

ORDER SUMMARY – Case Number: C-21-3086

Names and License Nos.: E MORTGAGE CAPITAL, INC., NMLS No. 1416824,
WESAM H. HIJAZIN, President and Owner, NMLS No. 274266,
JOSEPH NAGIB SHALABY, CEO and Owner, NMLS No. 393535,
FRANK PETER MARINO, III, NMLS No. 1982526

Order Number: C-21-3086-22-CO01

Effective Date: January 5, 2023

License Effect (Stayed): E Mortgage Capital, Inc.’s consumer loan company license is revoked with the revocation stayed for 3 years subject to conditions.

Prohibitions (Stayed): Respondents E Mortgage Capital, Hijazin, Shalaby, and Marino, are prohibited from the consumer loan and mortgage broker industries for three (3) years, with the prohibitions stayed subject to conditions.

Investigation Costs	\$ 7,277.10		Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 1/5/2023
Fine (Partially Stayed)	\$ 220,000	\$75,000 Paid \$145,00 Stayed	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 1/5/2023
Financial Literacy and Education	\$30,000		Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 1/5/2023

Comments:

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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

No.: C-21-3086-22-CO01

CONSENT ORDER

E MORTGAGE CAPITAL, INC., NMLS No.
1416824,
WESAM H. HIJAZIN, President and Owner,
NMLS No. 274266,
JOSEPH NAGIB SHALABY, Chief Executive
Officer and Owner, NMLS No. 393535,
CHRISTOPHER ADAM HILL, Division
Manager and Mortgage Loan Originator, NMLS
No. 1065651, and
FRANK PETER MARINO, III, NMLS No.
1982526,

Respondents.

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COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Lucinda Fazio, Division of Consumer Services Director, and E Mortgage Capital, Inc. (Respondent EMC), Wesam H. Hijazin; President and Owner, Joseph Nagib Shalaby, Chief Executive Officer and Owner, and Frank Peter Marino, III. (collectively "Respondents"), and finding that the issues raised in the above-captioned matter only as to those Respondents identified by name herein may be economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter 31.04 of the Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

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AGREEMENT AND ORDER

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The Department of Financial Institutions, Division of Consumer Services (Department) and Respondents have agreed upon a basis for resolution of the matters alleged in Statement of Charges

1 No. C-21-3086-22-SC01 (Statement of Charges), entered October 27, 2022, (copy attached hereto).
2 Pursuant to chapter 31.04 RCW, the Consumer Loan Act (Act), and RCW 34.05.060 of the
3 Administrative Procedure Act, Respondents hereby agree to the Department's entry of this Consent
4 Order and further agree that the issues raised in the above-captioned matter may be economically and
5 efficiently settled by entry of this Consent Order. The parties intend this Consent Order to fully
6 resolve the Statement of Charges and agree that the Respondents do not admit any wrongdoing by its
7 entry. Respondents are agreeing not to contest the Statement of Charges in consideration of the terms
8 of this Consent Order.

9 Based upon the foregoing:

10 **A. Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter
11 of the activities discussed herein.

12 **B. Waiver of Hearing.** It is AGREED that Respondents have been informed of the right to a
13 hearing before an administrative law judge, and hereby waive their right to a hearing and any and all
14 administrative and judicial review of the issues raised in this matter, or of the resolution reached
15 herein. Accordingly, Respondents, by their signatures and the signatures of their representatives
16 below, withdraw their appeals to the Office of Administrative Hearings.

17 **C. No Admission of Liability.** The parties intend this Consent Order to fully resolve the
18 Statement of Charges and agree that Respondents do not admit to any wrongdoing by its entry.

19 **D. Cease and Desist.** It is AGREED that Respondents shall cease and desist from engaging
20 in conduct that violates the Act, including, but not limited to, directly or indirectly engaging in any
21 unfair or deceptive practices toward any person, and distributing any false, deceptive, or misleading
22 advertising. Respondents shall cease and desist from advertising using all of the alleged false,
23 deceptive, and misleading representations, described in the Statement of Charges Paragraphs 1.4-1.7,

1 and 1.9. Respondents shall also cease and desist from engaging in unlicensed mortgage loan
2 originator activity.

3 **E. Revocation of Consumer Loan Company License (Stayed).** It is AGREED that
4 Respondent EMC's Consumer Loan Company license is revoked. It is further AGREED and
5 ORDERED that Respondent EMC's license revocation is stayed for three (3) years from the date of
6 entry of this Consent Order contingent upon compliance with the Act and related rules, and the terms
7 of this Consent Order, unless lifted pursuant to Paragraph M. If the Department does not seek to lift
8 the stay and impose the stayed revocation pursuant to Paragraph M within three (3) years from the
9 date of entry of this Consent Order, the revocation expires without further notice of action by the
10 Department and Paragraph E is vacated.

11 **F. Prohibition from Industry (Stayed).** It is AGREED that, for a period of three (3) years
12 from the date of entry of this Order, Respondents are prohibited from participating, in any capacity,
13 in the conduct of the affairs of any consumer loan company or mortgage broker licensed by the
14 Department or subject to licensure or regulation by the Department. It is further AGREED and
15 ORDERED that Respondents' prohibition from the consumer loan and mortgage broker industries is
16 stayed contingent upon compliance with the Act and related rules, and the terms of this Consent
17 Order, unless lifted pursuant to Paragraph M. If the Department does not seek to lift the stay and
18 impose the stayed prohibition pursuant to Paragraph M within three (3) years from the date of entry
19 of this Consent Order, the prohibition expires without further notice of action by the Department and
20 Paragraph F is vacated.

21 **G. Affirmative Action.** It is AGREED that Respondent EMC shall take the following
22 affirmative action:

- 23 1. Respondent EMC shall timely and completely respond to all requests for documents
24 and information made by the Department as part of an examination or investigation.

2. Respondent EMC shall maintain records in compliance with the Act, including, but not limited to maintain records for all advertising distributed by Washington branches.
3. Respondent EMC shall implement and maintain a policy that requires compliance review and record retention of all advertising material before Respondent EMC will pay or reimburse Washington branches for advertising costs.
4. Respondent EMC shall conduct an audit of such payment/reimbursement records and record retention described in item 3 at least annually for a period of (3) years to verify the policy in item 3 is being followed. Respondent EMC shall maintain records of the results of the audits and produce them to the Department upon request.

H. Fine (Partially Stayed). It is AGREED that Respondents shall pay a fine to the Department in the amount of \$220,000, with \$75,000 paid (Paid Fine), and \$145,000 stayed (Stayed Fine). The Paid Fine shall be paid pursuant to Paragraph K. The Stayed Fine shall be stayed for a period of three (3) years from the date of entry of this Consent Order contingent on Respondents' compliance with the Act and related rules, and this Consent Order, unless lifted pursuant to Paragraph M. Absent any action by the Department to lift the Stayed Fine pursuant to Paragraph M, Respondents' obligation to pay the Stayed Fine shall expire three years from the date of entry of this Consent Order without further action or notice by the Department.

I. Financial Literacy Payment. It is AGREED that, for a reduction in the Paid Fine and pursuant to RCW 31.04.093(7), Respondents shall pay \$30,000.00 to the Department for purposes of financial literacy and education. It is further AGREED that Respondents shall not advertise or publicize the Financial Literacy Payment.

J. Investigation Fee. It is AGREED that Respondents shall pay to the Department an investigation fee of \$7,277.10 pursuant to Paragraph K.

K. Payments. It is AGREED that the Paid Fine and the Investigation Fee shall be paid together in one \$82,277.10 cashier's check made payable to the "Washington State Treasurer." The Financial Literacy Payment shall be paid in one \$30,000 Cashier's Check made payable to the

1 “Washington State Treasurer.” The payments shall be delivered to the Department with this Consent
2 Order fully executed by Respondents.

3 **L. Compliance Examination.** It is AGREED that subject to the Department’s availability,
4 within two (2) years of the entry of this Consent Order, at Respondents’ cost, the Department will
5 conduct a full scope compliance examination of Respondents’ business, including examining
6 Respondents’ compliance with this Consent Order, the Act, related rules, applicable federal law,
7 policies, and procedures. Only violations that occur after the date of entry of this Consent Order will
8 be considered for assessing compliance with this Consent Order.

9 **M. Lifting of Stay and Imposition of Stayed Sanctions.** It is AGREED that:

10 1. If during the stay, the Department determines that Respondents have not complied
11 with the Act, related rules, or this Consent Order, and the Department seeks to lift the
12 stays and impose the Stayed Revocation, Stayed Prohibition, and/or Stayed Fine
(Stayed Sanctions), the Department will first serve Respondents with a written notice
of alleged noncompliance.

13 2. The notice will include:

- 14 a. A description of the alleged noncompliance;
- 15 b. A statement that the Department seeks to lift the stay and impose the Stayed
16 Sanctions;
- 17 c. Notice that Respondents can contest the Department’s determination of
18 noncompliance in an adjudicative hearing before an Administrative Law Judge
(ALJ) of the Office of Administrative Hearings (OAH); and
- 19 d. Notice that the notification and adjudicative hearing process provided in this
20 Paragraph applies only to this Consent Order solely in the event any
Respondent chooses to contest the Department’s determination of
noncompliance.

21 3. Any Respondent who wishes to contest the Department’s determination of
22 noncompliance will have twenty (20) days from the date of receipt of the
23 Department’s notice to submit a written request to the Department for an adjudicative
hearing.

- 1 4. The scope and issues of the adjudicative hearing are limited solely to whether or not
2 Respondents are in violation of the terms of this Consent Order.
- 3 5. At the conclusion of the hearing, the ALJ will issue an initial decision. Either party
4 may file a Petition for Review of that initial decision with the Director of the
5 Department.
- 6 6. **DEFAULT:** If any Respondent does not timely request an adjudicative hearing, the
7 Department will impose the Stayed Sanctions without further notice.

8 **N. Authority to Execute Order.** It is AGREED that the undersigned have represented and
9 warranted that they have the full power and right to execute this Consent Order on behalf of the
10 parties represented.

11 **O. Non-Compliance with Order.** It is AGREED that Respondents understand that failure to
12 abide by the terms and conditions of this Consent Order may result in further legal action by the
13 Director. In the event of such legal action, Respondents may be responsible to reimburse the Director
14 for the cost incurred in pursuing such action, including but not limited to, attorney fees.

15 **P. Voluntarily Entered.** It is AGREED that Respondents have voluntarily entered into this
16 Consent Order, which is effective when signed by the Director's designee.

17 **Q. Completely Read, Understood, and Agreed.** It is AGREED that Respondents have read
18 this Consent Order in its entirety and fully understand and agree to all of the same.

19 **R. Counterparts.** This Consent Order may be executed by the Respondents in any number
20 of counterparts, including by facsimile or e-mail of a .pdf or similar file, each of which shall be
21 deemed to be an original, but all of which, taken together, shall constitute one and the same Consent
22 Order.

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1 **RESPONDENTS:**

2 E Mortgage Capital, Inc.

3 By:

4 /s/

5 _____
6 Wesam H. Hijazin
7 President and Owner

12/29/2022

Date

8 E Mortgage Capital, Inc.

9 By:

10 _____
11 Joseph Nagib Shalaby
12 Chief Executive Officer and Owner

Date

13 /s/

14 _____
15 Wesam H. Hijazin
16 Individually

12/29/2022

Date

17 _____
18 Joseph Nagib Shalaby
19 Individually

Date

20 _____
21 Frank Peter Marino, III
22 Individually

Date

23 Approved for Entry:

24 _____
25 Jessica Creager, WSBA No.42183
26 Attorney at Law
27 Seattle Litigation Group
28 Attorney for Respondents

Date

29 DO NOT WRITE BELOW THIS LINE

1 **RESPONDENTS:**

2 E Mortgage Capital, Inc.

3 By:

4 _____
Wesam H. Hijazin
President and Owner

_____ Date

5 E Mortgage Capital, Inc.

6 By:

7 /s/

_____ 12/29/2022

8 _____
Joseph Nagib Shalaby
Chief Executive Officer and Owner

_____ Date

9 _____
10 Wesam H. Hijazin
Individually

_____ Date

11 /s/

_____ 12/29/2022

12 _____
Joseph Nagib Shalaby
Individually

_____ Date

13 _____
14 Frank Peter Marino, III
Individually

_____ Date

15 Approved for Entry:

16 _____
17 Jessica Creager, WSBA No.42183
18 Attorney at Law
19 Seattle Litigation Group
20 Attorney for Respondents
21 _____

_____ Date

22 DO NOT WRITE BELOW THIS LINE

1 **RESPONDENTS:**

2 E Mortgage Capital, Inc.

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4 _____
Wesam H. Hijazin
President and Owner

_____ Date

5 E Mortgage Capital, Inc.

6 By:

7 _____
Joseph Nagib Shalaby
Chief Executive Officer and Owner

_____ Date

8 _____
Wesam H. Hijazin
Individually

_____ Date

9 _____
Joseph Nagib Shalaby
Individually

_____ Date

10 /s/

_____ 12/29/2022

11 _____
Frank Peter Marino, III
Individually

_____ Date

12 Approved for Entry:

13 _____
Jessica Creager, WSBA No.42183
Attorney at Law
14 Seattle Litigation Group
15 Attorney for Respondents

_____ Date

16 DO NOT WRITE BELOW THIS LINE

1 **RESPONDENTS:**

E Mortgage Capital, Inc.

2 By:

3
4 _____
Wesam H. Hijazin
President and Owner

_____ Date

5 E Mortgage Capital, Inc.

6 By:

7 _____
8 Joseph Nagib Shalaby
Chief Executive Officer and Owner

_____ Date

9
10 _____
Wesam H. Hijazin
Individually

_____ Date

11
12 _____
13 Joseph Nagib Shalaby
Individually

_____ Date

14
15 _____
Frank Peter Marino, III
Individually

_____ Date

16
17 Approved for Entry:

18 _____
/s/

_____ December 29, 2022

19 _____
Jessica Creager, WSBA No.42183
Attorney at Law
20 Seattle Litigation Group
Attorney for Respondents

_____ Date

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22 **DO NOT WRITE BELOW THIS LINE**

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THIS ORDER ENTERED THIS 5th DAY OF January, 2023.



/s/
Lucinda Fazio, Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

/s/
KENDALL FREED
Financial Legal Examiner

Approved by:

/s/
JACK McCLELLAN
Enforcement Chief

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **DIVISION OF CONSUMER SERVICES**

4 IN THE MATTER OF DETERMINING
5 Whether there has been a violation of the
6 Consumer Loan Act of Washington by:

7 E MORTGAGE CAPITAL, INC., NMLS No.
8 1416824,
9 WESAM H. HIJAZIN, President and Owner,
10 NMLS No. 274266,
11 JOSEPH NAGIB SHALABY, Chief Executive
Officer and Owner, NMLS No. 393535,
CHRISTOPHER ADAM HILL, Division
Manager and Mortgage Loan Originator, NMLS
No. 1065651, and
FRANK PETER MARINO, III, NMLS No.
1982526,

Respondents.

No. C-21-3086-22-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENT TO ENTER AN
ORDER TO CEASE AND DESIST, REVOKE
LICENSES, PROHIBIT FROM INDUSTRY,
ORDER AFFIRMATIVE ACTION, IMPOSE
FINE, COLLECT INVESTIGATION FEE,
and RECOVER COSTS AND EXPENSES

12 **INTRODUCTION**

13 Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial
14 Institutions of the State of Washington (Director) is responsible for the administration of chapter
15 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to
16 RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges
17 (Charges), the Director, through his designee, Division of Consumer Services Director Lucinda
18 Fazio, institutes this proceeding and finds as follows:

19 **I. FACTUAL ALLEGATIONS**

20 **1.1 Respondents.**

21 **A. E Mortgage Capital, Inc. (Respondent EMC)** was licensed by the Department of
22 Financial Institutions of the State of Washington (Department) to conduct business as a consumer
23 loan company on or about December 24, 2019, and continues to be licensed to date.

1 **B. Wesam H. Hijazin (Respondent Hijazin)** has been the President and Chief
2 Operating Officer of Respondent EMC since on or about June of 2020. As of date of this Statement
3 of Charges Respondent Hijazin owns 40% of the company. Respondent Hijazin is responsible for
4 compliance for Respondent EMC. Respondent Hijazin has never had a mortgage loan originator
5 licensed issued by the Department.

6 **C. Joseph Nagib Shalaby (Respondent Shalaby)** is the Chief Executive Officer (CEO)
7 of Respondent EMC and owns 60% of the company. Respondent Shalaby has been the CEO of
8 Respondent EMC at all times relevant to this Statement of Charges. Respondent Shalaby is
9 responsible for marketing for Respondent EMC. Respondent Shalaby previously held a mortgage
10 loan originator license issued by the Department that was surrendered effective December 31, 2021,
11 pursuant to Settlement Agreement and Consent Order C-22-3347-22-CO01.

12 **D. Christopher Adam Hill (Respondent Hill)** is currently licensed by the Department
13 as a mortgage loan originator and has been since at least March 18, 2020. Between February 29,
14 2020, and March 24, 2022, Respondent Hill was the Branch Manager of Respondent EMC's branch
15 located in Bellevue, Washington. As of the date of this Statement of Charges, Respondent Hill is
16 employed by Respondent EMC as a Division Manager.

17 **E. Frank Peter Marino, III (Respondent Marino)** has been employed by Respondent
18 EMC since on or about September 7, 2022. Respondent Marino has never been licensed by the
19 Department as a mortgage loan originator.

20 **1.2 Prior Complaints.** Between September 22, 2020, and September 14, 2022, the Department
21 received 10 consumer complaints against Respondent EMC about advertising of residential mortgage
22 loans to Washington consumers. On or about May 27, 2020, and again on or about September 1,
23 2020, the Department notified Respondent EMC that its direct mail solicitations appeared to violate
24 the Act, and advised Respondent EMC to implement a system designed to prevent future violations.

1 **1.3 Failure to Comply with Department’s Directives.**

2 **A. Enforcement Unit Investigation.** On or about October 1, 2020, the Department
3 issued a Directive No. 052769-20-DI01 to Respondent EMC requiring production of explanations
4 and documents, including Directive Document Request T to produce copies of all advertising in all
5 mediums distributed or published in Washington within the last 90 days. On or about October 23,
6 2020, Respondent EMC submitted a response. Respondent EMC did not provide any advertising
7 records in response to Document Request T. Respondent EMC had distributed or published
8 advertising in Washington during the requested time period as is more fully described in Paragraph
9 1.4 below. As such, Respondent EMC failed to comply with the Directive.

10 **B. Compliance Examination.** On or about January 6, 2021, the Department issued
11 a Directive for an examination to Respondent EMC requiring production of all advertising for the
12 time period of December 24, 2019, through December 31, 2020 (examination scope). Respondent
13 EMC provided a copy of only one template used for direct mail advertising labelled “Revised
14 Mailer.” On or about March 25, 2021, the Department e-mailed Respondent EMC’s designated
15 contact for the examination, Steven Manion, and again re-issued the Directive for a copy of all
16 advertising from the examination scope and provided additional direction clearly stating that the
17 Directive required production of all advertising material, including all advertising prior to the June 5,
18 2020, revision, and after that was marketed in Washington during the examination scope. On or
19 about March 29, 2021, Steven Manion of Respondent EMC responded to the e-mail and declined to
20 provide the records. On or about April 2, 2021, the Department e-mailed Steven Manion again to
21 reiterate that all outstanding examination requests were due no later than April 5, 2021. Respondent
22 EMC had distributed additional advertising that is more fully described in Paragraph 1.4 that was not
23 produced in response to the examination Directive. As such, Respondent EMC failed to fully comply
24 with the Directive.

1 **C. Additional Enforcement Unit Investigation.** On or about, April 20, 2021, the
2 Department’s enforcement unit sent an e-mail to Respondent EMC explaining that the Response to
3 the Department’s Directive No. 052769-20-DI01 was incomplete and provided additional explanation
4 regarding the records the Department believed were not provided. The Department’s enforcement
5 unit also reiterated that the records produced for the examination were incomplete. The Department
6 again reiterated the Directive from the examination to provide copies of all advertising regarding
7 residential mortgage loans marketed in Washington during the examination scope. On or about May
8 24, 2021, and May 26, 2021, the Department received additional records from Respondent including
9 copies of five direct mail templates, but the response was still incomplete as it failed to include copies
10 of text message advertisements and pre-recorded voicemail advertisements distributed to Washington
11 consumers during the examination scope further described in Paragraphs 1.6 and 1.7 below.

12 **1.4 Continued False, Deceptive, and Misleading Direct Mail Advertising.** After the
13 Department notified Respondent EMC that its direct mail solicitations appeared to violate the Act,
14 Respondent EMC continued to distribute direct mail solicitations in Washington advertising
15 residential mortgage loans that contained many of the same statements or representations that the
16 Department previously informed Respondent EMC appeared to violate the Act. The direct mail
17 solicitations also contained false, deceptive and misleading representations, and had inadequate
18 disclosures regarding terms.

19 **A. Financial Storm Solicitation.** On or about September 3, 2020, Respondent EMC
20 distributed 19,702 direct mail solicitations in Washington using template Financial Storm
21 Solicitation. The template Financial Storm Solicitation:

- 22 i. Failed to identify the name of the business on the envelope, or anywhere else
 reasonably noticeable to a recipient;
- 23 ii. Marked the envelope as a “Homeowner Notice Confidential” and represented
 that it included “Important Information Regarding your Home Loan;”
- 24 iii. Used an envelope designed to resemble a check where the sides ripped off;

- iv. Failed to clearly and conspicuously disclose whether the monthly payment advertised included amounts for taxes and insurance;
- v. Advertised a discounted interest rate and failed to clearly and conspicuously disclose the cost of the discount and that the rate is discounted;
- vi. Advertised “lowest interest rates ever;”
- vii. Advertised using the recipient’s current lender’s name both on the envelope and in the top left corner of the solicitation without disclosing Respondent EMC’s name with equal prominence and without clearly and conspicuously stating that Respondent EMC was not associated with or acting on behalf of the recipient’s current lender; and
- viii. Advertised the recipient could skip up to two mortgage payments.

B. Current Loan Solicitation. On or about September 3, 2020, Respondent EMC

distributed 85,177 direct mail solicitations in Washington using template Current Loan Solicitation.

The template Current Loan Solicitation:

- i. Advertised a new monthly payment amount to the recipient that represented it included obtaining available cash out of a specific amount, but calculated the new payment advertised without including the cash out advertised;
- ii. Advertised the recipient could have “Cash in hand as fast as 7 days” when Respondent EMC failed to substantiate this claim was true;
- iii. Advertised the recipient could skip up to two mortgage payments;
- iv. Represented a benefit of refinancing would be obtaining an escrow refund of a specific amount without disclosing that the actual amount available at closing of the refinance as a refund would depend on many factors and the recipient would likely have to fund a new escrow account at the closing of the refinance;
- v. Failed to clearly and conspicuously disclose whether the monthly payment advertised included amounts for taxes and insurance;
- vi. Advertised a discounted interest rate and failed to clearly and conspicuously disclose the cost of the discount and that the rate is discounted;
- vii. Advertised “\$0 Appraisal Options;”
- viii. Represented that the offer was the “Best Offer Guaranteed;” and
- ix. Advertised unavailable loan terms, including advertised to at least one of the recipients that the recipient was “prequalified for a new loan of \$296,694 at 2.25% interest and 2.64 APR when the solicitation stated in the fine print disclosure that the minimum loan amount was actually \$400,000.

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1 **C. Modified Current Loan Solicitation.** On or about October 28, 2020, Respondent
2 EMC distributed a direct mail solicitation to at least one Washington resident using a modified
3 template similar to the Current Loan Solicitation that:

- 4 i. Advertised “\$0 Appraisal Options, \$0 Origination Options, \$0 Processing
5 Options, \$0 Underwriting Options;”
- 6 ii. Advertised the recipient could receive cash in hand as fast as 10 days when
7 Respondent EMC failed to substantiate the claim was true;
- 8 iii. Represented that the offer was the “Best Offer Guaranteed;”
- 9 iv. Advertised a new monthly payment amount to the recipient that represented it
10 included obtaining available cash out of a specific amount, but calculated the
11 new payment advertised without including the cash out advertised; and
- 12 v. Failed to clearly and conspicuously disclose whether the monthly payment
13 advertised included amounts for taxes and insurance.

14 **D. Conventional Eligibility Solicitation.** On or about December 11, 2020, Respondent
15 EMC distributed a direct mail solicitation using template Conventional Eligibility Solicitation to at
16 least one Washington resident that:

- 17 i. Advertised “\$0 Appraisal;”
- 18 ii. Advertised the recipient could receive cash in hand as fast as 10 days when
19 Respondent EMC failed to substantiate the claim was true;
- 20 iii. Represented that the offer was the “Best Offer Guaranteed;”
- 21 iv. Advertised a new monthly payment amount to the recipient that represented
22 it included obtaining available cash out of a specific amount, but calculated
23 the new payment without including the cash out advertised; and
- 24 v. Failed to clearly and conspicuously disclose whether the monthly payment
 advertised included amounts for taxes and insurance;
- vi. Advertised the recipient could skip up to two mortgage payments; and
- vii. Advertised a discounted interest rate and failed to clearly and conspicuously
 disclose the cost of the discount and that the rate is discounted.

25 **E. Rate Reduction Notice.** Between September 28, 2020, and October 13, 2020,
26 Respondent EMC distributed a direct mail solicitation using template Rate Reduction Notice to at
27 least one Washington resident that:

- 28 i. Advertised using the recipient’s current lender’s name without disclosing
29 Respondent EMC’s name with equal prominence;
- 30 ii. Failed to identify the name of the business on the envelope, marked the
31 envelope as a “Homeowner Notice Confidential,” and represented that it

- 1 included "Important Information Regarding your Home Loan" and that the
2 recipient "Must Respond within 30 days;" and
3 iii. Used an envelope designed to resemble a check where the sides ripped off.

3 **1.5 False, Deceptive, and Misleading Internet Advertising.** Respondent EMC advertised on its
4 website emortgagecapital.com using false, deceptive, or misleading statements and representations.

5 **A.** On or about March 30, 2021, Respondent EMC advertised:

- 6 i. "Lowest Rates in the Market;"
7 ii. "No Fees Options;"
8 iii. "Our goal is to provide home loans to our clients while providing them with
9 the lowest interest rates and closing costs possible;"
10 iv. "Average closing time 10-14 days" when Respondent EMC failed to
11 substantiate the claim was true.

12 **B.** On or about September 19, 2022, Respondent EMC advertised:

- 13 i. "15-minute loan approvals;"
14 ii. Average closing time between 10-14 days;" when Respondent EMC failed to
15 substantiate the claim was true;
16 iii. That four other competitors named in a chart did not offer products or features
17 that were offered by Respondent EMC, such as "15-minute loan approvals,"
18 "non-QM & No income options", and "Average Closings between 10-14 days"
19 when the statements were false.

20 **1.6 False, Deceptive, and Misleading Text Message Advertising.** Between April of 2021 and
21 June of 2021, Respondent Hill sent at least 7 text messages to at least 3 Washington residents
22 advertising residential mortgage loans without obtaining their prior consent. The text messages
23 included the following false, deceptive, or misleading statements and representations:

- 24 **A.** Claimed that Respondent Hill worked with the recipient's current lender;
B. Claimed Respondent Hill of Respondent EMC worked with the recipients "mortgage
servicer" and they indicated the recipient's current interest rate was over 3%;
C. Stated Respondent Hill would cover the origination costs on the refinance offered;
D. Advertised an interest rate without disclosing the APR associated with the interest
rate;
E. Advertised a "no cost" refinance; and
F. Represented that the VA and Fannie Mae were covering all origination costs for
refinances where the borrower's current interest rate was higher than 3% when the
statement was false.

1 **1.7 Voicemails.** Between April of 2021 and June of 2021 Respondent Hill sent at least 3
2 prerecorded voicemails to at least 2 Washington residents without obtaining their prior consent. The
3 prerecorded voicemails included the following false, deceptive, or misleading statements:

- 4 A. Stated Respondent Hill received the recipient's current loan information from the
recipient's loan servicer;
- 5 B. Offered a specific interest rate without disclosing the corresponding APR;
- 6 C. Offered a zero cost loan.

7 **1.8 Unlicensed Mortgage Loan Originator Activity.** On or about September 12, 2022,
8 Respondent Marino made an unsolicited phone call to a consumer residing in Washington who had
9 just applied for a refinance of a residential mortgage loan with a different consumer loan company.
10 During the phone call, Respondent Marino offered to assist the consumer in obtaining a residential
11 mortgage loan, and solicited and offered to accept an application for a residential mortgage loan. On
12 or about September 13, 2022, Respondent Marino made another phone call to the same consumer and
13 again offered to assist the consumer in obtaining a residential mortgage loan, and solicited and
14 offered to accept an application for a residential mortgage loan.

15 **1.9 False, Deceptive, and Misleading E-Mail Advertising.** On or about September 12, 2022,
16 Respondent Marino sent an e-mail advertisement to the same consumer who had no pre-existing
17 relationship with Respondent Marino or Respondent EMC. In the email advertisement, Respondent
18 Marino represented he was a "senior mortgage banker," offered terms of a residential mortgage loan,
19 offered to assist the recipient in obtaining a residential mortgage loan, and solicited and offered to
20 accept an application for a residential mortgage loan. Respondent Marino's email advertisement
21 failed to clearly and conspicuously identify that the message was an advertisement and failed to
22 include a clear and conspicuous notice of the opportunity to decline to receive further commercial
23 electronic mail messages. Respondent Marino's email advertisement also included the following
24 false, deceptive, or misleading statements:

- A. Respondent Marino was “reaching out regarding [the recipient’s] recent mortgage inquiry;”
- B. the recipient had “been a cherished customer of ours in the past and we would love to continue to serve you with the best rates in the nation moving forward as well;”
- C. “At E Mortgage Capital we are the #1 wholesale broker in the country, and we have the absolute lowest rates and lowest payments in the nation[;]”
- D. “With us, you have the ability to choose from over 100 different lenders at the wholesale pricing that they don’t offer to normal consumers[;]”

1.10 On or about September 13, 2022, Respondent Marino sent another e-mail advertisement to the same consumer and again offered to assist the recipient in obtaining a residential mortgage loan, and solicited and offered to accept an application for a residential mortgage loan.

1.11 **On-Going Investigation.** The Department’s investigation into the alleged violations of the Act by Respondents continues to date.

II. GROUNDS FOR ENTRY OF ORDER

2.1 **Failure to Comply with Department’s Directives.** Based on the Factual Allegations set forth in Section I above, Respondent EMC is in apparent violation of RCW 31.04.027(1)(b), RCW 31.04.155, and WAC 208-620-550(14), for failing to timely and completely comply with any directive, subpoena, or order issued by the Department, including by withholding records subject to examination and investigation.

2.2 **False, Deceptive, or Misleading Advertising.** Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 31.04.027(1)(b) for directly or indirectly engaging in any unfair or deceptive practice toward any person; RCW 31.04.027(1)(e) for advertising specific interest rates, points, or other financing terms that were not actually available; RCW 31.04.027(1)(g) for making in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms of conditions for a residential mortgage loan; RCW 31.04.135 for advertising in any manner whatsoever, any statement or representation with regard to the rates, terms, or conditions for the lending of money that is false, misleading, or

1 deceptive; and by being in apparent violation of the rules related to the above referenced statutes,
2 including WAC 208-620-550(5) and (9), WAC 208-620-630(1), (5), (6), (8), and (9).

3 **2.3 Compliance with Applicable Federal Advertising Laws and Rules.** Based on the Factual
4 Allegations set forth in Section I above, Respondents are in apparent violation of RCW
5 31.04.027(1)(m) and WAC 208-620-640 for failing to comply with applicable federal laws or rules
6 relating to the activities governed by the Act, including but not limited to the Federal Trade
7 Commission Act, 15 U.S.C. § 45(a) *et seq.*; the Dodd-Frank Wall Street Reform and Consumer
8 Protection Act, 15 U.S.C. § 5536 *et seq.*; the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, as
9 implemented by Regulation Z, including specifically, 12 C.F.R. §§ 1026.24(a) and (c),
10 1026.24(f)(3)(i)(c), and 1026.24(i)(4); the Mortgage Acts and Practices Advertising Rule, Regulation
11 N, 12 C.F.R. §§ 1014.3(c), (j), (o), and (r); the Telephone Consumer Protection Act, 47 U.S.C. § §
12 227(b)(1)(B) and (C); the Controlling the Assault of Non-Solicited Pornography and Marketing Act
13 of 2003, 15 U.S.C. § 7701 *et seq.*, including specifically, 15 U.S.C. §§ 7704(a)(a), and 7704(a)(5)(A);
14 and the Federal Trade Commission Guides Against Deceptive Pricing, 16 C.F.R. § 233.

15 **2.4 Definition of Mortgage Loan Originator.** Pursuant to RCW 31.04.015(18)(a), “Mortgage
16 loan originator” means an individual who for compensation or gain (i) takes a residential mortgage
17 loan application, or (ii) offers or negotiates terms of a residential mortgage loan. Mortgage loan
18 originator also includes individuals who hold themselves out to the public as able to perform any of
19 these activities.

20 **2.5 Unlicensed Mortgage Loan Originator.** Based on the Factual Allegations set forth in
21 Section I above, Respondent Marino is in apparent violation of RCW 31.04.221 for engaging in the
22 business of a mortgage loan originator without a license.

23 **2.6 Responsibility for Conduct of Employees.** Pursuant to RCW 31.04.027(1)(b), RCW
24 31.04.165, and WAC 208-620-372, a consumer loan company is responsible for any conduct

1 violating the Act or these rules by any person employed, or engaged as an independent contractor, to
2 work in the business covered by your license.

3 III. AUTHORITY TO IMPOSE SANCTIONS

4 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 31.04.093(5)(a), the
5 Director may issue orders directing a licensee, its employee, loan originator, or other person subject
6 to the Act to cease and desist from conducting business in a manner that is injurious to the public or
7 violates any provision of the Act.

8 **3.2 Authority to Revoke Licenses.** The Director may revoke a license pursuant to RCW
9 31.04.093(3)(b) if the Director finds that the licensee, either knowingly or without the exercise of due
10 care, has violated any provision of the Act or any rule adopted under the Act, and pursuant to RCW
11 31.04.093(3)(d) for failure to comply with any directive, order, or subpoena issued by the Director.

12 **3.3 Authority to Prohibit from the Industry.** Pursuant to RCW 31.04.093(6)(d), (e), and (f),
13 the Director may issue an order prohibiting from participation in the affairs of any licensee, any
14 officer, principal, employee, mortgage loan originator, or any other person subject to the Act for
15 failure to comply with any order or subpoena issued under this chapter, a violation of RCW
16 31.04.027, RCW 31.04.221, or 31.04.155, and for failure to obtain a license for activity that requires
17 a license.

18 **3.4 Authority to Order Affirmative Action.** Pursuant to RCW 31.04.093(5)(b), the Director
19 may issue an order directing a licensee, its employee, loan originator, or other person subject to the
20 Act to take such affirmative action as is necessary to comply with the Act.

21 **3.5 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of
22 up to one hundred dollars per day, per violation, upon the licensee, its employee or loan originator, or
23 any other person subject to the Act for any violation of the Act or failure to comply with any order or
24 subpoena issued by the Director under the Act.

1 **3.6 Authority to Charge Investigation Fee.** Pursuant to RCW 31.04.145(3) and WAC 208-620-
2 590, WAC 208-620-610(7), every licensee investigated by the Director or the Director's designee
3 shall pay for the cost of the investigation, calculated at the rate of \$69.01 per staff hour.

4 **3.7 Authority to Recover Costs and Expenses.** Pursuant to RCW 31.04.205(2), the Director
5 may recover the state's costs and expenses for prosecuting violations of the Act.

6 **IV. NOTICE OF INTENT TO ENTER ORDER**

7 Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC,
8 as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose
9 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, RCW
10 31.04.202, and RCW 31.04.205. Therefore, it is the Director's intent to ORDER that:

11 **4.1** Respondents E Mortgage Capital, Inc., Wesam H. Hijazin, Joseph Nagib Shalaby,
12 Christopher Adam Hill, and Frank Peter Marino, III, cease and desist from engaging in
all conduct in violation of the Act, including all violations cited in Section II above.

13 **4.2** Respondent E Mortgage Capital, Inc.'s license to conduct the business of a
14 consumer loan company be revoked.

15 **4.3** Respondent Christopher Adam Hill's license to conduct the business of a mortgage
loan originator be revoked.

16 **4.4** Respondents E Mortgage Capital, Inc., Wesam H. Hijazin, Joseph Nagib Shalaby,
17 Christopher Adam Hill, and Frank Peter Marino, III, be prohibited from participation
in the conduct of the affairs of any consumer loan company subject to licensure by the
18 Director, in any manner, for a period of five years.

19 **4.5** Respondents E Mortgage Capital, Inc., Wesam H. Hijazin, Joseph Nagib Shalaby,
20 Christopher Adam Hill, and Frank Peter Marino, III, maintain records in compliance
with the Act and provide the Department with the location of the records relating to
Respondent E Mortgage Capital Inc.'s consumer loan business, and the name, address
21 and telephone number of the individual responsible for maintenance of such records.

22 **4.6** Respondents E Mortgage Capital, Inc., Wesam H. Hijazin, and Joseph Nagib Shalaby
jointly and severally pay a fine. As of the date of this Statement of Charges, the fine
23 totals \$250,000.

24 **4.7** Respondent Christopher Adam Hill pay a fine. As of the date of this Statement of
Charges, the fine totals \$60,000.

