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

11 In the Matter of:)	CRMLA License No.: 413-1104
)	
12 THE COMMISSIONER OF BUSINESS)	STATEMENT OF FACTS IN SUPPORT OF
13 OVERSIGHT,)	ORDER TO DISCONTINUE VIOLATIONS
)	PURSUANT TO FINANCIAL CODE
14 Complainant,)	SECTION 50321 AND NOTICE OF INTENT
)	TO MAKE ORDER FINAL
15 v.)	
)	
16 TOP FLITE FINANCIAL, INC.,)	
)	
17 Respondent.)	
)	
19)	

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

24 **I.**

25 **Introduction**

26 1. Top Flite Financial, Inc. (Top Flite) is a residential mortgage lender licensed by the
27 Commissioner of Business Oversight (Commissioner) pursuant to the California Residential
28 Mortgage Lending Act (Fin. Code § 50000 *et seq.*) (CRMLA).

1 subsidiary ledger for its appraisal trust account showing receipts and disbursements of appraisal
2 funds associated with the borrower, as required by California Code of Regulations, title 10, section
3 1950.314.1.

4 **III.**

5 **Applicable Law**

6 8. Financial Code section 50202, subdivision (a) provides:

7 (a) Escrow funds for a purpose authorized by the residential mortgage
8 loan contract (1) shall be subject to and satisfy all applicable state and
9 federal requirements, including Section 2609 of the federal Real Estate
10 Settlement Procedures Act of 1974, as amended (12 U.S.C. Sec. 2601 et
11 seq.) and all applicable provisions of the Civil Code, (2) shall be
12 maintained in a depository institution as described in subdivision (b), and
13 (3) may not be commingled with a licensee’s funds.

14 9. California Code of Regulations, title 10, section 1950.314.1 provides, in relevant
15 part:

16 (a) A residential mortgage lender, residential mortgage lender and
17 servicer, or residential mortgage loan servicer shall establish, and maintain
18 current, the following books with reference to its trust accounts:

19 (1) A trust account ledger card for **each account** detailing receipts and
20 disbursement of all funds deposited by the borrower, lender or seller with
21 the licensee in connection with the origination, closing or servicing of any
22 mortgage loan. The funds shall be held in accordance with the terms of a
23 written agreement between the licensee and such borrower, lender or seller
24 which provides that upon the occurrence of a specific condition or event,
25 the funds or a portion thereof shall be disbursed to the borrower, lender or
26 seller.

27 (2) Liability controlling account . . .

28 (b) The records referred to in subsections (a)(1) and (2) shall be
reconciled at least once each month with the bank statements of the trust
account. The records referred to in subsection (a)(1) shall be reconciled at
least once each week with the liability controlling account referred to in
subsection (a)(2) (Emphasis added)

10. Financial Code section 50321 provides:

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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.

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

12. By reason of the foregoing, Top Flite Financial, Inc. has violated Financial Code section 50202 and California Code of Regulations, title 10, section 1950.314.1.

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

Dated: September 8, 2017
Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____
Sophia C. Kim
Senior Counsel
Enforcement Division