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11 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
12 OF THE STATE OF CALIFORNIA

14	In the Matter of:)	CRMLA License No.: 413-1349
)	
15	THE COMMISSIONER OF FINANCIAL)	NMLS ID No.: 2893
16	PROTECTION AND INNOVATION,)	
)	
17	Complainant,)	ACCUSATION TO SUSPEND
)	CALIFORNIA RESIDENTIAL MORTGAGE
18	v.)	LENDER AND SERVICER LICENSES AND
)	TO LEVY ADMINISTRATIVE PENALTIES
19	NFM, INC.,)	
)	
20	Respondent.)	
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24 Clothilde V. Hewlett, the Commissioner of Financial Protection and Innovation
25 (Commissioner), is informed and believes, and based upon such information and belief, alleges and
26 charges Respondent as follows:

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I.

Jurisdiction

1. The Commissioner brings this action under the provisions of Financial Code section 50327 and section 50513 and the rules and regulations promulgated thereunder.

2. The Commissioner is authorized to administer and enforce the provisions of the California Residential Mortgage Lending Act (Fin. Code, § 50000 et seq.) (CRMLA) and the rules issued under title 10 of the California Code of Regulations (Cal. Code of Regs.) that regulate the business and activities of residential mortgage lenders and mortgage loan servicers.

II.

Statement of Facts

3. At all relevant times, NFM, Inc. (NFM) was and is a residential mortgage lender and mortgage loan servicer licensed by the Commissioner under the CRMLA. On or around September 1, 2015, the Commissioner issued CRMLA license number 413-1349 to NFM. The company’s principal place of business is located at 1190 Winterson Road, Suite 300, Linthicum, Maryland 21090. At all relevant times herein, NFM employed mortgage loan originators and operated branch locations throughout California.

4. Pursuant to Financial Code section 50002.5(d) and section 50003(z), NFM maintains the unique Nationwide Multistate Licensing System and Registry identification number (NMLS ID No.) 2893. At all relevant times, NFM operated the website <https://www.nfmlending.com>.

2022 Regulatory Examination

5. The Commissioner commenced a remote regulatory examination of NFM on July 22, 2022. The regulatory examination included a review of the company’s activities conducted under its CRMLA lender and servicer licenses for the period from January 1, 2019 to December 31, 2021.

6. Pursuant to Civil Code section 2948.5 (the per diem statute), a borrower shall not be required to pay per diem interest for more than 1 day prior to the disbursement of loan proceeds from an escrow on a principal obligation under a promissory note secured by a mortgage or deed of trust on real property. Civil Code section 2948.5 sets forth limited circumstances where interest

1 may start to accrue on the business day immediately preceding the date of the loan disbursement.
2 Financial Code section 50204(o) prohibits a licensee from violating the per diem statute.

3 7. Interest may commence to accrue on the business day immediately preceding the day
4 of disbursement if the borrower affirmatively requests that the disbursement occur on a Monday or
5 on a day immediately following a bank holiday. This is permitted if the following information is
6 disclosed to the borrower in writing: (a) the amount of additional per diem interest charged to
7 facilitate the disbursement on Monday or the day following the holiday and (b) it may be possible
8 to avoid the additional per diem interest charge by disbursing the loan proceeds on a day
9 immediately following a business day. Civil Code section 2948.5(b)(2) requires that this written
10 disclosure must be provided to and an acknowledgement signed by the borrower prior to placing
11 funds in escrow.

12 8. The 2022 regulatory examination revealed that in 5 out of the 25 originated loan files
13 (20%) sampled NFM overcharged borrowers per diem interest in violation of Financial Code
14 section 50204(o) and Civil Code section 2948.5.

15 9. The following is a summary of the 5 loan files where NFM overcharged per diem
16 interest to borrowers.

17 a. **Loan Number 56420028467**

18 NFM charged the borrower 7 days of per diem interest from April 24, 2020 to May
19 1, 2020. The final settlement statement and disbursement ledger identified April 28, 2020 as the
20 disbursement date. NFM should have used the disbursement date of April 28, 2020 to May 1, 2020
21 to calculate the per diem interest amount for 4 days. NFM is allowed to charge 1 day of per diem
22 interest prior to the date when the loans proceeds are disbursed pursuant to Civil Code section
23 2948.5(a). The borrower was overcharged \$153.03 for 3 days of per diem interest from April 24,
24 2020 to April 27, 2020. The Commissioner instructed NFM to refund the overcharged amount plus
25 10% interest to the borrower. On May 25, 2023, NFM issued check number 234418 in the amount
26 of \$200.28 to the borrower.

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1 b. **Loan Number 56503219580**

2 NFM charged borrower 13 days of per diem interest from June 18, 2021 to July 1,
3 2021. The final settlement statement identified June 21, 2021 as the disbursement date. NFM
4 should have used the disbursement date of June 21, 2021 to July 1, 2021 to calculate the per diem
5 interest amount for 11 days, plus 1 additional day of interest per Civil Code section 2948.5(a). The
6 borrower was overcharged \$30.90 for 2 days of per diem interest from June 18, 2021 to June 20,
7 2021. The Commissioner instructed NFM to refund the overcharged amount plus 10% interest to
8 the borrower. On May 25, 2023, NFM issued check number 234420 in the amount of \$36.86 to the
9 borrower.

10 c. **Loan Number 56205216444**

11 NFM charged borrower 28 days of per diem interest from October 4, 2021 to
12 November 1, 2021. The disbursement ledger identified October 6, 2021 as the disbursement date.
13 NFM should have used the disbursement date of October 6, 2021 to November 1, 2021 to calculate
14 the per diem interest amount for 27 days, plus 1 additional day of interest per Civil Code section
15 2948.5(a). The borrower was overcharged \$212.33 for 1 day of per diem interest from October 4,
16 2021 to October 5, 2021. The Commissioner instructed NFM to refund the overcharged amount
17 plus 10% interest to the borrower. On May 25, 2023, NFM issued check number 234435 in the
18 amount of \$247.18 to the borrower.

19 d. **Loan Number 56521081134**

20 NFM charged borrower 7 days of per diem interest from November 24, 2021 to
21 December 1, 2021. The final settlement statement identified November 29, 2021 as the
22 disbursement date. NFM should have used the disbursement date of November 29, 2021 to
23 December 1, 2021 to calculate the per diem interest amount for 3 days, plus 1 additional day of
24 interest per Civil Code section 2948.5(a). On November 19, 2021, the borrower signed and dated
25 the California Per Diem Interest Disclosure (Disclosure). However, the borrower did not check the
26 box requesting the loan disbursement occur on a Monday or a day immediately following a bank
27 holiday, nor did the Disclosure contain the amount of additional per diem interest to be charged.
28 The Commissioner determined that this Disclosure was unacceptable. The borrower was

1 overcharged \$165.44 for 4 days of per diem interest from November 24, 2021 to November 28,
2 2021. The Commissioner instructed NFM to refund the overcharged amount plus 10% interest to
3 the borrower. On May 25, 2023, NFM issued check number 234456 in the amount of \$190.17 to the
4 borrower.

5 e. **Loan Number 70703218052**

6 NFM charged borrower 5 days of per diem interest from April 26, 2021 to May 1,
7 2021. The final settlement statement and disbursement summary identified April 28, 2021 as the
8 disbursement date. NFM should have used the disbursement date of April 28, 2021 to May 1, 2021
9 to calculate the per diem interest amount for 4 days, plus 1 additional day of interest per Civil Code
10 section 2948.5(a). The borrower was overcharged 1 day of per diem interest from April 26, 2021 to
11 April 27, 2021. The Commissioner instructed NFM to refund the overcharged amount plus 10%
12 interest to the borrower. On May 25, 2023, NFM issued check number 233575 in the amount of
13 \$34.64 to the borrower.

14 **2023 Self-Audit Report**

15 10. Due to the high percentage of per diem overcharges found during the 2022
16 regulatory examination (5 out of 25 files; 20%), the Commissioner instructed NFM to provide a
17 self-audit report of all loans originated from February 4, 2019 to April 19, 2023 to determine the
18 number and amount of per diem interest overcharges, including but not limited to: the borrower
19 loan number, name, loan amount, interest rate, date funds were disbursed by the settlement agent,
20 interest start date, interest end date, amount of interest collected, correct amount of interest,
21 overcharged interest charged with 10% interest, amount of refund check, date of refund, and first
22 payment due date (self-audit report).

23 11. On June 14, 2023, NFM submitted its self-audit report to the Commissioner. The
24 self-audit report showed that 653 borrowers out of the 2,946 borrowers (22%) were overcharged per
25 diem interest totaling \$70,359.50. Per the Commissioner's instructions, NFM refunded \$85,514.38
26 (\$70,359.50 plus 10% interest) to the borrowers.

27 12. The following are some loan files identified in the self-audit report that showed per
28 diem interest violations.

1 a. **Loan Number 57222101593**

2 NFM charged the borrower 19 days of per diem interest from January 13, 2023 to
3 February 1, 2023. The final settlement statement identified January 17, 2023 as the disbursement
4 date. NFM should have used the disbursement date of January 17, 2023 to February 1, 2023 to
5 calculate the per diem interest amount for 15 days, plus 1 additional day of interest per Civil Code
6 section 2948.5(a). The daily interest rate was \$63.20. The borrower was overcharged \$189.60 for 3
7 days from January 13, 2023 to January 16, 2023. On June 1, 2023, NFM issued check number
8 234773 in the amount of \$198.67 to refund the borrower for per diem interest overcharges.

9 b. **Loan Number 56106206137**

10 NFM charged the borrower 15 days of per diem interest from July 17, 2020 to
11 August 1, 2020. The final closing statement identified July 20, 2020 as the disbursement date. NFM
12 should have used the disbursement date of July 20, 2020 to August 1, 2020 to calculate the per diem
13 amount for 12 days, plus 1 additional day of interest per Civil Code section 2948.5(a). The daily
14 interest rate was \$39.38. The borrower was overcharged \$78.76 for 2 days from July 17, 2020 to
15 July 19, 2020. On June 1, 2023, NFM issued check number 234758 in the amount of \$101.42 to
16 refund the borrower for per diem interest overcharges.

17 c. **Loan 56106207296**

18 NFM charged the borrower 18 days of per diem interest from August 14, 2020 to
19 September 1, 2020. The final settlement statement identified August 19, 2020 as the disbursement
20 date. NFM should have used the disbursement date of August 19, 2020 to September 1, 2020 to
21 calculate the per diem amount for 13 days, plus 1 additional day of interest per Civil Code section
22 2948.5(a). The daily interest rate was \$43.35. The borrower was overcharged \$173.40 for 4 days
23 from August 14, 2020 to August 18, 2020. On May 11, 2023, NFM issued check number 233549 in
24 the amount of \$220.91 to refund the borrower for per diem interest overcharges.

25 13. On June 30, 2023, the Commissioner reviewed a sample of NFM's self-audit report.
26 The Commissioner sent NFM a follow-up letter requesting supporting documents for the 653 loans
27 identified with per diem interest overcharges.

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1 14. On July 10, 2023, NFM provided the Commissioner the requested documents.
2 NFM’s self-audit report identified 653 out of 2,956 loan files (22.2%) where borrowers were
3 overcharged per diem interest in violation of Financial Code section 50204(o) and Civil Code
4 section 2948.5.

5 **III.**

6 **Applicable Statutes**

7 15. Civil Code section 2948.5, provides:

8 (a) A borrower shall not be required to pay interest on a principal
9 obligation under a promissory note secured by a mortgage or deed of
10 trust on real property improved with between one to four residential
11 dwelling units for any period that meets any of the following
12 requirements:

13 (1) Is more than one day prior to the date that the loan proceeds are
14 disbursed from escrow.

15 (2) In the event of no escrow, if a request for recording is made in
16 connection with the disbursement, is more than one day prior to the
17 date the loan proceeds are disbursed to the borrower, to a third party
18 on behalf of the borrower, or to the lender to satisfy an existing
19 obligation of the borrower.

20 (3) In all other circumstances where there is no escrow and no request
21 for recording, is prior to the date funds are disbursed to the borrower,
22 to a third party on behalf of the borrower, or to the lender to satisfy an
23 existing obligation of the borrower.

24 (b) Interest may commence to accrue on the business day immediately
25 preceding the day of disbursement, for obligations described in
26 paragraphs (1) and (2) of subdivision (a) if both of the following
27 occur:

28 (1) The borrower affirmatively requests, and the lender agrees, that the
 disbursement will occur on Monday, or a day immediately following a
 bank holiday.

 (2) The following information is disclosed to the borrower in writing:

 (A) the amount of additional per diem interest charged to facilitate
 disbursement on Monday or the day following a holiday, as the case
 may be, and (B) that it may be possible to avoid the additional per
 diem interest charge by disbursing the loan proceeds on a day

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immediately following a business day. This disclosure shall be provided to the borrower and acknowledged by the borrower by signing a copy of the disclosure document prior to placing funds in escrow.

(c) This section does not apply to a loan that is subject to subdivision (c) of Section 10242 of the Business and Professions Code.

16. Financial Code section 50204, provides in pertinent part, “A licensee may not do any of the following . . . (o) Commit an act in violation of Section 2948.5 of the Civil Code[.]”

17. Financial Code section 50327 provides:

(a) The commissioner may, after notice and a reasonable opportunity to be heard, deny, decline to renew, suspend, or revoke any license if the commissioner finds that:

(1) The licensee has violated any provision of this division or any rule or order of the commissioner thereunder.

(2) Any fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.

(b) The power of investigation and examination by the commissioner is not terminated by the denial, nonrenewal, surrender, suspension, or revocation of any license issued by him or her.

18. Financial Code section 50513 provides in pertinent part:

(a) The commissioner may do one or more of the following:

. . . .

(4) Impose fines on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).

. . . .

(b) The commissioner may impose a civil penalty on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by

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the commissioner under this division or order issued under authority of this division.

(c) The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).

(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

IV.

Conclusion

The Commissioner finds that, by reason of the foregoing, NFM, Inc. has violated Financial Code section 50204(o) and Civil Code section 2948.5, and grounds exists to: (1) suspend the residential mortgage lender and servicer licenses of NFM, Inc. under Financial Code section 50327(a)(1) and (2) assess penalties against NFM, Inc. under Financial Code section 50513(b).

WHEREFORE, IT IS PRAYED that:

Under Financial Code section 50327, the residential mortgage lender and servicer license of NFM, Inc. be suspended for a period of up to 12 months and, under Financial Code section 50513(b), penalties be levied against NFM, Inc. for 653 violations of Financial Code section 50204(o) and Civil Code section 2948.5, overcharging per diem interest, according to proof, but in an amount of at least \$1,000.00 per violation.

Dated: November 27, 2024
San Diego, CA

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By _____
Vanessa T. Lu
Senior Counsel
Enforcement Division