ALAN S. WEINGER
Deputy Commissioner
JOYCE TSAI (CA BAR NO. 241908)
Corporations Counsel
Department of Corporations
1350 Front Street, Suite 2034
San Diego, CA 92101
Telephone: (619) 525-4043 Fax: (619) 525-4045

Attorneys for Complainant

BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, vs. FIRST ONE LENDING CORPORATION, Respondent.	File No.: 413-0939 **ACCUSATION**

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

I

First One Lending Corporation ("Respondent") is a residential mortgage lender licensed by the California Department of Corporations ("Department") pursuant to the California Residential Mortgage Lending Act ("CRMLA"), Cal. Fin. Code § 50000 et seq. At all relevant times, Respondent's principal address was 31831 Camino Capistrano #300b, San Juan Capistrano, CA 92675.

II

Pursuant to Financial Code section 50200, all licensees under the CRMLA are required to

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cause their books and accounts to be audited by an independent certified public accountant. Under § 50200, subd. (d), within 105 days of the end of the licensee's fiscal year, the audit report must be filed with the California Corporations Commissioner ("Commissioner"). Respondent's fiscal year end is December 31. Accordingly, Respondent was required to file an audit report on or before April 15 of each year.

Respondent has failed to file its annual audit report for the fiscal year ending December 31, 2011.

III

Financial Code section 50307, subdivision (a), provides that each licensee shall file a report annually, on or before the first day of March, giving the information that the Commissioner requires to calculate the annual assessment for the licensee. Subdivision (b) of that section provides that a licensee shall make any other special reports to the Commissioner that the Commissioner may, from time to time, require.

California Code of Regulations, Title 10, Section 1950.314.8, requires every licensee to implement "best practices" to manage loan product risk on a continuous basis. In a separate written document called the Report on Non-traditional, Adjustable Rate and Mortgage Loan Products ("Non-traditional Report"), submitted as an addendum to its financial report required under Section 50307 of the Financial Code, every licensee shall state whether it made or arranged nontraditional mortgage products and adjustable rate mortgage products during the reporting period covered by the annual report. (CCR tit. 10, § 1950.314.8, subd. (b).)

If any nontraditional mortgage loans or adjustable rate mortgage loans subject to the Guidance were made or arranged, the licensee shall also submit information regarding those loans on the form entitled Non-traditional, Adjustable Rate and Mortgage Loan Survey ("Survey"). (*Id.*).

On February 6, 2012, the Commissioner sent the Non-traditional Report and Survey to Respondent and notified Respondent that these were required to be filed by March 1, 2012. Respondent has not filed the Non-traditional Report and Survey.

Under Financial Code section 50129, each licensee must report the number and principal amount of California loans processed and underwritten. Respondent was required to file the Report

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of Principal Amount of Loans Originated and Aggregate Amount of Loans Serviced for the 12 Month Period Ended December 31, 2011 ("Report"), by March 1, 2012. Information from the Report is used to calculate the licensee's annual assessment. The Report was also sent to Respondent on February 6, 2012. Respondent has not filed the Report.

IV

Financial Code section 50326 provides in pertinent part as follows:

> 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…. 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.

On June 5, 2012, the Department notified Respondent by letter that it had failed to file the Report, Non-traditional Report, and Survey. Therefore, the letter stated that the Department was assessing a penalty of $1,000 pursuant to Financial Code section 50326. The letter required Respondent to pay the penalty within ten days.

Respondent has failed to pay the penalty of $1,000 pursuant to Financial Code section 50326.

V

Financial Code section 50205, subdivision (a) provides that a residential mortgage lender or servicer licensee shall maintain a surety bond in accordance with that subdivision.

Effective January 21, 2012, Bond No. S9053001 issued by Washington International Insurance Company in favor of First One Lending Corporation expired and no replacement bond has been obtained.

Financial Code section 50319 provides that if the Commissioner finds that a licensee is conducting business in an unsafe or injurious manner that renders further operations hazardous to the public or to customers, or has failed to comply with the bonding requirements of Section 50205, the Commissioner may order the licensee to immediately discontinue the disbursement of trust funds held by the licensee and establish a separate trust account for all subsequent trust funds received by the licensee.

On January 23, 2012, pursuant to Financial Code section 50319, the Commissioner issued

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her Order to Discontinue Residential Mortgage Lending and/or Servicing Activities Pursuant to Section 50319, California Financial Code, against Respondent.

VI

Financial Code section 50201 provides that a licensee shall continuously maintain a minimum tangible net worth at all times of $250,000.

As of July 31, 2011, Respondent had a tangible net worth of only $80,500. Therefore, Respondent did not meet the requirement of Section 50201.

VII

Beginning on July 27, 2011, the Commissioner conducted an examination of Respondent. The Commissioner found that Respondent was collecting up-front fees to assist consumers with loan modifications, in violation of Civil Code sections 2944.6 and 2944.7 and Business and Professions Code section 10085.6.

Civil Code section 2944.6, subdivision (a), provides, in pertinent part:

> "any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, shall provide the following to the borrower, as a separate statement, in not less than 14-point bold type, prior to entering into any fee agreement with the borrower:
>
> It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms."

Civil Code section 2944.7, subdivision (a), provides, in pertinent part:

> "Notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:
>
> (1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform."

Business and Professions Code section 10085.6, subdivision (a), provides, in pertinent part:

> "Notwithstanding any other provision of law, it shall be unlawful for any licensee who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan

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forbearance for a fee or other compensation paid by the borrower, to do any of the following:

(1) Claim, demand, charge, collect, or receive any compensation until after the licensee has fully performed each and every service the licensee contracted to perform or represented that he, she, or it would perform."

VIII

Financial Code section 50314 provides:

"Every person subject to this division shall keep documents and records that will properly enable the commissioner to determine whether the residential mortgage lending or residential mortgage loan servicing functions performed by that person comply with the provisions of this division and with all rules and orders made by the commissioner under this division. Upon request of the commissioner, residential mortgage lenders and residential mortgage loan servicers shall file an authorization for disclosure to the commissioner of financial records of the licensed business pursuant to Section 7473 of the Government Code."

During the examination that was begun on July 27, 2011, the Commissioner requested information on the consumers that have paid up-front fees to Respondent. Respondent failed to provide this information. Therefore, Respondent violated Financial Code section 50314.

IX

Financial Code section 50401 provides that each licensee shall pay an annual assessment to the commissioner of at least $1,000. Subdivision (c) of that section provides: "On or before the 30th day of September in each year, the commissioner shall notify each licensee by mail of the amount assessed and levied against it and that amount shall be paid within 20 days."

On September 30, 2011, the Commissioner sent an invoice to Respondent for its annual assessment of $1,000. Pursuant to Financial Code section 50401, payment was due within 20 days. Respondent has not paid this annual assessment.

X

Financial Code section 50327, subd. (a), provides in pertinent part as follows:

The commissioner may, after notice and 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 or any rule or order of the commissioner thereunder….

XI

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The Commissioner finds that, by reason of the foregoing, Respondent has violated Financial Code sections 50200, 50307, 50326, 50205, 50129, 50201, 50314, and 50401; Civil Code sections 2944.6 and 2944.7; Business and Professions Code section 10085.6; and Code of Regulations, title 10, section 1950.314.8, which constitutes grounds for revocation of its license as a residential mortgage lender.

WHEREFORE, IT IS PRAYED that the Respondent's residential mortgage lender license be revoked pursuant to Financial Code section 50327.

Dated: July 27, 2012
San Diego, CA

JAN LYNN OWEN
California Corporations Commissioner

By_____
Joyce Tsai
Corporations Counsel

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