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

11 In the Matter of:) OAH CASE NO. 2017060026
12)
13 THE COMMISSIONER OF BUSINESS) CRMLA LICENSE NO. 413-0901
OVERSIGHT,)
14) SETTLEMENT AGREEMENT
15 Complainant,)
16 v.) Hearing Dates: December 6-7, 2017
17) Hearing Time: 9:00 a.m.
18 AMERIFIRST FINANCIAL, INC.,)
19 Respondent.)
20)
21)

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

24 RECITALS

25 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
26 entities engaged in the business of lending and servicing residential mortgage loans under the
27 California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.).
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1 B. AmeriFirst is a residential mortgage lender licensed by the Commissioner (CRMLA
2 License No. 413-0901). AmeriFirst has its principal place of business located at 1550 E. McKellips
3 Road, Suite 117, Mesa, Arizona. AmeriFirst operates multiple branch offices and employs mortgage
4 loan originators in California.

5 C. Erik Lutz is the President and a control person of AmeriFirst and, as such, is
6 authorized to enter into this Settlement Agreement on behalf of AmeriFirst.

7 D. On May 20, 2014, in connection with the Commissioner’s 2014 examination of
8 AmeriFirst, AmeriFirst advised the Commissioner in item # 5 of its Annual Examination
9 Questionnaire that AmeriFirst owned mortgage servicing rights related to California loans, making
10 it a “Master Servicer,” with actual servicing performed by a licensed subservicer.

11 E. On or about March 12, 2015, the Commissioner commenced an enforcement action
12 against AmeriFirst based on certain alleged regulatory violations. The Commissioner did not allege,
13 in that action, that AmeriFirst was engaged in the business of servicing California mortgage loans
14 without a CRMLA license.

15 F. The March 12, 2015 enforcement action was settled by a written settlement
16 agreement signed April 21, 2015, which contained the following provision: “The parties
17 acknowledge and agree that this Agreement is intended to constitute a full, final, and complete
18 resolution of the Accusation, Order to Discontinue Violations, and Order to Refund and that no
19 further proceedings or actions will be brought by the Commissioner in connection with these
20 matters either under the CRMLA or any other provision of law, excepting any proceeding or action
21 if such proceeding or action is based on facts not presently known to the Commissioner or which
22 were knowingly concealed from the Commissioner by AmeriFirst.”

23 G. On May 14, 2015, the Commissioner notified AmeriFirst, through the Nationwide
24 Mortgage Licensing System and Registry (NMLS) that AmeriFirst had engaged in the business of
25 servicing California mortgage loans without a CRMLA servicer license.

26 H. On June 12, 2015, AmeriFirst submitted to the Commissioner, via e-mail, its
27 application to add servicing authority to its existing CRMLA lenders license.

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1 I. On November 9, 2016, the Commissioner determined AmeriFirst’s application was
2 incomplete and informed the company of the deficiency by posting a license item to the NMLS,
3 which requested AmeriFirst submit a loss mitigation policy that conformed to Assembly Bill 278
4 (2012), better known as the California Homeowners Bill of Rights (HBOR). The Commissioner also
5 requested that AmeriFirst provide a copy of its subservicer oversight policies and procedures.

6 J. The company responded on November 9 and December 19, 2016, providing the
7 Commissioner with copies of the items the Department had requested.

8 K. The Commissioner has not yet approved AmeriFirst’s residential mortgage loan
9 servicing application.

10 L. The Commissioner is of the opinion that during the period of at least January
11 2014 through the date hereof, AmeriFirst has engaged in the business of servicing residential
12 mortgage loans in this state without a servicer license in violation of Financial Code section 50002,
13 subdivision (a).

14 M. On the basis of the Commissioner’s determination that AmeriFirst engaged in the
15 business of servicing residential mortgage loans in this state without a servicer license, on May 4,
16 2017, the Commissioner issued a Notice of Intention to Impose Penalties under Financial Code
17 section 50513, subdivision (b); Accusation; and accompanying documents (collectively, the
18 Accusation).

19 N. AmeriFirst maintains that, prior to the May 4, 2015 notice from the Commissioner,
20 AmeriFirst operated under its informed and good faith belief that its CRMLA license, issued
21 pursuant to the terms of Financial Code section 50002, subdivision (a), permitted its ownership of
22 mortgage servicing rights without further endorsement or additional license.

23 O. AmeriFirst timely filed its Notice of Defense, dated May 18, 2017, requesting an
24 administrative hearing regarding the Accusation, which is currently set for trial before the Office of
25 Administrative Hearings on December 6 and 7, 2017.

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1 P. The Commissioner finds that entering into this Settlement Agreement is in the public
2 interest, protects consumers, and is consistent with the purposes fairly intended by the policies and
3 provisions of the CRMLA.

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

6 TERMS AND CONDITIONS

7 1. Purpose. It is the intention and desire of the parties to resolve this matter without the
8 necessity of a hearing or other litigation for the purpose of judicial economy and expediency and to
9 avoid the expense of a hearing and possible further court proceedings.

10 2. Waiver of Hearing Rights. The Parties agree that this Settlement Agreement shall
11 have the effect of withdrawing all requests for an administrative hearing on the matter set forth
12 herein. AmeriFirst acknowledges its right to an administrative hearing under the CRMLA in
13 connection with the Accusation and hereby waives such right to a hearing and to any
14 reconsideration, appeal, or other rights which may be afforded it under the CRMLA, the
15 Administrative Procedure Act (APA) (Gov. Code, § 11370 et seq.), the Code of Civil Procedure
16 (CCP) (Code Civ. Proc., § 1 et seq.), or any provision of law in connection with these matters.

17 3. Acknowledgment. The Parties acknowledge that the Commissioner issued an
18 Accusation dated May 4, 2017, in which the Commissioner alleges the company engaged in the
19 business of servicing residential mortgage loans in this state without a license from the
20 Commissioner in violation of Financial Code section 50002, subdivision (a), as set forth above, and
21 that AmeriFirst has timely filed a Notice of Defense, but wish to resolve their dispute by entering
22 into this Settlement Agreement.

23 4. Administrative Penalty. As part of this Settlement Agreement AmeriFirst agrees to
24 pay an administrative penalty of \$9,000.00 (the Penalty) and said amount has been paid.

25 5. Servicing Authority. The Commissioner hereby acknowledges that the residential
26 mortgage loan servicer application filed by AmeriFirst on June 12, 2015 is ready to be approved,
27 and the Commissioner hereby agrees to approve it.

28 6. Full and Final Settlement. The parties hereby acknowledge and agree that this

1 Settlement Agreement is intended to constitute a full, final, and complete resolution of AmeriFirst's
2 alleged violations of the CRMLA as identified herein. No further proceedings or actions will be
3 brought by the Commissioner in connection with these matters under the CRMLA or any other
4 provision of law, excepting any proceeding to enforce compliance with the terms of this Settlement
5 Agreement or action if such proceeding is based upon discovery of new and further violations of the
6 CRMLA which do not form the basis for this Settlement Agreement or which AmeriFirst
7 knowingly concealed from the Commissioner.

8 7. Commissioner's Duties. The parties further acknowledge and agree that nothing in
9 this Settlement Agreement shall limit the Commissioner's ability to assist any other agency (city,
10 county, state, or federal) with any prosecution, administrative, civil, or criminal, brought by any
11 such agency against AmeriFirst or any other person based upon any of the activities alleged in these
12 matters or otherwise.

13 8. Binding. This Settlement Agreement is binding on all heirs, assigns, or successors in
14 interest.

15 9. Third Party Actions. It is the intent and understanding between the parties that this
16 Settlement Agreement does not create any private rights or remedies against AmeriFirst, create any
17 liability for AmeriFirst, or limit defenses of AmeriFirst with respect to any person or entity not a
18 party to this agreement.

19 10. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
20 has received independent advice from its attorney(s) or representative(s) with respect to the
21 advisability of executing this Settlement Agreement.

22 11. Counterparts. The parties agree that this Settlement Agreement may be executed in
23 one or more separate counterparts, each of which shall be deemed an original when so executed.
24 Such counterparts shall together constitute and be one and the same instrument.

25 12. Waiver, Modification, and Qualified Integration. The waiver of any provision of this
26 Settlement Agreement shall not operate to waive any other provision set forth herein. No waiver,
27 amendment, or modification of this Settlement Agreement shall be valid or binding to any extent
28 unless it is in writing and signed by all the parties affected by it.

1 13. Headings and Governing Law. The headings to the paragraphs of this Settlement
2 Agreement are inserted for convenience only and will not be deemed a part hereof or affect the
3 construction or interpretation of the provisions hereof. This Settlement Agreement shall be
4 construed and enforced in accordance with and governed by California law.

5 14. Full Integration. Each of the parties represents, warrants, and agrees that in executing
6 this Settlement Agreement it has relied solely on the statements set forth herein and the advice of its
7 own counsel. Each of the parties further represents, warrants, and agrees that in executing this
8 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any
9 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
10 party or any other person or entity to make any statement, representation, or disclosure of anything
11 whatsoever. The parties have included this clause (1) to preclude any claim that any party was in
12 any way fraudulently induced to execute this Settlement Agreement and (2) to preclude the
13 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
14 Settlement Agreement.

15 15. Presumption from Drafting. In that the parties have had the opportunity to draft,
16 review, and edit the language of this Settlement Agreement, no presumption for or against any party
17 arising out of drafting all or any part of this Settlement Agreement will be applied in any action
18 relating to, connected to, or involving this Settlement Agreement. Accordingly, the parties waive
19 the benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases
20 of uncertainty, language of a contract should be interpreted most strongly against the party that
21 caused the uncertainty to exist.

22 16. Voluntary Agreement. AmeriFirst enters into this Settlement Agreement voluntarily
23 and without coercion and acknowledges that no promises, threats, or assurances have been made by
24 the Commissioner, or any officer or agent thereof, about this Settlement Agreement.

25 17. Effective Date. This Settlement Agreement shall become final and effective when
26 signed by all parties and delivered by the Commissioner's agent via e-mail to AmeriFirst's counsel
27 at mpfeifer@pfeiferlaw.com.

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1 18. Notice. Any notices required under this Settlement Agreement shall be provided to
2 each party at the following addresses:

3 If to Respondent to: AmeriFirst Financial, Inc., Legal Dept.
4 40 E. Rio Salado Pkwy
5 Suite 445
6 Tempe, Arizona 85281
7 Attention: General Counsel

8 If to the Commissioner to: Blaine A. Noblett, Senior Counsel
9 Department of Business Oversight
10 320 West 4th Street, Suite 750
11 Los Angeles, California 90013-2344

12 19. Authority to Execute. Each signatory hereto covenants that he or she possesses all
13 necessary capacity and authority to sign and enter into this Settlement Agreement.

14 IN WITNESS WHEREOF, the parties hereto have approved and executed this Settlement
15 Agreement on the dates set forth opposite their respective signatures.

16 Dated: 8/31/17 JAN LYNN OWEN
17 Commissioner of Business Oversight

18 By _____
19 MARY ANN SMITH
20 Deputy Commissioner
21 Enforcement Division

22 Dated: 8/30/17 AMERIFIRST FINANCIAL, INC.

23 By _____
24 ERIK LUTZ, President
25 On behalf of AmeriFirst Financial, Inc.

1 Approved as to Form and Content

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By _____

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Michael R. Pfeifer, Esq.

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Pfeifer & de la Mora, LLP

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Attorneys on behalf of AmeriFirst Financial, Inc.

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