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

11 In the Matter of:)
) CRMLA LICENSE NO.: 413-1200
12 THE COMMISSIONER OF BUSINESS)
13 OVERSIGHT,)
) STIPULATION
14 Complainant,)
)
15 v.)
)
16 CITIMORTGAGE, INC.,)
17)
18 Respondent.)

19
20 This Stipulation (Stipulation) is entered into by and between Respondent CitiMortgage, Inc.
21 (CMI) and Complainant the Commissioner of Business Oversight (Commissioner), and is made with
22 respect to the following facts:

23 **I.**

24 **RECITALS**

25 A. CMI is a residential mortgage loan servicer licensed by the Commissioner pursuant to
26 the California Residential Mortgage Lending Act (CRMLA) (Fin. Code §50000 et seq.). CMI has its
27 principal place of business located at 1000 Technology Drive, O’Fallon, Missouri 63368. CMI
28 currently has 5 branch office locations under its CRMLA license.

STIPULATION

1 B. The Department of Business Oversight (Department), through the Commissioner, has
2 jurisdiction over the licensing and regulation of persons and entities engaged in the business of
3 lending and/or servicing pursuant to the CRMLA.

4 C. During a regulatory examination of CMI commenced in October 2017, the
5 Commissioner found that CMI had failed to pay 2% interest on escrow impounds in violation of
6 Financial Code section 50202, subdivision (d) and Civil Code section 2954.8.

7 D. David J. Smith is the president of CMI, and, as such, is authorized to enter into this
8 Stipulation on behalf of CMI.

9 E. In entering into this Stipulation, CMI does not admit any of the findings contained in
10 this Stipulation.

11 F. It is the intention and desire of the parties to resolve this matter without the necessity
12 of a hearing and/or other litigation.

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. This Stipulation resolves the issues before the Commissioner of the findings
18 of the October 2017 regulatory examination of CMI set forth in paragraph C above in a manner that
19 avoids the expense of a hearing and other possible court proceedings, protects consumers, is in the
20 public interest, and is consistent with the purposes, policies, and provisions of the CRMLA.

21 2. Finality of Stipulation. CMI agrees to comply with this Stipulation and stipulates this
22 Stipulation is hereby deemed final.

23 3. Restitution. CMI agrees to pay 2% interest to borrowers on escrow impound
24 amounts for the period of July 1, 2014 through December 31, 2018 on all California loans secured
25 by one-to-four family residential real estate serviced by CMI at any time on or after July 1, 2014,
26 regardless of when the loan was originated or who made the loan, that were not previously paid 2%
27 interest on escrow impound amounts (Interest Restitution) in order to come into compliance with
28 the Commissioner’s allegation that CMI violated Financial Code section 50202, subdivision (d) and

1 Civil Code section 2954.8. CMI represents that it completed a review of all California loans and
2 identified 94,483 California loans meeting the Interest Restitution criteria (Interest Restitution
3 Population). CMI further represents that it has determined the total Interest Restitution amount to be
4 approximately \$7.8 million.

5 4. Interest Restitution Payments. CMI shall pay the Interest Restitution as described
6 below.

7 (a) Interest Restitution shall be applied as follows:

8 i. Where the loan is charged-off and the borrower(s) owes outstanding
9 sums to CMI, CMI shall reduce, or cause to be reduced, the outstanding charged-off balance by the
10 Interest Restitution amount for each such loan.

11 ii. For all other loans, CMI shall mail a check for the Interest Restitution
12 amount to the borrower(s) except as set forth in subparagraph (b) below.

13 iii. Steps (4)(a)(i) and (ii) shall be completed within 180 days from the
14 Effective Date of this Stipulation, as defined in Paragraph 27.

15 (b) CMI is not required to send a check to any borrower(s) whose Interest
16 Restitution amount is \$1.00 or less.

17 5. If an Interest Restitution check is returned undeliverable, CMI shall search for a new
18 address for the borrower(s). If a new address is located, CMI shall send the Interest Restitution
19 check via U.S. Mail to the new address. If a new address is not located or the Interest Restitution
20 check is returned again, CMI shall thereafter escheat the returned check funds to the California State
21 Controller’s Office within the period provided by and in accordance with the Unclaimed Property
22 Act. (Code of Civ. Proc., § 1500 et seq.).

23 6. Audit Report. CMI shall submit to the Commissioner the results of the Interest
24 Restitution Population review (Interest Restitution Population Report) no later than 120 days from
25 the completion of 4(a) above. The report shall be in Microsoft Excel format and include for each
26 loan, the loan number, borrower name, address, loan date, originator name, investor name, interest
27 restitution amount, amount of backup withholding tax, if any, and evidence of Interest Restitution.
28 Evidence of Interest Restitution shall be in the form of a copy of the letter and Interest Restitution

1 check mailed to each borrower or a screenshot showing the crediting of the amount charged to the
2 charged off account.

3 7. Interest Going Forward. For all California loans secured by one-to-four family
4 residential real estate (“Applicable Loans”), CMI agrees to pay 2% interest on escrow impound
5 amounts, either directly or through its sub-servicer servicing on behalf of CMI as the holder of the
6 mortgage servicing rights, if any, on a going forward basis. CMI represents that it commenced
7 paying interest on escrow impound amounts for Applicable Loans on January 1, 2019.

8 8. Waiver of Hearing Rights. CMI acknowledges that the Commissioner is ready,
9 willing, and able to proceed with the filing of an administrative enforcement action on the charges
10 contained in this Stipulation. CMI hereby waives the right to any hearings, and to any
11 reconsideration, appeal, or other right to review which may be afforded pursuant to the CRMLA, the
12 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
13 provision of law. CMI further expressly waives any requirement for the filing of an Accusation
14 pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights, CMI
15 effectively consents to this Stipulation becoming final.

16 9. Full and Final Settlement. The Parties hereby acknowledge and agree that this
17 Stipulation is intended to constitute a full, final and complete resolution of the matters described
18 herein, and that no further proceedings or actions will be brought by the Commissioner in connection
19 with these matters either under the CRMLA, or any other provision of law, excepting therefrom any
20 proceeding to enforce compliance with the terms of this Stipulation.

21 10. Reservation of Rights. Except as otherwise provided for in this Stipulation, CMI and
22 the Commissioner reserve, as to third parties, all of their respective rights, remedies and defenses
23 with respect to payment of interest on escrow impound amounts and with respect to the meaning,
24 enforcement, interpretation or applicability, of any and all applicable laws related to payment of
25 interest on escrow impound amounts.

26 11. Cessation of Interest on Escrow Impound Amounts.

27 (a) CMI specifically reserves the right to:

28 (i) discontinue the payment of interest on escrow impound account balances after 30-

1 day notice to the Commissioner if any of the following occur:

2 a. Any future final civil order or decision issued by the California Supreme
3 Court or Ninth Circuit Court of Appeals as to which all other appeals have been exhausted, that is
4 binding over California courts and/or the Commissioner, finding that Financial Code Section 2954.8
5 is not applicable to loans originated and/or serviced by: (i) national banks; or (ii) federal savings
6 banks; or (iii) their subsidiaries; and/or (iv) mortgage servicers that are required to maintain escrow
7 impound balances in non-interest-bearing deposit accounts (each an “Applicable Institution”),
8 and/or;

9 b. Civil Code section 2954.8 is repealed or amended by the California state
10 legislature to provide that it does not apply to an “Applicable Institution”, and/or;

11 c. Any California statute or regulation enacted and/or promulgated after the
12 effective date of this Stipulation, as defined in Paragraph 27, otherwise provides authority that an
13 Applicable Institution is not required to pay interest on impound accounts, and/or,

14 d. Subject to the provisions of the California Constitution, Article 3, section
15 3.5, a federal statute and/or regulation is enacted or promulgated after the effective date of this
16 Stipulation, as defined in Paragraph 27, that preempts state law requirements regarding the payment
17 of interest on impound account balances by an Applicable Institution; and/or;

18 e. The Commissioner issues a formal opinion pursuant to Financial Code
19 section 50312 that Civil Code section 2954.8 does not apply to an Applicable Institution.

20 (ii) Litigate against third parties, as it deems appropriate, to secure a judicial
21 interpretation of California law and/or federal law regarding the payment of interest on escrow
22 impound accounts.

23 (b) The Commissioner agrees that if CMI exercises its reservation of rights as
24 described in this Paragraph 11, the Commissioner shall not, based solely upon such exercise of
25 reservation of rights, take any legal or regulatory action to condition, suspend and/or revoke any
26 CRMLA license of CMI without first providing CMI with reasonable notice and an opportunity to
27 be heard of the nature provided for in Sections 50327 and 50331 under the CRMLA.
28

1 12. Failure to Comply with Stipulation. CMI agrees that if it fails to comply with the
2 terms of this Stipulation, except as otherwise set forth in Paragraph 11, the Commissioner may, in
3 addition to all other available remedies it may invoke under the CRMLA, summarily suspend the
4 CRMLA licenses of CMI until CMI is in compliance. CMI waives any notice and hearing rights to
5 contest such summary suspension which may be afforded under the CRMLA, the California
6 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law
7 in connection therewith.

8 13. Information Willfully Withheld. This Stipulation may be revoked, and the
9 Commissioner may pursue any and all remedies available under law against CMI if the
10 Commissioner discovers that CMI knowingly or willfully withheld information used and relied upon
11 in this Stipulation.

12 14. Future Actions by the Commissioner. If CMI fails to comply with any of the terms of
13 this Stipulation, except as otherwise set forth in Paragraph 11, the Commissioner may institute
14 proceedings for any and all violations otherwise resolved by this Stipulation. The Commissioner
15 reserves the right to bring any future actions against CMI, or any of its partners, owners, officers,
16 shareholders, directors, employees, or successors for any and all unknown violations of the CRMLA.

17 15. Assisting Other Agencies. Nothing in this Stipulation limits the Commissioner's
18 ability to assist any other governmental agency, (city, county, state or federal) with any prosecution,
19 administrative, civil or criminal, brought by any such agency against CMI, or any other person based
20 upon any of the activities alleged in this matter or otherwise.

21 16. Binding. This Stipulation is binding on all heirs, assigns and/or successors in interest.

22 17. Third Party Actions. This Stipulation does not create any private rights or remedies
23 against CMI, create any liability for CMI, or limit defenses of CMI for any person or entity not a
24 party to this Stipulation.

25 18. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
26 has received independent advice from its attorney(s) and/or representatives with respect to the
27 advisability of executing this Stipulation.
28

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

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

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

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

27 23. Headings and Governing Law. The headings to the paragraphs of this Stipulation are
28 inserted for convenience only and will not be deemed a part hereof or affect the construction or

1 interpretation of the provisions hereof. This Stipulation shall be construed and enforced in
2 accordance with and governed by California law.

3 24. Counterparts. This Stipulation may be executed in one or more separate counterparts,
4 each of which when so executed, shall be deemed an original. Such counterparts shall together
5 constitute a single document.

6 25. Signatures. A signature delivered by facsimile or electronic mail will be deemed an
7 original signature.

8 26. Voluntary Stipulation. CMI enters into this Stipulation voluntarily and without any
9 coercion and acknowledges that no promise, threats, or assurances about this Stipulation have been
10 made by the Commissioner or any of her officers or agents.

11 27. Effective Date. This Stipulation shall not become effective until signed by all parties
12 and a fully executed copy is delivered by counsel for the Commissioner via email to counsel for
13 CMI.

14 28. Notice. Any notice/report required under this Stipulation shall be addressed as
15 follows:

16 To CMI: Lawrence J. Kettenbach
17 General Counsel
18 CitiMortgage, Inc.
19 1000 Technology Drive, MS 140
20 O’Fallon, Missouri 63368
21 lawrence.kettenbach@citi.com

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

28 29. Public Record. CMI acknowledges that this Stipulation is a public record.

30. Settlement Authority. Each signatory hereto covenants that he/she possesses all
necessary capacity and authority to sign and enter into this Stipulation.

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31. Termination of Stipulation. The parties agree that this Stipulation shall terminate upon the surrender of CMI’s CRMLA license(s).

Dated: June 18, 2019

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: June 13, 2019

CITIMORTGAGE, INC.

By _____
DAVID J. SMITH
President

APPROVED AS TO FORM:

By _____
LAWRENCE J. KETTENBACH, ESQ. attorney
for CITIMORTGAGE, INC.