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8  
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
10 OF THE STATE OF CALIFORNIA

11 In the Matter of THE COMMISSIONER OF ) File No. 413-0732  
12 BUSINESS OVERSIGHT OF THE STATE OF ) NMLS ID No. 3117  
13 CALIFORNIA, )  
14 Complainant, ) SETTLEMENT AGREEMENT  
15 vs. )  
16 )  
17 CITY FIRST MORTGAGE SERVICES, LLC, )  
18 ALSO DOING BUSINESS AS CITY 1<sup>st</sup> )  
19 MORTGAGE AND CITY 1<sup>st</sup> MORTGAGE )  
SERVICES )  
20 Respondent. )  
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22 This Settlement Agreement is entered into between City First Mortgage Services, LLC, also  
23 doing business as City 1<sup>st</sup> Mortgage and City 1<sup>st</sup> Mortgage Services (hereafter “City First”), and the  
24 Commissioner of Business Oversight of the State of California (“Commissioner” or “Complainant”),  
25 and is made with respect to the following facts:  
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**RECITALS**

A. City First Mortgage Services, LLC, also doing business as City 1<sup>st</sup> Mortgage and City 1<sup>st</sup> Mortgage Services (hereafter “Respondent”), is a limited liability company in good standing, duly formed, and existing pursuant to the laws of the State of Utah, with its principal place of business located at 750 South Main Street, Suite 104, Bountiful, Utah, 84010.

B. Respondent is a residential mortgage lender and servicer licensed by the California Department of Business Oversight (“Department”)<sup>1</sup> pursuant to the California Residential Mortgage Lending Act (“CRMLA”) (Fin. Code, §§ 50000 et seq.). Under its CRMLA license (#413-0732), Respondent currently has 29 branch offices in California and other states (NMLS ID# 3117). Respondent employs mortgage loan originators in its CRMLA business.

C. The Department, through the Commissioner, has jurisdiction over the licensing and regulation of persons and entities engaged in the business of lending and/or servicing residential mortgage loans pursuant to the CRMLA, including mortgage loan originators.

D. On June 21, 2013, Respondent submitted to the Department a self-audit report that identified per diem interest overcharged to California borrowers for 226 out of 961, or approximately 23 percent, of loans funded during the period of August 5, 2010 to January 8, 2013.

E. On August 5, 2013, the Commissioner served Respondent through certified mail the following documents: Notice of Intent to Issue Orders and Accusation in Support of Notice of Intention to Issue Orders Suspending Residential Mortgage Lender and Servicer License and Imposing Penalties dated July 31, 2013 (“Accusation”); Order to Discontinue Violations Pursuant to Financial Code Section 50321 and Refund Excessive Per Diem Interest Charges Pursuant to Financial Code Section 50504 dated July 31, 2013 (“Order”); Statement of Facts In Support of Order to Discontinue Violations Pursuant to California Financial Code Section 50321 and Refund Excessive Per Diem Interest Charges Pursuant to Financial Code Section 50504 and Notice of Intent to Make Order Final dated July 31, 2013; and, accompanying documents (collectively “Administrative Action”).

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<sup>1</sup> As of July 1, 2013, the Department of Corporations and the Department of Financial Institutions merged to form the Department of Business Oversight.

1 F. On August 21, 2013, Respondent timely submitted to the Commissioner a Notice of  
2 Defense, requesting a hearing regarding the Administrative Action, which has been set in this matter  
3 for May 27-28, 2014 in Sacramento, California.

4 G. It is the intention and desire of the parties to resolve this matter without the necessity  
5 of a hearing and/or other litigation.

6 H. Respondent enters into this Settlement Agreement without admitting or denying any of  
7 the findings contained within the Administrative Action.

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

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

12 **TERMS AND CONDITIONS**

13 1. Purpose. The purpose of this Settlement Agreement is to resolve the charges alleged in the  
14 Administrative Action in a manner that avoids the expense of a hearing and possible further court  
15 proceedings, is in the public interest, protects consumers, and is consistent with the purposes, policies  
16 and provisions of the CRMLA.

17 2. Finality of Order. Respondent hereby agrees to comply with the Commissioner's Order  
18 and, further, stipulates that the Order is hereby deemed final.

19 3. Waiver of Hearing Rights. Respondent acknowledges that the Commissioner is ready,  
20 willing and able to proceed to an administrative hearing on the charges contained in the  
21 Administrative Action, and Respondent hereby waives the right to a hearing, and to any  
22 reconsideration, appeal, or other right to review which may be afforded pursuant to the CRMLA, the  
23 California Administrative Procedure Act, the California Code of Civil Procedure, or any other  
24 provision of law; and by waiving such rights, Respondent effectively withdraws its hearing request  
25 and consents to the Settlement Agreement becoming final.

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1           4. Independent Auditor. Respondent agrees to engage an independent certified public  
2 accountant(s) or independent certified accounting firm that is reasonably acceptable to the  
3 Department (in each case, the “Independent Auditor”) to conduct an internal audit of Respondent's  
4 loan information in order to provide the report set forth in Paragraph 5 of this Settlement Agreement,  
5 as follows:

6           a.       The first audit report shall cover all California loans originated and funded by  
7 Respondent from August 5, 2010 to April 30, 2014, and shall be submitted to the Department by no  
8 later than 90 calendar days after the execution of this Settlement Agreement.

9           b.       The second audit report shall cover all California loans originated and funded by  
10 Respondent from May 1, 2014 through July 31, 2014, and shall be submitted to the Department by no  
11 later than October 31, 2014.

12           c.       The third audit report shall cover all California loans originated and funded by  
13 Respondent from August 1, 2014 through October 31, 2014, and shall be submitted to the  
14 Department by no later than January 31, 2015.

15           d.       The fourth audit report shall cover all California loans originated and funded by  
16 Respondent from November 1, 2014 through January 31, 2015, and shall be submitted to the  
17 Department by no later than April 30, 2015.

18           e.       The fifth audit report shall cover all California loans originated and funded by  
19 Respondent from February 1, 2015 through April 30, 2015, and shall be submitted to the Department  
20 by no later than July 31, 2015.

21           5. Independent Auditor Reports. Each report of the Independent Auditor shall include, at a  
22 minimum, the following: (i) the total number of loans originated and funded by Respondent during  
23 the periods specified in Paragraph 4 above; (ii) the number of loans with per diem interest charges in  
24 excess of the amount permitted by California Financial Code section 50204(o) and California Civil  
25 Code section 2948.5; and (iii) for each and every loan, the borrower loan number, name, address,  
26 loan amount, loan date, per diem interest charged, per diem interest that should have been charged  
27 under California Financial Code section 50204(o) and California Civil Code section 2948.5,  
28 overcharge amount (if any), date of refund (if applicable), and evidence of refund (if applicable) in

1 the form of a cancelled check and accompanying correspondence mailed to the borrower pursuant to  
2 Paragraph 6 below.

3 6. Payment of Refunds. Respondent agrees to refund any amounts collected in excess of  
4 amounts permitted by the CRMLA, plus interest at the rate of 10 percent per annum, as follows:

5 (a) Refunds shall be mailed to all of the 226 overcharged borrowers identified in  
6 Respondent's June 2013 internal audit, including without limitation any borrowers for whom  
7 documentation was missing or incomplete, no later than ten (10) business days after the effective date  
8 of this Settlement Agreement, as such date is defined in Paragraph 26;

9 (b) For additional overcharges identified pursuant to the Independent Auditor's reports  
10 described in Paragraph 4, subdivisions (a) through (e) above, refunds shall be sent by certified mail to  
11 the last known address of each borrower no later than ten (10) business days following the respective  
12 due date for each report.

13 7. Outstanding Refunds. No later than the due date set forth for each report identified in  
14 Paragraph 4, subdivisions (a) through (e) above, Respondent shall notify the Department of any  
15 refund payment that has been returned or remains outstanding for loans originated during the period  
16 of August 5, 2010 through the funding date covered by each respective report. Payment owed to any  
17 borrower that cannot be reasonably located shall be escheated by Respondent to the State of  
18 California pursuant to the provisions of the California Unclaimed Property Law (Code of Civ. Proc.,  
19 §§ 1500 et seq.).

20 8. Payment of Penalties. Respondent agrees to pay a penalty of \$110,000.00 in consideration  
21 for resolving known violations of California Financial Code section 50204(o) and California Civil  
22 Code section 2948.5 [per diem interest overcharges] and violation of California Financial Code  
23 section 50326 [failure to make reports to Commissioner], and any subsequently discovered violations  
24 fully refunded in compliance with Paragraph 6 above. The penalties totaling \$110,000.00 shall be  
25 due within twenty (20) calendar days of the effective date of this Settlement Agreement, as such date  
26 is defined in Paragraph 26, and made payable to the Department of Business Oversight, sent to the  
27 attention of: Miranda LeKander, Senior Corporations Counsel, Enforcement Division, at the  
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1 California Department of Business Oversight located at 1515 K Street, Suite 200, Sacramento,  
2 California, 95814.

3 9. Declaration of Policies and Procedures. Respondent shall submit to the Department  
4 contemporaneously upon execution of this Settlement Agreement a declaration, under of penalty of  
5 perjury, from an officer with personal knowledge of Respondent's policies and procedures that sets  
6 forth all policies and procedures implemented by Respondent to correct and prevent the violations set  
7 forth in the Administrative Action and ensure compliance with the CRMLA. Respondent agrees to  
8 make any changes or corrections to such policy within ten (10) business days following written  
9 request by the Department.

10 10. Effect of Settlement Agreement on License. In consideration of the information provided  
11 to the Commissioner by Respondent as described in the paragraphs above and Respondent's payment  
12 of penalties as provided herein, the Commissioner hereby agrees that except as set forth in this  
13 Settlement Agreement, she shall not suspend the residential mortgage lender or servicer license of  
14 Respondent or take any further action based on the violations cited in this Settlement Agreement.  
15 Accordingly, this Settlement Agreement, which resolves the Administrative Action, does not affect  
16 the licensing status of Respondent.

17 11. Failure to File Timely or Complete Reports Concerning Audits or Refunds. Respondent  
18 agrees that if it fails to meet any deadline or any requirement in Paragraphs 4 or 5 (regarding the  
19 independent auditor's internal review) or Paragraph 7 (regarding outstanding refunds), Respondent  
20 shall immediately notify the Department of such failure and cooperate with the Department to cause  
21 such failure to be rectified as soon as reasonably practicable but no later than thirty (30) calendar  
22 days. Failure to abide by these terms shall result in the revocation of Respondent's CRMLA license  
23 number 413-0732. Respondent hereby waives any notice and hearing rights to contest the revocation  
24 resulting from failure to comply with Paragraphs 4, 5, and 7 above that may be afforded under the  
25 California Financial Code, the California Administrative Procedure Act, the California Code of Civil  
26 Procedure, or any other legal provisions.

27 12. Failure to Make Timely or Sufficient Refunds. Respondent agrees that if it fails to meet  
28 any deadline or any requirement in Paragraph 6 above (regarding payment of refunds), other than

1 inadvertent and isolated errors that are promptly corrected by Respondent within thirty (30) calendar  
2 days, Respondent's CRMLA license number 413-0732 shall be revoked. Respondent hereby waives  
3 any notice and hearing rights to contest the revocation resulting from failure to comply with  
4 Paragraph 6 above which may be afforded under the California Financial Code, the California  
5 Administrative Procedure Act, the California Code of Civil Procedure, or any other legal provisions.

6 13. Failure to Make Payment of Penalties. Respondent agrees that if it fails to meet the  
7 deadline for payment of penalties set forth in Paragraph 8, Respondent's CRMLA license number  
8 413-0732 shall be revoked. Respondent hereby waives any notice and hearing rights to contest the  
9 revocation resulting from failure to comply with Paragraph 8 above that may be afforded under the  
10 California Financial Code, the California Administrative Procedure Act, the California Code of Civil  
11 Procedure, or any other legal provisions.

12 14. Full and Final Settlement. The parties hereby acknowledge and agree that this Settlement  
13 Agreement is intended to constitute a full, final, and complete resolution of the Administrative Action  
14 and that no further proceedings or actions will be brought by the Commissioner in connection with  
15 these matters either under the CRMLA, or any other provision of law, excepting therefrom any  
16 proceeding or action if such proceeding or action is based upon facts not presently known to the  
17 Commissioner or which were knowingly concealed from the Commissioner by Respondent.

18 15. Binding. This Settlement Agreement is binding on all heirs, assigns and/or successors in  
19 interest.

20 16. Commissioner's Duties. The parties further acknowledge and agree that nothing  
21 contained in this Settlement Agreement shall operate to limit the Commissioner's ability to assist any  
22 other agency, (city, county, state or federal) with any prosecution, administrative, civil or criminal,  
23 brought by any such agency against Respondent or any other person based upon any of the activities  
24 alleged in these matters or otherwise.

25 17. Third Party Actions. It is the intent and understanding between the parties that this  
26 Settlement Agreement does not create any private rights or remedies against Respondent, create any  
27 liability for Respondent or limit defenses of Respondent for any person or entity not a party to this  
28 Settlement Agreement.

1           18. Future Actions by Commissioner. This Settlement Agreement may be revoked and the  
2 Commissioner may pursue any and all remedies available under law against Respondent if the  
3 Commissioner later discovers that Respondent knowingly or willfully withheld information used and  
4 relied upon in this Settlement Agreement. Further, Respondent agrees that this Settlement  
5 Agreement does not resolve any penalties that may be assessed by the Commissioner upon discovery  
6 of new and further violations of the CRMLA which do not form the basis for the current  
7 Administrative Action.

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

11           20. Counterparts. The parties agree that this Settlement Agreement may be executed in one  
12 or more separate counterparts, each of which when so executed, shall be deemed an original. A fax  
13 signature shall be deemed the same as an original signature. Such counterparts shall together  
14 constitute and be one and the same instrument.

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

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

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

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

5 24. Presumption from Drafting. In that the parties have had the opportunity to draft, review  
6 and edit the language of this Settlement Agreement, no presumption for or against any party arising  
7 out of drafting all or any part of this Settlement Agreement will be applied in any action relating to,  
8 connected to, or involving this Settlement Agreement. Accordingly, the parties waive the benefit of  
9 California Civil Code section 1654 and any successor or amended statute, providing that in cases of  
10 uncertainty, language of a contract should be interpreted most strongly against the party who caused  
11 the uncertainty to exist.

12 25. Voluntary Agreement. Respondent enters into this Settlement Agreement voluntarily and  
13 without coercion and acknowledges that no promises, threats or assurances have been made by the  
14 Commissioner or any officer, or agent thereof, about this Settlement Agreement.

15 26. Effective Date. This Settlement Agreement shall not become effective until signed by all  
16 parties and delivered by the Commissioner’s counsel to Respondent’s counsel at  
17 Justin.Ashworth@City1st.com.

18 27. Public Record. Respondent acknowledges that this Settlement Agreement is a public  
19 record.

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1           28. Authority to Execute. Each signator hereto covenants that he/she possesses all necessary  
2 capacity and authority to sign and enter into this Settlement Agreement.

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4 Dated: 5/16/14                           JAN LYNN OWEN  
5   Commissioner of Business Oversight

6  
7 By \_\_\_\_\_  
8   MARY ANN SMITH  
9   Deputy Commissioner  
10    Enforcement Division

11 Dated: 5/15/14                           CITY FIRST MORTGAGE SERVICES, LLC, ALSO DOING  
12   BUSINESS AS CITY 1<sup>ST</sup> MORTGAGE AND CITY 1<sup>ST</sup>  
13   MORTGAGE SERVICES

14 By \_\_\_\_\_  
15   GERRETT VAN WAGONER  
16   Chief Executive Officer

17 APPROVED AS TO FORM AND CONTENT:

18 \_\_\_\_\_  
19 JUSTIN ASHWORTH  
20 Counsel for City First Mortgage Services, LLC  
21 Also doing business as City 1<sup>st</sup> Mortgage and City 1<sup>st</sup> Mortgage Services  
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