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10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of the Accusation of THE) Case No.: 415-0042
13 COMMISSIONER OF BUSINESS)
OVERSIGHT,) **ACCUSATION IN SUPPORT OF NOTICE**
14) **OF INTENT TO ISSUE ORDER**
15 Complainant,) **SUSPENDING RESIDENTIAL**
16 vs.) **MORTGAGE LENDING LICENSE AND**
17) **IMPOSING PENALTIES**
18)
19 FIRST CALIFORNIA MORTGAGE)
COMPANY,)
20 Respondent.)

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

23 **I.**

24 Respondent First California Mortgage Company (“First Cal”) is a residential mortgage
25 lender licensed by the California Commissioner of Business Oversight (“Commissioner”) of the
26 Department of Business Oversight (“Department”) pursuant to the California Residential Mortgage
27 Lending Act (Cal. Fin. Code § 50000 et seq.) (“CRMLA”). First Cal has its principal place of
28 business located at 1435 N. McDowell Blvd., Suite 300, Petaluma, California 94954.

1 **II.**

2 **The December 2008 Regulatory Examination**

3 In or about December, 2008, the Commissioner commenced a regulatory examination of the
4 books and records of First Cal. The regulatory examination disclosed that in five (5) out of twenty
5 (20) loans, or approximately twenty five percent (25%) of the loan files reviewed, First Cal was
6 charging the borrowers per diem interest in excess of one day prior to the date that the loan
7 proceeds were disbursed from escrow, in violation of the CRMLA section 50204, subdivisions (k)
8 and (o), and California Civil Code section 2948.5. During 2008, First Cal originated 2671 loans in
9 California.

10 The per diem interest overcharges averaged \$126.06 per loan. The range of per diem interest
11 overcharges was between \$18.01 and \$298.56. The range of days the interest was overcharged was
12 between one (1) and five (5) days.

13 Based upon the findings of the 2008 regulatory examination, First Cal was instructed by the
14 Commissioner's examination staff to take measures to prevent any recurrence of per diem
15 overcharge to borrowers in the future.

16 Additionally, the Commissioner's examination staff instructed First Cal to conduct a self-
17 audit and review all loans it made since its date of licensure and make appropriate refunds. First Cal
18 was also required to provide a detailed report to the Commissioner's examination staff of the files
19 reviewed and the dollar amount of the overcharges established through the review, including, but
20 not limited to, the loan number, borrower's name, loan amount, interest rate, date disbursed, date
21 interest started being collected, interest overcharged and date interest was refunded to the borrower.

22 Following the self-audit, First Cal refunded \$71,584.85 to 518 borrowers.

23 In addition, the 2008 examination also revealed trust fund shortages in violation of Title 10,
24 California Code of Regulations (CCR) section 1950.314.6. Although procedures were put in place
25 by First Cal to avoid further shortages, the Commissioner's 2012 examination revealed that those
26 procedures are not working, as set out below. The trust fund shortages are repeated serious
27 violations that concern the Commissioner.

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1 **III.**

2 **The October 2012 Regulatory Examination**

3 A subsequent regulatory exam, conducted on or about October 22, 2012, again disclosed
4 trust fund shortages in violation of CCR 1950.314.6, and overcharging of per diem interest in four
5 (4) out of twenty-one (21) loans, or approximately nineteen (19%) of the loan files reviewed, in
6 violation of the CRMLA section 50204, subdivisions (k) and (o), and California Civil Code section
7 2948.5. During 2012, First Cal originated 3,190 loans in California.

8 The examination disclosed that First Cal had a combined debit balance (shortage) of
9 \$49,845.26 in its trust accounts as of August 31, 2012. First Cal maintains three trust accounts for
10 all escrow impounds and all borrowers, no matter the state residence of the borrowers. The types of
11 impounds maintained in the trust accounts are taxes, hazard insurance, mortgage insurance
12 premiums, and appraisals. The shortage was mainly caused by not reconciling incorrect transfers of
13 escrow funds (taxes and insurance) and mortgage insurance premiums in a timely manner. During
14 the examination First Cal transferred \$49,845.26 from the operating account to the main trust bank
15 account to correct the shortage.

16 With regard to the per diem interest violations, the overcharges averaged \$56.99 per loan.
17 The range of per diem interest overcharges was between \$40.11 and \$88.04. The range of days that
18 interest was overcharged was between one (1) and three (3) days.

19 Additionally, the Commissioner's examination staff instructed First Cal to review all loans
20 made since 2009 and make appropriate refunds. After the Commissioner granted First Cal several
21 extensions, on September 5, 2014, First Cal completed the request by providing details and
22 supporting documents evidencing refunds made from 2009-2013. First Cal refunded \$85,678.63 to
23 8778 borrowers. Although First Cal had procedures in place for reviewing and refunding per diem
24 overcharges, they were not being done in a timely manner.

25 The findings of the 2012 regulatory examination demonstrate that First Cal has failed to
26 implement procedures to ensure that per diem interest would not continue be overcharged and that
27 trust fund shortages would not continue to occur, as requested by the Commissioner's examination
28 staff.

IV.

Based on the above described conduct, the Commissioner may suspend First Cal’s CRMLA License under any one (1) of three (3) different statutory grounds.

California Financial Code section 50327 provides in pertinent part:

(a) The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license, if the commissioner finds that: (1) the licensee has violated any provision of this division [commencing with Fin. Code § 50000] or rule or order of the commissioner thereunder; or (2) any fact or condition exists that, if it had existed at the time of the original application for license, reasonably would have warranted the commissioner in refusing to issue the license originally.

(Cal. Fin. Code § 50327).

First, pursuant to CRMLA section 50327, subdivision (a)(1), the Commissioner may suspend or revoke a license if a licensee has violated “any provision of this division or any rule or order of the commissioner thereunder.” First Cal’s repeat conduct, discussed above, is a violation of CRMLA section 50204, subdivisions (k) and (o), which states:

A licensee may not do any of the following:

...

(k) Do an act . . . that constitutes fraud or dishonest dealings.

...

(o) Commit an act in violation of Section 2948.5 of the Civil Code

(Cal. Fin. Code § 50204.)

Civil Code section 2948.5, subdivision (a)(1), prohibits a lender from requiring a borrower to pay more than one (1) day of interest on a loan, prior to the day of disbursement to the borrower or on the borrower’s behalf.

Second, First Cal’s repeat conduct with regard to the trust fund shortages in violation of CCR 1950.314.6 is a violation of a rule of the Commissioner under the CRMLA, giving the commissioner the power to suspend First Cal’s license. CCR § 1950.314.6 provides:

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1 A residential mortgage lender, residential mortgage lender and
2 servicer, or residential mortgage loan servicer shall not withdraw,
3 pay out, or transfer moneys from any loan or servicing account in
4 excess of the amount to the credit of the account at the time of the
5 withdrawal, payment, or transfer.

6 However, a residential mortgage lender, residential mortgage
7 lender and servicer, or residential mortgage loan servicer may
8 advance its own funds to a loan or servicing account under an
9 impound agreement to pay taxes, insurance, and other payments, if
10 the required withdrawal, payment, or transfer exceeds the amount
11 of the credit for the account.

12 Third, the violations of the CRMLA described above, if committed by First Cal on or before
13 having originally sought a license from the Department under the CRMLA, would have constituted
14 grounds for the Commissioner to deny First Cal's application under the CRMLA section 50327,
15 subdivision (a)(2). Thus, a fact or condition now exists that, if it had existed at the time of the
16 original application of First Cal for a license under the CRMLA, reasonably would have warranted
17 the Commissioner in refusing to issue the license.

18 V.

19 Fines and penalties should be imposed on First Cal for the conduct discussed above.

20 California Financial Code section 50513 provides in pertinent part:

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

22 . . .

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

26 . . .

27 (b) The commissioner may impose a civil penalty on a mortgage
28 loan originator or any residential mortgage lender or servicer
licensee employing a mortgage loan originator, if the commissioner
finds, on the record after notice and opportunity for hearing, that the
mortgage loan originator or any residential mortgage lender or
servicer licensee employing a mortgage loan originator has violated
or failed to comply with any requirement of this division
[commencing with Fin. Code § 50000] or any regulation prescribed
by the commissioner under this division or order issued under
authority of this division.

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1 (c) The maximum amount of penalty for each act or omission
2 described in subdivision (b) shall be twenty-five thousand dollars
3 (\$25,000).

4 (d) Each violation or failure to comply with any directive or
5 order of the commissioner is a separate and distinct violation or
6 failure.

7 (Cal. Fin. Code § 50513.)

8 **VI.**

9 The Commissioner finds that, by reason of the foregoing, First Cal has violated CRMLA
10 section 50204 and CCR section 1950.314.6.

11 For all the foregoing reasons, grounds exist to:

12 (1) suspend First Cal’s CRMLA residential mortgage lender license pursuant to CRMLA
13 sections 50326 and 50327; and

14 (2) levy penalties against First Cal pursuant to CRMLA sections 50326 and 50513.

15 **WHEREFORE, IT IS PRAYED** that:

16 1. The residential mortgage lender license of First Cal Mortgage Company be suspended,
17 pursuant to CRMLA sections 50326 and 50327, for the *greater* period of:

18 a. 12 months, or

19 b. Until (i) First Cal has submitted a complete self-audit report providing all the
20 information demanded by the Commissioner; (ii) the complete self-audit report has been determined
21 by the Commissioner to be trustworthy; *and* (iii) First Cal has complied fully with the Order to
22 Refund Excessive Per Diem Interest Charges Pursuant To California Financial Code Section 50504;

23 2. Pursuant to Financial Code section 50513, subdivision (b), penalties be levied against First
24 Cal for at least four (4) known violations of Financial Code section 50204, subdivision (k) and (o),
25 whereby First Cal overcharged borrowers per diem interest on loans funded during the period from
26 about January, 2009, to the present, in an amount of \$2,500 per violation, for a total amount of
27 \$10,000, or according to proof; and

28 3. Pursuant to Financial Code section 50513, subdivision (d), penalties be levied against First
Cal for its repeated violation of CCR section 1950.314.6, whereby shortages in the trust fund were

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1 discovered during the routine October 2012 examination in an amount of \$25,000.00, or according
2 to proof.

3 Dated: October 15, 2014
4 Sacramento, CA

JAN LYNN OWEN
Commissioner of Business Oversight

5 By _____
6 JOANNE ROSS
7 Senior Corporations Counsel
8 Enforcement Division

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