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BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT

OF THE STATE OF CALIFORNIA

In the Matter of THE COMMISSIONER OF BUSINESS OVERSIGHT OF THE STATE OF CALIFORNIA, Complainant, vs. PROSPECT MORTGAGE, LLC, Respondent.	File Nos.: 413-0266 and 603-E734 STATEMENT OF FACTS IN SUPPORT OF ORDER TO DISCONTINUE VIOLATIONS PURSUANT TO CALIFORNIA FINANCIAL CODE SECTION 50321 AND NOTICE OF INTENT TO MAKE ORDER FINAL

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

1. Prospect Mortgage, LLC ("Prospect") is a residential mortgage lender and loan servicer licensed since August 25, 1999 by the Commissioner Business Oversight ("Commissioner" or "Complainant")[1] pursuant to the California Residential Mortgage Lending Act ("CRMLA") (California Financial Code sections 50000 et seq.). Prospect has its principal place of business

[1] As of July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to form the Department of Business Oversight.

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located at 15301 Ventura Boulevard, Suite D300, Sherman Oaks, California 91403. Prospect employs mortgage loan originators.

2. Prospect is also licensed by the Commissioner as a finance lender and broker pursuant to the California Finance Lenders Law ("CFLL") (California Financial Code sections 22000 et seq.) under license number 603-E734. Prospect's principal place of business under the CFLL is also located at 15301 Ventura Boulevard, Suite D300, Sherman Oaks, California 91403.

Multi-State Examination

3. On or about April 23, 2012, the Department of Business Oversight ("Department") and seven other state banking and finance commissions ("Participating State Agencies") commenced a Multi-State Examination of Prospect under the agreed authority of the Conference of State Bank Supervisors / American Association of Residential Mortgage Regulators ("CSBS/AARMR") Nationwide Cooperative Agreement for Mortgage Supervision. Each Participating State Agency examined Prospect for the period of October 1, 2010 through March 31, 2012 under its respective regulatory authority.

Violations of the CRMLA

4. Trust Account Shortages. A review of the balance sheets provided by Prospect during the Multi-State Examination disclosed that Prospect's trust assets held in its trust bank accounts were insufficient to cover its trust liabilities, causing a debit balance totaling $1,075,665.72 as of June 30, 2012. California Code of Regulations, title 10, section 1950.314.6 prohibits debit balances in any loan or servicing account maintained by a CRMLA licensee. During the Multi-State Examination Prospect was informed of this violation and by August 1, 2012, had replaced the debit balance of $1,075,665.72 into its trust bank accounts.

5. Failure to Reconcile Escrow Liability Ledgers. The Multi-State Examination disclosed that Prospect did not reconcile its escrow liability ledgers to its control account at least once a week and to the bank statement at least once each month, in violation of California Code of Regulations, title 10, section 1950.314.1. To correct this deficiency Prospect agreed to implement a new process for ensuring that the trust assets adequately cover trust liabilities and to strengthen the reconciliation processes.

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6. Per Diem Interest Overcharges. The Multi-State Examination disclosed that for nine of 67 loans, or approximately 13% of the loans reviewed, Prospect was charging the borrower per diem interest in excess of one day prior to the date that the loan proceeds are disbursed from escrow, in violation of California Financial Code ("FC") section 50204(o). For eight of the nine loans with per diem interest overcharges, a document entitled, "California Per Diem Interest Disclosure," seeking the borrower's authorization to charge per diem interest in excess of one day prior to the date the loan proceeds are disbursed from escrow, was included in the loan files. However, these documents did not comply with California Civil Code ("CC") section 2948.5(b) in that six of them were signed with blanks, in violation of FC section 50204(e), and two of them were signed not authorizing Prospect to charge additional per diem interest. Therefore, the disclosures were not considered in calculating per diem interest charges. The range of per diem interest overcharges was between $33.12 and $158.34. The range of days in which interest was overcharged was between two and three days.

7. A prior regulatory examination conducted on or around March 5, 2007 similarly disclosed violations of overcharging per diem interest for 13 out of 29 loans, or approximately 44% of the loans reviewed. Prospect was directed on October 12, 2007 to review all loans on mortgages that had been originated since September 15, 2004 to October 12, 2007 to determine the number and amount of overcharges collected from California borrowers. Prospect was also to provide a detailed report of the files reviewed and the dollar amount of the overcharges established through the review, including, but not limited to, the loan number, borrower's name, loan amount, interest rate, date disbursed, date interest commenced, interest overcharged and date refunded. Pursuant to FC section 50504(b) the borrowers were to be refunded the amount of the overcharge plus interest at the rate of 10 percent per annum. Prospect failed to submit a complete self-audit report or make the appropriate refunds.

8. A subsequent regulatory examination conducted on or around August 9, 2009 again disclosed violations of overcharging per diem interest in nine out of 29 loans, or approximately 31% of the loans reviewed. Prospect was directed on January 7, 2010 to review all of the loans on mortgages originated since August 10, 2006 to determine the number and amount of overcharges

collected from borrowers. Prospect was to provide a detailed report of the files reviewed and the dollar amount of the overcharges established through the review of its originated loans, including, but not be limited to, the loan number, borrower's name, loan amount, interest rate, date disbursed, date started collecting interest, interest overcharged and date refunded. Prospect was again notified that pursuant to FC section 50504(b) the borrowers were to be refunded the amount of the overcharge plus interest at the rate of 10 percent per annum. Furthermore, Prospect was notified that "[t]his is a repeat violation, which was also noted in our previous examination during March 2007." Prospect again failed to submit a complete self-audit report or make the appropriate refunds.

9. During the Multi-State Examination, Prospect again was notified of violations of overcharging per diem interest. Prospect again was informed that it was required to conduct a self-audit in which it reviewed all California loans originated from August 10, 2006 through March 31, 2012, to determine the number and amount of overcharges collected from borrowers, and to make appropriate refunds in the amount of the overcharge plus 10 percent per annum. Prospect was again required to provide a detailed report of the files reviewed and the dollar amount of interest overcharges discovered in the review, including, but not limited to, the loan number, borrower's name, loan amount, interest rate, and date of disbursement from the settlement agent, date interest commenced, interest overcharged, and the date of refund.

10. Failure to Make Report to the Commissioner by the Extended Deadline. On May 2, 2013, the Department notified Prospect that its response was due within 30 days. On or around May 24, 2013, the Department considered Prospect's request for a 90-day extension, and granted an extension only until June 30, 2013. On or around August 21, 2013, having failed to meet the deadline, Prospect requested another extension until October 31, 2013, and the Department granted an extension only until September 10, 2013. On or around September 9, 2013, Prospect provided a status report to the Department regarding the self-audit and reiterated its prior request for an extension until October 31, 2013. On September 16, 2013, the Department denied this request for an extension. Prospect failed to submit the self-audit report as required by September 10, 2013.

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Incomplete Self-Audit Report

11. On or around October 8, 2013, Prospect notified the Department that it had completed its per diem interest self-audit of all California loans originated, not for the period of August 10, 2006 through March 31, 2012 as the Department directed, but for an extended period of August 10, 2006 through June 28, 2013. Prospect stated that the total population of loans during this period was 81,133. However, Prospect's self-audit report listed details for only the 8,375 loans it alleged required refunds because of per diem interest overcharges.

12. In its October 8, 2013 letter Prospect listed various reasons why it had excluded 9,038 loans from the self-audit, bringing the total self-audited loan files down from 81,133 to 72,095. Prospect then explained that it could not locate applicable documentation necessary to accurately recalculate the per diem interest on 2,214 loans, thus bringing the total of self-audited files down further to 69,881. Prospect omitted to provide any information regarding the 61,506 loan files that were self-audited but allegedly *did not* require refunds. Because the self-audit report did not include all the information required by the Department and Prospect's explanations were insufficient to allow the Department to test the accuracy of the self-audit, the self-audit report was incomplete as of October 8, 2013, which is 28 days past the Commissioner's extended deadline.

13. Moreover, by failing to locate documentation necessary to accurately recalculate the per diem interest on 2,214 loans, Prospect failed to keep documents and records that would properly enable the Commissioner to determine whether Prospect complied with the CRMLA, in violation of FC section 50314.

14. By reason of the foregoing, Prospect Mortgage, LLC has violated FC sections 50204(o) and 50314, and California Code of Regulations, title 10, sections 1950.314.6 and 1950.314.1.

15. 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.

16. 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 of 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.
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> (b) The licensee has 10 days after an order is made final to commence an action 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 Prospect Mortgage, LLC of her intention to make the order final.

Dated: November 26, 2013
Los Angeles, CA

JAN LYNN OWEN
Commissioner of Business Oversight

By_____
Sophia C. Kim
Corporations Counsel
Enforcement Division