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

11 In the Matter of THE COMMISSIONER OF) CRMLA License No.: 417-0030
12 BUSINESS OVERSIGHT OF THE STATE OF)
13 CALIFORNIA,) AMENDED ACCUSATION IN SUPPORT OF
14 Complainant,) NOTICE OF INTENT TO ISSUE ORDERS
15 vs.) SUSPENDING LICENSES AND IMPOSING
16 OPEN MORTGAGE, LLC,) PENALTIES
17 Respondent.)
18)

19 This Amended Accusation partially amends and supersedes the Accusation dated January 6,
20 2015.

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

23 I.

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

4 II.

5 On or about February 6, 2012, the Commissioner commenced a regulatory examination of
6 the books and records of Open Mortgage at its branch office located at 1225 W. 190th Street, Suite
7 455F, Gardena, California 90248 (the “2012 regulatory examination”). Prior to the 2012 regulatory
8 examination, on October 22, 2008, the Commissioner conducted a regulatory examination of the
9 books and records of Open Mortgage at the same office located referenced herein (the “2008
10 regulatory examination”).

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

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

1 On January 5, 2016, the Commissioner commenced a regulatory examination of the books
2 and records of Open Mortgage at its branch office located at 1225 W. 190th Street, Suite 455F,
3 Gardena, California 90248 (the “2016 regulatory examination”). The 2016 regulatory examination
4 disclosed that Open Mortgage; (i) obtained documents containing blank spaces to be filled after
5 execution in violation of Financial Code Section 50204 (e); (ii) failed to maintain record showing it
6 first obtained a written brokerage agreement before providing brokerage services in violation of
7 Financial Code section 50700; (iii) failed to disclose the correct daily per diem interest and interest
8 start date in the final HUD-1 Settlement Statement in violation of Financial Code section 50314;
9 and (iv) failed to maintain information evidencing the “disbursement date” of loan proceeds in
10 violation of Financial Code section 50314.

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

13 III.

14 1. The 2012 regulatory examination disclosed that Open Mortgage had a trust overage
15 of \$111,633.37 in its trust account as of December 31, 2012. It was noted that Open Mortgage
16 consistently maintained a balance of \$250,000.00 in its trust account the entire year regardless of
17 any changes in its corresponding liability account. Open Mortgage’s corresponding liability
18 account held in escrow had a balance of \$138,366.63 which resulted in the trust overage of
19 \$111,633.37. Open Mortgage did not reconcile its escrow liability ledgers to its control account at
20 least once each week and to the bank statement balance at least once each month in violation of
21 Title 10, California Code of Regulations, section 1950.314.1(b). Open Mortgage was noted to have
22 similarly violated Title 10, California Code of Regulations, section 1950.314.1(b) by failing to its
23 reconcile its account escrow liability ledgers to its control account at least once each week and to
24 the bank statement balance at least once each month during the 2008 regulatory examination.

25 2. On or about August 6, 2014, written demand was made to Open Mortgage to provide
26 its detailed balance sheet as of July 31, 2014. The Department requested the detailed balance sheet
27 in order to determine if the trust overage had been corrected. Open Mortgage provided the
28 documents on or about August 27, 2014. The documents showed that Open Mortgage still failed to

1 properly reconcile trust funds and that it deposited trust funds in an interest bearing trust account in
2 violation of Financial Code section 50202 and the California Code of Regulations section
3 1950.314.1(b).

4 3. The detailed balance sheet Open Mortgage provided showed a debit balance
5 (shortage) of \$2,119.20 for escrow funds and an overage of \$31,916.80 for the mortgage insurance
6 premium funds as of July 31, 2014. California Code of Regulations, title 10, section 1950.314.6
7 prohibits debit balances in any loan or servicing account maintained by CRMLA licensees. The
8 additional balance sheet Open Mortgage provided showed Open Mortgage continued to commingle
9 company funds with trust funds and to deposit trust funds in an interest bearing trust account in
10 violation of Financial Code section 50202. The documents Open Mortgage provided further
11 showed that Open Mortgage did not properly reconcile all trust liability ledgers to the bank
12 statement balance at least once each month as required under California Code of Regulations
13 section 1950.314.1.

14 4. Open Mortgage overcharged borrowers appraisal fees in at least 2 funded loans in
15 violation of Financial Code sections 50203(a)(1) and 50204(i), (k). On or about February 15, 2012,
16 Open Mortgage provided documentation to the Commissioner which showed that Open Mortgage
17 had refunded the borrowers referenced herein the overcharged amount. Open Mortgage was noted
18 to have similarly overcharged borrowers appraisal fees in violation of Financial Code section
19 50203(a)(1) and 50204(i), (k) in the 2008 regulatory examination.

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

26 6. The regulatory examination further disclosed that in 4 out of the 3 funded loans
27 reviewed, or approximately 13.13 percent, Open Mortgage charged borrowers per diem interests in
28 excess of one day prior to the disbursement of loan proceeds in violation of Financial Code section

1 50204(0). While a “California Additional Per Diem Interest Accrual Disclosure” form was found
2 in one (1) of the 4 loans with per diem interest overcharges, the disclosure was not prepared in
3 accordance with California Civil Code section 2948.5(b) in that it understated the amount of per
4 diem interest charged, therefore was not considered in calculating per diem interest charges.

5 7. The interest overcharges averaged \$42.63 per loan. The range of per diem interest
6 overcharges was between \$18.22 and \$64.65, while the range of days that interest was overcharged
7 was between 1 and 6 days. On or about March 5, 2013, Open Mortgage submitted documentation
8 to the Commissioner which disclosed that the amount of excess per diem interest charged borrowers
9 was refunded to the borrowers. Open Mortgage was noted to have similarly charged borrowers per
10 diem interests in excess of one day prior to the disbursement of loan proceeds in violation of
11 Financial Code section 50204(0) during the 2008 regulatory examination.

12 8. The 2015 exam showed that at least 1 file had the incorrect per diem interest start
13 date reflected on the HUD-1; however, there was no overcharge of per diem interest to the
14 borrower;

15 9. The 2016 regulatory examination disclosed that 3 out of 26 files reviewed by the
16 Commissioner’s staff had per diem interest disclosures which were signed by the borrowers that
17 had blank spaces in violation of Financial Code section 50204 (e).

18 10. Open Mortgage failed to provide 7 borrowers a “Fair Lending Notice Disclosure”
19 form (Disclosure) as required by Health & Safety Code section 35830 and California Code of
20 Regulations section 7114. Open Mortgage was noted to have similarly failed to provide borrowers
21 Disclosures in violation of Health & Safety Code section 35830 and California Code of Regulations
22 section 7114 during the 2008 regulatory examination.

23 11. While Open Mortgage provided Disclosures to 5 other borrowers, the Disclosures
24 were inadequate in that they did not contain information required by Health & Safety Code section
25 35830 and California Code of Regulations section 7114. Open Mortgage was noted to have
26 similarly failed to produce adequate Disclosures to borrowers in violation of Health & Safety Code
27 section 35830 and California Code of Regulations section 7114 during the 2008 regulatory
28 examination.

1 12. Open Mortgage failed to provide information showing the “disbursement date” of
2 loan proceeds in 1 of the 30 loan files reviewed in violation of Financial Code section 50314.
3 Evidence of a “disbursement date” is essential to determine if per diem interest is being properly
4 calculated. On January 25, 2012, the Commissioner sent a letter to Open Mortgage requesting that
5 it provide documentation evidencing the date of disbursement of loan proceeds. The Commissioner
6 did not receive the information requested from Open Mortgage (at the time of the examination).
7 Open Mortgage was noted to have similarly violated Financial Code section 50314 by failing to
8 provide information evidencing the “disbursement date” of loan proceeds during the 2008
9 regulatory examination.

10 13. The 2016 regulatory examination revealed that at least 1 file had the incorrect date of
11 disbursement on the HUD-1 in violation of Financial Code sections 50314 and 50505, however,
12 there was no overcharge of per diem interest to the borrower.

13 14. Open Mortgage failed to provide documentation showing that it first obtained
14 written brokerage agreements with borrowers before providing brokerage services in connection
15 with least 2 loans in violation of Financial Code section 50700(1)(c). Open Mortgage was noted to
16 have similarly violated Financial Code section 50700(1)(c) by failing to retain broker agreements in
17 its files during the 2008 regulatory examination.

18 15. Open Mortgage did not retain in its files The Notice of Assignment, Sale, or Transfer
19 as required pursuant to Code of Federal Regulation section 12 CFR 1024.21(d). Open Mortgage
20 similarly failed to retain the Notice of Assignment, Sale, or Transfer in its files in violation of Code
21 of Federal Regulations section 12 CFR 1024.21(d) during the 2008 regulatory examination.

22 16. Open Mortgage caused its trust account to be placed in an interest bearing account in
23 violation of Financial Code section 50202(b).

24 17. By reason of the foregoing, Open Mortgage has violated Financial Code sections
25 50202(b); 50203(a)(1); 50204(o); 50204(i), (k); 50314, 50700(1)(c), and California Code of
26 Regulations, title 10, sections 1950.314.1(b) and 1950.314.6; and California Code of Regulations,
27 title 10, section 7114. Further, Open Mortgage has violated Civil Code section 2948.5; Health and
28 Safety Code section 35830 and Code of Federal Regulations section 12 CFR 1024.21(d).

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IV.

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 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.

V.

Financial Code section 50513 provides in pertinent part:

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

.....

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

.....

(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.

VI.

1 The Commissioner finds that, by reason of the foregoing, Open Mortgage has violated
2 Financial Code sections 50202(b); 50203(a)(1); 50204(o); 50204(i), (k); 50314, 50700; California
3 Code of Regulations, title 10, sections 1950.314.1 (b) and 1950.314.6; and California Code of
4 Regulations, title 10, section 7114. Further, Open Mortgage has violated Civil Code section
5 2948.5; Health and Safety Code section 35830 and Code of Federal Regulations section 12 CFR
6 1024.21 (d).

7 For the foregoing reasons, grounds exist to:

8 (1) Suspend Open Mortgage’s CRMLA residential mortgage lender license and CFLL
9 finance lender and broker license;

10 (2) Assess penalties against Open Mortgage pursuant to Financial Code section 50513(b);

11 (3) Order Open Mortgage to discontinue with the aforementioned violations pursuant to
12 Financial Code section 50321;

13 (4) Order Open Mortgage to refund excessive per diem interest charges with interest at the
14 rate of 10 percent per annum, calculated from the date the improper charge was imposed pursuant
15 to Financial Code section 50504;

16 (5) Order Open Mortgage to refund excessive appraisal charges with interest at the rate of
17 10 percent per annum, calculated from the date such appraisal charges were received by Open
18 Mortgage pursuant to Financial Code section 50504; and

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

22 WHEREFORE, IT IS PRAYED that:

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

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

27 3. Pursuant to the Financial Code section 50513(b), a penalty be levied against Open
28 Mortgage for failure to reconcile its escrow liability ledgers to its control account at least once a

1 week and to the bank statement at least once each month, in violation of California Code of
2 Regulations, title 10, section 1950.314.1, in an amount of at least \$25,000.00 or according to proof;

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

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

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

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

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

24 9. Pursuant to the Financial Code section 50513(b), penalties be levied against Open
25 Mortgage for at least 3 violations of Financial Code section 20204 (e), whereby Open Mortgage
26 obtained documents containing blank spaces left to be filled in after execution in an amount of at
27 least \$25,000.00 per violation, for an amount of at least \$75,000.00 or according to proof;

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1 10. Pursuant to the Financial Code section 50513 (b), penalties be levied against Open
2 Mortgage for at least 1 violation of Financial Code section 50314 (d), whereby Open Mortgage
3 failed to disclose the correct daily per diem interest and interest start date in the final HUD-1
4 Settlement Statement in an amount of at least \$25,000.00 per violation, for an amount of at least
5 \$25,000.00 or according to proof;

6 11. Pursuant to the Financial Code section 50513(b), penalties be levied against Open
7 Mortgage for at least 3 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
9 amount of at least \$25,000.00 per violation, for an amount of at least \$75,000.00 or according to
10 proof;

11 12. Pursuant to the Financial Code section 50513(b), penalties be levied against Open
12 Mortgage for at least 2 violation of the Financial Code 50314, whereby Open Mortgage failed to
13 provide a borrower information evidencing the “disbursement date” of loan proceeds, in an amount
14 of at least \$25,000.00 per violation, for an amount of at least \$50,000.00 or according to proof;

15 13. Pursuant to the Financial Code section 50513(b), penalties be levied against Open
16 Mortgage for at least 7 violations of the Health & Safety Code section 35830 and California Code
17 of Regulations section 7114, whereby Open Mortgage failed to provide borrowers The Initial Fair
18 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 14. Pursuant to the Financial Code section 50513(b), penalties be levied against Open
21 Mortgage for at least at least 5 violations of the Health & Safety Code section 35830 and California
22 Code of Regulations section 7114, whereby Open Mortgage failed to provide borrowers adequate
23 disclosures identifying the Department of Business Oversight as the contact agency, in an amount
24 of at least \$25,000.00 per violation, for an amount of at least \$125,000.00 or according to proof;

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

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For a total amount of penalties of at least \$825,000.00, 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: March 14, 2016
Los Angeles, CA

JAN LYNN OWEN
Commissioner of Business Oversight



By _____
Uche L. Enenwali
Senior Corporations Counsel
Enforcement Division