

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
3 SEAN ROONEY
Assistant Chief Counsel
4 BLAINE A. NOBLETT (State Bar No. 235612)
5 Senior Counsel
6 Department of Financial Protection & Innovation
320 W. 4th Street, Suite 750
7 Los Angeles, California 90013-2344
8 Telephone: (213) 503-3747
9 Facsimile: (213) 576-7181
Email: blaine.nobleTT@dfpi.ca.gov

10 Attorneys for Complainant

11 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
12 OF THE STATE OF CALIFORNIA

13 In the Matter of:	)	OAH CASE NO.: 2022040771
)	
14 THE COMMISSIONER OF FINANCIAL	)	CRMLA LICENSE NO.: 413-0901
15 PROTECTION AND INNOVATION,)	
	)	SETTLEMENT AGREEMENT
16 Complainant,)	
	)	Hearing Dates: October 31 – November 3, 2022
17 v.	)	Hearing Time: 9:00 a.m.
	)	Location: 320 West 4th Street, Suite 630
18 AMERIFIRST FINANCIAL, INC.,	)	Los Angeles, CA 90013
	)	Call-In No.: (669) 254-5252
19 Respondent.	)	Conf. ID: # 161 416 9977
	)	Judge: Unassigned
)	

22 This Settlement Agreement (the Settlement Agreement) is entered into between the
23 Commissioner of Financial Protection and Innovation (Commissioner) and AmeriFirst Financial, Inc.
24 (AmeriFirst), and is made with respect to the following facts.

25 **RECITALS**

26 A. The Department of Financial Protection and Innovation (Department), through the
27 Commissioner, is authorized to administer and enforce the provisions of the California Residential
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1 Mortgage Lending Act (Fin. Code, § 50000 et seq.) (CRMLA) and the rules issued under title 10 of
2 the California Code of Regulations (CCR) that regulate the business and activities of residential
3 mortgage lenders, mortgage loan servicers, and mortgage loan originators.

4 B. AmeriFirst is a corporation in good standing, duly formed and existing pursuant to the
5 laws of the state of Arizona and authorized to conduct business in the state of California. AmeriFirst
6 has its principal place of business located at 1550 East McKellips Road, Unit 117, Mesa, Arizona.

7 C. AmeriFirst is a residential mortgage lender and servicer licensed by the Commissioner
8 under the CRMLA with the assigned license number 413-0901. AmeriFirst employs mortgage loan
9 originators in its business.

10 D. The Commissioner commenced a regulatory examination of AmeriFirst on September
11 1, 2020, from a remote office location. The regulatory examination included a review of the
12 company's activities conducted under its CRMLA lender and servicer licenses from May 1, 2017
13 through May 31, 2020.

14 E. Under the 2020 regulatory examination, the Commissioner discovered the following
15 violations of the CRMLA and other applicable laws and regulations (the Examination Findings):

16 (i) AmeriFirst overcharged borrowers per diem interest in excess of one day prior
17 to disbursement of loan proceeds in violation of Financial Code section 50204, subdivision (o) and
18 Civil Code section 2948.5, which was a repeat violation that was discovered during the 2014
19 regulatory examination.
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21 F. On March 23, 2022, the Commissioner personally served AmeriFirst with the
22 following documents: (1) Statement to Respondent; (2) Notice of Intention; (3) Accusation
23 (Accusation); (4) Order to Refund Excessive Per Diem Interest Charges under Financial Code section
24 50504 (Order to Refund); (5) Order to Discontinue Violations under Financial Code section 50321
25 (Order to Discontinue); and (6) Statement of Facts in Support of Order to Discontinue Violations
26 under Financial Code section 50321 and Notice of Intent to Make Order Final.

27 G. AmeriFirst filed with the Commissioner its Notice of Defense and hearing request
28 regarding the Accusation, Order to Refund, and Order to Discontinue. A hearing has been scheduled

1 in this matter before the Los Angeles Office of Administrative Hearings, which is to commence on
2 October 31.

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

5 I. It is the intention and desire of the parties to resolve this matter without the necessity
6 of a hearing and other litigation.

7 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
8 forth herein, the parties agree as follows.

9 **TERMS AND CONDITIONS**

10 1. Purpose. The Settlement Agreement is entered into for the purpose of judicial
11 economy and expediency, and to avoid the expense of a hearing, and possible further court
12 proceedings.

13 2. Order to Refund. AmeriFirst stipulates to the finality of the Order to Refund.

14 3. Order to Discontinue. AmeriFirst stipulates to the finality of the Order to Discontinue.

15 4. Waiver of Hearing Rights. AmeriFirst acknowledges its right to an administrative
16 hearing under the CRMLA in connection with the Accusation, Order to Refund, and Order to
17 Discontinue and hereby waives that right to a hearing, and to any reconsideration, appeal, or other
18 rights which may be afforded pursuant to the CRMLA, California Administrative Procedure Act, the
19 California Code of Civil Procedure, or any other provision of law in connection with these matters.

20 5. Per Diem Interest Calculation Revised Policies and Procedures. On June 14, 2022,
21 AmeriFirst submitted to the Commissioner a copy of the company's revised policies and procedures
22 that ensure compliance with Civil Code section 2948.5 and Financial Code section 50204,
23 subdivision (o). The Commissioner has reviewed the policies and procedures contained therein and
24 found them satisfactory. AmeriFirst hereby agrees to implement those policies and procedures no
25 later than the Effective Date of the Settlement Agreement.

26 6. Administrative Penalty. AmeriFirst agrees to pay to the Commissioner an
27 administrative penalty of \$165,600.00 (the Penalty). The Penalty shall be due prior to or concurrent
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1 with the Effective Date of the Settlement Agreement and made payable in the form of a cashier's
2 check or Automated Clearing House deposit and transmitted to the attention of Accounting –
3 Enforcement Division, Department of Financial Protection & Innovation, 2101 Arena Boulevard,
4 Sacramento, California 95834. Notice of such payment shall be sent concurrently with the
5 submission of payment to the attention of Blaine A. Noblett, Senior Counsel, at
6 blaine.noblett@dfpi.ca.gov.

7 7. Third-Party Auditor. AmeriFirst agrees to engage at its own expense a certified public
8 accountant(s), certified accounting firm, or compliance auditing firm (Third-Party Auditor), subject
9 to the approval of the Commissioner, which approval shall not be unreasonably withheld. AmeriFirst
10 agrees to identify and propose to the Department the Third-Party Auditor it has engaged within 15
11 calendar days from the Effective Date of the Settlement Agreement. The Third-Party Auditor shall
12 have access to AmeriFirst's files and information as necessary to produce any reports demanded
13 under the Settlement Agreement, including, but not limited to, AmeriFirst's loan files and its policies
14 and procedures referenced in paragraph 5., above.

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16 8. Examination Period Audit. The Third-Party Auditor shall conduct an audit of per diem
17 interest charges for all California loans AmeriFirst originated during the period of January 1, 2017
18 through September 30, 2020 (Examination Period Audit). The Third-Party Auditor shall submit the
19 results of the Examination Period Audit prepared by the Third-Party Auditor (Examination Period
20 Audit Report) within 90 calendar days from the Effective Date of the Settlement Agreement.

21 (a) Scope of Examination Period Audit Report. The Examination Period Audit
22 Report shall include, at a minimum, the total number of California loans made during the
23 Examination Audit Period; the number of California loans with per diem interest overcharges; and for
24 each loan, the report shall list the borrower's loan number, name, address, loan amount, loan date,
25 interest rate, disbursement date, date per diem interest commenced, per diem interest charged, daily
26 per diem interest amount, number of days per diem interest charged, number of days per diem interest
27 overcharged (if applicable), proof of refund (if applicable).

28 (b) Payment of Refunds of Overcharges for Examination Period Audit. AmeriFirst

1 agrees to refund any amounts of per diem interest charged in excess of that permitted under Financial
2 Code section 50204, subdivision (o), and Civil Code section 2948.5, in connection with loans funded
3 during the Examination Period Audit as follows: a refund of the amount of per diem interest
4 overcharged, plus interest at the rate of 10 percent per annum, shall be mailed to the last known
5 address of each borrower no later than 90 calendar days from the Effective Date of the Settlement
6 Agreement.

7 9. Post-Examination Period Audit. The Third-Party Auditor shall conduct an audit of per
8 diem interest charges for all California loans AmeriFirst originated during the period of October 1,
9 2020 through September 30, 2022 (Post-Examination Period Audit). The Third-Party Auditor shall
10 submit the results of the Post-Examination Period Audit prepared by the Third-Party Auditor (Post-
11 Examination Period Audit Report) within 180 calendar days from the Effective Date of the
12 Settlement Agreement.

13 (a) Scope of Post-Examination Period Audit Report. The Post-Examination Period
14 Audit Report shall include, at a minimum, the total number of California loans made during the
15 period; the total number of California loans made by AmeriFirst during the Post-Examination Audit
16 Period that contained a per diem interest charge in excess of the amount permitted by Financial Code
17 section 50204, subdivision (o) and Civil Code section 2984.5; provided, however, that the Post-
18 Examination audit report need not report excess interest charges identified by AmeriFirst through its
19 normal post-closing process if the excess charges were refunded to the borrower/s by AmeriFirst
20 within 30 calendar days of disbursement; and for each loan, the report shall list the borrower's loan
21 number, name, address, loan amount, loan date, interest rate, disbursement date, date per diem
22 interest commenced, per diem interest charged, daily per diem interest amount, number of days per
23 diem interest charged, number of days per diem interest overcharged (if applicable), proof of refund
24 (if applicable).

25 (b) Payment of Refunds of Overcharges for Post-Examination Period Audit.
26 AmeriFirst agrees to refund any amounts of per diem interest charged in excess of that permitted
27 under Financial Code section 50204, subdivision (o), and Civil Code section 2948.5, in connection
28 with loans funded during the Post-Examination Audit Period as follows: a refund of the amount of

1 per diem interest overcharged, plus interest at the rate of 10 percent per annum, shall be mailed to the
2 last known address of each borrower no later than 180 calendar days from the Effective Date of the
3 Settlement Agreement.

4 (c) Administrative Penalties Based on Post-Examination Audit Findings.

5 AmeriFirst shall pay an administrative penalty in the amount of \$200.00 for each loan with a per
6 diem overcharge reported in the Post-Examination Period Audit Report. AmeriFirst need not pay the
7 penalty if it refunded any overcharge to the borrower/s within 30 calendar days of the disbursement
8 date of the loan. The payment of these penalties shall be made within 30 calendar days following
9 delivery of the Post-Examination Period Audit Report in which the loan, day and/or failure is
10 reported. All payments of penalties shall be made in the form a cashier's check or an Automated
11 Clearing House deposit and transmitted to the attention of Accounting – Enforcement Division,
12 Department of Financial Protection & Innovation, 2101 Arena Boulevard, Sacramento, California
13 95834. Notice of such payment shall be sent concurrently with the submission of payment to the
14 attention of Blaine A. Noblett, Senior Counsel, at blaine.noblett@dfpi.ca.gov.

15 10. Escheatment. No later than 90 calendar days after the submission of the Examination
16 Period Audit Report and no later than 90 calendar days after the submission of the Post-Examination
17 Period Audit Report, AmeriFirst shall notify the Commissioner of any refund payment that has been
18 returned or remains outstanding for loans, as appropriate. AmeriFirst shall be responsible for ensuring
19 that any outstanding refund payment owed to any borrower identified in the Examination Period
20 Audit and Post-Examination Period Audit Reports is escheated to the California State Controller's
21 Office within the period provided by and in accordance with Code of Civil Procedure section 1519.5
22 of the Unclaimed Property Law (Code Civ. Proc., § 1500 et seq.).

23 11. Remedies for Breach. AmeriFirst agrees that, following 30 days from the
24 receipt of notice from the Commissioner of AmeriFirst's failure to comply with any term of the
25 Settlement Agreement, AmeriFirst may be immediately suspended from engaging in business under
26 its CRMLA lenders license upon the issuance of an order from the Commissioner until it provides
27 evidence satisfactory to the Commissioner that the terms are met. AmeriFirst hereby waives any
28 notice and hearing rights that may be afforded under the CRMLA, Administrative Procedure Act,

1 Code of Civil Procedure, or any other provision of law to contest immediate suspension. AmeriFirst
2 further acknowledges and agrees that its failure to comply with paragraphs 5. through 10. of the
3 Settlement Agreement shall constitute a failure to comply with the Settlement Agreement and be
4 subject to this paragraph.

5 12. Notice and Opportunity To Cure. The Commissioner agrees that any such notice
6 under paragraph 11. will be in writing and will include reasonably sufficient detail for AmeriFirst to
7 understand the nature of the Commissioner’s claims so that it has a reasonable opportunity to cure
8 any such failure within the 10-business day period provided therein and to present evidence to the
9 Department that no violation has occurred. Notwithstanding the provisions of paragraph 11.,
10 AmeriFirst shall not be subject to suspension for violations of the Settlement Agreement that,
11 through no fault of AmeriFirst, are caused by the Third-Party Auditor’s failure to meet its
12 contractual obligations arising from the Settlement Agreement. Further, to avoid borrower harm,
13 AmeriFirst may complete and fund during the suspension period called for in paragraph 11. any
14 loans that were scheduled to close before the start of the suspension period, but AmeriFirst will not
15 accept new loan applications or engage in any other activities pursuant to CRMLA lenders license
16 during the suspension period.

17 13. Full and Final Agreement. The parties hereby acknowledge and agree that the
18 Settlement Agreement is intended to constitute a full, final, and complete resolution of the
19 Accusation, Order to Refund, Order to Discontinue Violations, the Examination Findings, and the
20 Examination Period Audit and Post-Examination Period Audit Reports (Audit-Reported Violations).
21 The Commissioner hereby agrees that no further proceedings or actions will be brought by the
22 Department under the CRMLA, or any other provision of law, based upon either the Examination
23 Findings or the Audit-Reported Violations excepting therefrom any proceeding to enforce
24 compliance with the terms of the Settlement Agreement.

25 14. Exceptions to Full and Final Agreement. Nothing in paragraph 13., above, or
26 anything else in the Settlement Agreement shall be construed to prohibit or restrict or preclude the
27 Commissioner from taking any of the following actions:

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1 (a) Bringing a proceeding to enforce compliance with the terms of the Settlement
2 Agreement;

3 (b) Bringing a proceeding based upon the discovery of violations of the CRMLA
4 occurring after the Effective Date of the Settlement Agreement;

5 (c) Bringing a proceeding based upon discovery of violations of the CRMLA that
6 do not form the basis of the Settlement Agreement;

7 (d) Bringing a proceeding based upon the discovery of violations of the CRMLA
8 that AmeriFirst knowingly concealed from the Commissioner.

9 15. Binding. The Settlement Agreement is binding on all heirs, assigns, and successors in
10 interest.

11 16. Commissioner's Duties. The parties acknowledge and agree that nothing contained in
12 the Settlement Agreement shall operate to limit the Commissioner's ability to assist any other agency
13 (city, county, state or federal) with any prosecution, administrative, civil or criminal, brought by any
14 such agency against AmeriFirst or any other person based upon any of the activities alleged in these
15 matters or otherwise.

16 17. Third Party Actions. It is the intent and understanding between the parties that the
17 Settlement Agreement does not create any private rights or remedies against AmeriFirst, create any
18 liability for AmeriFirst or limit defenses of AmeriFirst for any person or entity not a party to the
19 Settlement Agreement.

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

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

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

5 20. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
6 has received independent advice from its attorney(s) and representatives with respect to the
7 advisability of executing the Settlement Agreement.

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

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

19 23. Voluntary Agreement. AmeriFirst enters into the Settlement Agreement voluntarily
20 and without coercion and acknowledges that no promises, threats or assurances have been made by
21 the Commissioner or any officer, or agent thereof, about the Settlement Agreement.

22 24. Authority to Execute. Each signatory hereto covenants that he or she possesses all
23 necessary capacity and authority to sign and enter into the Settlement Agreement.

24 25. Counterparts. The parties agree that the Settlement Agreement may be executed in one
25 or more separate counterparts, each of which when so executed, shall be deemed an original. Such
26 counterparts shall together constitute and be one and the same instrument.

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1 26. Effective Date. The Settlement Agreement shall not become effective until signed by
2 all parties and delivered by the Commissioner’s counsel by email to T. Robert Finlay, AmeriFirst’s
3 counsel at: rfinlay@wrightlegal.net (Effective Date).

4 27. Notice. Any notices required under the Settlement Agreement shall be provided to
5 each party at the following addresses:

6 If to Respondent to: Eric M. Bowlby
7 AmeriFirst Financial, Inc.
8 1550 East McKellips Road, Suite 117
9 Mesa, Arizona 85203
 Email: ebowlby@amerifirst.us

10 with copy to: T. Robert Finlay, Esq.
11 Wright, Finlay & Zak, LLP
12 4665 MacArthur Court, Suite 200
 Newport Beach, California 92660
 Email: rfinlay@wrightlegal.net

13 If to the Commissioner to: Blaine A. Noblett, Senior Counsel
14 Department of Financial Protection & Innovation
15 320 W. 4th Street, Suite 750
16 Los Angeles, California 90013
 Email: blaine.noblett@dfpi.ca.gov

17 28. Public Record. AmeriFirst acknowledges that the Settlement Agreement is a public
18 record.

19 [Signatures to follow]

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IN WITNESS WHEREOF, the parties hereto have approved and executed the Settlement Agreement on the dates set forth opposite their respective signatures.

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

Dated: September 9, 2022

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

AMERIFIRST FINANCIAL, INC.

Dated: August 29, 2022

By _____
ERIC M. BOWLBY, President and Chief Executive Officer

APPROVED AS TO FORM:

WRIGHT, FINLAY & ZAK, LLP

By: _____
T. ROBERT FINLAY, Esq.
Attorneys for AmeriFirst Financial, Inc.