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

11 In the Matter of:) CRMLA LICENSE No. 413-0901
12)
13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) ACCUSATION IN SUPPORT OF NOTICE OF
14) INTENTION TO ISSUE ORDER
15 Complainant,) SUSPENDING LICENSE AND LEVYING
16) PENALTIES
17 vs.)
18)
19 AMERIFIRST FINANCIAL, INC.)
20)
21 Respondent.)
_____)

22 Jan Lynn Owen, the Commissioner of Business Oversight (“Commissioner”), is informed and
23 believes, and based upon such information and belief, alleges and charges Respondent as follows:

24 **I**

25 **Jurisdiction and Venue**

26 1. The Commissioner brings this action under the provisions of Financial Code sections
27 50513, subdivisions (a)(4), (b), and 50327, subdivision (a)(1), and the rules and regulations
28 promulgated thereunder.

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III

Applicable Statutes

8. Business and Professions Code section 17200 provides:

As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

9. Business and Professions Code section 17500 provides in pertinent part:

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. . . .

10. Civil Code section 2948.5 provides:

(a) A borrower shall not be required to pay interest on a principal obligation under a promissory note secured by a mortgage or deed of trust on real property improved with between one to four residential dwelling units for any period that meets any of the following requirements:

(1) Is more than one day prior to the date that the loan proceeds are disbursed from escrow.

(2) In the event of no escrow, if a request for recording is made in

1 connection with the disbursement, is more than one day prior to the
2 date the loan proceeds are disbursed to the borrower, to a third party on
3 behalf of the borrower, or to the lender to satisfy an existing obligation
of the borrower.

4 (3) In all other circumstances where there is no escrow and no request
5 for recording, is prior to the date funds are disbursed to the borrower, to
6 a third party on behalf of the borrower, or to the lender to satisfy an
existing obligation of the borrower.

7 (b) Interest may commence to accrue on the business day immediately
8 preceding the day of disbursement, for obligations described in
9 paragraphs (1) and (2) of subdivision (a) if both of the following occur:

10 (1) The borrower affirmatively requests, and the lender agrees, that the
11 disbursement will occur on Monday, or a day immediately following a
bank holiday.

12 (2) The following information is disclosed to the borrower in writing:
13 (A) the amount of additional per diem interest charged to facilitate
14 disbursement on Monday or the day following a holiday, as the case
15 may be, and (B) that it may be possible to avoid the additional per diem
16 interest charge by disbursing the loan proceeds on a day immediately
17 following a business day. This disclosure shall be provided to the
18 borrower and acknowledged by the borrower by signing a copy of the
19 disclosure document prior to placing funds in escrow.

20 (c) This section does not apply to a loan that is subject to subdivision
21 (c) of Section 10242 of the Business and Professions Code.

22 11. Financial Code section 50204 provides in pertinent part:

23 A licensee may not do any of the following:

24 (c) Accept fees at closing that are not disclosed to the borrower on the
25 federal HUD-1 Settlement Statement.

26 (i) Engage in acts in violation of Section 17200 or 17500 of the
27 Business and Professions Code

28 (k) Do an act, whether of the same or a different character than
specified in this section, that constitutes fraud or dishonest dealings.

1 (o) Commit an act in violation of Section 2948.5 of the Civil Code.
2 Evidence of compliance with Section 2948.5 of the Civil Code may be
3 evidenced by (1) a certification executed by the licensee, at no cost to
4 the borrower, pursuant to Section 2015.5 of the Code of Civil
5 Procedure, or (2) other evidence in the loan file acceptable to the
6 commissioner.

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10 12. Financial Code section 50327 provides in pertinent part:

11 (a) The commissioner may, after notice and a reasonable opportunity to
12 be heard, deny, decline to renew, suspend, or revoke any license, if the
13 commissioner finds that:

14 (1) The licensee has violated any provision of this division or rule or
15 order of the commissioner thereunder.

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20 13. Financial Code section 50513 provides in pertinent part:

21 (a) The commissioner may do one or more of the following:

22 (4) Impose fines on a mortgage loan originator or any residential
23 mortgage lender or servicer licensee employing a mortgage loan
24 originator pursuant to subdivisions (b), (c), and (d).

25 (b) The commissioner may impose a civil penalty on a mortgage loan
26 originator or any residential mortgage lender or servicer licensee
27 employing a mortgage loan originator, if the commissioner finds, on
28 the record after notice and opportunity for hearing, that the mortgage
loan originator or any residential mortgage lender or servicer licensee
employing a mortgage loan originator has violated or failed to comply
with any requirement of this division or any regulation prescribed by
the commissioner under this division or order issued under authority of
this division.

(c) The maximum amount of penalty for each act or omission described
in subdivision (b) shall be twenty-five thousand dollars (\$25,000).

(d) Each violation or failure to comply with any directive or
order of the commissioner is a separate and distinct violation or
failure.

14. CCR section 1950.204.3, subdivision (b) provides:

(b) A residential mortgage lender, mortgage servicer, residential
mortgage lender and servicer, or mortgage loan originator shall refer to

1 its licensure under the [CRMLA] in any written or printed
2 communication or any communication by means of recorded telephone
3 messages, telephonic or electronic media, or spoken on radio, television
4 or similar communications media, only by the following statement:
"Licensed by the Department of Business Oversight under the
California Residential Mortgage Lending Act."

5 15. CCR section 1950.314.4, subdivision (j) provides:

6 All licensees shall maintain a record keeping system which shall
7 demonstrate the following fees if charged to the mortgage applicant by,
8 the licensee:

- 9 (1) Appraisal fees;
- 10 (2) Credit report fees;
- 11 (3) Application fees;
- 12 (4) Commitment fees;
- 13 (5) Warehouse fees; and
- 14 (6) Third party charges.

16 **IV**

17 **Prayer**

18 The Commissioner finds that, by reason of the foregoing, AmeriFirst has violated Financial
19 Code sections 50204, subdivisions (c), (i), (k), and (o), and California Code of Regulations, title 10,
20 sections 1950.204.3, subdivision (b), and 1950.314.4, subdivision (j), of the CRMLA. For the
21 foregoing reasons, grounds exist to:

- 22 (1) suspend AmeriFirst's CRMLA residential mortgage lender license; and
- 23 (2) levy penalties against AmeriFirst under to Financial Code section 50513, subdivisions
- 24 (a)(4) and (b).

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1 WHEREFORE, IT IS PRAYED that:

2 1. Pursuant to Financial Code section 50327, the residential mortgage lender license of
3 AmeriFirst be suspended for a period of up to 12 months;

4 2. Pursuant to Financial Code section 50513, subdivisions (a)(4) and (b), penalties be
5 levied against AmeriFirst for four violations of Financial Code section 50204, subdivisions (k) and
6 (o), and section 2948.5 of the Civil Code, as AmeriFirst overcharged borrowers' per diem interest, in
7 an amount of at least \$1,000 per violation, for a total amount of penalties of at least \$4,000, or
8 according to proof;

9 3. Pursuant to Financial Code section 50513, subdivisions (a)(4) and (b), penalties be
10 levied against AmeriFirst for overcharging customers credit report fees, in violation of Financial
11 Code section 50204, subdivisions (c), (i), (k) and CCR section 1950.314.4, subdivision (j), in an
12 amount of at least \$1,000 per violation, for a total amount of penalties of at least \$3,000, or according
13 to proof; and

14 4. Pursuant to Financial Code section 5013, subdivisions (a)(4) and (b), penalties be
15 levied against AmeriFirst for failing to state in its advertisement that it was licensed by the California
16 Department of Business Oversight, in violation of CCR section 1950.204.3, subdivision (b), in an
17 amount of at least \$1,000, or according to proof.

18 Dated: March 12, 2015
19 Los Angeles, CA

JAN LYNN OWEN
Commissioner of Business Oversight

21 By _____
22 Blaine A. Noblett
23 Senior Counsel
24 Enforcement Division