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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.: 4131068  
13 )  
14 THE COMMISSIONER OF FINANCIAL )  
PROTECTION AND INNOVATION, ) CONSENT ORDER  
15 )  
16 Complainant, )  
17 v. )  
18 RUSHMORE LOAN MANAGEMENT )  
SERVICES, LLC )  
19 )  
20 Respondent. )  
21 )

22  
23 This Consent Order is entered into between the Commissioner of Financial Protection and  
24 Innovation (formerly the Department of Business Oversight<sup>1</sup>) (Commissioner) and Respondent  
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27 <sup>1</sup> As of September 30, 2020, the Department of Business Oversight has been renamed the Department of Financial  
Protection and Innovation pursuant to AB No. 107. All references in law to the Department of Business Oversight is to be  
28 a reference to the Department of Financial Protection and Innovation.

1 Rushmore Loan Management Services, LLC (Rushmore) and is made with respect to the following  
2 facts:

3 **I.**

4 **RECITALS**

5 A. The Commissioner has jurisdiction over the licensing and regulation of entities  
6 engaged in the business of a residential mortgage lender and servicer under the California Residential  
7 Mortgage Lending Act, commencing at Fin. Code, § 50000 *et seq.* (CRMLA) as well as finance  
8 lenders and brokers under the California Financing Law, commencing at Fin. Code, § 22000 *et seq.*  
9 (CFL).

10 B. Rushmore is a residential mortgage lender and mortgage loan servicer licensed by the  
11 Commissioner pursuant to the CRMLA with license number 413-1068. Rushmore is also a lender  
12 licensed under the CFL with license number 603-K553.

13 C. Rushmore's principal place of business is located at 15480 Laguna Canyon Road,  
14 Suite 100, Irvine, California 92618. Rushmore operates CRMLA and CFL branches and employs  
15 mortgage loan originators.

16 D. On or around September 24, 2018, the Commissioner commenced a regulatory  
17 examination of the books and records of Rushmore, covering the period from September 1, 2015  
18 through July 31, 2018 (2018 Regulatory Exam). The 2018 Regulatory Exam reviewed the activity  
19 conducted under the company's CRMLA lender and servicer license, and its CFL lender license.

20 E. The 2018 Regulatory Exam initially disclosed that there were four loan files with per  
21 diem overcharges under Rushmore's CRMLA license, in violation of Financial Code section 50204,  
22 subdivision (o) and Civil Code section 2948.5. This finding was made in the prior regulatory  
23 examination of Rushmore commenced on November 10, 2014 (2014 Exam).

24 F. The 2014 Exam identified per diem interest overcharged 20% of the loan files  
25 reviewed (6 out of 30), Rushmore charged borrowers per diem interest in excess of one day prior to  
26 the date that the loan proceeds were disbursed from escrow. Rushmore originated approximately 478  
27 loans during the 2014 Exam.

1 G. The 2018 Exam also disclosed eight loan files in which Rushmore had presented the  
2 California Per Diem Interest Disclosure in blank to the borrower for signature, in violation of  
3 Financial Code section 50204, subdivision (e).

4 H. As a result of the findings made in the 2018 Regulatory Exam, the Commissioner  
5 directed Rushmore to conduct a self-audit of all California loan files for the period September 1, 2015  
6 through July 31, 2018 (2018 Self-Audit). The 2018 Self-Audit showed that in 30 out of 248 loans (or  
7 12%), Rushmore overcharged borrowers per diem interest in excess of one day prior to the  
8 disbursement of loan proceeds in violation of Financial Code section 50204, subdivision (o) and Civil  
9 Code section 2948.5. The per diem overcharges amounted to \$3,890.94, including interest at the rate  
10 of 10% per annum.

11 I. Rushmore represents that it has not originated loans to California residents since  
12 March 2018 and has not funded loans to California residents since May 30, 2018.

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

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

## 17 II.

### 18 TERMS AND CONDITIONS

19 1. Purpose. This Consent Order resolves the issues before the Commissioner under the  
20 2018 Regulatory Exam, set forth above, in a manner that avoids the expense of a hearing and other  
21 possible court proceedings, protects consumers, is in the public interest, and is consistent with the  
22 purposes, policies, and provisions of the CRMLA. It is understood that this Consent Order is binding  
23 on the Department of Financial Protection and Innovation and Rushmore, as well as their successors  
24 in interest and assigns.

25 2. Order to Discontinue Violations. Under Financial Code sections 50321 and 50323, it  
26 will immediately discontinue violating Financial Code section 50204, subdivisions (e) and (o) and  
27 Civil Code section 2948.5, subdivision (a)(1).

1           3.       Payment of Refunds. Rushmore represents that it has already sent refunds to all  
2 affected borrowers in all California loan files originated from September 1, 2015 through July 31,  
3 2018 covered by the 2018 Self-Audit.

4           4.       Penalties. Rushmore shall pay penalties of \$45,000.00 for the violations set forth in  
5 Paragraph H above by no later than 30 days after the Effective Date of this Consent Order as defined  
6 in Paragraph 24 below.

7                       All penalties shall be made payable in the form of a cashier's check or Automated  
8 Clearing House deposit to the "Department of Financial Protection and Innovation," and transmitted  
9 to the attention of Accounting – Litigation, at the Department of Financial Protection and Innovation,  
10 2101 Arena Boulevard, Sacramento, California 95834-2036. Notice of the payment must be  
11 concurrently sent to Marlou de Luna, Senior Counsel, Department of Financial Protection and  
12 Innovation, 320 West 4<sup>th</sup> Street, Suite 750, Los Angeles, California 90013,  
13 Marlou.deluna@dfpi.ca.gov.

14           5.       Declaration of Policies and Procedures. Rushmore acknowledges that it has not  
15 originated loans to California residents since March of 2018 and has not funded loans to California  
16 residents May 30, 2018. Should Rushmore desire to issue or originate loans to California residents  
17 after the effective date of the Consent Order, Rushmore agrees to submit to the Department of  
18 Financial Protection and Innovation, within 30 days of resuming issuing or originating loans to  
19 California residents, policies and procedures that set forth all policies and procedures that have been  
20 implemented to ensure compliance with Financial Code section 50204, subdivision (o) and Civil  
21 Code section 2948.5.

22           6.       California Per Diem Interest Disclosure. Rushmore acknowledges that it has not  
23 originated loans to California residents since March of 2018 and has not funded loans to California  
24 residents since May 30, 2018. Should Rushmore desire to issue or originate loans to California  
25 residents after the effective date of the Consent Order, Rushmore agrees to submit, within 30 days of  
26 resuming issuing or originating loans to California residents, an updated California Additional Per  
27 Diem Interest Charge Disclosure, approved by the Commissioner, that would provide an option to the  
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1 borrower whether to disburse on a Monday or a day immediately following a bank holiday, and with  
2 the following information disclosed to the borrower in writing: (a) the amount of additional per diem  
3 interest charged to facilitate disbursement on Monday or the day following a holiday and (b) that it  
4 may be possible to avoid the additional per diem interest charge by disbursing the loan proceeds on a  
5 day immediately following a business day.

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

14 8. Full and Final Settlement. The parties hereby acknowledge and agree that this  
15 Consent Order is intended to constitute a full, final, and complete resolution of the violations  
16 described herein, and that no further proceedings or actions will be brought by the Commissioner in  
17 connection with these matters under the CRMLA or any other provision of law, excepting therefrom  
18 any proceeding to enforce compliance with the terms of this Consent Order and revocation pursuant  
19 to Paragraph 9 below.

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

1           10.    Information Willfully Withheld or Misrepresented. This Consent Order may be  
2 revoked, and the Commissioner may pursue any and all remedies available under the law against  
3 Rushmore if the Commissioner discovers that Rushmore knowingly or willfully withheld or  
4 misrepresented information used for and relied upon in this Consent Order.

5           11.    Future Actions by Commissioner. If Rushmore fails to comply with any terms of the  
6 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise  
7 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions  
8 against Rushmore, or any of its partners, owners, officers, shareholders, directors, employees or  
9 successors for any and all unknown violations of the CRMLA.

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

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

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

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

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

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

20 19. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in  
21 interest.

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

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

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

8           23.    Capacity. Each signatory hereto covenants that he, she, or it possesses all necessary  
9 capacity and authority to sign and enter into this Consent Order.

10          24.    Effective Date. This Consent Order shall become effective (Effective Date) when  
11 signed and delivered by all parties.

12          25.    Notice. Any notices required under this Consent Order shall be provided to each party  
13 at the following addresses:

14           If to Respondent to:           Christopher Moore, Chief Compliance Officer  
15    Rushmore Loan Management Services, LLC  
16    1755 Wittington Place, Suite 400  
  Dallas, TX 75234

17           If to the Commissioner to:    Marlou de Luna, Senior Counsel  
18    Department of Financial Protection and Innovations  
19    320 W. 4th Street, Suite 750  
  Los Angeles, CA 90013-2344

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21    *[Signature Page to Follow]*  
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Dated: December 3, 2020

MANUEL P. ALVAREZ  
Commissioner of Financial Protection and Innovation

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

Dated: December 2, 2020

By \_\_\_\_\_  
CHRISTOPHER MOORE  
Chief Compliance Officer  
Rushmore Loan Management Services, LLC

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Jonathan Jaffe, Esq.  
Mayer Brown  
Attorney for Rushmore Loan Management Services, LLC