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8
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:) CRMLA LICENSE No. 413-0698
12)
13 MORTGAGE LENDERS OF AMERICA, LLC,)
14 Respondent.) **CONSENT ORDER**
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22 This Consent Order (Consent Order) is entered into between the Commissioner of Business
23 Oversight (Commissioner) and Mortgage Lenders of America, LLC (MLOA), and is made with
24 respect to the following facts:

25 **RECITALS**

26 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
27 entities engaged in the business of lending and/or servicing residential mortgage loans pursuant to the
28 California Residential Mortgage Lending Act (CRMLA) (Fin. Code § 50000, *et seq.*).

1 B. MLOA is a residential mortgage lender and loan servicer. (CRMLA License No. 413-
2 0698; NMLS No. 10287). MLOA has its principal place of business located at 10975 El Monte
3 Street, Overland Park, Kansas 66211.

4 C. Philip Kneibert is the President and a control person of MLOA and is authorized to
5 enter into this Consent Order on behalf of MLOA.

6 D. During a regulatory examination of MLOA that commenced on December 10, 2015,
7 the Department of Business Oversight (DBO) discovered the following violations of the CRMLA and
8 other applicable laws and regulations (Examination Findings):

9 (i) MLOA had engaged in servicing activities prior to the submission of a
10 servicing application with the Commissioner in violation of Financial Code section 50002(a);

11 (ii) MLOA had failed to maintain sufficient trust funds in its trust account in
12 violation of Financial Code section 50202, which was a repeat violation that had been discovered in a
13 previous examination that commenced on January 3, 2012 (Prior Examination);

14 (iii) MLOA had failed to reconcile its trust accounts in accordance with title 10 of
15 the Code of Regulations, section 1950.314.1, which was a repeat violation that had been discovered
16 in the Prior Examination;

17 (iv) MLOA had overcharged per diem interest to at least two borrowers in violation
18 of Financial Code section 50204(o) and Civil Code section 2948.5, which was a repeat violation that
19 had been discovered in the Prior Examination; and

20 (v) MLOA had failed to list the DBO in the fair lending notice it provided to
21 borrowers in violation of Health and Safety Code section 35830 and title 21 of the Code of
22 Regulations, section 7114.

23 E. Following the presentation of the Examination Findings to MLOA, the Enforcement
24 Division of the DBO informed MLOA that it intended to commence an administrative action to
25 enforce MLOA's compliance with the Financial Code and seek remedies relating to the Examination
26 Findings (Enforcement Action).

27 F. Upon being informed of the DBO's intent to commence the Enforcement Action,
28 MLOA indicated that it would agree to the issuance of this Consent Order by the Commissioner

1 without the need to commence filing an administrative action. MLOA indicated its intent and desire
2 to cooperate fully with the DBO to correct and remedy any past violations.

3 G. It is the intention and desire of the parties to resolve this matter without the necessity
4 of a hearing and/or other litigation.

5 H. The Commissioner finds that this action is appropriate in the public interest and
6 consistent with the purposes fairly intended by the policy and provisions of this law.

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

9 **TERMS AND CONDITIONS**

10 1. Purpose. This Consent Order is entered into for the purpose of judicial economy and
11 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

12 2. Order to Discontinue Violations. MLOA stipulates that, in accordance with Financial
13 Code Sections 50321, MLOA will immediately discontinue the violations set forth above at
14 Paragraph D.

15 3. Finality of Order. MLOA hereby agrees to comply with this Consent Order and
16 further stipulates that this Consent Order is hereby deemed a final and enforceable order issued
17 pursuant to the Commissioner’s authority under California Financial Code section 50321, 50504 and
18 50513.

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

1 5. Independent Audit. MLOA agrees to engage a certified public accountant, certified
2 accounting firm, or compliance auditing firm (Third Party Auditor), subject to the approval of the
3 DBO, which approval shall not be unreasonably withheld.

4 The Third Party Auditor shall conduct examinations of MLOA's files in order to conduct an
5 independent audit and produce compliance reports for the Commissioner containing the information
6 specified at Paragraphs 7 and 8 below (Independent Audit Reports). The Third Party Auditor shall
7 have access to all files and information from MLOA as required to produce the Independent Audit
8 Reports, including, but not limited to, MLOA's loan files, trust account statements, and the policies
9 and procedures referenced in Paragraphs 11 and 12 below.

10 MLOA agrees and acknowledges that the Commissioner may test the results of the
11 Independent Audit Reports to ensure their accuracy. In connection with these tests, MLOA agrees to
12 provide loan files and related information requested by the Commissioner within 10 calendar days of
13 receiving written notice. If the Commissioner finds material inaccuracies in the Independent Audit
14 Reports, MLOA agrees to hire a second certified public, certified accounting firm, or compliance
15 auditing firm, subject to the approval of the DBO, which approval shall not be unreasonably
16 withheld, to redo the inaccurate Independent Audit Report.

17 6. Independent Audit Reports. The Independent Audit Reports shall cover the following
18 dates and shall be delivered to the DBO on the following schedule:

19 a. The first Independent Audit Report (First Independent Audit Report) shall
20 cover all California loans originated and/or funded by MLOA from December 10, 2015 through the
21 Effective Date of this Consent Order, as defined in Paragraph 29. The First Independent Audit
22 Report shall be submitted to the Commissioner no later than the last day of the third full month
23 following the Effective Date of this Consent Order.

24 b. The second Independent Audit Report (Second Independent Audit Report)
25 shall cover all California loans originated and/or funded by MLOA from the Effective Date of this
26 Consent Order, as defined in Paragraph 29, through the last day of the third full month following the
27 Effective Date of this Consent Order. The Second Independent Audit Report shall be submitted to
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1 the Commissioner no later than the last day of the sixth full month following the Effective Date of
2 this Consent Order.

3 c. The third Independent Audit Report (Third Independent Audit Report) shall
4 cover all California loans originated and/or funded by MLOA from the first day of the fourth full
5 month following the Effective Date of this Consent Order through the last day of the sixth full month
6 following the Effective Date of this Consent Order. The Third Independent Audit Report shall be
7 submitted to the Commissioner no later than the last day of the ninth full month following the
8 Effective Date of this Consent Order.

9 d. The fourth Independent Audit Report (Fourth Independent Audit Report) shall
10 cover all California loans originated and/or funded by MLOA from the first day of the seventh full
11 month following the Effective Date of this Consent Order through the last day of the ninth full month
12 following the Effective Date of this Consent Order. The Fourth Independent Audit Report shall be
13 submitted to the Commissioner no later than the last day of the twelfth full month following the
14 Effective Date of this Consent Order.

15 e. The fifth Independent Audit Report (Fifth Independent Audit Report) shall
16 cover all California loans originated and/or funded by MLOA from the first day of the tenth full
17 month following the Effective Date of this Consent Order through the last day of the twelfth full
18 month following the Effective Date of this Consent Order. The Fifth Independent Audit Report shall
19 be submitted to the Commissioner no later than the last day of the fifteenth full month following the
20 Effective Date of this Consent Order.

21 7. Scope of Independent Audit Report regarding Per Diem Interest. The Independent
22 Audit Reports shall include the following information:

23 a. the total number of loans originated and/or funded by MLOA during the period
24 specified;

25 b. the total number of loans originated and/or funded by MLOA during the period
26 specified for which MLOA failed to include in the loan file the documentation of the disbursement
27 date required under the approved policies and procedures, referenced in Paragraph 11.
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1 c. the total number of loans originated and/or funded by MLOA during the period
2 specified that contained a per diem interest charge in excess of the amount permitted by California
3 Financial Code section 50204(o) and California Civil Code section 2984.5;

4 d. the total number of loans identified in Paragraph 7(c) above where the excess
5 per diem interest charges were not refunded to the borrower within 30 days of the disbursement date;

6 e. for each loan identified in Paragraph 7(c) above, the borrower's loan number,
7 name, address, loan amount, loan origination and/or funding date, per diem interest charged,
8 maximum per diem interest permitted by California Financial Code section 50204(o) and California
9 Civil Code section 2984.5, per diem interest overcharge amount, if any, date of refund, if applicable,
10 and the proof of refund, if applicable; and

11 f. for any other deviations from the policies and procedures approved under
12 Paragraph 11 below that are not already reported under Paragraph 7(b)-(d) above, the Third Party
13 Auditor shall report a description of the deviation, the suspected cause of the deviation, the actions
14 taken by MLOA to prevent such a deviation in the future, and any advice provided by the Third Party
15 Auditor to MLOA to prevent such a deviation in the future.

16 In addition, the Third Party Auditor shall complete a spreadsheet, using a template with
17 specified fields that shall be provided by the Commissioner to MLOA prior to the execution of this
18 Consent Order, for each loan originated and/or funded by MLOA during the period specified. The
19 completed spreadsheet shall be included with the delivery of each, respective Independent Audit
20 Report.

21 8. Scope of Independent Audit Reports regarding Trust Accounting. The Second, Third,
22 Fourth and Fifth Independent Audit Reports shall also include the following information:

23 a. the number of days during which MLOA failed to maintain sufficient trust
24 funds in its trust accounts, as identified in the approved policies and procedures, referenced in
25 Paragraph 12, in violation of Financial Code section 50202, if any;

26 b. the number of times MLOA failed to conduct the reconciliations required by
27 approved policies and procedures, referenced in Paragraph 12, if any; and
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1 c. for any other deviations from the policies and procedures approved under
2 Paragraph 12 below that are not already reported under Paragraph 8(a)-(b) above, the Third Party
3 Auditor shall report a description of the deviation, the suspected cause of the deviation, the actions
4 taken by MLOA to prevent such a deviation in the future, and any advice provided by the Third Party
5 Auditor to MLOA to prevent such a deviation in the future.

6 9. Payment of Refunds. MLOA agrees to refund any amounts of per diem interest
7 charged in excess of that permitted under Financial Code section 50204, subdivision (o), and Civil
8 Code section 2948.5 as identified in the Audit Reports pursuant to Paragraph 7(c) above. MLOA
9 agrees that refunds shall be mailed to the last known address of each borrower no later than 30
10 calendar days after the due date of the Audit Report that identifies each overcharge. For any refund
11 that is not mailed within 30 calendar days after the date of loan disbursement, MLOA shall pay the
12 borrower interest on the amount of the refund at the rate of 10 percent per annum on and in addition
13 to the amount of the overcharge.

14 10. Outstanding Refunds. No later than 90 calendar days after the due date of each Audit
15 Reports, MLOA shall notify the Commissioner of any refund payment that has been returned or
16 remains outstanding for loans originated during the period covered by that audit report. MLOA shall
17 be responsible for ensuring that any outstanding refund payment owed to any borrower identified in
18 any Audit Report that was returned or remains outstanding is escheated to the State of California
19 pursuant to the provisions of the California Unclaimed Property Law (Code of Civ. Proc., § 1500 et
20 seq.).

21 11. Per Diem Interest Policies and Procedures. MLOA has submitted to the
22 Commissioner a copy of MLOA's current policies and procedures that set forth all policies and
23 procedures that have been implemented as of the date of this Consent Order by MLOA to ensure
24 compliance with Civil Code section 2948.5 and Financial Code sections 50204, subdivisions (e) and
25 (o), and 50326. The Commissioner has reviewed the policies and procedures contained therein and
26 found them satisfactory. MLOA hereby agrees to continue implementing those policies and
27 procedures in the future.
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1 12. Trust Accounting Policies and Procedures. MLOA has submitted to the
2 Commissioner a copy of MLOA’s current policies and procedures that sets forth all policies and
3 procedures that have been implemented as of the date of this Consent Order by MLOA to ensure
4 compliance with Financial Code section 50202 and title 10, Code of Regulations, section 1950.314.1.
5 The Commissioner has reviewed the policies and procedures contained therein and found them
6 satisfactory. MLOA hereby agrees to continue implementing those policies and procedures in the
7 future.

8 13. Penalties. MLOA shall pay the following penalties:
9 a. \$67,000.00 for the violations referenced at Paragraph D above;
10 b. \$125.00 for each loan reported in the Audit Reports pursuant to Paragraph 7(b)
11 above;
12 c. \$125.00 for each loan reported in the Audit Reports pursuant to Paragraph 7(d)
13 above;
14 d. \$25,000.00 if any days are reported in an Independent Audit Report pursuant
15 to Paragraph 8(a) above; and
16 e. \$25,000.00 if any failures are reported in an Independent Audit Report
17 pursuant to Paragraph 8(b) above.

18 14. Payment of Penalties. The payment of the penalties set forth at Paragraph 13(a) above
19 shall be paid within 30 calendar days of the Effective Date of this Consent Order, as defined in
20 Paragraph 29. The payment of penalties at Paragraph 13(b)-(e) above shall be paid within 30 days
21 following delivery of the Audit Report in which the loan, day and/or failure is reported.

22 All payments of penalties shall be made in the form of a cashier’s check or Automated
23 Clearing House deposit to the “Department of Business Oversight” and transmitted to the attention
24 of: Accounting - Litigation, at the Department of Business Oversight located at 1515 K Street, Suite
25 200, Sacramento, California, 95814. Notice of all payments shall be sent to Adam Wright, Senior
26 Counsel, Enforcement Division, at the Department of Business Oversight located at 320 West 4th
27 Street, Suite 750, Los Angeles, California 90013-2344.

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1 15. Licensure. In consideration of MLOA's agreements in Paragraphs 2 through 14
2 above, the Commissioner hereby agrees that, except as otherwise set forth in this Consent Order, the
3 Commissioner shall not suspend the residential mortgage lender or servicer license of MLOA nor
4 take any further action based on either the Examination Findings or the violations that may be
5 reported through the Independent Audit Reports, which are otherwise penalized pursuant to
6 Paragraph 13 above (Audit-Reported Violations). Accordingly, this Consent Order resolves the
7 Enforcement Action and does not affect the licensing status of MLOA.

8 16. Failure to Comply with Consent Order. If MLOA fails to meet any deadline or any
9 requirement in Paragraphs 5 through 14 above, other than through inadvertent and isolated errors that
10 are promptly corrected by MLOA within five (5) business days with notice of such correction
11 provided to the Commissioner within three (3) business days of correction, nothing in Paragraph 15
12 of this Consent Order shall preclude the Commissioner from immediately initiating any action against
13 MLOA seeking any remedies available under this Consent Order or California law for any violations.
14 Such remedies include, but are not limited to, the payment of penalties and the immediate suspension
15 from lending under MLOA's residential mortgage lender license.

16 17. Full and Final Settlement. The parties hereby acknowledge and agree that this
17 Consent Order is intended to constitute a full, final, and complete resolution of both the Enforcement
18 Action and the Audit-Reported Violations and that no further proceedings or actions will be brought
19 by the Commissioner based on the Examination Findings or the Audit-Reported Violations under the
20 CRMLA, or any other provision of law, excepting therefrom any proceeding to enforce compliance
21 with the terms of this Consent Order, or action if such proceeding or action is based upon discovery
22 of new and further violations of the CRMLA which do not form the basis for this Consent Order or
23 which were knowingly or willfully concealed from the Commissioner by MLOA. Further, this
24 Consent Order may be revoked and the Commissioner may pursue any and all remedies available
25 under law against MLOA if the Commissioner later discovers that MLOA knowingly or willfully
26 withheld information used and relied upon in this Consent Order.

27 18. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
28 interest.

1 19. Commissioner's Duties. The parties acknowledge and agree that nothing contained in
2 this Consent Order shall operate to limit the Commissioner's ability to assist any other agency (city,
3 county, state or federal) with any prosecution, administrative, civil or criminal, brought by any such
4 agency against MLOA or any other person based upon any of the activities alleged in these matters or
5 otherwise.

6 20. Third Party Actions. It is the intent and understanding between the parties that this
7 Consent Order does not create any private rights or remedies against MLOA, create any liability for
8 MLOA or limit defenses of MLOA for any person or entity not a party to this Consent Order.

9 21. Waiver and Modification. The waiver of any provision of this Consent Order shall not
10 operate to waive any other provision set forth herein. No waiver, amendment, or modification of this
11 Consent Order shall be valid or binding to any extent unless it is in writing and signed by all of the
12 parties affected by it.

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

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

25 24. Headings and Governing Law. The headings to the paragraphs of this Consent Order
26 are inserted for convenience only and will not be deemed a part hereof or affect the construction or
27 interpretation of the provisions hereof. This Consent Order shall be construed and enforced in
28 accordance with and governed by California law.

1 25. Presumption from Drafting. In that the parties have had the opportunity to draft,
2 review and edit the language of this Consent Order, no presumption for or against any party arising
3 out of drafting all or any part of this Consent Order will be applied in any action relating to,
4 connected to, or involving this Consent Order. Accordingly, the parties waive the benefit of Civil
5 Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,
6 language of a contract should be interpreted most strongly against the party who caused the
7 uncertainty to exist.

8 26. Voluntary Agreement. MLOA enters into this Consent Order voluntarily and without
9 coercion and acknowledges that no promises, threats or assurances have been made by the
10 Commissioner or any officer, or agent thereof, about this Consent Order.

11 27. Authority to Execute. Each signator hereto covenants that he/she possesses all
12 necessary capacity and authority to sign and enter into this Consent Order.

13 28. Counterparts. The parties agree that this Consent Order may be executed in one or
14 more separate counterparts, each of which when so executed, shall be deemed an original. Such
15 counterparts shall together constitute and be one and the same instrument.

16 29. Effective Date. This Consent Order shall not become effective until signed by all
17 parties and delivered by the Commissioner’s counsel by email to Paul D’Agostino, MLOA’s Vice
18 President of Compliance, at pdagostino@mloausa.com.

19 30. Public Record. Respondent acknowledges that this Consent Order is a public record.

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Dated: 11/1/17

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 11/1/17

MORTGAGE LENDERS OF AMERICA, LLC

By _____
Philip Kneibert
President