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7 Attorneys for Complainant

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

11 In the Matter of:) CRMLA LICENSE No. 413-0901
12)
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) SETTLEMENT AGREEMENT
14)
15 Complainant,)
16 vs.)
17)
18 AMERIFIRST FINANCIAL, INC.)
19 Respondent.)
20)
21)

22 This Settlement Agreement (“Agreement”) is entered into between AmeriFirst Financial, Inc.
23 (“AmeriFirst”) and the Commissioner of Business Oversight, and is made with respect to the
24 following facts:

25 **RECITALS**

26 A. AmeriFirst is a corporation in good standing, duly formed and existing under the laws
27 of the State of Arizona, and authorized to conduct business in the State of California.

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1 B. AmeriFirst is a residential mortgage lender licensed by the Commissioner under the
2 California Residential Mortgage Lending Act (Fin. Code, § 50000 et seq.) (“CRMLA”). AmeriFirst
3 has its principal place of business located at 1550 East McKellips Road, Suite 117, Mesa, Arizona.
4 AmeriFirst employs mortgage loan originators and operates branch locations throughout California.

5 C. The Department of Business Oversight (“Department”), by and through the
6 Commissioner, has jurisdiction over the licensing and regulation of persons and entities engaged in
7 the business of lending under the CRMLA, including mortgage loan originators.

8 D. On or about March 20, 2015, the Commissioner served AmeriFirst, by certified mail,
9 with a Notice of Intention to Issue Orders Suspending License and Imposing Penalties (“Notice of
10 Intention”); Accusation In Support of Notice of Intention to Issue Orders Suspending License and
11 Imposing Penalties (“Accusation”); Order to Discontinue Violations Under Financial Code section
12 50321 (“Order to Discontinue Violations”); and Order to Refund Excessive Per Diem Interest
13 Charges Under Financial Code section 50504 (“Order to Refund”).

14 E. On March 27, the Commissioner timely received AmeriFirst’s notice of defense.

15 F. The Commissioner finds that this action is appropriate in the public interest and
16 consistent with the purposes fairly intended by the policy and provisions of this law.

17 G. It is the intention and desire of the parties to resolve this matter without the necessity
18 of a hearing and/or other litigation.

19 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
20 forth herein, the parties agree as follows:

21 **TERMS AND CONDITIONS**

22 1. This Agreement is entered into for the purpose of judicial economy and expediency,
23 and to avoid the expense of a hearing, and possible further court proceedings.

24 2. AmeriFirst agrees to comply with the Order to Discontinue Violations and Order to
25 Refund, both of which are deemed final orders.

26 3. AmeriFirst acknowledges its right to an administrative hearing under the CRMLA in
27 connection with the Accusation, Order to Discontinue Violations, and Order to Refund and hereby
28 waives that right to a hearing, and to any reconsideration, appeal, or other rights which may be

1 afforded to it under the CRMLA; the Administrative Procedure Act (Govt. Code, § 11370 et seq.);
2 the Code of Civil Procedure (Code of Civ. Proc., § 1 et seq.); or any other provision of law in
3 connection with these matters.

4 4. AmeriFirst agrees to provide \$288.69 in refunds to the four borrowers who were
5 brought to its attention on or about March 19, 2015, and under the Order to Refund. Evidence of the
6 refunds in the form of cancelled checks and accompanying correspondence mailed to the borrowers
7 shall be due to the Department within 30 days following execution of this Agreement.

8 5. Refunds owed to any borrower who cannot be reasonably located shall be escheated
9 by AmeriFirst to the State of California under the provisions of the Unclaimed Property Law (Code
10 of Civ. Proc., § 1500 et seq.).

11 6. AmeriFirst agrees to pay administrative penalties for violations of the CRMLA in the
12 amount of \$8,000.00, due contemporaneously upon execution of this Agreement, made payable to the
13 Department of Business Oversight, sent to the attention of Blaine A. Noblett, Senior Counsel,
14 Enforcement Division, at the Department's Los Angeles office located at 320 W. 4th Street, Suite
15 750, Los Angeles, California 90013.

16 7. In consideration of the payment of administrative penalties, the Commissioner agrees
17 that except as set forth in this Agreement, the Department will not suspend the residential mortgage
18 lender license of AmeriFirst or take any further action based on the violations cited in this
19 Agreement. Accordingly, this Agreement, which resolves the Accusation, Order to Discontinue
20 Violations, and Order to Refund, does not affect the licensing status of AmeriFirst.

21 8. AmeriFirst agrees that if it fails to meet any deadline or any requirement in Paragraph
22 4. (regarding refunds to four borrowers) or Paragraph 6. (regarding payment of administrative
23 penalties), AmeriFirst shall be immediately suspended from lending under its CRMLA license until
24 the requirement is met. AmeriFirst hereby waives any notice and hearing rights to contest the
25 immediate suspension from lending resulting from failure to comply with Paragraphs 4. and 6.,
26 above, that may be afforded under the CRMLA, the Administrative Procedure Act, the Code of Civil
27 Procedure, or any other legal provisions.

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1 9. The parties acknowledge and agree that this Agreement is intended to constitute a full,
2 final, and complete resolution of the Accusation, Order to Discontinue Violations, and Order to
3 Refund and that no further proceedings or actions will be brought by the Commissioner in connection
4 with these matters either under the CRMLA or any other provision of law, excepting any proceeding
5 or action if such proceeding or action is based on facts not presently known to the Commissioner or
6 which were knowingly concealed from the Commissioner by AmeriFirst. The parties further
7 acknowledge and agree that nothing contained in this Agreement shall operate to limit the
8 Commissioner's ability to assist any other agency (city, county, state or federal) with any prosecution
9 (administrative, civil, or criminal) brought by any such agency against AmeriFirst or any other person
10 based on any of the activities alleged in these matters or otherwise.

11 10. This Agreement may be revoked and the Commissioner may pursue any and all
12 remedies available under law against AmeriFirst, if the Commissioner later discovers that the
13 company knowingly or willfully withheld information used and relied upon in this Agreement.

14 11. Each of the parties represents, warrants, and agrees that it has received independent
15 advice from their attorneys and/or representatives with respect to the advisability of executing this
16 Agreement.

17 12. Each of the parties represents, warrants, and agrees that in executing this Agreement
18 they have relied solely on the statements set forth herein and the advice of their own counsel. Each of
19 the parties further represents, warrants, and agrees that in executing this Agreement it has placed no
20 reliance on any statement, representation, or promise of any other party, or any other person or entity
21 not expressly set forth in this Agreement, or on the failure of any party or any other person or entity
22 to make any statement, representation or disclosure of anything whatsoever. The parties have
23 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to
24 execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret,
25 supplement, or contradict the terms of the Agreement.

26 13. This Agreement is the final written expression and the complete and exclusive
27 statement of all agreements, conditions, promises, representations, and covenants between the parties
28 with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements,

1 negotiations, representations, understandings, and discussions between and among the parties, their
2 respective representatives, and any other person or entity, with respect to the subject matter covered
3 by the Agreement.

4 14. In that the parties have had an opportunity to draft, review, and edit the language of
5 this Agreement, no presumption for or against any party arising out of drafting all or any part of this
6 Agreement will be applied in any action relating to, connected to, or involving this Agreement.
7 Accordingly, the parties waive the benefit of Civil Code section 1654 and any successor or amended
8 statute, providing that in cases of uncertainty, language of a contract should be interpreted most
9 strongly against the party who caused the uncertainty to exist.

10 15. AmeriFirst enters into this Agreement voluntarily and without coercion and
11 acknowledges that no promises, threats, or assurances have been made by the Commissioner or any
12 officer, or agent thereof, about this Agreement.

13 16. The waiver of any provision of this Agreement shall not operate to waive any other
14 provision set forth herein, and any waiver, amendment, and/or change to the terms of this Agreement
15 must be in writing and signed by the parties.

16 17. This Agreement shall not become effective until it is signed and delivered by all
17 parties.

18 18. The parties agree that this Agreement may be executed in one or more separate
19 counterparts, each of which, when so executed, shall be deemed an original. A facsimile or scanned
20 signature shall be deemed the same as an original signature. Such counterparts together constitute one
21 document.

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1 19. Each signator hereto covenants that he/she possesses all necessary capacity and
2 authority to sign and enter into this Agreement.

3 Dated: 4/21/15

JAN LYNN OWEN
Commissioner of Business Oversight

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5 By: _____
6 MARY ANN SMITH
7 Deputy Commissioner
8 Enforcement Division

9 Dated: 4/17/15

AMERIFIRST FINANCIAL, INC.

10
11 By: _____
12 ERIC M. BOWLBY,
13 President and Chief Executive Officer

14 APPROVED AS TO FORM:

15 AMERIFIRST FINANCIAL, INC.

16
17 By: _____
18 GERMÁN A. SALAZAR,
19 Vice President, General Counsel

20 JAN LYNN OWEN
21 Commissioner of Business Oversight

22
23 By: _____
24 BLAINE A. NOBLETT
25 Senior Counsel
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