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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11) CIVIL ACTION NO. S-03-0256 GEB DAD
12 QUICKEN LOANS INC., a Michigan)
corporation,)
13)
14 Plaintiff) ANSWER TO FIRST AMENDED
15 vs.) COMPLAINT FOR DECLARATORY
RELIEF, PRELIMINARY INJUNCTION
16) AND PERMANENT INJUNCTION
17)
18 DEMETRIOS A. BOUTRIS, in his official)
capacity as Commissioner of the California)
Department of Corporations)
19 Defendant.)

20
21 Defendant Demetrios A. Boutris, in his official capacity as California Department of
22 Corporations Commissioner answers the First Amended Complaint for declaratory relief,
23 preliminary injunction and permanent injunction (“amended complaint”) and admits, denies, and
24 alleges as follows:

25 With regard to the individually numbered paragraphs of the amended complaint, Defendant
26 answers as follows:

27 1. Defendant admits that Plaintiff alleges it has brought this action under the Depository
28 Institutions Deregulation and Monetary Control Act of 1980 (“DIDMCA”), Alternative Mortgage

1 Transaction Parity Act of 1982 (“Parity Act”), Supremacy Clause of the United States Constitution,
2 the Takings Clause of the United States Constitution, the Fourteenth Amendment to the United
3 States Constitution and 42 U.S.C. § 1983. Defendant denies each and every other allegation
4 contained in paragraph 1 of the amended complaint.

5 2. Defendant admits that he resides in this district, but denies each and every other
6 allegation contained in paragraph 2 of the amended complaint.

7 3. Defendant admits that he resides in the county of the Sacramento division, but denies
8 each and every other allegation contained in paragraph 3 of the amended complaint.

9 4. In answering paragraph 4 of the amended complaint, Defendant denies that pursuant
10 to state law or otherwise, that he has required Plaintiff Quicken Loans, Inc. (“Quicken”) to be
11 licensed by the Defendant and be subject to Defendant’s regulatory, supervisory, examination, and
12 enforcement jurisdiction. If the Plaintiff in the second sentence in paragraph 4 of the amended
13 complaint means California Financial Code section 50204 (o), the Defendant admits that he has
14 asserted that Quicken has violated a California state law, known as the California “per diem” statute.
15 Defendant admits that he is requiring Quicken to comply with California Financial Code section
16 50204 (o). Defendant further admits that such compliance has been required throughout the tenure
17 of the license. Defendant admits he has demanded Quicken, who voluntarily obtained a license
18 under the CRMLA, to submit to his authority and that Quicken conduct an audit of its mortgage
19 loans since 1999, as well as comply with the per diem restriction. Defendant admits that since the
20 violations of California Financial Code section 50204 (o) were discovered during an examination of
21 Quicken pursuant to the terms of the license, he has demanded that Quicken perform an audit to
22 determine the extent and magnitude of the violations and to make refunds. Defendant lacks
23 information and belief sufficient to answer the allegation that it will cost Quicken at least \$400,000
24 to complete the audit, and basing his denial thereon, denies the allegation. Defendant denies that he
25 has demanded Quicken complete a manual audit. Defendant lacks information and belief sufficient
26 to answer the allegation that Quicken understands that the failure to comply with state law and the
27 direction of the Defendant to make refunds to California consumers will result in an enforcement
28 action, and basing his denial thereon, denies the allegation. Defendant denies each and every other

1 allegation contained in paragraph 4 of the amended complaint.

2 5. Answering paragraph 5, Defendant admits that the amended complaint states that it
3 seeks declaratory and injunctive relief on behalf of Quicken loans. Further answering paragraph 5,
4 Defendant admits that DIDMCA and 12 U.S.C. § 1735f-7a(a)(1) speak for themselves as duly
5 adopted laws. Further, answering paragraph 5, Defendant admits that the Parity Act and 12 U.S.C. §
6 3803 (c) speak for themselves as duly adopted laws. Defendant lacks information and belief
7 sufficient to answer the allegation that a significant percentage of Quicken Loans’ business involves
8 “alternative mortgage transactions.” Except as expressly admitted, the Defendant denies each and
9 every allegation of paragraph 5 of the amended complaint.

10 6. Defendant admits that Quicken is a residential mortgage lender with its main office
11 and principal place of business in Livonia, Michigan and does business in California. Defendant
12 admits that Quicken makes residential mortgages in California to which the California per diem
13 statute applies. Defendant lacks information and belief sufficient to answer the remaining
14 allegations of paragraph 6 of the amended complaint, and basing his denial thereon, denies each and
15 every other allegation contained therein.

16 7. Defendant admits the allegations in paragraph 7 of the amended complaint.

17 8. In answering paragraph 8, Defendant admits that DIDMCA, 12 U.S.C. §1735f-
18 7a(a)(1), and 12 U.S.C. § 1735f-5(b)(1) and 2(D) speak for themselves as duly adopted laws. Except
19 as expressly admitted, denies each and every allegation in paragraph 8 of the amended complaint.

20 9. Answering paragraph 9, Defendant admits that DIDMCA and 12 U.S.C. § 1735f-
21 7a(a)(1) speak for themselves as duly adopted laws. Except as expressly admitted, denies each and
22 every allegation in paragraph 9 of the amended complaint.

23 10. Defendant denies each and every allegation contained in paragraph 10 of the amended
24 complaint.

25 11. In answering paragraph 11, Defendant admits that the Parity Act and 12 U.S.C. §
26 3801 (b) speak for themselves as duly adopted laws. Defendant lacks information and belief
27 sufficient to answer the allegations of paragraph 11 of the amended complaint, and basing his denial
28 thereon, denies each and every other allegation.

1 12. In answering paragraph 12, Defendant admits that the Parity Act section 803(c) and
2 12 U.S.C. § 3803 (c) speak for themselves as duly adopted laws. Except as expressly admitted,
3 denies each and every allegation in paragraph 12 of the amended complaint.

4 13. In answering paragraph 13, Defendant admits that section 803 of the Parity Act and
5 12 U.S.C. § 3803(a)(3) speak for themselves as duly adopted laws. Except as expressly admitted,
6 Defendant denies each and every allegation in paragraph 13 of the amended complaint.

7 14. In answering paragraph 14, Defendant admits that the Parity Act, 12 U.S.C. § 3803
8 and 12 U.S.C. § 3804(a) speak for themselves as duly adopted laws. Defendant admits that
9 California did not explicitly opt out of the Parity Act prior to the October 15, 1985 expiration date.
10 Except as expressly admitted, Defendant denies each and every allegation in paragraph 14 of the
11 amended complaint.

12 15. Defendant lacks information and belief sufficient to answer the allegation that “to
13 achieve the parity Congress sought between federal housing creditors and state housing creditors
14 when Congress enacted the Parity Act, the Parity Act preempts the application of the per diem
15 statutes to state housing creditors such as Quicken Loans, subject to Quicken Loans’ compliance
16 with the Parity Act” and basing his denial thereon, denies each and every other allegation.

17 16. Defendant admits that the California Residential Mortgage Lending Act (“California
18 RMLA”) codified in California Financial Code § 50002 (a) states that “[n]o person shall engage in
19 the business of making residential mortgage loans or servicing residential mortgage loans, in this
20 state, without first obtaining a license from the commissioner in accordance with the requirements of
21 Chapter 2 (commencing with Section 50120) or Chapter 3 (commencing with Section 50130), and
22 any rules promulgated by the commissioner under this law, unless a person or transaction is excepted
23 from a definition or exempt from licensure by a provision of this law or a rule of the commissioner.”
24 Except as expressly admitted, Defendant denies each and every allegation in paragraph 16 of the
25 amended complaint.

26 17. In answering paragraph 17, Defendant admits California Financial Code § 50302 (a)
27 speaks for itself as a duly adopted law. Except as expressly admitted, Defendant denies each and
28 every allegation in paragraph 17 of the amended complaint.

1 18. In answering paragraph 18, Defendant admits that California Financial Code §§
2 50315, 50318, 50320, 50322, 50323, 50324 and 50325 speak for themselves as duly adopted laws.
3 Except as expressly admitted, denies each and every allegation in paragraph 18 of the amended
4 complaint.

5 19. In answering paragraph 19, Defendant admits that California Financial Code § 50204
6 (o) speaks for itself as a duly adopted law. Except as expressly admitted, Defendant denies each and
7 every allegation in paragraph 19 of the amended complaint.

8 20. In answering paragraph 20, Defendant admits that California Civil Code § 2948.5 and
9 California Financial Code § 50204 (o) speak for themselves as duly adopted laws. Defendant lacks
10 information and belief sufficient to answer the allegations of the first sentence of paragraph 20 of the
11 amended complaint, and basing his denial thereon, denies each and every other allegation in the first
12 sentence of paragraph 20 of the amended complaint. Except as specifically admitted herein,
13 Defendant denies each and every other allegation contained in paragraph 20 of the amended
14 complaint.

15 21. Defendant admits that Quicken presently holds a license, which it voluntarily
16 obtained under the CRMLA, and that Defendant has asserted regulatory, supervisory, examination,
17 and enforcement authority over Quicken as a licensee under the CRMLA. Defendant further admits
18 that without objection from Quicken he has conducted audits and examinations of Quicken and
19 required Quicken, as a licensee of the CRMLA, to submit to periodic reports on its condition to
20 Defendant or his designated official at the Department of Corporations. Defendant admits that after
21 the most recent audit and examination under the CRMLA, he asserted that Quicken violated
22 California Financial Code § 50204 (o) by charging interest on mortgage loans in excess of one day
23 prior to the recording of the mortgage. Defendant also admits that he has demanded that Quicken
24 comply with the California Financial Code section 50204(o) and that Quicken undertake an audit of
25 its loan files for residential mortgage loans made in California since 1999. Defendant lacks
26 information and belief sufficient to answer the allegations of the sixth sentence of paragraph 21 of
27 the amended complaint, and basing his denial thereon, denies each and every other allegation in the
28 sixth sentence in paragraph 21 of the amended complaint. Except as specifically admitted herein,

1 Defendant denies each and every other allegation contained in paragraph 21 of the amended
2 complaint.

3 22. Defendant denies each and every allegation contained in paragraph 22 of the amended
4 complaint.

5 23. Defendant denies each and every allegation contained in paragraph 23 of the amended
6 complaint.

7 24. In answering paragraph 24 of the amended complaint, Defendant repeats his answers
8 to paragraphs 1-23 of the amended complaint above as if each was fully set forth herein.

9 25. Defendant lacks information and belief sufficient to answer the allegations of
10 paragraph 25 of the amended complaint, and basing his denial thereon, denies each and every
11 allegation.

12 26. In answering paragraph 26, Defendant admits that California Civil Code § 2948.5,
13 California Financial Code § 50204 (o) and 12 U.S.C. § 1735f-7a(a)(1) speak for themselves as duly
14 adopted laws. Defendant denies that the statutes alleged in paragraph 26 of the amended complaint
15 “limits the rate or amount of interest, discount points, finance charges, or other charges that Quicken
16 loans may charge, take, receive, or reserve on loans, mortgages, credit sales, or advances which are
17 secured by a first lien on residential property. . . .” Defendant admits that California Financial Code
18 § 50204 (o) does not fall within the type of activities preempted by DIDMCA because it does not
19 expressly limit interest rates or amounts. Defendant admits that section 501(a) of the DIDMCA
20 preempts state laws “expressly limiting the rate or amount of interest, discount points, finance
21 charges, or other charges taken on a first lien on residential real property.” Further, Defendant
22 admits that California Financial Code § 50204 (o) imposes no restriction on either the rate or amount
23 of interest charged. Defendant admits that § 50204 (o) is designed to prevent borrowers from paying
24 interest on funds more than one day before the loan is recorded and escrow closed. Defendant
25 admits that DIDMCA was intended to preempt usury statutes, not consumer protection statutes like §
26 50204 (o) that do not expressly limit the rate of interest, but only affect when interest may
27 commence. Except as specifically admitted herein, Defendant denies each and every other
28 allegation contained in paragraph 26 of the amended complaint.

1 27. Defendant denies each and every allegation contained in paragraph 27 of the amended
2 complaint.

3 28. In answering paragraph 28 of the amended complaint, Defendant repeats his answers
4 to paragraph 1-23 of the amended complaint above as if each was fully set forth herein.

5 29. Defendant lacks sufficient information and belief to answer paragraph 29 of the
6 amended complaint, and based thereon, Defendant denies each and every allegation contained
7 therein.

8 30. Defendant denies each and every allegation contained in paragraph 30 of the amended
9 complaint.

10 31. Defendant denies each and every allegation contained in paragraph 31 of the amended
11 complaint.

12 32. In answering paragraph 32 of the amended complaint, Defendant repeats his answers
13 to paragraph 1-23 of the amended complaint above as if each was fully set forth herein.

14 33. Defendant denies that plaintiff has a compensable property interest in the interest
15 income collected in violation of California laws or to be collected in violation of California laws.
16 Defendant denies each and every other allegation in paragraph 33 of the amended complaint.

17 34. Defendant denies each and every allegation in paragraph 34, except to the extent that
18 that California Civil Code § 2948.5 and California Financial Code § 50204 (o) speak for themselves
19 as duly_adopted laws.

20 35. Defendant denies each and every allegation in paragraph 35 of the amended
21 complaint.

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AFFIRMATIVE DEFENSES

24 As separate and distinct affirmative defenses to Plaintiff’s amended complaint,
25 Defendant alleges as follows:

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FIRST AFFIRMATIVE DEFENSE

(Estoppel-All claims for relief)

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SIXTH AFFIRMATIVE DEFENSE

(Constitutional Mandate-All claims for relief)

6. Pursuant to Section 3.5, Article III of the California Constitution, Defendant is prohibited from declaring a statute unenforceable, or refusing to enforce a statute, on the basis that the statute(s) is unconstitutional or that federal law or federal regulations prohibit the enforcement of such statute(s) unless an appellate court has made a determination that such statute(s) is unconstitutional or enforcement is prohibited by federal law or federal regulations.

SEVENTH AFFIRMATIVE DEFENSE

(Uncertainty-All claims for relief)

7. The amended complaint is uncertain, vague, ambiguous, improper and unintelligible.

EIGHTH AFFIRMATIVE DEFENSE

(Right to apply all other affirmative defenses reserved-All claims for relief)

8. Because the amended complaint only alleges conclusions of fact and law, answering Defendant cannot fully anticipate all affirmative defenses that may be applicable to this action. Accordingly, the right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are applicable, is hereby reserved.

WHEREFORE, Defendant prays for judgment against Plaintiff's as follows:

- 1. That Plaintiff takes nothing by virtue of its amended complaint herein;
- 2. That the Court dismiss plaintiff's amended complaint for Declaratory Relief, Preliminary Injunction, and Permanent Injunction with prejudice;
- 3. For reasonable attorneys fees and costs of suit; and
- 4. For such other and further relief as this Court deems just and proper.

Dated: March 7, 2003

DEMETRIOS A. BOUTRIS
California Corporations Commissioner

By _____
VIRGINIA JO DUNLAP
Assistant Commissioner
Attorney for Defendant