

1 MARY ANN SMITH
Deputy Commissioner
2 DOUGLAS M. GOODING
Assistant Chief Counsel
3 LINDSAY B. HERRICK (State Bar No. 224986)
Counsel
4 1515 K Street, Suite 200
Sacramento, California 95814
5 Telephone: (916) 445-3682
6 Facsimile: (916) 445-6985

7 Attorneys for Complainant

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

11 In the Matter of:)	CRMLA License No. 413-0421
12 THE COMMISSIONER OF BUSINESS)	
13 OVERSIGHT,)	
14 Complainant,)	ACCUSATION SUPPORTING NOTICE OF
15 v.)	INTENTION TO ISSUE ORDERS
)	SUSPENDING LICENSE AND LEVYING
16 SUMMIT MORTGAGE CORPORATION,)	PENALTIES
17 Respondent.)	
)	
)	

19
20 The Commissioner of Business Oversight (“Commissioner” “Complainant” or “Department”)
21 is informed and believes, and based upon such information and belief, finds, alleges and charges
22 Respondent, Summit Mortgage Corporation (“Summit”), as follows:

23 **I. Introduction**

24 Summit is a residential mortgage lender and servicer licensed by the Commissioner pursuant
25 to the California Residential Mortgage Lending Act (“CRMLA”) (Cal. Fin. Code, § 50000 et seq.),
26 license number 413-0421, and employs mortgage loan originators. Summit is a Minnesota
27 corporation located at 13355 10th Avenue N, Suite 100, Plymouth, Minnesota, with a registered agent
28

1 for service in California located at 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California
2 95833.

3 **II. Per Diem Overcharges**

4 On or about April 2, 2013, the Commissioner commenced a regulatory examination of the
5 books and records of Summit under the CRMLA (“2013 regulatory examination”). During the
6 examination it was revealed that Summit continues to overcharge its customers for per diem interest
7 in violation of Financial Code section 50204, subdivision (o) which prohibits a licensee from
8 committing “an act in violation of Section 2948.5 of the Civil Code...” which in turn states in
9 pertinent part:

10 “(a) A borrower shall not be required to pay interest on a principal
11 obligation under a promissory note secured by a mortgage or deed
12 of trust on real property improved with between one to four
13 residential dwelling units for any period that meets any of the
14 following requirements:

15 (1) Is more than one day prior to the date that the loan proceeds are
16 disbursed from escrow...”

17 Here, according to the California Additional Per Diem Interest Charge Disclosure, borrowers
18 indicated that they would not pay interest on a loan more than one day prior to the date that the loan
19 proceeds are disbursed from escrow. A comparison of the interest computed from the starting date per
20 HUD-1 documentation and the disbursement date from company records revealed that Summit
21 commenced charging borrowers per diem interest several days in excess of the one-day period prior
22 to the disbursement of loan proceeds in violation of Financial Code section 50204, subdivision (o).

23 The per diem interest overcharges are repeat violations by Summit that were discovered in a
24 prior regulatory examination conducted on or about May 17, 2011 by the Department (“2011
25 regulatory examination”). As a result of that examination, Summit was required to perform an audit
26 and to refund \$10,660.79 to borrowers with ten percent interest per annum.

27 During the 2013 regulatory examination and again on November 17, 2014 in a regulatory
28 report (“2014 regulatory report), the Department informed Summit that it would once again be
required to perform a third-party audit review for all mortgages made since January 3, 2012 and
refund overcharges plus interest at the rate of ten percent per annum. On January 16, 2015, Summit

1 submitted its report on its third-party audit review covering the period January 3, 2012 to December
2 15, 2014 (“audit report”). Based on Summit’s audit report and a review of its results by the
3 Department, Summit was required to refund a total of 16 loans plus interest for per diem overcharges.

4 **III. Trust Account Violations**

5 During the 2013 regulatory examination, trust account shortages were also discovered. On
6 June 5, 2013, Summit was asked for additional information relating to the shortages. Information
7 supplied thereafter to the Department however revealed instead trust overages. Summit was therefore
8 instructed in part in the Department’s 2014 regulatory report that pursuant to California Code of
9 Regulations, title 10, section 1950.314.1, it must properly reconcile its trust accounts.

10 California Code of Regulations, title 10, section 1950.314.1 requires residential mortgage
11 lenders to reconcile their trust accounts and states in pertinent part:

12 “(a) A residential mortgage lender, residential mortgage lender and
13 servicer, or residential mortgage loan servicer shall establish, and
14 maintain current, the following books with reference to its trust
15 accounts:

16 (1) A trust account ledger card for each account detailing receipts
17 and disbursement of all funds deposited by the borrower, lender or
18 seller with the licensee in connection with the origination, closing
19 or servicing of any mortgage loan. The funds shall be held in
20 accordance with the terms of a written agreement between the
21 licensee and such borrower, lender or seller which provides that
22 upon the occurrence of a specific condition or event, the funds or a
23 portion thereof shall be disbursed to the borrower, lender or seller.

24 (2) Liability controlling account;...

25 (b) The records referred to in subsections (a)(1) and (2) shall be
26 reconciled at least once each month with the bank statements of the
27 trust account. The records referred to in subsection (a)(1) shall be
28 reconciled at least once each week with the liability controlling
account referred to in subsection (a)(2).”

29 In the Department’s 2014 regulatory report, and again on February 12, 2015, Summit was
30 again asked for additional information relating to its reconciliation of trust accounts. A review of
31 Summit’s responses revealed that Summit again had shortages in its trust accounts and failed to
32 properly reconcile its trust accounts. Information supplied by Summit as of January 31, 2015 initially
33 showed a trust shortage of \$59,242.70, which the Department then asked Summit to correct. Summit
34 provided documentation and a reconciliation worksheet showing however that it had corrected a

1 shortage it calculated of \$102,717.24 as of February 2, 2015. The Department asked Summit for
 2 documentation to support its figures stated in its worksheet. The supporting documentation Summit
 3 supplied, however, did not support its calculation of \$102,717.24, and it informed the Department
 4 that it could not provide any due to an upgrade in its software. The Department therefore could not
 5 validate Summit’s shortage figure due to its lack of proper record keeping.

6 Financial Code section 50314 states in pertinent part:

7 “(a) Every person subject to this division shall keep documents and
 8 records that will properly enable the commissioner to determine
 9 whether the residential mortgage lending or residential mortgage loan
 10 servicing functions performed by that person comply with the
 11 provisions of this division and with all the rules and orders made by
 12 the commissioner under this division...

13 (b) The business documents and records of every residential mortgage
 14 lender or residential mortgage loan servicer, whether required to be
 15 licensed under this division or not, are subject to inspection and
 16 examination by the commissioner at any time without prior notice...

17 Any person subject to this division shall, upon request and within the
 18 time specified in the request, allow inspection and copying of any
 19 documents and records by the commissioner or his or her authorized
 20 representative...”

21 In addition, California Code of Regulations, title 10, section 1950.314.2 states in pertinent
 22 part:

23 “(a) A residential mortgage lender, residential mortgage lender and
 24 servicer, or residential mortgage lender loan servicer shall establish, and
 25 maintain current, the following books with reference to its general
 26 accounts:

27 (1) General ledger reflecting the assets, liabilities, capital, income and
 28 expense of the business, in accordance with generally accepted
 accounting principles;

(2) Cash receipt and disbursement journal.

The bank accounts contained in the general ledger shall be reconciled
 at least once each month with the bank statements of the general
 accounts.”

Summit’s inability to provide documentation that could validate its trust balances violates
 these requirements of the CRMLA that it maintain a record keeping system.

In addition, Summit’s trust shortages violate California Code of Regulations, title 10, section

1 1950.314.6 prohibiting debit balances. That section states in pertinent part, “A residential mortgage
2 lender, residential mortgage lender and servicer, or residential mortgage loan servicer shall not
3 withdraw, pay out, or transfer moneys from any loan or servicing account in excess of the amount to
4 the credit of the account at the time of the withdrawal, payment, or transfer.”

5 Summit’s trust shortages and overages also violate California Code of Regulations, title 10,
6 section 1950.314.1 in failing to properly reconcile trust accounts. The trust reconciliation violations
7 by Summit are repeat violations involving the same trust account that were discovered back in the
8 2011 regulatory examination.

9 **IV. Suspension**

10 The violations of the CRMLA described above constitute grounds for suspending Summit’s
11 license as a residential mortgage lender and servicer. Financial Code section 50327 provides in
12 pertinent part, “(a) The commissioner may, after notice and a reasonable opportunity to be
13 heard,...suspend...any license if the commissioner finds that: (1) The licensee has violated any
14 provision of this division or any rule or order of the commissioner thereunder...”

15 Summit’s license as a residential mortgage lender and servicer should therefore be suspended
16 because Summit’s overcharging of per diem interest to borrowers and trust account violations of
17 failing to reconcile its trust account, maintain a proper record keeping system and causing shortages
18 of trust funds violates the CRMLA.

19 **V. Penalties**

20
21 Summit’s overcharges for per diem interest and the violations relating to its trust account are
22 grounds for the issuance of penalties.

23 California Financial Code section 50513 provides in pertinent part:

24 “(a) The commissioner may do one or more of the following:

25 ...

26 (4) Impose fines on a mortgage loan originator or any residential
27 mortgage lender or servicer licensee employing a mortgage loan
28 originator pursuant to subdivisions (b), (c), and (d)...

1 (b) The commissioner may impose a civil penalty on a mortgage
2 loan originator or any residential mortgage lender or servicer
3 licensee employing a mortgage loan originator, if the
4 commissioner finds, on the record after notice and opportunity for
5 hearing, that the mortgage loan originator or any residential
6 mortgage lender or servicer licensee employing a mortgage loan
7 originator has violated or failed to comply with any requirement of
8 this division or any regulation prescribed by the commissioner
9 under this division or order issued under authority of this division.

10 (c) The maximum amount of penalty for each act or omission
11 described in subdivision (b) shall be twenty-five thousand dollars
12 (\$25,000).”

13 Here, Summit’s overcharges to borrowers of per diem interest discovered in the 2013
14 regulatory examination in violation of Financial Code section 50204, subdivision (o) are repeat
15 violations of the overcharging discovered in the 2011 regulatory examination. Summit had
16 previously been required to perform an audit and refund borrowers for its overcharging and yet
17 thereafter continued to overcharge borrowers per diem interest. Summit’s violations therefore
18 support the issuance of a penalty under Financial Code section 50513, subdivisions (a)(4), (b) and (c)
19 in the amount of one-thousand dollars for each of the sixteen loans with per diem overcharges
20 identified in violation of Financial Code section 50204, subdivision (o), for a penalty of \$16,000.

21 In addition, Summit’s recent trust account violations come despite being specifically
22 instructed multiple times by the Department over the years to perform the necessary reconciliation as
23 required under the law and to prevent shortages of its trust account funds. Summit’s failure to
24 properly reconcile its trust account, maintain a record-keeping system, and its trust account shortages
25 violate Financial Code section 50314, subdivisions (a) and (b), and the California Code of
26 Regulations, title 10, sections 1950.314.1, 1950.314.2 and 1950.314.6. Summit’s violations are
27 grounds therefore under Financial Code section 50513, subdivisions (a)(4), (b) and (c) for the
28 Commissioner imposing an additional penalty in the amount of \$75,000, including \$25,000 for failure
to properly reconcile its trust account, \$25,000 for failure to maintain a record-keeping system and
\$25,000 for having shortages in trust funds.

VI. Conclusion

The Commissioner finds that, by reason of the foregoing, Summit has violated California
Financial Code sections 50204, subdivision (o) and 50314, subdivisions (a) and (b), and California

1 Code of Regulations, title 10, sections 1950.314.1, 1950.314.2 and 1950.314.6 of the CRMLA for
2 overcharging per diem interest, failing to properly reconcile its trust account, failing to properly
3 maintain a record keeping system, and for having shortages in trust funds. For the foregoing reasons,
4 grounds exist to suspend Summit’s license as a residential mortgage lender and servicer and to levy
5 penalties against Summit.

6 WHEREFORE, IT IS PRAYED that:

7 1. Pursuant to Financial Code section 50327, subdivision (a)(1), Summit Mortgage
8 Corporation’s license as a residential mortgage lender and servicer be suspended for a period of up to
9 12 months.

10 2. Pursuant to Financial Code section 50513, subdivisions (a)(4), (b) and (c), penalties be
11 levied against Summit Mortgage Corporation in an amount of \$91,000.00, including:

12 a. \$1,000.00 per violation for sixteen (16) violations of Financial Code section 50204,
13 subdivision (o), whereby Summit overcharged borrowers per diem interest, for a total of at least
14 \$16,000.00, or according to proof; and

15 b. \$75,000.00 for violations relating to its trust account, specifically, \$25,000 for failing
16 to reconcile its trust account, \$25,000 failing to properly maintain a record keeping system and
17 \$25,000 for having shortages in trust funds, in violation of Financial Code section 50314,
18 subdivisions (a) and (b), and California Code of Regulations, title 10, sections 1950.314.1,
19 1950.314.2 and 1950.314.6, or according to proof.

20 Dated: January 6, 2016
21 Sacramento, CA

JAN LYNN OWEN
Commissioner of Business Oversight

22
23 By _____
24 Lindsay B. Herrick
25 Counsel
26 Enforcement Division
27
28