

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 UCHE L. ENENWALI (State Bar No. 235832)
Senior Counsel
4 Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7586
6 Facsimile: (213) 576-7181
7 Attorneys for Complainant

8
9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:) CRMLA LICENSE NO. 413-0603
12) CFL LICENSE NO. 6037861
13 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,) SETTLEMENT AGREEMENT
14)
Complainant,) Hearing Date: October 12, 2020
15) Hearing Time: 9:00 a.m.
16 v.) Location: OAH - 320 West 4th Street,
Suite 630
17 ARK-LA-TEX FINANCIAL SERVICES,)
LLC,) Judge: Los Angeles, CA 90013
Unassigned
18)
19 Respondent.)
20)

21 This Settlement Agreement (Settlement Agreement) is entered between the
22 Commissioner of Financial Protection and Innovation (Commissioner) and Ark-LA-Tex
23 Financial Services, LLC (Ark-LA) and is made with respect to the following facts:

24 **I.**
25 **Recitals**

26 A. The Department of Financial Protection and Innovation, through the
27 Commissioner, has jurisdiction over the licensing and regulation of persons and entities
28 engaged in the business of residential mortgage lending and/or servicing pursuant to the

1 California Residential Mortgage Lending Act (CRMLA) (Fin. Code §50000 et seq.) and
2 finance lending and/or brokering pursuant to the California Financing Law (Fin. Code,
3 section 22000, et seq.) (CFL).

4 B. Ark-LA-Tex Financial Services, LLC (Ark-LA) is a limited liability
5 company in good standing, duly formed and existing pursuant to the laws of the state of
6 Texas and is authorized to conduct business in the state of California. Ark-LA is a
7 residential mortgage lender and servicer licensed by the Commissioner pursuant to the
8 CRMLA. Ark-LA is also licensed as a finance lender by the Commissioner pursuant to
9 the CFL. Ark-LA has its principal place of business located at 5160 Tennyson Parkway,
10 Suite 1000 Plano, Texas 75024. Ark-LA currently has 12 branch office locations under its
11 CRMLA license and six branch office locations under its CFL license. Ark-LA employs
12 mortgage loan originators in its CRMLA and CFL businesses.

13 C. Brian McKinney is, and was, at all times herein, the chief executive officer
14 of Ark-LA.

15 D. On June 6, 2020, Ark-LA was personally served by the Commissioner with
16 a Notice of Intention to Issue Order Suspending Residential Mortgage Lender and
17 Servicer and Finance Lender Licenses and to Levy Penalties, Accusation and
18 accompanying documents dated June 4, 2020 (Accusation). In the Accusation, the
19 Commissioner alleged that Ark-LA (i) failed to properly reconcile its trust account ledger
20 with liability controlling accounts at least once each week and to the trust account bank
21 statement at least once each month, resulting in shortages and/or overages in its trust
22 accounts in violation of Financial Code section 50202, subdivision (a); and California
23 Code of Regulations, title 10, section 1950.314.1; (ii) commingled operating funds with
24 trust monies in violation of Financial Code section 50202, subdivision (a); and (iii) caused
25 debit balances to exist in borrower impound accounts in violation of California Code of
26 Regulations, title 10, section 1950.314.6.

27 E. On June 12, 2020, Ark-LA timely submitted a Notice of Defense to the
28 Commissioner requesting an administrative hearing on the Accusation allegations.

1 F. It is the intention of Ark-LA and the Commissioner (the Parties) to resolve
2 the Accusation Allegations without the necessity of a hearing.

3 NOW, THEREFORE, in consideration of the foregoing, and the terms and
4 conditions contained herein, the Parties agree as follows:

5 **II.**

6 **Terms and Conditions**

7 1. Purpose. This Settlement Agreement resolves the Accusation before the
8 Commissioner described above in a manner that avoids the expense of a hearing and
9 other possible court proceedings, protects consumers, is in the public interest, and is
10 consistent with the purposes, policies, and provisions of the CRMLA and CFL.

11 2. Order to Discontinue Violations (CRMLA). Pursuant to Financial Code
12 section 50321, Ark-LA-Tex Financial Services, LLC is hereby ordered to discontinue:

13 a. violating Financial Code section 50314 and California Code of
14 Regulations, title 10, section 1950.314.1 by failing to properly reconcile its trust accounts;

15 b. violating Financial Code section 50202, subdivision (a) by
16 commingling operating funds with trust funds; and

17 c. violating California Code of Regulations, title 10, section
18 1950.314.6 by causing debit balances to exist in borrower impound accounts.

19 3. Penalty. Ark-LA shall pay to the Commissioner a penalty of \$35,000.00
20 (Penalty), which shall be due and payable on the effective date of this Settlement
21 Agreement, as such date is defined in Paragraph 25. The Penalty must be made payable in
22 the form of a cashier's check or Automated Clearing House deposit to the Department of
23 Financial Protection and Innovation and transmitted to the attention of Accounting –
24 Litigation, at the Department of Financial Protection and Innovation, 2101 Arena
25 Boulevard, Sacramento, California 95834-2306. Notice of the payment must be
26 concurrently sent to Uche Enenwali, Senior Counsel, Department of Financial Protection
27 and Innovation, 320 W. Fourth Street, Suite 750, Los Angeles, California 90013.

28 4. Proof of Compliance. Ark-LA has previously submitted to the

1 Commissioner audit reports showing the practices and procedures it has implemented as
2 of the date of this Settlement Agreement to ensure compliance with Financial Code
3 section 50202, subdivision (a); and California Code of Regulations, title 10, section
4 1950.314.1. Ark-LA agrees to submit to the Commissioner no later than October 1, 2020,
5 additional documents, including the monthly reconciliation of its subsidiary ledger &
6 liability controlling accounts against its trust bank statements for the month ending
7 September 30, 2020. The Commissioner’s receipt of Ark-LA’s audit reports and
8 procedures does not constitute an approval that the audit reports or Ark-LA’s procedures
9 for reconciling its accounts are correct and does not otherwise limit the Commissioner’s
10 audit or examination rights under this Settlement Agreement. Ark-LA agrees to provide,
11 upon the Commissioner’s request, documentation satisfactory to the Commissioner to
12 determine its compliance with Financial Code section 50202, subdivision (a); and
13 California Code of Regulations, title 10, section 1950.314.1.

14 5. Waiver of Hearing Rights. Ark-LA acknowledges that the Commissioner
15 is ready, willing, and able to proceed with the administrative enforcement action described
16 above in Paragraph D. Ark-LA hereby waives the right to a hearing, and to any
17 reconsideration, appeal, or other right to review which may be afforded pursuant to the
18 CRMLA, CFL, the California Administrative Procedure Act, the California Code of Civil
19 Procedure, or any other provision of law. By waiving such rights, Ark-LA effectively
20 consents to this Settlement Agreement becoming final.

21 6. Full and Final Settlement. The Parties hereby acknowledge and agree that
22 this Settlement Agreement is intended to constitute a full, final, and complete resolution of
23 the Accusation Allegations, and that no further proceedings or actions will be brought by
24 the Commissioner in connection with the Accusation Allegations under the CRMLA, CFL
25 or any other provision of law, excepting therefrom any proceeding to enforce compliance
26 with the terms of this Settlement Agreement.

27 7. Failure to Comply with this Settlement Agreement. Ark-LA agrees that if
28 it fails to comply with the terms of this Settlement Agreement, the Commissioner may, in

1 addition to all other available remedies it may invoke under the CRMLA and/or the CFL,
2 summarily suspend the CRMLA and/or CFL licenses of Ark-LA until Ark-LA is in
3 compliance. Ark-LA waives any notice and hearing rights to contest such summary
4 suspensions which may be afforded under the CRMLA, CFL, the California
5 Administrative Procedure Act, the California Code of Civil Procedure, or any other
6 provision of law in connection therewith.

7 8. Information Willfully Withheld or Misrepresented. This Settlement
8 Agreement may be revoked, and the Commissioner may pursue any and all remedies
9 available under the law against Ark-LA , if the Commissioner discovers that Ark-LA
10 knowingly or willfully withheld information used for and relied upon in this Settlement
11 Agreement.

12 9. Future Actions by Commissioner. If Ark-LA fails to comply with any
13 terms of this Settlement Agreement, the Commissioner may institute proceedings for any
14 and all violations otherwise resolved under this Settlement Agreement. The
15 Commissioner reserves the right to bring any future actions against Ark-LA, or any of its
16 partners, owners, officers, shareholders, directors, employees, or successors for any and all
17 unknown violations of the CRMLA and/or CFL.

18 10. Assisting Other Agencies. Nothing in this Settlement Agreement limits the
19 Commissioner’s ability to assist any other government agency (city, county, state, or
20 federal) with any administrative, civil or criminal prosecutions brought by that agency
21 against Ark-LA or any other person based upon any of the activities alleged in this matter
22 or otherwise.

23 11. Headings. The headings to the paragraphs of this Settlement Agreement
24 are for convenience only and will not be deemed a part hereof or affect the construction or
25 interpretation of the provisions hereof.

26 12. Binding. This Settlement Agreement is binding on all heirs, assigns, and/or
27 successors in interest.

28 13. Reliance. Each of the Parties represents, warrants, and agrees that in

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

11 14. Waiver, Amendments, and Modifications. No waiver, amendment, or
12 modification of this Settlement Agreement will be valid or binding unless it is in writing
13 and signed by each of the Parties. The waiver of any provision of this Settlement
14 Agreement will not be deemed a waiver of any other provision. No waiver by either party
15 of any breach of, or of compliance with, any condition or provision of this Settlement
16 Agreement by the other party will be considered a waiver of any other condition or
17 provision or of the same condition or provision at another time.

18 15. Full Integration. This Settlement Agreement is the final written expression
19 and the complete and exclusive statement of all the agreements, conditions, promises,
20 representations, and covenants between the parties with respect to the subject matter
21 hereof, and supersedes all prior or contemporaneous agreements, negotiations,
22 representations, understandings, and discussions between and among the parties, their
23 respective representatives, and any other person or entity, with respect to the subject
24 matter covered hereby.

25 16. Governing Law. This Settlement Agreement will be governed by and
26 construed in accordance with California law. Each of the parties hereto consents to the
27 jurisdiction of such court, and hereby irrevocably waives, to the fullest extent permitted by
28 law, the defense of an inconvenient forum to the maintenance of such action or proceeding

1 in such court.

2 17. Counterparts. This Settlement Agreement may be executed in one or more
3 separate counterparts, each of which when so executed, shall be deemed an original. Such
4 counterparts shall together constitute a single document.

5 18. Mandatory Disclosure in Future Applications. Ark-LA agrees to disclose
6 this Settlement Agreement in any application for a license, permit or qualification under the
7 Commissioner’s current or future jurisdiction.

8 19. Effect Upon Future Proceedings. If Ark-LA is the subject of any future
9 action by the Commissioner to enforce this Settlement Agreement, then the subject matter
10 hereof shall be admitted for the purpose of such action.

11 20. Third Parties. This Settlement Agreement does not create or give rise to
12 any private rights or remedies against Ark-LA , create any liability for Ark-LA, or limit
13 the defenses of Ark-LA for any person or entity not a party to this Settlement Agreement.

14 21. Voluntary Agreement. Ark-LA enters into this Settlement Agreement
15 voluntarily and without coercion and acknowledges that no promises, threats, or
16 assurances have been made by the Commissioner or any officer, or agent thereof, about
17 this Settlement Agreement. The Parties each represent and acknowledge that he, she, or it
18 is executing this Settlement Agreement completely voluntarily and without any duress or
19 undue influence of any kind from any source.

20 22. Notice. Any notice/report required under this Settlement Agreement shall
21 be addressed as follows:

22 To Ark-LA: Joseph D. Mirabella, Esq.
23 Ark-La-Tex Financial Services, LLC
24 5160 Tennyson Parkway, Suite 1000
25 Plano, TX 75024
26 Joe@benchmark.us.

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To the Commissioner:

Uche L. Enenwali, Esq., Senior Counsel
Department of Financial Protection
and Innovation
320 W. 4th Street, Suite 750
Los Angeles, California 90013-2344
Uche.Enenwali@dfpi.ca.gov

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

24. Public Record. Ark-LA hereby acknowledges that this Settlement Agreement is and will be a matter of public record.

25. Effective Date. This Settlement Agreement shall become final and effective when signed by all parties and delivered by the Commissioner’s counsel via e-mail to Ark-LA’s counsel, Joe@benchmark.us.

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

Dated: October 5, 2020

MANUEL P. ALVAREZ
Commissioner of Financial Protection and
Innovation

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: October 2, 2020

ARK-LA-TEX FINANCIAL SERVICES, LLC

By _____
BRIAN MCKINNEY
Chief Executive Officer

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APPROVED AS TO FORM:

By _____
JOSEPH D. MIRABELLA, ESQ.
General Counsel for
ARK-LA-TEX FINANCIAL SERVICES, LLC

