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

11 In the Matter of THE COMMISSIONER OF) File Nos.: 417-0030
12 BUSINESS OVERSIGHT OF THE STATE OF)
13 CALIFORNIA,) ACCUSATION IN SUPPORT OF NOTICE OF
14 Complainant,) INTENT TO ISSUE ORDERS SUSPENDING
15 vs.) LICENSES AND IMPOSING PENALTIES
16 OPEN MORTGAGE, LLC,)
17 Respondent.)
18)

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

21 I.

22 Open Mortgage, LLC (“Open Mortgage”) is a residential mortgage lender and loan servicer
23 licensed by the Commissioner of Business Oversight ("Commissioner" or "Complainant") pursuant
24 to the California Residential Mortgage Lending Act ("CRMLA") (California Financial Code Section
25 50000 et seq.). Open Mortgage has its principal place of business located at 14101 W. Hwy 290,
26 Suite #1300, Austin, TX 78737. Open Mortgage currently has 19 branch office locations under its
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1 CRMLA license located in California, and other states. Open Mortgage employs mortgage loan
2 originators in its CRMLA business.

3 II.

4 On or about February 6, 2012, the Commissioner commenced a regulatory examination of
5 the books and records of Open Mortgage at its branch office located at 1225 W. 19011 Street, Suite
6 455F, Gardena, California 90248 (the “2012 regulatory examination”). Prior to the 2012 regulatory
7 examination, on October 22, 2008, the Commissioner conducted a regulatory examination of the
8 books and records of Open Mortgage at the same office located referenced herein (the “2008
9 regulatory examination”).

10 During the 2008 and 2012 regulatory examinations, the Commissioner discovered that Open
11 Mortgage engaged in unlawful acts while conducting business as a residential mortgage lender or
12 servicer, including but not limited to, (i) failing to reconcile all trust liability ledgers to its control
13 account at least once each week and to the bank statement balance at least once each month in
14 violation of California Code of Regulation section 1950.314.1(b); (ii) overcharging borrowers
15 appraisal fees, credit report fees, and per diem interest in violation of Financial Code sections
16 50203(a)(1); 50204(i) and (k); 50204(0), and Civil Code section 2948.5; (iv) failing to provide
17 adequate notices and disclosures to borrowers in violation Health & Safety Code section 35830 and
18 California Code of Regulations section 7114; (v) failing to maintain information evidencing the
19 “disbursement date” of loan proceeds in violation of Financial Code section 50314; (vi) failing to
20 maintain record showing it first obtained a written brokerage agreement before providing brokerage
21 services in violation of Financial Code section 50700; and (viii) failing to retain a Notice of
22 Assignment, Sale, or Transfer in its files in violation of the Code of Federal Regulation section 12
23 CFR 1024.21(d).

24 In addition, on or about August 27, 2014, the Commissioner observed that Open Mortgage
25 caused debit balances to exist in its escrow accounts in violation of Title 10, California Code of
26 Regulations, Section 1950.314.6; and further, caused its trust account to be placed in an interest-
27 bearing account in violation of Financial Code section 50202(b).

1 Open Mortgage acted in violation of the statutory provisions referenced herein in the manner
2 more fully described below:

3 III.

4 1. The 2012 regulatory examination disclosed that Open Mortgage had a trust overage
5 of \$111,633.37 in its trust account as of December 31, 2012. It was noted that Open Mortgage
6 consistently maintained a balance of \$250,000 in its trust account the entire year regardless of any
7 changes in its corresponding liability account. Open Mortgage's corresponding liability account
8 held in escrow had a balance of \$138,366.63 which resulted in the trust overage of \$111,633.37.
9 Open Mortgage did not reconcile its escrow liability ledgers to its control account at least once each
10 week and to the bank statement balance at least once each month in violation of Title 10, California
11 Code of Regulations, section 1950.314.1(b). Open Mortgage was noted to have similarly violated
12 Title 10, California Code of Regulations, section 1950.314.1(b) by failing to its reconcile its account
13 escrow liability ledgers to its control account at least once each week and to the bank statement
14 balance at least once each month during the 2008 regulatory examination.

15 2. On or about August 6, 2014, written demand was made to Open Mortgage to provide
16 its detailed balance sheet as of July 31, 2014. The Department requested the detailed balance sheet
17 in order to determine if the trust overage had been corrected. Open Mortgage provided the
18 documents on or about August 27, 2014. The documents showed that Open Mortgage still failed to
19 properly reconcile trust funds and that it deposited rust funds in an interest bearing trust account in
20 violation of Financial Code section 50202 and the California Code of Regulations section
21 1950.314.1(b).

22 3. The detailed balance sheet Open Mortgage provided showed a debit balance
23 (shortage) of \$2,119.20 for escrow funds and an overage of \$31,916.80 for the mortgage insurance
24 premium funds as of July 31, 2014. California Code of Regulations, title 10, section 1950.314.6
25 prohibits debit balances in any loan or servicing account maintained by CRMLA licensees. The
26 additional balance sheet Open Mortgage provided showed Open Mortgage continued to commingle
27 company funds with trust funds and to deposit trust funds in an interest bearing trust account in
28 violation of Financial Code section 50202. The documents Open Mortgage provided further showed

1 that Open Mortgage did not properly reconcile all trust liability ledgers to the bank statement
2 balance at least once each month as required under California Code of Regulations section
3 1950.314.1.

4 4. Open Mortgage overcharged borrowers appraisal fees in at least two (2) funded loans
5 in violation of Financial Code sections 50203(a)(1) and 50204(i), (k). On or about February 15,
6 2012, Open Mortgage provided documentation to the Commissioner which showed that Open
7 Mortgage had refunded the borrowers referenced herein the overcharged amount. Open Mortgage
8 was noted to have similarly overcharged borrowers appraisal fees in violation of Financial Code
9 section 50203(a)(1) and 50204(i), (k) in the 2008 regulatory examination.

10 5. Open Mortgage overcharged borrowers credit report fees in at least two (2) funded
11 loans in violation of Financial Code sections 50203(a)(1) and 50204(i), (k). On or about February 2,
12 2012, Open Mortgage submitted documentation to the Commissioner indicating that it had refunded
13 borrowers the overcharged amount of credit report fees referenced herein. Open Mortgage was
14 noted to have similarly overcharged borrowers credit report fees in violation of Financial Code
15 sections 50203(a)(1) and 50204(i),(k) in the 2008 regulatory examination.

16 6. The regulatory examination further disclosed that in four (4) out of the thirty (30)
17 funded loans reviewed, or approximately 13.13 percent, Open Mortgage charged borrowers per diem
18 interests in excess of one day prior to the disbursement of loan proceeds in violation of Financial
19 Code section 50204(0). While a “California Additional Per Diem Interest Accrual Disclosure” form
20 was found in one (1) of the four (4) loans with per diem interest overcharges, the disclosure was not
21 prepared in accordance with California Civil Code section 2948.5(b) in that it understated the
22 amount of per diem interest charged, therefore was not considered in calculating per diem interest
23 charges.

24 7. The interest overcharges averaged \$42.63 per loan. The range of per diem interest
25 overcharges was between \$18.22 and \$64.65, while the range of days that interest was overcharged
26 was between one (1) and (6) days. On or about March 5, 2013, Open Mortgage submitted
27 documentation to the Commissioner which disclosed that the amount of excess per diem interest
28 charged borrowers was refunded to the borrowers. Open Mortgage was noted to have similarly

1 charged borrowers per diem interests in excess of one day prior to the disbursement of loan proceeds
2 in violation of Financial Code section 50204(0) during the 2008 regulatory examination.

3 8. Open Mortgage failed to provide seven (7) borrowers a “Fair Lending Notice
4 Disclosure” form (Disclosure) as required by Health & Safety Code section 35830 and California
5 Code of Regulations section 7114. Open Mortgage was noted to have similarly failed to provide
6 borrowers Disclosures in violation of Health & Safety Code section 35830 and California Code of
7 Regulations section 7114 during the 2008 regulatory examination.

8 9. While Open Mortgage provided Disclosures to five (5) other borrowers, the
9 Disclosures were inadequate in that they did not contain information required by Health & Safety
10 Code section 35830 and California Code of Regulations section 7114. Open Mortgage was noted to
11 have similarly failed to produce adequate Disclosures to borrowers in violation of Health & Safety
12 Code section 35830 and California Code of Regulations section 7114 during the 2008 regulatory
13 examination.

14 10. Open Mortgage failed to provide information showing the “disbursement date” of
15 loan proceeds in one (1) of the thirty (30) loan files reviewed in violation of Financial Code section
16 50314. Evidence of a “disbursement date” is essential to determine if per diem interest is being
17 properly calculated. On January 25, 2012, the Commissioner sent a letter to Open Mortgage
18 requesting that it provide documentation evidencing the date of disbursement of loan proceeds. The
19 Commissioner did not receive the information requested from Open Mortgage (at the time of the
20 examination). Open Mortgage was noted to have similarly violated Financial Code section 50314 by
21 failing to provide information evidencing the “disbursement date” of loan proceeds during the 2008
22 regulatory examination.

23 11. Open Mortgage failed to provide documentation showing that it first obtained written
24 brokerage agreements with borrowers before providing brokerage services in connection with least
25 one (1) loan in violation of Financial Code section 50700(1)(c). Open Mortgage was noted to have
26 similarly violated Financial Code section 50700(1)(c) by failing to retain broker agreements in its
27 files during the 2008 regulatory examination.
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1 12. Open Mortgage did not retain in its files The Notice of Assignment, Sale, or Transfer
 2 as required pursuant to Code of Federal Regulation section 12 CFR 1024.21(d). Open Mortgage
 3 similarly failed to retain the Notice of Assignment, Sale, or Transfer in its files in violation of Code
 4 of Federal Regulations section 12 CFR 1024.21(d) during the 2008 regulatory examination.

5 13. Open Mortgage caused its trust account to be placed in an interest bearing account in
 6 violation of Financial Code section 50202(b).

7 14. By reason of the foregoing, Open Mortgage has violated Financial Code sections
 8 50202(b); 50203(a)(1); 50204(o); 50204(i), (k); 50314, 50700(1)(c), and California Code of
 9 Regulations, title 10, sections 1950.314.1(b) and 1950.314.6; and California Code of Regulations,
 10 title 10, section 7114. Further, Open Mortgage has violated Civil Code section 2948.5; Health and
 11 Safety Code section 35830 and Code of Federal Regulations section 12 CFR 1024.21(d).

12 IV.

13 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 rule or order
 17 of the commissioner thereunder; or (2) any fact or condition exists that, if
 18 it had existed at the time of the original application for license, reasonably
 19 would have warranted the commissioner in refusing to issue the license
 originally.

20 V.

21 Financial Code section 50513 provides in pertinent part:

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

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

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27 (b) The commissioner may impose a civil penalty on a mortgage loan
 28 originator or any residential mortgage lender or servicer licensee
 employing a mortgage loan originator, if the commissioner finds, on

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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.

VI.

The Commissioner finds that, by reason of the foregoing, Open Mortgage has violated Financial Code sections 50202(b); 50203(a)(1); 50204(o); 50204(i), (k); 50314, 50700; California Code of Regulations, title 10, sections 1950.314.1 (b) and 1950.314.6; and California Code of Regulations, title 10, section 7114. Further, Open Mortgage has violated Civil Code section 2948.5; Health and Safety Code section 35830 and Code of Federal Regulations section 12 CFR 1024.21 (d).

For the foregoing reasons, grounds exist to:

- (1) Suspend Open Mortgage’s CRMLA residential mortgage lender license and CFLL finance lender and broker license;
- (2) Assess penalties against Open Mortgage pursuant to Financial Code section 50513(b);
- (3) Order Open Mortgage to discontinue with the aforementioned violations pursuant to Financial Code section 50321;
- (4) Order Open Mortgage to refund excessive per diem interest charges with interest at the rate of 10 percent per annum, calculated from the date the improper charge was imposed pursuant to Financial Code section 50504;
- (5) Order Open Mortgage to refund excessive appraisal charges with interest at the rate of 10 percent per annum, calculated from the date such appraisal charges were received by Open Mortgage pursuant to Financial Code section 50504; and

1 (6) Order Open Mortgage to refund excessive credit report charges with interest at the rate
2 of 10 percent per annum, calculated from the date such credit report fee was received by Open
3 Mortgage improper pursuant to Financial Code section 50504.

4 WHEREFORE, IT IS PRAYED that:

5 1. Pursuant to Financial Code section 50327, the residential mortgage lender licenses of
6 Open Mortgage be suspended for a period of up to 12 months;

7 2. Pursuant to Financial Code section 22714, the finance lender and broker license of
8 Open Mortgage be suspended for a period of up to 12 months;

9 3. Pursuant to the Financial Code section 50513(b), a penalty be levied against Open
10 Mortgage for failure to reconcile its escrow liability ledgers to its control account at least once a
11 week and to the bank statement at least once each month, in violation of California Code of
12 Regulations, title 10, section 1950.314.1, in an amount of at least \$25,000.00 or according to proof;

13 4. Pursuant to the Financial Code section 50513(b), a penalty be levied against Open
14 Mortgage for shortages in its trust account, in violation of California Code of Regulations, title 10,
15 section 1950.314.6, in an amount of at least \$25,000.00, or according to proof;

16 5. Pursuant to the Financial Code section 50513(b), a penalty be levied against Open
17 Mortgage for placing trust account in an interest-bearing account in violation of California Code of
18 Financial Code section 50202(b), in an amount of at least \$25,000.00, or according to proof

19 6. Pursuant to the Financial Code section 50513(b), penalties be levied against Open
20 Mortgage for at least two (2) violations of Financial Code section 50204(o), whereby Open
21 Mortgage overcharged borrowers per appraisal fees during the period from 5/13/2011 through
22 6/1/2011, in an amount of at least \$25,000.00 per violation, for an amount of at least \$50,000.00 or
23 according to proof;

24 7. Pursuant to the Financial Code section 50513(b), penalties be levied against Open
25 Mortgage for at least two (2) violations of Financial Code section 50204(o), whereby Open
26 Mortgage overcharged borrowers credit report fees during the period from 5/18/2011 through
27 10/26/2011, in an amount of at least \$25,000.00 per violation, for an amount of at least \$50,000.00
28 or according to proof;

1 8. Pursuant to the Financial Code section 50513(b), penalties be levied against Open
2 Mortgage for at least four (4) violations of Financial Code section 50204(o), whereby Open
3 Mortgage overcharged borrowers per diem interest during the period from 7/29/2011 through
4 10/26/2011, in an amount of at least \$25,000.00 per violation, for an amount of at least \$100,000.00
5 or according to proof;

6 9. Pursuant to the Financial Code section 50513(b), penalties be levied against Open
7 Mortgage for at least two (2) violations of the Financial Code 50700(1)(c), whereby Open Mortgage
8 failed to first obtain written brokerage agreements before providing brokerage services, in an amount
9 of at least \$25,000.00 per violation, for an amount of at least \$50,000.00 or according to proof;

10 10. Pursuant to the Financial Code section 50513(b), penalties be levied against Open
11 Mortgage for at least one (1) violation of the Financial Code 50314, whereby Open Mortgage failed
12 to provide a borrower information evidencing the “disbursement date” of loan proceeds, in an
13 amount of at least \$25,000.00 per violation, for an amount of at least \$25,000.00 or according to
14 proof;

15 11. Pursuant to the Financial Code section 50513(b), penalties be levied against Open
16 Mortgage for at least seven (7) violations of the Health & Safety Code section 35830 and California
17 Code of Regulations section 7114, whereby Open Mortgage failed to provide borrowers The Initial
18 Fair Lending Notice, in an amount of at least \$25,000.00 per violation, for an amount of at least
19 \$175,000.00 or according to proof;

20 12. Pursuant to the Financial Code section 50513(b), penalties be levied against Open
21 Mortgage for at least at least five (5) violations of the Health & Safety Code section 35830 and
22 California Code of Regulations section 7114, whereby Open Mortgage failed to provide borrowers
23 adequate disclosures identifying the Department of Business Oversight as the contact agency, in an
24 amount of at least \$25,000.00 per violation, for an amount of at least \$125,000.00 or according to
25 proof;

26 13. Pursuant to the Financial Code section 50513(b), penalties be levied against Open
27 Mortgage for failure to retain in its files The Notice of Assignment, Sale, or Transfer in violation of
28 Code of Federal Regulation section 12 CFR 1024.21(d), in an amount of at least \$25,000.00, or

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according to proof;

For a total amount of penalties of at least \$675,000.00, or according to proof.

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

WHEREFORE, good cause showing, the Commissioner is issuing an Order to Open Mortgage to immediately Desist and Refrain from conducting business Pursuant to Financial Code Section 50513(5)(A).

Dated: January 6, 2015
Los Angeles, CA

JAN LYNN OWEN
Commissioner of Business Oversight



By _____
Uche L. Enenwali
Senior Corporations Counsel
Enforcement Division