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10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) CRMLA LICENSE NO. 41DBO-42471
13 THE COMMISSIONER OF BUSINESS) CONSENT ORDER
OVERSIGHT,)
14)
Complainant,)
15 v.)
16 AMERICAN INTERBANC MORTGAGE,)
17 LLC,)
18 Respondent.)
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21 This Consent Order is entered into between the Commissioner of Business Oversight
22 (Complainant or Commissioner) and Respondent American Interbanc Mortgage, LLC (Respondent
23 or AIM) and is made with respect to the following facts:

24 **I.**

25 **Recitals**

26 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
27 entities engaged in the business of lending and/or servicing residential mortgage loans pursuant to
28 the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.), including

1 mortgage loan originators.

2 B. AIM is a residential mortgage lender licensed by the Commissioner pursuant to the
3 CRMLA since June 16, 2015, under the license number 41DBO-42471. AIM employs mortgage
4 loan originators. AIM is a limited liability company, with a principal place of business located at 4
5 Park Plaza, Suite 650, Irvine, California 92614.

6 C. AIM operates one main branch in California.

7 D. Michael Kime is the managing director of AIM and, as such, is authorized to enter
8 into this Consent Order on behalf of AIM.

9 E. In about March 2017 and March 2018, AIM submitted its 2016 and 2017 annual
10 reports which disclosed unlicensed loan servicing activities. AIM's 2016 and 2017 annual reports
11 showed that since at least May 2016, AIM has conducted servicing activities without first obtaining
12 a license from the Commissioner in violation of Financial Code section 50002 (a). AIM serviced at
13 least three loans as of December 2016 and at least 96 loans as of December 2017. On October 19,
14 2018, AIM applied to add servicing authority to its CRMLA lender license.

15 F. Based on AIM's unlicensed loan servicing activities, on January 29, 2019, the
16 Commissioner issued an accusation against AIM seeking penalties for at least 99 violations of
17 Financial Code section 50002, subdivision (a), for engaging in unlicensed loan servicing activities.

18 G. AIM timely requested a hearing and the matter is scheduled to be heard on August 19,
19 2019 at 9:00 a.m. at the Office of Administrative Hearings, Los Angeles.

20 H. AIM agrees to the entry of this Consent Order as a resolution of this matter without
21 the need to initiate litigation.

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

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

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II.

Terms and Conditions

1. Purpose. This Consent Order resolves the issues before the Commissioner’s findings set forth above, in a manner that avoids the expense of a hearing and other possible court proceedings, protects consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of the CRML.

2. Administrative Penalty. AIM shall pay an administrative penalty of \$9,000.00 no later than 30 days after the effective date of this Consent Order as defined in paragraph 26. The penalty must be 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 Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice of the payment must be concurrently sent to Uche L. Enenwali, Senior Counsel, Department of Business Oversight, 320 West 4th Street, Suite 750, Los Angeles, California 90013-2344.

3. Servicing Authority. The Commissioner hereby acknowledges that the mortgage loan servicer application filed by AIM on or about October 19, 2018 is ready to be approved, and the Commissioner hereby agrees to approve AIM’s residential mortgage loan servicer application within five days of execution of this Consent Order.

4. Effect of Consent Order on License. In consideration of AIM’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 AIM, 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 AIM.

5. Waiver of Hearing Rights. AIM 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 AIM 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 AIM further expressly waives any requirement for the filing of an Accusation that may be

1 afforded by Government Code section 11415.60, subdivision (b), the California Administrative
2 Procedure Act, the California Code of Civil Procedure, or any other provision of law; and by
3 waiving such rights, AIM effectively consents to this Consent Order becoming final.

4 6. Full and Final Settlement. The parties hereby acknowledge and agree that this
5 Consent Order is intended to constitute a full, final, and complete resolution of the violations
6 described herein, and that no further proceedings or actions will be brought by the Commissioner in
7 connection with those matters under the CRMLA or any other provision of law, excepting therefrom
8 any proceeding to enforce compliance with the terms of this Consent Order.

9 7. Failure to Comply with Consent Order. AIM agrees that if it fails to comply with the
10 terms of this Consent Order, the Commissioner may, in addition to all other available remedies it
11 may invoke under the CRMLA, summarily suspend/revoke the CRMLA license of AIM until AIM
12 is in compliance. AIM waives any notice and hearing rights to contest such summary
13 suspension/revocation which may be afforded under the CRMLA, the California Administrative
14 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection
15 therewith.

16 8. Information Willfully Withheld or Misrepresented. This Consent Order may be
17 revoked, and the Commissioner may pursue any and all remedies available under law against AIM if
18 the Commissioner discovers that AIM knowingly or willfully withheld or misrepresented
19 information used for and relied upon in this Consent Order.

20 9. Future Actions by Commissioner. If AIM fails to comply with any terms of the
21 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
22 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
23 against AIM, or any of its partners, owners, officers, shareholders, directors, employees or
24 successors for any and all unknown violations of the CRMLA.

25 10. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
26 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
27 administrative, civil or criminal brought by that agency against AIM or any other person based upon
28 any of the activities alleged in this matter or otherwise.

1 11. No Presumption Against Drafting Party. Each party acknowledges that it has had the
2 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
3 intend that no presumption for or against the drafting party will apply in construing any part of this
4 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
5 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
6 language of a contract should be interpreted most strongly against the party that caused the
7 uncertainty to exist.

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

11 13. Headings. The headings to the paragraphs of this Consent Order are inserted for
12 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
13 the provisions hereof.

14 14. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
15 interest.

16 15. Reliance. Each of the parties represents, warrants, and agrees that in executing this
17 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel.
18 Each of the parties further represents, warrants, and agrees that in executing this Consent Order it
19 has placed no reliance on any statement, representation, or promise of any other party, or any other
20 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
21 entity to make any statement, representation or disclosure of anything whatsoever. The parties have
22 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to
23 execute this Consent Order; and (2) to preclude the introduction of parol evidence to vary, interpret,
24 supplement, or contradict the terms of this Consent Order.

25 16. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
26 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
27 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
28 provision. No waiver by either party of any breach of, or of compliance with, any condition or

1 provision of this Consent Order by the other party will be considered a waiver of any other condition
2 or provision or of the same condition or provision at another time.

3 17. 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 covenant
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 18. Governing Law. This Consent Order will be governed by and construed in
10 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court,
11 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
12 forum to the maintenance of such action or proceeding in such court.

13 19. Counterparts. This Consent Order may be executed in one or more separate
14 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
15 together constitute a single document.

16 20. Effect Upon Future Proceedings. If AIM applies for any license, permit or
17 qualification under the Commissioner's current or future jurisdiction, or is the subject of any future
18 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
19 admitted for the purpose of such application(s) or enforcement proceedings(s).

20 21. Voluntary Agreement. AIM enters into this Consent Order voluntarily and without
21 coercion and acknowledges that no promises, threats or assurances have been made by the
22 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
23 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
24 without any duress or undue influence of any kind from any source.

25 22. Notice. Any notice required under this Consent Order shall be provided to each party
26 at the following addresses:

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1 To AIM: American Interbanc Mortgage, LLC
2 c/o Michael Kime, Managing Director
3 4 Park Plaza, Suite 650,
4 Irvine, California 92614.
5 Michael.kime@seashinecapital.com

6 To the Commissioner: Uche L. Enenwali, Senior Counsel
7 Department of Business Oversight
8 320 West 4th Street, Suite 750
9 Los Angeles, California 90013-2344
10 Uche.enenwali@dbo.ca.gov

11 23. Signatures. A fax or electronic mail signature shall be deemed the same as an
12 original signature.

13 24. Public Record. AIM hereby acknowledges that this Consent Order is and will be a
14 matter of public record.

15 25. Effective Date. This Consent Order shall become final and effective when signed by
16 all parties and delivered by the Commissioner's agent via e-mail to AIM at
17 michael.kime@seashinecapital.com.

18 26. Authority to Sign. Each signatory hereto covenants that he/she possesses all
19 necessary capacity and authority to sign and enter into this Settlement Agreement and undertake the
20 obligations set forth herein.

21 Dated: 8/12/19 MANUEL P. ALVAREZ
22 Commissioner of Business Oversight

23 By _____
24 MARY ANN SMITH
25 Deputy Commissioner
26 Enforcement Division

27 Dated: 8/9/19 AMERICAN INTERBANC MORTGAGE

28 By _____
MICHAEL KIME
Managing Director