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7 Attorneys for Complainant

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

11 In the Matter of:) CRMLA LICENSE NO. 415-0083
12)
13 THE COMMISSIONER OF BUSINESS) CONSENT ORDER
OVERSIGHT,)
14)
15 Complainant,)
16 v.)
17)
18 COMMERCE HOME MORTGAGE LLC,)
Respondent.)

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20 This Consent Order is entered into between the Commissioner of Business Oversight
21 (Commissioner) on the one hand and Commerce Home Mortgage LLC, (CHM), successor in
22 interest to Commerce Home Mortgage, Inc. (CHM, Inc.) on the other (the Parties), and is made
23 with respect to the following:

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 lending and/or servicing residential mortgage loans pursuant to
28 the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.), including

1 mortgage loan originators.

2 B. CHM represents that on April 30, 2018 (CHM, Inc. Purchase Date), CHM, Inc. was
3 acquired by The Capital Corps. (TCC) pursuant to the terms of a change in control agreement, and
4 was thereafter recapitalized and reorganized as Commerce Home Mortgage, LLC, a wholly-owned
5 operating subsidiary of TCC. CHM further represents that in connection with the reorganization of
6 CHM, Inc., TCC caused the company to replace its senior management team.

7 C. CHM is a California corporation located at 16845 Von Karman Avenue, Suite 200
8 Irvine, California 92606.

9 D. On or about November 6, 2018, CHM changed its name from Commerce Home
10 Mortgage, Inc. to Commerce Home Mortgage, LLC.

11 E. CHM, as successor in interest to CHM, Inc., is a residential mortgage lender and
12 loan servicer licensed by the DBO since February 14, 2013, with the CRMLA license no. 415-0083.
13 CHM is also licensed by the Commissioner as a finance lender and broker since October 18, 2017,
14 pursuant to the California Finance Lenders Law (CFLL) (Fin. Code §22000 et seq.), under the
15 CFLL license no. 60DBO74388.

16 F. Ted Ray became the President of CHM subsequent to the CHM, Inc. Purchase Date
17 and as such, is authorized to enter into this Consent Order on behalf of CHM.

18 G. During a regulatory examination of CHM, Inc. conducted in September 2014, and a
19 second examination conducted in July 2018, the Commissioner discovered that on or prior to the
20 CHM, Inc. Purchase Date, CHM, Inc.: (i) failed to reconcile its escrow liability ledgers to its trust
21 bank account at least once each month in violation of California Code of Regulations (CCR) section
22 1950.314.1.; (ii) failed to include the required statement "Licensed by the Department of Business
23 Oversight under the California Residential Mortgage Lending Act" in its advertisement material, in
24 violation of California Code of Regulations section 1950.204.3.; (iii) CHM provided borrowers
25 California Financing law disclosures in loans made under the CRMLA, in violation of California
26 Financial Code section 50314; and (iv) provided Fair Lending Notices which did not disclose the
27 Department of Business Oversight as the contact agency to borrowers, in violation of California
28 Health and Safety Code 35830.

1 H. On or about October 11, 2018, the Department of Business Oversight issued a
2 Report of Examination to CHM for the regulatory examination commenced in July 2018 setting
3 forth the violations described herein in paragraph G (i)-(iv).

4 I. CHM has submitted information and documentation to the Commissioner
5 evidencing that the above findings, which findings were made in respect of the period prior to the
6 CHM, Inc. Purchase Date, were either not violations or have been resolved. CHM agrees to the
7 entry of this Consent Order as a resolution of this matter without the need to initiate litigation.

8 J. The Commissioner finds this Consent Order is appropriate, in the public interest and
9 consistent with the purposes fairly intended by the policy and provisions of the CRMLA.

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

12 **II.**

13 **Terms and Conditions**

14 1. Purpose. This Consent Order resolves the issues before the Commissioner, including
15 findings of the July 2018 regulatory examination of CHM set forth in paragraph G, above in a
16 manner that avoids the expense of a hearing and other possible court proceedings, protects
17 consumers, is in the public interest, and is consistent with the purposes and provisions of the CFLL.

18 2. Finality of Consent Order. CHM agrees to comply with this Consent Order and
19 stipulates this Consent Order is hereby deemed final.

20 3. Order to Discontinue Violations. CHM hereby agrees that in accordance with
21 Financial Code section 50321, it will immediately discontinue the violations set forth herein.

22 4. Administrative Penalty. CHM shall pay a penalty to the Commissioner in the
23 amount of \$43,000.00, which shall be due and payable on the effective date of this Consent Order,
24 as such date is defined in Paragraph 21. The penalty must be made payable in the form of a
25 cashier’s check or Automated Clearing House deposit to the Department of Business Oversight and
26 transmitted to the attention of Accounting – Litigation, at the Department of Business Oversight,
27 1515 K Street, Suite 200, Sacramento, California 95814. Notice of the payment must be
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1 concurrently sent to Uche Enenwali, Senior Counsel, Department of Business Oversight, 320 W.
2 Fourth Street, Suite 750, Los Angeles, California 90013.

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

11 6. Failure to Comply with Consent Order. CHM agrees that if it fails to comply with
12 the terms of this Consent Order, the Commissioner may, in addition to all other available remedies
13 it may invoke under the CRMLA and CFLL, summarily suspend/revoke the CRMLA and CFLL
14 licenses of CHM until CHM is in compliance. CHM waives any notice and hearing rights to
15 contest such summary suspensions which may be afforded under the CRMLA and CFLL, the
16 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
17 provision of law in connection therewith.

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

22 8. Future Actions by Commissioner. If CHM fails to comply with any terms of the
23 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
24 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
25 against CHM, or any of its partners, owners, officers, shareholders, directors, employees or
26 successors for any and all unknown violations of the CFLL.

27 9. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
28 ability to assist a government agency (whether city, county, state, or federal) with any

1 administrative, civil or criminal action brought by that agency against CHM or any other person
2 based upon any of the activities alleged in this matter or otherwise.

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

6 11. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
7 interest.

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

17 13. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
18 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
19 parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any other
20 provision. No waiver by either party of any breach of, or of compliance with, any condition or
21 provision of this Consent Order by the other party will be considered a waiver of any other
22 condition or provision or of the same condition or provision at another time.

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

- 1 20. Signatures. A fax or electronic mail signature shall be deemed the same as an
- 2 original signature.
- 3 20. Public Record. CHM hereby acknowledges that this Consent Order is and will be a
- 4 matter of public record.
- 5 21. Effective Date. This Consent Order shall become final and effective when signed by
- 6 all parties and delivered by the Commissioner's agent via e-mail to CHM
- 7 amiranda@commercemtg.com.
- 8 22. Authority to Sign. Each signatory hereto covenants that he/she possesses all
- 9 necessary capacity and authority to sign and enter into this Consent Order and undertake the
- 10 obligations set forth herein.
- 11 23. Independent Legal Advice. Each of the parties represents, warrants, and agrees that
- 12 it has received independent advice from its attorney(s) and/or representatives with respect to the
- 13 advisability of executing this Consent Order.
- 14 24. Opportunity to Cure. In the event CHM fails to comply with the terms of this
- 15 Consent Order, the Commissioner, in his sole discretion, may give CHM written notice of such
- 16 breach (Notice) and the opportunity to cure the breach (Cure). The Cure must be completed to the
- 17 satisfaction of the Commissioner within five business days after the day the Notice has been sent
- 18 via email to CHM at amiranda@commercemtg.com, unless another date for receipt of Cure is
- 19 agreed to in writing by the Commissioner's Enforcement Counsel.
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Proof of Cure, satisfactory to the Commissioner, shall be sent to Uche L. Enenwali, Department of Business Oversight, at 320 W. Fourth Street, Suite 750, California 90013 and via email at Uche.enenwali@dbo.ca.gov.

Dated: 12/19/19

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 12/19/19

COMMERCE HOME MORTGAGE, LLC.

By _____
TED RAY, President