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

11 In the Matter of:) CRMLA LICENSE NO.: 413-0532
12 THE COMMISSIONER OF BUSINESS) CONSENT ORDER
13 OVERSIGHT,)
14 Complainant,)
15 v.)
16 K. HOVNANIAN AMERICAN MORTGAGE,)
17 L.L.C.,)
18 Respondent.)
19 _____)

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21 This Consent Order is entered into between the Commissioner of Business Oversight
22 (Complainant or Commissioner) and K. Hovnanian American Mortgage, L.L.C. (KHAM) and is
23 made with respect to the following facts:

24 **I.**

25 **RECITALS**

26 A. The Commissioner has jurisdiction over the licensing and regulation of entities
27 engaged in the business of a residential mortgage lender and servicer under the California
28 Residential Mortgage Lending Act, commencing at Fin. Code, § 50000 *et seq.* (CRMLA).

1 B. KHAM is a residential mortgage lender and servicer licensed by the Commissioner
2 pursuant to the CRMLA with license number 413-0532.

3 C. KHAM's principal place of business is located at 3601 Quantum Boulevard,
4 Boynton Beach, Florida 33426. KHAM employs mortgage loan originators.

5 D. On or around September 18, 2017, the Commissioner commenced a regulatory
6 examination of the books and records of KHAM pursuant to Section 50302 of the CRMLA, covering
7 the period from August 2014 through August 2017 (2017 Regulatory Exam).

8 E. The 2017 Regulatory Exam initially disclosed that in at least two out of seven loan
9 files, or approximately 28.6% of loan files reviewed, KHAM charged borrowers per diem interest in
10 excess of one day prior to the date that the loan proceeds were disbursed from escrow, in violation of
11 Financial Code section 50204, subdivision (o), and Civil Code section 2948.5. This finding was
12 made in two prior regulatory examinations of KHAM commencing on or around November 14, 2006
13 (2006 Exam) and on or around September 9, 2013 (2013 Exam).

14 F. The 2006 Exam had disclosed that in 63% of loan files reviewed KHAM charged
15 borrowers per diem interest in excess of one day prior to the date that the loan proceeds were
16 disbursed from escrow, prompting a mandatory self-audit review and refunds. The 2013 Exam had
17 similarly disclosed at least two loan files in which KHAM funded the loan on a Monday or day
18 immediately following a bank holiday but failed to obtain the borrower's affirmative request to be
19 charged additional per diem interest, in violation of Financial Code section 50204, subdivision (o)
20 and Civil Code section 2948.5.

21 G. The 2017 Regulatory Exam also disclosed that in at least two out of seven loan files
22 reviewed KHAM provided applicants with Fair Lending Notices (FLN(s)) that referred them to
23 agencies other than the Department if they had questions about their rights or wished to file a
24 complaint, rather than directing them solely to the Department, in violation of Financial Code
25 section 50204, subdivision (i), California Code of Regulations, title 21, section 7114, and Health and
26 Safety Code section 35830. This finding was also made in at least four loan files during the 2013
27 Exam.

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1 H. As a result of the findings made in the 2013 Exam, on or around September 9, 2014,
2 KHAM submitted to the Department its revised policies and procedures regarding the charging of
3 per diem interest, providing that its Quality Control Department would investigate for any
4 overcharges, and if discovered, issue a refund to the borrower including 10% per annum interest.
5 KHAM also submitted a sample FLN that stated, “If you have questions about your rights, or if you
6 wish to file a complaint, contact the management of this financial institution State of California,
7 Department of Business Oversight” to comply with the CRMLA.

8 I. As the 2017 Regulatory Exam showed that KHAM’s revised policies and procedures
9 submitted on or around September 9, 2014 did not necessarily result in the use of compliant FLNs or
10 timely discovery of per diem interest overcharges and refunds, in or around February 2018 the
11 Department ordered KHAM to conduct a self-audit of all California loan files for the period from
12 September 9, 2013 through February 2, 2018 (2018 Self-Audit).

13 J. The 2018 Self-Audit revealed that in 59 out of 1,151 loans, KHAM overcharged
14 borrowers per diem interest in excess of one day prior to the disbursement of loan proceeds in
15 violation of Financial Code section 50204, subdivision (o) and Civil Code section 2948.5. The per
16 diem interest overcharges ranged from \$13.02 to \$379.80. KHAM overcharged borrowers from one
17 to six days’ worth of interest.

18 K. On or around March 6, 2018, KHAM refunded borrowers the amount of overcharges
19 plus interest at the rate of 10% per annum.

20 L. The Commissioner finds that entering into this Consent Order is in the public interest
21 and consistent with the purposes fairly intended by the policies and provisions of the CRMLA.

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

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25 **II.**
26 **TERMS AND CONDITIONS**

27 1. Purpose. This Consent Order resolves the issues before the Commissioner set forth in
28 Paragraphs A through L above in a manner that avoids the expense of a hearing and other possible

1 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes,
2 policies, and provisions of the CRMLA.

3 2. Order to Discontinue Violations. KHAM hereby agrees that in accordance with
4 Financial Code section 50321 and 50323, it will immediately discontinue violating Financial Code
5 section 50204, subdivisions (i) and (o), Civil Code section 2948.5, California Code of Regulations,
6 title 21, section 7114, and Health and Safety Code section 35830.

7 3. Independent Audits Regarding Per Diem Interest and FLNs. KHAM shall engage at
8 its own expense an independent third-party auditor (Auditor) to review KHAM's California loans
9 regarding per diem interest and FLNs on a quarterly basis as follows:

10 i. The Auditor shall be an independent certified public accountant, certified
11 public accounting firm, or compliance auditing firm approved by the Department. The Department
12 shall not unreasonably withhold approval of KHAM's selection of an Auditor;

13 ii. KHAM shall contract with the Auditor for the services described herein
14 within 60 days of the Effective Date of this Consent Order as defined in Paragraph 28;

15 iii. The Auditor shall submit to the Department quarterly an Audit Report based
16 upon its review of KHAM's California loan originations for four consecutive quarters (each quarter
17 shall be referred to as a Review Period);

18 iv. The first Audit Report shall cover all California loans originated by KHAM
19 from February 3, 2018 through August 31, 2019, and shall be submitted to the Department by no
20 later than January 10, 2020;

21 v. The second Audit Report shall cover all California loans originated by
22 KHAM from September 1, 2019 through December 31, 2019, and shall be submitted to the
23 Department by no later than February 28, 2020;

24 vi. The third Audit Report shall cover all California loans originated by KHAM
25 from January 1, 2020 through April 30, 2020, and shall be submitted to the Department by no later
26 than July 31, 2020;

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1 vii. The fourth Audit Report shall cover all California loans originated by
2 KHAM from May 1, 2020 through August 31, 2020, and shall be submitted to the Department by
3 no later than October 30, 2020;

4 viii. Each Audit Report shall include the total number of loans within the Review
5 Period, and at least the following:

6 a) For each loan reviewed: the loan number; borrower's name; loan
7 amount; loan date; per diem interest charged; per diem interest that should have been charged under
8 Financial Code section 50204, subdivision (o), and Civil Code section 2948.5; overcharge amount
9 (if any); date of refund (if applicable); evidence of refund (if applicable) in the form of a canceled
10 check and accompanying correspondence mailed to the borrower; whether the FLN was included in
11 the loan file and listed the name and address of the California Department of Business Oversight as
12 the sole contact if a borrower wished to file a complaint;

13 b) The number of loans in which KHAM overcharged borrowers per
14 diem interest in excess of one day prior to the disbursement of loan proceeds in violation of
15 Financial Code section 50204, subdivision (o) and Civil Code section 2948.5 (Per Diem Interest
16 Overcharge(s)). The Auditor shall conduct this analysis in accordance with standards satisfactory
17 to the Department. For purposes of calculating the number of Per Diem Interest Overcharges, the
18 Auditor shall include any loan that KHAM cannot timely provide adequate documentation of
19 compliance within 14 days of the Auditor's request. The Auditor shall exclude any loan where
20 KHAM issued the borrower a refund equal to or exceeding the amount of the overcharge within 30
21 days of the disbursement date of the transaction;

22 c) The number of loans where the Auditor found per diem interest
23 overcharges, but where KHAM issued the borrower a refund equal to or exceeding the amount of
24 the overcharge within 30 days of the disbursement date of the transaction;

25 d) Identification of any refund payment that has been returned or
26 remains outstanding for loans in the prior Review Period;

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1 e) The total number of loans for which KHAM failed to include in the
2 loan file the required documentation of the actual disbursement date of the loan proceeds needed to
3 determine if excess per diem interest was charged; and

4 f) The total number of loans for which KHAM provided applicants with
5 FLNs that did not comply with Financial Code section 50204, subdivision (i), California Code of
6 Regulations, title 21, section 7114, and Health and Safety Code section 35830. The FLN shall be
7 deemed to have complied if it conformed substantially to the language set forth in Paragraph H
8 above.

9 4. Payment of Refunds. KHAM represents that it has already sent refunds to all affected
10 borrowers identified in all loan files originated from September 9, 2013 through February 2, 2018
11 covered by the 2018 Self-Audit. KHAM agrees that it shall issue refunds of all Per Diem Interest
12 Overcharges identified in each quarterly Audit Report within 30 days of the date of the Audit
13 Report. KHAM shall provide evidence of issuance of such refunds, in the form of a canceled check
14 and accompanying correspondence mailed to the borrower at his/her last known address, to the
15 Department within 60 days of the Auditor's issuance of each Audit Report. Refund amounts shall be
16 equal to the amount of the overcharge plus 10% per annum, calculated from the date of the
17 overcharge.

18 5. Outstanding Refunds. Within 90 days of the Effective Date of this Consent Order as
19 defined in Paragraph 28 below, KHAM shall notify the Department of any refund payment that has
20 been returned or remains outstanding for loans originated from September 9, 2013 through February
21 2, 2018 covered by the 2018 Self-Audit. KHAM shall be responsible for escheating to the State of
22 California pursuant to the provisions of the California Unclaimed Property Law (Code of Civ. Proc.,
23 § 1500 *et seq.*) any outstanding refund payment owed to a borrower identified in the 2018 Self-Audit
24 or any Audit Report submitted by the Auditor.

25 6. Penalties. KHAM shall pay penalties as follows:

26 a) \$61,000.00 for the violations set forth in Paragraphs G and J above by
27 no later than 30 days after the Effective Date of this Consent Order as defined in Paragraph 28
28 below;

1 pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights, KHAM
2 effectively consents to this Consent Order and Order to Discontinue Violations becoming final.

3 9. Full and Final Settlement. The parties hereby acknowledge and agree that this
4 Consent Order is intended to constitute a full, final, and complete resolution of the violations
5 described herein, and that no further proceedings or actions will be brought by the Commissioner in
6 connection with these matters under the CRMLA or any other provision of law, excepting therefrom
7 any proceeding to enforce compliance with the terms of this Consent Order.

8 10. Failure to Comply with Consent Order. KHAM agrees that if it fails to comply with
9 the terms of this Consent Order, the Commissioner may, in addition to all other available remedies
10 he may invoke under the CRMLA, summarily suspend or revoke KHAM's CRMLA license until
11 KHAM is in compliance. KHAM waives any notice and hearing rights to contest such summary
12 suspension or revocation which may be afforded under the CRMLA, the California Administrative
13 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection
14 therewith.

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

19 12. Future Actions by Commissioner. If KHAM fails to comply with any terms of the
20 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
21 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
22 against KHAM, or any of its partners, owners, officers, shareholders, directors, employees or
23 successors for any and all unknown violations of the CRMLA.

24 13. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
25 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
26 administrative, civil or criminal brought by that agency against KHAM or any other person based
27 upon any of the activities alleged in this matter or otherwise.

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

4 15. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
5 interest.

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

15 17. No Presumption Against Drafting Party. Each party acknowledges that it has had the
16 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
17 intend that no presumption for or against the drafting party will apply in construing any part of this
18 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
19 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
20 language of a contract should be interpreted most strongly against the party that caused the
21 uncertainty to exist.

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

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

1 provision of this Consent Order by the other party will be considered a waiver of any other condition
2 or provision or of the same condition or provision at another time.

3 20. Full Integration. This Consent Order is the final written expression and the complete
4 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
5 between the parties with respect to the subject matter hereof, and supersedes all prior or
6 contemporaneous agreements, negotiations, representations, understandings, and discussions
7 between and among the parties, their respective representatives, and any other person or entity, with
8 respect to the subject matter covered hereby.

9 21. Governing Law. This Consent Order shall be construed and enforced in accordance
10 with and governed by California law.

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

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

18 24. Voluntary Agreement. KHAM enters into this Consent Order voluntarily and without
19 coercion and acknowledges that no promises, threats or assurances have been made by the
20 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
21 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
22 without any duress or undue influence of any kind from any source.

23 25. Notice. Any notice required under this Consent Order shall be provided to each party
24 at the following addresses:

25 To KHAM:

26 Mitchel H. Kider, Weiner Brodsky Kider PC, 1300 19th Street NW 5th Floor,
27 Washington DC 20036, Kider@thewbkfirm.com.

28 To the Commissioner:

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Sophia C. Kim, Senior Counsel, Enforcement Division, Department of Business Oversight, 320 West 4th Street, Suite 750, Los Angeles, California 90013, Sophia.Kim@dbo.ca.gov.

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

27. Public Record. KHAM hereby acknowledges that this Consent Order is and will be a matter of public record.

28. Effective Date. This Consent Order shall become final and effective when signed by all parties and delivered by the Commissioner’s counsel via e-mail to KHAM at Kider@thewbkmfirm.com.

29. 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: 11/15/19 MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 11/14/19 K. HOVNANIAN AMERICAN MORTGAGE, L.L.C.

By _____
DAN A. KLINGER
President