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BEFORE THE DEPARTMENT OF CORPORATIONS

10

OF THE STATE OF CALIFORNIA

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In the Matter of the Accusation of THE
12 CALIFORNIA CORPORATIONS
COMMISSIONER,

) File No.: 413-0602

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) **AMENDED ACCUSATION**

14

Complainant,

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v.

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17 NEWKEY HOME LENDING; PINNACLE
HOME LOAN (MAC ONE INVESTMENTS,
INC., DBA),

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Respondent.

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21 The Complainant, California Corporations Commissioner ("Commissioner"), is informed and
22 believes, and based upon such information and belief, alleges and charges Respondent Newkey Home
23 Lending; Pinnacle Home Loan (Mac One Investments, Inc. DBA) ("Respondent") as follows:

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I.

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26 Respondent is a residential mortgage lender and mortgage loan servicer licensed by the
California Department of Corporations pursuant to the California Residential Mortgage Lending Act
27 ("CRMLA") (California Financial Code sections 50000 et seq.). Respondent had its principal place
28 of business located at 495 E. Rincon Street, Suite 207, Corona, CA, 92879.

II.

1 Pursuant to California Financial Code section 50200, on December 6, 2005, the
2 Commissioner notified Respondent in writing that it was required to submit an annual audit report
3 ("Audit Report") for its fiscal year ending on December 31, 2005 no later than April 15, 2006.
4 Respondent failed to file its 2005 Audit Report. Pursuant to California Financial Code section 50326,
5 a licensee shall pay \$100.00 penalty for each day up to the 10th day for failure to file a report required
6 by law or by the Commissioner. On or about August 10, 2006, Respondent was notified, in writing,
7 that Respondent must remit a penalty amount of \$1,000.00 for its failure to file its 2005 Audit Report.
8 Respondent was also notified that its failure to file the Audit Report or remit the \$1,000.00 penalty
9 would result in a revocation of Respondent's license. Respondent filed its 2005 Audit Report on
10 August 28, 2006, but it never paid the administrative penalty.
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12 On or about December 17, 2007, the Commissioner notified Respondent in writing that,
13 pursuant to California Financial Code section 50200, it was required to submit its Audit Report for its
14 fiscal year ending on December 31, 2007 no later than April 15, 2008. Respondent failed to file its
15 2007 Audit Report. On or about June 4, 2008, the Commissioner notified Respondent in writing that
16 it had failed to file its 2007 Audit Report and it was required to file the 2007 Audit Report within ten
17 (10) days of the date of the letter. Respondent was further notified that its failure to file the 2007
18 Audit Report would result in assessment of fines. Again, Respondent failed to file its 2007 Audit
19 Report.

20 On or about August 1, 2008, Respondent was notified, in writing, that Respondent must remit
21 a penalty amount of \$1,000.00, pursuant to California Financial Code section 50326, for its failure to
22 file its 2007 Audit Report. Respondent was also notified that its failure to file the Audit Report or
23 remit the \$1,000.00 penalty would result in a revocation of Respondent's license.

III.

24 Pursuant to California Financial Code sections 50307, 50401 and California Code of
25 Regulations, title 10, section 1950.314.8, all licensees are required to file an annual Report of
26 Principal Amount of Loans and Aggregate Amount of Loans Serviced ("Activity Report") on or
27 before March 1st of each year for the preceding 12-month period ended December 31.
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1 On or about February 1, 2008, an Activity Report form was sent to all CRMLA licensees with
2 a notice that their Activity Report was due on or before March 1, 2008. Respondent did not file its
3 Activity Report in violation of California Financial Code sections 50307, 50401 and California Code
4 of Regulations, title 10, section 1950.314.8.

5 On or about May 15, 2008, the Commissioner notified Respondent in writing that it had failed
6 to file its Activity Report and, pursuant to California Financial Code section 50326, Respondent must
7 remit a penalty amount of \$1,000.00 for its failure to file its Activity Report.

8 IV.

9 On or about October 1, 2008, Respondent filed its 2007 Audit Report and submitted
10 information regarding restructuring of its management. After reviewing the 2007 Audit Report,
11 reviewing the information regarding restructuring of Respondent's management and examining
12 Respondent's file, the Commissioner discovered that Respondent failed to remit the three prior
13 penalties that were assessed on August 10, 2006, May 15, 2008 and August 1, 2008 totaling
14 \$3,000.00. Respondent also failed to pay its fiscal year 2008-2009 annual assessment fees.
15 Respondent further failed to file its Activity Report and the 2007 Residential Mortgage Loan Report.
16 Furthermore, Respondent changed its name and officers without notifying the Commissioner.

17 Pursuant to California Financial Code section 50124(a)(6), Respondent was required to file
18 with the Commissioner post-licensing amendments prior to any material change in the information
19 contained in the licensing application. Pursuant to California Financial Code section 50206,
20 Respondent was required to submit a written application prior to a change of control of its business.
21 Respondent, in violation of California Financial Code sections 50124(a)(6) and 50206, failed to file
22 the post-licensing amendments and failed to submit a written application to reflect these changes.

23 V.

24 In light of these findings, on or about October 2, 2008, the Commissioner notified Respondent
25 in writing that it was required to file post-licensing documents to reflect the changes, remit the three
26 delinquent penalties, pay its fiscal year 2008-2009 annual assessment, file its Activity Report and file
27 the 2007 Residential Mortgage Loan Report. In response to the Commissioner's October 2, 2008
28 demand, Respondent submitted incomplete and deficient reports and post-licensing documents. On

1 or about October 31, 2008, the Commissioner notified Respondent that the reports and post-licensing
2 documents were incomplete and deficient, and that it had failed to pay the penalties and the annual
3 assessment. On or about November 7, 2008, Respondent paid the penalties and again submitted
4 incomplete and deficient reports and post-licensing documents. On or about December 15, 2008, the
5 Commissioner again notified Respondent that the reports and post-licensing documents were
6 incomplete and deficient, and that Respondent failed to pay the assessment. Subsequently,
7 Respondent paid its fiscal year 2008-2009 annual assessment and filed the reports. On or about
8 February 27, 2009 and March 12, 2009, the Commissioner again informed Respondent of the
9 required post-licensing documents that should have been filed to reflect the changes. Respondent was
10 notified that failure to completely submit all the required post-licensing amendments would result in
11 an action to suspend or revoke its license. The Commissioner further notified Respondent that an on-
12 site regulatory examination would be conducted in May 2009. Notwithstanding the Commissioner
13 numerous attempts to assist Respondent, Respondent failed to completely and adequately file the
14 amendments reflecting the material changes.

15 VI.

16 Pursuant to California Financial Code section 50302, the Commissioner can examine the
17 affairs of a licensee, as often as he deems necessary and appropriate. On or about May 20, 2009, the
18 Commissioner, by and through his examiner, conducted a regulatory examination of Respondent's
19 business. The Commissioner noted several violations in addition to the previous violations.

20 Pursuant to California Financial Code section 50120(b), a licensee may not engage in the
21 business as a residential mortgage lender under a name other than the name that appears on the
22 license. According to the documents obtained by the Commissioner, Respondent is using different
23 names other than the name that appears on its license, including but not limited to, Newkey Home
24 Lending, Newkey Financial Corp., and Newkey Home Lending Corporation.

25 Section 1950.204.3 of the California Code of Regulations requires a license to used the
26 following statement: "Licensed by the Department of Corporations under the California Residential
27 Mortgage Lending Act" in any written, printed, spoken or recorded communication. Respondent's
28 website did not indicate the authority under which Respondent was authorized to do business in

1 violation of section 1950.204.3.

2 Pursuant to California Financial Code section 50124(a)(2), a licensee must keep and maintain
3 business records and other information required by law or rules of the Commissioner regarding any
4 mortgage loan made or serviced in the course of the conduct of its business. On or about May 20,
5 2009, the Commissioner requested a copy of Respondent's Board Minutes from August 2007 to
6 September 2008. Respondent informed the Commissioner that its "Ex-Corporate Secretary Mr.
7 Donte Andry" deleted Respondent's Board Minutes for that period for confidentiality purposes.

8 Pursuant to California Financial Code section 50306, a written notification must be made to
9 the Commissioner prior to opening a new branch office or making any changes to existing business
10 location. Respondent notified the Commissioner after it moved out of its Corona office. According
11 to Respondent's executive assistant, Respondent's loan agents were conducting CRMLA activities
12 from their residence.

13 Pursuant to California Financial Code section 50207(b), a license is not transferable or
14 assignable. The U.S. Department of Housing and Urban Development issued Handbook 4060.1 Rev-
15 2 FHA: Title II Mortgagee Approval ("Mortgagee Approval") in August 2006 that both prohibits and
16 provides guidance and clarification for certain branch arrangements, staffing requirements and
17 payments of operating expenses. The Commissioner considers these guidelines when reviewing
18 operations by licensees under CRMLA. Respondent entered into a "Recruiting Agreement" and an
19 "Outside Loan Agent Employment Agreement" with its loan in violation of California Financial
20 Code section 50207(b).

21 California Financial Code section 50200(d) provides in pertinent part that a licensee shall file
22 an accounting and financial report certified by a certified public accountant. In violation of section
23 50200(d), Respondent's 2008 Audit Report was not certified by a certified public accountant.

24 On or about June 25, 2009, the Commissioner notified Respondent about the violations and
25 asked Respondent to submit the corrections within thirty calendar days. Respondent failed to
26 completely and adequately file the corrections and remedy the violations.

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VII.

Financial Code section 50327 provides in pertinent part:

- (a) The commissioner may, after notice and a reasonable opportunity to be heard, 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; or (2) any fact or condition exists that, if it had existed at the time of the original application for license, reasonably would have warranted the commissioner in refusing to issue the license originally.

Financial Code section 50311 states:

Nothing in this law shall preclude a person whose license has been suspended or revoked, summarily or otherwise, from making a residential mortgage loan pursuant to a commitment issued by that person prior to the suspension or revocation. A prospective borrower who received a commitment issued by a person whose license has been suspended or revoked may, prior to the closing of the loan, terminate the commitment or receive a refund of all money paid to that person.

VIII.

The Commissioner finds that, by reason of the foregoing, Newkey Home Lending; Pinnacle Home Loan (Mac One Investments, Inc. DBA) has violated California Financial Code sections 50124(a)(6), 50206, 50120(b), 50306, 50200, 50200(d), 50124(a)(2), 50207(b), and California Code of Regulations section 1950.204.3 and based thereon grounds exist to revoke the residential mortgage lender and mortgage loan servicer license of Newkey Home Lending; Pinnacle Home Loan (Mac One Investments, Inc. DBA).

WHEREFORE, IT IS PRAYED that the residential mortgage lender and mortgage loan servicer license of Newkey Home Lending; Pinnacle Home Loan (Mac One Investments, Inc. DBA) be revoked and, pursuant to California Financial Code section 50311, Newkey Home Lending; Pinnacle Home Loan (Mac One Investments, Inc. DBA) be given a transition period of sixty (60) days within which to complete any loans for which it had prior commitments.

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DATED: September 16, 2009
San Diego, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
AFSANEH EGHBALDARI
Corporations Counsel