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

12 In the Matter of:) CFL LICENSE NO. 603F324
13)
14 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
15)
16 Complainant,)
17 v.)
18 AMERICAN ADVISORS GROUP,)
19 Respondent.)
20 _____)

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22 This Consent Order (Consent Order) is entered into between the Commissioner of Business
23 Oversight (Commissioner) and American Advisors Group (AAG) and is made with respect to the
24 following:

25 **RECITALS**

26 A. The Commissioner as the chief officer of the Department of Business Oversight has
27 jurisdiction over the licensing and regulation of persons and entities engaged in the business of
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1 finance lending under the California Financing Law (CFL) (Fin. Code, § 22000 et seq.) and the
2 regulations promulgated under title 10 of the California Code of Regulations (CCR) (Cal. Code
3 Regs., tit. 10, § 1404 et seq.).

4 B. The purpose of the CFL is to ensure an adequate supply of credit to borrowers in
5 California; to simplify, clarify, and modernize the law governing loans made by finance lenders; to
6 foster competition among finance lenders; to protect borrowers against unfair practices by some
7 lenders, having due regard for the interests of legitimate and scrupulous lenders; to permit and
8 encourage the development of fair and economically sound lending practices; and to encourage and
9 foster a sound economic climate in this state. (Fin. Code § 22001, subd. (a).)

10 C. AAG, a California corporation, is a finance lender and broker licensed by the
11 Commissioner since July 6, 2007 under the CFL and a finance lender under the California Residential
12 Mortgage Lending Act (CRMLA) since May 28, 2015. AAG's main office is located at 3800 W.
13 Chapman Ave., 3rd and 7th Floors, Orange, California.

14 D. Martin Lenoir is the chief operating officer and a control person of AAG, and as such,
15 is authorized to enter into this Consent Order on behalf of AAG. AAG neither admits nor denies the
16 Commissioner's findings of facts and conclusions of law.

17 **FINDINGS OF FACT**

18 E. On June 5, 2017, the Commissioner, through her staff, commenced a regulatory
19 examination of AAG for the period from July 1, 2014 through March 31, 2017, at the company's
20 main office in Orange, California (the Examination).

21 F. AAG did not report any CRMLA activity (lending, brokering or servicing) during the
22 period from July 1, 2014 through March 31, 2017.

23 G. The Examination reviewed AAG's origination activity conducted under its CFL
24 license for the period from July 1, 2014 through March 31, 2017.

25 H. During the course of the Examination, the Commissioner found that AAG failed to
26 timely provide a reverse mortgage worksheet guide to 14 funded borrowers prior to the required
27 meeting with a counseling agency on reverse mortgages, in violation of Civil Code section 1923.5(b).

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CONCLUSIONS OF LAW

I. Civil Code section 1923.5, in relevant parts, provides:

(b) (1) In addition to the plain language notice described in subdivision (a), no reverse mortgage loan application shall be taken by a lender unless the lender provides the prospective borrower, prior to his or her meeting with a counseling agency on reverse mortgages, with a reverse mortgage worksheet guide, or in the event that the prospective borrower seeks counseling prior to requesting a reverse mortgage loan application from the reverse mortgage lender, the counseling agency shall provide the prospective borrower with the following plain language reverse mortgage worksheet guide in 14-point type or larger:

Reverse Mortgage Worksheet Guide—Is a Reverse Mortgage Right for Me?

To decide if a recommended purchase of a reverse mortgage is right for you, consider all of your goals, needs, and available options. This self-evaluation worksheet has five essential questions for you to consider when deciding if a reverse mortgage is right for you.

(2) The reverse mortgage worksheet guide required in paragraph (1) shall be signed by the agency counselor, if the counseling is done in person, and by the prospective borrower and returned to the lender along with the certification of counseling required under subdivision (k) of Section 1923.2, and the loan application shall not be approved until the signed reverse mortgage worksheet guide is provided to the lender. A copy of the reverse mortgage worksheet guide shall be provided to the borrower.

J. Financial Code section 22707.5 provides:

(a) If, upon inspection, examination, or investigation, the commissioner has cause to believe that a licensee or other person is violating any provision of this division or any rule or order thereunder, the commissioner or his or her designee, may issue a citation to the licensee or person in writing, describing with particularity the basis of the citation. Each citation may contain an order to correct the violation or violations identified and provide a reasonable time period or periods by which the violation or violations must be corrected. In addition, each citation may assess an administrative fine not to exceed two thousand five hundred dollars (\$2,500) that shall be deposited in the State Corporations Fund. In assessing a fine, the commissioner shall give due consideration to the appropriateness of the amount of the fine with respect to factors including the gravity of the violation, the good faith of the person or licensees cited, and the history of previous

1 violations. A citation issued or a fine assessed pursuant to this section,
2 while constituting punishment for a violation of law, shall be in lieu of
3 other administrative discipline by the commissioner for the offense or
4 offenses cited, and the citation and fine payment thereof by a licensee
5 shall not be reported as disciplinary action taken by the commissioner.

6 (b) Notwithstanding subdivision (a), nothing in this section shall
7 prevent the commissioner from issuing an order to desist and refrain
8 from engaging in a specific business or activity or activities, or an order
9 to suspend all business operations to a person or licensee who is
10 engaged in or who has engaged in continued or repeated violations of
11 this division. In any of these circumstances, the sanctions authorized
12 under this section shall be separate from, and in addition to, all other
13 administrative, civil, or criminal remedies.

14 (c) If, within 30 days from the receipt of the citation, the licensee or
15 person cited fails to notify the department that he or she intends to
16 request a hearing as described in subdivision (d), the citation shall be
17 deemed final.

18 (d) Any hearing under this section shall be conducted in accordance
19 with Chapter 5 (commencing with Section 11500) of Part 1 of Division
20 3 of Title 2 of the Government Code .

21 (e) After the exhaustion of the review procedures provided for in this
22 section, the commissioner may apply to the appropriate superior court
23 for a judgment in the amount of the administrative fine and an order
24 compelling the cited licensee or person to comply with the order of the
25 commissioner. The application, which shall include a certified copy of
26 the final order of the commissioner, shall constitute a sufficient
27 showing to warrant the issuance of the judgment and order.

28 K. Based on the foregoing findings, the Commissioner is of the opinion that AAG
violated Civil Code section 1923.5(b) by failing to timely provide a reverse mortgage worksheet
guide to 14 funded borrowers prior to the required meeting with a counseling agency on reverse
mortgages. Under the provisions of Financial Code section 22707.5, subdivision (b), AAG is ordered
to desist and refrain from violating Civil Code section 1923.5.

TERMS AND CONDITIONS

On the basis of the Commissioner’s finding of fact and conclusions of law, and AAG’s
stipulation to the entry of this Consent Order, the Commissioner has determined that the following
relief is appropriate and in the public interest for the protection of consumers and consistent with the
purpose, policies and provisions of the CFL. It is the intention and desire of the Commissioner and

1 AAG (each, a “Party,” and collectively, the “Parties”) to resolve this matter without the necessity of a
2 hearing or other litigation for the purpose of judicial economy and expediency and to avoid the
3 expense of a hearing and possible further court proceedings.

4 1. Desist and Refrain Order. Under Financial Code section 22707.5, subdivision (b),
5 AAG stipulates that it is ordered to desist and refrain from violating Civil Code section 1923.5 for
6 failing to timely provide 14 funded borrowers with a reverse mortgage worksheet guide prior to the
7 required meeting with a counseling agency on reverse mortgages.

8 2. Finality of Consent Order. AAG agrees to comply with this Consent Order and
9 stipulates that this Consent Order is hereby deemed final.

10 3. Waiver of Hearing Rights. AAG acknowledges that the Commissioner is ready,
11 willing, and able to proceed with the enforcement action based on the facts contained in this Consent
12 Order, and AAG hereby waives the right to a hearing, and to any reconsideration, appeal, or other
13 right to review which may be afforded pursuant to the CFL. AAG further expressly waives any
14 requirement for the filing of an Accusation that may be afforded by Government Code section
15 11415.60 (b), the California Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.), the
16 Code of Civil Procedure (CCP) (Code Civ. Proc., § 1 et seq.), or any other provision of law in
17 connection with this matter. By waiving such rights, AAG effectively consents to this Consent Order
18 and Desist and Refrain Order becoming final.

19 4. Reverse Mortgage Worksheet Guide. AAG agrees that for each reverse mortgage
20 originated by AAG, it will provide each borrower with a reverse mortgage worksheet guide prior to
21 his or her meeting with a counseling agency on reverse mortgages as required by Civil Code section
22 1923.5(b). To ensure compliance with the law, AAG agrees to: (a) implement certain processes and
23 procedures, including but not limited to, requiring the mortgage loan officer (MLO) to send to the
24 applicant a disclosure package that would include the reverse mortgage worksheet guide and the
25 California Important Notice to Reverse Mortgage Loan Applicant prior to the required reverse
26 mortgage counseling; (b) implement certain systemic controls including a daily reporting process to
27 alert Sales Team Leaders if an AAG MLO has referred an applicant to counseling without generating
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1 a Disclosure Package and sending it to the applicant; and (c) AAG's Quality Control team conducts
2 monitoring activity to ensure compliance with Section 1923.5(b), including testing loan files for
3 evidence that all applicants with completed counseling were sent the Disclosure Package prior to the
4 counseling date. The loan origination units are required to respond to the Director of Quality Control
5 regarding any anomalies noted in this Quality Control testing. The Commissioner will not deem AAG
6 out of compliance with this provision until after receipt of 10 business days' notice of an alleged
7 violation and it has failed to revise its procedures to address the failure outlined in the notice. Further,
8 AAG will not be deemed out of compliance with the processes and procedure of the Consent Order if a
9 prospective borrower has received counseling prior to requesting a reverse mortgage loan application
10 from AAG, so long as AAG obtains from the prospective borrower or counselor a reverse mortgage
11 worksheet guide as used and signed by the agency counselor, along with the certification of counseling
12 as provided in Civil Code section 1923.5, subdivision (b)(1) and (2). Alternatively, where a prospective
13 borrower has received counseling before receiving a disclosure packet from AAG, the borrower may,
14 before AAG approves the loan application, provide a written, certification attesting that he or she (a)
15 received the counseling from an approved counselor and (b) that the counselor reviewed with him or her
16 a reverse mortgage worksheet guide as used and signed by that counselor and provided to AAG.

17 5. Administrative Fine. AAG agrees to pay an administrative fine in the amount of
18 \$35,000.00. Such payment shall be made by AAG within 10 days of the effective date of this Consent
19 Order, as such date is defined in paragraph 21, made payable in the form of a cashier's check or
20 Automated Clearing House deposit to the "Department of Business Oversight," and transmitted to the
21 attention of Accounting – Enforcement Division, Department of Business Oversight, 1515 K Street,
22 Suite 200, Sacramento, California, 95814. Notice of the payment shall be concurrently sent to Marlou
23 de Luna, Senior Counsel, Department of Business Oversight, 320 West 4th Street, Suite 750, Los
24 Angeles, California 90013.

25 6. Effect of Consent Order on License. In consideration of AAG's agreement to the
26 entry of this Consent Order, the Commissioner shall not take any further action based on the
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1 violations cited in this Consent Order or any other matter arising from the Examination. Accordingly,
2 this Consent Order does not affect the licensing status of AAG.

3 7. Remedy for Breach. AAG acknowledges that failure to comply with any deadline or
4 provision of this Consent Order shall be deemed a breach and cause for the Commissioner to
5 immediately suspend any licenses held by or deny any pending applications(s) of AAG, its
6 successors, and assigns, by whatever names they might be known. AAG hereby waives any notice
7 and hearing rights to contest such suspension(s) or denial(s) which may be afforded under the CFL,
8 the Administrative Procedure Act, the Code of Civil Procedure, or any other provision of law in
9 connection with this matter.

10 8. Full and Final Agreement. The Parties hereby acknowledge and agree that this
11 Consent Order is intended to constitute a full, final, and complete resolution of AAG's failure to
12 timely provide 14 funded borrowers with a reverse mortgage worksheet guide prior to the required
13 meeting with a counseling agency on reverse mortgages, in violation of Civil Code section 1923.5(b)
14 discovered during the Examination. No further proceedings or actions will be brought by the
15 Commissioner in connection with these alleged violations under the CFL, or any other matter referred
16 to or arising from the Examination, subject to the exceptions set forth in paragraph 9 below.

17 9. Exceptions to Full and Final Settlement. Nothing in paragraph 8 above or anything
18 else in this Consent Order shall be construed to prohibit or restrict or preclude the Commissioner
19 from taking any of the following actions:

- 20 a) Bringing a proceeding to enforce compliance with the terms of this Consent Order;
- 21 b) Bringing a proceeding based upon discovery of violations of the CFL occurring
22 after the effective date of this Consent Order;
- 23 c) Bringing a proceeding based upon discovery after the Effective Date of violation of
24 the CFL which did not form the basis for this Consent Order or a finding in the
25 Examination; or
- 26 d) Bringing a proceeding based upon discovery of violations of the CFL which AAG
27 knowingly concealed from the Commissioner.

1 10. Commissioner’s Duties. The Parties further acknowledge and agree that nothing
2 contained in this Consent Order shall operate to limit the Commissioner’s ability to assist any other
3 agency (city, county, state or federal) with any prosecution, administrative, civil or criminal, brought
4 by any such agency against AAG or any other person based upon any of the activities alleged in these
5 matters or otherwise.

6 11. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
7 interest of either Party.

8 12. Third Party Actions. It is the intent and understanding between the Parties that this
9 Consent Order does not create any private rights or remedies against AAG, create any liability for
10 AAG or limit defenses of AAG for any person or entity not a Party to this Consent Order.

11 13. Future Actions by Commissioner. This Consent Order may be revoked, and the
12 Commissioner may pursue any and all remedies available under law against AAG if the
13 Commissioner later discovers that AAG knowingly or willfully withheld information used for and
14 relied upon in this Consent Order. Further, AAG agrees that this Consent Order does not resolve any
15 fines or penalties that may be assessed by the Commissioner upon discovery of new and further
16 violations of the CFL.

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

20 15. Waiver, Modification, and Qualified Integration. The waiver of any provision of this
21 Consent Order shall not operate to waive any other provision set forth herein. No waiver,
22 amendment, or modification of this Consent Order shall be valid or binding to any extent unless it is
23 in writing and signed by each of the Parties.

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

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1 17. Counterparts. The Parties agree that this Consent Order may be executed in one or
2 more separate counterparts, each of which when so executed, shall be deemed an original. Such
3 counterparts shall together constitute and be one and the same instrument.

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

13 19. Presumption Against Drafting Party. In that the Parties have had the opportunity to
14 draft, review and edit the language of this Consent Order, no presumption for or against any Party
15 arising 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 20. Voluntary Agreement. AAG enters into this Consent Order voluntarily and without
21 coercion and acknowledges that no promises, threats or assurances have been made by the
22 Commissioner or any officer, or agent thereof, about this Consent Order.

23 21. Effective Date. This Consent Order shall not become effective until signed by all
24 Parties and delivered by the Commissioner's counsel by email to AAG's counsel at
25 flevin@buckleyfirm.com.

26 22. Notice. Any notices required under this Consent Order shall be provided to each Party
27 by Federal Express or similar delivery mechanism, return receipt requested, at the following
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1 addresses:

2 If to AAG: American Advisors Group
3 3800 W. Chapman Ave.
4 3rd and 7th Floors
5 Orange, California 92868
6 Attention: Legal Department

6 Copy to: Fredrick S. Levin
7 Buckley LLP
8 100 Wilshire Boulevard, Suite 1000
9 Santa Monica, California 90045

9 If to the Commissioner: Marlou de Luna, Senior Counsel
10 Department of Business Oversight
11 320 West 4th Street, Suite 750
12 Los Angeles, California 90013

12 23. Public Record. The Parties agree that this Consent Order shall be deemed to be public
13 record.

14 24. Authority to Execute. Each signatory hereto covenants that he or she possesses all
15 necessary capacity and authority to sign and enter into this Consent Order.

17 Dated: 6/6/19 MANUEL P. ALVAREZ
18 Commissioner of Business Oversight

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20 By: _____
21 MARY ANN SMITH
22 Deputy Commissioner
23 Enforcement Division

24 Dated: 5/21/19 AMERICAN ADVISORS GROUP

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26 By: _____
27 Martin Lenoir
28 Chief Operating Officer

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APPROVED AS TO FORM:

By: _____
Fredrick Levin, Esq.
Buckley LLP
Counsel for American Advisors Group