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13 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
14 OF THE STATE OF CALIFORNIA

15	In the Matter of:)	CRMLA LICENSE NO.: 413-0238
16)	
17	THE COMMISSIONER OF BUSINESS)	STATEMENT OF FACTS IN SUPPORT OF
18	OVERSIGHT,)	ORDER TO DISCONTINUE VIOLATIONS
19)	PURSUANT TO FINANCIAL CODE
20	Complainant,)	SECTION 50321 AND NOTICE OF INTENT
21)	TO MAKE ORDER FINAL
22	vs.)	
23)	
24	SUNTRUST MORTGAGE, INC.,)	
25	Respondent.)	
26)	
27)	
28)	

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

31 1. SunTrust Mortgage, Inc. ("SunTrust") is a residential mortgage lender and loan
32 servicer licensed by the Commissioner of Business Oversight ("Commissioner" or "Complainant")
33 pursuant to the California Residential Mortgage Lending Act ("CRMLA") (Fin. Code §50000 et
34 seq.). SunTrust has its principal place of business located at 901 Semmes Avenue, Richmond,
35 Virginia 23224. SunTrust currently has 15 branch office locations under its CRMLA license located
36 in California and elsewhere. SunTrust employs mortgage loan originators in its CRMLA business.

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II

CRMLA Violations

2. On or about April 15, 2013, the Commissioner, by and through staff, commenced a regulatory examination of the books and records of SunTrust under the CRMLA (“2013 regulatory examination”). The 2013 regulatory examination included a review for compliance with loss mitigation and/or foreclosure laws.¹ The loss mitigation/foreclosure review portion of the 2013 regulatory examination disclosed that SunTrust repeatedly failed to maintain proper books and records with regard to compliance with loss mitigation/foreclosure laws in violation of Financial Code section 50314, subdivision (a).

3. Pursuant to Civil Code section 2923.5, subdivision (a)(2), in effect prior to January 1, 2013, loan servicers were prohibited from filing a notice of default on loans made from January 1, 2003 to December 31, 2007 until thirty days after in person or telephonic contact was made with the borrower wherein the borrower, among other things, was advised of their right to request a subsequent meeting and provided with the toll-free telephone number made available by the United States Department of Housing and Urban Development (“HUD”) in order to find a HUD-certified housing counseling agency. The 2013 regulatory examination disclosed that in 10 of the fourteen applicable loans² reviewed for loss mitigation/foreclosure compliance, SunTrust failed to maintain evidence that it had advised the borrower(s), in person or telephonically, of their right to request a subsequent meeting or that it had provided the borrower(s) with a HUD toll-free telephone number as required by Civil Code section 2923.5, subdivision (a)(2).

4. Pursuant to Civil Code section 2923.5, subdivision (g), in effect prior to January 1, 2013, loan servicers were prohibited from filing a notice of default on loans made from January 1,

¹ The loss mitigation/foreclosure compliance examination included a review of 20 applicable loan files. One of the 20 selected loans involved a non-owner occupied property. Thus, the Civil Code sections discussed in paragraphs 3, 4, 5, 9, and 10 herein (Sections 2923.5, 2923.6, and 2923.7) do 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 2003 to December 31, 2007 when the loan servicer had not made contact as required by Civil Code
2 section 2923.5, subdivision (a)(2) unless the required contact failed despite the due diligence of the
3 loan servicer. Due diligence is defined to include first attempting to contact the borrower by sending
4 a first-class letter that includes the toll free number made available by HUD. Thereafter, the loan
5 servicer must attempt to contact the borrower by telephone at the borrower’s primary telephone
6 number on file at least three times at different hours and on different days. The 2013 regulatory
7 examination disclosed that in two of the four loans reviewed for loss mitigation/foreclosure
8 compliance where SunTrust claimed due diligence was performed, SunTrust failed to maintain
9 evidence that it had complied with Civil Code section 2923.5, subdivision (g).

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

17 6. Pursuant to Civil Code section 2924, subdivision (a)(4), in effect prior to January 1,
18 2013, loan servicers were prohibited from giving notice of sale until three months had elapsed since
19 the recordation of the notice of default or up to five days before the lapse of the three month period
20 provided the date of sale is no earlier than three months and 20 days after recordation of the notice of
21 default. The 2013 regulatory examination disclosed that in two of the 20 loans reviewed for loss
22 mitigation/foreclosure compliance, SunTrust failed to maintain evidence that it had complied with
23 Civil Code section 2924, subdivision (a)(4).

24 7. In at least one of the 20 loans reviewed for loss mitigation/foreclosure compliance,
25 the borrower applied for a loan modification with SunTrust under HAMP. SunTrust ultimately
26 denied the HAMP loan modification. SunTrust was unable to provide the Commissioner with the
27 HAMP application or denial so that the Commissioner could to determine whether SunTrust had
28 complied with the provisions of HAMP.

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2 8. In at least one of the 20 loans reviewed for loss mitigation/foreclosure compliance,
3 the borrower filed bankruptcy, but the property was sold at a foreclosure sale. SunTrust was unable
4 to provide the Commissioner with the Notice(s) of Sale and all the file notes so that the
5 Commissioner could determine whether SunTrust had complied with the automatic stay provisions
6 of 11 U.S.C. section 362.

7 9. By reason of the foregoing, SunTrust has repeatedly violated Financial Code section
8 50314, subdivision (a).

9 10. Financial Code section 50321 provides in pertinent part:

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

16 11. Financial Code section 50323 provides:

17 (a) No order issued pursuant to Section 50321 or 50322 may become
18 final except after notice to the affected licensee of the commissioner's
19 intention to make the order final and of the reasons for the finding. The
20 commissioner shall also notify the licensee that upon receiving a
21 request the matter will be set for hearing to commence within 15 business
22 days after receipt. The licensee may consent to have the hearing
23 commenced at a later date. If no hearing is requested within 30 days
24 after the mailing or service of the required notice, and none is ordered
25 by the commissioner, the order may become final without hearing and
26 the licensee shall immediately discontinue the practices named in the
27 order. If a hearing is requested or ordered, it shall be held in accordance
28 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 not

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enjoined within 10 days by the court in which the action is brought,
the licensee shall comply with the order.

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

Dated: January 21, 2016
Los Angeles, CA

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
Judy L. Hartley
Senior Counsel
Enforcement Division