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

11 In the Matter of: ) CRMLA LICENSE NO.: 41DBO-40950  
12 ) CFL LICENSE NO.: 603-H883  
13 THE COMMISSIONER OF BUSINESS )  
OVERSIGHT, ) ACCUSATION  
14 )  
15 Complainant, )  
16 v. )  
17 )  
18 WYNDHAM CAPITAL MORTGAGE, INC., )  
19 Respondent. )  
20 )

21 Manuel P. Alvarez, the Commissioner of Business Oversight (Commissioner), is informed  
22 and believes, and based upon such information and belief, alleges and charges Respondent Wyndham  
23 Capital Mortgage, Inc. (Wyndham), as follows:

24 I.

25 **Jurisdiction**

26 1. The Commissioner has jurisdiction over the licensing and regulation of persons  
27 engaged in the business of making or servicing residential mortgage loans under the California  
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1 Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.). The Commissioner is  
2 authorized to administer the CRMLA and the rules and regulations promulgated in title 10 of the  
3 California Code of Regulations (CCR).

4 2. Financial Code section 22000 et seq. authorizes the Commissioner to administer and  
5 enforce the provisions of the California Financing Law (CFL) and the rules and regulations  
6 promulgated in title 10 of the CCR that regulate the business and activities of finance lenders and  
7 brokers.

8 3. The Commissioner brings this action under the provisions of Financial Code sections  
9 50327 and 50513 of the CRMLA and Financial Code sections 22172 and 22714 of the CFL, and the  
10 rules and regulations promulgated under both the CRMLA and CFL.

11 **II.**

12 **Statement of Facts**

13 4. Wyndham is a residential mortgage lender licensed by the Commissioner under the  
14 CRMLA, license number 41DBO-40950. Wyndham has its principal place of business located at  
15 6115 Park South Drive, Suite 200, Charlotte, North Carolina. At all relevant times herein, Wyndham  
16 employed mortgage loan originators and operated branch locations throughout California under its  
17 CRMLA license.

18 5. Wyndham submitted through the Nationwide Mortgage Licensing System and  
19 Registry (the NMLS) a request to surrender its CRMLA license on May 14, 2019. But under the  
20 CRMLA, before the Commissioner may accept a licensee's surrender, the licensee must satisfy the  
21 requirements of section 50123 of the Financial Code.

22 6. Wyndham has failed to satisfy the requirements of section 50123 of the Financial  
23 Code and the Commissioner has not accepted the surrender of Wyndham's CRMLA license.

24 7. Wyndham holds a finance lender and broker license under the CFL. At all relevant  
25 times herein, Wyndham employed mortgage loan originators and operated branch locations  
26 throughout California under its CFL license.

27 8. On March 5, 2019, the Commissioner commenced a regulatory examination of  
28 Wyndham's business under both its CRMLA and CFL licenses. The Commissioner's examiner

1 reviewed Wyndham's lending activity for the period January 1, 2015 through December 30, 2018.  
2 The examination disclosed violations of the CRMLA and CFL as follows.

3 **Failure to Report Key Officers**

4 9. Under the CRMLA and CFL, a licensee's principal officers and directors must  
5 undergo a background check (including fingerprinting) before the Department of Business Oversight  
6 (department) will approve the license. (Fin. Code, §§ 50121 [CRMLA] and 22105 [CFL], 10 CCR  
7 sections 1950.122.2, 1950.122.4, and 1409.) At all times, licensees are required to maintain with the  
8 department a current list of officers and directors. (10 CCR sections 1950.122.2.1 and 1409.)

9 10. On or about January 7, 2019, at the Commissioner's request, Wyndham completed a  
10 State of California Department of Business Oversight California Residential Mortgage Lending Act  
11 Examination Questionnaire (Questionnaire). Kimberly Spain (Spain), Wyndham's senior vice  
12 president of Risk, completed the questionnaire on the licensee's behalf.

13 11. At box 14 of the Questionnaire, the Commissioner asks the licensee to:

14 Name all executive officers, partners, directors and owners of 10% or  
15 more including their titles and responsibilities. For purposes of this  
16 report, *an executive officer is one who participates or has authority to*  
17 *participate in major policy making functions of the mortgage entity[.]*  
(emphasis added.)

18 12. In response, Spain provided a list of Wyndham's executive officers and directors,  
19 which included: Jeremy Abig (Abig), CFO; Spain, senior vice president of Risk; and Josh Hankins  
20 (Hankins), senior vice president of Operations.

21 13. But a review of the Commissioner's internal licensing database failed to disclose  
22 background and fingerprint checks for Spain and Hankins under Wyndham's CRMLA license and no  
23 background or fingerprint checks for Abig, Spain, and Hankins in connection with Wyndham's  
24 finance lender and broker license issued under the CFL.

25 14. The Commissioner requested Wyndham remedy the deficiency by completing and  
26 submitting to the department "Fingerprint Deficiency" forms for Abig, Spain, and Hankins.  
27 Wyndham refused.

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1           23.     During the January 2, 2013 examination of the company, the Commissioner found  
2     Wyndham had overcharged borrowers' government recording fees in violation of Financial Code  
3     section 22336, subdivision (a).

4                                 **Disclosure of CFL License Number**

5           24.     In at least five out of 35 loan files reviewed, Wyndham failed to disclose its CFL  
6     license number in in the written disclosure it provided borrowers entitled, "California Financing Law  
7     Statement of Loan Disclosure."

8           25.     Financial Code section 22337, subdivision (a) requires licensees "Deliver or cause to  
9     be delivered to the borrower . . . at the time the loan is made, a statement showing in clear and  
10    distinct terms the name, address, and license number of the finance lender[.]" Wyndham violated  
11    Financial Code section 22337, subdivision (a) by failing to disclose its CFL license number in the  
12    disclosures it provided to the five borrowers.

13          26.     During the January 2, 2013 examination of the company, the Commissioner found  
14    Wyndham had failed to disclose its CFL license number to borrowers in violation of Financial Code  
15    section 22337, subdivision (a).

16                                 **Deficient Fair Lending Notices**

17          27.     Health and Safety Code section 35830 and title 21 CCR section 7114, require lenders  
18    in California to provide borrowers with a Fair Lending Notice that discloses to the borrower, in 10-  
19    point type, the name and address of the contact agency.

20          28.     In eight out of 35 loan files reviewed, Wyndham provided borrowers with Fair  
21    Lending Notices that referred borrowers to the Department of Real Estate, even though the  
22    borrowers' loans were issued under the authority of Wyndham's CFL license. Wyndham's failure to  
23    provide the eight borrowers with correct Fair Lending Notices violated section 35830 of the Health  
24    and Safety Code and title 21 CCR section 7114.

25          29.     In seven out of 35 loan files reviewed, Wyndham provided borrowers with Fair  
26    Lending Notices to multiple contact agencies rather than referring to the department only, as is  
27    required. Wyndham's failure to provide the seven borrowers with correct Fair Lending Notices  
28    violated section 35830 of the Health and Safety Code and title 21 CCR section 7114.

1 30. During the January 2, 2013 examination of the company, the Commissioner found  
2 Wyndham had failed to provide borrowers with accurate Fair Lending Notices in violation of Health  
3 and Safety Code section 35830 and title 21 CCR section 7114.

4 **III.**

5 **Applicable Statutes**

6 31. Financial Code section 22105 provides in pertinent part:

7 (a) Upon the filing of an application pursuant to Section 22101 and the  
8 payment of the fees, the commissioner shall investigate the applicant . .  
9 . If the applicant is a corporation, trust, limited liability company, or  
10 association, including an unincorporated organization, the  
11 commissioner shall investigate the applicant, its principal officers,  
12 directors, managing members, and persons owning or controlling,  
13 directly or indirectly, 10 percent or more of the outstanding equity  
14 securities or any person responsible for the conduct of the applicant’s  
15 lending activities . . . for the applicant in this state. Upon the filing of  
16 an application pursuant to Section 22102 and the payment of the fees,  
17 the commissioner shall investigate the person responsible for the  
18 lending activity of the licensee . . . at the new location described in the  
19 application. The investigation may be limited to information that was  
20 not included in prior applications filed pursuant to this division. If the  
21 commissioner determines that the applicant has satisfied this division  
22 and does not find facts constituting reasons for denial under Section  
23 22109, the commissioner shall issue and deliver a license to the  
24 applicant.

25 (b) For the purposes of this section, “principal officers” shall mean  
26 president, chief executive officer, treasurer, and chief financial officer,  
27 as may be applicable, and any other officer with direct responsibility  
28 for the conduct of the applicant’s lending activities . . . for the applicant  
within the state[.]

32. Financial Code section 22150 provides:

The commissioner may make general rules and regulations and specific  
rulings, demands, and findings for the enforcement of this division, in  
addition to, and within the general purposes of, this division.

33. Financial Code section 22172 provides in pertinent part:

(a) The commissioner may do one or more of the following:

1 (4) Impose fines on a mortgage loan originator or any finance lender or  
2 broker licensee employing a mortgage loan originator pursuant to  
3 subdivisions (b), (c), and (d).

4 (b) The commissioner may impose a civil penalty on a mortgage loan  
5 originator or any finance lender or broker licensee employing a  
6 mortgage loan originator, if the commissioner finds, on the record after  
7 notice and opportunity for hearing, that the mortgage loan originator or  
8 any finance lender or broker licensee employing a mortgage loan  
9 originator has violated or failed to comply with any requirement of this  
10 division or any regulation prescribed by the commissioner under this  
11 division or order issued under authority of this division.

12 (c) The maximum amount of penalty for each act or omission described  
13 in subdivision (b) shall be twenty-five thousand dollars (\$25,000).

14 (d) Each violation or failure to comply with any directive or order of  
15 the commissioner is a separate and distinct violation or failure.

16 34. Financial Code section 22317 provides:

17 On any loan made that is secured by real property, an appraisal fee not  
18 to exceed the actual cost of the appraisal may be charged by the  
19 licensee if a written appraisal is provided to the licensee by a qualified  
20 appraiser. Only one fee for appraising the same real property may be  
21 collected unless the borrower has obtained a new or additional loan and  
22 more than one year has elapsed since the prior appraisal. The fee is not  
23 included in charges as defined in this division or in determining the  
24 maximum charges that may be made under this article.

25 35. Financial Code section 22336 provides in pertinent part:

26 This article does not prohibit any licensee from contracting for,  
27 collecting, or receiving the following:

28 (a) The statutory fee paid by the licensee to any public officer for  
acknowledging, filing, recording, or releasing in any public office any  
instrument securing the loan or executed in connection with the loan[.]

34. Financial Code section 22337 provides in pertinent part:

Each licensed finance lender shall:

(a) Deliver or cause to be delivered to the borrower, or any one thereof,  
at the time the loan is made, a statement showing in clear and distinct  
terms the name, address, and license number of the finance lender and

1 the broker, if any. The statement shall show the date, amount, and  
2 maturity of the loan contract, how and when repayable, the nature of  
3 the security for the loan, if any, and the agreed rate of charge or the  
4 annual percentage rate pursuant to Regulation Z promulgated by the  
Consumer Financial Protection Bureau (12 C.F.R. 1026).

5 37. Financial Code section 22714 provides in pertinent part:

6 (a) The commissioner shall suspend or revoke any license, upon notice  
7 and reasonable opportunity to be heard, if the commissioner finds any  
of the following:

8 (1) The licensee has failed to comply with any demand, ruling, or  
9 requirement of the commissioner made pursuant to and within the  
authority of this division.

10 (2) The licensee has violated any provision of this division or any rule  
11 or regulation made by the commissioner under and within the authority  
12 of this division.

13 (3) A fact or condition exists that, if it had existed at the time of the  
14 original application for the license, reasonably would have warranted  
the commissioner in refusing to issue the license originally[.]

15 38. Financial Code section 50121 provides:

16 The commissioner shall issue a residential mortgage lender license  
17 upon the satisfaction of all of the following:

18 (a) The filing with the commissioner of a complete and executed  
19 application for licensure, which may, at the discretion of the  
20 commissioner, include background and experience disclosures required  
by any of the uniform application forms of [the NMLS].

21 (b) The payment of a nonrefundable investigation fee of one hundred  
22 dollars (\$100), plus the cost of fingerprint processing and clearance,  
23 and an application filing fee of nine hundred dollars (\$900).

24 (c) An investigation of the statements required by Section 50124 based  
25 upon which the commissioner is able to issue findings that the financial  
26 responsibility, criminal records (verified by fingerprint, at the  
27 discretion of the commissioner), experience, character, and general  
28 fitness of the applicant and of the partners or members thereof, if the  
applicant is a partnership or association, and of the principal officers  
and directors thereof, if the license applicant is a corporation, support a



1 finding that the business will be operated honestly, fairly, and in  
2 accordance with the requirements of this division.

3 39. Financial Code section 50123 provides:

4 (a) A residential mortgage lender license shall remain in effect until  
5 suspended, surrendered, or revoked.

6 (b) A residential mortgage lender licensee that ceases to engage in the  
7 business regulated by this division and desires to no longer be licensed  
8 shall inform the commissioner in writing and, at that time, surrender the  
9 license and all other indicia of licensure to the commissioner. The  
10 licensee shall file a plan for the withdrawal from regulated business,  
11 and the plan shall include a timetable for the disposition of the  
12 business. The plan shall also include a closing audit, review, or other  
13 agreed upon procedures performed by an independent certified public  
14 accountant prescribed by rule or order of the commissioner. Upon  
15 receipt of the written notice and plan, the commissioner shall review  
16 the plan and, if satisfactory to the commissioner, shall accept the  
17 surrender of the license. A license is not surrendered until its tender is  
18 accepted in writing by the commissioner after a review, and a finding  
19 has been made on the licensee's plan required to be filed by this  
20 section, and a determination has been made that there is no violation of  
21 this law[.]

22 40. Financial Code section 50304 provides in pertinent part:

23 The commissioner may, from time to time, make, amend, and rescind  
24 the rules, forms, and orders that are necessary to carry out the  
25 provisions of this law, including rules and forms governing applications  
26 and reports, and defining any terms, whether or not used in this law,  
27 provided that the definitions are consistent with the provisions of this  
28 law[.]

29 41. Financial Code section 50327 provides:

30 (a) The commissioner may, after notice and a reasonable opportunity  
31 to be heard, deny, decline to renew, suspend, or revoke any license if  
32 the commissioner finds that:

33 (1) The licensee has violated any provision of this division or any rule  
34 or order of the commissioner thereunder.

35 (2) Any fact or condition exists that, if it had existed at the time of the  
36 original application for the license, reasonably would have warranted  
37 the commissioner in refusing to issue the license originally.

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(b) The power of investigation and examination by the commissioner is not terminated by the denial, nonrenewal, surrender, suspension, or revocation of any license issued by him or her.

42. Financial Code section 50513 provides in pertinent part:

(a) The commissioner may do one or more of the following:

(4) Impose fines on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).

(b) The commissioner may impose a civil penalty on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.

(c) The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).

(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

43. Health and Safety Code section 35830 provides:

In order to further the purposes of this part, financial institutions shall notify all applicants at the time of written application for financial assistance of the prohibitions enumerated in Chapter 3 (commencing with Section 35810) and the right of review provided by Section 35820. Such notice shall include the address of the secretary, or the secretary's designee, and where complaints may be filed and questions may be asked. Such notice shall be in at least 10-point type and shall also be posted in a conspicuous place for public inspection.

44. Title 10 CCR section 1409 provides:

1 (a) A finance company shall at all times maintain on file with the  
2 Commissioner a current list of officers, directors, and partners in the  
3 case of a partnership, and other persons named in the application . . . In  
4 the event of any change, other than transfers between branch offices,  
5 the officers, directors, or partners, or other persons named in the  
6 application, a finance company shall file with the Commissioner an  
7 amendment to the application containing the same information in  
8 relation to such new person(s) as is required in the application, within  
9 thirty days from the date of the change.

7 (b) A mortgage lender, mortgage broker, or mortgage lender and broker  
8 shall comply with subsection (a) by submitting changes to the  
9 Commissioner through NMLS on Forms MU1, MU2, MU3, and MU4,  
10 as applicable.

10 45. Title 10 CCR section 1950.122.2 provides in pertinent part:

11 (a) The notice to accompany the filing of an individual’s fingerprints  
12 required in the following circumstances shall be made on the form set  
13 forth in subsection (c) of this rule:

14 (1) In compliance with the requirements for a license application in  
15 Section 1950.122.4 of Subchapter 11.5 of these rules;

16 (2) In compliance with the requirements for filing an application for  
17 change of control (Rule 1950.206);

18 (3) In compliance with Section 50317(a) of the Code for an officer,  
19 director, partner, shareholder controlling 10 percent or more of the  
20 ownership interests or trustee of a licensed residential mortgage lender,  
21 residential mortgage lender and servicer, or residential mortgage loan  
22 servicer whose office, employment, ownership interest or other  
23 participation in the licensed business commenced after January 1, 1995;  
24 or

25 (4) In compliance with the requirements of Rule 1950.301 for certain  
26 employees.

27 (5) For purposes of this section, an individual who has submitted  
28 fingerprints through NMLS as part of the application for a mortgage  
loan originator license is not required to submit an additional set of  
fingerprints under this rule.

(b) For the purpose of paragraph (4) of subsection (a) of this rule,  
“employee” means (1) an individual with access to or responsibility for  
trust funds held by a licensed residential mortgage lender, residential

1 mortgage lender and servicer, mortgage loan originator, or residential  
2 mortgage loan servicer, and (2) employed by such licensee after  
3 January 1, 1995[.]

4 46. Title 10 CCR section 1950.122.2.1 provides:

5 (a) A residential mortgage lender, mortgage servicer, or residential  
6 mortgage lender and servicer shall at all times maintain on file with  
7 NMLS in accordance with its procedures for transmission to the  
8 Commissioner, a current list of officers, directors, and partners in the  
9 case of a partnership, and other persons named in the Forms MU1,  
10 MU2, MU3, and MU4, as applicable. In the event of any change in the  
11 officers, directors, partners, or other persons named in the application,  
12 other than transfers between branch offices, a residential mortgage  
13 lender, mortgage servicer, or residential mortgage lender and servicer  
14 shall file with NMLS in accordance with its procedures for  
15 transmission to the Commissioner, an amendment to the application  
16 containing the same information in relation to such new person(s) as is  
17 required in the Forms MU1, MU2, MU3, and MU4.

18 47. Title 10 CCR section 1950.122.4 provides in pertinent part:

19 The procedures set forth in this section are applicable to a person who  
20 is required to be licensed pursuant to Section 50002 of the Code as a  
21 residential mortgage lender, mortgage servicer, or as a residential  
22 mortgage lender and servicer. The application for a license as a  
23 residential mortgage lender, mortgage servicer, or residential mortgage  
24 lender and servicer shall be filed as follows:

25 (a) INITIAL APPLICATION: The application for a license as a  
26 residential mortgage lender, mortgage servicer, or residential mortgage  
27 lender and servicer under subdivision (a) of Section 50002 of the Code  
28 and any amendment to such application shall be filed upon Form MU1  
(Uniform Mortgage Lender/Mortgage Broker Form) and any exhibits,  
in accordance with the instructions of NMLS for transmission to the  
Commissioner. Exhibits that cannot be submitted through NMLS shall  
be submitted directly to the Commissioner. The notices set forth in  
Section 1950.122.8 of Subchapter 11.5 of these rules are part of every  
application. An applicant shall provide the following information,  
exhibits and documentation in the manner provided:

(3) An applicant shall provide the names, personal history, and  
experience of individual applicants, officers, directors, managing  
members (in the case of a limited liability company), general and  
managing partners (in the case of a partnership), and control persons

(both direct and indirect) of the applicant through NMLS on Form MU1 within the “Directors and Executive Officers” section and on Form MU2.

(A) The named individuals shall provide authorization for, and subsequent delivery of, fingerprints to NMLS or the California Department of Justice, or both, as applicable.

(B) An applicant shall pay all fees required for the criminal history background check.

(d) FILING AN AMENDMENT: In the event of a change to the information in the application, or exhibits thereto, the residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer applicant or licensee shall file an amendment to the Form MU1, MU2 or MU3 through NMLS in accordance with the procedures in Section 1950.122.9 of Subchapter 11.5 of these rules. Prior to the issuance of a license, any amendment to an application shall be filed within five (5) days. Any change that cannot be reported through NMLS shall be reported directly to the Commissioner.

48. Title 21 CCR section 7114 provides in pertinent part:

(a) A financial institution shall provide each applicant for financial assistance upon the submission of a written application as completed by and submitted by the applicant, and shall post in a conspicuous place, a Fair Lending Notice which sets forth the prohibitions of Chapter 3 of the Act, the complaint procedures set forth in Chapter 4 of the Act, and the name and address of the office(s) where complaints may be filed and where questions may be asked[.]

**IV.**

**Conclusion**

The Commissioner finds that, by reason of the foregoing, Wyndham violated Financial Code section 50121 and title 10 CCR sections 1950.122.2 and 1950.122.4 of the CRMLA (failing to submit background and fingerprint checks for corporate officers); Financial Code section 22105 and title 10 CCR section 1409 (failing to submit background and fingerprint checks for corporate officers); Financial Code section 22317 (excess appraisal fees); Financial Code section 22336, subdivision (a) (excess recording fees); Financial Code section 22337, subdivision (a) (failure to

1 disclose license number); and Health and Safety Code section 35830 and title 21 CCR 7114 (deficient  
2 Fair Lending Notices). Based on the violations identified by the Commissioner, grounds exist to: (i)  
3 suspend Wyndham’s residential mortgage lender and finance lender and broker licenses; and (ii)  
4 assess penalties against Wyndham.

5 **V.**

6 **Prayer**

7 WHEREFORE, IT IS PRAYED that:

8 1. Under Financial Code section 50327, the residential mortgage lender license issued to  
9 Wyndham be suspended for a period of up to 12 months;

10 2. Under Financial Code section 22714, the Commissioner suspend the finance lender  
11 and broker license issued to Wyndham for a period of up to 12 months;

12 3. Under Financial Code section 50513, a penalty be levied against Wyndham for its  
13 failure to submit background and fingerprint checks for its officers in violation of Financial Code  
14 section 50121 and title 10 CCR sections 1950.122.2 and 1950.122.4, according to proof, but in an  
15 amount of at least \$1,000.00;

16 4. Under Financial Code section 22172, a penalty be levied against Wyndham for its  
17 failure to submit background and fingerprint checks for its officers in violation of Financial Code  
18 section 22105 and title 10 CCR section 1409, according to proof, but in an amount of at least  
19 \$1,000.00;

20 5. Under Financial Code section 22172, penalties be levied against Wyndham for at least  
21 three violations of Financial Code section 22317 for overcharging appraisal fees, according to proof,  
22 but in an amount of at least \$1,000.00 per violation;

23 6. Under Financial Code section 22172, penalties be levied against Wyndham for at least  
24 five violations of Financial Code section 22336, subdivision (a) for overcharging government  
25 recording fees, according to proof, but in an amount of at least \$1,000.00 per violation;

26 7. Under Financial Code section 22172, penalties be levied against Wyndham for at least  
27 five violations of Financial Code section 22337, subdivision (a) for failing to disclose its license  
28

1 number in the written disclosures it provided to borrowers, according to proof, but in an amount of at  
2 least \$1,000.00 per violation; and

3 8. Under Financial Code section 22172, penalties be levied against Wyndham for at least  
4 15 violations of Health and Safety Code section 35830 and title 21 CCR section 7114 for providing  
5 borrowers deficient Fair Lending Notices, according to proof, but in an amount of at least \$1,000.00  
6 per violation.

7 Dated: October 15, 2019  
8 Los Angeles, California

MANUEL P. ALVAREZ  
Commissioner of Business Oversight

9  
10 By \_\_\_\_\_  
11 Blaine A. Noblett  
12 Senior Counsel  
13 Enforcement Division  
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