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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.: 413-1206  
12 THE COMMISSIONER OF BUSINESS ) CONSENT ORDER  
13 OVERSIGHT, )  
14 Complainant, )  
15 v. )  
16 NEW WEST LENDING, INC., )  
17 Respondent. )  
18 )  
19 )  
20 )

21 This Consent Order is entered into between the Commissioner of Business Oversight  
22 (Complainant or Commissioner) and New West Lending, Inc. (New West) and is made with respect  
23 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. New West is a residential mortgage lender licensed by the Commissioner pursuant to  
2 the CRMLA with license number 413-1206.

3 C. New West's principal place of business is located 7310 N. 16<sup>th</sup> Street, Suite 170,  
4 Phoenix, Arizona 85020. New West employs mortgage loan originators.

5 D. On or around January 10, 2018, the Commissioner commenced a regulatory  
6 examination of the books and records of New West pursuant to Section 50302 of the CRMLA  
7 covering the period from October 1, 2014 through November 30, 2017 (2018 Regulatory Exam).

8 E. The 2018 Regulatory Exam disclosed the following:

9 (1) In two out of 20 loan files reviewed (10%), New West charged borrowers per  
10 diem interest in excess of one day prior to the date that the loan proceeds were disbursed from  
11 escrow, in violation of Financial Code section 50204, subdivision (o) and Civil Code section 2948.5.  
12 Pursuant to Financial Code section 50504, subdivision (b), New West issued refunds to the two  
13 borrowers in the amount of the overcharge plus interest at the rate of 10% per annum from the date  
14 of the overcharge.

15 (2) In three out of 20 loan files reviewed (15%), New West charged borrowers for the  
16 title insurance premium at closing that was not disclosed on the federal HUD-1 or was in excess of  
17 amount disclosed on the invoice or Schedule A of the title policy, in violation of Financial Code  
18 section 50204, subdivisions (c), (i), and (k) and California Code of Regulations, title 10, section  
19 1950.314.4, subdivision (j)(6). Pursuant to Financial Code section 50504, subdivision (b), New  
20 West issued refunds to the three borrowers as directed by the Department.

21 (3) In 24 out of 27 loan files reviewed (88.9%), New West violated Health and Safety  
22 Code section 35830 and California Code of Regulations, title 21, section 7114, as follows: (a) in 11  
23 out of 27 loan files reviewed (40.7%), New West failed to provide the Fair Lending Notice (FLN) to  
24 loan applicants at the time of submission of a written application, instead providing the FLN days,  
25 sometimes months, after the date of the application; (b) in five out of 27 loan files reviewed (18.5%),  
26 New West failed to provide the FLN to the borrower; and (c) in eight out of 27 loan files reviewed  
27 (29.6%), New West failed to list the Department as the contact agency where complaints may be  
28 filed, leaving the section blank or listing the Bureau of Real Estate.

1 (4) In three out of seven loan files reviewed (42.9%), New West failed to provide the  
2 name and address of the federal agency that administers compliance with the Equal Credit  
3 Opportunity Act, Code of Federal Regulations, title 12, section 1002.9(a)(2) (Reg B) with respect to  
4 the creditor in the Notice of Adverse Action.

5 F. The prior regulatory examination that commenced on January 7, 2014 (2014 Exam)  
6 disclosed similar findings. For example:

7 (a) In six out of 15 loan files reviewed (40%), New West overcharged borrowers for  
8 per diem interest, in violation of Financial Code section 50204, subdivision (o) and Civil Code  
9 section 2948.5. Pursuant to Financial Code section 50504, subdivision (b), New West issued refunds  
10 to the six borrowers in the amount of the overcharge plus interest at the rate of 10% per annum from  
11 the date of the overcharge.

12 (b) In one out of 15 loan files reviewed (6.7%), New West charged a borrower for the  
13 title insurance premium at closing that was not disclosed on the federal HUD-1 or was in excess of  
14 amount disclosed on the invoice or Schedule A of the title policy, in violation of Financial Code  
15 section 50204, subdivisions (c), (i), and (k) and California Code of Regulations, title 10, section  
16 1950.314.4, subdivision (j)(6). Pursuant to Financial Code section 50504, subdivision (b), New  
17 West issued a refund to the borrower as directed by the Department.

18 (c) In four out of 15 loan files reviewed (26.7%), New West failed to provide the FLN  
19 to loan applicants at the time of submission of a written application, instead providing the FLN days,  
20 sometimes months, after the date of the application. In three out of 15 loan files reviewed (20%),  
21 New West failed to provide the FLN to the borrower.

22 (d) In three out of 15 loan files reviewed (20%), New West failed to provide the name  
23 and address of the federal agency that administers compliance with Reg B with respect to the  
24 creditor in the Notice of Adverse Action.

25 G. The 2018 Regulatory Exam disclosed that any changes in policies and procedures that  
26 New West implemented since the 2014 Exam were not effective to prevent the violations noted in  
27 Paragraph E.

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

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

5  
6 **II.**

7 **TERMS AND CONDITIONS**

8 1. Purpose. This Consent Order resolves the issues before the Commissioner set forth in  
9 Paragraphs A through H above in a manner that avoids the expense of a hearing and other possible  
10 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes,  
11 policies, and provisions of the CRMLA.

12 2. Order to Discontinue Violations. New West hereby agrees that in accordance with  
13 Financial Code sections 50321 and 50323, it will immediately discontinue violating Financial Code  
14 section 50204, subdivisions (c), (i), (k), and (o); Civil Code section 2948.5; California Code of  
15 Regulations, title 10, section 1950.314.4, subdivision (j)(6); California Code of Regulations, title 21,  
16 section 7114; and Health and Safety Code section 35830.

17 3. Independent Audits.

18 a. New West shall engage at its own expense an independent third-party auditor  
19 (Auditor) to review New West's California loans regarding:

20 i. *Per Diem Interest* (Financial Code section 50204, subdivision  
21 (o) and Civil Code section 2948.5);

22 ii. *Third Party Charges* (Financial Code section 50204,  
23 subdivisions (c), (i), and (k), and California Code of Regulations, title 10, section 1950.314.4,  
24 subdivision (j)(6));

25 iii. *FLN* (California Code of Regulations, title 21, section 7114;  
26 and Health and Safety Code section 35830); and

27 iv. *Notice of Adverse Action* (Equal Credit Opportunity Act, Code  
28 of Federal Regulations, title 12, section 1002.9(a)(2)).

1           b.       The Auditor shall be an independent certified public accountant, certified  
2 public accounting firm, or compliance auditing firm approved by the Department. The Department  
3 shall not unreasonably withhold approval of New West’s selection of an Auditor.

4           c.       New West shall contract with the Auditor for the services described herein  
5 within 60 days of the Effective Date of this Consent Order as defined in Paragraph 27.

6           d.       The Auditor shall submit to the Department quarterly an Audit Report based  
7 upon its review of New West’s California loan originations for four consecutive quarters (each  
8 quarter shall be referred to as a Review Period).

9           e.       The First Audit Report shall cover all California loans originated by New  
10 West from **December 1, 2017 through July 31, 2020** and shall be submitted to the Department by  
11 no later than *October 30, 2020*.

12           f.       The Second Audit Report shall cover all California loans originated by New  
13 West from **August 1, 2020 through November 30, 2020** and shall be submitted to the Department  
14 by no later than *January 4, 2021*.

15           g.       The Third Audit Report shall cover all California loans originated by New  
16 West from **December 1, 2020 through March 31, 2021** and shall be submitted to the Department  
17 by no later than *April 30, 2021*.

18           h.       The Fourth Audit Report shall cover all California loans originated by New  
19 West from **April 1, 2021 through July 31, 2021** and shall be submitted to the Department by no  
20 later than *August 31, 2021*.

21           i.       Each Audit Report shall include the total number of loans within the Review  
22 Period, and at least the following:

23                               (1)     *For each loan reviewed*, the loan number; borrower’s name;  
24 loan amount; loan date; per diem interest charged; per diem interest that should have been charged  
25 under Financial Code section 50204, subdivision (o), and Civil Code section 2948.5; overcharge  
26 amount (if any); date of refund (if applicable); evidence of refund (if applicable) in the form of a  
27 canceled check and accompanying correspondence mailed to the borrower; whether the FLN was  
28 included in the loan file and listed the name and address of the California Department of Business

1 Oversight as the sole contact if a borrower wished to file a complaint; the date of the application;  
2 the date on which the FLN was provided to the borrower; whether an invoice or alternative  
3 documentation such as Schedule A of the title insurance policy was included in the loan file to fully  
4 substantiate the title insurance premium charged; the title insurance premium charged; the amount  
5 of the title insurance policy premium stated in an invoice or alternative documentation such as  
6 Schedule A of the title insurance policy; title insurance premium overcharge amount (if any); date  
7 of title insurance premium refund (if applicable); evidence of title insurance premium refund (if  
8 applicable) in the form of a canceled check and accompanying correspondence mailed to the  
9 borrower; and whether the Notice of Adverse Action (if any) included the federal agency contact  
10 information in compliance with Reg B;

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

20 (3) The number of loans where the Auditor found per diem  
21 interest overcharges, but where New West issued the borrower a refund equal to or exceeding the  
22 amount of the overcharge within 30 days of the disbursement date of the transaction;

23 (4) The total number of loans for which New West failed to  
24 include in the loan file the required documentation of the actual disbursement date of the loan  
25 proceeds needed to determine if excess per diem interest was charged;

26 (5) The number of loans in which New West overcharged  
27 borrowers title insurance premiums in violation of Financial Code section 50204, subdivisions (c),  
28 (i), and (k), and California Code of Regulations, title 10, section 1950.314.4, subdivision (j)(6)

1 (Title Insurance Premium Overcharge(s)). The Auditor shall conduct this analysis in accordance  
2 with standards satisfactory to the Department. For purposes of calculating the number of Title  
3 Insurance Premium Overcharges, the Auditor shall include any loan that New West cannot timely  
4 provide adequate documentation of compliance within 14 days of the Auditor's request. The  
5 Auditor shall exclude any loan where New West issued the borrower a refund equal to or exceeding  
6 the amount of the overcharge within 30 days of the overcharge;

7 (6) The number of loans where the Auditor found title insurance  
8 premium overcharges, but where New West issued the borrower a refund equal to or exceeding the  
9 amount of the overcharge within 30 days of the date of the overcharge;

10 (7) Identification of any refund payment that has been returned or  
11 remains outstanding for loans in any prior Review Period;

12 (8) The total number of loans for which New West did not  
13 provide an applicant with the FLN at the time of the application;

14 (9) The total number of loans for which New West provided the  
15 applicant with an FLN that failed to list the name and address of the California Department of  
16 Business Oversight as the sole contact if a borrower wished to file a complaint; and

17 (10) The total number of loans for which New West provided a  
18 Notice of Adverse Action that failed to include the federal agency contact information in  
19 compliance with Reg B.

20 4. Payment of Refunds. New West agrees that it shall issue refunds of any and all Per  
21 Diem Interest Overcharges and Title Insurance Premium Overcharges identified in each quarterly  
22 Audit Report within 30 days of the date of the Audit Report. New West shall provide evidence of  
23 issuance of such refunds, in the form of a canceled check and accompanying correspondence mailed  
24 to the borrower at his/her last known address, to the Department within 60 days of the Auditor's  
25 issuance of each Audit Report. Refund amounts shall be equal to the amount of the overcharge plus  
26 10% per annum, calculated from the date of the overcharge.

27 5. Outstanding Refunds. New West shall be responsible for escheating to the State of  
28 California pursuant to the provisions of the California Unclaimed Property Law (Code of Civ. Proc.,

1 § 1500 *et seq.*) any outstanding refund payment owed to a borrower identified in any Audit Report  
2 submitted by the Auditor.

3 6. Penalty. New West shall pay a penalty in the amount of \$29,000.00 for the violations  
4 set forth in Paragraph E above by no later than 30 days after the Effective Date of this Consent Order  
5 as defined in Paragraph 27 below. The penalty shall be made payable in the form of a cashier's  
6 check or Automated Clearing House deposit to the Department of Business Oversight and  
7 transmitted to the attention of Accounting – Litigation, at the Department of Business Oversight,  
8 1515 K Street, Suite 200, Sacramento, California 95814. Notice of the payment must be  
9 concurrently sent to Sophia C. Kim via e-mail at Sophia.Kim@dbo.ca.gov.

10 7. Declaration of Policies and Procedures. New West has submitted to the  
11 Commissioner a declaration under the penalty of perjury (Declaration) from an officer with  
12 personal knowledge of New West's policies and procedures that sets forth all policies and  
13 procedures that have been implemented as of the date of this Consent Order to ensure compliance  
14 with Financial Code section 50204, subdivisions (c), (i), (k), and (o); Civil Code section 2948.5;  
15 California Code of Regulations, title 10, section 1950.314.4, subdivision (j)(6); California Code of  
16 Regulations, title 21, section 7114; Health and Safety Code section 35830; and the Equal Credit  
17 Opportunity Act, Code of Federal Regulations, title 12, section 1002.9(a)(2). The Commissioner  
18 has reviewed the Declaration and deemed the policies and procedures contained therein as  
19 satisfactory.

20 8. Waiver of Hearing Rights. New West acknowledges that the Commissioner is ready,  
21 willing, and able to proceed with the filing of an administrative enforcement action on the charges  
22 contained in this Consent Order. New West hereby waives the right to any hearings, and to any  
23 reconsiderations, appeal, or other right to review which may be afforded pursuant to the CRMLA,  
24 the California Administrative Procedure Act, the California Code of Civil Procedure, or any other  
25 provision of law. New West further expressly waives any requirement for the filing of an  
26 Accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such  
27 rights, New West effectively consents to this Consent Order and Order to Discontinue Violations  
28 becoming final.



1           9.       Failure to Comply with Consent Order. New West agrees that if it fails to comply  
2 with the terms of this Consent Order, the Commissioner may, in addition to all other available  
3 remedies he may invoke under the CRMLA, summarily suspend or revoke New West’s CRMLA  
4 license until New West is in compliance. New West waives any notice and hearing rights to contest  
5 such summary suspension or revocation which may be afforded under the CRMLA, the California  
6 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law  
7 in connection therewith.

8           10.       Information Willfully Withheld or Misrepresented. This Consent Order may be  
9 revoked and the Commissioner may pursue any and all remedies available under law against New  
10 West if the Commissioner discovers that New West knowingly or willfully withheld or  
11 misrepresented information used for and relied upon in this Consent Order.

12           11.       Future Actions by Commissioner. If New West fails to comply with any terms of the  
13 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise  
14 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions  
15 against New West, or any of its partners, owners, officers, shareholders, directors, employees or  
16 successors for any and all unknown violations of the CRMLA.

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

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

24           14.       Binding. This Consent Order is binding on all heirs, assigns, and/or successors in  
25 interest.

26           15.       Reliance. Each of the parties represents, warrants, and agrees that in executing this  
27 Consent Order it has relied solely on the statements set forth herein and the advice of its own  
28 counsel. Each of the parties further represents, warrants, and agrees that in executing this Consent

1 Order it has placed no reliance on any statement, representation, or promise of any other party, or  
2 any other person or entity not expressly set forth herein, or upon the failure of any party or any other  
3 person or entity to make any statement, representation or disclosure of anything whatsoever. The  
4 parties have included this clause: (1) to preclude any claim that any party was in any way  
5 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol  
6 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

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

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

17 18. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of  
18 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.  
19 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 condition  
22 or provision or of the same condition or provision at another time.

23 19. 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 covenants  
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.    Governing Law. This Consent Order shall be construed and enforced in accordance  
2 with and governed by California law.

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

6           22.    Effect Upon Future Proceedings. If New West applies for any license, permit or  
7 qualification under the Commissioner’s current or future jurisdiction, or are the subject of any future  
8 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be  
9 admitted for the purpose of such application(s) or enforcement proceeding(s).

10          23.    Voluntary Agreement. New West enters into this Consent Order voluntarily and  
11 without coercion and acknowledges that no promises, threats or assurances have been made by the  
12 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent  
13 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and  
14 without any duress or undue influence of any kind from any source.

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

17           To New West:

18                   Robert Heidrich, 7310 N. 16<sup>th</sup> Street, Suite 170, Phoenix, Arizona 85020,  
19                   Bob@newwestlending.com.

20           To the Commissioner:

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

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

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

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27. 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 New West at Bob@newwestlending.com.

28. 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: 8/19/20

MANUEL P. ALVAREZ  
Commissioner of Business Oversight

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

Dated: 8/10/20

NEW WEST LENDING, INC.

By \_\_\_\_\_  
ROBERT HEIDRICH  
President