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9
10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA

12 In the Matter of) CRMLA License No.: 413-0046
13) NMLS ID: 2726
14 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION)
15)
16 Complainant,) CONSENT ORDER
17 v.)
18 PHH MORTGAGE CORPORATION)
19 Respondent.)
20)
21)

22 The Commissioner of Financial Protection and Innovation (Commissioner) and PHH
23 Mortgage Corporation (PHH) (collectively, the parties), enter this Consent Order with respect to the
24 following facts:

25 **I.**
26 **Recitals**

27 A. PHH is a New Jersey corporation licensed by the Commissioner under the California
28 Residential Mortgage Lending Act (CRMLA) (License No 413-0046).

1 B. On or about April 10, 2017, the Commissioner commenced a regulatory examination of
2 PHH (2017 Exam) covering the period from July 1, 2014 through February 28, 2017.

3 C. The 2017 Exam found that PHH had overcharged borrowers per diem interest, in violation
4 of Financial Code section 50204, subdivision (o), and Civil Code section 2948.5.

5 D. In response to this examination finding and at the request of the Commissioner, PHH
6 undertook a self-audit of its California-based originations covering the period from July 1, 2014
7 through August 21, 2017 to identify all per diem interest overcharges.

8 E. It is the intention and desire of the parties to resolve the violations described above without
9 the necessity of a hearing or other litigation.

10 F. The Commissioner finds that this action is appropriate, in the public interest, and consistent
11 with the purposes fairly intended by the policies and provisions of CRMLA.

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

14 **II.**
15 **Terms and Conditions**

16 1. Purpose. This Consent Order resolves the violations set forth above in a manner that avoids
17 the expense of a hearing and other possible court proceedings, protects consumers, is in the public
18 interest, and is consistent with the purposes, policies, and provisions of the CRMLA.

19 2. Order to Discontinue Violations. PHH hereby agrees that in accordance with Financial Code
20 section 50321, PHH has discontinued the violations set forth above.

21 3. Self-Audit. PHH agrees to audit its California loan files and produce a compliance report for
22 the Commissioner (Audit Report) covering the period from August 22, 2017 to August 21, 2018
23 (Audit Period). The Audit Report shall be submitted to the Department no later than three months
24 following the Effective Date of this Consent Order as defined by Paragraph 29. The Audit Report
25 shall include, at a minimum, the following information:

- 26 (i) the total number of loans originated and funded by PHH during the Audit Period;
- 27 (ii) the number of loans with per diem interest charges exceeding the amount permitted
28 by Financial Code section 50204, subdivision (o), and Civil Code section 2948.5; and,

1 (iii) for every loan originated, the borrower’s loan number, name, address, loan amount,
2 loan date, per diem interest charged, maximum per diem interest allowed under Financial
3 Code section 50204, subdivision (o), and Civil Code section 2948.5, overcharge amount (if
4 any), date of refund (if applicable), and proof of refund (if applicable).

5 4. Self-Audit Accuracy and Re-Audit:

6 a. PHH agrees and acknowledges that the Commissioner may test the results of the Audit
7 Report to ensure its accuracy. In connection with this test, PHH agrees to provide loan files and
8 related information requested by the Commissioner within 10 calendar days of receiving written
9 notice. PHH further agrees to have its Self-Audit conducted anew (Re-Audit) by and through a third
10 party acceptable to the Commissioner if the Commissioner’s testing reveals more than a 10 percent
11 error rate.

12 b. In the event a Re-Audit is required, PHH, by and through the third party, shall submit to
13 the Commissioner the results of the Re-Audit (Re-Audit Report) within 180 days of the date PHH is
14 notified in writing by the Commissioner that a Re-Audit is required. The Commissioner agrees to
15 extend the 180-day period a further 60 days if requested in writing by PHH and PHH can evidence to
16 the Commissioner that it has exercised due diligence in attempting to meet the initial 180-day time
17 period. The Re-Audit Report shall include the same information required by Paragraph 3.

18 4. Penalties.

- 19 a. PHH shall pay a penalty of \$62,000.00 for the violations set forth in Paragraphs C
20 and D of the recitals above.
- 21 b. PHH shall pay a penalty of \$150.00 per violation for each violation identified in the
22 Audit Report.
- 23 c. PHH shall pay a penalty of \$250.00 for each violation identified in the Re-Audit
24 Report that was not previously reported as a violation in the Audit Report.

25 5. Payment of Refunds. PHH agrees to refund any amounts of per diem interest charged
26 exceeding charges permitted under Financial Code section 50204, subdivision (o), and Civil Code
27 section 2948.5 as follows:
28

- 1 a. PHH represents that it has already sent refunds, plus interest at the rate of 10 percent
- 2 per annum, to all borrowers that were overcharged per diem interest that were
- 3 disclosed in the exam and self-audit conducted prior to the execution of this Consent
- 4 Order.
- 5 b. For any additional overcharges identified in Audit Report or Re-Audit Report, PHH
- 6 shall mail refunds equal to the overcharge plus interest at the rate of 10 percent per
- 7 annum to the last known address of each borrower no later than 30 calendar days
- 8 after the submission of each report to the Commissioner.

9 6. Timing of Penalty Payments.

- 10 a. The penalties set forth in paragraph 4(a) shall be due within 30 calendar days of the
- 11 Effective Date of this Consent Order, as such date is defined in Paragraph 29.
- 12 b. The penalties set forth in paragraph 4(b) shall be due within 30 calendar days of the
- 13 date PHH submits its Audit Report to the Commissioner.
- 14 c. The penalties set forth in paragraph 4(c) shall be due within 30 calendar days of the
- 15 date PHH submit its Re-Audit Report to the Commissioner.
- 16 d. All penalties shall be made payable in the form of a cashier’s check to the
- 17 “Department of Financial Protection and Innovation,” and mailed to the attention of:
- 18 Accounting – Litigation, at the Department Financial Protection and Innovation
- 19 located at 2101 Arena Boulevard, Sacramento, California 95834. Notice of all
- 20 payments shall be sent to Charles Carriere, Counsel, Enforcement Division, at the
- 21 Department of Financial Protection and Innovation located at One Sansome Street,
- 22 Suite 600, San Francisco, California 94104.

23 7. Waiver of Hearing Rights. PHH acknowledges the Commissioner is ready, willing, and able

24 to proceed with the filing of an administrative enforcement action on the charges contained in this

25 Consent Order. PHH hereby waives the right to any hearings, and to any reconsideration, appeal, or

26 other right to review which may be afforded pursuant to the CRMLA, the California Administrative

27 Procedure Act, the California Code of Civil Procedure, or any other provision of law. PHH further

28 expressly waives any requirement for the filing of an Accusation pursuant to Government Code

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

3 8. Policies and Procedures. As part of the 2017 Exam, PHH submitted policies and procedures
4 concerning its compliance with Financial Code section 50204, subdivision (o), and Civil Code
5 section 2948.5. The Commissioner has reviewed the policies and procedures and deemed the
6 policies and procedures contained therein to be satisfactory. Barring any change in applicable law,
7 PHH agrees to continue implementing policies and procedures which are similar in all material
8 respects in the future.

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

15 10. Opportunity to Cure. Before exercising summary suspension powers under Paragraph 9, and
16 before initiating an action for PHH's failure to comply with the terms of this consent order pursuant
17 to Paragraph 12, the Commissioner shall give PHH written notice (Notice) of its failure to comply
18 with the terms of the Consent Order and the opportunity to cure the breach (Cure). The Cure must
19 be completed to the satisfaction of the Commissioner within five business days after the day the
20 Notice has been sent via email to PHH, unless another date is agreed to in writing by the
21 Commissioner's Enforcement Counsel.

22 11. Information Willfully Withheld or Misrepresented. This Consent Order may be revoked and
23 the Commissioner may pursue any and all remedies available under law against PHH if the
24 Commissioner discovers that PHH knowingly or willfully withheld or misrepresented information
25 used for and relied upon in this Consent Order.

26 12. Future Actions by Commissioner. If PHH fails to comply with any terms of the Consent
27 Order, the Commissioner may institute proceedings for any and all violations otherwise resolved
28 under this Consent Order. The Commissioner reserves the right to bring any future actions against

1 PHH, or any of its partners, owners, officers, shareholders, PHH, employees or successors for any
2 and all unknown violations of the CRMLA.

3 13. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s ability
4 to assist a government agency (whether city, county, state, or federal) with any administrative, civil
5 or criminal action brought by that agency against PHH or any other person based upon any of the
6 activities alleged in this matter or otherwise.

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

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

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

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

26 18. Full Integration. This Consent Order is the final written expression and the complete and
27 exclusive statement of all the agreements, conditions, promises, representations, and covenant
28 between the parties with respect to the subject matter hereof, and supersedes all prior or

1 contemporaneous agreements, negotiations, representations, understandings, and discussions
2 between and among the parties, their respective representatives, and any other person or entity, with
3 respect to the subject matter covered hereby.

4 19. Governing Law. This Consent Order will be governed by and construed in accordance with
5 California law.

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

9 21. Effect Upon Future Proceedings. If Respondents apply for any license, permit or
10 qualification under the Commissioner's current or future jurisdiction, or are the subject of any future
11 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
12 admitted for the purpose of such application(s) or enforcement proceedings(s).

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

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

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

28

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

6 26. Notice. Any notice required under this Consent Order be provided to each party at the
7 following addresses:

8 To PHH:

9 Marlon Groen
10 Chief Compliance Officer, PHH Mortgage
11 1 Mortgage Way
12 Mt. Laurel, NJ 08054
13 Marlon.groen@mortgagefamily.com

14 To the Commissioner:

15 Charlie Carriere, Senior Counsel
16 Enforcement Division
17 Department of Financial Protection and Innovation
18 One Sansome St., Suite 600
19 San Francisco, CA 94104
20 Charles.carriere@dfpi.ca.gov

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

23 28. Public Record. PHH hereby acknowledges that this Consent Order is and will be a matter of
24 public record.

25 29. Effective Date. This Consent Order shall become final and effective when signed by all
26 parties and delivered by the Commissioner's agent via e-mail to PHH at

27 Marlon.groen@mortgagefamily.com.

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1 30. Authority to Sign. Each signatory hereto covenants that they possess all necessary capacity
2 and authority to sign and enter into this Consent Order and undertake the obligations set forth
3 herein.

4 Dated: October 12, 2020

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

6 By _____

7 MARY ANN SMITH
8 Deputy Commissioner
9 Enforcement Division

10 Dated: October 7, 2020

PHH Mortgage Corporation

12 By _____

13 Joseph Samarias, General Counsel

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