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9 Attorneys for Complainant

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

13 In the Matter of: ) CRMLA LICENSE NO.: 413-0742  
14 THE COMMISSIONER OF FINANCIAL )  
PROTECTION AND INNOVATION, ) CONSENT ORDER  
15 Complainant, )  
16 v. )  
17 AMHERST FUNDING GROUP, L.P., )  
18 Respondent. )  
19  
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21 The Commissioner of Financial Protection and Innovation (Commissioner) and Amherst  
22 Funding Group, L.P. (Amherst) (collectively, the Parties) enter into this Consent Order with respect  
23 to the following facts:

24 **I.**

25 **Recitals**

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

27 A. The Department of Financial Protection and Innovation (Department) through the  
28 Commissioner has jurisdiction over the licensing and regulation of persons engaged in the business

1 of making or servicing residential mortgage loans, under the California Residential Mortgage  
2 Lending Act (CRMLA) (Fin. Code, § 50000 et seq.).

3 B. Amherst is a residential mortgage lender and residential mortgage loan servicer  
4 licensed by the Commissioner, pursuant to the CRMLA. Amherst has its place of business at 5001  
5 Plaza on the Lake, Suite 215, Austin, Texas 78746.

6 C. Victoria Husband is the Chief Compliance Officer of Amherst, and as such, is  
7 authorized to enter into this Consent Order on behalf of Amherst.

8 D. Financial Code section 50123, subdivision (a), states that a residential mortgage  
9 lender license remains in effect until suspended, surrendered, or revoked.

10 E. Financial Code section 50123, subdivision (b), states a residential mortgage lender  
11 licensee that ceases to engage in the business regulated by this division and desires to no longer be  
12 licensed shall inform the Commissioner in writing and, at that time, surrender the license and all  
13 other indicia of licensure to the Commissioner. The licensee shall file a plan for the withdrawal from  
14 regulated business, and the plan shall include a timetable for the disposition of the business. The plan  
15 shall also include a closing audit, review, or other agreed upon procedures performed by an  
16 independent certified public accountant prescribed by rule or order of the Commissioner. Upon  
17 receipt of the written notice and plan, the Commissioner shall review the plan and, if satisfactory to  
18 the commissioner, shall accept the surrender of the license. A license is not surrendered until its  
19 tender is accepted in writing by the Commissioner after a review, and a finding has been made on  
20 the licensee’s plan required to be filed by this section, and a determination has been made that there  
21 is no violation of this law.

22 F. On September 29, 2020, Amherst submitted a license surrender request to the  
23 Department through the Nationwide Multistate Licensing System (NMLS). Amherst was required  
24 to file a plan to withdrawal, audited financials and other documents required by Financial Code  
25 section 50123, subdivision (b). Amherst failed to submit the required information, reports and  
26 documents.

27 G. Amherst’s surrender request remained incomplete. As such, Amherst had to comply  
28 with the CRMLA until the Commissioner approved its surrender request.

1 H. Pursuant to Financial Code section 50200 and California Code of Regulations, title  
2 10, section 1950.200, every residential mortgage lender or mortgage loan servicer must cause its  
3 books, records and accounts to be audited by an independent certified public accountant  
4 (Independent CPA). The audit report must be certified by an Independent CPA conducting the  
5 audit, and filed with the Commissioner within 105 days of the end of the licensee’s fiscal year.  
6 Licensees are required to upload audited financial statements to the NMLS website.

7 I. On April 1, 2021, NMLS posted an automated license item stating that Amherst’s  
8 2020 financial statements had not been submitted. The 2020 audited financial statements were due  
9 on April 15, 2021. Amherst failed to file audited financial statements for the year ending December  
10 31, 2020.

11 J. On April 1, 2022, NMLS posted an automated license item stating that Amherst’s  
12 2021 financial statements had not been submitted. The 2021 audited financial statements were due  
13 on April 15, 2022. Amherst failed to file audited financial statements for the year ending December  
14 31, 2021.

15 K. On October 17, 2022, the Department posted an item in the NMLS notifying  
16 Amherst that its 2021 audited financial statements had not been uploaded to the NMLS’ website.  
17 Amherst was further notified that its failure to upload the audited financial statements may result in  
18 summary revocation of its license.

19 L. Amherst failed to file audited financial statements for the years ending December 31,  
20 2020, and December 31, 2021.

21 M. In May of 2023, Amherst filed a plan for the withdrawal from the regulated business  
22 and information to supplement its surrender request.

23 N. Based upon the foregoing, the Commissioner finds that Amherst violated Financial  
24 Code section 50200 and California Code of Regulations, title 10, section 1950.200.

25 O. The Commissioner finds that this Consent Order is appropriate, in the public interest,  
26 and consistent with the purposes fairly intended by the policies and provisions of the CRMLA.

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**II.**

**Terms and Conditions**

1. Purpose. This Consent Order resolves the issues before the Commissioner, finding that Amherst violated the CRMLA, as set forth above in paragraphs A through O, 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 CRMLA.

2. Order to Discontinue Violations. In accordance with Financial Code sections 50321 and 50323, Amherst Funding Group, L.P. is hereby ordered to immediately discontinue violations of Financial Code section 50200 and California Code of Regulations, title 10, section 1950.200, set forth herein. This Order to Discontinue Violations is final and effective from the Effective Date of this Consent Order, as defined in paragraph 24 (Effective Date).

3. Administrative Penalties. Amherst Funding Group, L.P. is hereby ordered to pay an administrative penalty to the Commissioner in the amount of \$5,000.00 within ten days of the Effective Date of this Consent Order. Amherst Funding Group, L.P. shall pay the penalties by automated Clearing House deposit or cashier’s check to the Department and transmitted to the attention of Accounting-Litigation at the Department of Financial Protection and Innovation, 2101 Arena Blvd., Sacramento, California 95834. Notice of payments shall be sent concurrently to Affi Eghbaldari, Senior Counsel, Enforcement Division, by email at: affi.eghbaldari@dfpi.ca.gov.

4. License Surrender. Upon the effective date of this Consent Order and receipt of the penalty payment detailed in paragraph 3, above, the Department agrees that it will process Amherst’s license surrender request and will notify Amherst in writing of acceptance of the license surrender.

5. Waiver of Hearing Rights. Amherst acknowledges 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. Amherst hereby waives the right to any hearings, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the CRMLA, the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law. Amherst further expressly waives any requirement for the filing of an enforcement action pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights,

1 Amherst effectively consents to this Consent Order becoming final.

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

7 7. Failure to Comply with Consent Order. Amherst agrees that if it fails to comply with  
8 any of the terms of this Consent Order or Order to Discontinue Violations, including, but not limited  
9 to failure to timely pay the penalty, the Commissioner may, in addition to all other available  
10 remedies it may invoke under the CRMLA, summarily suspend or revoke Amherst’s license.  
11 Amherst waives any notice and hearing rights to contest such summary suspension or revocation  
12 which may be afforded under the CRMLA, the California Administrative Procedure Act, the  
13 California Code of Civil Procedure, or any other provision of law in connection therewith.

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

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

20 10. Future Actions by Commissioner. If Amherst fails to comply with any terms of this  
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 Amherst, or any of its partners, owners, officers, directors, shareholders, employees or  
24 successors for any and all unknown violations of the CRMLA.

25 11. Commissioner’s Duties. Nothing in this Consent Order limits the Commissioner’s  
26 ability to assist any other government agency with any action brought by that agency (city, county,  
27 state or federal) with any prosecution, administrative, civil, and/or criminal brought by any such  
28 agency against Amherst, including an action based on any of the acts, omissions, or events described

1 in this Consent Order.

2 12. Independent Legal Advice. Each party represents that it has received independent  
3 advice from its counsel or representatives regarding the advisability of executing this Consent Order.

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

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

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

25 16. No Presumption Against Drafting Party. Each party acknowledges that it has had the  
26 opportunity to draft, review, and edit the language of this Order. Accordingly, the Parties intend that  
27 no presumption for or against the drafting party will apply in construing any part of this Consent  
28 Order. The Parties waive the benefit of Civil Code section 1654 as amended or corresponding

1 provisions of any successor statute, which provide that in cases of uncertainty, language of a contract  
2 should be interpreted most strongly against the party that caused the uncertainty to exist.

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

5 18. Governing Law. This Consent Order will be governed by and construed in accordance  
6 with the laws of the State of California.

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

12 20. Counterparts. This Consent Order may be executed in any number of counterparts,  
13 each of which will be deemed an original when executed. All counterparts together will be deemed  
14 to constitute a single document.

15 21. Public Record. Amherst acknowledges that this Consent Order is and will be a  
16 matter of public record.

17 22. Authority to Sign. Each signatory hereto covenants that he/she possesses all  
18 necessary capacity and authority to sign and enter into this Consent Order and undertake the  
19 obligations set forth herein.

20 23. Signatures. A signature delivered by facsimile or email will be deemed an original  
21 signature.

22 24. Effective Date. This Consent Order shall become final and effective when signed by  
23 the Parties and delivered by the Commissioner’s agent via e-mail to Amherst’s attorney, William G.  
24 Beecher at william.beecher@dentons.com.

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

3 To Amherst: Amherst Funding Group, L.P.  
4 Victoria Husband, Chief Compliance Officer  
5 5001 Plaza on the Lake, Suite 215  
6 Austin, Texas 78746

7 and

8 William G. Beecher of Dentons US LLP, Counsel to  
9 Amherst Funding Group, L.P. at  
10 william.beecher@dentons.com

11 To the Commissioner: Affi Eghbaldari, Counsel  
12 Department of Financial Protection & Innovation  
13 1455 Frazee Road, Suite 315  
14 San Diego, California 92108  
15 Affi.eghbaldari@dfpi.ca.gov

16 Dated: May 30, 2023

17 CLOTHILDE V. HEWLETT  
18 Commissioner of Financial Protection and Innovation



19 By \_\_\_\_\_  
20 MARY ANN SMITH  
21 Deputy Commissioner  
22 Enforcement Division

23 AMHERST FUNDING GROUP, L.P.

24 Dated: May 30, 2023

25 By \_\_\_\_\_  
26 VICTORIA HUSBAND, Chief Compliance Officer  
27 of Amherst Funding Group, L.P.

28 Approved as to Form and Content:

By \_\_\_\_\_  
William G. Beecher of Dentons US LLP,  
Counsel for Amherst Funding Group, L.P.