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

12 In the Matter of) CRMLA License No.: 413-0968
13)
14 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,)
15)
16 Complainant,) CONSENT ORDER
17)
18 v.)
19 MASON MCDUFFIE MORTGAGE)
CORPORATION,)
20 Respondent.)

22 The Commissioner of Business Oversight (Commissioner) and Mason McDuffie Mortgage
23 Corporation (Mason McDuffie) (collectively, the parties) enter this Consent Order (Consent Order)
24 with respect to the following facts:

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I.
Recitals

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

5 B. Mason McDuffie is a residential mortgage lender licensed by the Commissioner since
6 March 10, 2009 (CRMLA License No. 413-0968). Mason McDuffie has its principal place of
7 business located at 2010 Crow Canyon Place #400, San Ramon, California 94583.

8 C. Marilyn Richardson is the President, the Chief Executive Officer and a control person of
9 Mason McDuffie and, as such, is authorized to enter this Consent Order on Mason McDuffie’s
10 behalf.

11 D. During a regulatory examination of Mason McDuffie conducted in 2016 (“2016 Exam”), the
12 Commissioner discovered that Mason McDuffie overcharged per diem interest to California
13 borrowers in violation of Financial Code section 50204, subdivision (o), and Civil Code section
14 2948.5.

15 E. Following the 2016 Exam, the Department directed Mason McDuffie to conduct a self-audit
16 of its loan origination files to determine whether other borrowers had been overcharged per diem
17 interest.

18 F. After Mason McDuffie completed its audit, the Department reviewed the audit files and
19 identified certain files in which Mason McDuffie failed to maintain books and records to
20 demonstrate compliance with Civil Code section 2948.5, in violation of Financial Code section
21 50204, subdivision (o).

22 G. It is the intention and desire of the parties to resolve this matter without the necessity of a
23 hearing and/or other litigation.

24 H. The Commissioner finds that this action is appropriate, in the public interest, and consistent
25 with the purposes fairly intended by the policies and provisions of the CRMLA.

26 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
27 forth herein, the parties agree as follows:
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II.

Terms and Conditions

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2 1. Purpose.

3 The purpose of this Consent Order is to resolve the issues before the commissioner in a
4 manner that avoids the expense of court proceedings and a hearing, is in the public interest, protects
5 consumers, and is consistent with the purposes, policies, and provisions of the CRMLA.

6 2. Order to Discontinue.

7 Mason McDuffie stipulates that in accordance with Financial Code section 50321, Mason
8 McDuffie will immediately discontinue and desist and refrain from the violations set forth herein.

9 3. Finality of Consent Order.

10 Mason McDuffie hereby agrees to comply with this Consent Order and, further, stipulates
11 that this Consent Order is hereby deemed a final and enforceable order issued pursuant to the
12 Commissioner’s authority under Financial Code sections 50321, 50504 and 50513.

13 4. Independent Audit Report - Timing.

14 Mason McDuffie agrees to engage a certified public accountant(s), certified accounting firm,
15 or compliance auditing firm (Third-Party Auditor), reasonably acceptable to the Commissioner.
16 The Third-Party Auditor shall conduct an independent audit of Mason McDuffie and provide a
17 compliance report (Independent Audit Report) to the Department containing the information
18 required in Paragraph 6. The Independent Audit Report shall cover all California loans originated
19 and/or funded by Mason McDuffie from May 17, 2017 to the date six months following the
20 Effective Date of this Order, as defined herein in Paragraph 25, and shall be submitted to the
21 Department no later than eight months following the Effective Date of this Order.

22 5. Independent Audit Report – Contents.

23 The Independent Audit Report shall include, at a minimum, the following information:

- 24 (i) the total number of loans originated and funded by Mason McDuffie during the
25 period specified in Paragraph 5;
26 (ii) the number of loans with per diem interest charges in excess of the amount permitted
27 by Financial Code section 50204, subdivision (o), and Civil Code section 2948.5;
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- 1 (iii) for each and every loan, the borrower’s loan number, name, address, loan amount,
- 2 loan date, per diem interest charged, maximum per diem interest allowed under Financial
- 3 Code section 50204, subdivision (o), and Civil Code section 2948.5, overcharge amount (if
- 4 any), date of refund (if applicable), and proof of refund (if applicable); and,
- 5 (iv) the total number of loans for which Mason McDuffie failed to include in the loan file
- 6 the required documentation of the actual disbursement date of the loan proceeds needed to
- 7 determine if excess per diem interest was charged.

8 For each of the files identified pursuant to section (iv) above, the Independent Audit Report will use
9 the title recordation date in place of the missing disbursement date to calculate and report the
10 amount of per diem interest overcharged, if any. Mason McDuffie will then be required to refund
11 that amount to each of those borrowers under the same requirements provided in Paragraph 7 below
12 for overcharges. However, Mason McDuffie will not be required to pay an additional \$500.00
13 penalty pursuant to Paragraph 9, subsection (ii), for any overcharges found on such loans, since
14 such loans will be assessed a penalty pursuant to Paragraph 9, subsection (iii), for lacking required
15 documentation.

16 6. Payment of Refunds.

17 In compliance with the Commissioner’s Consent Order, Mason McDuffie agrees to refund
18 any amounts of per diem interest charged exceeding charges permitted under Financial Code section
19 50204, subdivision (o), and Civil Code section 2948.5 as follows:

- 20 a. Mason McDuffie represents that it has already sent refunds to all borrowers that were
- 21 overcharged per diem interest that were disclosed in the exam, plus interest at the rate of 10 percent
- 22 per annum.
- 23 b. For any additional overcharges identified pursuant to the Independent Audit Report
- 24 described in Paragraphs 5 and 6 above, refunds plus interest at the rate of 10 percent per annum
- 25 shall be mailed to the last known address of each borrower no later than 30 calendar days after the
- 26 submission of the Audit Report to the Commissioner.

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1 7. Outstanding Refunds.

2 No later than 90 calendar days after the submission of the Independent Audit Report
3 referred to in Paragraphs 5 and 6 above, Mason McDuffie shall notify the Commissioner of any
4 refund payment that has been returned or remains outstanding for loans originated during the period
5 covered by the Independent Audit Report. Mason McDuffie shall be responsible for ensuring that
6 any outstanding refund payment owed to any borrower identified in the Independent Audit Report
7 required by Paragraphs 5 and 6 above is escheated to the State of California pursuant to the
8 provisions of the California Unclaimed Property Law (Code Civ. Proc., § 1500 et seq.).

9 8. Payment of Penalties.

10 Mason McDuffie shall pay the following penalties:

- 11 (i) A penalty of \$23,250 for the violations discussed herein;
- 12 (ii) A penalty of \$500 for each additional loan reported by the Independent Audit Report
13 as described in Paragraphs 5 and 6 above, where per diem interest was charged in
14 excess of the amount permitted by Financial Code section 50204, subdivision (o),
15 and Civil Code section 2948.5 of more than one dollar and the excess per diem
16 interest charges were not refunded to the borrower within 30 days of the
17 disbursement date; and,
- 18 (iii) A penalty of \$500.00 for each additional loan that is reported in the Independent
19 Audit Report for which Mason McDuffie lacked required documentation in the loan
20 file to verify the actual disbursement date of the loan to determine if excess per diem
21 interest had been charged.

22 9. Timing of Penalty Payments.

23 The payment of the \$23,250 in penalties set forth in Paragraph 8 shall be due within 60
24 calendar days of the Effective Date of this Consent Order, as such date is defined in Paragraph 25,
25 made payable in the form of a cashier's check or Automated Clearing House deposit to the
26 "Department of Business Oversight," and mailed to the attention of: Accounting – Litigation, at the
27 Department of Business Oversight located at 1515 K Street, Suite 200, Sacramento, California
28 95814. Notice of all payments shall be sent to Charles Carriere, Counsel, Enforcement Division, at

1 the Department of Business Oversight located at One Sansome Street, Suite 600, San Francisco,
2 California 94104. The penalties for any additional violations discovered by the Independent Audit
3 Report as set forth in Paragraphs 5 and 6 above will be paid within 30 days of the submission of the
4 Independent Audit Report in the same manner and location as indicated above.

5 10. Policies and Procedures.

6 Mason McDuffie has submitted to the Commissioner a copy of its policies and procedures to
7 ensure compliance with the laws set forth herein. The Commissioner has reviewed the policies and
8 procedures and determined that they are satisfactory. Mason McDuffie agrees to continue
9 implementing those policies and procedures in the future.

10 11. Waiver of Hearing Rights.

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

19 12. Effect of Consent Order on License.

20 In consideration of Mason McDuffie's agreement to provide the audit report described in the
21 paragraphs above, to the entry of this Consent Order, and to pay penalties required by Paragraph 9
22 hereof, the Commissioner hereby agrees that except as set forth in this Consent Order, she shall not
23 suspend the residential mortgage lender or servicer license of Mason McDuffie or take any further
24 action based on violation of the code provisions cited in this order for the period of July 1, 2014
25 through the Effective Date of this Order. Accordingly, this Consent Order does not affect the
26 licensing status of Mason McDuffie.

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1 13. Suspension of License for Failure to Comply with Order.

2 Mason McDuffie agrees that if it fails to comply with the terms of this Consent Order,
3 within five business days after written notice of demand, the Commissioner may, in addition to all
4 other available remedies under the CRMLA and CFLL, summarily suspend Mason McDuffie’s
5 CRMLA license until Mason McDuffie is in compliance. Mason McDuffie waives any further
6 notice and hearing rights to contest such summary suspensions which may be afforded under the
7 CRMLA, the California Administrative Procedure Act, the California Code of Civil Procedure, or
8 any other provision of law in connection therewith.

9 14. Full and Final Settlement.

10 The parties hereby acknowledge and agree that this Consent Order is intended to constitute a
11 full, final, and complete resolution of the violations cited herein and that no further proceedings or
12 actions will be brought by the Commissioner in connection with those matters either under the
13 CRMLA, or any other provision of law, excepting therefrom any proceeding to enforce compliance
14 with the terms of this Consent Order.

15 15. Binding.

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

17 16. Commissioner’s Duties.

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

23 17. Future Actions by Commissioner.

24 This Consent Order may be revoked and the Commissioner may pursue any and all remedies
25 available under law against Mason McDuffie if the Commissioner later discovers that Mason
26 McDuffie knowingly or willfully withheld information used for and relied upon in this Consent
27 Order. Further, Mason McDuffie agrees that this Consent Order does not resolve any penalties that
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1 may be assessed by the Commissioner upon discovery of new and further violations of the
2 CRMLA.

3 18. 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 19. 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 20. 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 of the parties affected by it.

15 21. 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 22. 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
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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 23. 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 24. Voluntary Agreement.

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

14 25. 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 Mason McDuffie’s Executive Vice President Kevin
17 Conlon (“Effective Date”).

18 26. Public Record.

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

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27. Authority to Execute.

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

Dated: 4/11/19 JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 4/10/19 MASON MCDUFFIE MORTGAGE CORPORATION

By _____
MARILYN RICHARDSON
President and Chief Executive Officer

APPROVED AS TO FORM AND CONTENT:

G. Bradley Hargrave, Medlin & Hargrave, P.C.
Counsel for Mason McDuffie Mortgage, Inc.