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4 Department of Business Oversight
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8 Attorneys for Complainant
9

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

12 In the Matter of:)	CRMLA License No.: 413-0922
)	CFL License No.: 603-9627
13 THE COMMISSIONER OF BUSINESS)	
14 OVERSIGHT,)	CONSENT ORDER
)	
15 Complainant,)	
16 v.)	
)	
17 FM Home Loans, LLC,)	
)	
18 Respondent.)	
19)	

20
21 The Commissioner of Business Oversight (Commissioner) and FM Home Loans, LLC
22 (FMHL), (collectively, the parties), enter into this Consent Order with respect to the following facts:

23 RECITALS

- 24 A. The Commissioner has jurisdiction over the licensing and regulation of persons and entities
- 25 engaged in the business of lending and servicing residential mortgage loans pursuant to the
- 26 California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.)
- 27 B. The Commissioner has jurisdiction over the licensing and regulation of persons and entities
- 28 engaged in the business of making consumer and commercial loans pursuant to the California

1 Financing Law (CFL) (Fin. Code, § 22000 et seq.).

2 C. FMHL is a residential mortgage lender licensed by the Commissioner since December 17,
3 2007 (CRMLA License No. 413-0922) and a finance lender licensed by the Commissioner since
4 February 4, 2004 (CFL License No.603-9627). FMHL has its principal office located at 2329
5 Nostrand Avenue, 3rd Floor, Brooklyn, New York 11210.

6 D. David Brecher is the Chief Executive Officer and a control person of FMHL and, as such, is
7 authorized to enter this Consent Order on FMHL’s behalf.

8 E. During a regulatory examination of FMHL conducted in 2016 (2016 Exam), the
9 Commissioner discovered that FMHL had several violations of the CRMLA and CFL, including:

- 10 i. Commingling company funds with trust funds and failing to properly reconcile all
11 trust accounts with control accounts in violation of Financial Code section 50202 and
12 California Code of Regulations, title 10, section 1950.314.1.
- 13 ii. Failing to provide documentation and explanation as requested on the Report of
14 Examination in violation of Financial Code section 50314.
- 15 iii. Engaging in servicing activity prior to obtaining authority to do so.
- 16 iv. Failing to properly reconcile financial statements in violation of Financial Code
17 sections 22156 and 50314, and California Code of Regulations, title 10, section
18 1950.314.1.
- 19 v. Failing to provide required disclosures to applicants regarding appropriate agencies to
20 contact with complaints and for information in violation of California Code of
21 Regulations, title 21, section 7114.
- 22 vi. Failing to provide proof of loan funds disbursements in violation of Financial Code
23 section 22156.
- 24 vii. Overcharging borrowers for recording fees in violation of Financial Code section
25 22336, subdivision (a).
- 26 viii. Overcharging borrowers per diem interest in violation of Civil Code section 2948.5.
- 27 ix. Failure to timely provide Notice of Servicing Transfer to borrowers in violation of
28 Financial Code section 22346.

1 F. FMHL admits to the jurisdiction of the Department of Business Oversight (Department) and it
2 is the intention of the parties to resolve this matter without the necessity of a hearing and/or other
3 litigation.

4 G. The Commissioner finds this action is appropriate, in the public interest, and consistent with
5 the purposes fairly intended by the policies and procedures of the CRMLA and CFL.

6 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
7 forth herein, the Parties agree as follows:

8 TERMS

9 1. Purpose: This Consent Order resolves the issues before the Commissioner described above
10 in a manner that avoids the expense of a hearing and other possible court proceedings, protects
11 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of
12 the CRMLA and CFL.

13 2. Desist and Refrain Order: The Commissioner hereby orders that in accordance with
14 Financial Code section 22712, FMHL will immediately desist and refrain from further violations of
15 the CFL, including those violations set forth in Recital E above.

16 3. Order to Discontinue Violations: The Commissioner hereby orders that in accordance with
17 Financial Code section 50321, FMHL will immediately discontinue further violations of the
18 CRMLA, including those violations set forth in Recital E above.

19 4. Penalties: FMHL shall pay penalties in the amount of \$65,600.00 for the violations of the
20 CRMLA and CFL enumerated in Recital E above. The penalties shall be paid within 30 calendar
21 days of the Effective Date of this Consent Order.

22 5. Penalty Payments: All penalties referenced in this Consent Order shall be made payable in
23 the form of a cashier's check or Automated Clearing House deposit to the Department of Business
24 Oversight and mailed to the attention of:

25 Accounting-Litigation
26 Department of Business Oversight
27 1515 K Street, Suite 200
28 Sacramento, California 95814

Notice of payment shall be made via email to Joanne Ross, Senior Counsel at Department of

1 Business Oversight, joanne.ross@dbo.ca.gov.

2 6. Approval of Application: The Commissioner hereby acknowledges that the mortgage loan
3 servicer application filed by FMHL is ready to be approved, and the Commissioner hereby agrees to
4 approve the application as soon as the Penalties in Paragraph 4 herein are paid in full.

5 7. Self Audit: FMHL agrees to audit its California loan files and produce compliance reports
6 for the Commissioner (Self Audit) containing the information specified in Paragraph 8, covering the
7 Audit Period of thirty-six months prior to the Effective Date of this Consent Order through twelve
8 months after the Effective Date of this Consent Order (Self Audit Reports).

9 8. Scope of Self Audit Reports: The Self Audit Reports shall include, at the minimum, the
10 following information for the Audit Period:

11 a. The total number of loans originated of serviced by FMHL in California.

12 b. A review and accounting of all fees and charges associated with all California loans
13 originated and/or funded by FMHL, identifying each and every loan with any overcharges to
14 borrowers, including, but not limited to excess per diem interest charges and recording fees. For
15 each identified overcharge, provide the borrower's loan number, name, address, loan amount, loan
16 origination and/or funding date, interest rate, disbursement date, date per diem interest charged,
17 number of days per diem interest overcharged (if applicable), overcharge amount (if applicable),
18 date of refund (if applicable), proof of refund (if applicable), and whether the overcharge was
19 previously reported loan amount, loan date, interest rate, and type and amount of overcharge.
20 Provide an accounting of all refunds made by FMHL for identified overcharges.

21 c. A review of FMHL's Fair Lending Notice disclosures, identifying each and every
22 California loan wherein incorrect or incomplete information regarding appropriate agency contact
23 information for complaints or information was provided to the borrower(s).

24 d. The total number of California loans with servicing activity performed by or contracted
25 to a third party by FMHL.

26 e. A review of the statutory timeliness of all Notices of Servicing Transfer provided to
27 California borrowers.

28 f. A review of all trust fund accounting for California loans, including the following: a

1 summary of the application of the funding policies and procedures; the timing for trust fund liability
2 recognition and deposit of trust funds into the trust account; if applicable, the handling of trust funds
3 for loan cancellation; the handling of borrower’s interim payment(s); and an explanation of how a
4 trust fund debit balance is handled.

5 9. Self Audit Report – Contents: The Self Audit Reports shall cover the following dates and
6 shall be delivered to the Department on the following schedule:

7 a. The first Self Audit Report shall cover all California loans originated and/or funded by
8 FMHL from 36 months prior to the Effective Date of this Consent Order through the Effective Date
9 of this Consent Order. The first Self Audit Report shall be submitted to the Commissioner no later
10 than 90 days after the Effective Date of this Consent Order.

11 b. The second Self Audit Report shall cover all California loans originated and/or funded by
12 FMHL from the Effective Date of this Consent Order through 90 days after the Effective Date of this
13 Consent Order. The third Self Audit Report shall be submitted to the Commissioner no later than 90
14 days after the second Self Audit Report period ends.

15 c. The third Self Audit Report shall cover all California loans originated and/or funded by
16 FMHL from 91 days after the Effective Date of this Consent Order through 180 days after the
17 Effective Date of this Consent Order. The third Self Audit Report shall be submitted to the
18 Commissioner no later than 90 days after the third Self Audit Report period ends.

19 d. The fourth Self Audit Report shall cover all California loans originated and/or funded by
20 FMHL from 181 days after the Effective Date of this Consent Order through 270 days after the
21 Effective Date of this Consent Order. The fourth Self Audit Report shall be submitted to the
22 Commissioner no later than 90 days after the fourth Self Audit Report period ends.

23 e. The fifth Self Audit Report shall cover all California loans originated and/or funded by
24 FMHL from 271 days after the Effective Date of this Consent Order through 365 days after the
25 Effective Date of this Consent Order. The fifth Self Audit Report shall be submitted to the
26 Commissioner no later than 90 days after the fifth Self Audit Report period ends.

27 10. Self Audit Refunds: FMHL agrees to refund any overcharged amounts to borrowers,
28 including but not limited to per diem interest and recording fee overcharges, identified in the Self

1 Audit. FMHL agrees that refunds shall be mailed to the last known address of each borrower no
2 later than 30 calendar days after the due date of the Audit Report that identifies each overcharge.
3 For any refund that is not mailed within 30 calendar days after the date of loan disbursement, FMHL
4 shall pay the borrower interest on the amount of the refund at the rate of 10 percent per annum on
5 and in addition to the amount of the overcharge.

6 11. Outstanding Self Audit Refunds: No later than the due date of the next Self Audit Report,
7 FMHL shall notify the Commissioner of any refund payment that has been returned or remains
8 outstanding for loans originated during the period covered by the most recently filed Self Audit
9 Report. Notice shall be sent to Joanne Ross, Senior Counsel, at 1515 K Street, Suite 200,
10 Sacramento, California 95814. FMHL shall be responsible for ensuring that any outstanding refund
11 payment owed to any borrower identified in any Audit Report that was returned or remains
12 outstanding is escheated to the State of California pursuant to the provisions of the California
13 Unclaimed Property Law (Code of Civ. Proc., § 1500 et seq.).

14 12. Self Audit Penalties:

15 FMHL shall pay a penalty of \$125.00 per violation for each violation found through the Self
16 Audit. Such penalties shall be paid within 30 days of the date the corresponding Self Audit Report is
17 filed with the Department.

18 13. Self Audit Accuracy and Re-Audit:

19 a. FMHL agrees and acknowledges that the Commissioner may test the results of the Self
20 Audit Reports to ensure their accuracy. In connection with these tests, FMHL agrees to provide loan
21 files and related information requested by the Commissioner within 10 calendar days of receiving
22 written notice. FMHL further agrees to have its Self Audit conducted anew (Re-Audit) by and
23 through an independent certified public accountant (CPA) if the Commissioner's testing reveals more
24 than a 10 percent error rate.

25 b. In the event a Re-Audit is required, FMHL, by and through its CPA, shall submit to the
26 Commissioner the results of the Re-Audit (Re-Audit Report) within 180 days of the date FMHL is
27 notified in writing by the Commissioner that a Re-Audit is required. The Commissioner agrees to
28 extend the 180-day period a further 60 days if requested in writing by FMHL and FMHL can

1 evidence to the Commissioner that it has exercised due diligence in attempting to meet the initial
 2 180-day time period. The Re-Audit reports shall include at a minimum:

3 i. the number of trust accounting violations on California loans with details on such
 4 violations, including any failures of FMHL to timely reconcile trust accounts and any instances of
 5 commingling of trust account funds with company funds as prohibited under Financial Code sections
 6 50202 and California Code of Regulations, title 10, section 1950.314.1 and 1950.314.6;

7 ii. the total number of California loans made during the period;

8 iii. the number of California loans with per diem interest or recording fee overcharges,
 9 and;

10 iv. for each loan with overcharges, the report shall list the borrower loan number, name
 11 and address, loan amount, loan date, interest rate, disbursement date, date per diem interest charged,
 12 number of days per diem interest overcharged (if applicable), overcharge amount (if applicable), date
 13 of refund (if applicable), proof of refund (if applicable), and whether the overcharge was previously
 14 reported in the Self Audit.

15 c. FMHL further agrees that it shall pay an administrative penalty to the Commissioner,
 16 upon submission of the Re-Audit Report, equal to \$250.00 for each violation discovered during the
 17 Re-Audit that was not previously reported in the Self Audit.

18 14. Opportunity to Cure: In the event FMHL fails to comply with the terms of this Consent
 19 Order, FMHL will have 10 calendar days to cure such breach from the date written notice of the
 20 breach is given by the Commissioner to FMHL (Notice). Proof of cure, satisfactory to the
 21 Commissioner, shall be sent via traceable method by FMHL so that it is received within 15 days of
 22 the date of Notice to Joanne Ross, Senior Counsel, Department of Business Oversight, 1515 K Street,
 23 Suite 200, Sacramento, California 95814.

24 15. Remedy for Breach: In the event FMHL fails to comply with the terms of this Consent
 25 Order with regard to any term in this Consent Order, and fails to cure any term to the satisfaction of
 26 the Commissioner, as described in Paragraph 14 above, FMHL hereby agrees that an additional
 27 penalty of \$25,000.00 will be ordered and shall be deemed a final and enforceable order (Additional
 28 Penalty). The Additional Penalty payment in full shall be received (see Paragraph 5, herein) within

1 30 days of Notice (see Paragraph 14 above). If the Additional Penalty is not received timely, the
2 Commissioner may, in addition to all other available remedies he may invoke under the CRMLA
3 and CFL, summarily suspend or revoke the CRMLA and/or CFL licenses of FMHL. FMHL hereby
4 stipulates to the finality of any such CFL and/or CRMLA license suspension or revocation that the
5 Commissioner may order. FMHL hereby waives any notice and hearing rights to contest the
6 immediate penalty assessment for breach of this Consent Order, and the license(s) suspension(s) or
7 revocation(s) order(s) that may be issued after such breach, which may be afforded under the
8 CRMLA, CFL, the California Administrative Procedure Act, the California Code of Civil Procedure,
9 or any other law.

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

19 17. Full and Final Settlement: The Parties hereby acknowledge and agree that this Consent Order
20 is intended to constitute a full, final, and complete resolution of the violations described herein, and
21 that no further proceedings or actions will be brought by the Commissioner in connection with these
22 matters, excepting therefrom any proceeding to enforce compliance with the terms of this Consent
23 Order.

24 18. Information Willfully Withheld: This Consent Order may be revoked and the Commissioner
25 may pursue any and all remedies available under law against FMHL if the Commissioner discovers
26 that FMHL knowingly or willfully withheld information used for and relied upon in this Consent
27 Order.

28 19. Future Actions by the Commissioner: The Commissioner reserves the right to bring any

1 future actions against FMHL, or any of its partners, owners, officers, shareholders, directors,
2 affiliates, employees or successors for any and all unknown violations of the CRMLA and CFL. This
3 Consent Order shall not serve to exculpate FMHL or any of its members, officers, directors,
4 affiliates, shareholders, employees, or successors from liability for its violations of the CRMLA and
5 CFL.

6 20. Assisting Other Agencies: Nothing in this Consent Order limits the Commissioner’s ability
7 to assist any other government agency (city, county, state, or federal) with any prosecution,
8 administrative, civil or criminal brought by that agency against FMHL or any other person based
9 upon any of the activities alleged in this matter or otherwise.

10 21. Independent Legal Advice: Each of the Parties represents, warrants, and agrees that it has
11 received or been advised to seek independent legal advice from its attorneys with respect to the
12 advisability of executing this Consent Order.

13 22. Headings: The headings to the paragraphs of this Consent Order are inserted for
14 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
15 the provisions hereof.

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

17 24. Reliance: Each of the Parties represents, warrants, and agrees that in executing this Consent
18 Order, it has relied solely on the statements set forth herein and the advice of its own counsel. Each
19 of the Parties further represents, warrants, and agrees that in executing this Consent Order, it has
20 placed no reliance on any statement, representation, or promise of any other party, or any other
21 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
22 entity to make any statement, representation or disclosure of anything whatsoever. The Parties have
23 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced
24 to execute this Consent Order; and (2) to preclude the introduction of parol evidence to vary,
25 interpret, supplement, or contradict the terms of this Consent Order.

26 25. Waiver, Amendments, and Modifications: No waiver, amendment, or modification of this
27 Consent Order will be valid or binding unless it is in writing and signed by each of the parties. The
28 waiver of any provision of this Consent Order will not be deemed a waiver of any other provision.

1 No waiver by either party of any breach of, or of compliance with, any condition or provision of this
2 Consent Order by the other party will be considered a waiver of any other condition or provision or
3 of the same condition or provision at another time.

4 26. No Presumption From Drafting: In that the Parties have had the opportunity to draft, review
5 and edit the language of this Consent Order, no presumption for or against any party arising out of
6 drafting all or any part of this Consent Order will be applied in any action relating to, connected to,
7 or involving this Consent Order. Accordingly, the Parties waive the benefit of Civil Code section
8 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a
9 contract should be interpreted most strongly against the party who caused the uncertainty to exist.

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

16 28. Governing Law: This Consent Order will be governed by and construed in accordance with
17 California law. Each of the parties hereto consents to the jurisdiction of such court, and hereby
18 irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the
19 maintenance of such action or proceeding in such court

20 29. Counterparts: This Consent Order may be executed in one or more separate counterparts,
21 each of which when so executed, shall be deemed an original. Such counterparts shall together
22 constitute a single document.

23 30. Effect Upon Future Proceedings: If FMHL applies for any license, permit or qualification
24 under the Commissioner's current or future jurisdiction, or are the subject of any future action by the
25 Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for the
26 purpose of such application(s) or enforcement proceedings(s).

27 31. Voluntary Agreement: FMHL enters into this Consent Order voluntarily and without coercion
28 and acknowledges that no promises, threats or assurances have been made by the Commissioner or

1 any officer, or agent thereof, about this Consent Order. The parties each represent and acknowledge
2 that he, she or it is executing this Consent Order completely voluntarily and without any duress or
3 undue influence of any kind from any source.

4 32. Notice: Any notice required under this Consent Order be provided to each party at the
5 following addresses:

6 To FM Home Loans, LLC:

7 David Brecher, Chief Executive Officer
8 2329 Nostrand Avenue, 3rd Floor
9 Brooklyn, New York 11210

10 With a courtesy copy to:

11 Daniella Casseres
12 Offit Kurman, Attorneys at Law
13 10 E. 40th Street, 35th Floor
14 New York, New York 10016

15 To the Commissioner:

16 Joanne Ross, Senior Counsel
17 Department of Business Oversight
18 Enforcement Division
19 1515 K Street, Suite 200
20 Sacramento, California 95814

21 33. Signatures: A fax or electronic mail signature shall be deemed the same as an original
22 signature.

23 34. Public Record: FMHL hereby acknowledges that this Consent Order is and will be a matter
24 of public record.

25 35. Effective Date: This Consent Order shall become final and effective when signed by all
26 parties and delivered by the Commissioner's agent via email to FMHL's counsel at
27 dcasseres@offitKurman.com.
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1 36. Authority to Sign: Each signatory hereto covenants that he/she possesses all necessary
2 capacity and authority to sign and enter into this Consent Order and undertake the obligations set
3 forth herein.

4 Dated: September 18, 2019

MANUEL P. ALVAREZ
Commissioner of Business Oversight

6 By _____
7 MARY ANN SMITH
8 Deputy Commissioner
9 Enforcement Division

10 Dated: September 18, 2019

By _____
David Brecher, Chief Executive Officer
FM HOME LOANS, LLC

14 APPROVED AS TO FORM AND CONTENT

15 Dated: September 18, 2019

By _____
Daniella Casseres
Offit Kurman, Attorneys at Law
Counsel for FM HOME LOANS, LLC