

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 FRANCIS N. SCOLLAN (State Bar No. 186262)
Senior Counsel
4 MARLOU de LUNA (State Bar No. 162259)
Senior Counsel
5 Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
6 Los Angeles, California 90013
Telephone: (213) 576-7523
7 Facsimile: (213) 576-7181

8 Attorneys for Complainant

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

12 In the Matter of:

CRMLA License No.: 4130544

13 THE COMMISSIONER OF FINANCIAL
14 PROTECTION AND INNOVATION,

CONSENT ORDER

15 Complainant,

16 v.

17 OCWEN LOAN SERVICING, LLC,

18 Respondent

19
20 This Consent Order (Order) is entered into between the Commissioner of Financial Protection
21 and Innovation (Commissioner), on the one hand, and Ocwen Loan Servicing, LLC (OLS) and PHH
22 Mortgage Corporation (PHHMC), as successor by merger to OLS (together, OLS Parties) (and all
23 collectively referred to as the Parties) as of the Effective Date set forth in paragraph 28 below.

24
25 **RECITALS**

26 A. OLS was a limited liability company formed and existing under the laws of the State
27 of Delaware and was authorized to conduct business in the State of California. PHHMC is a New
28 Jersey corporation with its principal place of business in Mount Laurel, New Jersey and is registered

1 to do business in California. PHHMC is the successor by merger to OLS.

2 B. The Commissioner licensed OLS as a residential mortgage lender and loan servicer
3 pursuant to the California Residential Mortgage Lending Act (CRMLA) (Fin. Code §§ 50000 *et seq.*).
4 The Commissioner has also licensed PHHMC as a residential mortgage lender and loan servicer
5 pursuant to the CRMLA.

6 C. The Department of Financial Protection and Innovation (Department), through the
7 Commissioner, has jurisdiction over the licensing and regulation of entities engaged in the business
8 of mortgage lending and/or servicing pursuant to the CRMLA.

9 D. Pursuant to Financial Code section 50302, the Commissioner is required to examine
10 the records, documents, and affairs of each CRMLA licensee to ensure compliance with the law.

11 E. In or about October 2019, the Department commenced an examination of OLS under
12 the CRMLA. As part of the examination, the Department found that OLS undercharged certain
13 borrowers by not timely implementing changes in loan terms (in particular, interest rate adjustments)
14 after the servicing of mortgage loans was transferred to OLS. OLS had already self-identified and
15 undertaken measures to remediate the issue by notifying affected borrowers that undercharged
16 amounts would be assessed as a non-interest-bearing lump sum payment due at loan maturity or pay
17 off (Undercharge Letter).

18 F. Additionally, during the examination OLS reported to the Department that certain
19 borrowers were overcharged as a result of OLS not timely implementing changes in loan terms (in
20 particular, interest rate adjustments) after the servicing of mortgage loans was transferred to OLS.
21 OLS had similarly self-identified this issue and undertaken measures to remediate it by issuing refund
22 checks to borrowers with an overcharge.

23 G. Based on the overcharges and undercharges, the Department found that OLS violated
24 the CRMLA in the following ways:

- 25 1. Violation of Financial Code section 50505(a) and the incorporated sections
26 1024.38(a) and (b)(1)(i) of Title 12 of the Code of Federal Regulations (CFR)
27 (Regulation X under the federal Real Estate Settlement Procedure Act (RESPA)) by
28 failing to maintain policies and procedures designed to ensure accurate and timely

1 disclosures to borrowers, resulting in borrowers receiving periodic account statements
2 that did not accurately disclose interest rates, principal amounts and/or amounts due on
3 mortgages as a result of undercharges and/or overcharges;

4 2. Violation of Financial Code section 50505(b) and the incorporated sections
5 1026.41(a)(2) and (d)(1) (7) of Title 12 of the CFR (Regulation Z under the federal
6 Truth in Lending Act (TILA)) by failing to provide accurate periodic account
7 statements to borrowers as a result of undercharges and/or overcharges;

8 3. Violation of Financial Code section 50204(i) and (j) by misrepresenting to
9 affected borrowers that:

10 a) Undercharges would be assessed back to their accounts as a non-
11 interest-bearing amount payable at maturity date or payoff date but then
12 including the undercharged amount in the monthly amount due section of
13 period account statements;

14 b) Undercharges would be assessed back to their accounts as a non-
15 interest-bearing amount payable at maturity date or payoff date but then
16 applying borrower overpayments to pay down the undercharged amount; and,

17 c) Undercharges would be assessed back to their accounts as a non-
18 interest-bearing amount payable at maturity date or payoff date but not
19 disclosing to borrowers that the undercharge amount listed in undercharge
20 letters had already been reduced from the true undercharge amount based on
21 OLS's practice of "netting" overcharges and undercharges that existed in
22 borrower accounts;

23 4. Violation of Financial Code sections 50314(a) and 50124(a)(2), requiring
24 servicers to maintain books and records, by failing to maintain notices of transfer as
25 required by Regulation X, section 1024.33(a);

26 5. Violation of Financial Code sections 50314(a) and 50124(a)(2), requiring
27 servicers to maintain books and records, by failing to maintain payment audit sheets
28 for loans with reported overcharges;

1 b) The Penalty shall be paid by cashier’s check, wire transfer or Automated
2 Clearing House deposit transmitted to the attention of Accounting – Litigation, at the
3 Department of Financial Protection and Innovation, 2101 Arena Boulevard,
4 Sacramento, California 95834 or pursuant to the ACH and wire transfer instructions
5 that have been separately provided within ten (10) days of the Effective Date.

6 c) The OLS Parties shall concurrently provide notice of payment to Frank
7 Scollan, Enforcement Division at the Department by email at
8 frank.scollan@dfpi.ca.gov.

9 **2. Late Fee Waivers**

10 a) The OLS Parties shall waive late fees previously assessed, but not collected, on
11 any California loans that the OLS Parties are servicing as of the Effective Date which
12 are in foreclosure, bankruptcy or are more than 60 days delinquent.

13 b) The OLS Parties represent that as of April 30, 2022, there were approximately
14 5,800 loans meeting such criteria, with an accumulated late fee balance of
15 approximately \$3,488,704. However, the late fee waiver obligation set forth above
16 shall be re-calculated as of the Effective Date.

17 c) Within 90 days of the Effective Date, the OLS Parties shall provide a report to
18 the Department identifying late fees waived including the following: loan number,
19 amount of late fees waived, and loan status at the time of the late fee waiver (in
20 foreclosure, in bankruptcy, and/or 60+ days delinquent).

21 **INJUNCTIVE RELIEF**

22 3. **Refund Checks:** The OLS Parties shall re-issue refund checks to all borrowers in the
23 Overcharge Report who did not previously cash their overcharge refund check, together with a letter
24 notifying each such borrower of the reason for the refund within 60 days of the Effective Date.
25 Within six months of the Effective Date, the OLS Parties shall provide a report to the Department
26 identifying the re-issued checks including: loan number, borrower name(s), borrower contact
27 information, refund amount, and check status (cashed, not cashed but delivered, or not cashed with
28 mail returned/not deliverable).

1 4. **Loan Term Implementation Verification**

2 a) The OLS Parties shall verify data points related to interest rate and other
3 payment-related terms for California loans within 60 days from the date of boarding
4 for each such loan provided that the prior servicer has provided the OLS Parties with
5 documents necessary to complete such verification at boarding. Completion of the
6 aforementioned verification process within the 60-day timeframe shall be subject to a
7 3.5% exception rate.

8 b) Commencing within sixty (60) days of the Effective Date, the OLS Parties
9 shall provide the Department a monthly report with the following data points
10 regarding the OLS Parties' compliance with Paragraph 4(a):

- 11 i) The number of loans that were in the verification process at month-begin
12 ii) The number of loans that are in the verification process at month-end
13 iii) The number of loans that entered the verification process during the month
14 iv) The number of onboarded loans that exited verification process that month
15 v) The number of those loans that exited as fully verified
16 vi) The number of those loans that exited as verified-exhausted
17 vii) The number of those loans that were over 60 days from boarding to exiting
18 verification
19 viii) The number of loans that are in the verification process at month-end
20 that are over 60 days from boarding

21 c) The OLS Parties shall conduct an annual staffing analysis with respect to the
22 loan verification function, in order to ensure appropriate staffing levels necessary to
23 comply with the loan verification timeline.

24 d) The OLS Parties shall provide additional training for loan verification staff
25 including compliance with the loan verification timeline.

26 e) The OLS Parties shall conduct monthly data integrity testing on one percent
27 (1%) of California loans that completed the verification process during the prior
28 month, up to a maximum of 50 loans, targeting data points related to interest rate and

1 other payment-related terms. When possible, at least 75% of the tested loans shall be
2 adjustable-rate mortgages.

3 f) The OLS Parties shall provide monthly dashboard loan boarding reporting in
4 Excel format to the Department showing loan volumes boarded by channel during the
5 prior month and projections for loans to be boarded in the following month.

6 g) The obligations in this Paragraph 4 shall continue for a period of three years
7 from the Effective Date.

8 **ORDER TO DISCONTINUE VIOLATIONS**

9 5. Pursuant to California Financial Code section 50321, the OLS Parties agree to not
10 engage in violations of the applicable state and federal laws and regulations referenced in paragraph
11 G above.

12 **HOMEOWNER RELIEF**

13 6. **Targeted Loss Mitigation Solicitation**

14 a) Within ninety (90) days of the Effective Date, the OLS Parties shall conduct a
15 targeted loss mitigation solicitation by which the OLS Parties will solicit eligible
16 California borrowers in writing to review the account for a loan modification;

17 b) For purposes of the relief set forth in this paragraph, an “eligible California
18 borrower” is a borrower:

- 19 (1) Whose mortgage loan is serviced by the OLS Parties;
- 20 (2) Whose mortgage loan is at least 90 days delinquent;
- 21 (3) Whose loan is not already liquidated or in REO status;
- 22 (4) Who is not already in a performing modification or trial plan or on a
23 forbearance plan;
- 24 (5) Who is not currently being underwritten for a modification;
- 25 (6) Who is not currently in the process of submitting documents for a
26 requested modification (the “document chase” process);
- 27 (7) Who has not been sent a Request for Mortgage Assistance or otherwise
28 solicited within the prior thirty (30) days;

- 1 (8) Who is not in active litigation; and
- 2 (9) Whose account is not otherwise ineligible due to the loan investor's
- 3 requirements, program requirements, customer no-contact directives,
- 4 bankruptcy rules, or other applicable law.
- 5 c) The OLS Parties will solicit this population of eligible California borrowers for
- 6 all loss mitigation options available to each borrower. The OLS Parties may contact
- 7 such borrowers by mail, electronic mail, or online borrower account portal. The
- 8 solicitation shall state that if requested by borrower the borrower's account will be
- 9 reviewed for loan modification and other loss mitigation or relief programs and
- 10 include directions on how to respond to the solicitation to initiate such review;
- 11 d) Upon receipt of a complete loss mitigation application (as defined by 12 C.F.R.
- 12 § 1024.41(b)(1)), the OLS Parties will evaluate loans of these California borrowers for
- 13 all available loss mitigation programs. The OLS Parties shall exercise "reasonable
- 14 diligence," as defined by the Consumer Financial Protection Bureau's (CFPB) official
- 15 interpretation of 12 Code of Federal Regulations part 1024.41(b)(1), to obtain the
- 16 documents necessary for a borrower's complete application; and
- 17 e) The OLS Parties shall place all eligible loans on a 60-day foreclosure hold
- 18 after sending the solicitation specified in paragraphs 5(a), (b) and (c) of this Order,
- 19 except as required by a presiding court or applicable investor guidelines. A
- 20 "foreclosure hold" means the OLS Parties shall not refer any such borrower's account
- 21 to foreclosure, move for foreclosure judgment or order of sale, or conduct or seek a
- 22 foreclosure sale within 60 days of the solicitation and continuing while the borrower's
- 23 complete application for any loan modification program is pending.
- 24 f) Commencing in the first full calendar quarter after the solicitation is sent, the
- 25 OLS Parties shall provide a report setting forth the number of eligible borrowers
- 26 solicited for review and a quarterly report setting forth (i) the number of borrowers
- 27 that requested review in response to solicitations in that quarter, (ii) the number of
- 28 loans that were put on foreclosure hold in that quarter, and (iii) the number of loans

1 that were placed into a loan modification or other relief program in that quarter. The
2 quarterly reporting requirement will sunset one year after the solicitation specified in
3 paragraphs 5(a), (b) and (c) of this Order is sent.

4 **7. Outreach Event**

5 a) No later than December 31, 2023, the OLS Parties shall conduct a loss
6 mitigation outreach event in California, by partnering with a non-profit homeowner
7 assistance organization to host an in-person event (as permitted by applicable state and
8 federal COVID-19-related safety and social distancing guidelines) where the OLS
9 Parties shall provide information and qualified personnel to answer questions
10 regarding available loss mitigation options, including for those borrowers exiting
11 COVID-19 forbearance plans;

12 b) The OLS Parties shall take steps to ensure that adequate staffing is available to
13 address the reasonably anticipated turnout at such event.

14 **8. Consumer Hotline**

15 a) The OLS Parties agree to build and maintain, for a period of three years, a
16 “hotline” for California borrowers. The hotline will be an escalation line outside of the
17 OLS Parties’ ordinary call center workflow and will route California borrowers to
18 specialized agents familiar with the OLS Parties’ policies and procedures, and all
19 relevant federal and California requirements. The hotline agents, however, will not be
20 specifically assigned to handle loss mitigation, which will be addressed via the OLS
21 Parties’ existing customer service model.

22 b) This hotline will be in place within 90 days of the Effective Date of this Order,
23 with notice provided to the Department when the hotline has been activated. The
24 three-year period will commence from the date the OLS Parties provide notice to the
25 Department.

26 **9. Borrower Complaints:** Commencing with the first full quarter after the Effective
27 Date and continuing for a period of three years thereafter, the OLS Parties shall:

28 a) Submit a quarterly report to the Department of all written complaints received

1 from California borrowers; and,

2 b) Provide a dedicated single point of contact within the Office of the
3 Ombudsman, for use by the Department in escalating borrower complaints.

4 **NOTICES**

5 10. All communications regarding this Order shall be sent to:

6 For the Department:

7 Frank Scollan

8 Senior Counsel

9 Department of Financial Protection & Innovation

320 West 4th Street, Suite 750

Los Angeles, California 90013

Frank.scollan@dfpi.ca.gov (for notice by email when not excluded herein)

10 For the OLS PARTIES

11 Jenna Evans

12 Executive Vice President, Deputy General Counsel, and Chief Risk & Compliance Officer

13 Ocwen Financial Corporation

2000 Midlantic Drive, Suite 410

14 Mount Laurel, NJ 08054

jenna.evans@ocwen.com (for notice by email when not excluded herein)

15 **MUTUAL RELEASE AND WAIVER**

16 11. The Department, on the one hand, and the OLS Parties, on the other hand, mutually
17 release and discharge the other from any and all claims, demands, causes of action, obligations and
18 liabilities of every kind and nature whatsoever which each of the Parties had, or claims to have had,
19 or now has, against the other (including but not limited to claims against individual executives,
20 officers, directors, agents, appointees, representatives and/or employees of each Party), whether
21 known or unknown, with regard to the implementation of loan terms as described herein through the
22 Effective Date (Released Claims).

23 12. The Parties understand and agree that the Released Claims include not only claims
24 presently known to them, but also include all unknown or unanticipated claims, rights, demands,
25 actions, obligations, liabilities and causes of action of every kind and character. The Parties
26 knowingly and voluntarily waive any and all rights or benefits that they may now have, or in the
27 future may have, under the terms of section 1542 of the California Civil Code, which provides:

28 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, WHICH THE

1 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
2 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
3 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
4 SETTLEMENT WITH THE DEBTOR.

5 13. No entity or individual other than the OLS Parties and the Department may rely on
6 this release and there are no intended or unintended third-party beneficiaries.

7 **NON-COMPLIANCE WITH ORDER AND OPPORTUNITY TO CURE**

8 14. The OLS Parties agrees to comply with this Order and any amendment in writing
9 thereto. It is further understood this Order is binding on the Department and the OLS Parties, as well
10 as their successors in interest and assigns, but it specifically does not bind any federal or other state
11 agencies or any law enforcement authorities.

12 15. The OLS Parties must notify the Department of a dissolution, assignment, sale,
13 merger, or other action that would result in the emergence of a successor company; the creation or
14 dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this
15 Order; or the filing of any bankruptcy or insolvency proceeding by or against any of the OLS Parties.
16 The OLS Parties must provide this notice as soon as practicable, and at least 30 days before the
17 development, when possible.

18 16. If the Department determines the OLS Parties have failed to meet any of the
19 obligations set forth in paragraphs 1 through 9 above, the Department will notify the OLS Parties of
20 the alleged failure (Default Notice), provide an opportunity to meet and confer regarding the alleged
21 failure, and provide the OLS Parties 30 days following the meet and confer to cure the alleged failure
22 (Cure Period). If the OLS Parties fail or refuse to meet and confer within 30 days of the Default
23 Notice date, then the Cure Period shall be deemed to expire 30 days from the date of the Default
24 Notice.

25 17. The OLS Parties agree that following a failure to comply with paragraphs 1 through 9
26 of this Order, having received a Default Notice but having failed to cure during the Cure Period, the
27 Department may immediately suspend the OLS Parties from lending and servicing under a CRMLA
28 license until the terms of this Order are met.

1 18. While OLS does not admit the alleged violations set forth in the Order other than those
2 facts deemed necessary to establish the jurisdiction of the Commissioner, the OLS Parties agree the
3 facts and violations set forth in recital paragraphs E through I, above, in this Order may be taken as
4 true without further proof only in any bankruptcy case or subsequent civil litigation the Department
5 may pursue to enforce its rights to any payment or money judgment under the terms of this Order,
6 including but not limited to, any nondischargeability complaint in any bankruptcy proceeding and
7 that this Order shall have collateral estoppel effect in any bankruptcy case.

8 19. The Parties further acknowledge and agree nothing in this Order shall preclude the
9 Commissioner, or her agents or employees, to the extent required by law, from assisting or
10 cooperating in any investigation and/or action brought by any other federal, state, county, or city
11 agency.

12 **WAIVER OF HEARING AND APPEAL**

13 20. The Commissioner states that she is fully prepared to file an administrative
14 enforcement action based on the allegations contained in this Order. The OLS Parties acknowledge
15 the right to an administrative hearing under the CRMLA and, in reliance on the notice and cure
16 provisions stated above, (1) waive such hearing with respect to the allegations herein and (2)
17 expressly waive any requirement for the filing of an accusation that may be afforded by the
18 California Administrative Procedure Act, including Government Code section 11415.60, subdivision
19 (b), the California Code of Civil Procedure, or any other provision of law in connection with this
20 matter. By waiving such rights, the OLS Parties stipulate to this Order becoming final.

21 21. The OLS Parties waive any rights to seek judicial review or otherwise challenge or
22 contest in any court or tribunal outside the Department the validity or effectiveness of this Order.

23 **ANNUAL REPORT PLEADINGS**

24 22. The Department will issue an order withdrawing the Annual Report Pleadings. OLS
25 may proceed with surrender of its CRMLA license in accordance with the provisions of the CRMLA
26 and the Department's regular process for surrender.

27 **OTHER PROVISIONS**

28 23. The section headings contained in this Order are for reference purposes only and shall

1 not affect the meaning or interpretation of this Order.

2 24. The waiver of any provision of this Order shall not operate to waive any other
 3 provision set forth herein, and any waiver, amendment or change to the terms of this Order must be in
 4 writing and signed by the Parties.




5 25. The Parties represent and warrant each party has received advice from its attorney(s)
 6 and/or other representatives prior to entering into this Order, and that in executing this Order each
 7 party relied solely on the statements set forth herein and the advice of its own counsel and/or
 8 representative.

9 26. The OLS Parties enter this Order voluntarily and acknowledge that no promises or
 10 assurances have been made by the Department or any officer or agent thereof about this Order.

11 27. The Order may be executed in one or more counterparts, each of which shall be an
 12 original but all of which, together, shall be deemed to constitute a single document. An electronically
 13 produced and/or transmitted signature shall be deemed the same as an original signature.

14 28. Each signatory represents and warrants that they possess the necessary capacity and
 15 authority to execute this Order and bind the party for which they have executed the Order.

16 29. This Order shall not become effective until signed by all parties and delivered by the
 17 Commissioner's counsel by email to counsel for the OLS Parties (Effective Date).

18 Dated: <u>2/17/2023</u> 19 20  21 22	CLOTHILDE V. HEWLETT Commissioner of Financial Protection and Innovation By:  Mary Ann Smith Deputy Commissioner of Enforcement
23 Dated: February 17, 2023 24 25 26 27 28	Ocwen Loan Servicing, LLC PHH Mortgage Corporation By:  Jenna Evans Executive Vice President, Deputy General Counsel, and Chief Risk & Compliance Officer for Ocwen Financial Corporation, as parent of PHH Mortgage Corporation, successor by merger to Ocwen Loan Servicing, LLC