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

11 In the Matter of THE COMMISSIONER OF) File No. 413-0732
12 BUSINESS OVERSIGHT OF THE STATE OF) NMLS ID No. 3117
13 CALIFORNIA,)
)
14 Complainant,) SETTLEMENT AGREEMENT
)
15 vs.)
16)
17 CITY FIRST MORTGAGE SERVICES, LLC,)
18 ALSO DOING BUSINESS AS CITY 1st)
19 MORTGAGE AND CITY 1st MORTGAGE)
SERVICES)
)
20 Respondent.)
21)

22 This Settlement Agreement is entered into between City First Mortgage Services, LLC, also
23 doing business as City 1st Mortgage and City 1st Mortgage Services (hereafter “City First”), and the
24 Commissioner of Business Oversight of the State of California (“Commissioner” or “Complainant”),
25 and is made with respect to the following facts:
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RECITALS

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2 A. City First Mortgage Services, LLC, also doing business as City 1st Mortgage and City
3 1st Mortgage Services (hereafter “Respondent”), is a limited liability company in good standing, duly
4 formed, and existing pursuant to the laws of the State of Utah, with its principal place of business
5 located at 750 South Main Street, Suite 104, Bountiful, Utah, 84010.

6 B. Respondent is a residential mortgage lender and servicer licensed by the California
7 Department of Business Oversight (“Department”)¹ pursuant to the California Residential Mortgage
8 Lending Act (“CRMLA”) (Fin. Code, §§ 50000 et seq.). Under its CRMLA license (#413-0732),
9 Respondent currently has 29 branch offices in California and other states (NMLS ID# 3117).
10 Respondent employs mortgage loan originators in its CRMLA business.

11 C. The Department, through the Commissioner, has jurisdiction over the licensing and
12 regulation of persons and entities engaged in the business of lending and/or servicing residential
13 mortgage loans pursuant to the CRMLA, including mortgage loan originators.

14 D. On June 21, 2013, Respondent submitted to the Department a self-audit report that
15 identified per diem interest overcharged to California borrowers for 226 out of 961, or approximately 23
16 percent, of loans funded during the period of August 5, 2010 to January 8, 2013.

17 E. On August 5, 2013, the Commissioner served Respondent through certified mail the
18 following documents: Notice of Intent to Issue Orders and Accusation in Support of Notice of
19 Intention to Issue Orders Suspending Residential Mortgage Lender and Servicer License and
20 Imposing Penalties dated July 31, 2013 (“Accusation”); Order to Discontinue Violations Pursuant to
21 Financial Code Section 50321 and Refund Excessive Per Diem Interest Charges Pursuant to Financial
22 Code Section 50504 dated July 31, 2013 (“Order”); Statement of Facts In Support of Order to
23 Discontinue Violations Pursuant to California Financial Code Section 50321 and Refund Excessive
24 Per Diem Interest Charges Pursuant to Financial Code Section 50504 and Notice of Intent to Make
25 Order Final dated July 31, 2013; and, accompanying documents (collectively “Administrative
26 Action”).

27
28 ¹ As of July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to form the Department of Business Oversight.

1 F. On August 21, 2013, Respondent timely submitted to the Commissioner a Notice of
2 Defense, requesting a hearing regarding the Administrative Action, which has been set in this matter
3 for May 27-28, 2014 in Sacramento, California.

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

6 H. Respondent enters into this Settlement Agreement without admitting or denying any of
7 the findings contained within the Administrative Action.

8 I. The Commissioner finds that this action is appropriate, in the public interest, and
9 consistent with the purposes fairly intended by the policy and provisions of this law.

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

12 **TERMS AND CONDITIONS**

13 1. Purpose. The purpose of this Settlement Agreement is to resolve the charges alleged in the
14 Administrative Action in a manner that avoids the expense of a hearing and possible further court
15 proceedings, is in the public interest, protects consumers, and is consistent with the purposes, policies
16 and provisions of the CRMLA.

17 2. Finality of Order. Respondent hereby agrees to comply with the Commissioner's Order
18 and, further, stipulates that the Order is hereby deemed final.

19 3. Waiver of Hearing Rights. Respondent acknowledges that the Commissioner is ready,
20 willing and able to proceed to an administrative hearing on the charges contained in the
21 Administrative Action, and Respondent hereby waives the right to a hearing, and to any
22 reconsideration, appeal, or other right to review which may be afforded pursuant to the CRMLA, the
23 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
24 provision of law; and by waiving such rights, Respondent effectively withdraws its hearing request
25 and consents to the Settlement Agreement becoming final.

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1 4. Independent Auditor. Respondent agrees to engage an independent certified public
2 accountant(s) or independent certified accounting firm that is reasonably acceptable to the
3 Department (in each case, the “Independent Auditor”) to conduct an internal audit of Respondent's
4 loan information in order to provide the report set forth in Paragraph 5 of this Settlement Agreement,
5 as follows:

6 a. The first audit report shall cover all California loans originated and funded by
7 Respondent from August 5, 2010 to April 30, 2014, and shall be submitted to the Department by no
8 later than 90 calendar days after the execution of this Settlement Agreement.

9 b. The second audit report shall cover all California loans originated and funded by
10 Respondent from May 1, 2014 through July 31, 2014, and shall be submitted to the Department by no
11 later than October 31, 2014.

12 c. The third audit report shall cover all California loans originated and funded by
13 Respondent from August 1, 2014 through October 31, 2014, and shall be submitted to the
14 Department by no later than January 31, 2015.

15 d. The fourth audit report shall cover all California loans originated and funded by
16 Respondent from November 1, 2014 through January 31, 2015, and shall be submitted to the
17 Department by no later than April 30, 2015.

18 e. The fifth audit report shall cover all California loans originated and funded by
19 Respondent from February 1, 2015 through April 30, 2015, and shall be submitted to the Department
20 by no later than July 31, 2015.

21 5. Independent Auditor Reports. Each report of the Independent Auditor shall include, at a
22 minimum, the following: (i) the total number of loans originated and funded by Respondent during
23 the periods specified in Paragraph 4 above; (ii) the number of loans with per diem interest charges in
24 excess of the amount permitted by California Financial Code section 50204(o) and California Civil
25 Code section 2948.5; and (iii) for each and every loan, the borrower loan number, name, address,
26 loan amount, loan date, per diem interest charged, per diem interest that should have been charged
27 under California Financial Code section 50204(o) and California Civil Code section 2948.5,
28 overcharge amount (if any), date of refund (if applicable), and evidence of refund (if applicable) in

1 the form of a cancelled check and accompanying correspondence mailed to the borrower pursuant to
2 Paragraph 6 below.

3 6. Payment of Refunds. Respondent agrees to refund any amounts collected in excess of
4 amounts permitted by the CRMLA, plus interest at the rate of 10 percent per annum, as follows:

5 (a) Refunds shall be mailed to all of the 226 overcharged borrowers identified in
6 Respondent's June 2013 internal audit, including without limitation any borrowers for whom
7 documentation was missing or incomplete, no later than ten (10) business days after the effective date
8 of this Settlement Agreement, as such date is defined in Paragraph 26;

9 (b) For additional overcharges identified pursuant to the Independent Auditor's reports
10 described in Paragraph 4, subdivisions (a) through (e) above, refunds shall be sent by certified mail to
11 the last known address of each borrower no later than ten (10) business days following the respective
12 due date for each report.

13 7. Outstanding Refunds. No later than the due date set forth for each report identified in
14 Paragraph 4, subdivisions (a) through (e) above, Respondent shall notify the Department of any
15 refund payment that has been returned or remains outstanding for loans originated during the period
16 of August 5, 2010 through the funding date covered by each respective report. Payment owed to any
17 borrower that cannot be reasonably located shall be escheated by Respondent to the State of
18 California pursuant to the provisions of the California Unclaimed Property Law (Code of Civ. Proc.,
19 §§ 1500 et seq.).

20 8. Payment of Penalties. Respondent agrees to pay a penalty of \$110,000.00 in consideration
21 for resolving known violations of California Financial Code section 50204(o) and California Civil
22 Code section 2948.5 [per diem interest overcharges] and violation of California Financial Code
23 section 50326 [failure to make reports to Commissioner], and any subsequently discovered violations
24 fully refunded in compliance with Paragraph 6 above. The penalties totaling \$110,000.00 shall be
25 due within twenty (20) calendar days of the effective date of this Settlement Agreement, as such date
26 is defined in Paragraph 26, and made payable to the Department of Business Oversight, sent to the
27 attention of: Miranda LeKander, Senior Corporations Counsel, Enforcement Division, at the
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1 California Department of Business Oversight located at 1515 K Street, Suite 200, Sacramento,
2 California, 95814.

3 9. Declaration of Policies and Procedures. Respondent shall submit to the Department
4 contemporaneously upon execution of this Settlement Agreement a declaration, under of penalty of
5 perjury, from an officer with personal knowledge of Respondent's policies and procedures that sets
6 forth all policies and procedures implemented by Respondent to correct and prevent the violations set
7 forth in the Administrative Action and ensure compliance with the CRMLA. Respondent agrees to
8 make any changes or corrections to such policy within ten (10) business days following written
9 request by the Department.

10 10. Effect of Settlement Agreement on License. In consideration of the information provided
11 to the Commissioner by Respondent as described in the paragraphs above and Respondent's payment
12 of penalties as provided herein, the Commissioner hereby agrees that except as set forth in this
13 Settlement Agreement, she shall not suspend the residential mortgage lender or servicer license of
14 Respondent or take any further action based on the violations cited in this Settlement Agreement.
15 Accordingly, this Settlement Agreement, which resolves the Administrative Action, does not affect
16 the licensing status of Respondent.

17 11. Failure to File Timely or Complete Reports Concerning Audits or Refunds. Respondent
18 agrees that if it fails to meet any deadline or any requirement in Paragraphs 4 or 5 (regarding the
19 independent auditor's internal review) or Paragraph 7 (regarding outstanding refunds), Respondent
20 shall immediately notify the Department of such failure and cooperate with the Department to cause
21 such failure to be rectified as soon as reasonably practicable but no later than thirty (30) calendar
22 days. Failure to abide by these terms shall result in the revocation of Respondent's CRMLA license
23 number 413-0732. Respondent hereby waives any notice and hearing rights to contest the revocation
24 resulting from failure to comply with Paragraphs 4, 5, and 7 above that may be afforded under the
25 California Financial Code, the California Administrative Procedure Act, the California Code of Civil
26 Procedure, or any other legal provisions.

27 12. Failure to Make Timely or Sufficient Refunds. Respondent agrees that if it fails to meet
28 any deadline or any requirement in Paragraph 6 above (regarding payment of refunds), other than

1 inadvertent and isolated errors that are promptly corrected by Respondent within thirty (30) calendar
2 days, Respondent's CRMLA license number 413-0732 shall be revoked. Respondent hereby waives
3 any notice and hearing rights to contest the revocation resulting from failure to comply with
4 Paragraph 6 above which may be afforded under the California Financial Code, the California
5 Administrative Procedure Act, the California Code of Civil Procedure, or any other legal provisions.

6 13. Failure to Make Payment of Penalties. Respondent agrees that if it fails to meet the
7 deadline for payment of penalties set forth in Paragraph 8, Respondent's CRMLA license number
8 413-0732 shall be revoked. Respondent hereby waives any notice and hearing rights to contest the
9 revocation resulting from failure to comply with Paragraph 8 above that may be afforded under the
10 California Financial Code, the California Administrative Procedure Act, the California Code of Civil
11 Procedure, or any other legal provisions.

12 14. Full and Final Settlement. The parties hereby acknowledge and agree that this Settlement
13 Agreement is intended to constitute a full, final, and complete resolution of the Administrative Action
14 and that no further proceedings or actions will be brought by the Commissioner in connection with
15 these matters either under the CRMLA, or any other provision of law, excepting therefrom any
16 proceeding or action if such proceeding or action is based upon facts not presently known to the
17 Commissioner or which were knowingly concealed from the Commissioner by Respondent.

18 15. Binding. This Settlement Agreement is binding on all heirs, assigns and/or successors in
19 interest.

20 16. Commissioner's Duties. The parties further acknowledge and agree that nothing
21 contained in this Settlement Agreement shall operate to limit the Commissioner's ability to assist any
22 other agency, (city, county, state or federal) with any prosecution, administrative, civil or criminal,
23 brought by any such agency against Respondent or any other person based upon any of the activities
24 alleged in these matters or otherwise.

25 17. Third Party Actions. It is the intent and understanding between the parties that this
26 Settlement Agreement does not create any private rights or remedies against Respondent, create any
27 liability for Respondent or limit defenses of Respondent for any person or entity not a party to this
28 Settlement Agreement.

1 18. Future Actions by Commissioner. This Settlement Agreement may be revoked and the
2 Commissioner may pursue any and all remedies available under law against Respondent if the
3 Commissioner later discovers that Respondent knowingly or willfully withheld information used and
4 relied upon in this Settlement Agreement. Further, Respondent agrees that this Settlement
5 Agreement does not resolve any penalties that may be assessed by the Commissioner upon discovery
6 of new and further violations of the CRMLA which do not form the basis for the current
7 Administrative Action.

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

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

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

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

23 23. Full Integration. Each of the parties represents, warrants, and agrees that in executing
24 this Settlement Agreement it has relied solely on the statements set forth herein and the advice of its
25 own counsel. Each of the parties further represents, warrants, and agrees that in executing this
26 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any
27 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
28 party or any other person or entity to make any statement, representation or disclosure of anything

1 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
2 any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude the
3 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
4 Settlement Agreement.

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

12 25. Voluntary Agreement. Respondent enters into this Settlement Agreement voluntarily and
13 without coercion and acknowledges that no promises, threats or assurances have been made by the
14 Commissioner or any officer, or agent thereof, about this Settlement Agreement.

15 26. Effective Date. This Settlement Agreement shall not become effective until signed by all
16 parties and delivered by the Commissioner’s counsel to Respondent’s counsel at
17 Justin.Ashworth@City1st.com.

18 27. Public Record. Respondent acknowledges that this Settlement Agreement is a public
19 record.

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

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4 Dated: 5/16/14 JAN LYNN OWEN
5 Commissioner of Business Oversight

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7 By _____
8 MARY ANN SMITH
9 Deputy Commissioner
10 Enforcement Division

11 Dated: 5/15/14 CITY FIRST MORTGAGE SERVICES, LLC, ALSO DOING
12 BUSINESS AS CITY 1ST MORTGAGE AND CITY 1ST
13 MORTGAGE SERVICES

14 By _____
15 GERRETT VAN WAGONER
16 Chief Executive Officer

17 APPROVED AS TO FORM AND CONTENT:

18 _____
19 JUSTIN ASHWORTH
20 Counsel for City First Mortgage Services, LLC
21 Also doing business as City 1st Mortgage and City 1st Mortgage Services
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