PRESTON DUFAUCHARD
California Corporations Commissioner
ALAN S. WEINGER
Deputy Commissioner
MIRANDA LEKANDER (BAR NO. 210082)
Senior Corporations Counsel
1515 K Street, Suite 200
Sacramento, California 95814
Telephone: (916) 320-8730 Fax: (916) 445-6985

Attorneys for Complainant

BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, v. MOUNTAIN STATES MORTGAGE CENTERS, INC., Respondent.	OAH NO: UNASSIGNED File No.: 413-0252 ACCUSATION IN SUPPORT OF REVOCATION OF CALIFORNIA RESIDENTIAL MORTGAGE LENDER AND SERVICER LICENSE

The California Corporations Commissioner ("Commissioner" or "Complainant") is informed and believes, and based upon such information and belief, alleges and charges as follows:

I.

Mountain States Mortgage Centers, Inc. (hereafter "Mountain States" or "Respondent") is a residential mortgage lender and servicer licensed by the California Department of Corporations ("Department") pursuant to the California Residential Mortgage Lending Act ("CRMLA") (California Financial Code section 50000 *et seq.*[1]). Respondent last reported to the Commissioner

[1] All code references are to the California Financial Code unless otherwise indicated.

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that its principal place of business is located at 1333 E. 9400 South, Sandy, Utah, 84093.

On or about February 1, 1999, the Department first issued a CRMLA license to Respondent. At the section marked "Exhibit M" of the CRMLA license application, Respondent averred under penalty of perjury that the licensee:

> 15. Hereby attests that the applicant has acted with due care and competence in performing any act for which it is required to hold a license under the California Residential Mortgage Lending Act.
>
> 16. Hereby attests that the applicant will comply with all applicable requirements of California and federal law. . . when servicing residential mortgage loans.

II.

Despite the Respondent's sworn acknowledgment of the CRMLA licensing requirements, Respondent has committed multiple violations of the CRMLA during its tenure of licensure, including the following:

i. <u>Failure to File 2010 Activity Report</u>

Pursuant to Financial Code sections 50307 and 50401 and California Code of Regulations, title 10, section 1950.314.8, on or before March 1st of each year all licensees under the CRMLA are required to file an annual Report of Principal Amount of Loans Originated and Aggregate Amount of Loans Serviced for the preceding 12-month period ended December 31, the Report on Non-Traditional, Adjustable Rate and Mortgage Loan Products, and, the Non-Traditional, Adjustable Rate and Mortgage Loan Survey (hereafter collectively referred to as the "Activity Report").

On or about January 27, 2011, forms for the Activity Report preprinted with the licensee's name, address and Department file number were sent to each CRMLA licensee along with filing instructions and notice that the enclosed reports were due on or before March 1, 2011.

Respondent failed to timely file its 2010 Activity Report by the March 1, 2011 deadline.

On or about June 17, 2011, the Commissioner assessed a $1,000.00 penalty against Respondent pursuant to Financial Code section 50326 for failure to timely submit its 2010 Activity Report to the Department in compliance with the provisions of the CRMLA. To date, Respondent's

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2010 Activity Report has not been filed with the Commissioner nor has the $1,000.00 penalty been paid.

ii. Failure to Maintain Surety Bond

Financial Code section 50205 requires each CRMLA licensee to maintain a surety bond to be used for the recovery of expenses, fines, or fees levied by the Commissioner for losses or damages incurred by borrowers or consumers as a result of a licensee's noncompliance with the requirements of the CRMLA.

On February 18, 2011, the Commissioner informed Respondent that on February 14, 2011 the Department was notified by Liberty Mutual Insurance Company that it was canceling Respondent's surety bond number 285033691 effective March 16, 2011. The February 18, 2011 letter advised that if a new replacement bond was not obtained prior to the cancellation date it would be necessary for the Commissioner to issue an order for Respondent to discontinue mortgage lending and/or servicing activities.

On March 16, 2011, the surety bond issued to Respondent expired, and no replacement bond was obtained.

On March 16, 2011, the Commissioner issued an order under the authority of Financial Code section 50319 requiring Respondent to discontinue conducting residential mortgage lending and/or servicing activities in an unsafe and injurious manner as to render further operations hazardous to the public or to customers. As no hearing was timely requested by Respondent pursuant to the provisions of section 50319, this order is final and remains in effect.

iii. Failure to Comply with License-Surrender Requirements

On or about July 5, 2011, Respondent submitted an electronic request through the Nationwide Mortgage Licensing System and Registry ("NMLS") to surrender its California residential mortgage lender license.

On July 6, 2011, the Department provided Respondent instructions through the NMLS outlining how to comply with the "Jurisdiction-Specific Requirements" for surrender of its California residential mortgage lender license as set forth in Financial Code section 50123. This

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jurisdiction-specific list ("Surrender Checklist") informs that surrender of a California residential mortgage lender license cannot be completed unless the licensee, among other things, files with the Commissioner a withdrawal plan setting forth a timetable for the orderly disposition of its California residential mortgage lender business. The Surrender Checklist itemizes documents that the licensee must submit to the Commissioner in connection with the proposed closure. To date, Respondent has not submitted the information and closing documents necessary to effectuate the surrender of its California residential mortgage lender license, as required by section 50123.

III.

Financial Code section 50326 provides:

> If any licensee fails to do any of the following, the licensee shall forfeit to the people of the state a sum of up to one hundred dollars ($100) for every day up to the 10th day: (a) to make any report required by law or by the commissioner within 10 days from the day designated for the making of the report, or within any extension of time granted by the commissioner, or (b) fails to include therein any matter required by law or by the commissioner. Thereafter, any failure shall constitute grounds for the suspension or revocation of the license held by the residential mortgage lender or residential mortgage loan servicer.

IV.

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 noncompliance with the requirements of this division.

V.

Financial Code section 50123 provides in relevant part:

> (a) A license shall remain in effect until suspended, surrendered, or revoked.
>
> (b) A 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

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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 . . . .

VI.

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 any 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.

VII.

Financial Code section 50311 provides in pertinent part:

> Nothing in this law shall preclude a person whose license has been suspended or revoked, summarily or otherwise, from making a residential mortgage loan pursuant to a commitment issued by that person prior to the suspension or revocation.
> A prospective borrower who received a commitment issued by a person whose license has been suspended or revoked may, prior to the closing of the loan, terminate the commitment or receive a refund of all money paid to that person.

VIII.

A CRMLA applicant is required pursuant to Financial Code section 50124, as a condition of receiving a license, to agree in writing to, among other things, comply with the provisions of the CRMLA and any rule or order of the Commissioner and file with the Commissioner all reports required under law or by rule or order of the Commissioner. Failure to comply with the provisions of section 50124 constitutes grounds under Financial Code section 50125 for the Commissioner to refuse to issue a license.

Pursuant to Financial Code section 50327, the Commissioner can revoke a CRMLA license if a fact or condition now exists, that if it existed at the time of original licensure, would reasonably have warranted the Commissioner in refusing to issue the license originally. Had the facts and conditions alleged herein existed at the time Respondent applied for its residential mortgage lender license, the Commissioner would have been warranted in refusing to issue such license. Further, the present facts set forth herein constitute sufficient grounds for the revocation of the residential

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mortgage lender license of Respondent pursuant to section 50327.

The Commissioner finds that, by reason of the foregoing, Respondent Mountain States Mortgage Centers, Inc. is in violation of Financial Code sections 50123, 50205, 50307, 50326, 50401 and section 1950.314.8 of title 10 of the California Code of Regulations, and based thereon grounds exist under Financial Code section 50327 to revoke Respondent's residential mortgage lender and servicer license.

WHEREFORE, IT IS PRAYED that the residential mortgage lender and servicer license of Mountain States Mortgage Centers, Inc. be revoked pursuant to Financial Code section 50327 and that Respondent be given a transition period of sixty (60) days within which to complete any loans for which it had prior commitments pursuant to Financial Code section 50311.

DATED: August 29, 2011
Sacramento, CA

PRESTON DUFAUCHARD
California Corporations Commissioner

By_____
Miranda LeKander
Senior Corporations Counsel

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