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7 Attorneys for Complainant

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

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11 In the Matter of:)
)
12 THE COMMISSIONER OF BUSINESS) CRMLA LICENSE NO.: 413-1030
13 OVERSIGHT,) CFL LICENSE NO.: 603-H496
)
14 Complainant,) ACCUSATION
)
15 v.)
)
16 360 MORTGAGE GROUP, LLC,)
17)
18 Respondent.)
)

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

22 **I.**

23 **Introduction**

24 1. 360 Mortgage Group, LLC (360) is licensed by the Commissioner of Business
25 Oversight (Commissioner) as a residential mortgage lender and servicer pursuant to the California
26 Residential Mortgage Lending Act ("CRMLA") (Fin. Code § 50000 et seq.). 360 has its principal
27 place of business located at 11305 Four Points Drive, Building 1, Suite 200, Austin, Texas 78726.
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ACCUSATION

1 360 currently has 1 branch office location under its CRMLA license located in Nevada. 360
2 employs mortgage loan originators in its CRMLA business.

3 2. 360 is also licensed by the Commissioner as a finance lender and broker pursuant to
4 the California Financing Law (CFL) (Fin. Code § 22000 et seq.). 360 has its principal place of
5 business under the CFL also located at 11305 Four Points Drive, Building 1, Suite 200, Austin,
6 Texas 78726. 360 does not currently have any branch office locations under its CFL license.

7 **II.**

8 **Trust Accounting Violations**

9 3. On or about January 18, 2017, the Commissioner commenced a regulatory
10 examination of the books and records of 360 under the CRMLA and the CFL (2017 regulatory
11 examination). The 2017 regulatory examination disclosed that 360 (i) was failing to properly
12 reconcile certain of its trust accounts in violation of Financial Code section 50314 and California
13 Code of Regulations, title 10, section 1950.314.1; and (ii) had caused a shortage to exist in one of its
14 trust accounts in violation of California Code of Regulations, title 10, section 1950.314.6.

15 4. In 2016 and 2017, 360 maintained the relevant trust accounts at Texas Capital Bank.
16 The trust account ending in 3912 was the trust account for interim escrow funds (Interim Escrow
17 Account). The trust funds held in the Interim Escrow Account are to be held until time for
18 disbursement to the tax authority, insurance company, contractor, etc.

19 5. 360 maintains asset general ledger number 10141 and liability general ledger number
20 22100 for Interim Escrow Funds.

21 6. A review of the trust account reconciliations for September 30, 2016 disclosed that
22 360 had failed to properly reconcile the Interim Escrow Account for the period ended September 30,
23 2016 as the Interim Escrow Account had a shortage of \$259,614.13. A trust account shortage
24 indicates there are insufficient funds available to pay all the escrow impound liabilities. California
25 Code of Regulations, title 10, section 1950.314.6 prohibits debit balances in any loan or servicing
26 account maintained by CRMLA licensees. 360 has corrected the shortage in the Interim Escrow
27 Account.
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III.**Per Diem Interest Overcharges**

7. The 2017 regulatory examination further disclosed that 360 engaged in unfair business acts or practices in violation of Financial Code section 22161, subdivision (a)(4) and Business and Professions Code section 17200 in that 360 charged the borrower per diem interest in excess of one day prior to the disbursement of loan proceeds in violation of Civil Code section 2948.5 in 3 of 20 (15%) funded CFL loans reviewed. A California Additional Per Diem Interest Charge Disclosure was found in the 3 loans with per diem interest overcharges. The disclosures were not prepared in accordance with California Civil Code section 2948.5, subdivision (b) or were not applicable, and therefore were not considered in calculating per diem interest charges. The per diem interest overcharges averaged \$50.98 per loan. The range of per diem interest overcharges was between \$27.37 and \$95.49. The range of days that interest was overcharged was between 2 and 3 days.

8. The Commissioner had found that 360 was overcharging per diem interest during the last regulatory examinations under the CRMLA and CFL that commenced in November 2012 and September 2012, respectively. Based upon the findings of the 2012 CRMLA and CFL regulatory examinations, the Commissioner instructed 360 to implement such procedures as necessary to ensure that per diem interest was not overcharged in the future.

IV**CRMLA Suspension/Penalty Statutes**

9. 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 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.

10. Financial Code section 50513 provides in pertinent part:

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

(4) Impose fines on a mortgage loan originator or any residential mortgage

1 lender or servicer licensee employing a mortgage loan originator pursuant
2 to subdivisions (b), (c), and (d).

3 (b) The commissioner may impose a civil penalty on a mortgage loan originator
4 or any residential mortgage lender or servicer licensee employing a mortgage
5 loan originator, if the commissioner finds, on the record after notice and
6 opportunity for hearing, that the mortgage loan originator or any residential
7 mortgage lender or servicer licensee employing a mortgage loan originator
8 has violated or failed to comply with any requirement of this division or any
9 regulation prescribed by the commissioner under this division or order issued
10 under authority of this division.

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

13 (d) Each violation or failure to comply with any directive or
14 order of the commissioner is a separate and distinct violation or
15 failure.

16 **V**

17 **CFL Suspension/Penalty Statutes**

18 11. Financial Code section 22714 provides in pertinent part:

19 (a) The commissioner shall suspend or revoke any license, upon notice
20 and reasonable opportunity to be heard, if the commissioner finds any of
21 the following:

22 . . .

23 (2) The licensee has violated any provision of this division or any rule or
24 regulation made by the commissioner under and within the authority of this
25 division.

26 12. Financial Code section 22172 provides in pertinent part:

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

28 (4) Impose fines on a mortgage loan originator or any finance lender or broker
licensee employing a mortgage loan originator pursuant to subdivisions (b), (c),
and (d).

(b) The commissioner may impose a civil penalty on a mortgage loan originator
or any finance lender or broker 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 finance lender or
broker licensee employing a mortgage loan originator has violated or failed to
comply with any requirement of this division or any regulation prescribed by the

1 commissioner under this division or order issued under authority of this division.

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

8 **Conclusion**

9 13. The Commissioner finds that, by reason of the foregoing, 360 Mortgage Group, LLC
10 has violated Financial Code sections 22161, subdivision (a)(4) and 50314, and California Code of
11 Regulations, title 10, sections 1950.314.1 and 1950.314.6, and based thereon, grounds exist to (i)
12 suspend the residential mortgage lender and servicer licenses and the finance lender and broker
13 license of 360 Mortgage Group, LLC, and (ii) assess penalties against 360 Mortgage Group, LLC.

14 **VII**

15 **Prayer**

16 WHEREFORE, IT IS PRAYED that:

- 17 1. Pursuant to Financial Code section 50327, the residential mortgage lender and
18 servicer licenses of 360 Mortgage Group, LLC be suspended for a period of up to 12 months;
- 19 2. Pursuant to Financial Code section 22714, the finance lender and broker license of
20 360 Mortgage Group, LLC be suspended for a period of up to 12 months;
- 21 3. Pursuant to Financial Code section 50513, subdivision (b), a penalty be levied against
22 360 Mortgage Group, LLC for failure to properly reconcile its trust accounts on a monthly basis, in
23 violation of Financial Code section 50314 and California Code of Regulations, title 10, section
24 1950.314.1, according to proof, but in an amount of at least \$15,000.00.
- 25 4. Pursuant to the Financial Code section 50513, subdivision (b), a penalty be levied
26 against 360 Mortgage Group, LLC for causing a shortage to exist in its Interim Escrow Account in
27 violation of California Code of Regulations, title 10, section 1950.314.6 according to proof, but in an
28 amount of at least \$25,000.00; and

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5. Pursuant to the Financial Code section 22172, subdivision (b), penalties be levied against 360 Mortgage Group, LLC for at least three violations of Financial Code section 22161, subdivision (a)(4) via violations of Civil Code section 2948.5, overcharging per diem interest, according to proof, but in an amount of at least \$1,000.00 per violation.

Dated: October 26, 2018
Los Angeles, CA

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
Judy L. Hartley
Senior Counsel
Enforcement Division