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

11 In the Matter of: ) CRMLA LICENSE No. 413-0574  
12 )  
13 THE COMMISSIONER OF BUSINESS ) ACCUSATION  
OVERSIGHT, )  
14 )  
15 Complainant, )  
16 vs. )  
17 )  
18 AMERISAVE MORTGAGE CORPORATION, )  
19 Respondent. )  
20 )

21 Jan Lynn Owen, the Commissioner of Business Oversight (“Commissioner”), is informed and  
22 believes, and based upon such information and belief, alleges and charges Respondent as follows:

23 I

24 **Jurisdiction and Venue**

25 1. The Commissioner brings this action under the provisions of Financial Code section  
26 50513.

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2. The Commissioner is authorized to administer and enforce the provisions of the California Residential Mortgage Lending Act (Fin. Code, § 50000 et seq.) (“CRMLA”) and the rules promulgated under title 10 of the California Code of Regulations (“CCR”) that regulate the business and activities of residential mortgage lenders and mortgage loan servicers.

II

**Statement of Facts**

3. Amerisave Mortgage Corporation, doing business as Celerity Home Loans (“Amerisave”), holds a residential mortgage lender license issued by the Commissioner under the CRMLA. The company’s principal place of business is located at 3525 Piedmont Road NE, 8 Piedmont Center, Suite 600, Atlanta, Georgia. Amerisave has branch office locations under its CRMLA license located in California and elsewhere. The company employs mortgage loan originators in its CRMLA business.

4. Under Financial Code section 50002, licensees are prohibited from engaging in the business of servicing residential mortgage loans in California without first obtaining a license from the Commissioner. Section 50003, subdivision (x) of the Financial Code defines loan servicing as:

[R]eceiving more than three installment payments of principal, interest, or other amounts placed in escrow, pursuant to the terms of a mortgage loan and performing services by a licensee relating to that receipt or the enforcement of its receipt, on behalf of the holder of the note evidencing that loan.

5. On or about March 20, 2013, the Commissioner notified Amerisave, through the Nationwide Mortgage Licensing System and Registry (“NMLS”), that it had engaged in residential mortgage loan servicing without a license by posting the following item:

Included in the company’s 2012 audited financial statements is an account called “Mortgage Servicing Rights[,]” which indicate[s] the company is engaged in servicing activity that may possibly include the state of California. If the company is indeed conducting such activity in CA then it must contact [the Department’s representative] to update its RML license. Currently, our records show the company is a lender.

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1           6.      On or about April 2, 2013, Amerisave applied to add residential mortgage loan  
 2 servicing authority to its CRMLA license by submitting a CRMLA Amendment to the  
 3 Commissioner.

4           7.      But the company’s residential mortgage loan servicing application was incomplete.  
 5 The loss mitigation procedures submitted with Amerisave’s application were those of its servicer,  
 6 Dovenmuehle Mortgage, Inc., and were marked confidential. On or about August 24, 2015, the  
 7 Commissioner notified the company, through NMLS, that it needed to submit a non-confidential loss  
 8 mitigation policy. Amerisave complied with the Commissioner’s request.

9           8.      On or about September 3, 2015, the Commissioner posted a license item in NMLS  
 10 requesting Amerisave submit a loss mitigation policy that conformed to Assembly Bill 278 (2012),  
 11 better known as the California Homeowners Bill of Rights (“HBOR”). The company responded to the  
 12 Commissioner’s request on or about November 3, 2015, providing a copy of its revised loss  
 13 mitigation policy.

14           9.      The Commissioner has not yet approved Amerisave’s residential mortgage loan  
 15 servicing application.

16           10.     A review of the company’s CRMLA annual reports for 2014 and 2015 disclosed  
 17 servicing activity. Amerisave’s Mortgage Call Reports (“MCRs”), filed in NMLS, reflect the  
 18 servicing of approximately 6,005 loans as of December 31, 2014 and 5,608 loans as of December 31,  
 19 2015.

### III

#### Applicable Statutes

22           11.     Financial Code section 50002 provides:

23                   (a) No person shall engage in the business of making residential  
 24 mortgage loans or servicing residential mortgage loans, in this state,  
 25 without first obtaining a license from the commissioner in accordance  
 26 with the requirements of Chapter 2 (commencing with Section 50120)  
 27 or Chapter 3 (commencing with Section 50130), and any rules  
 28 promulgated by the commissioner under this law, unless a person or  
 transaction is excepted from a definition or exempt from licensure by a  
 provision of this law or a rule of the commissioner.

1 (b)(1) An employee of a licensee or of a person exempt from licensure  
2 is not required to be licensed when acting within the scope of his or her  
3 employment and shall be exempt from any other law from which his or  
4 her employer is exempt, except that an individual who meets the  
5 definition of a mortgage loan originator in Section 50003.5 shall be  
6 subject to this division.

7 (2) A person exempt from this division may apply to the commissioner  
8 for an exempt company registration for the purpose of sponsoring one  
9 or more individuals required to be licensed as mortgage loan  
10 originators as defined in Section 50003.5 and pursuant to the SAFE  
11 Act.

12 (3) An exempt person applying under the exempt company registration  
13 procedure shall comply with all rules and orders that the commissioner  
14 deems necessary to ensure compliance with the SAFE Act and shall  
15 pay an annual registration fee established by the commissioner.

16 (c) The following persons are exempt from subdivision (a):

17 (1) Any bank, trust company, insurance company, or industrial loan  
18 company doing business under the authority of, or in accordance with,  
19 a license, certificate, or charter issued by the United States or any state,  
20 district, territory, or commonwealth of the United States that is  
21 authorized to transact business in this state.

22 (2) A federally chartered savings and loan association, federal savings  
23 bank, or federal credit union that is authorized to transact business in  
24 this state.

25 (3) A savings and loan association, savings bank, or credit union  
26 organized under the laws of this or any other state that is authorized to  
27 transact business in this state.

28 (4) A person engaged solely in business, commercial, or agricultural  
mortgage lending.

(5) A wholly owned service corporation of a savings and loan  
association or savings bank organized under the laws of this state or the  
wholly owned service corporation of a federally chartered savings and  
loan association or savings bank that is authorized to transact business  
in this state.

(6) An agency or other instrumentality of the federal government, or  
state or municipal government.

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(7) An employee or employer pension plan making residential mortgage loans only to its participants, or a person making those loans only to its employees or the employees of a holding company, or an owner who controls that person, affiliate, or subsidiary of that person.

(8) A person acting in a fiduciary capacity conferred by the authority of a court.

(9) A real estate broker licensed under California law, when making, arranging, selling, or servicing a residential loan.

(10) A California finance lender or broker licensed under Division 9 (commencing with Section 22000), when acting under the authority of that license.

(11) A trustee under a deed of trust pursuant to the Civil Code, when collecting delinquent loan payments, interest, or other loan amounts, or performing other acts in a judicial or nonjudicial foreclosure proceeding.

(12) A mortgage loan originator who has obtained a license under Chapter 3.5 (commencing with Section 50140), provided that the mortgage loan originator is employed by a residential mortgage lender or servicer.

(13) A registered mortgage loan originator described in subdivision (e).

(d) An individual, unless specifically exempted under subdivision (e), shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license in accordance with the requirements of Chapter 3.5 (commencing with Section 50140) and any rules promulgated by the commissioner under that chapter. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(e) A registered mortgage loan originator is exempt from licensure under subdivisions (a) and (d), when he or she is employed by a depository institution, a subsidiary of a depository institution that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration.

(f) A loan processor or underwriter who is an independent contractor employed by a residential mortgage lender or servicer may not perform the activities of a loan processor or underwriter under this division unless the independent contractor loan processor or underwriter obtains and maintains a license under Section 50120.

12. 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 lender or servicer 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 residential mortgage lender or servicer 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 residential mortgage lender or servicer licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.

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

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

**IV**

**Prayer**

The Commissioner finds that, by reason of the foregoing, Amerisave has violated Financial Code sections 50002, and based thereon, grounds exist to assess penalties against Amerisave under Financial Code section 50513, subdivision (b).

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WHEREFORE, IT IS PRAYED that:

Under Financial Code section 50513, subdivision (b), penalties be levied against Amerisave for at least 5,608 violations of Financial Code section 50002, engaging in unlicensed loan servicing activities, according to proof, but in an amount of at least \$200.00 per violation.

Dated: August 9, 2016  
Los Angeles, CA

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
Blaine A. Noblett  
Senior Counsel  
Enforcement Division