financial Code as alleged in the Administrative Action (the “2015 Audit Report”).
28

1 9. Open Mortgage, LLC submitted the 2015 Audit Report to the Commissioner on
2 December 16, 2015. The Commissioner’s review of the 2015 Audit Report disclosed that Open
3 Mortgage, LLC originated 995 loans during 2008 through December 2015. Of the 995 loans, five
4 loans were overcharged appraisal fees totaling \$595.00, while 19 loans were overcharged credit
5 report fees totaling \$177.33. Further, the 2015 Audit Report disclosed that 131 loans were reviewed
6 for per diem interest overcharges of which 46 loans incurred per diem interest overcharges totaling
7 \$3,454.58 plus 10 percent interest per annum totaling \$655.04.

8 10. Open Mortgage, LLC was noted to have refunded borrowers the excess credit report
9 charges of \$177.33, and excess appraisal fees of \$595.00. On per diem charges, Open Mortgage,
10 LLC was noted to have reimbursed excess per diem charges with 10 percent interest totaling
11 \$4,109.62 to the affected borrowers.

12 11. On January 5, 2016, the Commissioner commenced a regulatory examination of the
13 books and records of Open Mortgage, LLC at its main office located at 14101 W. Hwy 290, Suite
14 #1300, Austin, TX 78737 (the “2016 regulatory examination”). The Commissioner’s staff reviewed
15 approximately 26 files, which disclosed that: (a) At least 1 file had the incorrect per diem interest
16 start date reflected on the HUD-1; however, there was no overcharge of per diem interest to the
17 borrower; (b) at least 3 files had per diem interest disclosures which were signed by borrowers that
18 contained blank spaces to be filled after execution in violation of Financial Code Section 50204(e);
19 c) at least 1 file had the incorrect date of disbursement on the HUD-1 in violation of Financial Code
20 sections 50314 and 50505, however, there was no overcharge of per diem interest to the borrower;
21 and (d) Open Mortgage, LLC failed to maintain record showing it first obtained a written brokerage
22 agreement before providing brokerage services in connection with at least 1 loan file in violation of
23 Financial Code section 50700(1)(c).

24 12. In light of the violations noted during the 2016 regulatory examination, on March 14,
25 2016, the Commissioner served Open Mortgage, LLC an Amended Accusation in Support of Notice
26 of Intent to Issue Orders Suspending Licenses and Imposing Penalties dated March 14, 2106; an
27 Amended Statement of Facts in Support of Order to Discontinue Violations Pursuant to California
28 Financial Code Section 50321; and Notice of Intent to Make Order Finals dated March 14, 2016

1 (collectively referred to as “Amended Administrative Action”). The Amended Administrative
2 Action, in pertinent part, partially amends and supersedes the Administrative Action dated January 6,
3 2015 referenced in paragraph six of this Consent Order.

4 13. On or about April 6, 2016, the Commissioner requested that Open Mortgage, LLC
5 submit a report from a third-party auditor covering the period January 1, 2013- May 31, 2016,
6 identifying (a) the number of loans containing per diem interest disclosures in which blank spaces
7 were left to be filled in after execution; (b) the number of loans in which Open Mortgage, LLC
8 failed to disclose the correct daily per diem interest and interest start date in the final HUD-1; and
9 (c) the number of loans in which Open Mortgage, LLC failed to provide borrowers information
10 evidencing the “disbursement date” of loan proceeds, as alleged in the Amended Administrative
11 Action (“2016 Audit Report”).

12 14. Open Mortgage, LLC submitted the 2016 Audit Report to the Commissioner timely,
13 on July 7, 2016. Upon review of the 2016 Audit Report, the Commissioner noted that Open
14 Mortgage, LLC originated 108 loans during January 2013 through May 2016. Of the 108 loans, 43
15 loan files had per diem interest disclosure that contained blank spaces; Open Mortgage, LLC failed
16 to disclose the correct daily per diem interest and interest start date in the final HUD-1 Settlement
17 Statement in 13 loan files; and failed to provide borrowers information evidencing the
18 “disbursement date” of loan proceeds in 11 loans files.

19 15. It is the intention and desire of the Parties to resolve this matter without the necessity
20 of a hearing and/or other litigation.

21 16. The Commissioner finds that this Consent Order is appropriate, in the public interest,
22 and consistent with the purposes fairly intended by the policy and provisions of the CRMLA.

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

25 ///
26 ///
27 ///
28 ///

TERMS AND CONDITION

17. Purpose

The purpose of this Consent Order is to resolve the Department’s Amended Administrative Action and investigation of Open Mortgage, LLC’s violations of the Financial Code and other statutory provisions in a manner that avoids the expense of court proceedings and a hearing, is in the public interest, protects consumers, and is consistent with the purposes, policies, and provisions of the CRMLA.

18. Finality of Order

Open Mortgage, LLC hereby agrees to comply with the Consent Order and, further stipulates that this Consent Order is hereby deemed a final and enforceable order issued pursuant to the Commissioner’s authority under Financial Code sections 50321; 50504 (a) and (b); and 50513(b).

19. Compliance with the Commissioner’s Orders

Open Mortgage, LLC hereby agrees to comply with the Commissioner’s Orders that were served on Open Mortgage, LLC by personal delivery on January 9, 2015, including; (a) Order to Discontinue Violations Pursuant to California Financial Code section 50321; (b) Order to Refund Excess Credit Report Fees Pursuant to California Financial Code section 50504(a); (c) Order to Refund Excessive Appraisal Fees Pursuant to California Financial Code section 50504(a); and (d) Order to Refund Excessive Per Diem Interest Charges Pursuant to California Financial Code section 50504(b). Open Mortgage, LLC further stipulates that the Commissioner’s Orders are hereby deemed final.

20. Waiver of Hearing Rights

Open Mortgage, LLC acknowledges that the Commissioner is ready, willing, and able to proceed with the filing of an administrative enforcement action on the charges contained in this Consent Order, and Open Mortgage, LLC hereby waives the right to a hearing, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the CRMLA. Open Mortgage, LLC further expressly waives any requirement for the filing of an Accusation that may be afforded by Government Code section 11415.60 (b); the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law; and by

1 waiving such rights, Open Mortgage, LLC effectively consents to this Consent Order becoming
2 final.

3 21. Independent Audit Reports

4 Open Mortgage, LLC agrees to engage (at its own expense) an independent certified public
5 accountant(s) or certified public accounting firm, or compliance auditing firm, approved by the
6 Department, which approval shall not be unreasonably withheld by the Department reasonably
7 acceptable to the DBO (“Independent Auditor”) to conduct an Independent Audit for a period of one
8 year from October 1, 2016 to October 1, 2017 and provide quarterly Independent Audit Reports
9 within sixty (60) days of the completion of each quarter as set forth below:

10 a) the first Independent Audit Report shall cover all California loans originated and
11 funded by Open Mortgage, LLC from October 1, 2016 through December 31, 2016, and shall be
12 submitted to the DBO no later than March 1, 2017.

13 b) the second Independent Audit Report shall cover all California loans originated and
14 funded by Open Mortgage, LLC from January 1, 2017 through March 31, 2017, and shall be
15 submitted to the DBO no later than May 30, 2017.

16 c) the third Independent Audit Report shall cover all California loans originated and
17 funded by Open Mortgage, LLC from April 1, 2017 through June 30, 2017 and shall be submitted to
18 the DBO no later than August 29, 2017.

19 d) the fourth Independent Audit Report shall cover all California loans originated and
20 funded by Open Mortgage, LLC from July 1, 2017 through September 30, 2017 and shall be
21 submitted to the DBO no later than November 29, 2017.

22 Each report of the Independent Auditor must be submitted to the Department of Business
23 Oversight, sent to the attention of Uche Enenwali, Senior Counsel, 320 West 4th Street, Suite 750,
24 Los Angeles, California 90013.

25 ///

26 ///

27 ///

28 ///

1 22. Scope of Audit Reports

2 Each report of the Independent Auditor shall include, at a minimum, the following
3 information:

4 a) the total number of California loans originated and funded by Open Mortgage, LLC
5 during the periods specified in Paragraph 21, subparagraphs (a) through (d) above.

6 b) the number of California loans with per diem interest; appraisal fee; and credit report
7 charges in excess of the amount permitted by California Financial Code sections 50203(a)(1);
8 50204(i)(k); 50204(o) and California Civil Code section 2948.5. For each and every such loan, the
9 borrower loan number, name, address, loan amount, loan date, per diem interest charged, per diem
10 interest that should have been charged under California Financial Code sections 50203(a)(1);
11 50204(i)(k); 50204(o) and California Civil Code section 2948.5, overcharge amount (if any), date of
12 refund (if applicable), and proof of refund (if applicable).

13 c) the total number of California loans which had the incorrect per diem interest start
14 date reflected on the HUD-1 in violation of Civil Code section 2948.5.

15 d) the total number of California loans which had per diem interest disclosures which
16 were signed by borrowers that contained blank spaces to be filled after execution in violation of
17 section 50204(e).

18 Open Mortgage, LLC agrees to refund with 10% interest per annum all of the borrowers
19 covered by the Independent Auditor report, who were charged excessive per diem interest, appraisal
20 fees, and credit report fees during the period October 1, 2016 to October 1, 2017. Open Mortgage,
21 LLC agrees to mail said refunds by no later than 10 business days following receipt of the
22 Independent Auditor’s findings. Open Mortgage, LLC agrees to submit to the Department evidence,
23 satisfactory to the Department, of such refunds within 30 days of Open Mortgage, LLC receipt of the
24 Independent Auditor’s findings.

25 23. Payment of Refunds

26 In compliance with the Commissioner’s Consent Order, Open Mortgage, LLC agrees to
27 refund any amounts of per diem interest; credit report; or appraisal fees charged in excess of that
28 permitted under Financial Code section 50204, subdivision (o), and Civil Code section 2948.5 as

1 follows. The Commissioner acknowledges that Open Mortgage, LLC has submitted information
2 demonstrating it has:

3 (a) refunded excessive per diem interest charges with interest at the rate of 10 percent per
4 annum, in the total amount of \$4,109.62 to the 46 borrowers identified in 2015 and 2016 Audit
5 Reports;

6 (b) refunded all excessive appraisal charges totaling \$595.00 to the five borrowers
7 identified in the 2015 and 2016 Audit Reports; and

8 (c) refunded all excessive credit report charges totaling \$177.33 to the 19 borrowers
9 identified in the 2015 and 2016 Audit Reports.

10 For any additional overcharges identified pursuant to the Independent Audit Reports
11 described in Paragraphs 21 a-d above, refunds shall be mailed to the last known address of each
12 borrower no later than 30 calendar days after the date of loan disbursement. For any overcharge
13 identified pursuant to this paragraph that is not mailed within 30 calendar days after the date of loan
14 disbursement, Open Mortgage, LLC shall pay the borrower interest on the amount of the refund at
15 the rate of 10 percent per annum.

16 24. Outstanding Refunds

17 No later than 90 calendar days after the submission of each of the Independent Audit Reports
18 referred to in Paragraph 21 above, Open Mortgage, LLC shall notify the Commissioner of any
19 refund payment that has been returned or remains outstanding for loans originated during the period
20 covered by the Independent Audit Reports. Open Mortgage, LLC shall be responsible for ensuring
21 that any outstanding refund payment owed to any borrower identified in the Independent Audit
22 Reports required by Paragraph 21 above is escheated to the State of California pursuant to the
23 provisions of the California Unclaimed Property Law (Code of Civ. Proc., § 1500 et seq.).

24 25. Failure to File Timely or Complete Reports Concerning Audits or Refunds

25 Open Mortgage, LLC agrees that if it fails to meet any deadline or any requirement in
26 Paragraphs 21 through 23 (regarding the independent auditor’s internal review and refunds), Open
27 Mortgage, LLC shall immediately notify the Department of such failure and cooperate with the
28 Department to cause such failure to be rectified as soon as reasonably practicable, but no later than

1 thirty (30) calendar days after notice is provided by Open Mortgage, LLC. Open Mortgage, LLC
2 agrees that failure to abide by these terms shall constitute grounds for immediate suspension of its
3 CRMLA license number 417-0030 in accordance with the provisions set forth in paragraph 31 of
4 this Consent Order. Open Mortgage, LLC hereby waives any notice and hearing rights to contest the
5 immediate suspension resulting from failure to comply with Paragraphs 21 through 23 above that
6 may be afforded under the Financial Code, the Administrative Procedure Act, the Code of Civil
7 Procedure, or any other legal provisions.

8 26. Failure to Make Timely or Sufficient Refunds

9 Open Mortgage, LLC agrees that if it fails to meet any deadline or any requirement in
10 Paragraph 24 above (regarding payment of outstanding refunds), other than inadvertent and isolated
11 errors that are promptly corrected by Open Mortgage, LLC within thirty (30) calendar days, its
12 CRMLA license number 413-0030 shall be immediately suspended in accordance with the
13 provisions set forth in Paragraph 31 of this Consent Order. Open Mortgage, LLC hereby waives any
14 notice and hearing rights to contest the immediate suspension resulting from failure to comply with
15 Paragraph 24 above that may be afforded under the Financial Code, the Administrative Procedure
16 Act, the Code of Civil Procedure, or any other legal provisions.

17 27. Payment of Penalties

18 Penalties for violations found in the 2015 and 2016 Audit Reports

19 Open Mortgage, LLC agrees to pay an administrative penalty of \$90,900.00 in connection
20 with the violations found as a result of the 2015 and 2016 Audit Reports.

21 The payment of the \$90,900.00 in penalties shall be due within 30 business days of the
22 effective date of this Consent Order, as such date is defined in Paragraph 44, made payable in the
23 form of a cashier’s check to the “Department of Business Oversight” and mailed to the attention of:

24 Uche Enenwali, Senior Counsel
25 The California Department of Business Oversight
26 Enforcement Division
27 320 West Fourth Street, Suite 750,
28 Los Angeles, California 90013

///

///

1 Penalties for future violations found in the 2016-2017 Independent Audit Reports

2 Open Mortgage, LLC agrees to pay an administrative penalty of \$300.00 per violation, for
3 any additional violations discovered by the Independent Audit as set forth in Paragraphs 21 above.
4 The payment for all such penalties will be paid within 10 days of the submission of each
5 Independent Audit Reports described in Paragraph 21 above for the additional violations listed in
6 that report, and shall be paid in the same manner and location as indicated above.

7 28. Failure to Make Payment of Penalties

8 Open Mortgage, LLC agrees that failure to meet the deadline for payment of penalties set
9 forth in Paragraph 27 shall constitute grounds for immediate suspension of its CRMLA license
10 number 417-0030 in accordance with the provisions set forth in paragraph 31 of this Consent Order.
11 Open Mortgage, LLC hereby waives any notice and hearing rights to contest the immediate
12 suspension resulting from failure to comply with Paragraph 27 above that may be afforded under the
13 Financial Code, the Administrative Procedure Act, the Code of Civil Procedure, or any other legal
14 provisions.

15 29. Effect of Consent Order on License

16 In consideration of Open Mortgage, LLC’s agreement to the entry of this Consent Order, and
17 to pay penalties required by Paragraph 27 hereof, the Commissioner hereby agrees that except as set
18 forth in this Consent Order, she shall not take any further action based on violation of the code
19 provisions cited in this order for the period of January 2008 through the date of execution of this
20 Consent Order, as such date is defined in Paragraph 44. Accordingly, this Consent Order does not
21 affect the licensing status of Open Mortgage, LLC.

22 30. Declaration of Policies and Procedures

23 Open Mortgage Open Mortgage, LLC agrees to submit to the Commissioner a declaration
24 under the penalty of perjury (Declaration) from an officer with personal knowledge of Open
25 Mortgage, LLC’s policies and procedures that sets forth all policies and procedures that have been
26 implemented as of the date of this Oder by Open Mortgage, LLC to ensure compliance with
27 Financial Code sections 50204, subdivisions (e) and (o), 50203(a)(1); 50204(i)(k); 50204(o). The
28 Commissioner has reviewed the Declaration and deemed the policies and procedures contained

1 therein as satisfactory. Open Mortgage, LLC affirms it has implemented those policies and
2 procedures approved by the DBO and will continue implementing the policies and procedures in the
3 future.

4 31. Suspension of License for Failure to Comply with Order

5 Open Mortgage, LLC agrees that if it fails to comply with the terms of this Consent Order,
6 Open Mortgage, LLC shall be immediately suspended from lending and servicing under its
7 residential mortgage lender license until the terms are met. Open Mortgage, LLC hereby waives any
8 notice and hearing rights to contest the immediate suspension. Open Mortgage, LLC hereby waives
9 any notice and hearing rights to contest the immediate suspension of its residential mortgage lender
10 license resulting from failure to comply with the terms of this Consent Order that may be afforded
11 under the California Financial Code, the California Administrative Procedure Act, the California
12 Code of Civil Procedure, or any other legal provisions.

13 32. Full and Final Settlement

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

23 33. Binding

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

25 34. Commissioner's Duties

26 The parties further acknowledge and agree that nothing contained in this Consent Order shall
27 operate to limit the Commissioner's ability to assist any other agency (city, county, state or federal)
28 with any prosecution, administrative, civil or criminal, brought by any such agency against Open

1 Mortgage, LLC or any other person based upon any of the activities alleged in these matters or
2 otherwise.

3 35. Third Party Actions

4 It is the intent and understanding between the parties that this Consent Order does not create
5 any private rights or remedies against Open Mortgage, LLC, create any liability for Open Mortgage,
6 LLC or limit defenses of Open Mortgage, LLC for any person or entity not a party to this Consent
7 Order.

8 36. Future Actions by Commissioner

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

15 37. Independent Legal Advice

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

19 38. Counterparts

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

23 39. Waiver, Modification, and Qualified Integration

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

27 ///

28 ///

1 40. Headings and Governing Law

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

6 41. Full Integration.

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

16 42. Presumption from Drafting

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

23 43. Voluntary Agreement

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

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

44. Effective Date

The effective date of this Consent Order shall be the last date of execution of this Consent Order by the Parties. Further, this Consent Order shall not become effective until signed by all parties and delivered by the Commissioner’s counsel by email to Open Mortgage, LLC’s counsel, Jonathan D. Jaffe, Esq. at JJaffe@mayerbrown.com.

45. Public Record

Respondent acknowledges that this Consent Order is a public record.

46. 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: November 9, 2016

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: November 9, 2016

OPEN MORTGAGE, LLC.

By _____
SCOTT GORDON, President and CEO

APPROVED AS TO FORM AND CONTENT:

JONATHAN D. JAFFE, ESQ.
K & L GATES LLP
Attorney for Open Mortgage, LLC.

UCHE L. ENENWALI, ESQ.
Senior Counsel
Enforcement Division