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BEFORE THE MONTANA DEPARTMENT OF ADMINISTRATION,
DIVISION OF BANKING AND FINANCIAL INSTITUTIONS

STATE OF MONTANA, DEPARTMENT
OF ADMINISTRATION, DIVISION OF
BANKING AND FINANCIAL
INSTITUTIONS,

Claimant,

v.

OCWEN LOAN SERVICING, LLC, a
Montana licensed entity, NMLS # 1852,

Respondent.

Case No. M2017-16

**TEMPORARY CEASE AND
DESIST ORDER AND
OPPORTUNITY FOR
ADMINISTRATIVE
HEARING**

TO: Ocwen Loan Servicing, LLC
Registered Agent for Service of Process:
Corporation Service Company
26 W. Sixth Avenue
Helena, MT 59624-1691

The Division of Banking and Financial Institutions (Division) pursuant to the
authority granted by the Montana Mortgage Act (Act), Mont. Code Ann. § 32-9-101
et seq., hereby issues this Temporary Cease and Desist Order and Opportunity for
Administrative Hearing.

1 **A. PARTIES, JURISDICTION, AND VENUE**

2 1. Ocwen Financial Corporation (“OFC”) is a Florida corporation with
3 headquarters in West Palm Beach, Florida. Ocwen Mortgage Servicing, Inc.
4 (“OMS”) is a U.S. Virgin Islands corporation with headquarters in St. Croix, U.S.
5 Virgin Islands and an NMLS unique identifier of 1089752. Ocwen Loan Servicing,
6 LLC, (“OLS”) is a Delaware limited liability company with headquarters located in
7 West Palm Beach, Florida and an NMLS unique identifier of 1852. OLS at all
8 relevant times herein was a wholly-owned subsidiary of OMS, which was a wholly-
9 owned subsidiary of OFC (collectively referred to herein as “Ocwen”).

10 2. OLS is licensed as a mortgage lender, broker, and mortgage loan servicer
11 in Montana. OMS is licensed as a mortgage servicer in Montana.

12 3. The Division has jurisdiction over the licensing and regulation of persons
13 and entities engaged in the business of residential mortgage loan servicing in
14 Montana pursuant to the Montana Mortgage Act (Mont. Code Ann. § 32-9-101 et
15 seq.) and its implementing rules at ARM 2.59.1701 et seq.

16 4. Pursuant to Mont. Code Ann. § 32-9-130, the Division is authorized to
17 inspect the books, accounts, papers, records, and files of mortgage loan servicers
18 transacting business in Montana to determine compliance with the provisions of
19 Montana law and any rule adopted thereunder. Mont. Code Ann. § 32-9-130 also
20 allows the Division to accept and rely on examination or investigative reports by
21 other government officials.

22 5. The Multi-State Mortgage Committee (“MMC”) is a committee of state
23 mortgage regulators who have agreed to address their enforcement concerns with
24 Ocwen in a collective and coordinated manner. On February 28, 2015, the states of
25 Florida, Maryland, Massachusetts, Mississippi, Montana, and Washington
26 (collectively, the “Examining States”) conducted a Multi-State Examination of
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1 Ocwen in order to determine Ocwen's compliance with applicable federal and state
2 laws and regulations, financial condition, and control and supervision of the
3 licensed mortgage servicing operations. The Multi-State Examination of Ocwen
4 covered the period of January 1, 2013 to February 28, 2015.

5 6 **B. FINDINGS OF FACT**

7 6. A mortgage servicer is entrusted with borrower's mortgage payments. It
8 is responsible for accepting, timely crediting, and keeping an accurate accounting of
9 all borrower mortgage payments. Mortgage payments must be properly applied to
10 insurance, taxes, interest, principle, and late fees, if any. The servicer must pay
11 borrower taxes and insurance as they become due. The servicer must ensure that the
12 proper amount of interest and principal is paid to the note holder. The servicer must
13 maintain accurate records of all borrower payments and must annually calculate the
14 proper amount that should be held in escrow to cover the upcoming year's tax and
15 insurance payments.

16 7. A mortgage borrower has no choice in the entity that services their
17 mortgage loan. The borrower has no ability to change mortgage servicers.
18 Mortgage borrowers are simply notified that their mortgage servicing rights have
19 been transferred and are instructed to direct their payments to a new entity.

20 8. During the examination, the Examining States identified several violations
21 of state and federal law, including, but not limited to, mismanagement of borrower
22 escrow accounts, which resulted in failure to timely pay escrow items, the failure to
23 correctly maintain escrow account minimum balances, and the failure to correctly
24 estimate escrow disbursement amounts. Additionally, it was determined that
25 Ocwen's financial condition was significantly deteriorating, which impacts Ocwen's
26 ability to remain in business.

1 9. The MMC examination found that Ocwen has been unable to accurately
2 manage many of the borrower escrow accounts in its portfolio due to failings of its
3 software and systemic errors made when the escrow accounts were initially
4 transferred to Ocwen. The MMC examination further found that Ocwen failed to
5 make timely disbursements to pay for taxes and insurance from escrow accounts on
6 numerous loans. The MMC examination also found that Ocwen routinely sent
7 borrowers inaccurate, confusing, and/or misleading escrow statements.

8 10. As part of the MMC examination, it was determined that Ocwen failed to
9 timely pay insurance premiums from borrower escrow accounts on at least ten
10 Montana mortgage loans. Ocwen failed to timely pay taxes on at least one Montana
11 mortgage loan.

12 11. In a separate Montana loan, Ocwen failed to timely pay the insurance
13 premiums when due and the home was uninsured for one year. At the Division's
14 insistence, Ocwen agreed to pay the increased insurance premiums that resulted
15 from the loss of coverage.

16 12. Ocwen's onboarding process also created issues with lost documents.
17 Two Montana borrowers got a home equity line of credit (HELOC) on their house
18 in March 2005. They initially borrowed a small sum and paid it off in 2006. In
19 2010, they borrowed \$50,000 on the HELOC and asked for a copy of the note. The
20 borrowers sold the home in 2012, but continued to pay the \$123.73 monthly
21 HELOC payment. All liens were paid when the house sold, but the address on the
22 HELOC was wrong, so it was not paid off at the time the house sold. This meant
23 the HELOC was an unsecured loan. The servicing rights on the loan were
24 transferred to Ocwen on February 16, 2013.

25 13. In April 2015, Ocwen sent a notice to the borrowers that their payment
26 would increase from \$123.73 per month to \$890.78 per month. Ocwen said the
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1 draw period had ended and the unpaid principal balance (\$46,359.50) was due.

2 14. The borrowers contacted Ocwen asking what happened. Ocwen sent a
3 letter to the borrowers stating the loan was originated on March 25, 2005 for
4 \$50,000. Ocwen stated, “[A] review of the Note indicated that you . . . have signed
5 it. Therefore, you are responsible for the debt and the above loan is valid.”

6 15. The borrowers requested a copy of the note. Ocwen was unable to
7 provide the borrowers with a copy of the note showing the terms and conditions of
8 the loan agreement. In fact, in response to repeated requests from the borrower for a
9 copy of the note, Ocwen provided the borrowers with eight affidavits of lost
10 document.

11 16. The borrowers filed a complaint with the Division on August 7, 2015. In
12 response, Ocwen stated that it did not have the note, it only had a servicing transfer
13 notice. However, Ocwen stated that the maturity date of the loan was March 1,
14 2020 and the borrowers must pay \$890.78 per month in order to pay off the
15 remaining \$46,359.50 note balance in 60 months. Ocwen did, however, offer to
16 continue to accept \$112.78 as a payment. The borrowers refused to pay.

17 17. In September 2016, Ocwen determined that the mortgage had never been
18 recorded and therefore had not been paid off at closing. Ocwen forgave the debt,
19 and sent the borrowers a IRS form 1098 for the amount forgiven.

20 18. Ocwen’s recordkeeping issues include transferring their loans to other
21 servicers with accounting entries that are unclear. On February 14, 2017, a Montana
22 borrower filed a complaint with the Division because her mortgage payment
23 increased from \$558.85 to \$777.52 per month.

24 19. The current servicer of her loan, which is not Ocwen, stated that her
25 mortgage had been transferred to them with a negative balance in the escrow
26 account of \$1,348.93. The current servicer was unable to determine why the escrow
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1 account had a negative balance when transferred.

2 20. The prior servicer of the loan was Ocwen. Records from Ocwen show
3 that two transfers were made out of the escrow account in 2015, one transfer was for
4 \$660.78 and one was for \$986.50. The two transfers resulted in a negative balance
5 in the account. The two transfers are listed in Ocwen records as “escrow balance
6 adjustment.”

7 21. On April 17, 2017, Ocwen responded to the Division inquiry that the
8 \$660.78 item was an adjustment for a loan modification. Due to the limitations of
9 their servicing system, Ocwen could not capitalize principal and interest payments
10 without showing the escrow payments also being received. Since the escrow
11 payments were not actually received, Ocwen manually reversed the forced payments
12 out of the escrow account. The borrower cannot determine from their escrow
13 statement why the entries were made. According to Ocwen, the \$986.50 item was
14 “removed in error.” On April 12, 2017, over a year after the error occurred, and
15 after the Division notified Ocwen of the problem, Ocwen sent the borrower a check
16 for \$986.50.

17 22. Ocwen lost \$472 million in 2014, \$247 million in 2015, and \$200
18 million in 2016. Ocwen’s losses stem from declines in loan servicing income and
19 continue high operating costs. In 2015, Ocwen sold the servicing rights to loans
20 totaling approximately \$88 billion. Although the sale provided significant liquidity
21 that Ocwen primarily used to reduce debt, the sale significantly reduced income and
22 contributed to ongoing losses that have eroded capital. Ocwen’s operating costs
23 have been high due to the costs of operating deficiencies related to servicing
24 acquisition integrations, regulatory fines, industry litigation, and ongoing
25 monitoring required by regulatory settlements.

26 23. Ocwen’s liquidity remains less than satisfactory due to uncertainty
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1 surrounding Ocwen's ability to maintain and refinance borrowing facilities at
2 competitive rates in light of Ocwen's deteriorating financial condition.

3 24. Since 2014, Ocwen has lost a total of \$919 million and when combined
4 with \$320 million in stock repurchases, capital has been reduced by \$1.15 billion, or
5 63 percent. Additionally, Ocwen's stock value has declined from a high of \$59.97
6 on October 25, 2013 to a range of \$1.50 to \$7 dollars per share in 2016, which has
7 impeded Ocwen's ability to raise additional capital. OFC's deteriorating financial
8 condition impacts OLS's ability to remain a going concern.

9 25. Based on the findings of the examination and subsequent
10 communications with OFC, the state regulators and Ocwen entered into a
11 Memorandum of Understanding (MOU) on December 7, 2016.

12 26. The MOU required Ocwen to retain an independent auditing firm to
13 perform a comprehensive audit and reconciliation of all borrower escrow accounts,
14 with a report to be furnished by the auditor to Ocwen and the MMC within five
15 business days thereafter. The audit plan was to be submitted to the MMC no later
16 than January 13, 2017 for its approval.

17 27. Ocwen's auditor's response to the state regulators on January 13, 2017,
18 was that the audit and reconciliation of escrow accounts, which is paramount in
19 ensuring the appropriate management of borrower funds, would cost \$1.5 billion
20 and was well beyond Ocwen's financial capacity. Ocwen has suggested instead that
21 a sample of 457 escrow accounts be audited out of 2.5 million active first lien
22 escrow accounts that Ocwen has serviced since January 2013. This proposal could
23 leave a vast number of borrowers with unaudited and/or inaccurate escrow accounts.

24 28. The total number of Montana loans currently serviced by Ocwen is 1,911
25 out of a total of 1,391,077 loans serviced as of December 31, 2016. Clearly, Ocwen
26 can, and must, devote the resources necessary to audit and ensure the accuracy of all
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1 Montana mortgage accounts that have been serviced in any way by Ocwen since
2 January 1, 2013.

3 29. The MOU required Ocwen to provide, among other things, a viable
4 going forward business plan that encompassed an analysis of its future financial
5 condition. The purpose of the plan was to analyze Ocwen's future financial
6 condition incorporating and encompassing all known or reasonably certain
7 liabilities.

8 30. Ocwen's going forward plan submitted in response to the MOU did not
9 provide a complete assessment of its financial condition because it excluded
10 significant liabilities. If the going forward plan accurately accounted for known or
11 anticipated regulatory penalties and other operational costs, including, but not
12 limited to, the expenses of moving to a new servicing platform and complete
13 reconciliation of borrower escrow accounts with restitution to impacted borrowers,
14 it would indicate the company would not continue as a going concern.

15 31. Ocwen has an extensive history of serious mismanagement of borrower
16 escrow accounts resulting in significant harm to Montana borrowers who have no
17 ability to avoid the harm.

18 C. CONCLUSIONS OF LAW

19 32. Based upon the information contained in Paragraphs 1 through 31, the
20 Division has determined that Ocwen has engaged in, is engaging in, or is about to
21 engage in, acts or practices which warrant the belief that the company is not
22 operating honestly, fairly, soundly, and efficiently in the public interest as required
23 by Mont. Code Ann. § 32-9-120.

24 33. The Division has determined that Ocwen has engaged in, is engaging in,
25 or is about to engage in, acts or practices which violate prohibitions governing the
26 conduct of a Montana mortgage servicer including, but not limited to:

1 (a) failure to comply with the mortgage loan servicing transfer, escrow
2 account administration, or borrower inquiry response requirements imposed by the
3 Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601, et seq., and
4 regulations adopted under that act;

5 (b) failure to comply with applicable state and federal laws, rules, and
6 regulations related to mortgage servicing; and

7 (c) failure to make all payments from any escrow account held for the
8 borrower for insurance, taxes, and other charges with respect to the property in a
9 timely manner so as to ensure that late penalties are not assessed or other negative
10 consequences result regardless of whether the loan is delinquent unless there are not
11 sufficient funds in the account to cover the payments and the mortgage servicer has
12 a reasonable basis to believe that recovery of the funds will not be possible. Mont.
13 Code Ann. § 32-9-169.

14 34. The Division has determined that Ocwen has engaged in, is engaging in,
15 or is about to engage in, acts or practices which do not comply with the duties of a
16 mortgage servicer under Montana law including:

17 (a) comply with any duties imposed by federal law or regulations or the
18 common law;

19 (b) safeguard and account for any money handled for the borrower;

20 (c) follow reasonable and lawful instructions from the borrower; and

21 (d) act with reasonable skill, care, and diligence. Mont. Code Ann. § 32-9-
22 170.

23 35. Ocwen's failure to comply with Montana law has caused and will
24 continue to cause irreparable harm to Montana borrowers who cannot avoid the
25 harm. The public interest will be irreparably harmed by delay in issuing a temporary
26 cease and desist order to Ocwen.

1 **NOTICE OF OPPORTUNITY FOR HEARING**

2 Notice is hereby given that pursuant to Mont. Code Ann. § 32-9-133, the
3 Respondent has a right to an administrative hearing as provided in the Montana
4 Administrative Procedures Act (Title 2, Chapter 4, Part 6 of the Montana Code
5 Annotated) to contest the Division’s proposed agency action. Respondent has the
6 right to be represented by counsel at the hearing and related proceedings. **To**
7 **exercise the right to a hearing Respondent must make a timely written request**
8 **for hearing within 14 days of receipt of this Notice and mail or deliver the**
9 **request to:**


10 Banking and Financial Institutions Division
11 301 South Park, Room 316
12 P.O. Box 200546
13 Helena, MT 59620-0546

14 **POSSIBILITY OF DEFAULT**

15 Failure to make a written request for hearing within 14 days of receipt of this
16 Temporary Cease and Desist Order and Opportunity for Administrative Hearing or
17 to otherwise timely defend as provided by law may result in entry of Respondent's
18 default without further prior notice and a Final Order shall thereafter issue providing
19 for such relief and imposing such penalties as are appropriate and authorized by
20 Mont. Code Ann. §§ 32-9-133 and 32-9-142.

21 The Division will post a copy of any final order or decision in this matter to
22 the NMLS under regulatory actions which will be viewable by regulators and the
23 public.

24 DATED this 20th day of April, 2017.

25 By: 
26 Kelly M. O’Sullivan
27 Staff Attorney

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TEMPORARY CEASE AND DESIST ORDER

Pursuant to the authority of Mont. Code Ann. § 32-9-142(1), Respondent is hereby TEMPORARILY ORDERED to cease and desist from:

(a) acquiring new mortgage servicing rights, and acquiring or originating new residential mortgages serviced by Ocwen, until Ocwen can;


(i) show it is a going concern by providing a financial analysis that encompasses all of the liabilities Ocwen currently maintains, as well as liabilities it has knowledge it will incur in the course of its business;

(ii) provide the Division with a third party audit of its Montana escrow accounts showing that borrower funds are appropriately collected, properly calculated, and disbursed accurately and timely; and make any and all corrections of whatever type necessary to remedy all mistakes, errors, and improprieties occurring due to Ocwen's actions; and

(b) Ocwen shall immediately cease and desist from any and all foreclosures in the state of Montana until all Montana escrow accounts have been correctly and properly balanced and all corrections due to mismanagement of the escrow accounts have been effected.

This Order shall not be construed as approving any act, practice, or conduct not specifically set forth herein which was, is, or may be in violation of relevant state or federal laws and regulations.

DATED *April 20, 2017*


Melanie Hall, Commissioner
Division of Banking and Financial Institutions

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of April, 2017, the undersigned caused a true and accurate copy of the foregoing Temporary Cease and Desist Order and Opportunity for Administrative Hearing to be mailed by U.S. Certified Mail # 7013 2250 0001 8485 9456 to:

Ocwen Loan Servicing, LLC
Registered Agent for Service of Process:
Corporation Service Company
26 W. Sixth Avenue
Helena, MT 59624-1691

April 20, 2017



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