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11 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
12 OF THE STATE OF CALIFORNIA

13	In the Matter of:)	CRMLA No. 413-1247
14)	
15	THE COMMISSIONER OF BUSINESS)	ACCUSATION IN SUPPORT OF NOTICE OF
16	OVERSIGHT,)	INTENT TO ISSUE ORDER REVOKING
17	Complainant,)	RESIDENTIAL MORTGAGE LENDER
18	v.)	LICENSE
19)	
20	FT MORTGAGE, LLC,)	
21	Respondent.)	

22 Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), alleges
23 and charges as follows:

24 **I.**

25 **Jurisdiction and Venue**

26 1. The Commissioner brings this revocation action under the provisions of Financial
27 Code section 50327, subdivision (a) (1), and the rules and regulations promulgated thereunder.

1 The Commissioner mailed the 2013 Reports to Respondent on February 24, 2014. Due to the
2 delay in mailing the 2013 Reports, the Commissioner granted an extension until April 4, 2014 before
3 the Department would impose a penalty for a late filing. FT Mortgage did not submit the 2013
4 Reports. A penalty was assessed against FT Mortgage on September 3, 2014 under section 50326 of
5 the Financial Code for failing to file its 2013 Reports. The penalty assessment and another copy of
6 the 2013 Reports were again sent to FT Mortgage and Hodges, but the package mailed on September
7 3, 2014 was returned by the post office marked “RETURN TO SENDER UNABLE TO
8 FORWARD.”

9 The 2014 Reports were sent to FT Mortgage’s designated e-mail address² at
10 mhodges@fedtrustmortgage.com on February 2, 2015 and reminder e-mails were sent on February 8,
11 16, and 22, 2015, and again on March 1, 2015. The 2014 Reports were due on March 1, 2015, but to
12 date they remain outstanding.

13 The 2015 Reports were sent to FT Mortgage’s designated e-mail address on January 20, 2016
14 and reminder e-mails were sent on February 8, 16, and 22, 2016, and again on March 2, 2016. The
15 2015 Reports were due but on March 1, 2016, but to date they remain outstanding.

16 7. FT Mortgage failed to pay the annual assessments for the 2014/2015 and 2015/2016
17 fiscal years in violation of Financial Code section 50401. The 2016/2017 annual assessment was
18 made on September 28, 2016 and was due on October 18, 2016. All of these invoices were created
19 through NMLS and remain unpaid.

20 8. FT Mortgage failed to file its Mortgage Call Report (MCR). Section 50307.2 of the
21 Financial Code requires Respondent to file its MCRs as required by NMLS. NMLS requires all
22 CRMLA licensees to file its MCRs quarterly and completed within 45 days of the end of each
23 quarter. FT Mortgage has not filed its MCRs since the third quarter of 2013.

24 9. FT Mortgage failed to maintain a surety bond in the minimum amount of \$50,000.00
25 as required by Financial Code section 50205. The company’s bond expired on January 30, 2014, and

26 _____
27 ² The Commissioner uses a licensee’s designated e-mail address to communicate with the licensee pursuant to the
28 Commissioner’s Order dated November 22, 2013. The e-mails provided a unique link for a licensee to access instructions
and their annual report form to complete. The Department of Business Oversight’s IT section maintains electronic records
of the e-mails sent and the annual reports that have been filed.

1 no replacement was obtained. Consequently, on March 4, 2014, the Commissioner issued an order to
2 discontinue FT Mortgage’s lending activities pursuant to section 50319 of the Financial Code.

3 10. FT Mortgage filed a request to surrender its CRMLA license through NMLS on
4 December 17, 2013. On December 18, 2013, the Department requested from Respondent, through
5 NMLS, all items required in the Surrender Checklist which is located on the NMLS Resource Center.
6 To date Respondent has not submitted the required information to complete the surrender process.

7 **III.**

8 **Applicable Law**

9 11. Financial Code section 50200 provides, in relevant parts:

10 (a) At the end of the licensee's fiscal year, but in no case more than 12
11 months after the last audit conducted pursuant to this section, each
12 licensed residential mortgage lender or servicer shall cause its books
13 and accounts to be audited by an independent certified public
14 accountant. Beginning with all audits of business conducted after
15 December 31, 1995, the audit shall be sufficiently comprehensive in
16 scope to permit the expression of an opinion on the financial statements
17 prepared in accordance with generally accepted accounting principles
18 and shall be performed in accordance with generally accepted auditing
19 standards. The audit shall include a reconciliation of the licensee's trust
20 accounts as of the audit date.

21 . . .

22 (d) The audit report shall be filed with the commissioner within 105
23 days of the end of the licensee's fiscal year. The report filed with the
24 commissioner shall be certified by the certified public accountant
25 conducting the audit. The commissioner may promulgate rules
26 regarding late audit reports.

27 (e) If a licensee required to make an audit fails to cause an audit to be
28 made, the commissioner may cause the audit to be made by an
independent certified public accountant at the licensee's expense. The
commissioner shall select the independent certified public accountant
by advertising for bids or by other fair and impartial means that the
commissioner establishes by rule. The commissioner may summarily
revoke the license of a licensee who fails to file a certified financial
statement prepared by an independent certified public accountant as
required by this division or at the request of the commissioner.

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12. Financial Code section 50205 provides in relevant part:
- (a) A residential mortgage lender or servicer licensee shall maintain a surety bond in accordance with this subdivision. The bond shall be used for the recovery of expenses, fines, and fees levied by the commissioner in accordance with this division or for losses or damages incurred by borrowers or consumers as the result of a licensee's noncompliance with the requirements of this division. The bond shall be payable when the licensee fails to comply with a provision of this division and shall be in the amount of fifty thousand dollars (\$50,000), and may be increased by order of the commissioner to one hundred thousand dollars (\$100,000) upon a determination by the commissioner that the licensee is not in compliance with any provision of this chapter or any rule or order adopted or issued by the commissioner to implement or enforce provisions of this chapter. The bond shall be payable to the commissioner and issued by an insurance company authorized to do business in this state. An original surety bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be filed with the commissioner within 10 days of its execution.
13. Financial Code section 50307 in relevant part states:
- (a) Each residential mortgage lender or servicer licensee shall file a report with the commissioner annually, on or before the first day of March, giving the relevant information that the commissioner reasonably requires to make the calculation required by subdivision (a) of Section 50401. The report shall be made under oath and in the form prescribed by the commissioner.
14. Financial Code section 50307.2 provides:
- The commissioner may require a licensee that employs one or more mortgage loan originators to submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.
15. Financial Code section 50326 states:
- If any licensee fails to do any of the following, the licensee shall forfeit to the people of the state a sum of up to one hundred dollars (\$100) for every day up to the 10th day: (a) to make any report required by law or by the commissioner within 10 days from the day designated for the making of the report, or within any extension of time granted by the commissioner, or (b) fails to include therein any matter required by law or by the commissioner. Thereafter, any failure shall constitute grounds for the suspension or revocation of the license held by the residential mortgage lender or residential mortgage loan servicer.

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- 16. 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.

17. CCR section 1950.200 provides:

These instructions have been prepared as an aid to licensees and their independent certified public accountants in the preparation of the audit report to be filed with the Department pursuant to Section 50200 of the California Residential Mortgage Lending Act [Division 20 (commencing with *Section 50000*), *Financial Code*.]

A. In General.

This report should be filed with the office of the Department with which the residential mortgage lender or residential mortgage loan servicer ordinarily transacts its business within 105 days of the end of the licensee's fiscal year.

B. Internal Control.

The independent certified public accountant must provide a description of the system of internal control used by the residential mortgage lender or residential mortgage loan servicer, including material weaknesses in internal accounting controls, recommendations for improvements, and comments concerning corrective actions taken or in process.

C. The independent certified public accountant's opinion, the Statement of Financial Position, the Statement of Income and the Statement of Cash Flows, including any footnotes that are an integral part of those statements, are public records except as provided in Section 250.10, Title 10, California Code of Regulations. Other information required in the report will be considered confidential information and should be submitted as a separate report or in such a manner as to be easily separated from the Statement of Financial Position, Statement of Income and the Statement of Cash Flows.

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18. Financial Code 50401 provides in relevant parts:

(a) In addition to other fees and reimbursements required to be paid under this division, each residential mortgage lender or servicer licensee shall pay to the commissioner an amount equal to the lesser of: (1) its pro rata share of all costs and expenses (including overhead and the maintenance of a prudent reserve not to exceed 90 days' costs and expenses) that the commissioner reasonably expects to incur in the current fiscal year in the administration of this division and not otherwise recovered by the commissioner under this division or from the State Corporations Fund, plus a deficit or less a surplus actually incurred during the prior fiscal year; or (2) five thousand dollars (\$5,000). The pro rata share shall be the greater of either one thousand dollars (\$1,000) or the sum of: (A) a number derived from the ratio of the aggregate principal amount of the mortgage loans secured by residential real property originated by the licensee to all mortgage loans secured by residential real property originated by all licensees under this division, as shown by the annual financial reports to the commissioner, which number is then multiplied by one-half of the costs and expenses estimated by the commissioner for the current fiscal year; plus (B) a number derived from the ratio of the average value of mortgage loans secured by residential real property serviced by a licensee to the average value of all mortgage loans secured by residential real property serviced by all licensees under this division, as shown by the annual financial reports to the commissioner, which number is then multiplied by one-half of the costs and expenses estimated by the commissioner for the current fiscal year. For the purposes of this section, the "principal amount" of a mortgage loan means the initial total amount a borrower is obligated to repay the lender and the "average value" of loans serviced means the sum of the aggregate dollar value of all mortgage loans secured by residential real property serviced by a licensee, calculated as of the last day of each month in the calendar year just ended, divided by 12.

In order for the commissioner to calculate the assessment under this section, each licensee shall file an annual report for the calendar year just ended containing the information required by the commissioner on or before March 1 of the year in which the assessment is to be calculated.

(c) On or before the 30th day of September in each year, the commissioner shall notify each licensee by mail of the amount assessed and levied against it and that amount shall be paid within 20 days. If payment is not made within 20 days, the commissioner shall assess and collect a penalty, in addition to the assessment of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

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IV.

Conclusion

The Commissioner finds, by reason of the foregoing, that FT Mortgage has violated Financial Code sections 50200, 50205, 50307, 50307.2, 50326, 50401, CCR section 1950.200, and based thereon, grounds exist to revoke the residential mortgage lender license of FT Mortgage.

WHEREFORE, IT IS PRAYED that the residential mortgage lender license of FT Mortgage be revoked under Financial Code section 50327 and in accordance with Financial Code section 50311. FT Mortgage will be given a transition period of 60 days within which to complete any loans for which it had prior commitments.

Dated: January 31, 2017

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____
MARLOU de LUNA
Senior Counsel
Enforcement Division