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

12 In the Matter of:) CRMLA License No.: 413-1098
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
14)
15 Complainant,)
16 v.)
17 CROSSCOUNTRY MORTGAGE, INC.,)
18 Respondent.)
19 _____)

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

24 RECITALS

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

28 B. CrossCountry is a residential mortgage lender licensed by the Commissioner since December

1 7, 2010 (CRMLA License No. 413-1098). CrossCountry has its principal office located at 6850
2 Miller Road, Brecksville, Ohio 44141.

3 C. Barbara Voytek is the Chief Compliance and Audit Officer and a control person of
4 CrossCountry and, as such, is authorized to enter this Consent Order on CrossCountry’s behalf.

5 D. During a regulatory examination of CrossCountry conducted in 2016 (2016 Exam), the
6 Commissioner discovered that CrossCountry had several violations of the CRMLA, including:

7 i. Commingling company funds with trust funds and failing to properly reconcile all
8 trust accounts with control accounts in violation of Financial Code section 50202 and California
9 Code of Regulations, title 10, section 1950.314.1.

10 ii. Failing to provide records in violation of Financial Code section 50314.

11 iii. Providing incorrect disclosures to applicants in violation of California Code of
12 Regulations, title 21, section 7114.

13 iv. Overcharging borrowers per diem interest in violation of Civil Code section 2948.5.

14 v. Providing incorrect disclosure documents to borrowers, indicating that the loans are
15 made pursuant to the California Financing Law (CFL) when CrossCountry is not licensed under the
16 CFL.

17 E. CrossCountry admits to the jurisdiction of the Department of Business Oversight
18 (Department), and it is the intention of the Parties to resolve this matter without the necessity of a
19 hearing and/or other litigation.

20 F. The Commissioner finds this action is appropriate, in the public interest, and consistent with
21 the purposes fairly intended by the CRMLA.

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

24 TERMS

25 1. Purpose. This Consent Order resolves the issues before the Commissioner described above
26 in a manner that avoids the expense of a hearing and other possible court proceedings, protects
27 consumers, is in the public interest, and is consistent with the purposes and provisions of the
28 CRMLA.

1 2. Order to Discontinue Violations. The Commissioner hereby orders that in accordance with
2 Financial Code section 50321, CrossCountry shall immediately discontinue the violations set forth in
3 Paragraph D above. CrossCountry agrees that this Order to Discontinue Violations is hereby deemed
4 a final order.

5 3. Declaration of Policies and Procedures. CrossCountry has submitted to the Commissioner a
6 declaration under penalty of perjury (Declaration) from an officer with personal knowledge of
7 CrossCountry's policies and procedures that sets forth all policies and procedures that have been
8 implemented as of the date of this Consent Order by CrossCountry to ensure compliance with
9 Financial Code sections 50204, subdivisions (e) and (o), and 50326, and Civil Code section 2948.5.
10 The Commissioner has reviewed the Declaration and deemed the policies and procedures contained
11 therein as satisfactory. CrossCountry agrees to continue implementing those policies and procedures
12 in the future.

13 4. Payment of Refunds.

14 A. CrossCountry agrees to refund any overcharged per diem interest amounts to borrowers
15 identified in the 2016 Examination, plus interest at the rate of 10 percent per annum. CrossCountry
16 agrees that refunds shall be mailed to the last known address of each borrower no later than 30
17 calendar days after the Effective Date of this Consent Order. For any refund that is not mailed
18 within 30 calendar days after the date of loan disbursement, CrossCountry shall pay the borrower
19 interest on the amount of the refund at the rate of 10 percent per annum on and in addition to the
20 amount of the overcharge.

21 B. No later than 90 calendar days after the date any refund is required to be paid above,
22 CrossCountry shall provide evidence to the Commissioner of any refund payment that has been
23 made. Such evidence shall be sent to Joanne Ross, Senior Counsel, at 1515 K Street, Suite 200,
24 Sacramento, California 95814.

25 C. CrossCountry shall be responsible for ensuring that any outstanding refund payment
26 owed to any borrower identified in the 2016 Examination that was returned or remains outstanding is
27 escheated to the State of California pursuant to the provisions of the California Unclaimed Property
28 Law (Code of Civ. Proc., § 1500 et seq.).

1 5. Self-Audit. CrossCountry agrees to audit all California loans originated and/or funded by
2 CrossCountry from 36 months prior to the Effective Date of this Consent Order (Effective Date)
3 through the Effective Date (Self-Audit). CrossCountry agrees to produce compliance reports for the
4 Commissioner containing the information specified in Paragraph 8, sections A, B and D herein,
5 covering the 36 months prior to the Effective Date (Self-Audit Report). The Self-Audit Report shall
6 be submitted to the Commissioner no later than 90 calendar days after the Effective Date.

7 6. Self-Audit Accuracy and Re-Audit.

8 A. CrossCountry agrees and acknowledges that the Commissioner may test the results of the
9 Self-Audit Report to ensure its accuracy. In connection with these tests, CrossCountry agrees to
10 provide loan files and related information requested by the Commissioner within 10 calendar days of
11 receiving written notice. CrossCountry further agrees to have its Self-Audit conducted anew (Re-
12 Audit) by and through a Commissioner-approved independent certified accounting firm or
13 compliance auditing firm (Auditor) if the Commissioner's testing reveals more than a 10 percent
14 error rate.

15 B. In the event a Re-Audit is required, CrossCountry, by and through the Auditor, shall
16 submit to the Commissioner the results of the Re-Audit (Re-Audit Report) within 90 calendar days of
17 the date CrossCountry is notified in writing by the Commissioner that a Re-Audit is required. The
18 Re-Audit Report shall include at a minimum the information specified in Paragraph 8, subsections A,
19 B and D.

20 7. Independent Audit.

21 A. CrossCountry agrees to engage a certified public accountant(s), certified accounting firm,
22 or compliance auditing firm (Auditor), subject to the approval of the Department, within 30 calendar
23 days of the Effective Date.

24 B. The Auditor shall conduct an examination of CrossCountry's loan files in order to
25 conduct an independent audit and produce a compliance report for the Commissioner containing the
26 information specified in Paragraph 8 (Independent Audit Report), covering the Effective Date
27 through the six months following the Effective Date. The Independent Audit Report shall be sent to
28 Joanne Ross at Joanne.Ross@dbo.ca.gov so that it is received within 12 months after the Effective

1 Date of the Consent Order. The Auditor shall have access to all files and information from
2 CrossCountry as required to produce the Independent Audit Report, including, but not limited to,
3 CrossCountry's California loan files, trust account statements, disclosure statements, and policies
4 and procedures.

5 C. CrossCountry agrees and acknowledges that the Commissioner may test the results of the
6 Independent Audit Report to ensure its accuracy. In connection with these tests, CrossCountry
7 agrees to provide loan files and related information requested by the Commissioner within 10
8 calendar days of receiving written notice. If the Commissioner finds material inaccuracies in the
9 Independent Audit Report, CrossCountry agrees to engage a second certified public accountant(s),
10 public accounting firm, or compliance auditing firm within 30 calendar days, subject to the approval
11 of the Department; such new firm will complete its own independent audit report (Second
12 Independent Audit Report) including all items in Paragraph 8 herein and provide such report to
13 Joanne Ross at Joanne.Ross@dbo.ca.gov within 90 calendar days of engagement with
14 CrossCountry.

15 8. Scope of Audit Reports. All Reports shall include, at a minimum, and unless otherwise
16 specified in this Order, the following information:

17 A. The total number of loans originated and/or serviced by CrossCountry in California.

18 B. An accounting of all per diem fees associated with all California loans originated
19 and/or funded by CrossCountry, identifying each and every loan with any per diem overcharge to the
20 borrower. For each identified overcharge, provide, if applicable, the borrower's loan number, name,
21 address, loan amount, loan origination and/or funding date, interest rate, disbursement date, date per
22 diem interest charged, number of days per diem interest overcharged, overcharge amount, date of
23 refund, proof of refund, and whether the overcharge was previously reported. Provide an accounting
24 of all refunds made by CrossCountry for identified overcharges.

25 C. A summary of the review of the following CrossCountry disclosures to borrowers:

26 (i) made pursuant to California Code of Regulations, title 21, section 7114; and

27 (ii) made under Financial Code Section 22337, incorrectly stating that the loans were
28 made under a California Finance Lenders License when the loans were made under

1 the California Residential Mortgage Lending Act.

2 The Independent Audit Report and any Second Independent Audit Report shall identify each and
3 every California loan wherein the required disclosures were not given, or where incorrect or
4 incomplete information was provided to the borrower(s).

5 D. A summary of the review of all trust fund accounting for California loans, including
6 the following: a summary of the application of the funding policies and procedures; the timing for
7 trust fund liability recognition and deposit of trust funds into the trust account; if applicable, the
8 handling of trust funds for loan cancellation; the handling of borrower's interim payment(s); and an
9 explanation of how trust fund debit balances are being handled.

10 9. Payment of Refunds.

11 A. CrossCountry agrees to refund any per diem overcharges to borrowers identified in
12 any of the audits referenced herein, provided however that no refund of \$1.00 or less will be required
13 and will not be treated as a violation subject to a penalty under Paragraph 11. CrossCountry agrees
14 that refunds shall be mailed to the last known address of each borrower no later than 30 calendar
15 days after the due date of the Self-Audit Report, Re-Audit Report, Independent Audit Report, or
16 Second Independent Audit Report (Report(s)) that identifies each overcharge. For any refund that is
17 not mailed within 30 calendar days after the date of loan disbursement, CrossCountry shall pay the
18 borrower interest on the amount of the refund at the rate of 10 percent per annum on and in addition
19 to the amount of the overcharge.

20 B. No later than 90 calendar days after the date any refund is identified in any of the
21 Reports, CrossCountry shall provide evidence to the Commissioner of any refund payment that has
22 been made. Such evidence shall be sent, via traceable method, to Joanne Ross, Senior Counsel, at
23 1515 K Street, Suite 200, Sacramento, California 95814.

24 10. Outstanding Refunds. CrossCountry shall be responsible for ensuring that any outstanding
25 refund payment owed to any borrower identified in any of the Reports that was returned or remains
26 outstanding is escheated to the State of California pursuant to the provisions of the California
27 Unclaimed Property Law (Code of Civ. Proc., § 1500 et seq.).

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1 11. Penalties.

2 A. CrossCountry shall pay penalties in the amount of \$140,000.00 for the violations of
3 the CRMLA enumerated in Recital Paragraph D herein. The penalties shall be paid within 30
4 calendar days of the Effective Date.

5 B. CrossCountry shall pay a penalty of \$125.00 per violation for each violation found
6 through the Self Audit that is not identified in Paragraph 11 (C) herein.

7 C. CrossCountry shall pay a penalty of \$5,000.00 for each quarter in which the Company
8 commingled company funds with trust funds or failed to properly reconcile all trust accounts with
9 control accounts in violation of Financial Code section 50202 and California Code of Regulations,
10 title 10, section 1950.314.1. CrossCountry shall pay such penalty for trust fund violations discovered
11 in any and all Audit Reports.

12 D. CrossCountry further agrees that it shall pay an administrative penalty to the
13 Commissioner, concurrently with submission of the Re-Audit Report, equal to \$350.00 for each
14 violation discovered during the Re-Audit that was not previously reported in the Self-Audit Report.

15 E. CrossCountry shall pay a penalty of \$350.00 per violation for each violation disclosed
16 in the Independent Audit Report.

17 F. Any penalties shall be paid within 30 calendar days of the date the corresponding
18 Audit Report is filed with the Department. All penalties shall be made payable in the form of (i) a
19 cashier's check and mailed to the attention of:

20 Accounting-Litigation
21 Department of Business Oversight
22 1515 K Street, Suite 200
23 Sacramento, California 95814

23 or (ii) Automated Clearing House deposit to the Department of Business Oversight:

24 Account Owner: Department of Business Oversight
25 Account Name: EFT
26 Account Number: 10440639
27 Routing Number: 021052053

28 Notice of payment shall be made via email to Joanne Ross, Senior Counsel at Department of
Business Oversight, joanne.ross@dbo.ca.gov.

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

10 13. Failure to Comply with Consent Order. CrossCountry agrees that if it fails to comply with the
11 terms of this Consent Order, the Commissioner may, in addition to all other available remedies it may
12 invoke under the CRMLA, summarily suspend or revoke the CRMLA license(s) of CrossCountry
13 until CrossCountry is in compliance. CrossCountry waives any notice and hearing rights to contest
14 such summary suspensions or revocations that may be afforded under the CRMLA, the California
15 Administrative Procedure Act, the California Code of Civil Procedure, or any other provisions of law
16 in connection herewith.

17 14. Information Willfully Withheld or Misrepresented. This Consent Order may be revoked and
18 the Commissioner may pursue any and all remedies available under law against CrossCountry if the
19 Commissioner discovers that CrossCountry knowingly or willfully withheld or misrepresented
20 information used for and relied upon in this Consent Order.

21 15. Full and Final Settlement. The Parties hereby acknowledge and agree that this Consent
22 Order is intended to constitute a full, final, and complete resolution of the findings of the 2016
23 regulatory examination described in Paragraph D above, up to and including through the date of the
24 Commissioner's execution of this Consent Order, and that no further proceedings or actions will be
25 brought by the Commissioner in connection with these matters under the CRMLA, or any other
26 provision of law, excepting therefrom any proceeding to enforce compliance with the terms of this
27 Consent Order and revocation pursuant to Paragraph 13 above.

28 16. Future Actions by the Commissioner. If CrossCountry fails to comply with any terms of the

1 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
2 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
3 against CrossCountry, or any of its partners, owners, officers, shareholders, directors, affiliates,
4 employees or successors for any and all unknown violations of the CRMLA. This Consent Order
5 shall not serve to exculpate CrossCountry or any of its members, officers, directors, affiliates,
6 shareholders, employees, or successors from liability for its violations of the CRMLA, except as set
7 forth in Paragraph 15 above.

8 17. Effect of Consent Order on License. In consideration of the information to be provided to the
9 Commissioner by CrossCountry as described in this Order and CrossCountry's agreement to the entry
10 of this Consent Order and payment of penalties as provided above, the Commissioner agrees that,
11 except as otherwise set forth in this Consent Order, he shall not suspend and/or revoke the residential
12 mortgage lender licenses of CrossCountry. Accordingly, this Consent Order does not affect the
13 licensing status of CrossCountry.

14 18. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's ability
15 to assist any other government agency (city, county, state, or federal) with any prosecution,
16 administrative, civil or criminal brought by that agency against CrossCountry or any other person
17 based upon any of the activities alleged in this matter or otherwise.

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

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

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

1 this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement,
2 or contradict the terms of this Consent Order.

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

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

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

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

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

26 27. Voluntary Agreement. Cross Country enters into this Consent Order voluntarily and without
27 coercion and acknowledges that no promises, threats or assurances have been made by the
28 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent

1 and acknowledge that he, she or it is executing this Agreement completely voluntarily and without
2 any duress or undue influence of any kind from any source.

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

10 29. 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 30. Notice. Any notice required under this Consent Order shall be provided to each party at the
14 following addresses:

15 To CrossCountry:

16 Alex Ragon
17 Chief Legal Counsel
18 CrossCountry Mortgage, Inc.
19 6850 Miller Road
20 Brecksville, OH 44141

21 To the Department:

22 Joanne Ross, Senior Counsel
23 Department of Business Oversight
24 1515 K Street, Suite 200
25 Sacramento, California 95814
26 joanne.ross@dbo.ca.gov

27 31. Signatures. A fax or electronic mail signature shall be deemed the same as an original
28 signature.

32. Public Record. CrossCountry hereby acknowledges that this Consent Order will be a matter
of public record.

33. Effective Date. This Consent Order shall become effective when signed by all Parties and

1 delivered by the Commissioner's counsel by email to CrossCountry's counsel at
2 jjaffe@mayerbrown.com.

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

6 Dated: October 4, 2019

MANUEL P. ALVAREZ
Commissioner of Business Oversight

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

12 Dated: October 3, 2019

By _____
CrossCountry Mortgage, Inc.
BARBARA VOYTEK
Chief Compliance and Audit Officer

15 APPROVED AS TO FORM AND CONTENT:

17 Dated: October 3, 2019

By _____
JONATHAN D. JAFFE
Mayer Brown
Attorneys for CrossCountry Mortgage, Inc.