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7  
8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
9 OF THE STATE OF CALIFORNIA

10  
11 In the Matter of the Accusation of ) FILE NO.: 413 1040  
12 THE CALIFORNIA COMMISSIONER OF )  
BUSINESS OVERSIGHT, ) ACCUSATION IN SUPPORT OF NOTICE OF  
13 ) INTENT TO ISSUE ORDERS SUSPENDING  
14 Complainant, ) LICENSE AND IMPOSING PENALTIES  
15 v. )  
16 LOANDEPOT.COM LLC )  
17 Respondent. )  
18 )  
19 )  
20 )

21 Jan Lynn Owen, the Commissioner of Business Oversight ("Commissioner") is informed and  
22 believes, and based upon such information and belief, alleges and charges Respondent as follows:

23 I.

24 JURISDICTION AND VENUE

25 The Commissioner brings this action under the provisions of Financial Code sections 50513,  
26 subdivision (4) and 50327, subdivision (a) (1), and the rules and regulations promulgated thereunder.

27 The Commissioner is authorized to administer and enforce the provisions of the California  
28 Residential Mortgage Lending Act (Fin. Code § 50000 et seq.) ("CRMLA") and the regulations

1 issued under title 10, California Code of Regulations (“CCR”) which regulate the business and  
2 activities of residential mortgage lenders and servicers.

3 **II.**

4 **STATEMENT OF FACTS**

5 loanDepot.com LLC (“loanDepot”) is a residential mortgage lender licensed by the  
6 Commissioner under the CRMLA. Its principal place of business is located at 26642 Towne Centre  
7 Drive, Foothill Ranch, California. At all relevant times herein, loanDepot operates numerous branch  
8 offices in the State of California.

9 Anthony Li Hsieh, at all relevant times herein, is the chief executive officer of loanDepot.

10 On or about July 15, 2013, the Commissioner commenced a regulatory examination of  
11 loanDepot. The examination revealed numerous violations of the CRMLA, including the following:

12 1. loanDepot did not directly deposit escrow funds into its proper trust accounts  
13 as required by Financial Code section 50202. Consequently, it failed to maintain current its books  
14 and records with reference to the trust accounts thereby creating a trust shortage in violation of CCR  
15 section 1950.314.1. This violation was noted in the prior regulatory examination conducted on July  
16 25, 2011.

17 2. loanDepot failed to reconcile its trust liability ledgers to the general ledger  
18 control account at least once each week and to the bank statement balance at least once each month as  
19 required by CCR section 1950.314.1 thereby creating a trust shortage and/or overage. This violation  
20 was noted in the prior regulatory examination conducted on July 25, 2011.

21 3. At least nine loan files contained blanks that were left to be filled in after  
22 execution of the document in violation of Financial Code section 50204, subdivision (e).

23 4. At least four borrowers were overcharged their per diem interest in violation of  
24 Financial Code section 50204, subdivisions (i), (k), and (o). Although loanDepot provided refunds to  
25 these noted borrowers, the refunds were not provided timely. The refunds were made to the  
26 borrowers after the Commissioner informed the company of an upcoming examination.

27 5. loanDepot failed to conduct a ten year criminal background check of its  
28 prospective employees as required by Financial Code section 50317. The requirement under section

1 50317 would screen prospective employees who have been convicted of certain crimes to be  
2 ineligible for employment with a licensed mortgage lender and/or servicer. The examination  
3 disclosed that loanDepot only conducted a seven year criminal background check.

4           6.       loanDepot failed to post a prominent link on its website to inform borrowers  
5 about the alternative foreclosure prevention options available to them and the instructions to explore  
6 these options. Moreover, there was no link on its website that provided the borrowers with a list of  
7 financial documents needed to discuss foreclosure prevention options with the mortgage servicer as  
8 required by Civil Code section 2923.55, subdivision (f)(5).

9           7.       loanDepot disbursed funds out of at least two loan files that had insufficient  
10 credit thereby creating a debit balance in each file in violation of CCR 1950.341.6. The debit  
11 balances were not corrected until two days after the disbursement had been made.

12           8.       loanDepot’s radio advertisements did not reference that it was licensed by the  
13 Department of Business Oversight under the CRMLA as required by CCR section 1950.204.3.

14           9.       loanDepot’s advertising files made reference to the thousands of veterans that  
15 the company has helped in taking advantage of a special Veterans Administration (“VA”) programs  
16 to lower veterans’ interest rate, but a review of the VA loans funded by loanDepot showed that not all  
17 loans processed from veteran borrowers were funded under the VA programs but rather a  
18 conventional 30 year fixed or FHA loan. The advertised statements appear to be misleading to  
19 veteran borrowers in violation of Section 5 of the Federal Trade Commission Act that prohibits  
20 “unfair or deceptive acts or practices in or affecting commerce.”

21           On or about March 7, 2014, the report of regulatory examination was sent to loanDepot noting  
22 the violations found during the July 15, 2013 examination. The report stated that the violations were  
23 being brought to the company’s attention for correction. The report also stated that loanDepot’s  
24 failure to maintain current its books and records with reference to the trust accounts was noted in the  
25 prior regulatory examination.

26           On or about April 4, 2014, the Commissioner received a written response from loanDepot  
27 noting the corrections made in reply to the regulatory report.

28

1 On or about May 15, 2014, the Commissioner responded to loanDepot's April 4, 2014 letter.  
2 The Commissioner informed the company that the bank statements it provided "did not agree with  
3 the corresponding liability control accounts and the subsidiary ledger for the MIP Trust, Impound  
4 Trust and VA Funding accounts. Furthermore, there are debit amounts shown" in the company's  
5 "liability ledgers signifying debit balances as of February 28, 2014" in the Impound, MIP Trust, and  
6 VA Funding trust accounts. loanDepot was instructed to transfer \$245,654.81 to Wells Fargo Bank  
7 Account ending in 4235, \$189,310.91 to Well Fargo bank account ending in 4425 and \$111,758.64 to  
8 Wells Fargo Bank account ending in 4243.

9 On or about May 22, 2014, the Commissioner received loanDepot's response to the letter of  
10 May 15, 2014. In its cover letter, loanDepot stated that it "enclosed a spreadsheet detailing the  
11 reconciliation and March bank statements which show transfers to the accounts in question on March  
12 1." In addition, loanDepot stated that "[t]here is a one day delay between the funding date and the  
13 transfer date. I believe this was communicated during the onsite examination and is the reason for  
14 the differences noted by the Department on the February 28 balances."

15 On or about January 20, 2015, another letter was sent to loanDepot wherein loanDepot was  
16 notified that the amounts transferred to the trust accounts were over and above the shortage amounts  
17 thereby creating overages in the trust accounts. loanDepot was advised that the overages noted in the  
18 trust accounts are considered commingling and indicate the company continues to perform improper  
19 reconciliations of its trust accounts in violation of CCR section 1950.314.1.

20 loanDepot has failed to implement procedures to ensure that it is properly reconciling its  
21 books and records with reference to the trust accounts so as to avoid any trust shortages and/or  
22 overages

### 23 III.

### 24 LAW

25 Financial Code section 50202 provides, in relevant parts:

26 (a) Escrow funds for a purpose authorized by the residential mortgage  
27 loan contract (1) shall be subject to and satisfy all applicable state and  
28 federal requirements . . . (2) shall be maintained in a depository  
institution as described in subdivision (b), and (3) may not be  
commingled with a licensee's funds.

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- (b) . . . a trust account shall be placed in a non-interest-bearing account in a federally insured depository institution, a federal home loan bank, a federal reserve bank, or other similar government-sponsored enterprise, to be removed and used only for the following:
  - (1) Payments authorized by the borrower, allowed by the mortgage loan contract, or required by federal or state law.
  - (2) Refunds to the borrower.
  - (3) Transfer to another institution that is described in this subdivision.
  - (4) Forwarding to the appropriate servicer in case of a transfer of servicing.
  - (5) Any other purpose authorized by the residential mortgage loan contract.
  - (6) Compliance with a regulatory or court order.

Financial Code section 50204 states, in relevant parts:

A licensee may not do any of the following:

- (e) Obtain or induce an agreement or other instrument in which blanks are left to be filled in after execution.  
. . . .
- (i) Engage in any acts in violation of *Section 17200 or 17500 of the Business and Professions Code*.  
. . . .
- (k) Do an act, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealings.  
. . . .
- (o) Commit an act in violation of *Section 2948.5 of the Civil Code*. Evidence of compliance with *Section 2948.5 of the Civil Code* may be evidenced by (1) a certification executed by the licensee, at no cost to the borrower, pursuant to *Section 2015.5 of the Code of Civil Procedure*, or (2) other evidence in the loan file acceptable to the commissioner.

Financial Code section 50317 provides, in relevant parts:

- (a) Any person who has been convicted of, or pleaded nolo contendere to any crime specified in subdivision (b) within the past 10 years or has been held liable in any civil action by final judgment or any administrative judgment by any public agency within the past seven years, of any of the provisions specified in subdivision (b), shall not serve as an officer, director, partner, shareholder controlling 10 percent or more of the ownership interests, trustee, or employee of a residential mortgage lender or residential mortgage loan servicer. This subdivision shall not apply to any person whose office, employment, ownership interest, or other participation in the business of a licensed residential mortgage lender or residential mortgage loan servicer commenced prior

1 to January 1, 1995, or whose criminal conviction, plea, or judgment  
2 occurred prior to January 1, 1995.

3 . . . .

4 (h) For purposes of this section, the term "employee" means (1) a  
5 mortgage loan originator, including a loan officer or other individual  
6 who negotiates agreements with the public, or (2) an individual with  
7 access to or responsibility for trust funds held by the licensee.

8 Financial Code section 50327 provides, in relevant parts:

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  
13 or order of the commissioner thereunder.

14 . . . .

15 (b) The power of investigation and examination by the commissioner is  
16 not terminated by the denial, nonrenewal, surrender, suspension, or  
17 revocation of any license issued by him or her.

18 Financial Code section 50505 provides:

19 Any person who violates any provision of any of the following federal  
20 acts or regulations violates this division:

21 (a) The federal Real Estate Settlement Procedures Act, as amended (12  
22 U.S.C. Sec. 2601 et seq.).

23 (b) The federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601  
24 et seq.).

25 (c) The federal Home Ownership Equity Protection Act (15 U.S.C. Sec.  
26 1639).

27 (d) Any regulation promulgated under any of the federal acts in  
28 subdivision (a), (b), or (c).

Financial Code section 50513 provides, in relevant parts:

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

. . . .

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

(5) Issue orders or directives to mortgage loan originators under this  
division as follows:

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(B) Order or direct a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator to cease any harmful activities or violations of this division, including immediate temporary orders to desist and refrain.

....

(b) The commissioner may impose a civil penalty on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any residential mortgage lender or servicer licensee 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 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.

CCR section 1950.204.3 provides:

(a) A residential mortgage lender, mortgage servicer, residential mortgage lender and servicer, or mortgage loan originator shall not advertise that it or any of its officers, employees, or agents are "bonded," "supervised by," "regulated by," "audited by" or "examined by" the State of California or any agency thereof.

(b) A residential mortgage lender, mortgage servicer, residential mortgage lender and servicer, or mortgage loan originator shall refer to its licensure under the Act in any written or printed communication or any communication by means of recorded telephone messages, telephonic or electronic media, or spoken on radio, television or similar communications media, only by the following statement: "Licensed by the Department of Business Oversight under the California Residential Mortgage Lending Act."

CCR section 1950.314.1, in relevant part provides:

(a) A residential mortgage lender, residential mortgage lender and servicer, or residential mortgage loan servicer shall establish, and maintain current, the following books with reference to its trust accounts:

(1) A trust account ledger card for each account detailing receipts and disbursement of all funds deposited by the borrower, lender or seller

1 with the licensee in connection with the origination, closing or  
2 servicing of any mortgage loan . . . .

(2) Liability controlling account;

3 (3) Cash receipt and disbursement journal or a file containing copies of  
4 all receipts and checks and/or check stubs of checks issued by the  
5 residential mortgage lender or residential mortgage loan servicer as a  
6 medium of posting to the records referred to in subsections (a) and (b)  
7 in which case adding machine tapes of totals of receipts and checks  
8 shall be retained.

(b) The records referred to in subsections (a)(1) and (2) shall be  
9 reconciled at least once each month with the bank statements of the  
10 trust account. The records referred to in subsection (a)(1) shall be  
11 reconciled at least once each week with the liability controlling account  
12 referred to in subsection (a)(2).

(c) Maintenance of records in accordance with generally accepted  
13 accounting principles on microfilm, microfiche, or electronic data  
14 processing and retrieval systems shall be deemed to be in compliance  
15 with the requirements of this section.

12 CCR section 1950.314.2 provides:

(a) A residential mortgage lender, residential mortgage lender and  
13 servicer, or residential mortgage loan servicer shall establish, and  
14 maintain current, the following books with reference to its general  
15 accounts:

(1) General ledger reflecting the assets, liabilities, capital, income and  
16 expense of the business, in accordance with generally accepted  
17 accounting principles;

(2) Cash receipt and disbursement journal.

18 The bank accounts contained in the general ledger shall be reconciled at  
19 least once each month with the bank statements of the general accounts.

(b) Maintenance of records in accordance with generally accepted  
20 accounting principles on microfilm, microfiche, or electronic data  
21 processing and retrieval systems shall be deemed to be in compliance  
22 with the requirements of this section.

22 CCR section 1950.314.6 provides:

23 A residential mortgage lender, residential mortgage lender and servicer,  
24 or residential mortgage loan servicer shall not withdraw, pay out, or  
25 transfer moneys from any loan or servicing account in excess of the  
26 amount to the credit of the account at the time of the withdrawal,  
27 payment, or transfer.

26 However, a residential mortgage lender, residential mortgage lender  
27 and servicer, or residential mortgage loan servicer may advance its own  
28 funds to a loan or servicing account under an impound arrangement to



1 pay taxes, insurance, and other payments, if the required withdrawal,  
2 payment, or transfer exceeds the amount of the credit for the account.

3 Civil Code section 1923.2, subdivision (k) states:

4 A reverse mortgage loan shall comply with all of the following  
5 requirements:

6 (k) A lender shall not accept a final and complete application for a  
7 reverse mortgage loan from a prospective applicant or assess any fees  
8 upon a prospective applicant without first receiving certification from  
9 the applicant or the applicant's authorized representative that the  
10 applicant has received counseling from an agency as described in  
11 subdivision (j) and that the counseling was conducted in person, unless  
12 the certification specifies that the applicant elected to receive the  
13 counseling in a manner other than in person. The certification shall be  
14 signed by the borrower and the agency counselor, and shall include the  
15 date of the counseling and the name, address, and telephone number of  
16 both the counselor and the applicant. Electronic facsimile copy of the  
17 housing counseling certification satisfies the requirements of this  
18 subdivision. The lender shall maintain the certification in an accurate,  
19 reproducible, and accessible format for the term of the reverse  
20 mortgage.

21 Civil Code section 1923.5 provides, in relevant parts:

22 (a) No reverse mortgage loan application shall be taken by a lender  
23 unless the loan applicant, prior to receiving counseling, has received  
24 from the lender the following plain language statement in conspicuous  
25 16-point type or larger, advising the prospective borrower about  
26 counseling prior to obtaining the reverse mortgage loan . . . .

27 (b)  
28 (1) In addition to the plain statement notice described in subdivision  
(a), no reverse mortgage loan application shall be taken by a lender  
unless the lender provides the prospective borrower, prior to his or her  
meeting with a counseling agency on reverse mortgages, with a written  
checklist, or in the event that the prospective borrower seeks counseling  
prior to requesting a reverse mortgage loan application from the reverse  
mortgage lender, the counseling agency shall provide the prospective  
borrower with a written checklist. The written checklist shall  
conspicuously alert the prospective borrower, in 12-point type or larger,  
that he or she should discuss with the agency counselor the following  
issues:

(A) How unexpected medical or other events that cause the prospective  
borrower to move out of the home, either permanently or for more than  
one year, earlier than anticipated will impact the total annual loan cost  
of the mortgage . . . .

(2) The checklist required in paragraph (1) shall be signed by the  
agency counselor, if the counseling is done in person, and by the  
prospective borrower and returned to the lender along with the

1 certification of counseling required under subdivision (k) of Section  
2 1923.2, and the loan application shall not be approved until the signed  
3 checklist is provided to the lender. A copy of the checklist shall be  
4 provided to the borrower.

5 Civil Code section 2923.55, subdivision (f) (5) provides:

6 (f) A notice of default may be recorded pursuant to Section 2924 when  
7 a mortgage servicer has not contacted a borrower as required by  
8 paragraph (2) of subdivision (b), provided that the failure to contact the  
9 borrower occurred despite the due diligence of the mortgage servicer.  
10 For purposes of this section, "due diligence" shall require and mean all  
11 of the following:

12 . . . .

13 (5) The mortgage servicer has posted a prominent link on the homepage  
14 of its Internet Web site, if any, to the following information:

15 (A) Options that may be available to borrowers who are unable to  
16 afford their mortgage payments and who wish to avoid foreclosure, and  
17 instructions to borrowers advising them on steps to take to explore  
18 those options.

19 (B) A list of financial documents borrowers should collect and be  
20 prepared to present to the mortgage servicer when discussing options  
21 for avoiding foreclosure.

22 (C) A toll-free telephone number for borrowers who wish to discuss  
23 options for avoiding foreclosure with their mortgage servicer.

24 (D) The toll-free telephone number made available by HUD to find a  
25 HUD-certified housing counseling agency.

26 **IV.**

27 **CONCLUSION**

28 The Commissioner finds that, by reason of the foregoing, loanDepot.com LLC has  
continuously violated Financial Code sections 50202, and CCR section 1950.314.1. Therefore,  
grounds exist to:

(1) suspend the CRMLA residential mortgage lender license of loanDepot.com LLC  
pursuant to Financial Code section 50327, subdivision (a)(1); and

(2) levy penalties against loanDepot.com LLC pursuant to Financial Code section 50513,  
subdivision (a)(4).

WHEREFORE, IT IS PRAYED that:

1. Under Financial Code section 50327, subdivision (a)(1), the residential mortgage

1 lender and/or servicer license of loanDepot.com LLC be suspended for up to 12 months.

2           2.       Under Financial Code section 50513, subdivision (a)(4), penalties be levied against  
3 loanDepot.com LLC for its continuous violations of Financial Code section 50202 and CCR section  
4 1950.314.1 causing the shortages and/or overages in the trust accounts, in an amount of \$25,000 per  
5 violation, for a total amount of penalties of \$75,000.

6 Dated: January 30, 2015

JAN LYNN OWEN  
Commissioner of Business Oversight

By: \_\_\_\_\_  
MARLOU de LUNA  
Senior Corporations Counsel  
Enforcement Division

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