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

10
11 In the Matter of:)
)
12 THE COMMISSIONER OF BUSINESS) CRMLA LICENSE NO.: 413-0374
13 OVERSIGHT,)
) CONSENT ORDER
14 Complainant,)
)
15 v.)
)
16 UNITED SECURITY FINANCIAL CORP.,)
17)
18 Respondent.)
)

19
20 This Consent Order is entered into between the Commissioner of Business Oversight
21 (Commissioner) on the one hand and United Security Financial Corp. (United Security) on the other
22 (the Parties), and is made with respect to the following:

23 **I.**

24 **Recitals**

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

CONSENT ORDER

1 B. United Security is a residential mortgage lender and servicer licensed pursuant to the
2 CRMLA by the Commissioner since May 11, 2001 (CRMLA license number 413-0374) and
3 employs mortgage loan originators. United Security is a Utah corporation located at 930 East 6600
4 South, Murray, Utah 84121 with a registered agent for service in California located at 2710 Gateway
5 Oaks Drive, Suite 150N, Sacramento, California 95833.

6 C. Annie Lois Johnson is President and Chief Executive Officer of United Security and,
7 as such, is authorized to enter into this Consent Order on behalf of United Security.

8 D. On or about July 11, 2012, the Commissioner commenced a regulatory examination
9 of the books and records of United Security under the CRMLA (2012 regulatory exam). During the
10 2012 regulatory exam, it was revealed that United Security failed to reconcile the trust accounts to
11 the trust escrow liability account, subsidiary ledgers and the bank balance as required under
12 California Code of Regulations, title 10, section 1950.314.1.

13 E. United Security’s responses to the Commissioner’s requests for further information or
14 corrective action were deficient.

15 F. On June 1, 2016, the Commissioner commenced a second regulatory exam (2016
16 regulatory exam) which revealed that United Security commingled borrower trust funds with
17 company operating funds and continued to not properly reconcile its trust assets with trust liabilities.
18 As of March 31, 2016, United Security did not maintain a trust bank account to deposit and maintain
19 funds collected at closing from borrowers for mortgage insurance premiums, hazard insurance and
20 property taxes which amounted to an escrow deposit liability. On June 8, 2016, after being
21 instructed to do so, United Security corrected the liability.

22 G. In the Commissioner’s Report of Examination dated October 26, 2016, United
23 Security was instructed to provide unaudited financial statements, including the balance sheet, detail
24 trial balance, bank statement, bank reconciliation and corresponding loan level subsidiary ledgers as
25 of September 30, 2016. United Security failed to provide the corresponding loan level subsidiary
26 ledgers, however, other information provided revealed that the trust asset account did not reconcile
27 to the trust liabilities and showed a trust overage. By having an overage in the trust asset account,
28 United Security continued to improperly reconcile its trust accounts and appeared also to be

1 commingling borrower trust funds with company operating funds.

2 H. The Commissioner is of the opinion that the findings from the 2012 regulatory exam
3 support violations under the CRMLA relating to United Security’s trust account(s) for failure to
4 reconcile trust accounts in violation of California Code of Regulations, title 10, section
5 195101.314.1 and the findings from the 2016 regulatory exam support violations under the CRMLA
6 relating to United Security’s trust account, including Financial Code section 50202 for commingling
7 borrower trust funds with company operating funds and California Code of Regulations, title 10,
8 section 195101.314.1 for failure to reconcile trust accounts.

9 I. United Security agrees to the entry of this Consent Order as a resolution of this matter
10 without the need to initiate litigation.

11 J. The Commissioner finds this Consent Order is appropriate, in the public interest and
12 consistent with the purposes fairly intended by the policy and provisions of the CRMLA.

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

15 **II.**

16 **Terms and Conditions**

17 1. Purpose. The purpose of this Consent Order is to resolve the foregoing issues in a
18 manner that avoids the expense of a hearing, uncertainty of litigation and possible further court
19 proceedings.

20 2. Order to Discontinue. United Security hereby agrees to discontinue (1) commingling
21 borrower trust funds with company operating funds in violation of Financial Code section 50202 and
22 (2) failing to reconcile trust accounts in violation of California Code of Regulations, title 10, section
23 195101.314.1 (“Order to Discontinue”), and hereby stipulates to the finality of said Order to
24 Discontinue.

25 3. Payment of Penalties. United Security shall pay a penalty to the Commissioner in the
26 amount of \$50,000.00, which shall be due within 30 calendar days of the effective date of this
27 Consent Order, as such date is defined in Paragraph 22, made payable in the form of a cashier’s
28 check or Automated Clearing House deposit to the “Department of Business Oversight” and

1 transmitted to the attention of: ATTN: Accounting – Litigation, at the Department of Business
2 Oversight located at 1515 K Street, Suite 200, Sacramento, California 95814.

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

12 5. Policies and Procedures. United Security has submitted to the Commissioner its
13 latest bank reconciliation as of May 31, 2018 as well as a declaration, under penalty of perjury from
14 an officer with personal knowledge, setting forth all policies and procedures implemented by United
15 Security to correct and prevent commingling of borrower trust funds with operating funds and to
16 ensure proper reconciliation of trust accounts, and ensuring compliance with the CRMLA. United
17 Security agrees to make any changes or corrections to such policy within 10 business days following
18 written request by the Commissioner.

19 6. Independent Auditor. Within 30 days of the effective date of this Consent Order, as
20 defined in Paragraph 22, United Security agrees to engage an independent auditing firm
21 (Independent Auditor) that is reasonably acceptable to the Commissioner to conduct an internal audit
22 of United Security's trust account information in order to provide the reports set forth in Paragraph 7
23 of this Consent Order.

24 7. Independent Auditor Report. The report of the Independent Auditor shall include an
25 analysis of the effectiveness of the newly adopted policies and procedures with respect to the daily,
26 weekly and monthly duties and responsibilities contained therein to prevent any overages or
27 shortages within the trust accounts used by United Security in the course of its business. At a
28 minimum, the report shall include the following agreed upon procedures:

1 (a) A report analyzing United Security’s funding and selling procedures addressing or
2 including the following: a summary of the application of the funding policies and procedures; the
3 timing for trust fund liability recognition and deposit of the trust funds into the trust account; if
4 applicable, the handling of trust funds for loan cancellation; the handling of borrower’s interim
5 payment(s); United Security’s procedures for transferring trust funds to a new investor or servicer;
6 and an explanation of how a trust fund debit balance is handled. Said report shall be due along with
7 the final monthly report (see item (d), below);

8 (b) Five reports covering each of the first five loans made under the new policies and
9 procedures following the execution of this Consent Order from funding through the sale of the loan,
10 including a step-by-step, detailed explanation of the funding and liability process and the timing of
11 the movement of monies; said report shall be due along with the monthly report (see, item (d),
12 below) for the month in which the loan was sold;

13 (c) Two reports, corresponding to two consecutive weeks within the month of July 2018,
14 showing how the liability sub-ledger is being reconciled to the control account on a weekly basis for
15 any and all trust accounts. Said reports shall be due within seven days from the close of business for
16 each consecutive week ending July 7, 2018 and July 14, 2018; and

17 (d) Three reports covering the trust account reconciliations for the months of June, July
18 and August of 2018, showing how the new controls are affecting the trust account balances on a
19 monthly basis. If applicable, provide an explanation for any movement of a significant amount of
20 monies in or out of the trust account(s) before the monthly reconciliation was completed. Said
21 reports shall be due on July 16, 2018, August 15, 2018 and September 17, 2018.

22 8. Failure to Comply. United Security agrees that if it fails to meet the requirements in
23 Paragraphs 3 and 7, United Security’s CRMLA license, number 413-0374, shall be immediately
24 suspended until the requirement is met. United Security further agrees that if it fails to meet any
25 deadline or any requirement in Paragraph 7(a) through (d) above, United Security shall immediately
26 notify the Commissioner of such failure and cooperate with the Commissioner to cause such failure
27 to be rectified. United Security hereby waives any notice and hearing rights to contest the
28 immediate suspension from lending resulting from failure to comply with Paragraphs 3 or 7(a)

1 through (d) above that may be afforded under the CRMLA, the California Administrative Procedure
2 Act, the California Code of Civil Procedure, or any other legal provision.

3 9. Effect of Consent Order on License. In consideration of United Security’s stipulation
4 to the Order to Discontinue in Paragraph 2, the payment of penalties in Paragraph 3, and
5 Independent Auditor Reports in Paragraph 7, the Commissioner hereby agrees, except as otherwise
6 set forth in this Consent Order, to not suspend or revoke the residential mortgage lender or servicer
7 license of United Security, or take any further action, based on the violations cited herein.
8 Accordingly, this Consent Order, which resolves said violations, does not affect the licensing status
9 of United Security.

10 10. Future Actions by the Commissioner. The Parties acknowledge and agree that
11 nothing contained in this Consent Order shall operate to limit the Commissioner's ability to assist
12 any other agency, (county, state or federal) with any prosecution, administrative, civil or criminal,
13 brought by any such agency against United Security based upon the subject matter hereof or
14 otherwise. This Consent Order shall not limit the ability of the Commissioner to bring any
15 administrative or civil action to enforce compliance with this Consent Order or to seek penalties for
16 its violation. Further, the Commissioner reserves the right to bring any future action(s) against
17 United Security or any of the managers, officers, directors, shareholders or employees of United
18 Security for all unknown or future violations of the CRMLA.

19 11. Independent Legal Advice. United Security represents, warrants, and agrees that it
20 has had the opportunity to seek independent advice from legal counsel and/or representative with
21 respect to the advisability of executing this Consent Order.

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

1 party was in any way fraudulently induced to execute this Consent Order; and (2) to preclude the
2 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Consent
3 Order.

4 13. Modifications and Qualified Integration. No amendment, change or modification to
5 this Consent Order shall be valid or binding to any extent unless it is in writing and signed by all the
6 Parties affected by it.

7 14. Full Integration. This Consent Order is the final written expression and the complete
8 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
9 between the Parties with respect to the subject matter hereof, and supersedes all prior or
10 contemporaneous agreements, negotiations, representations, understandings, and discussions
11 between and among the Parties, their respective representatives, and any other person or entity, with
12 respect to the subject matter covered hereby.

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

20 16. Effect Upon Future Proceedings. If United Security applies for any license, permit or
21 qualification under the Commissioner’s current or future jurisdiction, or is the subject of any future
22 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
23 admitted for the purpose of such application(s) or enforcement proceedings(s).

24 17. Counterparts. This Consent Order may be executed in one or more counterparts, each
25 of which shall be an original but all of which, together, shall be deemed to constitute a single
26 document.
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1 18. Terms, Headings and Governing Law. All terms used, but not defined herein, shall
2 have the meaning assigned to them by the CRMLA. The headings to the paragraphs of this Consent
3 Order are inserted for convenience only and will not be deemed a part hereof or affect the
4 construction or interpretation of the provisions hereof. This Consent Order shall be construed and
5 enforced in accordance with, and governed by, the laws of the State of California.

6 19. Authority for Settlement. Each party warrants and represents that such party is fully
7 entitled and duly authorized to enter and deliver this Consent Order. In particular, and without
8 limiting the generality of the foregoing, each party warrants and represents that it is fully entitled to
9 enter the covenants, and undertake the obligations set forth herein.

10 20. Public Record. United Security acknowledges that this Consent Order is a public
11 record. United Security further understands and agrees to not make any statement or representation
12 that is inconsistent with the Consent Order.

13 21. Reports and Notice. Any reports and/or notices required under this Consent Order
14 shall be addressed as follows:

15 To United Security: Shawn D. Turner, General Counsel
16 United Security Financial Corp.
17 930 East 6600 South
18 Murray, Utah 84121
19 sturner@usfwholesale.net

20 To the Commissioner: Judy L. Hartley, Esq.
21 Senior Counsel
22 Department of Business Oversight
23 320 W. 4th Street, Suite 750
24 Los Angeles, California 90013-2344
25 judy.hartley@dbo.ca.gov

26 22. Effective Date: This Consent Order shall become effective when executed by the
27 Commissioner or her designee and transmitted by electronic mail (email) to United Security at
28 sturner@usfwholesale.net.

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23. Voluntary Agreement. The Parties each represent and acknowledge that in executing this Consent Order, each does so completely voluntarily and without any duress or undue influence of any kind from any source.

Dated: 6/11/18

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 6/8/18

UNITED SECURITY FINANCIAL CORP.

By _____
ANNIE LOIS JOHNSON
President and Chief Executive Officer

APPROVED AS TO FORM:

By _____
SHAWN D. TURNER, ESQ. attorney for
UNITED SECURITY FINANCIAL CORP.

Department of Business Oversight

By _____
JUDY L. HARTLEY, ESQ.
Senior Counsel