

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 JUDY L. HARTLEY (State Bar No. 110628)
Senior Counsel
4 Department of Business Oversight
320 West 4th Street, Ste. 750
5 Los Angeles, California 90013-2344
Telephone: (213) 576-7604
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

10
11 In the Matter of:) CRMLA LICENSE NO.: 413-0238
)
12 THE COMMISSIONER OF BUSINESS) AMENDED ACCUSATION
13 OVERSIGHT,)
)
14 Complainant,)
)
15 vs.)
)
16 SUNTRUST MORTGAGE, INC.)
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. SunTrust Mortgage, Inc. ("SunTrust") is a residential mortgage lender and servicer
25 licensed by the Commissioner of Business Oversight ("Commissioner" or "Complainant") pursuant
26 to the California Residential Mortgage Lending Act ("CRMLA") (Fin. Code §50000 et seq.).
27 SunTrust has its principal place of business located at 901 Semmes Avenue, Richmond, Virginia
28

1 23224. SunTrust currently has 15 branch office locations under its CRMLA license located in
2 California and elsewhere. SunTrust employs mortgage loan originators in its CRMLA business.

3 **II**

4 **CRMLA Violations**

5 **A. Books and Records Violations**

6 2. On or about April 15, 2013, the Commissioner, by and through staff, commenced a
7 regulatory examination of the books and records of SunTrust under the CRMLA (“2013 regulatory
8 examination”). The 2013 regulatory examination included a review for compliance with loss
9 mitigation and/or foreclosure laws.¹ That portion of the 2013 regulatory examination disclosed
10 numerous violations of loss mitigation/foreclosure laws along with failure to maintain proper books
11 and records in regards to compliance with such laws as further described below.

12 3. Pursuant to Civil Code section 2923.5, subdivision (a)(2), in effect prior to January 1,
13 2013, loan servicers were prohibited from filing a notice of default on loans made from January 1,
14 2003 to December 31, 2007 until thirty days after in person or telephonic contact was made with the
15 borrower wherein the borrower, among other things, was advised of their right to request a
16 subsequent meeting and provided with the toll-free telephone number made available by the United
17 States Department of Housing and Urban Development (“HUD”) in order to find a HUD-certified
18 housing counseling agency. The 2013 regulatory examination disclosed that in 9 of the fourteen²
19 applicable loans reviewed for loss mitigation/foreclosure compliance, SunTrust failed to maintain
20 evidence that it had advised the borrower(s), in person or telephonically, of their right to request a
21 subsequent meeting or that it had provided the borrower(s) with a HUD toll-free telephone number
22 as required by Civil Code section 2923.5, subdivision (a)(2), in violation of Financial Code section
23 50314.

24 _____
25 ¹ The loss mitigation/foreclosure compliance examination included a review of 20 applicable loan
26 files. One of the 20 selected loans involved a non-owner occupied property. Thus, the Civil Code
27 sections discussed in paragraphs 3, 4, 5, 9, and 10 herein (Sections 2923.5, 2923.6, and 2923.7) do
28 not apply to that loan nor did the Home Affordable Modification Program (12 U.S.C. §5200 et
seq.)(“HAMP”) until January 1, 2012.

² Only 14 of the 20 selected loans were made between January 1, 2003 and December 31, 2007 and
owner occupied, thereby coming within the applicability of Civil Code section 2923.5, subdivision
(a)(2) in effect prior to January 1, 2013.

1 4. Pursuant to Civil Code section 2923.5, subdivision (g), in effect prior to January 1,
2 2013, loan servicers were prohibited from filing a notice of default on loans made from January 1,
3 2003 to December 31, 2007 when the loan servicer had not made contact as required by Civil Code
4 section 2923.5, subdivision (a)(2) unless the required contact failed despite the due diligence of the
5 loan servicer. Due diligence is defined to include first attempting to contact the borrower by sending
6 a first-class letter that includes the toll free number made available by HUD. Thereafter, the loan
7 servicer must attempt to contact the borrower by telephone at the borrower’s primary telephone
8 number on file at least three times at different hours and on different days. The 2013 regulatory
9 examination disclosed that in one of the four loans reviewed for loss mitigation/foreclosure
10 compliance where SunTrust claimed due diligence was performed, SunTrust failed to maintain
11 evidence that it had complied with Civil Code section 2923.5, subdivision (g), in violation of
12 Financial Code section 50314.

13 5. Pursuant to Civil Code section 2923.7, subdivision (a), which became effective on
14 January 1, 2013, loan servicers are required to establish a single point of contact (“SPOC”) and
15 provide the borrower(s) with one or more direct means of contacting that SPOC upon receiving a
16 request for a foreclosure prevention alternative. The 2013 regulatory examination disclosed that in
17 two of the 20 loans reviewed for loss mitigation/foreclosure compliance, SunTrust failed to maintain
18 evidence that it had provided one or more direct means of contacting the SPOC to the borrower as
19 required by Civil Code section 2923.7, subdivision (a), in violation of Financial Code section 50314.

20 6. Pursuant to Civil Code section 2924, subdivision (a)(4), in effect prior to January 1,
21 2013, loan servicers were prohibited from giving notice of sale until three months had elapsed since
22 the recordation of the notice of default or up to five days before the lapse of the three month period
23 provided the date of sale is no earlier than three months and 20 days after recordation of the notice of
24 default. The 2013 regulatory examination disclosed that in two of the 20 loans reviewed for loss
25 mitigation/foreclosure compliance, SunTrust failed to maintain evidence that it had complied with
26 Civil Code section 2924, subdivision (a)(4), in violation of Financial Code section 50314.

27 7. In at least one of the 20 loans reviewed for loss mitigation/foreclosure compliance,
28 the borrower filed bankruptcy, but the property was sold at a foreclosure sale. SunTrust violated

1 Financial Code section 50314 with regard to this loan in that the Commissioner was unable to
2 determine SunTrust's compliance with the automatic stay provisions of 11 U.S.C. section 362 in that
3 SunTrust failed to provide the Notice(s) of Sale and all the file notes on this loan.

4 **B. Loss Mitigation and/or Foreclosure Violations**

5 8. Pursuant to Civil Code section 2923.5, subdivision (g), in effect prior to January 1,
6 2013, loan servicers were prohibited from filing a notice of default on loans made from January 1,
7 2003 to December 31, 2007 when the loan servicer had not made contact as required by Civil Code
8 section 2923.5, subdivision (a)(2) unless the required contact failed despite the due diligence of the
9 loan servicer. Due diligence is defined to include first attempting to contact the borrower by sending
10 a first-class letter that includes the toll free number made available by HUD. Thereafter, the loan
11 servicer must attempt to contact the borrower by telephone at the borrower's primary telephone
12 number on file at least three times at different hours and on different days. The 2013 regulatory
13 examination disclosed that in one of the four loans reviewed for loss mitigation/foreclosure
14 compliance where SunTrust claimed due diligence was performed, SunTrust failed to comply with
15 Civil Code section 2923.5, subdivision (g), in that the declaration required to be filed with the Notice
16 of Default pursuant to Civil Code section 2924 indicated that SunTrust's due diligence prior to
17 recording the Notice of Default failed to include first attempting to contact the borrower by sending
18 a first-class letter that includes the toll free made available by HUD.

19 9. Pursuant to Civil Code section 2934a, subdivision (c), loan servicers are required,
20 when a substitution of trustee is effected after a notice of default has been recorded but prior to the
21 recordation of the notice of sale, to mail a copy of any substitution of trustee to the borrower(s) by
22 certified or registered mail and attach an affidavit of such service to the substitution. The 2013
23 regulatory examination disclosed that in three of the 20 loans reviewed for loss
24 mitigation/foreclosure compliance, SunTrust failed to timely provide evidence to the Commissioner
25 of mailing the substitution of trustee to the borrowers in violation of Financial Code section 50314.

26 10. Pursuant to Civil Code section 2924g, subdivision (c)(2), loan servicers are required
27 to do a new notice of sale in the manner described by Civil Code section 2924f whenever sale
28 proceedings are postponed for a period or periods totaling more than 365 days. The 2013 regulatory

1 examination disclosed that in one of the 20 loans reviewed for loss mitigation/foreclosure
2 compliance, SunTrust failed to timely provide evidence to the Commissioner that it had done a new
3 substitution of trustee in violation of Financial Code section 50314.

4 11. All CRMLA licensees are required to comply with the provisions of the Civil Code
5 relating to mortgages, and if they choose to participate, with the requirements of HAMP. Pursuant
6 to Civil Code sections 2924.12, subdivision (d), and 2924.19, subdivision (d), a violation of Civil
7 Code sections 2923.5, 2923.6, and 2923.7 among other sections, by a licensee of the Department of
8 Business Oversight, is deemed a violation of the CRMLA. Accordingly, SunTrust violated the
9 CRMLA by violating Civil Code sections 2923.5 and 2923.6 as alleged in paragraphs 9 and 10.

10 **III**

11 **Suspension and Penalty Statutes**

12 12. Financial Code section 50327 provides in pertinent part:

13 (a) The commissioner may, after notice and a reasonable opportunity to
14 be heard, suspend or revoke any license, if the commissioner finds that:

15 (1) the licensee has violated any provision of this division or rule or order
16 of the commissioner thereunder; or (2) any fact or condition exists that, if
17 it had existed at the time of the original application for license, reasonably
18 would have warranted the commissioner in refusing to issue the license originally.

19 13. Financial Code section 50513 provides in pertinent part:

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

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

24 (b) The commissioner may impose a civil penalty on a mortgage loan originator
25 or any residential mortgage lender or servicer licensee employing a mortgage
26 loan originator, if the commissioner finds, on the record after notice and
27 opportunity for hearing, that the mortgage loan originator or any residential
28 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

14. The Commissioner finds that, by reason of the foregoing, SunTrust has (i) violated Financial Code section 50314, (ii) a fact or condition now exists, that if it had existed at the time of original licensure under the CRMLA, reasonably would have warranted the Commissioner in refusing to issue the CRMLA license, and (iii) violated Civil Code section 2923.5, subdivision (g), and based thereon, grounds exist to (i) suspend the residential mortgage lender and loan servicer licenses of SunTrust, and (ii) assess penalties against SunTrust pursuant to Financial Code section 50513, subdivision (b).

V

Prayer

WHEREFORE, IT IS PRAYED that:

1. Pursuant to Financial Code section 50327, the residential mortgage lender and servicer licenses of SunTrust be suspended for a period of up to 12 months;
2. Pursuant to the Financial Code section 50513, subdivision (b), penalties be levied against SunTrust for at least 19 violations of Financial Code section 50314, failure to maintain proper books and records, according to proof, but in an amount of at least \$2,500.00 per violation; and
3. Pursuant to the Financial Code section 50513, subdivision (b), penalties be levied against SunTrust for at least one violations of applicable loss mitigation/foreclosure laws, according to proof, but in an amount of at least \$2,500.00 per violation.

Dated: November 30, 2016
Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
Judy L. Hartley
Senior Counsel
Enforcement Division