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9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) CFL LICENSE NO.: 60DBO-89137
13 THE COMMISSIONER OF BUSINESS) NMLS NO.: 1587067_____
14 OVERSIGHT,) CONSENT ORDER
15 Complainant,)
16 v.) TRIAL DATE: September 5, 2019
17 FRANKLIN EXPRESS MORTGAGE, INC.,) TIME: 9:00 A.M.
18 Respondent.) LOCATION: 320 West 4th Street, Suite 630
19) Los Angeles, CA 90013
20)
21)

21 This Consent Order is entered into between the Commissioner of Business Oversight
22 (Commissioner) and Respondent Franklin Express Mortgage, Inc. (Respondent) and is made with
23 respect to the following facts:

24 **I.**

25 **Recitals**

26 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
27 entities engaged in the business of finance lending or brokering under the California Financing Law
28 (CFL) (Fin. Code, § 22000 et seq.).

1 B. Respondent is a corporation, with a principal place of business at 10723 White Oak
2 Avenue, Granada Hills, California 91344.

3 C. Respondent is licensed as a finance lender and broker under the CFL with the main
4 license number 60DBO-89137.

5 D. Respondent operates one branch office in California.

6 E. In accordance with Financial Code section 22159, CFL licensees must file an annual
7 report with the Commissioner by March 15 of each year (Annual Report).

8 F. On January 2, 2019, the Commissioner notified CFL licensees of the March 15, 2019
9 deadline to file their annual reports by sending notice to the email address of each CFL licensee
10 established pursuant to the Commissioner's Order on Electronic Communications, dated November
11 22, 2013. The notification admonished licensees that the Commissioner could assess penalties and
12 summarily revoke CFL license(s) for untimely filing or failing to file pursuant to Financial Code
13 section 22715.

14 G. On February 1, 2019, the Commissioner again notified CFL licensees of the March
15 15, 2019 deadline to file their annual reports by sending notice to the email address each CFL
16 licensee established pursuant to the Commissioner's Order on Electronic Communications, dated
17 November 22, 2013. The notification again warned that the Commissioner could assess penalties and
18 summarily revoke licenses for untimely filing or failing to file pursuant to Financial Code section
19 22715.

20 H. On March 5, 2019, the Commissioner again notified CFL licensees of the March 15,
21 2019 deadline to file their annual reports by sending notice to the email address each CFL licensee
22 established pursuant to the Commissioner's Order on Electronic Communications, dated November
23 22, 2013. The notification again warned that the Commissioner could assess penalties and
24 summarily revoke licenses for untimely filing or failing to file pursuant to Financial Code section
25 22715.

26 I. As of March 15, 2019, Respondent had not filed its Annual Report with the
27 Commissioner. As a result, the Commissioner issued a notice on March 18, 2019 to Respondent to
28 Respondent's email address established pursuant to the Commissioner's Order on Electronic

1 Communications, dated November 22, 2013, advising Respondent that it should file its annual report
2 by or before March 29, 2019 or else its license would be summarily revoked pursuant to Financial
3 Code section 22715 (Notice email).

4 J. On May 20, 2019, Respondent submitted its Annual Report, which was due on March
5 15, 2019, 45 business days late. Pursuant to Financial Code Section 22715, the maximum penalty
6 that may be imposed for filing 45 business days late is \$ 20,500.00 (\$100.00 per business day for the
7 first five business days and \$500.00 per business day thereafter up to a maximum of \$25,000.00).

8 K. As a result of the late filing, on June 26, 2019, the Commissioner issued a Penalty
9 Order pursuant to Financial Code Section 22715 for CFL License Number 60DBO-89137 in the
10 amount of \$ 20,500.00 (Penalty Order).

11 L. Upon receiving the Penalty Order, Respondent timely notified the Commissioner that
12 Respondent was requesting a hearing on the Penalty Order.

13 M. The Commissioner finds that entering into this Settlement Agreement is in the public
14 interest and consistent with the purposes fairly intended by the policies and provisions of the CFL.

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

17 **II.**

18 **Terms and Conditions**

19 1. Purpose. The parties intend to resolve this matter for the purpose of judicial economy
20 and expediency and without the uncertainty and expense of a hearing or other litigation.

21 2. Order Rescinding Penalty Order. The Commissioner hereby rescinds the Penalty
22 Order, which had been issued on June 26, 2019.

23 3. Administrative Penalty. Respondent shall pay an administrative penalty of \$6,000.00
24 no later than 3 days after the effective date of this Consent Order as defined in paragraph 25. The
25 penalty must be made payable in the form of a cashier's check or Automated Clearing House deposit
26 to the Department of Business Oversight and transmitted to the attention of Accounting – Litigation,
27 at the Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814.
28 Notice of the payment must be concurrently sent to Vanessa T. Lu, Counsel, Department of Business

1 Oversight, 1350 Front Street, Room 2034, San Diego, California 92101.

2 4. Waiver of Hearing Rights. Respondent acknowledges the Commissioner is ready,
3 willing, and able to proceed with the filing of an administrative enforcement action on the charges
4 contained in this Consent Order. Respondent hereby waives the right to any hearings, and to any
5 reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the
6 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
7 provision of law. Respondent further expressly waives any requirement for the filing of an
8 Accusation pursuant to Government section 11415.60, subdivision (b). By waiving such rights,
9 Respondent effectively consents to this Consent Order and Order rescinding Penalty Order becoming
10 final.

11 5. Full and Final Resolution. The parties hereby acknowledge and agree that this
12 Consent Order is intended to constitute a full and final resolution of the violations described herein,
13 and that no further proceedings or actions will be brought by the Commissioner in connection with
14 these matters except under the CFL or any other provision of law, excepting therefrom any
15 proceeding to enforce compliance with the terms of this Consent Order.

16 6. Failure to Comply with Consent Order. Respondent agrees that if it fails to comply
17 with the terms of this Consent Order, the Commissioner may, in addition to all other available
18 remedies it may invoke under the CFL, summarily revoke the CFL license of Respondent until
19 Respondent is in compliance. Respondent waives any notice and hearing rights to contest such
20 summary revocations which may be afforded under the CFL; the California Administrative
21 Procedure Act, including Government Code section 11415.60, subdivision (b); the California Code
22 of Civil Procedure; or any other provision of law in connection therewith.

23 7. Information Willfully Withheld or Misrepresented. This Consent Order may be
24 revoked, and the Commissioner may pursue any and all remedies available under law against
25 Respondent if the Commissioner discovers that Respondent knowingly or willfully withheld or
26 misrepresented information used for and relied upon in this Consent Order.

27 8. Future Actions by Commissioner. If Respondent fails to comply with the terms of the
28 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise

1 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
2 against Respondent, or any of its partners, owners, officers, shareholders, directors, employees or
3 successors for any and all unknown violations of this CFL.

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

8 10. No Presumption Against Drafter. Each party acknowledges that it has had the
9 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
10 intend no presumption for or against the drafting party will apply in construing any part of this
11 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
12 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
13 language of a contract should be interpreted most strongly against the party who caused the
14 uncertainty to exist.

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

18 12. Headings. The headings to the paragraphs of this Consent Order are inserted for
19 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
20 the provisions hereof.

21 13. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
22 interest.

23 14. Reliance. Each of the parties represents, warrants, and agrees that in executing this
24 Consent Order, it has relied solely on the statements set forth herein and the advice of its own legal
25 counsel. Each of the parties further represents, warrants, and agrees that in executing this Consent
26 Order it has placed no reliance on any statement, representation, or promise of any other party, or
27 any other person or entity not expressly set forth herein, or upon the failure of any party or any other
28 person or entity to make any statement, representation, or disclosure of anything whatsoever. The

1 parties have included this clause: (1) to preclude any claim that any party was in any way
2 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
3 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

4 15. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
5 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
6 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
7 provision. No waiver by either party of any breach of, or of compliance with, any condition or
8 provision of this Consent Order by the other party will be considered a waiver of any other condition
9 or provision or of the same condition or provision at another time.

10 16. Full Integration. This Consent Order is the final written expression and the complete
11 and 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 17. Governing Law. This Consent Order will be governed by and construed in
17 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court
18 and thereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
19 forum to the maintenance of such action or proceeding in such court.

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

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

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1 20. Voluntary Agreement. Respondent hereby enters in this Consent Order voluntarily
2 and without coercion and acknowledges that no promises, threats, or assurances have been made by
3 the Commissioner or any officer, or agent thereof, about this Consent Order. The parties each
4 represent and acknowledge that he, she or it is executing this Consent Order completely voluntarily
5 and without any duress or undue influence of any kind from any source.

6 21. Notice. Any notice required under this Consent Order be provided to each party at
7 the following addresses:

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9 To Respondent: Franklin Express Mortgage, Inc.
10 c/o Adrian Orozco, CEO
11 10723 White Oak Avenue
12 Granada Hills, CA 91344
13 Adrian@franklinexpressmortgage.com

14 To the Commissioner: Vanessa T. Lu, Counsel
15 Department of Business Oversight
16 1350 Front Street, Room 2034
17 San Diego, CA 92101
18 Vanessa.Lu@dbo.ca.gov

19 22. Signatures. A fax or electronic mail signature shall be deemed the same as an
20 original signature.

21 23. Public Record. Respondent hereby acknowledges that the Consent Order is and will
22 be a matter of public record.

23 24. Effective Date. This Consent Order shall become final and effective when signed by
24 all parties and delivered by the Commissioner’s agent via e-mail to
25 Adrian@franklinexpressmortgage.com.

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26. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: 8/29/19

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 8/29/19

Franklin Express Mortgage, Inc.

By _____
ADRIAN OROZCO
CEO