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10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

13 In the Matter of:) CRMLA License No.: 4713-1209
14) CFL License No.: 603-7985
15 THE COMMISSIONER OF BUSINESS) NMLS ID.: 2119
OVERSIGHT,)
16) CONSENT ORDER
Complainant,)
17)
18 v.)
19)
NATIONSTAR MORTGAGE, LLC doing)
20 business as MR. COOPER,)
Respondent.)

22 This Consent Order (Order) relating to settlement and resolution of examination and
23 compliance issues pending before the Commissioner of Business Oversight (Commissioner) is
24 entered between the Commissioner and Nationstar Mortgage, LLC doing business as Mr. Cooper
25 (Nationstar) (collectively, “the Parties”) and is made with respect to the following facts:

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Recitals

A. Nationstar is a limited liability company formed and existing under the laws of the State of Delaware and authorized to conduct business in the State of California. Nationstar is authorized to conduct business in the State of California under the name Mr. Cooper.

B. Nationstar is a residential mortgage lender and loan servicer licensed by the Commissioner pursuant to the California Financing Law (CFL) (Fin. Code, § 22000 et seq.)¹ and the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.). Nationstar has its principal place of business at 8950 Cypress Waters Boulevard, Dallas, Texas 75019.

C. The Department of Business Oversight (Department), through the Commissioner, has jurisdiction over the licensing and regulation of entities engaged in the business of lending and/or servicing pursuant to the CFL and CRMLA.

D. Pursuant to Financial Code section 22701, the Commissioner may examine the records, documents and affairs of a CFL licensee to ensure compliance with the law.

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

F. On or about October 11, 2011, the Commissioner commenced a routine regulatory compliance examination of Nationstar’s activities under its CFL license (2011 Exam). The 2011 Exam reviewed Nationstar’s loan originations from May 1, 2009 to May 10, 2012.

G. The 2011 Exam found that Nationstar committed the following violations of the CFL and its regulations:

1. Nationstar charged excess per diem interest in violation of Civil Code section 2948.5 and California Code of Regulations, title 10, section 1457, subdivision (d).
2. Nationstar charged recording fees in excess of actual recording costs in violation of Financial Code section 22336, subdivision (a).

¹ Effective October 4, 2017, the name of the “California Finance Lenders Law” changed to the “California Financing Law.” (Assem. Bill No. 1284 (2017-2018 Reg. Sess.) § 4.) For purposes of this document, a reference to the California Financing Law means the California Finance Lenders Law before October 4, 2017 and the California Financing Law on and after that date. (Cal. Fin. Code, § 22000.)

1 H. In 2014, the Commissioner commenced a joint regulatory originations and servicing
2 examination of Nationstar with various other states through the Multi-State Mortgage Committee
3 (2014 Exam). The Commissioner commenced the 2014 Exam to ensure compliance with the CFL
4 and the CRMLA. The 2014 Exam reviewed Nationstar’s loan origination and servicing practices
5 from March 1, 2012 to March 31, 2014.

6 I. The 2014 Exam found that Nationstar committed the following violations of
7 California law:

- 8 1. Nationstar charged excess per diem interest in violation of Civil Code section
9 2948.5, Financial Code section 50204, subdivision (o), and California Code of
10 Regulations, title 10, section 1457, subdivision (d).
- 11 2. Nationstar charged recording fees in excess of actual recording costs in
12 violation of Financial Code section 22336, subdivision (a).
- 13 3. Nationstar charged borrowers a \$120 fee paid to a Nationstar affiliate,
14 Solutionstar, in violation of 12 Code of Federal Regulations part 1024.14(c), and
15 Financial Code section 22346.

16 J. The Department directed Nationstar to begin self-audits to review all loans originated
17 from November 22, 2013 to March 31, 2014 for per diem interest and recording fee overcharges.
18 Nationstar agreed to the Department’s request and began making refunds in a timely manner to
19 consumers.

20 K. To ensure that the self-audits covered the findings from the Department’s 2011 Exam,
21 the Department later directed Nationstar to expand the self-audits’ range to cover all originations
22 from May 1, 2009 to March 31, 2014. Nationstar agreed to the expanded self-audit range.

23 L. On November 21, 2016, Nationstar reported to the Department that Nationstar had
24 completed its self-audits and had issued refunds to California borrowers as follows:

- 25 1. \$2,526,962.25 in per diem interest refunds for 17,487 loan originations made
26 between May 1, 2009 and March 31, 2014.
- 27 2. \$1,790,276.41 in recording fee refunds for 46,474 loan originations made
28 between May 1, 2009 and March 31, 2014.

1 this Order, and hereby waives the right to a hearing, and to any reconsideration, appeal, or other
2 right to review which may be afforded pursuant to the CFL and CRMLA. Nationstar, further
3 expressly waives any requirement for the filing of an Accusation that may be afforded by
4 Government Code section 11415.60, subdivision (b), the Administrative Procedure Act, the Code of
5 Civil Procedure, or any other provision of law; and by waiving such rights, Nationstar consents to
6 this Order becoming final.

7 5. Third-Party Auditor. Nationstar agrees to engage, at its own expense, a third-party
8 auditor (Auditor) to sample Nationstar's originations for per diem interest and recording fee
9 overcharges on a quarterly basis as follows:

10 a. The Auditor will be an independent certified public accountant, certified
11 public accounting firm, or compliance auditing firm approved by the Department. The
12 Department will not unreasonably withhold approval of Nationstar's auditor selection.

13 b. Nationstar will contract with an Auditor for the services described herein
14 within 90 days of the Effective Date of this Order.

15 c. The Auditor will report quarterly (Audit Report) based upon the Auditor's
16 sampling of Nationstar's California loan originations for four consecutive quarters (each
17 quarter shall be referred to as a Review Period).

18 i. The first Audit Report will cover (1) in the case of per diem interest
19 reviews, loans originated during the first quarter of 2018, ending on March
20 31, 2018, and (2) in the case of recording fees, loans for which deeds of trust
21 were recorded and received during the first quarter of 2018, ending on March
22 31, 2018.

23 ii. The second Audit Report will cover loans originated (or, in the case
24 of recording fees, deeds of trust recorded and received) in the second quarter
25 of 2018, ending on June 30, 2018. The third Audit Report will cover loans
26 originated (or, in the case of recording fees, deeds of trust recorded and
27 received) in the third quarter of 2018, ending on September 30, 2018. The
28 fourth Audit Report will cover loans originated (or, in the case of recording

1 fees, deeds of trust recorded and received) in the fourth quarter of 2018,
2 ending on December 31, 2018.

3 iii. No fewer than 200 loan files shall be tested during each Review
4 Period for per diem interest overcharges.

5 iv. No fewer than 200 loan files shall be tested during each Review
6 Period for recording fee overcharges.

7 d. Each Audit Report shall include the following information:

8 i. For per diem interest:

9 1. The total number of loans made in California by Nationstar
10 during the Review Period;

11 2. The number of loans with per diem interest charges in excess
12 of the amount permitted by California Code of Regulations, title 10,
13 section 1457, subdivision (d), Financial Code section 50204,
14 subdivision (o), and Civil Code section 2948.5 (per diem interest
15 overcharges). The Auditor shall conduct this analysis in accordance
16 with standards satisfactory to the Department. For purposes of
17 calculating the number of loans with per diem interest overcharges,
18 the Auditor shall exclude any loan where Nationstar issued the
19 borrower a refund equal to or exceeding the amount of the overcharge
20 within 30 days of the disbursement date of the transaction;

21 3. The number of loans where the Auditor found per diem
22 interest overcharges, but where Nationstar issued the borrower a
23 refund equal to or exceeding the amount of the overcharge within 30
24 days of the disbursement date of the transaction;

25 4. For each loan reviewed, the borrower loan number, name,
26 property address, loan amount, loan date, per diem interest charged,
27 per diem interest that should have been charged under California
28 Code of Regulations, title 10, section 1457, subdivision (d), Financial

1 Code section 50204, subdivision (o), and Civil Code section 2948.5,
2 overcharge amount (if any), date of refund (if applicable), and
3 evidence of refund (if applicable) in the form of a canceled check and
4 accompanying correspondence mailed to the borrower;

5 5. Identification of any refund payment that has been returned or
6 remains outstanding for loans specified in paragraph 5(d)(i)(3) above;

7 6. The total number of loans for which Nationstar failed to
8 include in the loan file, the required documentation of the actual
9 disbursement date of the loan proceeds needed to determine if excess
10 per diem interest was charged; and

11 7. The average rate of per diem interest overcharges for the
12 sample tested.

13 ii. For recording fees:

14 1. The total number of loans for which recorded deeds of trust
15 were received during the Review Period;

16 2. The number of loans with recording fee charges in excess of
17 the amount permitted by Financial Code section 22336, subdivision
18 (a), Financial Code section 50505, subdivision (b), and 12 Code of
19 Federal Regulations part 1026.19, subdivision (f)(3) (recording fee
20 overcharges). The Auditor shall conduct this analysis in accordance
21 with standards satisfactory to the Department. For purposes of
22 calculating the number of loans with recording fee overcharges, the
23 Auditor shall exclude any loan where Nationstar or the applicable title
24 company issued the borrower a refund equal to or exceeding the
25 amount of the overcharge within 90 days of Nationstar's receipt of
26 recorded copies of the deed of trust;

27 3. The number of loans where the Auditor found recording fee
28 overcharges, but where Nationstar, or the applicable title company,

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issued the borrower a refund equal to or exceeding the amount of the overcharge within 90 days of receipt of the recorded deed of trust;

4. For each loan reviewed, the borrower loan number, name, property address, loan amount, loan date, recording fee charged, recording fee that should have been charged under 12 Code of Federal Regulations part 1026.19, subdivision (f)(3), overcharge amount (if any), date of refund (if applicable), and evidence of refund (if applicable) in the form of a canceled check and accompanying correspondence mailed to the borrower; and,

5. Identification of any refund payment that has been returned or remains outstanding for loans specified in paragraph 5(d)(ii)(3) above;

6. The total number of loans for which Nationstar failed to include in the loan file, the required documentation of the actual recording fees needed to determine if excess recording fees were charged; and,

7. The average rate or recording fee overcharges for the sample tested.

iii. The Auditor will report a loan file as evidencing an overcharge if Nationstar cannot timely provide adequate documentation of compliance within fourteen days of the Auditor’s request, or if the documentation Nationstar provides shows evidence of overcharges.

iv. Nationstar shall deliver each Audit Report to the Department within 120 days of the conclusion of each applicable Review Period as set forth in paragraph 5(c)(i-ii). Thus, the Audit Reports will be due on July 29, 2018, October 28, 2018, January 28, 2019, and April 30, 2019.

6. Payment of Refunds. In compliance with this Order, Nationstar agrees to refund the following:

1 a. Per Diem Interest Overcharges. Nationstar represents that in all the files
2 originated between May 1, 2009 and March 31, 2014, it has already sent refunds in the
3 amount of \$2,526,962.25 to all affected borrowers according to the instructions set forth by
4 the Department.

5 b. Recording Fee Overcharges. Nationstar represents that in all the files
6 originated between May 1, 2009 and March 31, 2014, it has already sent refunds in the
7 amount of \$1,791,821.64 to all affected borrowers according to the instructions set forth by
8 the Department.

9 c. Refunds Identified by the Audit Reports. Nationstar shall issue refunds of all
10 per diem interest and recording fee overcharges identified in each quarterly Audit Report
11 within 30 days of the date of the Audit Report. Nothing in this Order shall preclude
12 Nationstar from seeking reimbursement from title companies for recording fee refunds that
13 Nationstar issues to borrowers. Nationstar shall provide evidence of issuance of such
14 refunds, in the form of a canceled check and accompanying correspondence mailed to the
15 borrower, to the Department within 60 days of the Auditor's issuance of each Audit Report.
16 Refund amounts shall be equal to the amount of the overcharge plus 10 percent per annum,
17 calculated from the date of the overcharge. Notwithstanding paragraph 13 of this Order,
18 nothing in this Order shall be interpreted as relieving Nationstar of its obligation to refund
19 overcharges for loan files that are not subject to review by the Auditor, or as precluding the
20 Department, under existing legal authority, from ordering Nationstar to conduct further
21 audits of such files and issue necessary refunds.

22 d. Refund of Origination Fee. Nationstar shall issue a refund of \$120.00 plus 10
23 percent per annum from the date of the charge to each borrower who paid a \$120.00
24 origination fee discussed in paragraph (I)(3), above. Nationstar shall make these refunds
25 within 30 days of the Effective Date of this Order. Nationstar shall provide evidence of
26 issuance of these refunds to the Department within 60 days from the Effective Date of the
27 Order. Nationstar has represented to the Department that 1,637 borrowers paid this fee.
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1 7. Refund Correspondence. With respect to any refunds issued directly by Nationstar
2 pursuant to paragraphs 6(c) and (d) above, Nationstar shall accompany all refunds made to
3 consumers with the following statement: “As a result of an examination by the Department
4 of Business Oversight, a refund in the amount of \$[REFUND AMOUNT] is being made for
5 your benefit.”

6 8. Payment of Penalties. Nationstar shall pay the following penalties:

7 a. The amount of \$4,800,000.00 for the violations identified in paragraphs G, I
8 and M, above, and the Released Matters as defined in paragraph 13 below.

9 b. After the Nationstar’s delivery of each Audit Report required by paragraph
10 5(d)(iv), Nationstar shall pay a stipulated penalty of \$250.00 per violation, with the total
11 number of violations for Nationstar’s originations for the Review Period calculated as
12 follows:

13 i. Number of per diem interest overcharges = [per diem interest
14 overcharge rate in the sample reviewed by the Auditor] × [Nationstar’s total
15 California loan origination volume for the Review Period].

16 ii. Number of recording fee overcharges = [recording fee overcharge rate
17 in the sample reviewed by the Auditor] × [Nationstar’s total California loan
18 origination volume for the Review Period].

19 c. The payment of the penalties set forth in subsection (a) of this paragraph shall
20 be due within 30 days of the Effective Date of this Order.

21 d. The payment of penalties set forth in subsection (b) of this paragraph will be
22 paid within 30 days of the due dates of each Audit Report, as set forth in paragraph 5(d)(iv).

23 e. All payments of penalties shall be made in the form of a cashier’s check or
24 Automated Clearing House deposit to the “Department of Business Oversight” and
25 transmitted to the attention of: Accounting - Litigation, at the Department of Business
26 Oversight located at 1515 K Street, Suite 200, Sacramento, California 95814. Notice of all
27 payments shall be sent concurrently to Charles Carriere, Counsel, Enforcement Division, at
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1 the Department of Business Oversight located at One Sansome Street, Suite 600, San
2 Francisco, California 94104.

3 9. Payment of Costs. Nationstar shall pay the Department \$200,000.00 for the
4 Department's investigative costs relating to the violations described herein. This amount does not
5 include costs incurred by Department examiners during their examinations of Nationstar, or the
6 costs of any follow up work done by those examiners, which Nationstar shall pay separately.
7 Payment shall be made in the form set forth in paragraph 8(e) above and is due within 30 days of
8 the Effective Date of this Order.

9 10. Policies and Procedures. Nationstar has submitted to the Commissioner a copy of
10 Nationstar's proposed policies and procedures that sets forth all policies and procedures that will be
11 implemented within 60 days of the Effective Date of this Order by Nationstar to ensure compliance
12 with the laws set forth herein. Nationstar agrees to adhere, at all times, to policies and procedures
13 that comply with federal and state laws.

14 11. Suspension of License for Failure to Comply with Order. If Nationstar fails to meet
15 any deadline or any requirement in paragraphs 5 through 9 of this Order, other than inadvertent and
16 isolated errors, the Department will notify Nationstar of the alleged failure in writing, and provide
17 Nationstar 30 days to meet and confer with the Department and cure the alleged failure (Cure
18 Period) prior to the Department immediately suspending Nationstar's CFL and CRMLA licenses.
19 Nationstar agrees that if it fails to meet any deadline or any requirement in paragraphs 5 through 9
20 of this Order, having received due notice in writing from the Department of such alleged failure to
21 comply but having failed to cure the alleged failure to meet any deadline or any requirement during
22 the Cure Period, Nationstar shall be immediately suspended from lending under its CFL and
23 CRMLA licenses until the deadline or requirement is met. Nationstar hereby waives any notice and
24 hearing rights to contest the immediate suspension from lending resulting from failure to comply
25 with this Order that may be afforded under the Financial Code, the Administrative Procedure Act,
26 the Code of Civil Procedure, or any other provisions of law.

27 12. Third Party Actions. The parties agree that this Order does not create any private
28 rights or remedies against Nationstar, create any liability for Nationstar, constitute evidence of any

1 wrongdoing by Nationstar for purposes of any third-party proceeding, or limit defenses of
2 Nationstar for any person or entity not a party to this Order.

3 13. Full and Final Settlement and Release. The parties hereby acknowledge and agree that
4 this Order is intended to constitute a full, final, and complete resolution of the violations of California
5 law occurring between May 1, 2009 and March 31, 2014, which are described herein or cited in the
6 reports of exam for the 2011 Exam and the 2014 Exam (hereafter, “Released Matters”). No further
7 proceedings or actions will be brought by the Commissioner in connection with the Released Matters,
8 except an action to suspend the licenses of Nationstar to enforce compliance with the terms of this
9 Order as specified in paragraph 11 or an action to order Nationstar to conduct audits and issue
10 necessary refunds as specified in paragraph 6(c). Notwithstanding this paragraph, the Commissioner
11 may commence a proceeding or action based upon any violation which Nationstar knowingly
12 concealed from the Commissioner. With respect to any further allegations or actions, Nationstar
13 reserves all rights under applicable law, unless otherwise waived in this Order as specified in
14 paragraph 11, including any legal or equitable defenses including, the statute of limitations. This
15 release applies only to the Parties to this Order and does not bind any other agency.

16 14. Binding. This Order is binding on all heirs, assigns, and/or successors in interest of
17 the Parties.

18 15. Commissioner’s Duties. The Parties further acknowledge and agree that nothing
19 contained in this Order shall operate to limit the Commissioner’s ability to assist any other agency
20 (city, county, state or federal) with any investigation or prosecution, administrative, civil or
21 criminal, brought by any such agency against Nationstar or any other person based upon any of the
22 activities alleged in this Order or otherwise.

23 16. Rights to Enforce Payment or Money Judgment. Nationstar agrees the facts and
24 violations set forth in paragraphs G, I, and M, above, in this Order may be taken as true without
25 further proof in any case brought under Title 11 of the United States Code or subsequent civil
26 litigation the Department may pursue to enforce its rights to any payment or money judgment under
27 the terms of this Order, including but not limited to, any complaint brought under 11 U.S.C. § 523
28 in any proceeding, and that this Order shall have collateral estoppel effect in any such case.

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

4 18. Counterparts. The Parties agree that this Order may be executed in one or more
5 separate counterparts, each of which when so executed, shall be deemed an original. Such
6 counterparts shall together constitute and be one and the same instrument.

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

11 20. Headings and Governing Law. The headings to the paragraphs of this Order are
12 inserted for convenience only and will not be deemed a part hereof or affect the construction or
13 interpretation of the provisions hereof. This Order shall be construed and enforced in accordance
14 with and governed by California law.

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

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

3 23. Voluntary Agreement. Nationstar enters into this Order voluntarily and without
4 coercion and acknowledges that no promises, threats or assurances have been made by the
5 Commissioner or any officer, or agent thereof, about this Order.

6 24. Effective Date. This Order shall not become effective until signed by all Parties and
7 delivered by the Commissioner’s counsel by email to Nationstar’s counsel at
8 Tony.Villani@nationstarmail.com.

9 25. Public Record. Nationstar acknowledges that this Order is a public record.

10 26. Authority to Execute. Each signatory hereto covenants that he/she possesses all
11 necessary capacity and authority to sign and enter into this Order.

JAN LYNN OWEN
Commissioner of Business Oversight

14 Dated: December 4, 2017

15 BY: _____
16 Mary Ann Smith
17 Deputy Commissioner
18 Enforcement Division

NATIONSTAR MORTGAGE, LLC doing business as
MR. COOPER

20 Dated: November 29, 2017

21 BY: _____
22 Jay Bray
23 Chief Executive Officer
24 Nationstar Mortgage, LLC
25 doing business as Mr. Cooper

26 APPROVED AS TO FORM:

27 _____
28 Elizabeth L. McKeen, Esq.
O’Melveny & Myers LLP
Counsel for Nationstar Mortgage, LLC
doing business as Mr. Cooper