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

11	In the Matter of THE COMMISSIONER OF)	File Nos.: 413-0944
12	BUSINESS OVERSIGHT,)	
13	Complainant,)	STATEMENT OF FACTS IN SUPPORT OF
14	vs.)	ORDER TO DISCONTINUE VIOLATIONS
15	SIRVA MORTGAGE, INC.,)	PURSUANT TO FINANCIAL CODE
16	Respondent.)	SECTION 50321 AND NOTICE OF INTENT
17)	TO MAKE ORDER FINAL

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

20
21 1. Sirva Mortgage, Inc. ("Sirva") is a residential mortgage lender licensed by the
22 Commissioner of Business Oversight ("Commissioner" or "Complainant") pursuant to the California
23 Residential Mortgage Lending Act ("CRMLA") (Fin. Code, §§ 50000 et seq.). Sirva has its
24 principal place of business located at 6022 Oak Tree Boulevard, Suite 300, Independent, Ohio
25 44131. Sirva currently has 3 branch office locations under its CRMLA license located in California,
26 and other states. Sirva employs mortgage loan originators in its CRMLA business.

27 2. On or about December 26, 2012, the Commissioner commenced a regulatory
28 examination of the books and records of Sirva under the CRMLA ("2012 regulatory examination").
The 2012 regulatory examination disclosed that Sirva had been depositing trust funds into its

1 company operations account. As of October 31, 2012, Sirva’s trust liability was \$181,305.71, which
2 was comprised of trust funds in the form of tax and insurance impounds. However, Sirva’s
3 operating account where such trust funds were maintained had a balance of \$392,648.09. Financial
4 Code section 50202(a) prohibits the commingling of trust funds with funds of the licensee.
5 Moreover, Financial Code section 50202(a) and (b) require trust funds be maintained in an account
6 designated as a “trust account”.

7 3. The Commissioner had found that Sirva was commingling trust funds with its
8 operating funds during the last regulatory examination that commenced on December 6, 2010.
9 Based upon the findings of the 2010 regulatory examination, the Commissioner instructed Sirva to
10 implement such procedures as necessary to ensure that its funds were not commingled with the trust
11 funds in the future.

12 4. The 2012 regulatory examination further disclosed that in two loans, Sirva had
13 charged the borrowers per diem interest in excess of one day prior to the disbursement of loan
14 proceeds in violation of Financial Code section 50204(o). The per diem interest overcharges in the
15 two loans totaled \$152.23. Sirva conducted a self-audit of all loans originated during 2012 regarding
16 per diem interest charges. The self-audit disclosed twenty-six (26) per diem interest overcharges.

17 5. The Commissioner found that Sirva had overcharged per diem interest in at least one
18 loan transaction during the 2010 regulatory examination.

19 6. The 2012 regulatory examination disclosed that the HUD-1 Settlement statements
20 provided to the borrowers were prepared such that the Commissioner was unable to determine if
21 appraisal fee overcharges had occurred. In twenty-three percent (23%) of the loans reviewed, it
22 appeared that Sirva had overcharged the borrower for appraisal fees, i.e., the amount stated on the
23 HUD-1 settlement statement for appraisal fees was higher than the appraisal invoice contained in the
24 loan file. Further review of the issue revealed that Sirva had credited back the amount of the
25 appraisal fee overcharge at the time of settlement. However, the appraisal fee overcharge credit was
26 lumped with other credits on the HUD-1 settlement statement. The settlement agents prepared the
27 HUD-1 settlement statements based upon information provided by Sirva. However, Sirva
28 maintained no documentation in the loan files regarding the breakdown of the credits. Financial

1 Code section 50314 requires CRMLA licensees to maintain its books and records in a manner that
2 will properly enable the Commissioner to determine whether the licensee is complying with the law.

3 7. The 2012 regulatory examination additionally disclosed that Sirva had charged a
4 borrower \$950 for title insurance, but there was no invoice or other documentation to support the
5 charge in violation of Financial Code section 50204(c) and (i) and California Code of Regulations,
6 title 10, section 1950.3314.4(j)(6). The Commissioner had found that Sirva had overcharged title
7 insurance fees in at least four loan transactions during the 2010 regulatory examination.

8 8. On or about March 3, 2014, the Commissioner received Sirva’s Report of Principal
9 Amount of Loans Originated and Aggregate Amount of Loans Serviced for the period ended
10 December 31, 2013 as required by Financial Code sections 50307 and 50401. The report indicated
11 that Sirva had engaged in residential mortgage loan servicing in the State of California during 2013.
12 This is a violation of Financial Code section 50002 as Sirva is not licensed in California to engage in
13 residential mortgage loan servicing.

14 9. On or about September 17, 2012, Sirva sent a letter to the Commissioner stating that
15 it will now be retaining servicing rights on the loans it sells. On or about September 18, 2012,
16 Complainant notified Sirva through NMLS that “The license issued to Sirva Mortgage, Inc. on
17 5/7/08 is for lending only. If you wish to add mortgage loan servicer authority to your license
18 authority, please complete and submit Amendment Checklist for Change of License Authority.”
19 Thereafter, on or about December 6, 2012, Sirva applied to add residential mortgage loan servicing
20 authority to its CRMLA license by submitting a California Residential Mortgage Lending Act
21 Amendments checklist to the Commissioner. The Commissioner has yet to approve the residential
22 mortgage loan servicing application due to the findings of the 2012 regulatory examination.

23 10. By reason of the foregoing, Sirva has violated Financial Code sections 50002, 50202,
24 subdivisions (a) and (b), 50204, subdivision (c), 50204, subdivision (i), 50204, subdivision (o), and
25 50314 and California Code of Regulations, title 10, section 1950.314.4(j)(6).

26 11. Financial Code section 50321 provides in pertinent part:

27 If, after investigation, the commissioner has reasonable grounds
28 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

1 order shall be effective immediately, but shall not become final except
2 in accordance with the provisions of Section 50323.

3 12. Financial Code section 50323 provides:

4 (a) No order issued pursuant to Section 50321 or 50322 may become
5 final except after notice to the affected licensee of the commissioner's
6 intention to make the order final and of the reasons for the finding. The
7 commissioner shall also notify the licensee that upon receiving a
8 request the matter will be set for hearing to commence within 15 business
9 days after receipt. The licensee may consent to have the hearing
10 commenced at a later date. If no hearing is requested within 30 days
11 after the mailing or service of the required notice, and none is ordered
12 by the commissioner, the order may become final without hearing and
13 the licensee shall immediately discontinue the practices named in the
14 order. If a hearing is requested or ordered, it shall be held in accordance
15 with the provisions of the administrative Procedure Act (Chapter 5
16 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
17 the Government Code), and the commissioner shall have all the powers
18 granted under that act. If, upon the hearing, it appears to the commissioner
19 that the licensee is conducting business in an unsafe and injurious manner
20 or is violating its articles of incorporation or any law of this state, or any
21 rule binding upon it, the commissioner shall make the order of discontinuance
22 final and the licensee shall immediately discontinue the practices named
23 in the order.

24 (b) The licensee has 10 days after an order is made final to commence an
25 action to restrain enforcement of the order. If enforcement of the order is not
26 enjoined within 10 days by the court in which the action is brought,
27 the licensee shall comply with the order.

28 WHEREFORE, good cause showing, the Commissioner is issuing an Order to Discontinue
Violations Pursuant to Financial Code Section 50321 and notifying Sirva of her intention to make
the order final.

Dated: October 14, 2014
Los Angeles, CA

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
Judy L. Hartley
Senior Corporations Counsel
Enforcement Division