

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 WAYNE STRUMPFER
Deputy Commissioner
3 ALAN S. WEINGER (CA BAR NO. 86717)
Lead Corporations Counsel
4 JUDY L. HARTLEY (CA BAR NO. 110628)
Senior Corporations Counsel
5 Department of Corporations
320 West 4th Street, Ste. 750
6 Los Angeles, California 90013-2344
Telephone: (213) 576-7604 Fax: (213) 576-7181

7 Attorneys for Complainant
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9 BEFORE THE DEPARTMENT OF CORPORATIONS
10 OF THE STATE OF CALIFORNIA
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12 In the Matter of THE CALIFORNIA) File No.: 413-0774
CORPORATIONS COMMISSIONER,)
13)
14 Complainant,) STATEMENT OF FACTS IN SUPPORT OF
15 vs.) ORDER TO DISCONTINUE VIOLATIONS
16 LENDING 1ST MORTGAGE LLC,) PURSUANT TO CALIFORNIA FINANCIAL
17) CODE SECTION 50321
18 Respondent.)
19)

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

- 22 1. Lending 1st Mortgage LLC (“Lending 1st”) is a residential mortgage lender licensed
23 by the California Corporations Commissioner ("Commissioner" or "Complainant") pursuant to the
24 California Residential Mortgage Lending Act ("CRMLA") (California Financial Code Section 50000
25 et seq.).
26 2. Commencing on exact dates unknown to the Commissioner, but in or about March
27 2007, Lending 1st began mailing loan solicitations to consumers that (i) did not comply with
28 Business and Professions Code section 14701, (ii) indicated on the envelope that the mailing was

1 from the County of Orange, and (iii) did not adequately describe the terms of the loan program
2 offered.

3 3. The solicitations described in paragraph 3 above constitute misleading advertisements
4 in violation of Corporations Code section 50204(i) in that:

5 (a) The solicitations failed to comply with Business and Professions Code section 14701 in
6 that the solicitations referred to the name of the consumer’s current lender without that lender’s
7 consent and failed to clearly and conspicuously state that Lending 1st was not sponsored by,
8 affiliated with, or that the solicitation was not authorized by the consumer’s lender in that Lending
9 1st put this information in small print in a footnote instead of being in close proximity to and in the
10 same or larger font size as the first and most prominent use of the consumer’s lender’s name.

11 (b) The solicitations violated Business and Professions Code section 17533.6 by printing
12 County of Orange in the return address section of the envelope indicating that the mailing was from
13 a local government entity. Business and Professions Code section 17533.6 provides in relevant part
14 that “[i]t is unlawful for any person, firm, corporation, or association that is a nongovernmental
15 entity to solicit . . . the purchase of or payment for a product or service, . . . by means of a mailing, . .
16 . that contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably
17 could be interpreted or construed as implying any . . . local government connection, approval or
18 endorsement . . .

19 (c) The solicitations fail to adequately describe the terms of the loan program offered, in that
20 (i) while stating that deferred interest will accrue, a ten year fixed rate of ¼% is promised with no
21 further indication of the actual interest rate or amount that will accrue during the ten year period,
22 how the deferred interest is to be repaid, or if there is negative amortization (the deferred interest
23 will be added to the principal balance of the loan), and (ii) no payments for twelve months is
24 promised but in the footnote in small print explains that in actuality the borrower will be credited
25 with twelve months of payments at the ¼% interest rate at close of escrow and monthly payments
26 are required to be made even during the first year.

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- 4. California Financial Code section 50204 (i) provides:
A licensee may not do any of the following:
 - (i) Engage in any acts in violation of Section 17200 or 17500 of the Business and Professions Code.
- 5. California Business and Professions Code section 17200 provides:
As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.
- 6. California Business and Professions Code section 17500 provides, in relevant part;
It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any such person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell such personal property or services, professional or otherwise, so advertised at the price stated therein, or as so advertised. . . .
- 7. By reason of the foregoing, Lending 1st has violated California Financial Code section 50204(i).
- 8. California Financial Code section 50321 provides in pertinent part:
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.

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9. California 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 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 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 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 notifying Lending 1st of his intention to make the order final.

Dated: July 23, 2007
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Judy L. Hartley
Senior Corporations Counsel