

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 JUDY L. HARTLEY (State Bar No. 110628)
Senior Counsel
4 Department of Business Oversight
320 West 4th Street, Ste. 750
5 Los Angeles, California 90013-2344
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7 Attorneys for Complainant

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

10
11 In the Matter of:)
)
12 THE COMMISSIONER OF BUSINESS) CRMLA LICENSE NO.: 413-0646
13 OVERSIGHT,)
) CONSENT ORDER
14 Complainant,)
)
15 v.)
)
16 iSERVE RESIDENTIAL LENDING, LLC,)
17 Respondent.)
)
18)
)

19
20 This Consent Order is entered into between the Commissioner of Business Oversight
21 (Commissioner) on the one hand and iServe Residential Lending, LLC, (iServe) on the other (the
22 Parties), and is made with respect to the following:

23 **I.**

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/or servicing residential mortgage loans pursuant to
27 the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.), including
28 mortgage loan originators.

CONSENT ORDER

1 B. iServe is a residential mortgage lender licensed pursuant to the CRMLA by the
2 Commissioner since September 29, 2004 and employs mortgage loan originators. iServe is an
3 Arizona limited liability company located at 15015 Avenue of Science, Suite 250, San Diego,
4 California 92128.

5 C. Douglas M. Wilson is co-Chief Executive Officer of iServe and, as such, is
6 authorized to enter into this Consent Order on behalf of iServe.

7 D. On or about January 22, 2015, iServe applied to add servicing authority to its existing
8 CRMLA lender license. During the application process, the Commissioner raised with iServe that it
9 had been engaging in the business of master loan servicing without having separately added
10 servicing authority to its existing CRMLA license in alleged violation of Financial Code section
11 50002.

12 E. On or about August 14, 2017, the Department of Business Oversight (Department)
13 issued a Report of Examination (ROE) to iServe for a regulatory examination commenced on or
14 about March 6, 2017. The ROE stated, among other things, that iServe had (i) commingled
15 company operating funds with borrower trust funds in violation of Financial Code section 50502 –
16 ROE Section 1.B.; (ii) overcharged a borrower for title insurance fees in violation of Financial Code
17 section 50204, subdivision (c) and California Code of Regulations, title 10, section 1950.314.4,
18 subdivision (j)(6) – ROE Section 2.A.; and (iii) failed to provide a proper loan brokerage agreement
19 in two loans in violation of Financial Code section 50701 – ROE Section 6.A. iServe has submitted
20 information and documentation to the Commissioner evidencing that the above findings were either
21 not violations or have been resolved.

22 F. iServe agrees to the entry of this Consent Order as a resolution of this matter without
23 the need to initiate litigation.

24 G. The Commissioner finds this Consent Order is appropriate, in the public interest and
25 consistent with the purposes fairly intended by the policy and provisions of the CRMLA.

26 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
27 forth herein, the parties agree as follows:
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II.

Terms and Conditions

1. Purpose. The purpose of this Consent Order is to resolve the foregoing issues in a manner that avoids the expense of a hearing, uncertainty of litigation and possible further court proceedings.

2. Payment of Penalties. iServe shall pay a penalty to the Commissioner in the amount of \$40,000.00, which shall be due and payable on the effective date of this Consent Order, as such date is defined in Paragraph 16, made payable in the form of a cashier’s check or Automated Clearing House deposit to the “Department of Business Oversight” and transmitted to the attention of: ATTN: Accounting – Litigation, at the Department of Business Oversight located at 1515 K Street, Suite 200, Sacramento, California 95814.

3. Waiver of Hearing Rights. iServe acknowledges that the Commissioner is ready, willing and able to proceed with the filing of an administrative enforcement action on the charges contained in this Consent Order, and iServe hereby waives the right to a hearing, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the CRMLA; and iServe further expressly waives any requirement for the filing of an Accusation that may be afforded by Government Code section 11415.60, subdivision (b), the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law; and by waiving such rights, iServe effectively consents to this Consent Order becoming final.

4. Servicing Authority. The Commissioner hereby acknowledges that the mortgage loan servicer application filed by iServe on or about January 22, 2015 is ready to be approved, and the Commissioner hereby agrees to approve iServe’s residential mortgage loan servicer application within five days of execution of this Consent Order.

5. Effect of Consent Order on License. In consideration of iServe’s payment of penalties in Paragraph 2, the Commissioner hereby agrees, except as otherwise set forth in this Consent Order, to not suspend or revoke the residential mortgage lender or servicer license of iServe, or take any further action, based on the violations cited herein. Accordingly, this Consent Order, which resolves said violations, does not affect the licensing status of iServe.

1 6. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
2 interest.

3 7. Third Party Actions. This Consent Order does not create any private rights or
4 remedies against iServe, create any liability for iServe or limit defenses of iServe for any person or
5 entity not a party to this Consent Order.

6 8. Full and Final Settlement. The parties hereby acknowledge and agree that this
7 Consent Order is intended to constitute a full, final, and complete resolution of (i) the alleged
8 unauthorized servicing described in paragraph D. above up to and including through the date of
9 approval of iServe’s January 22, 2015 servicer application, and (ii) the exceptions noted in Sections
10 1. B., 2. A., and 6. A. of the August 14, 2017 ROE, and that no further proceedings or actions will be
11 brought by the Commissioner in connection with those matters under the CRMLA or any other
12 provision of law, excepting therefrom any proceeding to enforce compliance with the terms of this
13 Consent Order.

14 9. Commissioner Duties. The Parties acknowledge and agree that nothing contained in
15 this Consent Order shall operate to limit the Commissioner's ability to assist any other agency,
16 (county, state or federal) with any prosecution, administrative, civil or criminal, brought by any such
17 agency against iServe or any other person based upon the subject matter hereof or otherwise.

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

21 11. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
22 Consent Order each has relied solely on the statements set forth herein and the advice of its own
23 counsel and/or representative. Each of the Parties further represents, warrants, and agrees that in
24 executing this Consent Order it has placed no reliance on any statement, representation, or promise
25 of any other party, or any other person or entity not expressly set forth herein, or upon the failure of
26 any party or any other person or entity to make any statement, representation or disclosure of
27 anything whatsoever. The Parties have included this clause: (1) to preclude any claim that any party
28 was in any way fraudulently induced to execute this Consent Order; and (2) to preclude the

1 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Consent
2 Order.

3 12. Full Integration. This Consent Order is the final written expression and the complete
4 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
5 between the parties with respect to the subject matter hereof, and supersedes all prior or
6 contemporaneous agreements, negotiations, representations, understandings, and discussions
7 between and among the parties, their respective representatives, and any other person or entity, with
8 respect to the subject matter covered hereby.

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

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

20 15. Headings and Governing Law. The headings to the paragraphs of this Consent Order
21 are inserted for convenience only and will not be deemed a part hereof or affect the construction or
22 interpretation of the provisions hereof. This Consent Order shall be construed and enforced in
23 accordance with, and governed by, the laws of the State of California.

24 16. Effective Date: This Consent Order shall not become effective until signed by all
25 parties and delivered by the Commissioner’s counsel by email to counsel for iServe at
26 flevin@BuckleySandler.com.

27 17. Counterparts. This Consent Order may be executed in one or more separate
28 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall

1 together constitute a single document.

2 18. Settlement Authority. Each signatory hereto covenants that he/she possesses all
3 necessary capacity and authority to sign and enter into this Consent Order.

4 19. Public Record. iServe acknowledges that this Consent Order is a public record.

5 20. Notice. Any notice required under this Consent Order shall be addressed as follows:

6 To iServe: Fredrick S. Levin, Esq.
7 Buckley Sandler LLP
8 100 Wilshire Boulevard, Suite 1000
9 Santa Monica, California 90401 84121
flevin@BuckleySandler.com

10 To the Commissioner: Judy L. Hartley, Esq.
11 Senior Counsel
12 Department of Business Oversight
13 320 W. 4th Street, Suite 750
Los Angeles, California 90013-2344
judy.hartley@dbo.ca.gov

14 21. Voluntary Agreement. The Parties each represent and acknowledge that in executing
15 this Consent Order, each does so voluntarily and without any duress or undue influence of any kind
16 from any source.

17 Dated: 6/8/18 JAN LYNN OWEN
18 Commissioner of Business Oversight

19 By _____
20 MARY ANN SMITH
21 Deputy Commissioner

22 Dated: 6/5/18 iSERVE RESIDENTIAL LENDING, LLC

23 By _____
24 DOUGLAS M. WILSON
Co-Chief Executive Officer

25 APPROVED AS TO FORM:

26 BUCKLEY SANDLER LLP

27 By _____
28 FREDRICK S. LEVIN, ESQ. attorneys for
iSERVE RESIDENTIAL LENDING, LLC