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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.: 413-1322  
12 )  
13 THE COMMISSIONER OF BUSINESS ) ACCUSATION  
OVERSIGHT, )  
14 )  
15 Complainant, )  
16 v. )  
17 )  
18 MORTGAGE ONE SOLUTIONS, INC., )  
19 Respondent. )  
20 )

21 Manuel P. Alvarez, the Commissioner of Business Oversight (Commissioner), is informed  
22 and believes, and based upon such information and belief, alleges and charges Respondent Mortgage  
23 One Solutions, Inc. (Mortgage One), as follows:

24 I.  
25 Jurisdiction

26 1. The Commissioner is authorized to administer and enforce the provisions of the  
27 California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.) and the rules  
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1 issued in title 10 of the California Code of Regulations (CCR) that regulate the business and activities  
2 of residential mortgage lenders and mortgage loan servicers.

3 2. The Commissioner brings this action under the provisions of Financial Code section  
4 50327 and the rules and regulations promulgated thereunder.

5 **II.**

6 **Statement of Facts**

7 3. Mortgage One is a foreign corporation not authorized to conduct business in  
8 California.

9 4. Mortgage One holds a residential mortgage lender's license issued by the  
10 Commissioner under the CRMLA. Mortgage One's principal place of business is located at 8609  
11 Westwood Center Drive, Suite 200, Vienna, Virginia.

12 5. The Commissioner commenced a regulatory examination of Mortgage One on  
13 February 27, 2018.

14 **Per Diem Interest Violations**

15 6. The Commissioner's examination disclosed, in at least three loan files, Mortgage One  
16 had overcharged borrowers' per diem interest in excess of one day prior to the disbursement date of  
17 loan proceeds in violation of Civil Code section 2948.5 and Financial Code section 50204,  
18 subdivision (o) as follows:

19 a. Loan Number 7715012000

20 Per the Final HUD-1, Mortgage One charged the borrower two days' interest (from January  
21 30 to February 1, 2015) at \$44.2675 per day. The borrower's first payment on the note was due  
22 March 1, 2015; therefore, interest began to accrue on the loan beginning February 1. But according to  
23 the records received from the title company, the majority of loan proceeds actually disbursed on  
24 February 2. The Interim Interest Payment Disclosure document Mortgage One provided the borrower  
25 to sign contained blanks and is not applicable and excluded from the per diem interest calculation.  
26 Mortgage One overcharged the borrower two days per diem interest or \$88.54.

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1           b.       Loan Number 8900000000

2           Per the final HUD-1, Mortgage One charged the borrower five days' interest (from October  
3 27 to November 1, 2015) at \$70.917 interest per day. The borrower's first payment on the note was  
4 due December 1, 2015; therefore, interest began to accrue on the loan beginning November 1. But  
5 according to the final settlement statement received from the escrow agent, the majority of loan  
6 proceeds actually disbursed on October 29. Mortgage One should have used October 29 through  
7 November 1, a total of three days, to determine the amount of per diem interest to collect. Under the  
8 Civil Code, Mortgage One was allowed to collect interest one day prior to the date the majority of  
9 loan proceeds disbursed (*i.e.*, October 28). Mortgage One should have charged the borrower four  
10 days' interest or \$283.67. Mortgage One overcharged the borrower one day of per diem interest or  
11 \$70.92.

12           c.       Loan Number 8500000207

13           Per the closing disclosure document, Mortgage One charged the borrower 26 days per diem  
14 interest (from June 5 to July 1, 2017) at \$58.7114 interest per day. The borrower's first payment on  
15 the note was due August 1, 2017; therefore, interest began to accrue on the loan beginning July 1. But  
16 according to the final settlement statement received from the escrow agent, the majority of loan  
17 proceeds actually disbursed on June 7. Mortgage One should have used June 7 through July 1, a total  
18 of 24 days, to determine the amount of per diem interest to collect. Under the Civil Code, Mortgage  
19 One was allowed to collect interest one day prior to the date the majority of loan proceeds disbursed  
20 (*i.e.*, June 6). Mortgage One should have charged the borrower 25 days interest of \$1,467.79.  
21 Mortgage One overcharged the borrower one day of per diem interest or \$58.71.

22                           **Failure to Provide Evidence of Disbursement Date**

23           7.       CCR section 1950.314.4, subdivision (d) requires licensees maintain "escrow  
24 instructions and the closing statement issued by an independent escrow holder on a residential  
25 mortgage loan in which the proceeds of that loan were disbursed to that escrow holder." (See also,  
26 Commissioner's Release No. 58-FS [May 3, 2017].) Upon the Commissioner's request, the licensee  
27 shall make the records "accessible to the inspection of the Commissioner within ten . . . calendar  
28 days[.]" (CCR section 1950.314.4, subd. (e).)

1 8. But during the examination, in 11 out of 16 loan files sampled by the examiner,  
2 Mortgage One could not timely provide the examiner with evidence of the date of disbursement of  
3 the majority of loan proceeds, which is necessary to enable the examiner to calculate the correct  
4 amount of per diem interest the lender was to charge the borrower on the loan (in order to determine  
5 the licensee’s compliance with Civil Code section 2948.5 and Financial Code section 50204,  
6 subdivision (o)).

7 9. On May 21, 2018, several months after the Commissioner’s initial request for records,  
8 Mortgage One provided the Commissioner’s examiner with evidence of disbursement of loan  
9 proceeds in five out of 11 of the files under review, but it did not provide evidence of disbursement  
10 on the remaining six loan files.

11 10. Again, on July 16, 2018, the Commissioner’s examiner requested evidence of the date  
12 of disbursement of loan proceeds on the remaining six loan files.

13 11. On July 26, Mortgage One provided the Commissioner with evidence of the date of  
14 disbursement of loan proceeds on the remaining six loan files.

15 **Failure to Renew Bond**

16 12. Financial Code section 50205, subdivision (a) requires all CRMLA licensees to  
17 maintain a surety bond to “be used for the recovery of expenses, fines, and fees levied by the  
18 Commissioner in accordance with [the CRMLA] or for losses or damages incurred by borrowers or  
19 consumers as the result of the licensee’s noncompliance with [the CRMLA].”

20 13. On December 21, 2018, North American Specialty Insurance Company notified the  
21 Commissioner that it would cancel Mortgage One’s surety bond number 2186729, effective January  
22 22, 2019.

23 14. On December 31, 2018, the Commissioner notified Mortgage One in writing (by  
24 certified mail) that its surety bond would be cancelled effective January 22, 2019, and that it was to  
25 immediately file a new replacement bond or reinstatement. The Commissioner also provided  
26 Mortgage One notice of the surety bond cancellation by posting a license deficiency item to the  
27 Nationwide Mortgage Licensing System and Registry (the NMLS). The Commissioner received  
28 proof that Mortgage One had received the written notice of bond deficiency on January 6, 2019.

1 15. As of June 18, 2019, Mortgage One has not provided the Commissioner with its  
2 replacement bond or evidence of bond reinstatement.

3 **Incomplete Surrender**

4 16. On January 15, 2019, Mortgage One requested the Commissioner approve the  
5 surrender of its residential mortgage lender’s license. (See Fin. Code, § 50123 [setting forth the  
6 requirements for surrender].)

7 17. As of the date of this Accusation, Mortgage One has not completed all steps necessary  
8 to surrender its CRMLA license and the Commissioner has not accepted Mortgage One’s surrender.

9 **III.**

10 **Applicable Statutes**

11 18. Civil Code section 2948.5 provides:

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

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

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

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

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

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

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(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 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.

19. Financial Code section 50123 provides, in pertinent part:

(a) A residential mortgage lender license shall remain in effect until suspended, surrendered, or revoked.

(b) A residential mortgage lender licensee that ceases to engage in the business regulated by this division and desires to no longer be licensed shall inform the commissioner in writing and, at that time, surrender the license and all other indicia of licensure to the commissioner. The licensee shall file a plan for the withdrawal from regulated business, and the plan shall include a timetable for the disposition of the business. The plan shall also include a closing audit, review, or other agreed upon procedures performed by an independent certified public accountant prescribed by rule or order of the commissioner. Upon receipt of the written notice and plan, the commissioner shall review the plan and, if satisfactory to the commissioner, shall accept the surrender of the license. A license is not surrendered until its tender is accepted in writing by the commissioner after a review, and a finding has been made on the licensee’s plan required to be filed by this section, and a determination has been made that there is no violation of this law[.]

20. 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[.]”

21. Financial Code section 50205 provides, in pertinent part:

(a) A residential mortgage lender or servicer licensee shall maintain a surety bond in accordance with this subdivision. The bond shall be used for the recovery of expenses, fines, and fees levied by the commissioner in accordance with this division or for losses or damages incurred by borrowers or consumers as the result of a licensee’s

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noncompliance with the requirements of this division. The bond shall be payable when the licensee fails to comply with a provision of this division and shall be in the amount of fifty thousand dollars (\$50,000), and may be increased by order of the commissioner to one hundred thousand dollars (\$100,000) upon a determination by the commissioner that the licensee is not in compliance with any provision of this chapter or any rule or order adopted or issued by the commissioner to implement or enforce provisions of this chapter. The bond shall be payable to the commissioner and issued by an insurance company authorized to do business in this state. An original surety bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be filed with the commissioner within 10 days of its execution.

(b) When an action is commenced on a licensee’s bond, the commissioner may require the filing of a new bond. Immediately upon the recovery of an action on the bond, the licensee shall file a new bond. Failure to file a new bond within 10 days of the recovery on a bond, or within 10 days after notification by the commissioner that a new bond is required, constitutes sufficient grounds for the suspension or revocation of the license[.]

22. Financial Code section 50304 provides, in pertinent part:

The commissioner may, from time to time, make, amend, and rescind the rules, forms, and orders that are necessary to carry out the provisions of this law, including rules and forms governing applications and reports, and defining any terms, whether or not used in this law, provided that the definitions are consistent with the provisions of this law[.]

23. 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.

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WHEREFORE, IT IS PRAYED that:

Under Financial Code section 50327, the residential mortgage lender’s license issued to Mortgage One be revoked.

Dated: July 15, 2019  
Los Angeles, California

MANUEL P. ALVAREZ  
Commissioner of Business Oversight

By \_\_\_\_\_  
Blaine A. Noblett  
Senior Counsel  
Enforcement Division