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BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT

OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of THE COMMISSIONER OF BUSINESS OVERSIGHT, Complainant, vs. FIRST CALIFORNIA MORTGAGE COMPANY, Respondent.	Case No.: 415-0042 **STATEMENT OF FACTS IN SUPPORT OF ORDER TO DISCONTINUE VIOLATIONS PURSUANT TO CALIFORNIA FINANCIAL CODE SECTION 50321**

Complainant is informed and believes and based upon such information and belief, alleges and charges as follows:

1. Respondent First California Mortgage Company ("First Cal") is a residential mortgage lender licensed by the California Commissioner of Business Oversight ("Commissioner") of the Department of Business Oversight ("Department") pursuant to the California Residential Mortgage Lending Act (Cal. Fin. Code § 50000 et seq.) ("CRMLA") (Cal. Fin. Code § 50000 et seq.).

2. In or about December, 2008, the Commissioner commenced a regulatory examination of the books and records of First Cal. The regulatory examination disclosed that in five (%) out of twenty (20) loans, or approximately twenty five percent (25%) of the loan files reviewed, First Cal was charging the borrowers per diem interest in excess of one day prior to the date that the loan proceeds were disbursed from escrow, in violation of the CRMLA section 50204, subdivisions (k) and (o), and California Civil Code section 2948.5. During 2008, First Cal originated 2671 loans in California.

3. The per diem interest overcharges averaged $126.06 per loan. The range of per diem interest overcharges was between $18.01 and $298.56. The range of days the interest was overcharged was between one (1) and five (5) days.

4. Based upon the findings of the 2008 regulatory examination, First Cal was instructed by the Commissioner's examination staff to take measures to prevent any recurrence of per diem overcharge to borrowers in the future.

5. Additionally, the Commissioner's examination staff instructed First Cal to conduct a self-audit and review all loans it made since its date of licensure and make appropriate refunds. First Cal was also required to provide a detailed report to the Commissioner's examination staff of the files reviewed and the dollar amount of the overcharges established through the review, including, but not limited to, the loan number, borrower's name, loan amount, interest rate, date disbursed, date interest started being collected, interest overcharged and date interest was refunded to the borrower.

6. Following the self-audit, First Cal refunded $71,584.85 to 518 borrowers.

7. In addition, the 2008 examination also revealed trust fund shortages in violation of Title 10, California Code of Regulations (CCR) section 1950.314.6. Although procedures were put in place by First Cal to avoid further shortages, the Commissioner's 2012 examination revealed that those procedures are not working, as set out below. The trust fund shortages are repeated serious violations that concern the Commissioner.

8. A subsequent regulatory exam conducted, on or about October 22, 2012, again disclosed trust fund shortages in violation of CCR 1950.314.6 and overcharging per diem interest in

four (4) out of twenty-one (21) loans, or approximately nineteen (19%) of the loan files reviewed, in violation of the CRMLA section 50204, subdivisions (k) and (o), and California Civil Code section 2948.5. During 2012, First Cal originated 3,190 loans in California.

9. The examination disclosed that First Cal had a combined debit balance (shortage) of $49,845.26 in its trust accounts as of August 31, 2012. First Cal maintains three trust accounts for all escrow impounds and all borrowers no matter the state residence of the borrowers. The types of impounds maintained in the trust accounts are taxes, hazard insurance, mortgage insurance premiums, and appraisals. The shortage was mainly caused by not reconciling incorrect transfers of escrow funds (taxes and insurance) and mortgage insurance premiums in a timely manner. During the examination First Cal transferred $49,845.26 from the operating account to the main trust bank account to correct the shortage.

10. With regard to the per diem interest violations, the overcharges averaged $56.99 per loan. The range of per diem interest overcharges was between $40.11 and $88.04. The range of days that interest was overcharged was between one (1) and three (3) days.

11. Additionally, the Commissioner's examination staff instructed First Cal to review all loans made since 2009 and make appropriate refunds. After the Commissioner granted First Cal several extensions, on September 5, 2014, First Cal completed the request by providing details and supporting documents evidencing refunds made from 2009-2013. First Cal refunded $85,678.63 to 8778 borrowers. Although First Cal had procedures in place for reviewing and refunding per diem overcharges, they were not being done in a timely manner.

12. The findings of the 2012 regulatory examination demonstrate that First Cal has failed to implement procedures to ensure that per diem interest would not continue be overcharged and that trust fund shortages would not continue to occur, as requested by the Commissioner's examination staff.

13. By reason of the foregoing, First Cal has violated California Financial Code sections 50204, subdivisions (k) and (o), and California Civil Code section 2948.5.

14. California Financial Code section 50321 provides in pertinent part:

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

(Cal. Fin. Code § 50321.)

15. California Financial Code section 50323 provides:

> (a) No order issued pursuant to Section 50321or 50322 may become final except after notice to the affected licensee of the commissioner's intention to make the order final and of the reasons for the finding. The commissioner shall also notify the licensee that upon receiving a request the matter will be set for hearing to commence within 15 business days after receipt. The licensee may consent to have the hearing commenced at a later date. If no hearing is requested within 30 days after the mailing or service of the required notice, and none is ordered by the commissioner, the order may become final without hearing and the licensee shall immediately discontinue the practices named in the order. If a hearing is requested or ordered, it shall be held in accordance with the provisions of the administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all the powers granted under that act. 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.
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> (b) The licensee has 10 days after an order is made final to commence to restrain enforcement of the order. If 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.

(Cal. Fin. Code § 50323.)

16. Additionally, First Cal has violated Title 10, California Code of Regulations, section 1950.314.6, which provides:

> A residential mortgage lender, residential mortgage lender and servicer, or residential mortgage loan servicer shall not withdraw, pay out, or transfer moneys from any loan or servicing account in excess of the amount to the credit of the account at the time of the withdrawal,

> payment, or transfer.
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> However, a residential mortgage lender, residential mortgage lender and servicer, or residential mortgage loan servicer may advance its own funds to a loan or servicing account under an impound agreement to pay taxes, insurance, and other payments, if the required withdrawal, payment, or transfer exceeds the amount of the credit for the account.

WHEREFORE, good cause showing, the Commissioner is issuing an Order to Discontinue Violations Pursuant to Financial Code Section 50321 and notifying Mount Olympus of his intention to make the order final.

Dated: October 15, 2014
Sacramento, CA

JAN LYNN OWEN
Commissioner of Business Oversight

By______________________________
JOANNE ROSS
Senior Corporations Counsel
Enforcement Division