

1 MARY ANN SMITH
Deputy Commissioner
2 MIRANDA LEKANDER
Assistant Chief Counsel
3 KIRK WALLACE (State Bar No. 129953)
Senior Counsel
4 Department of Business Oversight
5 One Sansome Street, Suite 600
San Francisco, California 94104
6 Telephone: (415) 972-8546
7 Facsimile: (415) 972-8550
8 Attorneys for Complainant

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

12 In the Matter of:) CRMLA No. 413-0995
13) CFLL No. 603-G994
14 UNITED SHORE FINANCIAL SERVICES,) NMLS No. 3038
LLC) **CONSENT ORDER**
15)
16 Respondent.)
17)

18 This Consent Order (Order) is entered into between the Commissioner of Business
19 Oversight (Commissioner) and United Shore Financial Services, LLC (United Shore) (collectively,
20 the parties), and is made with respect to the following facts:

21 RECITALS

22 A. The Commissioner has jurisdiction over the licensing and regulation of persons and entities
23 engaged in the business of lending and/or servicing residential mortgage loans pursuant to the
24 California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.), including
25 mortgage loan originators.

26 B. United Shore is a residential mortgage lender and loan servicer licensed by the
27 Commissioner under the CRMLA since July 28, 2009 (CRMLA No. 413-0995). United Shore is
28 also licensed by the Commissioner as a finance lender under the California Finance Lenders Law

1 (CFL) since July 2, 2009 (CFL No. 603-G994). United Shore had previously been known as
2 Shore Financial Services, Inc. before converting to the current name in 2012, and is also authorized
3 to do business under the fictitious business names of Shore Mortgage and United Wholesale
4 Mortgage. United Shore has its principal place of business located at 1414 E. Maple Road, Troy,
5 Michigan 48083.

6 C. Matthew I. Roslin is the Chief Legal Officer and a control person of United Shore and, as
7 such, is authorized to enter into this Consent Order (Order) on behalf of United Shore.

8 D. During regulatory examinations of United Shore conducted in 2011 and 2013, the
9 Commissioner discovered that United Shore overcharged per diem interest to California borrowers
10 in violation of Financial Code section 50204, subdivision (o), and Civil Code section 2948.5.
11 United Shore did not provide responses concerning these alleged violations that the Commissioner
12 considered satisfactory. The examinations also found that United Shore's trust accounts were in
13 violation of Financial Code section 50202 and California Code of Regulations 1950.314.1.

14 E. In or about 2015, the case was referred to the Enforcement Division of the Department of
15 Business Oversight (DBO) to bring an administrative action to enforce United Shore's compliance
16 with the Financial Code, and seek remedies for past violations. The potential remedies requested
17 for the violations included orders imposing penalties for past violations, requiring refunds of
18 excessive per diem interest charges pursuant to Financial Code section 50504, the discontinuance of
19 violations pursuant to Financial Code section 50321 and the suspension of United Shore's CRMLA
20 license (collectively, Enforcement Action).

21 F. Upon being informed of the DBO's intent to bring the Enforcement Action, United Shore
22 responded by indicating that in order to avoid the filing of the Enforcement Action by the DBO,
23 further litigation and the potential suspension or revocation of their license, United Shore would
24 cooperate fully with the Commissioner's request for audits and refunds of per diem overcharges,
25 and consent to the issuance of this final Order by the Commissioner to pay refunds, penalties and
26 discontinue violations.

27 G. During 2015 and 2016, United Shore submitted a series of self-audit reports (Self-Audit
28 Reports) to the Commissioner of the 24,755 loans funded during the period of August 2011 to May

1 2015. As of June 10, 2016, the Self-Audit Report for that period had been completed which
2 identified a number of loans in which excess per diem interest had been charged or documentation
3 was not available to determine if an overcharge had occurred. Refunds were made by United Shore
4 to the affected borrowers for any overcharges that may have occurred that totaled \$ 293,126.54,
5 including paying the required 10 percent annual interest from the date of the overcharge.

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

8 I. The Commissioner finds that this action is appropriate, in the public interest, and consistent
9 with the purposes fairly intended by the policy and provisions of this law. NOW, THEREFORE, in
10 consideration of the foregoing, and of the terms and conditions set forth herein, the parties agree as
11 follows:

12 TERMS AND CONDITIONS

13 1. Purpose.

14 The purpose of this Order is to resolve the Enforcement Action in a manner that avoids the
15 expense of a hearing and possible further court proceedings, is in the public interest, protects
16 consumers, and is consistent with the purposes, policies, and provisions of the CRMLA.

17 2. Finality of Order.

18 United Shore hereby agrees to comply with the Commissioner's Order and, further,
19 stipulates that this Order is hereby deemed a final and enforceable order issued pursuant to the
20 Commissioner's authority under California Financial Code section 50321, 50504 and 50513.

21 3. Order to Discontinue Violations

22 United Shore stipulates that in accordance with Financial Code Sections 50321, United
23 Shore immediately discontinue the violations set forth above.

24 4. Waiver of Hearing Rights.

25 United Shore acknowledges that the Commissioner is ready, willing, and able to proceed
26 with the filing of an administrative enforcement action on the charges contained in this Order, and
27 United Shore hereby waives the right to a hearing, and to any reconsideration, appeal, or other right
28 to review which may be afforded pursuant to the CRMLA. United Shore, further expressly waives

1 any requirement for the filing of an Accusation that may be afforded by Government Code section
2 11415.60 (b), the California Administrative Procedure Act, the California Code of Civil Procedure,
3 or any other provision of law; and by waiving such rights, United Shore effectively consents to this
4 Order becoming final.

5 5. Additional Self-Audit Reports.

6 United Shore agrees to conduct additional self-audits of United Shore's loan information
7 (Additional Self-Audits) using the same procedure and methods used in its prior Self-Audit,
8 including the use of an independent third party certified public accountant to verify the accuracy of
9 the Additional Self-Audits, and to provide additional self-audit reports (Additional Self-Audit
10 Reports) to the Department containing the information required in Paragraph 6 and on the following
11 schedule:

12 a. The first Additional Self-Audit Report (First Additional Self-Audit Report) shall
13 cover all California loans originated and/or funded by United Shore from the ending date of the
14 prior Self-Audit of May 1, 2015 through February 28, 2017, and shall be submitted to the
15 Commissioner no later than May 31, 2017. For this first audit period only, United Shore shall be
16 allowed to use the title recordation date of the loan in place of the actual disbursement date of the
17 loan proceeds, in order to calculate if an overcharge had occurred, and if a refund is owed. The
18 information as to the title recordation for these loans shall be acquired from a reliable third party
19 provider of title information and shall be made available upon request to the Commissioner or the
20 independent auditor who will review the audits' accuracy. All other audit periods will require that
21 the disbursement date of the loan proceeds be used to calculate if any overcharge has occurred, and
22 that adequate documentation of the actual disbursement be provided in each loan file.

23 b. For a period of one year from the Execution Date of this Order, as defined in
24 Paragraph 25, United Shore shall provide Additional Self-Audit Reports on a quarterly basis
25 (Quarterly Compliance Reports) to the Commissioner as to all new loans originated and/or funded
26 by United Shore in California during that period on the following schedule:
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

i. The first Quarterly Compliance Report shall cover all California loans originated by United Shore from and including March 1, 2017 through and including, May 31, 2017, and shall be submitted to the Commissioner no later than July 31, 2017.

ii. The second Quarterly Compliance Report shall cover all California loans originated by United Shore from June 1, 2017 through August 31, 2017, and shall be submitted to the Commissioner no later than October 31, 2017.

iii. The third Quarterly Compliance Report shall cover all California loans originated by United Shore from September 1, 2017 through November 30, 2017, and shall be submitted to the Commissioner no later than January 31, 2018.

iv. The fourth Quarterly Compliance Report shall cover all California loans originated by United Shore from December 1, 2017 through February 28, 2018, and shall be submitted to the Commissioner no later than April 30, 2018.

6. Scope of Additional Self-Audit Reports.

Each of the additional audit reports indicated in Paragraph 5 shall include, at a minimum, the following:

- (i) the total number of loans originated by United Shore during the periods specified in Paragraph 5 above;
- (ii) the number of loans with per diem interest charges in excess of the amount permitted by Financial Code section 50204, subdivision (o), and Civil Code section 2948.5;
- (iii) for each and every loan, the borrower loan number, name, property address, loan amount, loan date, per diem interest charged, per diem interest that should have been charged under Financial Code section 50204, subdivision (o), and Civil Code section 2948.5, overcharge amount (if any), date of refund (if applicable), and evidence of refund (if applicable) in the form of a canceled check and accompanying correspondence mailed to the borrower pursuant to Paragraph 7 below;
- (iv) identification of any refund payment that has been returned or remains outstanding for loans originated during any prior audit period specified in Paragraph 4 above; and

1 (v) the total number of loans for which United Shore failed to include in the loan file, the
2 required documentation of the actual disbursement date of the loan proceeds needed
3 to determine if excess per diem interest was charged.

4 7. Payment of Refunds.

5 In compliance with the Commissioner's Order, United Shore agrees to refund any amounts
6 of per diem interest charged in excess of that permitted under Financial Code section 50204,
7 subdivision (o), and Civil Code section 2948.5 as follows:

8 a. United Shore represents that in all the files identified in the Self-Audit Reports
9 completed as of June 10, 2016 as having per diem interest overcharges, it has already sent full
10 refunds to all affected borrowers in a total amount of \$293,126,54, including interest at the rate of
11 10 percent per annum.

12 b. For additional overcharges identified pursuant to the Additional Self-Audit Reports
13 described in Paragraphs 5 and 6 above, refunds for overcharges identified in each report shall be
14 mailed to the last known address of each borrower no later than 30 calendar days after the due date
15 of the report that identifies each overcharge. For any overcharge identified pursuant to this
16 paragraph that is not mailed within 30 calendar days after the date of loan disbursement, United
17 Shore shall pay the borrower interest on the amount of the refund at the rate of 10 percent per
18 annum on and in addition to the amount of the overcharge.

19 8. Outstanding Refunds.

20 No later than 90 calendar days after the Execution Date of this Order, as defined in
21 Paragraph 25, United Shore shall notify the Commissioner of any refund payment that has been
22 returned or remains outstanding for loans originated during the period covered by United Shore's
23 initial self-audit covering the loans made between August 2011 to May 2015. No later than 90
24 calendar days after the due date of each Additional Self-Audit Report required by Paragraph 5,
25 United Shore shall notify the Commissioner of any refund payment that has been returned or
26 remains outstanding for loans originated during the period covered by that Additional Self-Audit
27 Report. United Shore shall be responsible for ensuring that any outstanding refund payment owed to
28

1 any borrower identified in Self-Audit Reports or any audit report required by Paragraph 7 above
2 that was returned or remains outstanding is escheated to the State of California pursuant to the
3 provisions of the California Unclaimed Property Law (Code of Civ. Proc., § 1500 et seq.).

4 9. Payment of Penalties.

5 United Shore shall pay the following penalties:

- 6 a. \$1,100,000.00 for the violations set forth above;
- 7 b. \$125.00 for each additional loan reported in the Additional Self-Audit Reports required
8 pursuant to Paragraph 5 and 6 above, where per diem interest was charged in excess of
9 the amount permitted by Financial Code section 50204, subdivision (o), and Civil Code
10 section 2948.5 and the excess per diem interest charges were not refunded to the
11 borrower within 30 days of the disbursement date; and,
- 12 c. \$125.00 for each additional loan that is reported by the Additional Self-Audit Reports
13 for which United Shore lacked required documentation in the loan file to verify the
14 actual disbursement date of the loan in order to determine if excess per diem interest had
15 been charged.

16 The payment of the penalties set forth in sub-section (a) of this paragraph shall be due
17 within 30 calendar days of the Effective Date of this Order, as defined in Paragraph 25. The
18 payment of penalties set forth in sub-sections (b) and (c) of this paragraph will be paid within 30
19 days of the due dates of each Additional Self-Audit Report. All payments of penalties shall be made
20 in the form of a cashier's check or Automated Clearing House deposit to the "Department of
21 Business Oversight," and transmitted to the attention of: Accounting - Litigation, at the Department
22 of Business Oversight located at 1515 K Street, Suite 200, Sacramento, California, 95814. Notice of
23 all payments shall be sent to Kirk Wallace, Senior Counsel, Enforcement Division, at the
24 Department of Business Oversight located at One Sansome Street, Suite 600, San Francisco,
25 California, 94104.

26 10. Policies and Procedures.

27 United Shore has submitted to the Commissioner a copy of United Shore's current policies
28 and procedures that sets forth all policies and procedures that have been implemented as of the date

1 of this Order by United Shore to ensure compliance with Financial Code sections 50204,
2 subdivisions (e) and (o), and 50326, and Civil Code section 2948.5. The Commissioner has
3 reviewed the policies and procedures contained therein and found them satisfactory. United Shore
4 hereby agrees to continue implementing those policies and procedures in the future.

5 11. Effect of Order on License.

6 In consideration of United Shore's agreement to provide the audit reports described in the
7 paragraphs above, consent to the Commissioner's Order, and pay penalties required by Paragraph 9
8 hereof, the Commissioner hereby agrees that except as set forth in this Order, she shall not suspend
9 the residential mortgage lender or servicer license of United Shore or take any further action based
10 on violation of the provisions cited in the Enforcement Action for the period of August 2011
11 through the date of execution of this Order, as such date is defined in Paragraph 25. Accordingly,
12 this Order, which resolves the Enforcement Action, does not affect the licensing status of United
13 Shore.

14 12. Suspension of License for Failure to Comply with Order

15 If United Shore fails to meet any deadline or any requirement in Paragraphs 5- 9 (regarding
16 payment of administrative penalties, refunds and submitting self-audit reports) other than
17 inadvertent and isolated errors that are promptly corrected by United Shore, nothing in paragraph 11
18 of this order shall preclude the Department from immediately initiating any action against United
19 Shore seeking any remedies available under this Order or California law for any violations. Such
20 remedies include but are not limited to the payment of penalties and the immediate suspension from
21 lending under United Shore's CRMLA license.

22 13. Full and Final Settlement.

23 The parties hereby acknowledge and agree that this Order is intended to constitute a full,
24 final, and complete resolution of the Enforcement Action and that no further proceedings or actions
25 will be brought by the Commissioner in connection with these matters either under the CRMLA, or
26 any other provision of law, excepting therefrom any proceeding is to enforce compliance with the
27 terms of this Order, or action if such proceeding or action is based upon discovery of new and
28

1 further violations of the CRMLA which do not form the basis for this Order or which were
2 knowingly concealed from the Commissioner by United Shore.

3 14. Binding.

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

5 15. Commissioner's Duties.

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

10 16. Third Party Actions.

11 It is the intent and understanding between the parties that this Order does not create any
12 private rights or remedies against United Shore create any liability for United Shore or limit
13 defenses of United Shore for any person or entity not a party to this Order.

14 17. Future Actions by Commissioner.

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

20 18. Independent Legal Advice.

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

23 19. Counterparts.

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

27
28

1 20. Waiver, Modification, and Qualified Integration.

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

5 21. Headings and Governing Law.

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

9 22. Full Integration.

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

19 23. Presumption from Drafting.

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

26 ///

27

28

1 24. Voluntary Agreement.

2 United Shore enters into this Order voluntarily and without coercion and acknowledges that no
3 promises, threats or assurances have been made by the Commissioner or any officer, or agent
4 thereof, about this Order.

5 25. Effective Date.

6 This Order shall not become effective until signed by all parties and delivered by the
7 Commissioner's counsel by email to United Shore's counsel Maureen Gorsen at
8 Maureen.Gorsen@alston.com.

9 26. Public Record.

10 Respondent acknowledges that this Order is a public record.

11 27. Authority to Execute.

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

14 Dated: 4/10/17

JAN LYNN OWEN
Commissioner of Business Oversight

16 By _____
17 MARY ANN SMITH
18 Deputy Commissioner
19 Enforcement Division

20 Dated: 4/7/17

UNITED SHORE FINANCIAL SERVICES, LLC

21 By _____
22 Matthew I. Roslin
23 Chief Legal Officer

24 APPROVED AS TO FORM AND CONTENT:

25 _____
26 Maureen F. Gorsen
27 Alston & Bird LLP
28 Counsel for United Shore Financial Services, LLC