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7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF CORPORATIONS  
9 OF THE STATE OF CALIFORNIA  
10

11 In the Matter of THE CALIFORNIA ) Case No.: 415-0014  
CORPORATIONS COMMISSIONER, )  
12 )  
Complainant, ) STATEMENT OF FACTS IN SUPPORT OF  
13 ) ORDER TO DISCONTINUE VIOLATIONS  
vs. ) PURSUANT TO CALIFORNIA FINANCIAL  
14 ) CODE 50321  
LOANCITY.COM, )  
15 )  
Respondent. )  
16 )  
17 )  
18 )  
19

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

22 1. LOANCITY.COM ("LOANCITY") is a residential mortgage  
23 lender licensed by the California Corporations Commissioner  
24 ("Commissioner" or "Complainant") pursuant to the California  
25 Residential Mortgage Lending Act ("CRMLA") (California Financial  
26 Code Section 50000 et seq.).

27 2. On or about March 5, 2001, the Commissioner commenced a  
28 regulatory examination of the books and records of LOANCITY. The

1 March 5, 2001 regulatory examination, along with a follow up  
2 examination commenced on or about June 4, 2001 ("regulatory  
3 examination"), disclosed that LOANCITY had been depositing all  
4 trust funds into its company operations account, and that such  
5 commingling was still ongoing as of June 12, 2001. California  
6 Financial Code ("FC") § 50202(a) prohibits the commingling of trust  
7 funds with funds of the licensee.

8 3. The regulatory examination further disclosed that, from  
9 at least February 1, 2001 through May 31, 2001, LOANCITY had used  
10 trust funds for operating activities in violation of FC §§ 50202(b)  
11 and 50503(a)(1).

12 4. LOANCITY's use of trust funds for operating activities  
13 caused debit balances (shortages) to exist in the trust account  
14 from at least February 1, 2001 through May 31, 2001. The debit  
15 balances were as follows: \$386,586.71 as of February 28, 2001,  
16 \$799,382.94 as of March 31, 2001, \$967,863.86 as of April 30, 2001,  
17 and \$550,594.65 as of May 31, 2001. California Code of Regulations,  
18 Title 10 ("CCR"), § 1950.314.6 prohibits debit balances in any loan  
19 or servicing accounts maintained by CRMLA licensees. On June 4, and  
20 5, 2001, LOANCITY cured all debit balances existing as of May 31,  
21 2001. However, LOANCITY may have caused further debit balances to  
22 occur by continuing to commingle trust funds with the operating  
23 funds after February 1, 2001.

24 5. The regulatory examination further revealed that LOANCITY  
25 had been depositing trust funds into an interest bearing account at  
26 least until February 2001 in violation of FC § 50202(b).

27 6. By reason of the foregoing, LOANCITY has violated FC §§  
28 50202(a), 50202(b) and 50503(a)(1), and CCR § 1950.314.6.

1 7. FC § 50202(a) provides in relevant part:

2 (a) Escrow funds for a purpose authorized by  
3 the residential mortgage loan contract . . .  
4 and (3) may not be commingled with a licensee's funds.

5 8. FC § 50202(b) provides in relevant part:

6 Except as provide in subdivision (f), a trust  
7 account shall be placed in a non-interest bearing  
8 account in a federally insured depository institution,  
9 a federal home loan bank, a federal reserve bank, or  
10 other similar government sponsored enterprise to be  
11 removed and used only for the following:

12 (1) Payments authorized by the borrower, allowed  
13 by the mortgage contract, or required by federal  
14 or state law.

15 (2) Refunds to the borrower.

16 (3) Transfer to another institution that is described  
17 in this subdivision (b).

18 4. Forwarding to an appropriate servicer in case of  
19 a transfer of servicing.

20 5. Any other purpose authorized by the residential  
21 mortgage loan contract.

22 (6) Compliance with a regulatory or court order.

23 9. FC § 50503(a) provides in relevant part:

24 (a) It is a violation for any person subject to  
25 this law or any director, partner, shareholder  
26 controlling an ownership interest of 10 percent or  
27 more, trustee, officer, agent, or employee of any  
28 such person to do any of the following:

(1) Knowingly or recklessly disburse or cause  
the disbursal of trust funds, except as permitted by  
Section 50202, . . . .

10. CCR § 1950.314.6 provides:

A residential mortgage lender, residential mortgage

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

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

13 11. Financial Code Section 50321 provides in pertinent part:

14 If, after an investigation, the commissioner has  
15 reasonable grounds to believe that any licensee  
16 has violated its articles of incorporation or  
17 any law or rule binding upon it, the commissioner  
18 shall, by written order addressed to the licensee,  
19 direct the discontinuance of the violation. The  
20 order shall be effective immediately, but shall not  
21 become final except in accordance with the provisions  
22 of Section 50323.

23 12. Section 50323 of the Financial Code provides:

24 (a) No order issued pursuant to Section 50321  
25 or 50322 may become final except after  
26 notice to the affected licensee of the commissioner's  
27 intention to make the order final and of the  
28 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  
commenced 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

1 11500) of Part 1 of Division 3 of Title 2 of the  
2 Government Code), and the commissioner shall have  
3 all the powers granted under that act. If, upon the  
4 hearing, it appears to the commissioner that the  
5 licensee is conducting business in an unsafe and  
6 injurious manner or is violating its articles  
7 of incorporation or any law of this state, or any  
8 rule binding upon it, the commissioner shall make  
9 the order of discontinuance final and the licensee  
10 shall immediately discontinue the practices named  
11 in the order.

12  
13 (b) The licensee has 10 days after an order is made  
14 final to commence to restrain enforcement of the  
15 order. If enforcement of the order is not enjoined  
16 within 10 days by the court in which the action is  
17 brought, the licensee shall comply with the order.

18 WHEREFORE, good cause showing, the Commissioner is issuing an  
19 Order to Discontinue Violations Pursuant to Financial Code Section  
20 50321 and notifying LOANCITY of his intention to make the order  
21 final.

22 Dated: August 22, 2001  
23 Los Angeles, California

24 DEMETRIOS A. BOUTRIS  
25 California Corporations Commissioner

26 By \_\_\_\_\_  
27 Judy L. Hartley,  
28 Senior Trial Counsel