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

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11 In the Matter of:)
)
12 THE COMMISSIONER OF BUSINESS) CRMLA LICENSE NO.: 413-0456
13 OVERSIGHT,) CFL LICENSE NO.: 603-H857
)
14 Complainant,) ACCUSATION
)
15 v.)
)
16 MORTGAGE SOLUTIONS OF COLORADO)
17 LLC,)
)
18 Respondent.)

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20 The Complainant is informed and believes, and based upon such information and belief,
21 alleges and charges Respondent as follows:

22 **I.**

23 **Introduction**

24 1. Mortgage Solutions of Colorado LLC (Mortgage Solutions) is licensed by the
25 Commissioner of Business Oversight (Commissioner) as a residential mortgage lender and servicer
26 pursuant to the California Residential Mortgage Lending Act ("CRMLA") (Fin. Code § 50000 et
27 seq.). Mortgage Solutions has its principal place of business located at 5455 North Union
28 Boulevard, Colorado Springs, Colorado 80918. Mortgage Solutions currently has 14 branch office

ACCUSATION

1 locations under its CRMLA license. Mortgage Solutions employs mortgage loan originators in its
2 CRMLA business.

3 2. Mortgage Solutions is also licensed by the Commissioner as a finance lender pursuant
4 to the California Financing Law (CFL) (Fin. Code § 22000 et seq.). Mortgage Solutions has its
5 principal place of business under the CFL also located at 5455 North Union Boulevard, Colorado
6 Springs, Colorado 80918. Mortgage Solutions has 1 branch office location under its CFL license.

7 **II.**

8 **Trust Accounting Violations**

9 3. On or about July 16, 2018, the Commissioner, by and through staff, commenced a
10 regulatory examination of the books and records of Mortgage Solutions under the CRMLA and the
11 CFL (2018 regulatory examination). The 2018 regulatory examination disclosed that Mortgage
12 Solutions had (i) failed to properly reconcile certain of its trust accounts due to shortages and/or
13 overages in several of its trust accounts in violation of Financial Code section 50314 and California
14 Code of Regulations, title 10, section 1950.314.1; (ii) commingled operating funds with trust monies
15 in violation of Financial Code section 50202, subdivision (a); and (iii) caused debit balances to exist
16 in borrower impound accounts in violation of California Code of Regulations, title 10, section
17 1950.314.6.

18 4. In 2018, Mortgage Solutions maintained the relevant trust accounts at Republic Bank
19 and Wells Fargo Bank. The relevant trust accounts were (i) Republic Bank trust account ending in
20 1069 for mortgage insurance premiums (MIP Account); (ii) Republic Bank trust account ending in
21 1115 for escrow funds collected at loan closing (Escrow Account); (iii) Republic Bank trust account
22 ending in 1895 for escrow holdbacks such as buydowns and rehabilitation funds (Escrow Holdback
23 Account); (iv) Republic Bank trust account ending in 5703 for 203K rehabilitation funds (203K
24 Account); (v) Republic Bank account ending in 1077 for VA appraisal funds (VA Appraisal
25 Account); (vi) Wells Fargo Bank trust account ending in 1284 for MIP funds (WB MIP Account);
26 and (vii) Wells Fargo Bank trust account ending in 6782 for appraisal funds (Appraisal Account).
27 The trust funds are to be held until time for disbursement to the tax authority, insurance company,
28 contractor, etc.

1 5. A review of the trust account reconciliations for April 30, 2018 disclosed that
2 Mortgage Solutions had failed to properly reconcile the above described trust accounts for the period
3 ended April 30, 2018. The MIP Account, Escrow Account and Escrow Holdback Account had
4 shortages totaling \$477,782.27 and the 203K Account, Appraisal Account and VA Appraisal
5 Account had overages totaling \$209,499.41. At least \$25,154.88 of the trust account shortages can
6 be attributed to debit balances (overdrafts) in individual borrower escrow impound accounts.

7 6. A trust account shortage indicates there are insufficient funds available to pay all the
8 liabilities. California Code of Regulations, title 10, section 1950.314.6 prohibits debit balances
9 (shortages) in any loan or servicing account maintained by CRMLA licensees. Mortgage Solutions
10 corrected the shortages in the MIP, Escrow Account and Escrow Holdback Accounts on or about
11 August 1, 2018.

12 7. A trust account overage indicates that company operating funds have been
13 commingled with trust funds. Financial Code section 50202, subdivision (a) prohibits the
14 commingling of company funds with trust funds. Mortgage Solutions corrected the overages in the
15 203K, Appraisal and VA Appraisal Accounts on or about August 1, 2018.

16 8. Mortgage Solutions was instructed to submit its September 30, 2018 financials to
17 include the balance sheet, trial balance, trust account reconciliation, bank account statement, and
18 corresponding trust liability subsidiary ledgers for the above described trust accounts. A review of
19 the trust account reconciliations for September 30, 2018 disclosed that Mortgage Solutions
20 continued in its failure to properly reconcile the trust accounts. For the period ended September 30,
21 2019, the MIP Account, the WB MIP Account, Escrow Account, Appraisal Account and VA
22 Appraisal Account had shortages totaling \$151,973.93. The entire shortage in the MIP, WB MIP,
23 Escrow, Appraisal and VA Appraisal Accounts could be attributed to debit balances (overdrafts) in
24 individual borrower escrow impound accounts in violation of California Code of Regulations, title
25 10, section 1950.314.6.

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III.**Per Diem Interest Overcharges**

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3 9. The 2018 regulatory examination further disclosed that in 7 of 25 funded loans
4 reviewed, or approximately 28%, Mortgage Solutions was charging the borrower per diem interest in
5 excess of one day prior to the disbursement of loan proceeds in violation of California Financial
6 Code section 50204, subdivision (o) for loans made under its CRMLA license and Financial Code
7 section 22161, subdivision (a)(5), Business and Professions Code section 17200, Civil Code section
8 2948.5 and California Code of Regulations, title 10, section 1457 (d) for loans made under its CFL
9 license. A California Additional Per Diem Interest Charge Disclosure was found in the 5 loans with
10 a Monday or after bank holiday disbursement of loan proceeds, but the disclosures were not prepared
11 in accordance with California Civil Code section 2948.5, subdivision (b) or were not applicable, and
12 therefore were not considered in calculating per diem interest charges. The per diem interest
13 overcharges averaged \$71.00 per loan. The range of per diem interest overcharges was between
14 \$18.31 and \$200.17. The range of days that interest was overcharged was between 1 and 6 days.

15 10. On or about August 31, 2018, the Commissioner, based upon the findings of the 2018
16 regulatory examination and pursuant to Financial Code sections 50307, subdivision (b) and 22159,
17 subdivision (b), directed Mortgage Solutions to conduct a self-audit regarding per diem interest
18 charges for all loans originated from August 18, 2014 through August 31, 2018, make appropriate
19 refunds, and submit a report as to the findings of the self-audit (per diem self-audit report). On or
20 about December 14, 2018, Mortgage Solutions submitted its per diem self-audit report to the
21 Commissioner. The per diem self-audit report filed with the Commissioner, which covered the
22 period from August 18, 2014 through September 5, 2018, disclosed 325 per diem interest
23 overcharges out of 2,390 loans or 13.6% with refunds totaling \$24,113.16.

24 11. In testing the accuracy of the per diem self-audit, the Commissioner discovered that
25 Mortgage Solutions was incorrect in 7 of the 30 (23.3%) sampled loans¹. Mortgage Solutions failed
26 to discover per diem interest overcharges in 7 of the 25 sampled loans disclosed as no overcharge.
27 Accordingly, the Commissioner has determined the per diem self-audit is unreliable.

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¹ The sampling included 25 loans disclosed as no overcharge and 5 loans disclosed as overcharges.

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IV.

Recording Fee Overcharges

12. The 2018 regulatory examination additionally disclosed that in 25 of 25 funded loans reviewed, or 100%, Mortgage Solutions had charged the borrower in excess of the amount paid to the county recorder for recording documents and/or failed to obtain/maintain evidence to support the recording fee charges in violation of Financial Code section 50204, subdivision (i) and/or Financial Code section 50314 for loans made under its CRMLA license and Financial Code section 22336, subdivision (a) and/or Financial Code section 22156 for loans made under its CFL license. The recording fee overcharges averaged \$71.64 per loan. The range of recording fee overcharges was between \$10.00 and 317.00.

13. On or about August 31, 2018, the Commissioner, based upon the findings of the 2018 regulatory examination and pursuant to Financial Code sections 50307, subdivision (b) and 22159, subdivision (b), directed Mortgage Solutions to conduct a self-audit regarding recording fee charges for all residential mortgage loans originated from August 18, 2014 to the present if Mortgage Solutions could not substantiate the charges, make appropriate refunds, and submit a report as to the findings of the self-audit (recording fee report). On or about November 16, 2018, Mortgage Solutions submitted its recording fee report to the Commissioner. The recording fee report filed with the Commissioner, which covered the period from August 18, 2014 through September 5, 2018, disclosed 219 recording fee overcharges out of 2,385 loans or 9.2% with refunds totaling \$9,029.52. The Commissioner found no discrepancies in testing the accuracy of the recording fee report.

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V.

CRMLA Suspension/Penalty Statutes

14. Financial Code section 50327 provides in pertinent part:

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

(1) the licensee has violated any provision of this division or rule or order of the commissioner thereunder; or (2) any fact or condition exists that, if it had existed at the time of the original application for license, reasonably would have warranted the commissioner in refusing to issue the license originally.

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

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

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

VI.

CFL Suspension/Penalty Statutes

16. Financial Code section 22714 provides in pertinent part:

(a) The commissioner shall suspend or revoke any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:

...

(2) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.

17. Financial Code section 22172 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 finance lender or broker licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).

1 (b) The commissioner may impose a civil penalty on a mortgage loan originator
2 or any finance lender or broker licensee employing a mortgage
3 loan originator, if the commissioner finds, on the record after notice and
4 opportunity for hearing, that the mortgage loan originator or any finance lender or
5 broker licensee employing a mortgage loan originator has violated or failed to
6 comply with any requirement of this division or any regulation prescribed by the
7 commissioner under this division or order issued under authority of this division.
8 (c) The maximum amount of penalty for each act or omission described in
9 subdivision (b) shall be twenty-five thousand dollars (\$25,000).

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

13 **VII.**

14 **Conclusion**

15 18. The Commissioner finds that, by reason of the foregoing, Mortgage Solutions of
16 Colorado LLC has violated Financial Code sections 22156, 22159, subdivision (b), 22161,
17 subdivision (a)(5), 22336, subdivision (a), 50202, 50204, subdivision (i), 50204, subdivision (o),
18 50307, and 50314, and California Code of Regulations, title 10, sections 1457, subdivision (d),
19 1950.314.1 and 1950.314.6, and based thereon, grounds exist to (i) suspend the residential mortgage
20 lender and servicer licenses and the finance lender licenses of Mortgage Solutions of Colorado LLC,
21 and (ii) assess penalties against Mortgage Solutions of Colorado LLC.

22 **VIII.**

23 **Prayer**

24 WHEREFORE, IT IS PRAYED that:

- 25 1. Pursuant to Financial Code section 50327, the residential mortgage lender and
26 servicer licenses of Mortgage Solutions of Colorado LLC be suspended for a period of up to 12
27 months;
- 28 2. Pursuant to Financial Code section 22714, the finance lender licenses of Mortgage
Solutions of Colorado LLC be suspended for a period of up to 12 months;
3. Pursuant to Financial Code section 50513, subdivision (b), a penalty be levied against
Mortgage Solutions of Colorado LLC for failure to properly reconcile its trust accounts on a monthly

1 basis, in violation of Financial Code section 50314 and California Code of Regulations, title 10,
2 section 1950.314.1, according to proof, but in an amount of at least \$15,000.00;

3 4. Pursuant to the Financial Code section 50513, subdivision (b), a penalty be levied
4 against Mortgage Solutions of Colorado LLC for causing shortages to exist in its MIP, WB MIP,
5 Escrow, Escrow Holdback, Appraisal, and VA Appraisal Accounts in violation of California Code of
6 Regulations, title 10, section 1950.314.6 according to proof, but in an amount of at least \$25,000.00;

7 5. Pursuant to the Financial Code section 50513, subdivision (b), a penalty be levied
8 against Mortgage Solutions of Colorado LLC for commingling company funds with trust funds in its
9 203K, Appraisal and VA Appraisal Accounts in violation of Financial Code section 50202,
10 subdivision (a), according to proof, but in an amount of at least \$25,000.00;

11 6. Pursuant to the Financial Code sections 22172, subdivision (b) and 50513,
12 subdivision (b), penalties be levied against Mortgage Solutions of Colorado LLC for at least 325
13 violations of Financial Code sections 50204, subdivision (o) and/or 22161, subdivision (a)(5) via
14 violations of Civil Code section 2948.5, overcharging per diem interest, according to proof, but in an
15 amount of at least \$1,000.00 per violation; and

16 7. Pursuant to the Financial Code sections 22172, subdivision (b) and 50513,
17 subdivision (b), penalties be levied against Mortgage Solutions of Colorado LLC for at least 219
18 violations of Financial Code section 50204, subdivision (i) and/or 50314 and Financial Code section
19 22336, subdivision (a) and/or 22156, overcharging recording fees and/or failure to maintain proper
20 books and records, according to proof, but in an amount of at least \$500.00 per violation.

21 Dated: June 25, 2019
22 Los Angeles, CA

MANUEL P. ALVAREZ
Commissioner of Business Oversight

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24 By _____
25 Judy L. Hartley
26 Senior Counsel
27 Enforcement Division
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