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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.: 413-1076
) CFLL LICENSE NO.: 603-8205
12 THE COMMISSIONER OF BUSINESS)
13 OVERSIGHT,) STATEMENT OF FACTS IN SUPPORT OF
) ORDER TO DISCONTINUE VIOLATIONS
14 Complainant,) PURSUANT TO FINANCIAL CODE
) SECTION 50321 AND NOTICE OF INTENT
15 v.) TO MAKE ORDER FINAL
)
16 TOTAL MORTGAGE SERVICES, LLC,)
)
17 Respondent.)
)
19)

20 The Complainant, the Commissioner of Business Oversight (Commissioner) is informed and
21 believes and based upon such information and belief, alleges and charges as follows:

22 **I.**

23 **Introduction**

24 1. Total Mortgage Services, LLC (Total) is a residential mortgage lender licensed by the
25 Commissioner pursuant to the California Residential Mortgage Lending Act (CRMLA) (Fin. Code
26 Section §50000 et seq.). Total has its principal place of business located at 185 Plains Road, 3rd
27 Floor, Milford, Connecticut 06461. Total has five branch locations under its CRMLA license in
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1 California and elsewhere. Total employs mortgage loan originators in its CRMLA business.

2 2. Total is also licensed by the Commissioner as a finance lender and broker pursuant to
3 the California Finance Lenders Law (CFL) (Financial Code § 22000 et seq.). Total has its
4 principal place of business under the CFL also located at 185 Plains Road, 3rd Floor, Milford,
5 Connecticut 06461. Total does not currently have any branch office locations under its CFL
6 license.

7 **II.**

8 **Trust Account Violations**

9 3. On or about February 27, 2017, the Commissioner, by and through staff, commenced
10 a regulatory examination of the books and records of Total under the CRMLA (2017 regulatory
11 examination). The 2017 regulatory examination disclosed that Total had (i) failed to properly
12 reconcile certain of its trust accounts in violation of Financial Code section 50314 and California
13 Code of Regulations, title 10, section 1950.314.1, and (ii) caused debit balances (shortages) to exist
14 in certain of its loan and/or trust accounts in violation of California Code of Regulations, title 10,
15 section 1950.314.6.

16 4. In 2016, Total maintained the relevant trust accounts at Webster Bank and People’s
17 United Bank; Webster Bank trust accounts ending in 2705, 2714 and 3147 and People’s United Bank
18 trust accounts ending in 5184 and 5182. Although escrow trust monies were deposited into several
19 trust accounts, Total maintained only one liability ledger for the trust accounts.

20 5. A review of the trust account reconciliations for December 31, 2016 disclosed that
21 Total had failed to properly reconcile the trust accounts for the period ended December 31, 2016 in
22 violation of Financial Code section 50314, subdivision (a) and California Code of Regulations, title
23 10, section 1950.314.1 due to a shortage of funds in the trust accounts in the amount of \$61,743.97.
24 The manner in which Total reconciles its trust accounts failed to detect individual loan accounts with
25 debit balances (shortages) totaling \$22,618.10. The failure to detect debit balances in individual
26 loan accounts caused the escrow trust liability to be understated, and resulted in \$22,618.10 of the
27 \$61,743.97 trust account shortage. California Code of Regulations, title 10, section 1950.314.6
28 prohibits debit balances in any loan or servicing account maintained by CRMLA licensees. Total

1 cured the trust account(s) shortage on or about March 16, 2017.

2 **III.**

3 **Per Diem Interest Overcharges**

4 6. The 2017 regulatory examination further disclosed that in 3 of 16 funded loans
5 reviewed, or approximately 18.75%, Total was charging the borrower per diem interest in excess of
6 one day prior to the disbursement of loan proceeds in violation of California Financial Code section
7 50204, subdivision (o). A California Additional Per Diem Interest Charge Disclosure was found in
8 the 3 loans with per diem interest overcharges. The disclosures were not prepared in accordance
9 with California Civil Code section 2948.5, subdivision (b) or were not applicable, and therefore were
10 not considered in calculating per diem interest charges. The per diem interest overcharges averaged
11 \$164.35 per loan. The range of per diem interest overcharges was between \$109.32 and \$254.28.
12 The range of days that interest was overcharged was between 1 and 5 days.

13 7. The Commissioner had found that Total was overcharging per diem interest during
14 the last regulatory examination under the CRMLA that commenced in February 2011. Based upon
15 the findings of the 2011 regulatory examination, the Commissioner instructed Total to implement
16 such procedures as necessary to ensure that per diem interest was not overcharged in the future.

17 **IV.**

18 **Improper Fair Lending Notices**

19 8. A review of Fair Lending Notices during the 2017 regulatory examination revealed
20 that Total had violated Financial Code section 50204, subdivision (i), Health and Safety Code
21 section 35830 and California Code of Regulations, title 21, section 7114 in 8 of the 24 loans
22 reviewed by providing Fair Lending Notices to borrowers which failed to refer the borrowers to the
23 proper agency for filing complaints.

24 **VII.**

25 **Conclusion**

26 9. By reason of the foregoing, Total has violated Financial Code sections 50204,
27 subdivisions (i) and (o), and 50314, Health and Safety Code section 35380, California Code of
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1 Regulations, title 10, sections 1950.314.1 and 1950.314.6, and California Code of Regulations, title
2 21, section 7114.

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

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

10 11. Financial Code section 50323 provides:

11 (a) No order issued pursuant to Section 50321 or 50322 may become
12 final except after notice to the affected licensee of the commissioner's
13 intention to make the order final and of the reasons for the finding. The
14 commissioner shall also notify the licensee that upon receiving a
15 request the matter will be set for hearing to commence within 15 business
16 days after receipt. The licensee may consent to have the hearing
17 commenced at a later date. If no hearing is requested within 30 days
18 after the mailing or service of the required notice, and none is ordered
19 by the commissioner, the order may become final without hearing and
20 the licensee shall immediately discontinue the practices named in the
21 order. If a hearing is requested or ordered, it shall be held in accordance
22 with the provisions of the administrative Procedure Act (Chapter 5
23 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
24 the Government Code), and the commissioner shall have all the powers
25 granted under that act. If, upon the hearing, it appears to the commissioner
26 that the licensee is conducting business in an unsafe and injurious manner
27 or is violating its articles of incorporation or any law of this state, or any
28 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
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 Total Mortgage Services, LLC

1 of the Commissioner’s intention to make the order final.

2 Dated: October 4, 2017
3 Los Angeles, CA

JAN LYNN OWEN
Commissioner of Business Oversight

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By _____
Judy L. Hartley
Senior Corporations Counsel
Enforcement Division

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