MARY ANN SMITH
Deputy Commissioner
DOUGLAS M. GOODING
Assistant Chief Counsel
MIRANDA LEKANDER (SBN 210082)
Senior Corporations Counsel
1515 K Street, Suite 200
Sacramento, CA 95814
Tel: (916) 322-8730
Fax: (916) 445-6985
Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT

OF THE STATE OF CALIFORNIA

In the Matter of THE COMMISSIONER OF BUSINESS OVERSIGHT OF THE STATE OF CALIFORNIA, Complainant, v. GOLDEN EMPIRE MORTGAGE, INC., Respondent.	File No. 413-0360 NMLS ID. 2427 STATEMENT OF FACTS IN SUPPORT OF ORDER TO DISCONTINUE VIOLATIONS PURSUANT TO FINANCIAL CODE SECTION 50321 AND REFUND EXCESSIVE PER DIEM INTEREST CHARGES PURSUANT TO FINANCIAL CODE SECTION 50504 AND NOTICE OF INTENT TO MAKE ORDER FINAL

TO: GOLDEN EMPIRE MORTGAGE, INC.
1200 Discovery Drive, Suite 300
Bakersfield, California 93309

The Commissioner of Business Oversight of the State of California finds that:

At all relevant times, Golden Empire Mortgage, Inc. ("Respondent" or "GEM") was a residential mortgage lender and loan servicer licensed since March 22, 2001 by the Commissioner of

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Business Oversight of the State of California ("Commissioner" or "Complainant")[1] pursuant to the California Residential Mortgage Lending Act ("CRMLA") (California Financial Code sections 50000 et seq.). Respondent has its principal place of business located at 1200 Discovery Drive, Suite 300, Bakersfield, California, 93309. Respondent also has multiple branch offices in California doing business under other names. Respondent employs mortgage loan originators.

On or about October 19, 2009, the Department commenced a regulatory examination of Respondent's books and records pursuant to Financial Code section 50302 ("2009 exam"). As a result of the 2009 exam, the Department discovered that in seven out of 32 loans funded through October 2009, or approximately 21 percent of the loans reviewed, Respondent charged the borrower per diem interest in excess of one day prior to the date that the loan proceeds were disbursed from escrow, in violation of section 50204(o) of the Financial Code and section 2948.5 of the Civil Code. The amount of per diem interest overcharged per borrower was between $9.65 and $301.84. The range of days in which interest was overcharged was between one and six.

On or about April 12, 2010, the Department issued a regulatory examination report to Respondent summarizing the various violations found during the 2009 exam ("2009 exam report"). Respondent was instructed to submit a written response to the Department within 30 calendar days with evidence that the cited violations had been corrected. Additionally, Respondent was directed to make refunds of amounts overcharged plus interest at the rate of 10 percent per annum to the seven overcharged California borrowers identified in the report pursuant to Financial Code section 50504. The letter advised that all refunds made to borrowers must be accompanied by the following statement:

> AS A RESULT OF AN EXAMINATION BY THE DEPARTMENT OF CORPORATIONS, A REFUND OR ADJUSTMENT IN THE AMOUNT OF $XXX IS BEING MADE FOR YOUR BENEFIT. IF YOU HAVE ANY QUESTIONS CONCERNING THIS REFUND, PLEASE CONTACT (lender) AT (800) XXX-XXXX.

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[1] As of July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to form the Department of Business Oversight.

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Concerning the Department's findings of excessive per diem interest charged by Respondent, the 2009 exam report advised:

> These overcharges represent a repeat violation from our previous examination and therefore create significant regulatory concern.[2] Please indicate the measures taken to prevent any recurrences of this violation.

On or about May 20, 2010, Respondent replied that since it had a review process in place, it believed that the Department's finding of excessive per diem overcharges for some of the loans was "not due to a weakness in GEM's current process to monitor this area." Nonetheless, Respondent informed it would make refunds to the seven overcharged borrowers identified by the 2009 exam report.

On or about September 28, 2010, the Department informed Respondent that it had not provided evidence to the Department that it had made sufficient refunds and/or interest payments to all identified borrowers, as instructed by the 2009 regulatory exam report. Additionally, Respondent had failed to include the required consumer notice in its refund letters to borrowers. Concerning the excessive per diem interest charges discovered in the 2009 examination, the Department further advised:

> Although your company has a review process in place to review and refund any overcharges noted on per diem interest overcharges, there are still overcharges being made. Some loans are being overlooked in the review process and in some of the loans your company has reviewed, the refunds were being calculated improperly, causing the borrower to be overcharged. Therefore, this matter remains a significant regulatory concern.

On or about August 8, 2012, the Department commenced another regulatory examination of Respondent's books and records pursuant to Financial Code section 50302 ("2012 exam"). As a result of the 2012 exam, the Department discovered that in seven out of 30 loans funded during the period of October 2011 to May 2012, or approximately 23 percent of the loans reviewed, Respondent charged the borrower per diem interest in excess of one day prior to the date that the loan proceeds were disbursed from escrow in violation of section 50204(o) of the Financial Code and section

[2] In a prior examination in April 2008, the Department found that Respondent had overcharged or understated the per diem interest in 10 percent of loans reviewed.

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2948.5 of the Civil Code. The amount of per diem interest overcharged per borrower was between $12.05 and $392.39. The range of days in which interest was overcharged was between one and five.

On or about September 24, 2013, the Department issued a regulatory examination report to Respondent summarizing the various violations found during the 2012 exam ("2012 exam report"). Respondent was instructed to submit a written response to the Department within 30 days describing the corrective actions implemented to address the violations cited. In regard to the Department's findings of excessive per diem interest charges, the 2012 exam letter directed Respondent to conduct an internal audit as follows:

> Due to the high percentage of per diem interest overcharged (seven out of thirty loans reviewed or 23%), you are instructed to review all loans funded since October 2009 to the current date to determine the number and amount of overcharges collected from borrowers.

As part of its internal review, Respondent was instructed to provide a detailed self-audit report of the files reviewed and the dollar amount of the overcharges established through the review of its originated loans, including, but not be limited to, the loan number, borrower's name, loan amount, interest rate, date disbursed, date started collecting interest, interest overcharged and date refunded.

Further, the Department ordered Respondent to make refunds of excess amounts plus interest at the rate of 10 percent per annum to all overcharged California borrowers, including but not limited to the seven loans identified in the 2012 exam report pursuant to Financial Code section 50504.

Additionally, Respondent was instructed to submit a written report to the Department within 30 calendar days describing in detail the actions taken to correct the violations of Financial Code section 50204. Specifically, paragraph 3 of the 2012 exam report stated:

> Failure to submit a sufficient report may result in a special examination by the Department for which you will be required to pay the cost. Please indicate the corrective action taken to prevent a recurrence of this violation.
> . . .
> This is a repeat violation; consequently, this matter is being referred to the Special Administrator for administrative action.

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On or about October 23, 2013, Respondent submitted a written response to the 2012 exam report advising that it disagreed with several of the Department's findings of per diem interest overcharges. Respondent informed the Department that it had utilized the HUD[3] guidelines for calculating collection of interest from the date the lender disburses loan proceeds instead of the method mandated by the CRMLA which permits the lender to charge interest for only one day prior to the date that the loan proceeds are disbursed from escrow. Respondent informed that after conducting a review of its files, it disagreed that refunds were due for all the loans that had been identified in the 2012 exam report.

Additionally, in its written response to the Department dated October 23, 2013, Respondent informed that since it relied upon the HUD guidelines instead of the CRMLA, it had observed fewer per diem calculation errors than those found by the Department. Accordingly, Respondent requested that the Department "rescind the requirement for GEM to review all loans from October 2009 onward and reconsider any reference to a Special Administrator."

On April 9, 2014, the Department sent Respondent a letter demanding that the self-audit report be submitted within 10 days pursuant to the 2012 exam report. This letter further advised:

> Your response indicated that the company considers that the day funds are wired to the escrow/settlement agent to be the day that the company disburses and relinquishes control of the funds; therefore the funding day is utilized to calculate the per diem interest charge ….
>
> The Department considers the date funds were disbursed by the settlement agent to and/or on behalf of the borrower as the disbursement date. Please refer to the Commissioner's Release 58-FS which is located on the Department's website … The funding date as stated in your response is not an acceptable date to determine the date of funds disbursement. The company's request for the Department to rescind its request for review all loans originated since October 2009 to present is denied.

On or about April 18, 2014, Respondent sent a letter to the Department restating its plea for a waiver of the requirement to conduct a self-audit of all loans funded from the period of October 2009 to present.

[3] The Department of Housing and Urban Development.

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On April 28, 2014, the Department again advised Respondent that its request remained denied and that the self-audit report remains overdue.

To date, Respondent has failed to submit to the Department the self-audit report that was due within 30 calendar days of the 2012 exam report or sufficient evidence that it has made the borrower refunds required under the CRMLA.

By reason of the foregoing, the Commissioner finds that Respondent Golden Empire Mortgage, Inc. has charged California borrowers interest on loans for a period in excess of one day prior to the date that the loan proceeds were disbursed from escrow in at least seven loans funded during the period of October 2011 to the present in violation of Financial Code section 50204(o), and failed to disclose the amount of such additional interest as required by Civil Code section 2948.5. Moreover, the refunds that Respondent did issue to some borrowers for overcharges either lacked the required consumer notices and/or were made subsequent to receiving notice of the Department's regulatory examinations or well after the date that the loans had closed, which ranged between five and 210 days.

Financial Code section 50504, subdivision (b), provides:

> (b) If interest on the principal amount of a loan in excess of the amount authorized by this division is willfully charged, contracted for, or received, in addition to any other penalties or remedies, the commissioner may order the licensee to refund the excess interest amount to all borrowers charged the excess amount, with interest at the rate of 10 percent per annum, calculated from the date the improper charge was imposed.

Financial Code section 50321 provides:

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

Financial Code section 50323 provides:

> (a) No order issued pursuant to Section 50321 or 50322 may become final except after notice to the affected licensee of the commissioner's intention to make the order final and of the reasons for the finding. The commissioner shall also notify the licensee that upon receiving a request the matter will be set for hearing to

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commence within 15 business days after receipt. The licensee may consent to have the hearing commence at a later date. If no hearing is requested within 30 days after the mailing or service of the required notice, and none is ordered by the commissioner, the order may become final without hearing and the licensee shall immediately discontinue the practices named in the order. If a hearing is requested or ordered, it shall be held in accordance with the provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all of the powers granted under that act. If, upon the hearing, it appears to the commissioner that the licensee is conducting business in an unsafe and injurious manner or is violating its articles of incorporation or any law of this state, or any 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 the 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 Refund Excessive Per Diem Interest Charges Pursuant to Financial Code Section 50504 and hereby notifies Respondent Golden Empire Mortgage, Inc. of her intention to make the Order final.

Dated: May 29, 2014
Sacramento, CA

JAN LYNN OWEN
Commissioner of Business Oversight

By_____
MIRANDA LEKANDER
Senior Corporations Counsel
Enforcement Division

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