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

11 In the Matter of:) CRMLA LICENSE NO.: 413-1101
12)
13 THE COMMISSIONER OF BUSINESS) ACCUSATION
OVERSIGHT,)
14)
15 Complainant,)
16 v.)
17)
18 VENTA FINANCIAL GROUP, INC., DBA)
ALTERRA HOME LOANS)
19)
20 Respondent.)

21 Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), is informed and
22 believes, and based upon such information and belief, alleges and charges Respondent Venta
23 Financial Group, Inc., dba Alterra Home Loans (Venta) as follows:

24 **I.**

25 **Jurisdiction and Venue**

26 1. The Commissioner brings this action under the provisions of Financial Code sections
27 50327 and 50513 and the rules and regulations promulgated thereunder.
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1 b. **Loan Number CA6221601833**

2 Per the closing disclosure document, Venta charged the borrower two days of interest (from
3 April 29 to May 1) at \$25.29 interest per day. The first payment on the note was due June 1, 2016;
4 therefore, interest began to accrue beginning May 1. Per the escrow disbursement summary, the
5 actual disbursement date was May 2, so Venta should have provided the borrower a one-day interest
6 credit, less one additional day of interest allowed under Civil Code section 2948.5, subdivision (a), or
7 no interest due at closing. While the loan proceeds disbursed on a Monday, the borrower did not
8 agree, so the California Per Diem Interest Disclosure document is inapplicable. Venta overcharged
9 the borrower two days of interest or \$50.57.

10 c. **Loan Number CA4721601616**

11 The borrower's closing disclosure document shows Venta charged the borrower five days of
12 interest (from May 27 to June 1) at \$19.65 per day. The first payment on the note was due July 1,
13 2016; therefore, interest began accruing on June 1. But the lender actually disbursed the loan
14 proceeds on May 31, per the title disbursement summary, so Venta should have charged the borrower
15 one day of interest, plus an additional day of interest per Civil Code section 2948.5, subdivision (a),
16 or \$39.30. While the loan proceeds disbursed on the Tuesday following a bank holiday, the California
17 Per Diem Interest Disclosure document signed by the borrower was incomplete and therefore not
18 applicable. Venta overcharged the borrower three days of interest or \$58.95.

19 d. **Loan Number CA1121510835**

20 The borrower's closing disclosure statement shows Venta charged the borrower two days of
21 interest (from April 29 to May 1) at \$23.64 per day. The first payment on the note was due June 1,
22 2016; therefore, interest began accruing on May 1. Per the final borrower statement provided by the
23 escrow agent, the lender actually disbursed the loan proceeds on May 3, so Venta should have
24 provided the borrower two days of interest credit, less one day of additional interest per Civil Code
25 section 2948.5, subdivision (a), or a \$23.64 credit. Venta overcharged the borrower three days of
26 interest or \$70.91.

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1 e. **Loan Number CA4021602082**

2 The borrower's closing disclosure statement shows Venta charged the borrower 16 days of
3 interest (from April 15 to May 1) at \$30.49 per day. The first payment on the note was due June 1,
4 2016; therefore, interest began to accrue beginning May 1. But the loan proceeds actually disbursed
5 on April 18, per the title disbursement summary, so Venta should have charged the borrower 13 days
6 of interest, plus one additional day of interest per Civil Code section 2948.5, subdivision (a), or
7 \$426.82. While the loan proceeds disbursed on a Monday, the California Per Diem Interest
8 Disclosure document signed by the borrower is incomplete and therefore not applicable. Venta
9 overcharged the borrower two days of interest or \$60.98.

10 f. **Loan Number CA9021602191**

11 The borrower's closing disclosure document shows Venta charged the borrower three days of
12 interest (from April 28 to May 1) at \$22.55 per day. The first payment on the note was due June 1,
13 2016; therefore, interest began accruing on May 1. But while the disclosure document shows an April
14 28 disbursement date, the borrower's proceeds actually disbursed on May 2, per the escrow
15 disbursement ledger, so Venta should have charged the borrower no interest at closing (one-day
16 interest credit, less one day of additional interest under Civil Code section 2948.5, subdivision (a)).
17 While the loan proceeds were disbursed on a Monday, the per diem interest disclosure document
18 signed by the borrower is incomplete and therefore not applicable. Venta overcharged the borrower
19 three days of interest or \$67.64.

20 g. **Loan Number CA9021602553**

21 The borrower's closing disclosure document shows Venta provided the borrower with a credit
22 for six days of interest (from June 7 to June 1) at \$17.88 per day. The first payment on the note was
23 due July 1, 2016; therefore, interest began to accrue on June 1. But while the closing disclosure
24 shows a disbursement date of June 7, the borrower's proceeds actually disbursed on June 10, per title,
25 so Venta should have provided the borrower with an interest credit of nine days, less one day of
26 additional interest per Civil Code section 2948.5, subdivision (a), or a credit of \$143.02. Venta
27 overcharged the borrower two days of interest or \$35.76.

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1 h. **Loan Number CA1021603262**

2 The borrower's closing disclosure document shows Venta charged the borrower 12 days of
3 interest (from May 20 to June 1) at \$14.80 per day. The first payment on the note was due July 1,
4 2016; therefore, interest began to accrue on June 1. But while the closing disclosure document shows
5 a disbursement date of May 20, the borrower's proceeds actually disbursed on May 23, per title, so
6 Venta should have charged the borrower 9 days of interest, plus one day of additional interest per
7 Civil Code section 2948.5, subdivision (a), or \$148.03. While the loan proceeds disbursed on a
8 Monday, the borrower did not agree, so the California Per Diem Interest Disclosure document is
9 inapplicable. Venta overcharged the borrower two days of interest or \$29.61.

10 i. **Loan Number CA1121602132**

11 The borrower's closing disclosure document shows Venta charged the borrower six days of
12 interest (from April 25 to May 1) at \$38.68 per day. The first payment on the note was due June 1,
13 2016; therefore, interest began to accrue on May 1. But while the closing disclosure document shows
14 a disbursement date of April 25, the borrower's proceeds actually disbursed on April 27, per the
15 escrow disbursement ledger, so Venta should have charged the borrower four days of interest, plus
16 one additional day of interest under Civil Code section 2948.5, subdivision (a), or \$193.42. Venta
17 overcharged the borrower one day of interest or \$38.69.

18 j. **Loan Number CA1421507835**

19 The borrower's settlement statement shows Venta charged the borrower 16 days of interest
20 (from October 16 to November 2) at \$21.54 per day. The first payment on the note was due by
21 December 1, 2015; therefore, interest began to accrue on November 1. The borrower's proceeds
22 disbursed on October 19, per the final settlement statement provided by escrow, so Venta should have
23 charged the borrower 13 days of interest, plus one additional day of interest under Civil Code section
24 2948.5, subdivision (a), or \$301.58. While the loan proceeds disbursed on a Monday, the California
25 Per Diem Interest Disclosure document signed by the borrower is incomplete and therefore not
26 applicable. Venta overcharged the borrower two days of interest or \$43.08.

27 7. During the Department's prior examination of Venta on or about September 5, 2012,
28 the Commissioner cited the company for per diem interest overcharges in three out of the 11 funded

1 loan files reviewed during the exam (an exception rate of 27 percent). Based on the findings of the
2 2012 regulatory examination, the Commissioner instructed Venta to implement such procedures as
3 necessary to ensure that it would not overcharge per diem interest in the future.

4 **III.**

5 **Applicable Statutes**

6 8. Civil Code section 2948.5, provides:

7 (a) A borrower shall not be required to pay interest on a principal
8 obligation under a promissory note secured by a mortgage or deed of
9 trust on real property improved with between one to four residential
10 dwelling units for any period that meets any of the following
11 requirements:

12 (1) Is more than one day prior to the date that the loan proceeds are
13 disbursed from escrow.

14 (2) In the event of no escrow, if a request for recording is made in
15 connection with the disbursement, is more than one day prior to the
16 date the loan proceeds are disbursed to the borrower, to a third party on
17 behalf of the borrower, or to the lender to satisfy an existing obligation
18 of the borrower.

19 (3) In all other circumstances where there is no escrow and no request
20 for recording, is prior to the date funds are disbursed to the borrower, to
21 a third party on behalf of the borrower, or to the lender to satisfy an
22 existing obligation of the borrower.

23 (b) Interest may commence to accrue on the business day immediately
24 preceding the day of disbursement, for obligations described in
25 paragraphs (1) and (2) of subdivision (a) if both of the following occur:

26 (1) The borrower affirmatively requests, and the lender agrees, that the
27 disbursement will occur on Monday, or a day immediately following a
28 bank holiday.

(2) The following information is disclosed to the borrower in writing:

(A) the amount of additional per diem interest charged to facilitate
disbursement on Monday or the day following a holiday, as the case
may be, and (B) that it may be possible to avoid the additional per diem
interest charge by disbursing the loan proceeds on a day immediately
following a business day. This disclosure shall be provided to the

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borrower and acknowledged by the borrower by signing a copy of the disclosure document prior to placing funds in escrow.

(c) This section does not apply to a loan that is subject to subdivision (c) of Section 10242 of the Business and Professions Code.

9. Financial Code section 50204, provides in pertinent part, “A licensee may not do any of the following . . . (o) Commit an act in violation of Section 2948.5 of the Civil Code[.]”

10. Financial Code section 50327 provides:

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

(1) The licensee has violated any provision of this division or any rule or order of the commissioner thereunder.

(2) Any fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.

(b) The power of investigation and examination by the commissioner is not terminated by the denial, nonrenewal, surrender, suspension, or revocation of any license issued by him or her.

11. 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

1 with any requirement of this division or any regulation prescribed by
2 the commissioner under this division or order issued under authority of
3 this division.

4 (c) The maximum amount of penalty for each act or omission described
5 in subdivision (b) shall be twenty-five thousand dollars (\$25,000).

6 (d) Each violation or failure to comply with any directive or order of
7 the commissioner is a separate and distinct violation or failure.

8 **IV.**
9 **Prayer**

10 The Commissioner finds that, by reason of the foregoing, Venta has violated Financial Code
11 section 50204, subdivision (o), and grounds exist to (i) suspend the residential mortgage lender and
12 servicer licenses of Venta, and (ii) assess penalties against Venta under Financial Code section
13 50513, subdivision (b).

14 WHEREFORE, IT IS PRAYED that:

15 Under Financial Code section 50327, the residential mortgage lender license of Venta
16 Financial Group, Inc., dba Alterra Home Loans be suspended for a period of up to 12 months and,
17 under Financial Code section 50513, subdivision (b), penalties be levied against Venta for at least 10
18 violations of Financial Code section 50204, subdivision (o), overcharging per diem interest,
19 according to proof, but in an amount of at least \$5,000.00 per violation.

20 Dated: February 26, 2018

21 Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

22 By _____
23 Blaine A. Noblett
24 Senior Counsel
25 Enforcement Division
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