

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN ROONEY
Assistant Chief Counsel
3 VANESSA T. LU (State Bar No. 295217)
Counsel
4 Department of Business Oversight
1350 Front Street, Room 2034
5 San Diego, California 92101
Telephone: (619) 545-3727
6 Facsimile: (619) 525-4044

7 Attorneys for Complainant
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10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) CFL LICENSE NO.: 60DBO-44759
13)
14 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,)
15 Complainant,)
16 v.) CONSENT ORDER
17 RIVER CITY MORTGAGE, LLC,)
18 Respondent.)
19 _____)

20
21 This Consent Order is entered into between the Commissioner of Business Oversight
22 (Complainant or Commissioner) and Respondent River City Mortgage, LLC (Respondent) 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 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 4555 Lake Forest
2 Drive, Suite 450, Cincinnati, Ohio 45212.

3 C. Respondent is licensed as a finance lender and broker under the CFL with main
4 license number 6031596.

5 D. Respondent operates 1 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 December 16, 2019, the Commissioner notified CFL licensees of the March 15,
9 2020 deadline to file their annual reports by sending notice to the email address of each CFL
10 licensee established pursuant to the Commissioner's Order on Electronic Communications, dated
11 November 22, 2013. The notification admonished licensees that the Commissioner could assess
12 penalties for untimely filing or failing to file pursuant to Financial Code section 22715(b).

13 G. On January 29, 2020, the Commissioner again notified CFL licensees of the March
14 15, 2020 deadline to file their annual reports by sending notice to the email address each CFL
15 licensee established pursuant to the Commissioner's Order on Electronic Communications, dated
16 November 22, 2013. The notification again warned that the Commissioner could assess monetary
17 penalties for untimely filing or failing to file pursuant to Financial Code section 22715(b).

18 H. On March 2, 2020, the Commissioner again notified CFL licensees of the March 15,
19 2020 deadline to file their annual reports by sending notice to the email address each CFL licensee
20 established pursuant to the Commissioner's Order on Electronic Communications, dated November
21 22, 2013. The notification warned that the Commissioner could assess penalties and summarily
22 revoke licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

23 I. As of March 15, 2020, Respondent had not filed its Annual Report with the
24 Commissioner. As a result, the Commissioner issued a notice on March 18, 2020 to Respondent to
25 Respondent's email address established pursuant to the Commissioner's Order on Electronic
26 Communications, dated November 22, 2013, advising Respondent that it should file its annual report
27 by or before March 30, 2020 or else its license would be summarily revoked pursuant to Financial
28 Code section 22715 (Notice email).

1 J. As of March 30, 2020, Respondent had not filed its Annual Report with the
2 Commissioner as directed in the Notice email. As a result, on April 3, 2020, the Commissioner
3 issued an Order Summarily Revoking Finance Lenders and/or Brokers License(s) Pursuant to
4 Financial Code Section 22715 for CFL License Number 60DBO-44759 (Summary Revocation
5 Order).

6 K. Upon receiving the Summary Revocation Order(s), Respondent timely notified the
7 Commissioner that Respondent was requesting a hearing on the Summary Revocation Order(s).

8 L. On April 16, 2020, Respondent submitted its Annual Report, which was due on
9 March 15, 2020, 23 business days late. Pursuant to Financial Code Section 22715, the maximum
10 penalty that may be imposed for filing 23 business days late is \$9,500.00 (\$100 per business day for
11 the first five business days and \$500 per business day thereafter up to a maximum of \$25,000).

12 M. In connection with these proceedings, Respondent represented to the Commissioner
13 that it had taken no new applications under its license.

14 N. Respondent has failed to timely file its Annual Report with the Commissioner, in
15 violation of Financial Code Section 22715 the following fiscal years: 2019, 2018, 2017, and 2016.

16 O. Pursuant to Financial Code Sections 22153 and 22102, Respondent must provide 10
17 days-notice to the Commissioner before Respondent either changes its address on file or conducts
18 business at a new location. The Commissioner may impose an administrative penalty of \$500.00 for
19 failing to comply with Financial Code Sections 22153 and 22102.

20 P. On April 22, 2020, Respondent submitted to the Commissioner its California
21 Financing Law Change of Address Form (Change of Address Form). Respondent violated Financial
22 Code Sections 22153 and 22102 by failing to provide 10 days-notice to the Commissioner and did
23 not submit its Change of Address until after Respondent moved to its new address.

24 Q. The Commissioner finds that entering into this Consent Order is in the public interest
25 and consistent with the purposes fairly intended by the policies and provisions of the CFL.

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

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II.**TERMS AND CONDITIONS**

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

5 **2. Order Rescinding Penalty Order.** The Commissioner hereby rescinds the Order
6 Summarily Revoking California Finance Lenders License which had been issued on April 3, 2020.

7 **3. Final Order to Discontinue Violations.** Respondent stipulates that it is ordered to
8 discontinue violating Financial Code Sections 22102, 22153, and 22715. If Respondent fails to
9 comply with Financial Code Sections 22102, 22153, and 22715 in the future, the Commissioner will
10 permanently revoke Respondent's CFL License Number 60DBO-44759.

11 **4. Administrative Penalty.** Respondent shall pay an administrative penalty of
12 \$10,000.00 no later than 30 days after the effective date of this Consent Order as defined in
13 paragraph 25. The penalty must be made payable in the form of a cashier's check or Automated
14 Clearing House deposit to the Department of Business Oversight and transmitted to the attention of
15 Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200,
16 Sacramento, California 95814. Notice of the payment must be concurrently sent to Vanessa T. Lu,
17 Counsel, Department of Business Oversight, 1350 Front Street, Room 2034, San Diego, California
18 92101.

19 **5. Failure to Pay Administrative Penalty.** If Respondent fails to comply with paragraph
20 3, the Commissioner may summarily suspend Respondent from engaging in business under its
21 license until it provides evidence of compliance to the Commissioner's satisfaction. Respondent
22 hereby waives any notice or hearing rights afforded under the Administrative Procedure Act,
23 including Government Code section 11415.60, subdivision (b); Code of Civil Procedure; or any
24 other provision of law to contest the summary suspension contemplated by this paragraph.

25 **6. Waiver of Hearing Rights.** Respondent acknowledges the Commissioner is ready,
26 willing, and able to proceed with the filing of an administrative enforcement action on the charges
27 contained in this Consent Order. Respondent hereby waives the right to any hearings, and to any
28 reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the

1 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
2 provision of law. Respondent further expressly waives any requirement for the filing of an
3 Accusation pursuant to Government section 11415.60, subdivision (b). By waiving such rights,
4 Respondent effectively consents to this Consent Order and Order rescinding Penalty Order becoming
5 final.

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

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

18 **9. 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
20 Respondent if the Commissioner discovers that Respondent knowingly or willfully withheld or
21 misrepresented information used for and relied upon in this Consent Order.

22 **10. Future Actions by Commissioner.** If Respondent fails to comply with the 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 Respondent, or any of its partners, owners, officers, shareholders, directors, employees or
26 successors for any and all unknown violations of this CFL.

27 **11. Assisting Other Agencies.** Nothing in this Consent Order limits the Commissioner's
28 ability to assist any other government agency (city, county, state or federal) with any prosecution,

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

3 **12. No Presumption Against Drafter.** Each party acknowledges that it has had the
4 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
5 intend no presumption for or against the drafting party will apply in construing any part of this
6 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
7 corresponding provisions of any successor statute, which provide 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 **13. Independent Legal Advice.** Each of the parties represents, warrants, and agrees that it
11 has received independent advice from its attorney(s) and/or representatives with respect to the
12 advisability of executing this Consent Order.

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

16 **15. Binding.** This Consent Order is binding on all heirs, assigns, and/or successors in
17 interest.

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

27 **17. Waiver, Amendments, and Modifications.** No waiver, amendment, or modification of
28 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.

1 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
2 provision. No waiver by either party of any breach of, or of compliance with, any condition or
3 provision of this Consent Order by the other party will be considered a waiver of any other condition
4 or provision or of the same condition or provision at another time.

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

11 **19. Governing Law.** This Consent Order will be governed by and construed in
12 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court
13 and thereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
14 forum to the maintenance of such action or proceeding in such court.

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

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

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

27 **23. Notice.** Any notice required under this Consent Order be provided to each party at
28 the following addresses: Licensing@RChomeloans.com.

To Respondent River City Mortgage, LLC: River City Mortgage, LLC
c/o Dan Hutzelman, CEO
4555 Lake Forest Drive, Suite 450
Cincinnati, Ohio 45212
Licensing@RChomeloans.com

To the Commissioner: Vanessa T. Lu, Counsel
Department of Business Oversight
1350 Front Street, Room 2034
San Diego, California 92101
Vanessa.Lu@dbo.ca.gov

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

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

26. Effective Date. This Consent Order shall become final and effective when signed by all parties and delivered by the Commissioner’s agent via e-mail to Respondent at the following email address:

27. 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: May 6, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: May 6, 2020

RIVER CITY MORTGAGE, LLC

By _____
DAN HUTZELMAN
CEO