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

10  
11 In the Matter of: )  
 )  
12 THE COMMISSIONER OF BUSINESS ) CRMLA LICENSE NO.: 413-0449  
13 OVERSIGHT, )  
 ) ACCUSATION  
14 Complainant, )  
 )  
15 v. )  
 )  
16 SWBC MORTGAGE CORPORATION, )  
17 )  
18 Respondent. )  
19 )  
\_\_\_\_\_ )

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

22 **I**

23 **Introduction**

24 1. SWBC Mortgage Corporation (SWBC) is a residential mortgage lender and loan  
25 servicer licensed by the Commissioner of Business Oversight (Commissioner) pursuant to the  
26 California Residential Mortgage Lending Act (CRMLA) (Fin. Code Section §50000 et seq.). SWBC  
27 has its principal place of business located at 9311 San Pedro, Suite 100, San Antonio, Texas 78216.  
28

ACCUSATION

1 SWBC has five branch locations under its CRMLA license in California and elsewhere. SWBC  
2 employs mortgage loan originators in its CRMLA business.

3 **II**

4 **CRMLA Violations**

5 2. On or about December 14, 2015, the Commissioner commenced a regulatory  
6 examination of the books and records of SWBC under the CRMLA (2015 regulatory examination).  
7 The 2015 regulatory examination disclosed that in 3 of the 16 funded loans reviewed, or  
8 approximately 18.75%, SWBC was charging the borrower per diem interest in excess of one day  
9 prior to the disbursement of loan proceeds in violation of California Financial Code section 50204,  
10 subdivision (o). A California Additional Per Diem Interest Charge Disclosure was found in the 3  
11 loans with per diem interest overcharges. The disclosures were not prepared in accordance with  
12 California Civil Code section 2948.5, subdivision (b) or were not applicable, and therefore were not  
13 considered in calculating per diem interest charges. The per diem interest overcharges averaged  
14 \$109.76 per loan. The range of per diem interest overcharges was between \$78.56 and \$135.56.  
15 The range of days that interest was overcharged was between 1 and 3 days.

16 3. On or about March 7, 2017, the Commissioner, based upon the findings of the 2015  
17 regulatory examination, directed SWBC to conduct a self-audit regarding per diem interest charges  
18 for all loans originated from September 20, 2012 through March 7, 2017, make appropriate refunds,  
19 and submit a report as to the findings of the self-audit (self-audit report). On or about May 25, 2017,  
20 SWBC submitted its self-audit report to the Commissioner. The self-audit report filed with the  
21 Commissioner, which covered the period from September 20, 2012 through May 4, 2017, disclosed  
22 213 per diem interest overcharges out of the 607 loans, or 35%.

23 4. The Commissioner had found that SWBC was overcharging per diem interest during  
24 the last regulatory examination under the CRMLA that commenced in October 2011. Based upon  
25 the findings of the 2011 regulatory examination, the Commissioner instructed SWBC to implement  
26 such procedures as necessary to ensure that per diem interest was not overcharged in the future.  
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**III**

**CRMLA Suspension/Penalty Statutes**

- 5. 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.
  
- 6. 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.

**IV**

**Conclusion**

7. The Commissioner finds that, by reason of the foregoing, SWBC has violated Financial Code sections 50204, subdivision (o), and based thereon, grounds exist to (i) suspend the residential mortgage lender and servicer license of SWBC, and (ii) assess penalties against SWBC pursuant to Financial Code section 50513, subdivision (b).

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**V**

**Prayer**

WHEREFORE, IT IS PRAYED that:

- 1. Pursuant to Financial Code section 50327, the residential mortgage lender and servicer license of SWBC be suspended for a period of up to 12 months; and
- 2. Pursuant to the Financial Code section 50513, subdivision (b), penalties be levied against SWBC for at least 608 violations of Financial Code sections 50504, subdivision (o), overcharging per diem interest, according to proof, but in an amount of at least \$1,000.00 per violation.

Dated: October 2, 2017  
Los Angeles, CA

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
Judy L. Hartley  
Senior Counsel  
Enforcement Division