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8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

10 In the Matter of THE COMMISSIONER OF) File No. 416-0732
11 BUSINESS OVERSIGHT,)
12 Complainant,) STATEMENT OF FACTS IN SUPPORT OF
13 v.) ORDER TO DISCONTINUE VIOLATIONS
14 CITY FIRST MORTGAGE SERVICES, LLC) PURSUANT TO FINANCIAL CODE
15 DOING BUSINESS AS CITY 1st MORTGAGE) SECTION 50321 AND REFUND EXCESSIVE
16 AND CITY 1st MORTGAGE SERVICES,) PER DIEM INTEREST CHARGES
17 Respondent.) PURSUANT TO FINANCIAL CODE
18) SECTION 50504 AND NOTICE OF INTENT
19) TO MAKE ORDER FINAL
20)
21)
22)
23)

24 TO: CITY FIRST MORTGAGE SERVICES, LLC
25 DBA CITY 1st MORTGAGE AND CITY 1st MORTGAGE SERVICES
26 750 South Main Street, Suite 104
27 Bountiful, Utah 84010

28 The Commissioner of Business Oversight of the State of California finds that:

1 At all relevant times, City First Mortgage Services, LLC doing business as City 1st Mortgage
2 and City 1st Mortgage Services (hereafter “Respondent”) was a Utah limited liability company with
3 its principal place of business located at 750 South Main Street, Suite 104, Bountiful, Utah, 84010.
4 Respondent also has California branch offices in Modesto, Orange, San Bruno, San Diego, and San
5 Ramon.

6 Respondent is a residential mortgage lender and servicer licensed by the Department (NMLS
7 ID# 3117) pursuant to the California Residential Mortgage Lending Act (“CRMLA”) (Fin. Code, §§
8 50000 et seq.).

9 On or about July 16, 2009, the Department commenced a regulatory examination of
10 Respondent’s books and records (“2009 exam”). As a result of that exam, the Department discovered
11 that in seven out of 21, or approximately 33%, of the loans reviewed, Respondent had charged
12 borrowers per diem interest in excess of one day prior to the recording of the mortgage or deed of
13 trust.

14 On or about August 31, 2010, the Department instructed Respondent to perform a self-audit
15 and provide a detailed report of all instances of per diem interest overcharges to California borrowers
16 during the period of July 2006 to July 2010.

17 On or about November 19, 2010, Respondent reported to the Department that it had made per
18 diem overcharge refunds to the seven borrowers identified in the 2009 exam. Respondent further
19 informed that it had identified 43 borrowers who had been overcharged per diem interest and advised,
20 “City 1st is prepared to issue refund checks as directed by the Department for those borrowers
21 overcharged as indicated in our self-audit report.”

22 On or about February 13, 2012, the Department conducted another regulatory examination of
23 Respondent’s books and records (“2012 exam”). This examination disclosed that in 11 of 26, or
24 approximately 42%, of the loans reviewed for the period of August 2011 to December 2011,
25 Respondent had overcharged borrowers up to five extra days of per diem interest.

26 It was also discovered during the February 2012 exam that Respondent had not issued refund
27 checks to the 43 borrowers previously identified in its November 2010 self-audit report. At the
28 Department’s direction, Respondent proceeded to mail the refund checks to consumers in or about

1 June and September 2012. However, due to the delay in mailing the refunds, about 11 of these
2 checks were undeliverable or otherwise remain outstanding.

3 On or about January 7, 2013, the Department issued a regulatory examination report to
4 Respondent summarizing the various violations found during the 2012 exam. Respondent was
5 instructed to submit a written response to the Department within 30 days describing the corrective
6 actions implemented to address the violations cited and reporting the findings of a self-audit to
7 identify California borrowers who had been overcharged per diem interest during the period of
8 August 1, 2010 to the date of the regulatory examination report.

9 On or about March 11, 2013, Respondent submitted a response to the regulatory examination
10 acknowledging all violations. However, the self-audit report submitted with the response was
11 incomplete and did not contain information sufficient for the Department to accurately determine the
12 total number of per diem overcharges found.

13 On June 10, 2013, and after repetitive prompting from the Department, Respondent provided
14 an updated self-audit report that contained information for 961 loans funded from August 5, 2010 to
15 January 8, 2013. The self-audit report identified 215 borrowers that were overcharged per diem
16 interest. The Department conducted an independent review of a sample of the loans listed on the
17 self-audit report to confirm the accuracy of the report. The sampling revealed that no refunds were
18 made to some borrowers who appeared to have been overcharged. Respondent was made aware of
19 the report's discrepancies and instructed to provide the Department additional information to confirm
20 the findings. Respondent failed to provide the information requested by the Department and, instead,
21 asserted that it would conduct its own internal review of the self-audit findings.

22 On June 21, 2013, Respondent submitted a revised self-audit report that identified per diem
23 interest overcharges for 226 out 961 loans funded during the aforementioned period. Respondent
24 also identified a borrower for which a possible overcharge may have occurred but claimed it lacked
25 conclusive documentation to confirm such overcharge. Respondent stated it would provide an update
26 on the borrower once the documentation was received. To date, Respondent has not provided any
27 further update to the Department.

28 By reason of the foregoing, City First Mortgage Services, LLC doing business as City 1st

1 Mortgage and City 1st Mortgage Services has engaged in the following: (1) charging California
2 borrowers interest on loans for a period in excess of one day prior to the date that the loan proceeds
3 are disbursed from escrow in at least 226 of 961 loans during the period of August 2010 through
4 January 2013 in violation of Financial Code section 50204, subdivision (o), and failing to disclose
5 the amount of such additional interest as required by Civil Code section 2948.5; (2) failing to
6 comply with examination and records requirements pursuant to Financial Code section 50314; and,
7 (3) failing to timely make a report to the Department as required by Financial Code sections 50326
8 and 50307, specifically, a self-audit report of per diem interest overcharged to borrowers in violation
9 of Financial Code section 50204, subdivision (o).

10 Financial Code section 50321 provides:

11 If, after investigation, the commissioner has reasonable grounds to believe that any licensee
12 has violated its articles of incorporation or any law or rule binding upon it, the commissioner
13 shall, by written order addressed to the licensee, direct the discontinuance of the violation.
14 The order shall be effective immediately, but shall not become final except in accordance
15 with the provisions of Section 50323.

16 Financial Code section 50323 provides:

17 (a) No order issued pursuant to Section 50321 or 50322 may become final except after notice
18 to the affected licensee of the commissioner's intention to make the order final and of the
19 reasons for the finding. The commissioner shall also notify the licensee that upon receiving a
20 request the matter will be set for hearing to commence within 15 business days after receipt.
21 The licensee may consent to have the hearing commence at a later date. If no hearing is
22 requested within 30 days after the mailing or service of the required notice, and none is
23 ordered by the commissioner, the order may become final without hearing and the licensee
24 shall immediately discontinue the practices named in the order. If a hearing is requested or
25 ordered, it shall be held in accordance with the provisions of the Administrative Procedure
26 Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
27 Government Code), and the commissioner shall have all of the powers granted under that act.
28 If, upon the hearing, it appears to the commissioner that the licensee is conducting business in
an unsafe and injurious manner or is violating its articles of incorporation or any law of this
state, or any rule binding upon it, the commissioner shall make the order of discontinuance
final and the licensee shall immediately discontinue the practices named in the order.

(b) The licensee has 10 days after an order is made final to commence an action to restrain
enforcement of the order. If the enforcement of the order is not enjoined within 10 days by the
court in which the action is brought, the licensee shall comply with the order.

WHEREFORE, good cause showing, the Commissioner is issuing an Order to Discontinue

1 Violations Pursuant to Financial Code section 50321 and Refund Excessive Per Diem Interest
2 Charges Pursuant to Financial Code section 50504 and hereby notifies City First Mortgage Services,
3 LLC doing business as City 1st Mortgage and City 1st Mortgage Services of her intention to make the
4 order final.

5 Dated: July 31, 2013
6 Sacramento, CA

JAN LYNN OWEN
Commissioner of Business Oversight

7
8 By _____
9 MARY ANN SMITH
10 Deputy Commissioner
11 Enforcement Division
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