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

11 In the Matter of:)	CRMLA LICENSE NO.: 413-0675
)	CFL LICENSE NO.: 603-E024
12 THE COMMISSIONER OF BUSINESS)	
13 OVERSIGHT,)	
)	
14 Complainant,)	ACCUSATION IN SUPPORT OF NOTICE OF
)	INTENTION TO ISSUE ORDERS
15 vs.)	SUSPENDING LICENSES AND LEVYING
)	PENALTIES
16 FINANCE OF AMERICA MORTGAGE LLC,)	
)	
17 Respondent.)	
)	
18)	
19)	

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21 The Complainant, the Commissioner of Business Oversight of the State of California
22 (Commissioner), is informed and believes, and based upon such information and belief, alleges and
23 charges Respondent, Finance of America Mortgage LLC (FAM), as follows:

24 **I.**

25 **Introduction**

26 1. FAM is a residential mortgage lender licensed by the Commissioner pursuant to the
27 California Residential Mortgage Lending Act (CRMLA) (Financial Code section 50000 et seq.),
28 under license number 413-0675. FAM was formerly known as Gateway Funding Diversified

1 Mortgage Services, L.P. (Gateway). FAM has its principal place of business located at 300 Welsh
2 Road, Building #5, Horsham, Pennsylvania 19044. FAM employs mortgage loan originators.

3 2. FAM is also licensed by the Commissioner as a finance lender and broker pursuant to
4 the California Financing Law¹ (CFL) (Financial Code section 22000 et seq.), under license number
5 603-E024. FAM has its principal place of business under the CFL also located at 300 Welsh Road,
6 Building #5, Horsham, Pennsylvania 19044.

7 3. On or about June 11, 2013, the Commissioner issued an Order to Discontinue
8 Violations Pursuant to California Financial Code Section 50321 (2013 Order) against Gateway. The
9 2013 Order directed Gateway, now FAM, to discontinue violations of the California Code of
10 Regulations, title 10, sections 1950.314.1 and 1950.314.6 and Financial Code sections 50204,
11 subdivision (o) and 50314.

12 II.

13 February 2, 2016 Examination

14 4. On or about February 2, 2016, the Commissioner commenced an onsite regulatory
15 examination of the books and records of FAM under the CRMLA (2016 Examination). The
16 regulatory examination disclosed that FAM violated the 2013 Order and multiple provisions of the
17 California Code of Regulations, Financial Code, and Civil Code as detailed below:

18 A. Debit Balances in Trust Accounts and Failure to Reconcile Accounts

19 5. The regulatory examination disclosed that as of December 31, 2015, FAM was not in
20 compliance with the CRMLA with respect to its handling of trust funds. FAM had debit balances
21 (shortages) in its escrow impound trust accounts totaling \$302,103.84. The types of impounds
22 maintained in the trust accounts are escrow taxes and insurance and mortgage insurance premiums
23 (MIPs). There was a shortage of \$22,522.26 in FAM's Escrow Taxes & Insurance account and a
24 shortage of \$279,581.58 in FAM's MIP account. FAM's Escrow Taxes & Insurance account
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27 ¹ "Effective October 4, 2017, the name of the "California Finance Lenders Law" changed to the "California Financing Law." (Assem.
28 Bill No. 1284 (2017-2018 Reg. Sess.) § 4.) For purposes of this document, a reference to the California Finance Lenders Law means
the California Finance Lenders Law before October 4, 2017 and the California Financing Law on and after that date. (Cal. Fin. Code,
§ 22000.)"

1 contained trust funds for 1,187 loans nationwide, 100 of which were California loans. California
2 Code of Regulations, title 10, section 1950.314.6 and the 2013 Order prohibit debit balances in any
3 loan or servicing account maintained by CRMLA licensees.

4 6. On or about February 10, 2016, FAM corrected the shortage in the Escrow Taxes &
5 Insurance account by transferring \$22,522.26 from its operating account to the trust account. On or
6 about October 7, 2016, FAM provided evidence to the Commissioner that they have corrected the
7 \$279,581.58 shortage in the MIP account.

8 7. The 2016 Examination also disclosed that FAM did not reconcile its escrow liability
9 ledgers to its control account at least once a week and to the bank statement at least once each
10 month, in violation of California Code of Regulations, title 10, section 1950.314.1 and the 2013
11 Order. On or about October 7, 2016, FAM provided evidence of correction and also procedures
12 implemented to ensure that the reconciliation required under California Code of Regulations, title
13 10, section 1950.314.1 was being conducted.

14 **B. Per Diem Interest Overcharges**

15 8. The 2016 Examination further disclosed that in five out of eighty-two loan files
16 reviewed, FAM overcharged the borrower per diem interest in excess of one day prior to
17 disbursement of loan proceeds in violation of Financial Code section 50204, subdivision (o), Civil
18 Code section 2948.5 and the 2013 Order. The range of per diem interest overcharges was between
19 \$25.53 and \$161.97. FAM overcharged borrowers between one to three days of interest. The per
20 diem interest overcharges are repeat violations of Financial Code section 50204, subdivision (o) and
21 Civil Code section 2948.5 by FAM that were discovered in prior regulatory examinations conducted
22 by the Commissioner.

23 **III.**

24 **Applicable Law**

25 9. The violations of the CRMLA described above, if committed by FAM on or before
26 having originally sought a license from the Department under the CFL, would have constituted
27 grounds for the Commissioner to deny the application of FAM under Financial Code section 22109.
28 Pursuant to Financial Code section 22714, the Commissioner may suspend any CFL license if a “fact

1 or condition exists that, if it had existed at the time of the original application for the license,
2 reasonably would have warranted the commissioner in refusing to issue the license originally.”
3 Pursuant to Financial Code section 22109, the Commissioner may refuse to issue a license if the
4 applicant “has violated any provision of this division or the rules thereunder or any similar
5 regulatory scheme of the State of California.” Thus, a fact or condition now exists that, if it had
6 existed at the time of the original application of FAM for a license under the CFL, reasonably would
7 have warranted the Commissioner in refusing to issue the license.

8 10. Financial Code section 50327 provides in pertinent part:

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

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

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

17 11. Financial Code section 50513 provides in pertinent part:

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

19 ...

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

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

Prayer

12. The Commissioner finds that, by reason of the foregoing, FAM has violated Financial Code section 50204, subdivision (o), Civil Code section 2948.5, and California Code of Regulations, title 10, sections 1950.314.1 and 1950.314.6 and the Commissioner’s 2013 Order. Furthermore, based upon FAM’s violations of the CRMLA, a fact or condition now exists, that if it had existed at the time of original licensure under the CFL, reasonably would have warranted the Commissioner in refusing to issue a CFL license to FAM.

13. For all the foregoing reasons, grounds exist to: (1) suspend FAM’s CRMLA residential mortgage lender license and CFL finance lender and broker license and (2) levy penalties against FAM pursuant to Financial Code section 50513, subdivision (b).

14. WHEREFORE, IT IS PRAYED THAT:

- a) Pursuant to Financial Code section 50327, the residential mortgage lender license of FAM be suspended for a period of up to 12 months;
- b) Pursuant to Financial Code section 22714, the finance lender and broker license of FAM be suspended for a period of up to 12 months;
- c) Pursuant to Financial Code section 50513(b), a penalty be levied against FAM for failure to reconcile its escrow liability ledgers to its control account at least once a week and to the bank statement at least once each month, in violation of California Code of Regulations, title 10, section 1950.314.1, in an amount of at least \$25,000.00, or according to proof;
- d) Pursuant to Financial Code section 50513(b), a penalty be levied against FAM for shortages in its escrow impound trust accounts, in violation of California Code of Regulations, title 10, section 1950.314.6, in an amount of at least \$25,000.00, or according to proof; and

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e) Pursuant to Financial Code section 50513(b), penalties be levied against FAM for at least five violations of Financial Code section 50204(o), whereby FAM overcharged borrowers per diem interest, in an amount of at least \$1,000.00 per violation, for a total amount of penalties of at least \$5,000.00, or according to proof.

Dated: August 10, 2018
Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
JOHNNY VUONG
Senior Counsel
Enforcement Division