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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 STATEMENT OF FACTS IN
14 Complainant,) SUPPORT OF ORDER TO DISCONTINUE
15 vs.) VIOLATIONS PURSUANT TO CALIFORNIA
16 OPEN MORTGAGE, LLC,) FINANCIAL CODE SECTION 50321 AND
17 Respondent.) NOTICE OF INTENT TO MAKE ORDER
18) FINAL
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19 This Amended Statement of Facts in Support of Order to Discontinue Violations Pursuant to
20 California Financial Code Section 50321 and Notice of Intent to Make Order Final partially amends
21 and supersedes the Statement of Facts in Support of Order to Discontinue Violations Pursuant to
22 California Financial Code Section 50321 and Notice of Intent to Make Order Final dated January 6,
23 2015.

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

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28I.

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

II.

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

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

1 a Notice of Assignment, Sale, or Transfer in its files in violation of the Code of Federal Regulation
2 section 12 CFR 1024.21(d).

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

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

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

19 III.

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

1 escrow liability ledgers to its control account at least once each week and to the bank statement
2 balance at least once each month during the 2008 regulatory examination.

3 2. On or about August 6, 2014, written demand was made to Open Mortgage to provide
4 its detailed balance sheet as of July 31, 2014. The Department requested the detailed balance sheet
5 in order to determine if the trust overage had been corrected. Open Mortgage provided the
6 documents on or about August 27, 2014. The documents showed that Open Mortgage still failed to
7 properly reconcile trust funds and that it deposited trust funds in an interest bearing trust account in
8 violation of Financial Code section 50202 and the California Code of Regulations section
9 1950.314.1(b).

10 3. The detailed balance sheet Open Mortgage provided showed a debit balance
11 (shortage) of \$2,119.20 for escrow funds and an overage of \$31,916.80 for the mortgage insurance
12 premium funds as of July 31, 2014. California Code of Regulations, title 10, section 1950.314.6
13 prohibits debit balances in any loan or servicing account maintained by CRMLA licensees. The
14 additional balance sheet Open Mortgage provided showed Open Mortgage continued to commingle
15 company funds with trust funds and to deposit trust funds in an interest bearing trust account in
16 violation of Financial Code section 50202. The documents Open Mortgage provided further showed
17 that Open Mortgage did not properly reconcile all trust liability ledgers to the bank statement
18 balance at least once each month as required under California Code of Regulations section
19 1950.314.1.

20 4. Open Mortgage overcharged borrowers appraisal 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 15, 2012,
22 Open Mortgage provided documentation to the Commissioner which showed that Open Mortgage
23 had refunded the borrowers referenced herein the overcharged amount. Open Mortgage was noted
24 to have similarly overcharged borrowers appraisal fees in violation of Financial Code section
25 50203(a)(1) and 50204(i), (k) in the 2008 regulatory examination.

26 5. Open Mortgage overcharged borrowers credit report fees in at least 2 funded loans in
27 violation of Financial Code sections 50203(a)(1) and 50204(i), (k). On or about February 2, 2012,
28 Open Mortgage submitted documentation to the Commissioner indicating that it had refunded

1 borrowers the overcharged amount of credit report fees referenced herein. Open Mortgage was
2 noted to have similarly overcharged borrowers credit report fees in violation of Financial Code
3 sections 50203(a)(1) and 50204(i),(k) in the 2008 regulatory examination.

4 6. The regulatory examination further disclosed that in 4 out of the 30 funded loans
5 reviewed, or approximately 13.13%, Open Mortgage charged borrowers per diem interests in excess
6 of one day prior to the disbursement of loan proceeds in violation of Financial Code section
7 50204(0). While a California Additional Per Diem Interest Accrual Disclosure was found in 1 of the
8 4 loans with per diem interest overcharges, the disclosure was not prepared in accordance with
9 California Civil Code section 2948.5(b) in that it understated the amount of per diem interest
10 charged, therefore was not considered in calculating per diem interest charges.

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

18 8. The 2016 regulatory examination showed that at least 1 out of 26 files reviewed by
19 the Commissioner's staff had the incorrect per diem interest start date reflected on the HUD-1;
20 however, there was no overcharge of per diem interest to the borrower.

21 9. The 2016 regulatory examination disclosed that 3 files had per diem interest
22 disclosures which were signed by the borrowers that contained blank spaces in violation of Financial
23 Code section 50204 (e).

24 10. Open Mortgage failed to provide 7 borrowers a Fair Lending Notice Disclosure
25 (Disclosure) as required under section 35830 of the Health & Safety Code and California Code of
26 Regulations section 7114. Open Mortgage was noted to have similarly failed to provide borrowers
27 Disclosures in violation of section 35830 of the Health & Safety Code and California Code of
28 Regulations section 7114 during the 2008 regulatory examination.

1 11. While Open Mortgage provided Disclosures to 5 other borrowers, the Disclosures
2 were inadequate in that they did not contain information enumerated under section 35838 of the
3 Health & Safety Code and California Code of Regulations section 7114. Open Mortgage was noted
4 to have similarly failed to produce adequate Disclosures to borrowers in violation of Health & Safety
5 Code section 35830 and California Code of Regulations section 7114 during the 2008 regulatory
6 examination.

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

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

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

24 15. Open Mortgage did not retain in its files The Notice of Assignment, Sale, or Transfer
25 as required pursuant to Code of Federal Regulation section 12 CFR 1024.21(d). Open Mortgage
26 similarly failed to retain the Notice of Assignment, Sale, or Transfer in its files in violation of Code
27 of Federal Regulations section 12 CFR 1024.21(d) during the 2008 regulatory examination.
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16. Open Mortgage caused its trust account to be placed in an interest bearing account in violation of Financial Code section 50202(b).

By reason of the foregoing, Open Mortgage has violated California Financial Code sections 50202(b); 50203(a)(1); 50204(o); 50204(i), (k); 50314, 50700(1)(c), and 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 California Civil Code section 2948.5; Health and Safety Code section 35830 and Code of Federal Regulations section 12 CFR 1024.21(d).

III.

California Financial Code section 50321 provides in pertinent part:

If, after investigation, the commissioner has reasonable grounds to believe that any licensee has violated its articles of incorporation or any law or rule binding upon it, the commissioner shall, by written order addressed to the licensee, direct the discontinuance of the violation. The order shall be effective immediately, but shall not become final except in accordance with the provisions of Section 50323.

California Financial Code section 50323 provides:

(a) No order issued pursuant to Section 50321 or 50322 may become final except after notice to the affected licensee of the commissioner's intention to make the order final and of the reasons for the finding. The commissioner shall also notify the licensee that upon receiving a request the matter will be set for hearing to commence within 15 business days after receipt. The licensee may consent to have the hearing commenced at a later date. If no hearing is requested within 30 days after the mailing or service of the required notice, and none is ordered by the commissioner, the order may become final without hearing and the licensee shall immediately discontinue the practices named in the order. If a hearing is requested or ordered, it shall be held in accordance with the provisions of the administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all the powers granted under that act. If, upon the hearing, it appears to the commissioner that the licensee is conducting business in an unsafe and injurious manner or is violating its articles of incorporation or any law of this state, or any rule binding upon it, the commissioner shall make the order of discontinuance final and the licensee shall immediately discontinue the practices named in the order.

(b) The licensee has 10 days after an order is made final to commence an action to restrain enforcement of the order. If enforcement of the order is

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not enjoined within 10 days by the court in which the action is brought, the licensee shall comply with the order.

California Financial Code section 50513 provides in pertinent part:

- (a) The commissioner may do one or more of the following:
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 - (5) Issue orders or directives to mortgage loan originators under this division as follows:
 - (A) Order or direct a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator to desist and refrain from conducting business, including immediate temporary orders to desist and refrain.

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

Dated: March 14, 2016
Los Angeles, CA

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
Uche L. Enenwali
Senior Counsel
Enforcement Division