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7 Attorneys for Complainant

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

11 In the Matter of:) CFL LICENSE NO. 603C794
12)
13 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,) CONSENT ORDER
14)
15 Complainant,)
16 v.)
17 AMERICAN HERITAGE CAPITAL, LP,)
18 Respondent.)
19 _____)

22 This Consent Order is entered into by and between the Commissioner of Financial Protection
23 and Innovation (Commissioner) and American Heritage Capital, LP (AHC) (Consent Order).

24 I.

25 RECITALS

26 This Consent Order is made with reference to the following facts:

27 A. AHC is a Texas limited partnership created in 2002 with its principal place of business
28 at 4100 Spring Valley Road, Suite 770, Dallas, Texas 75244.

1 B. The Department of Financial Protection and Innovation (Department), through the
2 Commissioner, has jurisdiction over the licensing and regulation of persons and entities engaged in
3 the business of lending and brokering pursuant to the California Financing Law (Fin. Code, § 22000,
4 et seq.) (CFL).

5 C. AHC is licensed as a finance lender under the CFL with license number 603C794.

6 D. Nash Prasla is the President of AHC and is authorized to enter into this Consent Order
7 on behalf of AHC.

8 E. Financial Code section 22301 provides that:

9 (a) No licensee shall directly or indirectly charge, contract for, or receive
10 any interest or charge of any nature with respect to a loan of five thousand
11 dollars (\$5,000) or more unless the loan is made.

12 (b) Notwithstanding subdivision (a), whenever a loan of five thousand
13 dollars (\$5,000) or more is not consummated because of the borrower's
14 failure to disclose outstanding liens or other information essential to
15 making the loan or solely because of the borrower's failure to complete
16 the loan in accordance with the loan application, a licensee may charge,
17 contract for, and receive an amount equal to the actual expenses incurred
18 by the licensee in connection with the preparation for the loan.

17 F. Since at least 2017, AHC has required mortgage loan applicants in California to sign a
18 "Rate Lock" agreement that allowed AHC to charge the loan applicant a cancellation fee even if a
19 loan was not made. AHC used two versions of this "Rate Lock" agreement since 2017:

- 20 i. One version of the agreement allowed AHC to charge the applicant a \$995 "Loan
21 Cancellation Fee" if the applicant withdrew or cancelled their loan application for
22 any reason.
- 23 ii. Another version of the agreement allowed AHC to charge the applicant a fee
24 amounting to 1% of the original loan amount if the applicant "cancelled/withdrew"
25 their application or if their application was denied for failing to comply with other
26 loan requirements, and if the application closed on a loan with another lender
27 within 120 days.
- 28

1 G. Since 2017, AHC has contracted with over 100 California consumers to receive this
2 “Rate Lock Fee.” Moreover, AHC has demanded payment from at least one California consumer for
3 this “Rate Lock Fee,” even when it did not make a loan to that consumer.

4 H. Based on the above, the Commissioner determined that AHC has violated the CFL by
5 contracting and demanding payment for unlawful charges in connection with loans above \$5,000 that
6 were not made, in violation of Financial Code section 22301.

7 I. AHC neither admits nor denies the Recitals set forth above.

8 J. The Commissioner finds that entering into this Consent Order is in the public interest
9 and consistent with the purposes fairly intended by the policy and provisions of the CFL.

10 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
11 contained herein, the Commissioner and AHC (the Parties) agree as follows:

12 **II.**

13 **TERMS AND CONDITIONS**

14 1. Purpose. This Consent Order resolves the issues before the Commissioner in a
15 manner that avoids the expense of a hearing and other possible court proceedings, protects
16 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of
17 the CFL.

18 2. Desist and Refrain Order. Pursuant to Financial Code section 22712, AHC is hereby
19 ordered to desist and refrain from violating Financial Code section 22301 by contracting for or
20 demanding payment of unlawful charges in connection with loans above \$5,000 that are not made.

21 3. Penalty. AHC shall pay an administrative penalty totaling \$14,025.00 (Penalty) to the
22 Commissioner. Payment of the Penalty shall be made no more than five business days after the
23 Effective Date, as defined in Paragraph 22 below (Effective Date), and should be made in the form of
24 a cashier’s check or Automated Clearing House deposit payable to the “Department of Financial
25 Protection and Innovation” and transmitted to the attention of “Accounting – Litigation” at
26 Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California
27 95834-2036. Notice of such payment shall be forwarded to Taylor Steinbacher, Counsel,
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1 Department of Financial Protection and Innovation, Enforcement Division, 320 West 4th Street,
2 Suite750, Los Angeles, California 90013.

3 4. Waiver of Hearing Rights. AHC acknowledges the Commissioner is ready, willing,
4 and able to proceed with the filing of an enforcement action upon the charges contained in this
5 Consent Order. AHC hereby waives the right to any hearings, and to any reconsideration, appeal, or
6 other right to review which may be afforded pursuant to the CFL, the California Administrative
7 Procedure Act, the California Code of Civil Procedure, or any other provision of law. AHC further
8 expressly waives any requirement for the filing of an Accusation pursuant to Government Code
9 section 11415.60, subdivision (b). By waiving such rights, AHC effectively consents to this Consent
10 Order, and the Desist and Refrain Order contained herein, becoming final.

11 5. Failure to Comply with Consent Order. AHC agrees that, if it fails to comply with
12 the terms of this Consent Order, the Commissioner may, in addition to all other available
13 remedies he may invoke under the CFL, summarily suspend the AHC’s CFL license until AHC is
14 in compliance. AHC waives any notice and hearing rights to contest any such summary
15 suspension which may be afforded under the CFL, the California Administrative Procedure Act,
16 the California Code of Civil Procedure, or any other provision of law.

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

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

26 8. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
27 ability to assist a government agency (whether city, county, state, or federal) with any administrative,
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1 civil or criminal prosecutions brought by that agency against AHC or any other person based upon
2 any of the activities alleged in this matter or otherwise.

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

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

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

17 12. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
18 this Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.
19 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
20 provision. No waiver by either party of any breach of, or of compliance with, any condition or
21 provision of this Consent Order by the other party will be considered a waiver of any other condition
22 or provision or of the same condition or provision at another time.

23 13. Full Integration. This Consent Order is the final written expression and the complete
24 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
25 between the Parties with respect to the subject matter hereof, and supersedes all prior or
26 contemporaneous agreements, negotiations, representations, understandings, and discussions between
27 and among the Parties, their respective representatives, and any other person or entity, with respect to
28 the subject matter covered hereby.

1 14. Governing Law. This Consent Order will be governed by and construed in accordance
2 with California law. Each of the Parties hereto consents to the jurisdiction of such court, and hereby
3 irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the
4 maintenance of such action or proceeding in such court.

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

8 16. Effect Upon Future Proceedings. If AHC applies for any license, permit or
9 qualification under the Commissioner’s current or future jurisdiction, or is the subject of any future
10 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
11 admitted for the purpose of such application(s) or proceeding(s).

12 17. Third Parties. This Consent Order does not create or give rise to any private rights or
13 remedies against AHC, or any of its past, present, and future predecessors, successors, parents,
14 subsidiaries, affiliates, and related entities, and each of their respective partners, employees, agents,
15 attorneys, officers, directors, shareholders, members, partners, joint venturers, representatives and
16 assigns (AHC Parties), create any liability on the part of AHC or the AHC Parties, or limit the
17 defenses of AHC or the AHC Parties for any person or entity not a party to this Consent Order.

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

23 19. Notice. Any notice required under this Consent Order shall be provided to each party
24 at the following addresses.

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i. To AHC:
Nash Prasla
American Heritage Capital, LP
4100 Spring Valley Road, Suite 770
Dallas, Texas 75244
nprasla@ahcloans.com

ii. To the Commissioner:
Taylor Steinbacher, Counsel
Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
Los Angeles, California 90013-2344
Taylor.Steinbacher@dfpi.ca.gov

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

21. Public Record. AHC hereby acknowledges that this Consent Order is and will be a matter of public record.

22. Effective Date. This Consent Order shall become final and effective when signed by all Parties and delivered by the Commissioner’s agent via e-mail to AHC’s counsel, Alan Abergel at alan@abergellaw.com.

[continued on next page]

1 23. Authority to Sign. Each signatory hereto covenants that he or she possesses all
2 necessary capacity and authority to sign and enter into this Consent Order and undertake the
3 obligations set forth herein.

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5 Dated: November 18, 2020

MANUEL ALVAREZ
Commissioner of Financial Protection and Innovation

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7 By _____
8 Mary Ann Smith
Deputy Commissioner

9 Dated: November 18, 2020

AMERICAN HERITAGE CAPITAL, LP

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11 By _____
12 Nash Prasla
President