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9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA

12 In the Matter of the Accusation/Statement of) File Nos.: 603-5584, 603-C671, 603-C872, 603-
Issues of THE CALIFORNIA) C873, 603-D825, 603-D828, 603-E284, 603-
13 CORPORATIONS COMMISSIONER,) E489, 603-E802, 603-E967, 605-3418, 605-
14) 3716, 607-2564, 607-2630, 603-E966, 603-
Complainant,) F011, 603-F200, 603-F413, 607-2658, 607-2888
15) and 607-2904
16 vs.)
17 AAPEX DISCOUNT MORTGAGE,) ACCUSATION/STATEMENT OF ISSUES
Respondent.)
19 _____)

20 The Complainant California Corporations Commissioner (“Commissioner” or
21 “Complainant”) is informed and believes, and based upon such information and belief, alleges and
22 charges Respondent as follows:

23 I
24 INTRODUCTION

25 The proposed orders seek to revoke the finance lender licenses of Apex Financial Group,
26 Inc., which does business in California as Aapex Discount Mortgage (“Aapex”) pursuant to Section
27 22714 of the California Finance Lenders Law (Financial Code §§ 22000 et. seq.)(“CFL”) and deny
28 the issuance of seven further finance lender licenses to Aapex pursuant to Financial Code section

1 22109 in that Aapex (i) has repeatedly violated Financial Code sections 22010, 22100 and 22151 by
2 net branching (renting its licenses to third parties) in the State of California; (ii) routinely split fees
3 with non-licensed, non-exempt persons in violation of California Code of Regulations, title 10,
4 section 1451(c), (iii) brokered a loan to a non-CFLL lender in violation of Financial Code section
5 22059 on at least one occasion, (iv) failed to give a borrower the broker statement required under
6 Financial Code section 22338 on at least one occasion, (v) made false statements of material fact in
7 its license applications filed with the Commissioner, and (vi) has numerous administrative actions
8 against it by other state regulators.

9 II

10 CURRENT FINANCE LENDERS LICENSES

11 Aapex is, and at all relevant times, was a Florida corporation duly qualified to do business in
12 California. Aapex under the name Aapex Discount Mortgage has been licensed by the
13 Commissioner since on or about October 10, 1997 to engage in the business of a finance lender and
14 broker from its main office located at 213 W. Bloomingdale Avenue, Brandon, Florida 33511
15 (license number 603-5584).

16 Commencing on or about February 27, 2006 and continuing through on or about April 17,
17 2007, the Commissioner has issued 13 additional licenses to engage in the business of a finance
18 lender and/or broker under the CFLL to Aapex as follows: license number 603-C671 located at 5315
19 Avenida Encinas, Suite 234, Carlsbad, California 92008, license number 603-C872 located at 1
20 Orchard Road, Suite 210, Lake Forest, California 92630; license number 603-C873 located at 7390
21 Lincoln Way, Suite 200, Garden Grove, California 92841; license number 603-D825 located at 2400
22 Niles Street, Bakersfield, California 93306; license number 603-D828 located at 850 2nd Street, Suite
23 207, Santa Monica, California 90403; license number 603-E284 located at 50225 Harrison Street,
24 Suite 103, Coachella, California 92236; license number 603-E489 located at 2315 N. Frederic Street,
25 Suite N, Burbank, California 91501; license number 603-E802 located at 9205 Archibald Avenue,
26 Rancho Cucamonga 91730; license number 603-E967 located at 17401 Irvine Boulevard, Orange,
27 California 92780; license number 605-3418 located at 2480 Middlefield, #172R, Redwood City,
28 California 94063; license number 605-3716 located at 101 Sand Creek Road, Suite 308, Brentwood,

1 California 94513; license number 607-2564 located at 8150 Sierra College Boulevard, #250,
2 Roseville, California 95661; and license number 607-2630 located at 1900 Point West Way, Suite
3 204, Sacramento, California 95815.

4 The short form finance lender license applications filed with the Commissioner by Aapex
5 pursuant to Financial Code section 22102 for the additional licenses described immediately above,
6 stated that Aapex was the applicant and were signed under penalty of perjury by the president of
7 Aapex.

8 III

9 THE PENDING APPLICATIONS

10 On or about September 28, 2006, February 21, 2007, February 26, 2007, April 2, 2007, May,
11 16, 2007, May 18, 2007, and June 15, 2007, Aapex filed with the Commissioner seven further
12 applications for finance lender licenses to be located respectively at 5777 Madison Avenue, Suite
13 990, Sacramento, California 95841 (file number 607-2658); 632 Estancia, Irvine, California 92602
14 (file number 603-E966); 5890 Stoneridge Drive #212 & 213, Pleasanton, California 94588 (file
15 number 603-F011); 610 S. Main Street, #241, Los Angeles, California 90014 (file number 603-
16 F200); 4034 Morell Street, San Diego, California 92109 (file number 603-F413); 1348 Milano
17 Drive, #1, West Sacramento, California 95691 (file number 607-2888); and 4268 Tuluiyani Drive,
18 Chico, California 95973 (file number 607-2904). The pending applications all identified Aapex as
19 the applicant and were signed under penalty of perjury by the president of Aapex.

20 IV

21 FINANCE LENDER LAW VIOLATIONS

22 A. Net Branching and Unlicensed Activity:

23 Pursuant to Financial Code sections 22100 and 22152, any person engaged in the business of
24 a finance lender and/or broker must have a separate license for each location in which it engages in
25 finance lending and/or brokering activity.

26 On or about April 19, 2007, the Commissioner, through his staff, commenced a special
27 examination of Aapex based upon information received that Aapex was engaged in net branching,
28 i.e. renting its licenses to third parties. Net branching is prohibited under the CFLL pursuant to

1 Financial Code sections 22010 and 22151. Under the provisions of Financial Code section 22151,
2 licenses issued under the CFLL are not transferable or assignable. Moreover, Financial Code section
3 22010 requires persons employed at CFLL licensed locations to be actual employees of the licensee
4 or separately licensed.

5 The special examination disclosed that the Coachella, Orange and Redwood City offices of
6 Aapex were net branches in violation of Financial Code sections 22010 and 22151 in that the
7 “branch managers” were not employees of Aapex, the licensing costs for the offices were borne by
8 the “branch manager(s)”, the office lease is in the name of the “branch manager(s)”, and/or the
9 “branch managers” are responsible for all aspects of operating the office including all expenses
10 associated therewith.

11 The “branch managers” at the Coachella, Orange and Redwood City locations were not
12 separately licensed under the CFLL. As the “branch managers” were not separately licensed under
13 the CFLL, the Coachella, Orange and Redwood City locations also constituted unlicensed locations
14 in violation of Financial Code section 22100.

15 The Commissioner believes that the remaining branch locations in California are also net
16 branches in violation of the CFLL in that Aapex advertised net branching on its website located at
17 www.aapexmortgagenetbranch.com.

18 B. Other CFLL Violations:

19 The special examination further revealed that Aapex (i) routinely split fees with its “branch
20 managers” in violation of California Code of Regulations, title 10, section 1451(c), which rule
21 prohibits the payment of any compensation to an unlicensed person or company except employees, a
22 licensed real estate broker or financial institution exempt from licensing under the CFLL,
23 (ii) brokered to a non-CFLL lender in violation of Financial Code section 22059 on at least one
24 occasion through the Orange branch and (iii) failed to give a borrower the broker statement
25 disclosing the name, address, license number and amounts to be paid to both the broker and lender in
26 connection with the loan as required under Financial Code section 22338 on at least one occasion
27 through the Orange branch.
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V

FALSE STATEMENTS IN APPLICATIONS

The April 19, 2007 special examination disclosed that the “branch managers” of at least the Coachella, Orange, and Redwood City locations were in fact the owners and operators of those offices. Thus, representations of Aapex in the applications for Coachella, Orange and Redwood City, if not for all the other additional locations, that Aapex was the applicant and responsible entity for these locations were false.

VI

REGULATORY ACTIONS

On or about January 25, 2007, the Alabama State Banking Department issued an Order revoking the Alabama Consumer Credit Act license of Aapex, and further ordering Aapex to cease further operations in the State of Alabama.

On or about March 13, 2007, the Commissioner of Banks of the Commonwealth of Massachusetts issued a Temporary Order to Cease and Desist ordering Aapex to cease lending activities in Massachusetts.

On or about March 23, 2007, the Georgia Department of Banking and Finance issued an Order to Cease and Desist ordering Aapex to cease engaging in unlicensed lending activity in the State of Georgia.

On or about June 20, 2007, the Commissioner of Banks of the State of North Carolina issued an Order of Suspension suspending Aapex’s license to engage in mortgage lending in the State of North Carolina.

Pursuant to the license application requirements of Financial Code sections 22101 and 22102 and California Code of Regulations, title 10, sections 1422 and 1423, Aapex is required to disclose whether it has been the subject of any administrative action of another state and attest to not having engaged in any conduct that would be cause for denial.

Additionally, pursuant to Financial Code section 22705.1, any disciplinary action taken by another state for an action substantially related to the activity regulated under the CFLL may be grounds for disciplinary action by the Commissioner and a certified copy of the record of the

1 disciplinary action shall be conclusive evidence of the events related therein.

2 Under Financial Code section 22714, the Commissioner may revoke a finance lender
3 license(s) “if a fact or condition exists that, if it had existed at the time of the original application for
4 the license, reasonably would have warranted the commissioner in refusing to issue the license
5 originally.”

6 Under Financial Code section 22109, the Commissioner may deny a license application(s) if
7 the “applicant . . . has violated any provision of this division or the rules thereunder or any similar
8 regulatory scheme of the State of California or a foreign jurisdiction.”

9 The regulatory actions described above if they had been in existence at the time of the
10 applications for the existing licenses would have constituted grounds for the Commissioner to deny
11 those license applications. Thus, a fact or condition now exists that, if it had existed at the time of
12 the original applications, reasonably would have warranted the Commissioner in refusing to issue the
13 licenses.

14 VII

15 CONCLUSION

16 Complainant finds, by reason of the foregoing, that:

17 (1) Aapex has committed numerous violations of the CFLL.

18 (2) Aapex has made false statements of material fact in its applications for additional
19 licenses.

20 (3) Aapex is incapable of operating its business in compliance with the CFLL as
21 demonstrated by its flagrant and continuous pattern of violations.

22 (4) By virtue of the administrative action by other state regulators, a fact or condition
23 now exists that, if it had existed at the time of the original applications, reasonably would have
24 warranted the Commissioner in refusing to issue the licenses originally.

25 (5) It is in the best interests of the public to revoke the current CFLL licenses of Aapex
26 and deny Aapex’s pending applications for CFLL licenses.

27 Financial Code section 22714 provides in pertinent part:

28 (a) The commissioner shall suspend or revoke any license, upon notice and
reasonable opportunity to be heard, if the commissioner finds any of the following:

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(1) The licensee has failed to comply with any demand, ruling or requirement of the commissioner made pursuant to and within the authority of this division.

(2) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.

(3) A fact or condition now 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.

Financial section 22109 provides in pertinent part:

(a) Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for any of the following reasons:

(1) A false statement of a material fact has been made in the application. . . .

(3) The applicant or any officer, director, general partner, person responsible for the applicant’s lending activities in this state, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of the State of California or a foreign jurisdiction.

The findings set forth above constitute grounds under Financial Code sections 22714 and 22109 to revoke the CFLL licenses of Aapex and to deny Aapex’s applications for further CFLL licenses.

THEREFORE, Complainant asserts that he is justified under Financial Code sections 22714 and 22109 in revoking the CFLL licenses of Aapex and denying Aapex’s applications for seven further CFLL licenses.

WHEREFORE, Complainant prays that the CFLL licenses of Aapex are revoked and the seven applications for further CFLL licenses filed by Aapex be denied.

Dated: July 26, 2007
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Judy L. Hartley
Senior Corporations Counsel