

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN ROONEY
Assistant Chief Counsel
3 BLAINE A. NOBLETT (State Bar No. 235612)
Senior Counsel
4 Department of Business Oversight
320 West 4th Street, Suite 750
5 Los Angeles, CA 90013-2344
Telephone: (213) 576-1396
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

11 In the Matter of:) OAH CASE No. 2016090368
12)
13 THE COMMISSIONER OF BUSINESS) CRMLA LICENSE No. 413-0574
OVERSIGHT,)
14) SETTLEMENT AGREEMENT
15 Complainant,)
16 vs.) Hearing Dates: March 13-17, 2017
17) Hearing Time: 9:00 a.m.
18 AMERISAVE MORTGAGE CORPORATION,) Judge: Thomas Lucero
19)
20 Respondent.)
21)

21 This Settlement Agreement is entered into between the Commissioner of Business Oversight
22 (Commissioner) and AmeriSave Mortgage Corporation (AmeriSave) and is made with respect to
23 the 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.).
28

1 B. AmeriSave is a residential mortgage lender licensed by the Commissioner since July
2 1, 2004 (CRMLA License No. 413-0574). AmeriSave has its principal place of business located at
3 3525 Piedmont Road NE, 8 Piedmont Center, Suite 600, Atlanta, Georgia 30305. AmeriSave
4 operates multiple branch offices and employs mortgage loan originators in California.

5 C. Barbara Johnson is the Chief Operating Officer and a control person of AmeriSave
6 and, as such, is authorized to enter into this Settlement Agreement on behalf of AmeriSave.

7 D. On or about March 20, 2013, the Commissioner posted a license item on the
8 Nationwide Mortgage Licensing System and Registry (NMLS) informing AmeriSave that its 2012
9 annual report disclosed the company had engaged in the business of servicing California mortgage
10 loans without a CRMLA servicer license.

11 E. On or about April 2, 2013, AmeriSave applied to add residential mortgage loan
12 servicing authority to its CRMLA license by submitting a CRMLA Amendment to the
13 Commissioner. Based on written assurances from the Department, AmeriSave believed that it was in
14 full compliance with the Commissioner's request.

15 F. On August 24, 2015, and again on September 3, 2015, the Commissioner posted
16 license items on the NMLS, flagging alleged deficiencies related to AmeriSave's application for
17 servicing authority. AmeriSave submitted timely and satisfactory responses to each of these
18 deficiencies and continued to believe that it was in full compliance with the Commissioner's requests
19 and authorized by the Commissioner to continue its current practices.

20 G. The Commissioner has not yet approved AmeriSave's residential mortgage loan
21 servicing application although AmeriSave believed the Commissioner had approved AmeriSave's
22 application.

23 H. The Commissioner is of the opinion that during the period of at least January
24 2014 through the date hereof, AmeriSave has engaged in the business of servicing residential
25 mortgage loans in this state without a servicer license in violation of Financial Code section 50002,
26 subdivision (a). Based on the Department's written assurances and inaction over a period of years,
27 AmeriSave believed at all relevant times that it was duly authorized to carry out the activities in
28 which it was engaged.

1 I. On the basis of the Commissioner’s determination that AmeriSave engaged in the
2 business of servicing residential mortgage loans in this state without a servicer license, on August 9,
3 2016, the Commissioner issued a Notice of Intention to Impose Penalties under Financial Code
4 section 50513, subdivision (b); Accusation; and accompanying documents (collectively
5 Accusation). A true and correct copy of the Accusation is attached and incorporated herein as
6 **Exhibit A.**

7 J. AmeriSave timely filed its Notice of Defense, dated August 31, 2016. In its Notice of
8 Defense, AmeriSave denied that the Commissioner is entitled to any relief, and requested an
9 administrative hearing regarding the Accusation, which is currently set for trial before the Office of
10 Administrative Hearings on March 13 through 17, 2017. A true and correct copy of AmeriSave’s
11 Notice of Defense is attached and incorporated herein as **Exhibit B.**

12 K. The Commissioner finds that entering into this Settlement Agreement is in the public
13 interest, protects consumers, and is consistent with the purposes fairly intended by the policies and
14 provisions of the CRMLA.

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

17 TERMS AND CONDITIONS

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

21 2. Waiver of Hearing Rights. AmeriSave agrees that this Settlement Agreement shall
22 have the effect of withdrawing its request for an administrative hearing on the matter set forth
23 herein. AmeriSave acknowledges its right to an administrative hearing under the CRMLA in
24 connection with the Accusation and hereby waives such right to a hearing and to any
25 reconsideration, appeal, or other rights which may be afforded it under the CRMLA, the
26 Administrative Procedure Act (APA) (Gov. Code, § 11370 et seq.), the Code of Civil Procedure
27 (CCP) (Code Civ. Proc., § 1 et seq.), or any provision of law in connection with these matters.

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1 3. Acknowledgment. AmeriSave acknowledges that the Commissioner issued an
2 Accusation dated August 9, 2016, in which the Commissioner alleges the company engaged in the
3 business of servicing residential mortgage loans in this state without a license from the
4 Commissioner in violation of Financial Code section 50002, subdivision (a), as set forth above.

5 4. Administrative Fee. Under Financial Code section 50513, AmeriSave agrees to pay
6 an administrative fee of \$50,000.00 (the "Fee"). The Fee shall be due within 48 hours of execution
7 of this Settlement Agreement and made payable in the form of a cashier's check or Automated
8 Clearing House deposit to the "Department of Business Oversight," and transmitted to the attention
9 of Accounting – Enforcement Division, Department of Business Oversight, 1515 K Street, Suite
10 200, Sacramento, California, 95814. Notice of all payments shall be sent to Blaine A. Noblett,
11 Senior Counsel, Department of Business Oversight, 320 West 4th Street, Suite 750, Los Angeles,
12 California 90013.

13 5. Servicing Authority. The Commissioner hereby acknowledges that the residential
14 mortgage loan servicer application filed by AmeriSave on or about April 2, 2013 is ready to be
15 approved, and the Commissioner hereby agrees to approve it concurrently with the execution of this
16 agreement.

17 6. Remedy for Breach. AmeriSave acknowledges that failure to comply with the
18 payment term of this Settlement Agreement shall be deemed a breach and cause for the
19 Commissioner to immediately suspend any licenses held by or deny any pending application(s) of
20 AmeriSave, its successors, and assigns, by whatever names they might be known. AmeriSave hereby
21 waives any notice and hearing rights to contest such suspension(s) or denial(s) which may be
22 afforded under the CRMLA, APA, CCP, or any other provision of law in connection with this
23 matter.

24 7. Full and Final Settlement. The parties hereby acknowledge and agree that this
25 Settlement Agreement is intended to constitute a full, final, and complete resolution of AmeriSave's
26 alleged violations of the CRMLA as identified herein. No further proceedings or actions will be
27 brought by the Commissioner in connection with these matters under the CRMLA or any other
28 provision of law, excepting any proceeding to enforce compliance with the terms of this Settlement

1 Agreement or action if such proceeding is based upon discovery of new and further violations of the
2 CRMLA which do not form the basis for this Settlement Agreement or which AmeriSave
3 knowingly concealed from the Commissioner.

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

9 9. Binding. This Settlement Agreement is binding on all heirs, assigns, or successors in
10 interest.

11 10. Third Party Actions. It is the intent and understanding between the parties that this
12 Settlement Agreement does not create any private rights or remedies against AmeriSave, create any
13 liability for AmeriSave, or limit defenses of AmeriSave for any person or entity not a party to this
14 agreement.

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

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

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

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

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

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

18 17. Voluntary Agreement. AmeriSave enters into this Settlement Agreement voluntarily
19 and without coercion and acknowledges that no promises, threats, or assurances have been made by
20 the Commissioner, or any officer or agent thereof, about this Settlement Agreement.

21 18. Effective Date. This Settlement Agreement shall become final and effective when
22 signed by all parties and delivered by the Commissioner's agent via e-mail to AmeriSave's counsel
23 at flevin@BuckleySandler.com.

24 19. Notice. Any notices required under this Settlement Agreement shall be provided to
25 each party at the following addresses:

26 If to Respondent to:	AmeriSave Mortgage Corporation 3525 Piedmont Road NE 27 8 Piedmont Center, Suite 600 28 Atlanta, Georgia 30305
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If to the Commissioner to: Blaine A. Noblett, Senior Counsel
Department of Business Oversight
320 West 4th Street, Suite 750
Los Angeles, California 90026

20. Authority to Execute. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement.

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

Dated: 2/28/17 JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 2/27/17 AMERISAVE MORTGAGE CORPORATION

Dated: 2/27/17 By _____
_____, Title
On behalf of AmeriSave Mortgage Corporation

Approved as to Form and Content

By _____
Fredrick Levin, Esq.
BuckleySandler LLP
Attorneys on behalf of AmeriSave Mortgage Corporation