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9 Attorneys for Complainant
BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA

11 THE CALIFORNIA CORPORATIONS) File No.: 413-0044
12 COMMISSIONER,)
13 Complainant,) **ACCUSATION**
14 v.) California Financial Code §50311
15 M & T Mortgage Corporation)
16 Respondent.)
17)
18)
19)

20 The Complainant, California Corporations Commissioner ("Commissioner"), is informed and
21 believes, and based upon such information and belief, alleges and charges Respondent as follows:
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23 **I.**

24 Respondent M & T Mortgage Corporation ("M&T") is a residential mortgage lender and
25 mortgage loan servicer licensed by the Commissioner pursuant to the California Residential
26 Mortgage Lending Act (California Financial Code, § 50000 *et seq.*) ("CRMLA"). M&T has its
27 principal place of business located at One Fountain Plaza, Buffalo, New York, 14203.
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II.

Pursuant to California Financial Code sections 50307 and 50401 and California Code of Regulations, title 10, section 1950.314.8, all licensees under the CRMLA are required to file the following annual reports with the Commissioner: (1) Report of Principal Amount of Loans and Aggregate Amount of Loans Serviced ("Activity Report"); (2) Report on Non-traditional, Adjustable Rate and Mortgage Loan Products ("Non-traditional Report"); and (3) Non-traditional, Adjustable Rate and Mortgage Loan Survey ("Survey"). The Activity Report, Non-traditional Report, and Survey must be filed with the Commissioner on or before March 1st of each year for the preceding twelve (12) month period ending December 31.

On or about February 1, 2008, an Activity Report form, Non-traditional Report form and Survey were sent to all CRMLA licensees, including M&T, with a notice stating that these reports were due on or before March 1, 2008. The Commissioner assessed a penalty of \$1000.00 for the failure to submit these reports on or about May 15, 2008. To date, M&T has not submitted the Activity Report, the Non-traditional Report or the Survey to the Commissioner and paid the assessed penalty.

III.

Pursuant to California Financial Code section 50200, all licensees under the CRMLA are required to file audited financial statements ("Audited Report") with the Commissioner. M&T was required to submit its Audited Report for its fiscal year ending December 31, 2007 to the Commissioner.

On or about December 17, 2007, a reminder notice was issued to M&T reminding M&T that these reports were due to be filed with the Commissioner on or before April 15, 2008. M&T did not submit the Audited Report to the Commissioner, despite this reminder notice. On or about August 13, 2008, the Commissioner assessed a penalty of \$1000.00 for failure to submit the Audited Report pursuant to California Financial Code section 50326. To date, M&T has not submitted the Audited Report to the Commissioner and paid the assessed penalty.

1 IV.

2 California Financial Code section 50205(a) states “[a] licensee shall maintain a surety bond in
3 accordance with this subdivision.” M&T has failed to maintain its surety bond as required by that
4 section. On or about October 5, 2007, the Commissioner received a Notice of Cancellation Non-
5 Renewal of M&T’s surety bond from Western Surety Company. The date of cancellation of the
6 surety bond was September 7, 2008.

7 On or about October 11, 2007, the Commissioner issued an Order To Discontinue Residential
8 Mortgage Lending And/Or Servicing Activities Pursuant California Financial Code section 50319¹ to
9 M&T. To date, the surety bond has not been reinstated or replaced, and the Order To Discontinue
10 Residential Mortgage Lending And/Or Servicing Activities Pursuant California Financial Code
11 section 50319 remains in effect.

12 V.

13 California Financial Code section 50327 provides in pertinent part:

- 14 (a) The commissioner may, after notice and a reasonable opportunity to
15 be heard, suspend or revoke any license if the commissioner finds that:
16 (1) the licensee has violated any provision of this division or any rule or
17 order of the commissioner thereunder; or (2) any fact or condition
18 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.

19 The Commissioner finds that, by reason of the foregoing, M&T MORTGAGE
20 CORPORATION has violated California Financial Code sections 50200, 50205, 50307, 50326,
21 50401 and California Code of Regulations, title 10, section 1950.314.8, and based thereon, grounds
22 exist to revoke M&T MORTGAGE CORPORATION’s license as a residential mortgage lender and
23 mortgage loan servicer.

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25 ¹ California Financial Code section 50319 provides in pertinent part: (a) If the commissioner, as a result of any
26 examination or from any report made to him or her, shall find that any person subject to this division.... has
27 failed to comply with the bonding requirements of Section 50205, the commissioner may, by an order
28 addressed to and served by registered or certified mail, or by personal service on that person...., direct
discontinuance of the disbursement, in whole or in part, of trust funds held by the licensee and order the
establishment of a separate trust account for all subsequent trust funds received by the licensee.

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WHEREFORE, IT IS PRAYED that the residential mortgage lender and mortgage loan servicer license of M&T MORTGAGE CORPORATION be revoked and, pursuant to Financial Code section 50311, M&T MORTGAGE CORPORATION be given a transition period of sixty (60) days within which to complete any loans for which it had prior commitments.

DATED: December 10, 2008 PRESTON DuFAUCHARD
Sacramento, CA California Corporations Commissioner

By _____
Marisa I. Urteaga-Watkins
Corporations Counsel