BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:

THE COMMISSIONER OF BUSINESS OVERSIGHT,

Complainant,

v.

NATIONSTAR MORTGAGE, LLC doing business as MR. COOPER,

Respondent.

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

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CONSENT ORDER
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).


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

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

1. Nationstar charged excess per diem interest in violation of Civil Code section 2948.5, Financial Code section 50204, subdivision (o), and California Code of Regulations, title 10, section 1457, subdivision (d).


3. Nationstar charged borrowers a $120 fee paid to a Nationstar affiliate, Solutionstar, in violation of 12 Code of Federal Regulations part 1024.14(c), and Financial Code section 22346.

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

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

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

1. $2,526,962.25 in per diem interest refunds for 17,487 loan originations made between May 1, 2009 and March 31, 2014.

2. $1,790,276.41 in recording fee refunds for 46,474 loan originations made between May 1, 2009 and March 31, 2014.
3. On or about April 7, 2017, Nationstar reported an additional $1,545.23 in recording fee refunds that it had mistakenly omitted from its first round of self-audit refunds.

M. As the result of a Department investigation, the Department learned that Nationstar had inadequate policies and procedures in place requiring that Nationstar employees contact prior servicers in cases where borrowers submitted complaints or requests for information relating to problems that arose with prior servicers. Due to this lack of policies and procedures, Nationstar failed to conduct a “reasonable investigation” as required by 12 United States Code section 2605, subdivision (e), in response to a borrower dispute that was the subject of a consumer complaint received by the Department. This failure constitutes a violation of Financial Code section 22346, subdivision (a), and Financial Code section 50505, subdivision (a).

N. The Commissioner finds that this action is appropriate, in the public interest, and consistent with the purposes fairly intended by the policies and provisions of the CFL and CRMLA.

Terms

1. Purpose. The purpose of this Order is to resolve the issues described above in a manner that avoids the expense of a hearing and possible further court proceedings, is in the public interest, protects consumers, and is consistent with the purposes, policies, and provisions of the CFL and the CRMLA.

2. Finality of Order. Nationstar hereby agrees to comply with the Commissioner’s Order and, further, stipulates that this Order is hereby deemed a final and enforceable order issued pursuant to the Commissioner’s authority under Financial Code sections 22172, 22712, 50321, 50504 and 50513.

3. Order to Discontinue Violations and Desist and Refrain Order. Nationstar stipulates that in accordance with Financial Code sections 50321 and 22306, Nationstar will immediately discontinue and desist and refrain from the violations set forth in paragraphs G, I and M, above.

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

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

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

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

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

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

ii. The second Audit Report will cover loans originated (or, in the case
of recording fees, deeds of trust recorded and received) in the second quarter
of 2018, ending on June 30, 2018. The third Audit Report will cover loans
originated (or, in the case of recording fees, deeds of trust recorded and
received) in the third quarter of 2018, ending on September 30, 2018. The
fourth Audit Report will cover loans originated (or, in the case of recording
fees, deeds of trust recorded and received) in the fourth quarter of 2018, ending on December 31, 2018.

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

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

d. Each Audit Report shall include the following information:

i. For per diem interest:

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

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

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

4. For each loan reviewed, the borrower loan number, name, property address, loan amount, loan date, per diem interest charged, per diem interest that should have been charged under California Code of Regulations, title 10, section 1457, subdivision (d), Financial...
Code section 50204, subdivision (o), and Civil Code section 2948.5, 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;

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

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

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

ii. For recording fees:

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

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

3. The number of loans where the Auditor found recording fee overcharges, but where Nationstar, or the applicable title company,
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:
a. **Per Diem Interest Overcharges.** Nationstar represents that in all the files originated between May 1, 2009 and March 31, 2014, it has already sent refunds in the amount of $2,526,962.25 to all affected borrowers according to the instructions set forth by the Department.

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

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

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

8. **Payment of Penalties.** Nationstar shall pay the following penalties:
   a. The amount of $4,800,000.00 for the violations identified in paragraphs G, I and M, above, and the Released Matters as defined in paragraph 13 below.
   b. After the Nationstar’s delivery of each Audit Report required by paragraph 5(d)(iv), Nationstar shall pay a stipulated penalty of $250.00 per violation, with the total number of violations for Nationstar’s originations for the Review Period calculated as follows:
      i. Number of per diem interest overcharges = [per diem interest overcharge rate in the sample reviewed by the Auditor] × [Nationstar’s total California loan origination volume for the Review Period].
      ii. Number of recording fee overcharges = [recording fee overcharge rate in the sample reviewed by the Auditor] × [Nationstar’s total California loan origination volume for the Review Period].
   c. The payment of the penalties set forth in subsection (a) of this paragraph shall be due within 30 days of the Effective Date of this Order.
   d. The payment of penalties set forth in subsection (b) of this paragraph will be paid within 30 days of the due dates of each Audit Report, as set forth in paragraph 5(d)(iv).
   e. All payments of penalties shall be made in the form of a cashier’s check or Automated Clearing House deposit to the “Department of Business Oversight” and transmitted to the attention of: Accounting - Litigation, at the Department of Business Oversight located at 1515 K Street, Suite 200, Sacramento, California 95814. Notice of all payments shall be sent concurrently to Charles Carriere, Counsel, Enforcement Division, at
the Department of Business Oversight located at One Sansome Street, Suite 600, San Francisco, California 94104.

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

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

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

12. **Third Party Actions.** The parties agree that this Order does not create any private 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 Nationstar for any person or entity not a party to this Order.

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

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

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

16. **Rights to Enforce Payment or Money Judgment.** Nationstar agrees the facts and violations set forth in paragraphs G, I, and M, above, in this Order may be taken as true without further proof in any case brought under Title 11 of the United States Code or subsequent civil litigation the Department may pursue to enforce its rights to any payment or money judgment under the terms of this Order, including but not limited to, any complaint brought under 11 U.S.C. § 523 in any proceeding, and that this Order shall have collateral estoppel effect in any such case.
17. **Independent Legal Advice.** Each of the Parties represents, warrants, and agrees that it has received independent advice from its attorney(s) and/or representatives with respect to the advisability of executing this Order.

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

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

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

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

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

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

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

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

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

JANLYNN OWEN
Commissioner of Business Oversight

Dated: December 4, 2017

BY: ________________________________
Mary Ann Smith
Deputy Commissioner
Enforcement Division

NATIONSTAR MORTGAGE, LLC doing business as MR. COOPER

Dated: November 29, 2017

BY: ________________________________
Jay Bray
Chief Executive Officer
Nationstar Mortgage, LLC
doing business as Mr. Cooper

APPROVED AS TO FORM:

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

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CONSENT ORDER