

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 Bureau of Consumer Financial Protection,

4 Plaintiff,

5 v.

6 Village Capital & Investment LLC,

7 Defendant.
8

Case Number 2:18-cv-02304-JCM-GWF

STIPULATED FINAL JUDGMENT
AND ORDER

9 The Bureau of Consumer Financial Protection (“Bureau”) commenced this civil action on
10 December 4, 2018, to obtain injunctive relief, consumer redress, and civil penalties from Village
11 Capital & Investment LLC. The Complaint alleges violations of §§ 1031, 1036 of the Consumer
12 Financial Protection Act of 2010 (“CFPA”) in connection with Defendant’s misleading
13 representations to consumers regarding the extension of credit, including misstating (1) the
14 future principal owed on a mortgage loan if the consumer does not refinance; (2) the future
15 monthly payments if the consumer does refinance; and (3) the amounts the consumer would owe
16 on the existing and refinanced loans.

17 The Bureau and Defendant agree to entry of this Stipulated Final Judgment and Order
18 (“Order”), without adjudication of any issue of fact or law, to settle and resolve all matters in
19 dispute arising from the conduct alleged in the Complaint.

20 **FINDINGS**

21 1. This Court has jurisdiction over the parties and the subject matter of this action
22 under 12 U.S.C. § 5565(a)(1) and 28 U.S.C. §§ 1331, 1345.

23 2. Venue in the District of Nevada is proper under 12 U.S.C. § 5564(f).
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1 3. Defendant neither admits nor denies any allegations in the Complaint, except as
2 specified in this Order. For purposes of this Order, Defendant admits the facts necessary to
3 establish the Court's jurisdiction over it and the subject matter of this action.

4 4. Defendant waives all rights to seek judicial review or otherwise challenge or
5 contest the validity of this Order and any claim it may have under the Equal Access to Justice
6 Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each
7 Party agrees to bear its own costs and expenses, including, without limitation, attorneys' fees.

8 5. Entry of this Order is in the public interest.

9 **DEFINITIONS**

10 6. The following definitions apply to this Order:

11 a. **"Affected Consumer"** means any consumer who received an in-home
12 sales presentation by the employees of Defendant's San Antonio office and refinanced a
13 mortgage with Defendant.

14 b. **"Board"** means Defendant's duly-elected and acting Board of Directors.

15 c. **"Defendant"** means Village Capital & Investment LLC and its successors
16 and assigns.

17 d. **"Effective Date"** means the date on which the Order is entered on the
18 docket.

19 e. **"Enforcement Director"** means the Assistant Director of the Office of
20 Enforcement for the Bureau of Consumer Financial Protection, or his or her delegee.

21 f. **"Fees"** means all out-of-pocket expenses paid to Defendant by the
22 Affected Consumer at the time of closing and retained by Defendant, including but not
23 limited to loan-origination fees.

1 g. “**Related Consumer Action**” means a private action by or on behalf of
2 one or more consumers or an enforcement action by another governmental agency
3 brought against Defendant based on substantially the same facts as described in the
4 Complaint.

5 **ORDER**

6 **CONDUCT RELIEF**

7 **I. Prohibition on Deceptive Practices**

8 **IT IS ORDERED** that:

9 7. Defendant and its officers, agents, servants, employees, and attorneys, and all
10 other persons in active concert or participation with them who have actual notice of this Order,
11 whether acting directly or indirectly, in connection with offering mortgage refinancing may not
12 misrepresent, or assist others in misrepresenting, expressly or impliedly:

- 13 a. the future principal owed on a consumer’s existing mortgage loan;
14 b. the future monthly payments owed on a consumer’s existing mortgage
15 loan;
16 c. the future principal a consumer would owe on a refinanced mortgage loan;
17 or
18 d. the future monthly payments a consumer would owe on a refinanced
19 mortgage loan.

20 **II. Compliance Plan**

21 **IT IS FURTHER ORDERED** that:

22 8. Within 30 days of the Effective Date, Defendant must submit to the Enforcement
23 Director for review and determination of non-objection a comprehensive compliance plan
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1 designed to ensure that Defendant's conduct complies with all applicable laws that the Bureau
2 enforces and the terms of this Order (Compliance Plan). The Compliance Plan must include, at a
3 minimum:

- 4 a. detailed steps for addressing each action required by this Order;
- 5 b. a proposal for training that will be provided to Defendant's loan officers
6 designed to ensure that they comply with the CFPA's prohibition on deceptive acts and
7 practices and the terms of this Order; and
- 8 c. specific timeframes and deadlines for implementation of the steps
9 described above.

10 9. The Enforcement Director will have the discretion to make a determination of
11 non-objection to the Compliance Plan or direct Defendant to revise it. If the Enforcement
12 Director directs Defendant to revise the Compliance Plan, Defendant must make the revisions
13 and resubmit the Compliance Plan to the Enforcement Director within 30 days.

14 10. After receiving notification that the Enforcement Director has made a
15 determination of non-objection to the Compliance Plan, Defendant must implement and adhere
16 to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.

17 **MONETARY PROVISIONS**

18 **III. Order to Pay Redress**

19 **IT IS FURTHER ORDERED** that:

20 11. Within 30 days of the Effective Date, Defendant must reserve or deposit into a
21 segregated deposit account \$268,869 for the purpose of providing redress to Affected Consumers
22 as required by this Section.

1 12. Within 30 days of the Effective Date, Defendant must submit to the Enforcement
2 Director for review and non-objection a comprehensive written plan for providing redress
3 consistent with this Order (Redress Plan). The Enforcement Director will have the discretion to
4 make a determination of non-objection to the Redress Plan or direct Defendant to revise it. If the
5 Enforcement Director directs Defendant to revise the Redress Plan, Defendant must make the
6 revisions and resubmit the Redress Plan to the Enforcement Director within 5 days. After
7 receiving notification that the Enforcement Director has made a determination of non-objection
8 to the Redress Plan, Defendant must implement and adhere to the steps, recommendations,
9 deadlines, and timeframes outlined in the Redress Plan.

10 13. The Redress Plan must provide to each Affected Consumer a cash refund of all Fees
11 paid to Defendant in connection with the refinancing of a mortgage.

12 14. After completing the Redress Plan, if the amount of redress provided to Affected
13 Consumers is less than \$268,869, within 30 days of the completion of the Redress Plan,
14 Defendant must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and
15 according to the Bureau's wiring instructions, the difference between the amount of redress
16 provided to Affected Consumers and \$268,869.

17 15. The Bureau may use these remaining funds to pay additional redress to Affected
18 Consumers. If the Bureau determines, in its sole discretion, that additional redress is wholly or
19 partially impracticable or otherwise inappropriate, or if funds remain after the additional redress
20 is completed, the Bureau will deposit any remaining funds in the United States Treasury as
21 disgorgement. Defendant will have no right to challenge any actions that the Bureau or its
22 representatives may take under this Section.

1 16. Defendant may not condition the payment of any redress to any Affected
2 Consumer under this Order on that Affected Consumer waiving any right.

3 **IV. Order to Pay Civil Money Penalties**

4 **IT IS FURTHER ORDERED** that:

5 17. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of
6 law alleged in the Complaint and taking into account the factors in 12 U.S.C. § 5565(c)(3),
7 Defendant must pay a civil money penalty of \$260,000 to the Bureau.

8 18. Within 30 days of the Effective Date, Defendant must pay \$130,000 of the civil
9 money penalty, and within 60 days of the Effective Date, Defendant must pay the remaining
10 \$130,000 of the civil money penalty. These payments must be made by wire transfer to the
11 Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

12 19. The civil money penalty paid under this Order will be deposited in the Civil
13 Penalty Fund of the Bureau as required by § 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

14 20. Defendant must treat the civil money penalty paid under this Order as a penalty
15 paid to the government for all purposes. Regardless of how the Bureau ultimately uses those
16 funds, Defendant may not:

17 a. claim, assert, or apply for a tax deduction, tax credit, or any other tax
18 benefit for any civil money penalty paid under this Order; or

19 b. seek or accept, directly or indirectly, reimbursement or indemnification
20 from any source, including but not limited to payment made under any insurance policy,
21 with regard to any civil money penalty paid under this Order.

1 **V. Additional Monetary Provisions**

2 **IT IS FURTHER ORDERED** that:

3 21. In the event of any default on Defendant’s obligations to make payment under this
4 Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding
5 amounts not paid from the date of default to the date of payment and will immediately become
6 due and payable.

7 22. Defendant must relinquish all dominion, control, and title to the funds paid under
8 this Order to the fullest extent permitted by law, and no part of the funds may be returned to
9 Defendant.

10 23. In any proceeding based on the entry of the Order, or in any subsequent civil
11 litigation by or on behalf of the Bureau, including in a proceeding to enforce its rights to any
12 payment or monetary judgment under this Order, such as a nondischargeability complaint in any
13 bankruptcy case, the facts alleged in the Complaint will be taken as true and be given collateral-
14 estoppel effect, without further proof.

15 24. The facts alleged in the Complaint establish all elements necessary to sustain an
16 action by the Bureau under § 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A),
17 and for such purposes this Order will have collateral-estoppel effect against Defendant, even in
18 Defendant’s capacity as debtor-in-possession.

19 25. Under 31 U.S.C. § 7701, Defendant, unless it already has done so, must furnish to
20 the Bureau its taxpayer-identifying numbers, which may be used for purposes of collecting and
21 reporting on any delinquent amount arising out of this Order.

22 26. Within 30 days of the entry of a final judgment, order, or settlement in a Related
23 Consumer Action, Defendant must notify the Enforcement Director in writing of the final
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1 judgment, order, or settlement. That notification must indicate the amount of redress, if any, that
2 Defendant paid or is required to pay to consumers and describe the consumers or classes of
3 consumers to whom that redress has been or will be paid.

4 27. To preserve the deterrent effect of the civil money penalty in any Related
5 Consumer Action, Defendant may not argue that it is entitled to, nor may Defendant benefit by,
6 any offset or reduction of any monetary remedies imposed in the Related Consumer Action
7 because of the civil money penalty paid in this action. If the court in any Related Consumer
8 Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed
9 against Defendant based on the civil money penalty paid in this action or based on any payment
10 that the Bureau makes from the Civil Penalty Fund, Defendant must, within 30 days after entry
11 of a final order granting such offset or reduction, notify the Bureau and pay the amount of the
12 offset or reduction to the United States Treasury. Such a payment will not be considered an
13 additional civil money penalty and will not change the amount of the civil money penalty
14 imposed in this action.

15 **COMPLIANCE PROVISIONS**

16 **VI. Reporting Requirements**

17 **IT IS FURTHER ORDERED** that:

18 28. Defendant must notify the Bureau of any development that may affect compliance
19 obligations arising under this Order, including but not limited to a dissolution, assignment, sale,
20 merger, or other action that would result in the emergence of a successor company; the creation
21 or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to
22 this Order; the filing of any bankruptcy or insolvency proceeding by or against Defendant; or a
23 change in Defendant's name or address. Defendant must provide this notice at least 30 days
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1 before the development or as soon as practicable after the learning about the development,
2 whichever is sooner.

3 29. Within 7 days of the Effective Date, Defendant must:

4 a. designate at least one telephone number and email, physical, and postal
5 address as points of contact, which the Bureau may use to communicate with Defendant;

6 b. identify all businesses for which Defendant is the majority owner, or that
7 Defendant directly or indirectly controls, by all of their names, telephone numbers, and
8 physical, postal, email, and Internet addresses;

9 c. describe the activities of each such business, including the products and
10 services offered, and the means of advertising, marketing, and sales.

11 30. Defendant must report any change in the information required to be submitted
12 under Paragraph 29 at least 30 days before the change or as soon as practicable after the learning
13 about the change, whichever is sooner.

14 31. Within 90 days of the Effective Date, Defendant must submit to the Enforcement
15 Director an accurate written compliance progress report sworn to under penalty of perjury
16 (Compliance Report), which, at a minimum:

17 a. lists each applicable paragraph and subparagraph of the Order and
18 describes in detail the manner and form in which Defendant has complied with each such
19 paragraph and subparagraph of this Order; and

20 b. attaches a copy of each order acknowledgment obtained under Section
21 VII, unless previously submitted to the Bureau.

1 **VII. Order Distribution and Acknowledgment**

2 **IT IS FURTHER ORDERED** that:

3 32. Within 7 days of the Effective Date, Defendant must submit to the Enforcement
4 Director an acknowledgment of receipt of this Order, sworn under penalty of perjury.

5 33. Within 30 days of the Effective Date, Defendant must deliver a copy of this Order
6 to each of its board members and executive officers, as well as to any managers, employees,
7 Service Providers, or other agents and representatives who have responsibilities related to the
8 subject matter of the Order.

9 34. For 5 years from the Effective Date, Defendant must deliver a copy of this Order
10 to any business entity resulting from any change in structure referred to in Section VI, any future
11 board members and executive officers, as well as to any managers, employees, and contractors
12 who will have responsibilities related to the subject matter of the Order before they assume their
13 responsibilities.

14 35. Defendant must secure a signed and dated statement acknowledging receipt of a
15 copy of this Order, ensuring that any electronic signatures comply with the requirements of the
16 E-Sign Act, 15 U.S.C. § 7001 et seq., within 30 days of delivery, from all persons receiving a
17 copy of this Order under this Section.

18 **VIII. Recordkeeping**

19 **IT IS FURTHER ORDERED** that:

20 36. Defendant must create, for at least 5 years from the Effective Date, all documents
21 and records necessary to demonstrate full compliance with each provision of this Order,
22 including all submissions to the Bureau. Defendant must retain these documents for at least 5
23 years after creation and make them available to the Bureau upon the Bureau’s request.

1 37. Defendant must maintain, for at least 5 years from the Effective Date, or 5 years
2 after creation, whichever is longer, copies of all sales scripts, training materials, advertisements,
3 websites, and other marketing materials relating to the subject of this Order, including any such
4 materials used by a third party on Defendant's behalf. Defendant must make these materials
5 available to the Bureau upon the Bureau's request.

6 **IX. Notices**

7 **IT IS FURTHER ORDERED** that:

8 38. Unless otherwise directed in writing by the Bureau, Defendant must provide all
9 submissions, requests, communications, or other documents relating to this Order in writing,
10 with the subject line, "In re Village Capital & Investment LLC, ENF Matter No. 2018-1920-02,"
11 and send them by overnight courier or first-class mail to the below address and
12 contemporaneously by email to Enforcement_Compliance@cfpb.gov:

13 Assistant Director for Enforcement
14 Bureau of Consumer Financial Protection
15 ATTENTION: Office of Enforcement
16 1700 G Street, N.W.
17 Washington D.C. 20552.

18 **X. Cooperation with the Bureau**

19 **IT IS FURTHER ORDERED** that:

20 39. Defendant must cooperate fully to help the Bureau determine the identity and
21 location of, and the amount of injury sustained by, each Affected Consumer. Defendant must
22 provide such information in its or its agents' possession or control within 14 days of receiving a
23 written request from the Bureau.

24 40. Defendant must cooperate fully with the Bureau in this matter and in any
25 investigation related to or associated with the conduct described in the Complaint. Defendant

1 must provide truthful and complete information, evidence, and testimony. Defendant must cause
2 Defendant's officers, employees, representatives, or agents to appear for interviews, discovery,
3 hearings, trials, and any other proceedings that the Bureau may reasonably request upon 10 days
4 written notice, or other reasonable notice, at such places and times as the Bureau may designate,
5 without the service of compulsory process.

6 **XI. Compliance Monitoring**

7 **IT IS FURTHER ORDERED** that:

8 41. Within 14 days of receipt of a written request from the Bureau, Defendant must
9 submit additional compliance reports or other requested non-privileged information related to
10 requirements of this Order, which must be sworn under penalty of perjury; provide sworn
11 testimony related to requirements of this Order and Defendant's compliance with those
12 requirements; or produce non-privileged documents related to requirements of this Order and
13 Defendant's compliance with those requirements.

14 42. Defendant must permit Bureau representatives to interview about the
15 requirements of this Order and Defendant's compliance with those requirements any employee
16 or other person affiliated with Defendant who has agreed to such an interview. The person
17 interviewed may have counsel present.

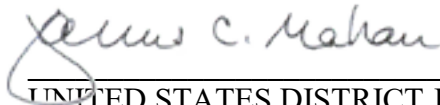
18 43. Nothing in this Order will limit the Bureau's lawful use of compulsory process,
19 under 12 C.F.R. § 1080.6.

1 **XII. Retention of Jurisdiction**

2 **IT IS FURTHER ORDERED** that:

3 44. The Court will retain jurisdiction of this matter for the purpose of enforcing this
4 Order.

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7 **IT IS SO ORDERED:**

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9 _____
UNITED STATES DISTRICT JUDGE

10 December 21, 2018

DATED: _____