

1 MARY ANN SMITH
Deputy Commissioner
2 DANIEL P. O'DONNELL
Assistant Chief Counsel
3 TIMOTHY L. Le BAS (State Bar No.135565)
Senior Counsel
4 Department of Business Oversight
5 1515 K Street, Suite 200
6 Sacramento, California 95814
Telephone: (916) 322-2050
7 Facsimile: (916) 445-6985
8 Attorneys for Complainant

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

12 In the Matter of:) CRMLA License No.: 413-0740
13 THE COMMISSIONER OF BUSINESS)
14 OVERSIGHT,) CONSENT ORDER
15 Complainant,)
16 v.)
17 CASTLE & COOKE MORTGAGE, LLC,)
18 Respondent.)
19

20
21 The Commissioner of Business Oversight (Commissioner), and Castle & Cooke Mortgage,
22 LLC (Castle & Cooke) (collectively, the Parties), enter into this Consent Order with respect to the
23 following facts:

24 **RECITALS**

25 A. Castle & Cooke holds a residential mortgage lender license issued by the Commissioner
26 pursuant to the California Residential Mortgage Lending Act (Fin. Code, § 50000 et seq.) (CRMLA).
27 Castle & Cooke has its principal place of business located at 13751 S. Wadsworth Park Drive, Suite
28 101, Draper, Utah 84020.

1 B. On February 22, 2017, the Department of Business Oversight (Department) conducted a
2 regulatory examination of Castle & Cooke. The Department found that Castle & Cooke overcharged
3 per diem interest in violation of Financial Code section 50204, subdivision (o).

4 C. The Department also found that Castle & Cooke was servicing loans, as a master servicer,
5 without a servicing license in violation of Financial Code section 50002, subdivision (a). Although
6 Castle & Cooke submitted a servicing application on July 23, 2014, that application is still pending
7 approval at the Department.

8 D. The Department, through the Commissioner, has jurisdiction over the licensing and regulation
9 of persons and entities engaged in the business of lending and/or servicing pursuant to the CRMLA,
10 including mortgage loan originators.

11 E. It is the intention and desire of the Parties to resolve this Action without the necessity of a
12 hearing and/or other litigation.

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

15 **TERMS AND CONDITIONS**

16 1. Purpose. This Consent Order resolves the issues before the Commissioner concerning
17 per diem overcharges and unlicensed servicing activity by Castle & Cooke set forth in paragraphs B
18 and C, above, in a manner that avoids the expense of a hearing and other possible court proceedings,
19 protects consumers, is in the public interest, and is consistent with the purposes, policies, and
20 provisions of the CRMLA.

21 2. Order to Discontinue Violations. Castle & Cooke agrees that in accordance with
22 Financial Code section 50321, it will immediately discontinue the violations set forth herein.

23 3. Final Order to Discontinue. Castle & Cooke agrees that the Order to Discontinue
24 Violations as described in Paragraph 2 above is hereby deemed a final order.

25 4. Penalties. Castle & Cooke agrees to pay \$50,000.00 in penalties (Penalties). These
26 Penalties shall be paid to the Commissioner within 30 days of the Effective Date of this Consent
27 Order as defined in paragraph 27. The payment shall be 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:

2 Attn: Accounting – Litigation
3 The Department of Business Oversight
4 1515 K Street, Suite 200
5 Sacramento, California 95814

6 Notice of payment shall be sent by email to:

7 Timothy L. Le Bas, Senior Counsel
8 Department of Business Oversight
9 Enforcement Division
10 1515 K Street, Suite 200
11 Sacramento, California 95814

12 In the event the payment due date falls on a weekend or holiday, the payment shall be due the
13 next business day.

14 5. Policies and Procedures. Castle & Cooke has developed and implemented, and the
15 Commissioner has approved, policies and procedures as of the date of this Consent Order that are
16 designed to prevent per diem overcharges.

17 6. Servicing Application. The Commissioner hereby acknowledges that the mortgage
18 loan servicer application filed by Castle & Cooke is ready to be approved, and the Commissioner
19 hereby agrees to approve the application upon execution of this Consent Order.

20 7. Waiver of Hearing Rights: Castle & Cooke acknowledges the Commissioner is ready,
21 willing, and able to proceed with the filing of an administrative enforcement action on the charges
22 contained in this Consent Order. Castle & Cooke hereby waives the right to any hearings, and to any
23 reconsideration, appeal, or other right to review which may be afforded pursuant to the CRMLA, the
24 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
25 provision of law. Castle & Cooke further expressly waives any requirement for the filing of an
26 Accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights,
27 Castle & Cooke effectively consents to this Consent Order and Order to Discontinue Violations
28 becoming final.

8. Full and Final Settlement: The Parties hereby acknowledge and agree that this
Consent Order is intended to constitute a full, final and complete resolution of the matters addressed

1 herein, and that no further proceedings or actions will be brought by the Commissioner in connection
2 with these matters under any other provision of law, excepting therefrom any proceeding to enforce
3 compliance with the terms of this Consent Order.

4 9. Failure to Comply with Consent Order. Castle & Cooke agrees that if it fails to
5 comply with the terms of this Consent Order, the Commissioner may, in addition to all other
6 available remedies it may invoke under the CRMLA, summarily suspend/revoke the CRMLA
7 licenses of Castle & Cooke until Castle & Cooke is in compliance. Castle & Cooke waives any
8 notice and hearing rights to contest such summary suspensions which may be afforded under the
9 CRMLA, the California Administrative Procedure Act, the California Code of Civil Procedure, or
10 any other provision of law in connection therewith.

11 10. Information Willfully Withheld. This Consent Order may be revoked and the
12 Commissioner may pursue any and all remedies available under law against Castle & Cooke if the
13 Commissioner discovers that Castle & Cooke knowingly or willfully withheld information used for
14 and relied upon in this Consent Order.

15 11. Future Actions by Commissioner. If Castle & Cooke fails to comply with any terms
16 of the Consent Order, the Commissioner may institute proceedings for any and all violations
17 otherwise resolved under this Consent Order. The Commissioner reserves the right to bring any
18 future actions against Castle & Cooke, or any of its partners, owners, officers, shareholders, directors,
19 employees or successors for any and all unknown violations of the CRMLA.

20 12. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
21 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
22 administrative, civil or criminal brought by that agency against Castle & Cooke or any other person
23 based upon any of the activities alleged in this matter or otherwise.

24 13. Third Party Actions. It is the intent and understanding between the parties that this
25 Consent Order does not create any private rights or remedies against Castle & Cooke or create any
26 liability for Castle & Cooke or limit defenses of Castle & Cooke for any person or entity not a party
27 to this Agreement.

28 14. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it

1 has received or been advised to seek independent legal advice from its attorneys with respect to the
2 advisability of executing this Consent Order.

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

12 16. Full Integration. This Consent Order is the final written expression and the complete
13 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
14 between the Parties with respect to the subject matter hereof, and supersedes all discussions between
15 and among the Parties, their respective representatives, and any other person or entity, with respect to
16 the subject matter covered hereby.

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

24 18. Voluntary Consent. Castle & Cooke enters into this Consent Order voluntarily and
25 without coercion and acknowledges that no promises, threats or assurances have been made by the
26 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
27 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and without
28 any duress or undue influence of any kind from any source.

1 19. Modifications and Qualified Integration. No amendment, change or modification of
2 this Consent Order shall be valid or binding in any extent unless it is in writing and signed by all of
3 the parties affected by it.

4 20. Waiver. The waiver of any provision of this Consent Order shall not operate to waive
5 that provision in the future, or waive any other provision set forth herein, and any waiver, amendment
6 and/or change to the terms of this Consent Order must be in writing and signed by the parties affected
7 by it.

8 21. Successors in Interest. This Consent Order is binding on all heirs, assigns and/or
9 successors in interest.

10 22. Counterparts. This Consent Order may be executed in any number of counterparts by
11 the Parties, and when each party has signed and delivered at least one such counterpart to the other
12 party, each counterpart shall be deemed an original and taken together shall constitute one and the
13 same Consent Order.

14 23. Signatures. This Consent Order may be executed by facsimile or scanned signature,
15 and any such facsimile or scanned signature by any party hereto shall be deemed to be an original
16 signature and shall be binding on such party to the same extent as if such facsimile or scanned
17 signature were an original signature.

18 24. Governing Law. This Consent Order shall be construed and enforced in accordance
19 with and governed by California law.

20 25. Public Record. Castle & Cooke hereby acknowledges that this Consent Order will be
21 a matter of public record.

22 26. Notice. Any notices required under this Consent Order shall be provided to each party
23 at the following addresses:

24 If to Respondent to: Castle & Cooke Mortgage, LLC
25 Attn: Adam Thorpe, President
26 13751 S. Wadsworth Park Drive, Suite 101
27 Draper, Utah 84020

27 If to Complainant to: Department of Business Oversight
28 Attn: Timothy L. Le Bas, Senior Counsel

1515 K Street, Suite 200
Sacramento, California 95814

27. Effective Date. This Consent Order shall not become effective until signed by all parties and delivered to Castle & Cooke by Department Senior Counsel Timothy L. Le Bas emailing the fully executed Consent Order to Nancy Thomas at nthomas@mofo.com.

28. Authority to Sign. Each party warrants and represents that such party is fully entitled and duly authorized to enter into, sign and deliver this Consent Order. In particular, and without limiting the generality of the foregoing, each party warrants and represents that it is fully entitled to enter into the covenants, and undertake the obligations set forth herein.

Dated: June 25, 2019 MANUEL P. ALVAREZ
Commissioner of Business Oversight

By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: June 25, 2019 CASTLE & COOKE, LLC

By: _____
MATHEW BRUMBLE
CHIEF FINANCIAL OFFICER

APPROVED AS TO FORM AND CONTENT:

Dated: June 25, 2019 By _____
NANCY THOMAS
Morrison & Foerster LLP
Counsel for Castle & Cooke Mortgage, LLC