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

12 In the Matter of:) CFL LICENSE NO.: 60DBO- 104061
13 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
14) CONSENT ORDER
15 Complainant,)
16 v.)
17 DSW MORTGAGE, INC., dba MUTUAL)
SECURITY MORTGAGE,)
18 Respondent.)
19)

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21 This Consent Order is entered into between the Commissioner of Financial Protection and
22 Innovation (Complainant or Commissioner) and Respondent DSW Mortgage, Inc., dba Mutual
23 Security Mortgage (Respondent) and is 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 929 Pearl Street,
2 Suite 350, Boulder, Colorado 80302.

3 C. Respondent is licensed as a finance lender and broker under the CFL with main
4 license number 60DBO- 104061.

5 D. Respondent operates no branch offices 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 21, 2020, the Commissioner notified CFL licensees of the March 15,
9 2021 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 21, 2021, the Commissioner again notified CFL licensees of the March
14 15, 2021 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 February 16, 2021, the Commissioner again notified CFL licensees of the March
19 15, 2021 deadline to file their annual reports by sending notice to the email address each CFL
20 licensee established pursuant to the Commissioner’s Order on Electronic Communications, dated
21 November 22, 2013. The notification warned that the Commissioner could assess penalties and
22 summarily revoke licenses for untimely filing or failing to file pursuant to Financial Code section
23 22715.

24 I. On March 12, 2021, the Commissioner again notified CFL licensees of the March 15,
25 2021 deadline to file their annual reports by sending notice to the email address each CFL licensee
26 established pursuant to the Commissioner’s Order on Electronic Communications, dated November
27 22, 2013. The notification warned that the Commissioner could assess penalties and summarily
28 revoke licenses for untimely filing or failing to file pursuant to Financial Code section 22715.

1 J. As of March 15, 2021, Respondent had not filed its Annual Report with the
2 Commissioner. As a result, the Commissioner issued a notice on March 18, 2021 to Respondent to
3 Respondent’s email address established pursuant to the Commissioner’s Order on Electronic
4 Communications, dated November 22, 2013, advising Respondent that it should file its annual report
5 by or before March 30, 2021 or else its license would be summarily revoked pursuant to Financial
6 Code section 22715 (Notice email).

7 K. As of March 30, 2021, Respondent had not filed its Annual Report with the
8 Commissioner as directed in the Notice Letter. As a result, on April 16, 2021, the Commissioner
9 issued an Order Summarily Revoking California Finance Lender and/or Broker License Pursuant to
10 Financial Code Section 22715 for CFL License Number 60DBO- 104061 (Summary Revocation
11 Order).

12 L. Upon receiving the Summary Revocation Order, Respondent timely notified the
13 Commissioner that Respondent was requesting a hearing on the Summary Revocation Order.

14 M. On May 3, 2021, Respondent submitted its Annual Report, which was due on March
15 15, 2021, 35 business days late. Pursuant to Financial Code Section 22715, the maximum penalty
16 that may be imposed for filing 35 business days late is \$15,000.00 (\$100 per business day for the
17 first five business days and \$500 per business day thereafter up to a maximum of \$25,000).

18 N. In connection with these proceedings, Respondent represented to the Commissioner
19 that it had taken no new applications under its license after Respondent received notice of the
20 Summary Revocation Order.

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

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

25 **II.**

26 **Terms and Conditions**

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

1 2. Order Rescinding Penalty Order. The Commissioner hereby rescinds the Summary
2 Revocation Order which had been issued on April 16, 2021.

3 3. Administrative Penalty. Respondent shall pay an administrative penalty of \$2,000.00
4 no later than 30 days after the effective date of this Consent Order as defined in paragraph 25. The
5 penalty must be made payable in the form of a cashier’s check or Automated Clearing House deposit
6 to the Department of Financial Protection and Innovation and transmitted to the attention of
7 Accounting – Litigation, Department of Financial Protection and Innovation, 2101 Arena Boulevard,
8 Sacramento, California 95834. Notice of the payment must be concurrently sent to Affi Eghbaldari,
9 Senior Counsel, Department of Financial Protection and Innovation, 1455 Frazee Road, Suite 315,
10 San Diego, California 92108.

11 4. Failure to Pay Administrative Penalty. If Respondent fails to comply with paragraph
12 3, the Commissioner may summarily suspend Respondent from engaging in business under its
13 license until it provides evidence of compliance to the Commissioner’s satisfaction. Respondent
14 hereby waives any notice or hearing rights afforded under the Administrative Procedure Act,
15 including Government Code section 11415.60, subdivision (b); Code of Civil Procedure; or any
16 other provision of law to contest the summary suspension contemplated by this paragraph.

17 5. Waiver of Hearing Rights. Respondent acknowledges the Commissioner is ready,
18 willing, and able to proceed with the filing of an administrative enforcement action on the charges
19 contained in this Consent Order. Respondent hereby waives the right to any hearings, and to any
20 reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the
21 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
22 provision of law. Respondent further expressly waives any requirement for the filing of an
23 Accusation pursuant to Government section 11415.60, subdivision (b). By waiving such rights,
24 Respondent effectively consents to this Consent Order and the Order Rescinding Penalty Order
25 becoming final.

26 6. Full and Final Resolution. The parties hereby acknowledge and agree that this
27 Consent Order is intended to constitute a full and final resolution of the violations described herein,
28 and that no further proceedings or actions will be brought by the Commissioner in connection with

1 these matters except under the CFL or any other provision of law, or excepting therefrom any
2 proceeding to enforce compliance with the terms of this Consent Order.

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

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

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

19 10. Assisting Other Agencies. Nothing in this Consent Order limits the
20 Commissioner's ability to assist any other government agency (city, county, state or federal) with
21 any prosecution, administrative, civil or criminal action brought by that agency against Respondent
22 or any other person based on any of the activities alleged in this matter or otherwise.

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

1 uncertainty to exist.

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

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

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

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

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

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

1 between and among the parties, their respective representatives, and any other person or entity, with
2 respect to the subject matter covered hereby.

3 18. Governing Law. This Consent Order will be governed by and construed in
4 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court
5 and thereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
6 forum to the maintenance of such action or proceeding in such court.

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

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

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

19 22. Notice. Any notice required under this Consent Order shall be provided to each party
20 at the following addresses:

21 To the Respondent: DSW Mortgage, Inc., dba Mutual Security Mortgage
22 c/o David S. Wein, President
23 929 Pearl Street, Suite 350
24 Boulder, Colorado 80302
david@mutualsecurity.com

25 To the Commissioner: Affi Eghbaldari, Senior Counsel
26 Department of Financial Protection and Innovation
27 1455 Frazee Road, Suite 315
28 San Diego, California 92108
affi.eghbaldari@dfpi.ca.gov

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

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

25. 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: david@mutualsecurity.com.

26. 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 10, 2021

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation



By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: May 7, 2021

DSW MORTGAGE, INC., DBA MUTUAL SECURITY

By _____
DAVID S. WEIN
President