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

10 In the Matter of THE COMMISSIONER OF ) File No. 416-0732  
11 BUSINESS OVERSIGHT, )  
12 ) ACCUSATION IN SUPPORT OF NOTICE OF  
13 Complainant, ) INTENTION TO ISSUE ORDERS  
14 v. ) SUPENDING RESIDENTIAL MORTGAGE  
15 ) LENDER AND SERVICER LICENSE AND  
16 CITY FIRST MORTGAGE SERVICES, LLC ) IMPOSING PENALTIES  
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Respondent. )

25 Jan Lynn Owen, the Commissioner ("Commissioner") of the Department of Business  
26 Oversight ("Department"), alleges and charges as follows:

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**I.****STATEMENT OF FACTS**

At all relevant times, City First Mortgage Services, LLC doing business as City 1<sup>st</sup> Mortgage and City 1<sup>st</sup> Mortgage Services (hereafter “Respondent”) was a Utah limited liability company with its principal place of business located at 750 South Main Street, Suite 104, Bountiful, Utah, 84010. Respondent also has California branch offices in Modesto, Orange, San Bruno, San Diego, and San Ramon.

Respondent is a residential mortgage lender and servicer licensed by the Department (NMLS ID# 3117) pursuant to the California Residential Mortgage Lending Act (“CRMLA”) (Fin. Code, §§ 50000 et seq.).

On or about July 16, 2009, the Department commenced a regulatory examination of Respondent’s books and records (“2009 exam”). As a result of that exam, the Department discovered that in seven out of 21, or approximately 33%, of the loans reviewed, Respondent had charged borrowers per diem interest in excess of one day prior to the recording of the mortgage or deed of trust.

On or about August 31, 2010, the Department instructed Respondent to perform a self-audit and provide a detailed report of all instances of per diem interest overcharges to California borrowers during the period of July 2006 to July 2010.

On or about November 19, 2010, Respondent reported to the Department that it had made per diem overcharge refunds to the seven borrowers identified in the 2009 exam. Respondent further informed that it had identified 43 borrowers who had been overcharged per diem interest and advised, “City 1<sup>st</sup> is prepared to issue refund checks as directed by the Department for those borrowers overcharged as indicated in our self-audit report.”

On or about February 13, 2012, the Department conducted another regulatory examination of Respondent’s books and records (“2012 exam”). This examination disclosed that in 11 of 26, or approximately 42%, of the loans reviewed for the period of August 2011 to December 2011, Respondent had overcharged borrowers up to five extra days of per diem interest.

1           It was also discovered during the February 2012 exam that Respondent had not issued refund  
2 checks to the 43 borrowers previously identified in its November 2010 self-audit report. At the  
3 Department's direction, Respondent proceeded to mail the refund checks to consumers in or about  
4 June and September 2012. However, due to the delay in mailing the refunds, about 11 of these  
5 checks were undeliverable or otherwise remain outstanding.

6           On or about January 7, 2013, the Department issued a regulatory examination report to  
7 Respondent summarizing the various violations found during the 2012 exam. Respondent was  
8 instructed to submit a written response to the Department within 30 days describing the corrective  
9 actions implemented to address the violations cited and reporting the findings of a self-audit to  
10 identify California borrowers who had been overcharged per diem interest during the period of  
11 August 1, 2010 to the date of the regulatory examination report.

12           On or about March 11, 2013, Respondent submitted a response to the regulatory examination  
13 acknowledging all violations. However, the self-audit report submitted with the response was  
14 incomplete and did not contain information sufficient for the Department to accurately determine the  
15 total number of per diem overcharges found.

16           On June 10, 2013, and after repetitive prompting from the Department, Respondent provided  
17 an updated self-audit report that contained information for 961 loans funded from August 5, 2010 to  
18 January 8, 2013. The self-audit report identified 215 borrowers that were overcharged per diem  
19 interest. The Department conducted an independent review of a sample of the loans listed on the  
20 self-audit report to confirm the accuracy of the report. The sampling revealed that no refunds were  
21 made to some borrowers who appeared to have been overcharged. Respondent was made aware of  
22 the report's discrepancies and instructed to provide the Department additional information to confirm  
23 the findings. Respondent failed to provide the information requested by the Department and, instead,  
24 asserted that it would conduct its own internal review of the self-audit findings.

25           On June 21, 2013, Respondent submitted a revised self-audit report that identified per diem  
26 interest overcharges for 226 out 961 loans funded during the aforementioned period. Respondent  
27 also identified a borrower for which a possible overcharge may have occurred but claimed it lacked  
28 conclusive documentation to confirm such overcharge. Respondent stated it would provide an update

1 on the borrower once the documentation was received. To date, Respondent has not provided any  
2 further update to the Department.

3 **II.**

4 **CHARGING EXCESSIVE PER DIEM INTEREST IN VIOLATION OF FINANCIAL CODE**  
5 **SECTION 50204, SUBDIVISION (o), AND CIVIL CODE SECTION 2948.5**

6 Financial Code section 50204, subdivision (o), provides in pertinent part:

7 A licensee may not do any of the following:

8 (o) Commit an act in violation of Section 2948.5 of the Civil Code. Evidence of  
9 compliance with Section 2948.5 of the Civil Code may be evidenced by (1) a  
10 certification executed by the licensee, at no cost to the borrower, pursuant to Section  
11 2015.5 of the Code of Civil Procedure, or (2) other evidence in the loan file acceptable  
12 to the commissioner.

13 Civil Code section 2948.5 provides in pertinent part:

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

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

20 [ . . . ]

21 (b) Interest may commence to accrue on the business day immediately preceding the  
22 day of disbursement, for obligations described in paragraphs (1) and (2) of subdivision  
23 (a) if both of the following occur:

24 (1) The borrower affirmatively requests, and the lender agrees, that the  
25 disbursement will occur on Monday, or a day immediately following a bank  
26 holiday.

27 (2) The following information is disclosed to the borrower in writing: (A) the  
28 amount of additional per diem interest charged to facilitate disbursement on  
Monday or the day following a holiday, as the case may be, and (B) that it may  
be possible to avoid the additional per diem interest charge by disbursing the  
loan proceeds on a day immediately following a business day. This disclosure  
shall be provided to the borrower and acknowledged by the borrower by  
signing a copy of the disclosure document prior to placing funds in escrow.

1 Generally, a residential mortgage lender is not allowed to charge more than one day in per  
2 diem interest. However, a residential mortgage lender may do so when the disbursement falls on a  
3 Monday or immediately following a bank holiday, the borrower expressly consents to these charges,  
4 and the amount of additional per diem interest is disclosed in writing as required by Civil Code  
5 section 2948.5.

6 Based on information reported by Respondent, the Commissioner finds that Respondent  
7 charged excessive per diem interest to California borrowers for 226 out of 961 loans funded during  
8 the period of August 5, 2010 to January 8, 2013, in violation of Financial Code section 50204,  
9 subdivision (o), and failed to accurately disclose the amount of such additional interest as required by  
10 Civil Code section 2948.5.

### 11 III.

#### 12 **FAILURE TO COMPLY WITH EXAMINATION AND RECORDS REQUIREMENTS**

13 Financial Code section 50302, subdivision (a), provides in relevant part:

- 14 (a) As often as the commissioner deems necessary and appropriate, but at least once  
15 every 48 months, the commissioner shall examine the affairs of each licensee for  
16 compliance with this division . . . The commissioner and his or her appointees may  
17 examine the books, records, and documents of the licensee, and may examine the  
18 licensee's officers, directors, employees, or agents under oath regarding the  
19 licensee's operations . . . .

20 Financial Code section 50314 provides in relevant part:

- 21 (a) Every person subject to this division shall keep documents and records that will  
22 properly enable the commissioner to determine whether the residential mortgage  
23 lending or residential mortgage loan servicing functions performed by that person  
24 comply with the provisions of this division and with all rules and orders made by  
25 the commissioner under this division . . . .
- 26 (b) The business documents and records of every residential mortgage lender or  
27 residential mortgage loan servicer, whether required to be licensed under this  
28 division or not, are subject to inspection and examination by the commissioner  
at any time without prior notice . . . .

Financial Code section 50307, subdivision (b), states:

- (b) A licensee shall make any other special reports to the commissioner that the  
commissioner may, from time to time, require.

1 Based on the foregoing, the Commissioner finds that by failing to provide the Department  
2 with the information that the Department requested pursuant to the 2012 exam in order to determine  
3 whether the residential mortgage lending or mortgage loan servicing functions performed by  
4 Respondent complied with the provisions of the CRMLA, Respondent has failed to provide the  
5 documents and records necessary to complete the Department's examination in violation of Financial  
6 Code sections 50314 and 50307.

7 **IV.**  
8 **ORDER SUSPENDING LICENSE PURSUANT TO**  
9 **FINANCIAL CODE SECTION 50327**

10 Financial Code section 50327 provides in pertinent part:

- 11 (a) The commissioner may, after notice and a reasonable opportunity to be heard,  
12 suspend or revoke any license if the commissioner finds that: (1) the licensee has  
13 violated any provision of this division or any rule or order of the commissioner  
14 thereunder; or (2) any fact or condition exists that, if it had existed at the time of  
15 the original application for license, reasonably would have warranted the  
16 commissioner in refusing to issue the license originally.

17 Based on the foregoing, the Commissioner finds that Respondent violated the CRMLA by:  
18 (1) charging excessive per diem interest in violation of Financial Code section 50204, subdivision  
19 (o), and by failing to disclose the amount of such additional interest as required by Civil Code section  
20 2948.5; (2) failing to comply with examination and records requirements pursuant to Financial Code  
21 section 50314; and, (3) failing to timely make a report to the Department as required by Financial  
22 Code section 50326. These violations constitute grounds to suspend Respondent's residential  
23 mortgage lender and servicer license.

24 **V.**  
25 **ORDER IMPOSING PENALTY PURSUANT TO**  
26 **FINANCIAL CODE SECTION 50326**

27 Financial Code section 50326 provides:

28 If any licensee fails to do any of the following, the licensee shall forfeit to the people of the  
state a sum of up to one hundred dollars (\$100) for every day up to the 10th day: (a) to make  
any report required by law or by the commissioner within 10 days from the day designated for  
the making of the report, or within any extension of time granted by the commissioner, or (b)  
fails to include therein any matter required by law or by the commissioner. Thereafter, any  
failure shall constitute grounds for the suspension or revocation of the license held by the  
residential mortgage lender or residential mortgage loan servicer.

1 Based on the foregoing, the Commissioner further finds that Respondent failed to make a  
2 report required by the Commissioner within 10 days from the due date or any extension of time  
3 granted by the Department, or failed to include therein any matter required by law. Due to  
4 Respondent's failure to timely make reports required by the Department to complete the 2012 exam,  
5 Respondent is subject to a penalty of \$100 for every day up to the 10th day in accordance with the  
6 provisions of Financial Code Section 50326.

7 **VI.**  
8 **ORDER IMPOSING CIVIL PENALTIES PURSUANT TO**  
9 **FINANCIAL CODE SECTION 50513**

10 Financial Code section 50513 provides in pertinent part:

11 (b) The commissioner may impose a civil penalty on a mortgage loan originator or any  
12 residential mortgage lender or servicer licensee employing a mortgage loan originator, if  
13 the commissioner finds, on the record after notice and opportunity for hearing, that the  
14 mortgage loan originator or any residential mortgage lender or servicer licensee  
15 employing a mortgage loan originator has violated or failed to comply with any  
16 requirement of this division or any regulation prescribed by the commissioner under this  
17 division or order issued under authority of this division.

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

20 Based on the foregoing, the Commissioner finds that Respondent violated the CRMLA by  
21 charging excessive per diem interest to California borrowers in 226 of 961 loans funded from August  
22 5, 2010 to January 8, 2013, in violation of Financial Code section 50204, subdivision (o), and by  
23 failing to disclose the amount of such additional interest as required by Civil Code section 2948.5.  
24 Pursuant to Financial Code section 50513, the Commissioner may impose a civil penalty against  
25 Respondent in the maximum amount of \$25,000 for each act committed in violation of the CRMLA.

26 **VII.**  
27 **PRAYER FOR RELIEF**

28 WHEREFORE, good cause showing, the Commissioner prays for orders against Respondent  
City First Mortgage Services, LLC doing business as City 1<sup>st</sup> Mortgage and City 1<sup>st</sup> Mortgage  
Services as follows:

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- (1) Suspending Respondent’s residential mortgage lender and servicer license for a period of up to 12 months pursuant to Financial Code section 50327;
- (2) Imposing a penalty of one thousand dollars (\$1,000) pursuant to Financial Code section 50326 for failing to make a report to the Department; in violation of Financial Code sections 50314 and 50307; and,
- (3) Imposing a civil penalty in the amount of one thousand dollars (\$1,000), pursuant to Financial Code section 50513, for each of the 226 violations of Financial Code section 50204, subdivision (o), occurring between August 2010 through January 2013, for a total of two hundred twenty-six thousand dollars (\$226,000), or according to proof.

Dated: July 31, 2013

JAN LYNN OWEN  
Commissioner of Business Oversight

By: \_\_\_\_\_  
MIRANDA LEKANDER  
Senior Corporations Counsel  
Enforcement Division