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3 JUDY L. HARTLEY (CA BAR NO. 110628)  
Senior Corporations Counsel  
4 Department of Business Oversight  
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6 Attorneys for Complainant

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

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11 In the Matter of the Accusation of THE ) File Nos.: 413-0749 and 603-I908  
COMMISSIONER OF BUSINESS )  
12 OVERSIGHT, ) ACCUSATION IN SUPPORT OF NOTICE OF  
13 ) INTENTION TO ISSUE LICENSE  
Complainant, ) SUSPENSIONS AND LEVY PENALTIES  
14 )  
vs. )  
15 )  
16 REAL ESTATE MORTGAGE NETWORK )  
doing business as FINANCEMYHOME.COM, )  
17 HOMEBRIDGE, and MENLO PARK )  
FUNDING, )  
18 )  
19 Respondent. )

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

22 I

23 Real Estate Mortgage Network, Inc. doing business as Financemyhome.com, Homebridge,  
24 and Menlo Park Funding (“REM N”) is a residential mortgage lender and loan servicer licensed by  
25 the Commissioner of Business Oversight ("Commissioner" or "Complainant") pursuant to the  
26 California Residential Mortgage Lending Act ("CRMLA") (California Financial Code Section 50000  
27 et seq.). REM N has its principal place of business located at 499 Thornall Street, 2<sup>nd</sup> Floor, Edison,  
28 New Jersey 08837. REM N currently has 15 branch office locations under its CRMLA license

1 located in California, and other states. REMN employs mortgage loan originators in its CRMLA  
2 business.

3 REMN is also licensed by the Commissioner as a finance lender and broker pursuant to the  
4 California Finance Lenders Law ("CFL") (California Financial Code Section 22000 et seq.).  
5 REMN has its principal place of business under the CFL also located at 499 Thornall Street, 2<sup>nd</sup>  
6 Floor, Edison, New Jersey 08837. REMN has only the one license under the CFL.

7 II

8 On or about March 19, 2012, the Commissioner commenced a regulatory examination of the  
9 books and records of REMN under the CRMLA ("2012 regulatory examination"). The 2012  
10 regulatory examination disclosed that REMN had debit balances (shortages) in its trust account  
11 totaling \$3,371,666.12 as of January 31, 2012. REMN maintains only one trust account for all  
12 escrow impounds and all borrowers no matter the state residence of the borrowers. The types of  
13 impounds maintained in the trust account are taxes, hazard insurance, mortgage insurance premiums,  
14 and repairs. California Code of Regulations, title 10, section 1950.314.6 prohibits debit balances in  
15 any loan or servicing account maintained by CRMLA licensees.

16 On or about June 13, 2012, REMN provided the Department of Business Oversight  
17 ("Department") with financial statements, bank account statements and liability ledgers for the  
18 period ended May 31, 2012. These documents revealed that the trust account shortage had grown to  
19 \$6,074,476.66 as of May 31, 2012.

20 On or about June 21, 2012, written demand was made to REMN to correct the trust account  
21 shortage no later than June 22, 2012. REMN determined that its trust account shortage was  
22 \$4,500,000.00 as of June 21, 2012 and immediately deposited funds into the trust account to correct  
23 the shortage.

24 Thereafter, the Department requested documents for the period ended June 30, 2012 in order  
25 to determine if the trust account shortage had been corrected. The documentation was provided on  
26 or about July 16, 2012 and disclosed that REMN had corrected the trust account shortage, and now  
27 had an overage of \$216,901.61 in its trust account.

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## III

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2 The 2012 regulatory examination further disclosed that in five (5) of the thirty-three (33)  
3 funded loans reviewed, or approximately fifteen percent (15%), REMN was charging the borrower  
4 per diem interest in excess of one day prior to the disbursement of loan proceeds in violation of  
5 California Financial Code section 50204(o). A California Additional Per Diem Interest Charge  
6 Disclosure was found in two (2) of the five (5) loans with per diem interest overcharges. However,  
7 the disclosures were not prepared in accordance with California Civil Code section 2948.5(b), and  
8 therefore were not considered in calculating per diem interest charges. The per diem interest  
9 overcharges averaged \$66.20 per loan. The range of per diem interest overcharges was between  
10 \$19.96 and \$166.15. The range of days that interest was overcharged was between one (1) and five  
11 (5).

12 On or about November 30, 2012, the Commissioner, based upon the findings of the 2012  
13 regulatory examination, directed REMN to conduct a self-audit regarding per diem interest charges  
14 for all loans originated from July 15, 2009 through March 19, 2012, make appropriate refunds, and  
15 submit a report as to the findings of the self-audit (“self-audit report”). REMN claimed to have  
16 completed the self-audit and corresponding refunds on or about March 7, 2013. The self-audit report  
17 filed with the Commissioner disclosed sixty-four (64) per diem interest overcharges.

18 In testing the thoroughness of the self-audit, the Commissioner noticed that four (4) of the  
19 five (5) per diem interest overcharges brought to the attention of REMN during the regulatory  
20 examination were not captured in the self-audit as requiring refunds. Accordingly, a follow up letter  
21 was sent to REMN requesting that REMN make refunds in those instances and submit an  
22 explanation as to why these transactions were not identified for refunds. The explanation received  
23 from REMN was contradicted by the self-audit report. Therefore, the Commissioner has determined  
24 that the self-audit is unreliable and has made written demand on REMN to conduct a new self-audit,  
25 by and through an independent certified public accountant.

26 On or about July 1, 2013, the Department received the new self-audit performed by REMN’s  
27 certified public accountant. The CPA conducted self-audit found a total of 106 per diem  
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1 overcharges for the period of July 15, 2009 through March 19, 2012. The Department is currently  
2 attempting to obtain further documentation to test the accuracy of the CPA conducted self-audit.

3 The Commissioner had found that REMN was overcharging per diem interest during the last  
4 regulatory examination under the CRMLA that commenced in May 2009. Based upon the findings  
5 of the 2009 regulatory examination, the Commissioner instructed REMN to conduct a self-audit to  
6 find all the per diem interest overcharges and make refunds and to also implement such procedures  
7 as necessary to ensure that per diem interest was not overcharged in the future.

8 IV

9 The 2012 regulatory examination additionally found that REMN had failed to maintain  
10 information that would evidence the “disbursement date” of loan proceeds in eight (8) of the loan  
11 files reviewed in violation of Financial Code section 50314. Evidence of a “disbursement date” is  
12 necessary to determine whether per diem interest is being properly calculated.

13 V

14 The violations of the CRMLA described above, if committed by REMN on or before having  
15 originally sought a license from the Commissioner under the CFLL, would have constituted grounds  
16 for the Commissioner to deny the license application of REMN under California Financial Code  
17 section 22109. Pursuant to California Financial Code section 22714, the Commissioner may  
18 suspend any license if “a fact or condition exists that, if it had existed at the time of the original  
19 application for the license, reasonably would have warranted the commissioner in refusing to issue  
20 the license originally.” Pursuant to California Financial Code section 22109, the Commissioner may  
21 refuse to issue a license if the “applicant . . . has violated any provision of this division or the rules  
22 thereunder or any similar regulatory scheme of the State of California . . .”

23 Thus, a fact or condition now exists that, if it had existed at the time of the original  
24 application of REMN for a license under the CFLL, reasonably would have warranted the  
25 Commissioner in refusing to issue the license.

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VI

California 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.

California Financial Code section 50513 provides in pertinent part:

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

(4) Impose fines on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).

(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.

VII

The Commissioner finds that, by reason of the foregoing, REMN has violated California Financial Code sections 50204, subdivision (o), and 50314, and California Code of Regulations, title 10, section 1950.314.6 of the CRMLA, and a fact or condition now exists, that if it had existed at the time of original licensure under the CFLL, reasonably would have warranted the Commissioner in refusing to issue the CFLL license, and based thereon, grounds exist to (i) suspend the residential

1 mortgage lender and loan servicer licenses and the finance lender and broker license of REMN, and  
2 (ii) assess penalties against REMN pursuant to Financial Code section 50513(b).

3 WHEREFORE, IT IS PRAYED that:

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

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

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

11 4. Pursuant to the Financial Code section 50513(b), penalties be levied against REMN  
12 for at least one-hundred and six (106) violations of Financial Code sections 50504(o), overcharging  
13 per diem interest, according to proof, but in an amount of at least \$1,000.00 per violation; and

14 5. Pursuant to the Financial Code section 50513(b), penalties be levied against REMN  
15 for at least eight (8) violations of Financial Code section 50314, failure to maintain evidence of  
16 disbursement date, according to proof, but in an amount of at least \$1,000.00 per violation.

17 Dated: July 9, 2013  
18 Los Angeles, California

JAN LYNN OWEN  
Commissioner of Business Oversight

19 By \_\_\_\_\_  
20 Judy L. Hartley  
21 Senior Corporations Counsel  
22 Enforcement Division  
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