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7 Attorneys for Complainant

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

10
11 In the Matter of:) CRMLA LICENSE No.: 413-0009
12 THE COMMISSIONER OF BUSINESS) ACCUSATION
13 OVERSIGHT,)
14 Complainant,)
15 vs.)
16 FIRST MORTGAGE CORPORATION,)
17 Respondent.)
18

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

21 **I**

22 **Introduction**

23 1. First Mortgage Corporation (“FMC”) is a residential mortgage lender and loan
24 servicer licensed by the Commissioner of Business Oversight ("Commissioner" or "Complainant")
25 pursuant to the California Residential Mortgage Lending Act ("CRMLA") (Financial Code §50000
26 et seq.). FMC has its principal place of business located at 1131 W. 6th Street, Ontario, California
27 91762. FMC currently has 2 branch office locations under its CRMLA license. FMC employs
28 mortgage loan originators in its CRMLA business.

II**CRMLA Violations****The 2011 Regulatory Examination**

2. On or about June 13, 2011, the Commissioner commenced a regulatory examination of the books and records of FMC under the CRMLA (“2011 regulatory examination”). The 2011 regulatory examination disclosed that in 16 of the 39 funded loans reviewed, or approximately 41%, FMC was charging the borrower per diem interest in excess of one day prior to the disbursement of loan proceeds in violation of Financial Code section 50204, subdivision (o). The California Additional Per Diem Interest Disclosures found in 6 of the loans with per diem interest overcharges were not prepared in accordance with Civil Code section 2948.5, subdivision (b), and therefore were not considered in calculating per diem interest charges. The per diem interest overcharges averaged \$75.30 per loan. The range of per diem interest overcharges was between \$23.62 and \$172.26. The range of days that interest was overcharged was between 1 and 3.

3. On or about July 12, 2011, the Commissioner, based upon the findings of the 2011 regulatory examination, directed FMC to conduct a self-audit regarding per diem interest charges for all loans originated from February 1, 2006 through July 15, 2011; make appropriate refunds; and submit a report as to the findings of the self-audit (“self-audit report”). FMC failed to perform the self-audit based upon its disagreement with the Department as to when per diem interest charges should commence. On or about August 12, 2014, FMC was again directed to perform a self-audit, with the audit period having been amended to cover June 13, 2011 through to the present. On or about December 3, 2014, FMC submitted its self-audit report to the Commissioner. The self-audit report filed with the Commissioner, which covered the period from June 13, 2011 to September 22, 2014, disclosed 1,694 per diem interest overcharges out of the 11,967 loans in which FMC could determine the disbursement date, or 14.15%.

4. The self-audit report revealed that FMC had failed to maintain information that would evidence the “disbursement date” of loan proceeds in 2,313 loans in violation of Financial Code section 50314. Evidence of a “disbursement date” is necessary to determine whether per diem interest is being properly calculated.

1 5. FMC has been able to obtain disbursement dates for 2,250 of the 2,313 loans for
2 which the loan file failed to contain the disbursement date. On or about June 2, 2015, FMC finalized
3 the self-audit, which disclosed 2,276 per diem interest overcharges out of the 14,280 loans funded
4 during the self-audit period, or 15.9%. There remained 63 loans that lacked evidence of the
5 disbursement date for which FMC agreed to refund an amount equal to 2 days per diem interest to
6 the affected borrowers.

7 6. From documentation submitted by FMC, the Commissioner believes that FMC has
8 made all the refunds for the per diem interest overcharges occurring during the period described in
9 paragraph 3 above along with refunds on the 63 loan described in paragraph 5 above.

10 **The 2008 Regulatory Examination**

11 7. The Commissioner had found that FMC was overcharging per diem interest during
12 the last regulatory examination under the CRMLA that commenced in October 2008. The 2008
13 regulatory examination disclosed that in 9 of the 20 funded loans reviewed, or approximately 45%,
14 FMC was charging the borrower per diem interest in excess of one day prior to the disbursement of
15 loan proceeds in violation of Financial Code section 50204, subdivision (o). The California
16 Additional Per Diem Interest Disclosures found in 2 of the loans with per diem interest overcharges
17 were not prepared in accordance with Civil Code section 2948.5, subdivision (b), and therefore were
18 not considered in calculating per diem interest charges.

19 8. Based upon the findings of the 2008 regulatory examination, the Commissioner
20 instructed FMC to conduct a self-audit to find all the per diem interest overcharges and make refunds
21 and to also implement such procedures as necessary to ensure that per diem interest was not
22 overcharged in the future. FMC failed to perform the self-audit based upon its disagreement with
23 the Department as to when per diem interest charges should commence.

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III

Suspension and Penalty Statutes

- 9. 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.
- 10. 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.

IV

Conclusion

11. The Commissioner finds that, by reason of the foregoing, FMC has violated Financial Code sections 50204, subdivision (o), and 50314, and based thereon, grounds exist to (i) suspend the residential mortgage lender and loan servicer licenses of FMC, and (ii) assess penalties against FMC pursuant to Financial Code section 50513, subdivision (b).

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V

Prayer

WHEREFORE, IT IS PRAYED that:

A. Pursuant to Financial Code section 50327, the residential mortgage lender licenses of FMC be suspended for a period of up to 12 months; and

B. Pursuant to Financial Code section 50513, subdivision (b), penalties be levied against FMC for at least 2,276 violations of Financial Code section 50504, subdivision (o), overcharging per diem interest, according to proof, but in an amount of at least \$1,000.00 per violation.

C. Pursuant to Financial Code section 50513, subdivision (b), penalties be levied against FMC for at least 63 violations of Financial Code section 50314, failure to maintain proper books and records, according to proof, but in an amount of at least \$1,000.00 per violation.

Dated: September 3, 2015
Los Angeles, California

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
Judy L. Hartley
Senior Counsel