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BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT

OF THE STATE OF CALIFORNIA

In the Matter of: THE COMMISSIONER OF BUSINESS OVERSIGHT, 　　　　　Complainant, 　　　v. TROY W. BERKLEY, 　　　　　Respondent.	) NMLS NO.: 728755)) STATEMENT OF ISSUES IN SUPPORT OF) ORDER DENYING APPLICATION FOR) MORTGAGE LOAN ORIGINATOR) LICENSE)) (FIN. CODE, § 50141))))))))))

The Commissioner of Business Oversight of the State of California (Commissioner), is informed and believes, and based upon such information and belief, alleges as follows:

I.

Introduction

The proposed order seeks to deny the issuance of a mortgage loan originator (MLO) license to Respondent, Troy W. Berkley (Berkley) pursuant to Financial Code section 50141 because he has been convicted of a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering and has not demonstrated such character and general fitness as to command the

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confidence of the community and to warrant a determination that he will operate honestly, fairly, and efficiently as a mortgage loan originator. Berkley was convicted of felony theft in 1999, and within the past 10 years, he was the subject of a foreclosure action and filed a personal bankruptcy petition.

II.

Application

On March 22, 2016, Berkley filed an application for a mortgage loan originator license with the Commissioner under section 50140 of the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.). Berkley applied by filing a Form MU4 through the Nationwide Mortgage Licensing System and Registry (NMLS).

Form MU4 question (A)(1) asked whether Berkley had "ever filed a personal bankruptcy petition or been the subject of an involuntary bankruptcy petition within the past 10 years." Berkley answered "Yes."

Form MU4 question (A)(3) asked whether Berkley had "been the subject of a foreclosure action within the past 10 years." Berkley answered "Yes."

Form MU4 question (F)(1) asked whether Berkley had "ever been convicted of or pled guilty or nolo contendere ('no contest') in a domestic, foreign, or military court to any felony." Berkley answered "Yes" and explained that he pleaded guilty "to signing [his] spouse[']s name to real estate documents." He did not, however, provide supporting documentation as required by the application.

On April 8, 2016, the Commissioner instructed Berkley through a license item in NMLS to submit supporting documentation for the criminal disclosure in question (F)(1).

On April 11, 2016, Berkley filed an amended Form MU4, to which was attached a written statement regarding his conviction, dated October 23, 2015, and a copy of his Colorado arrest record, dated April 9, 2016. In the statement, Berkley explained that he "pled guilty to a crime of theft and fraud in 1998 to avoid going to trial." He explained that his former common-law wife had accused him of "fraudulently signing her name to a set of documents on [their] home" even though

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1 she had given him "verbal authorization to do so." As of the date of the statement, Berkley had

2 "started the process" of expunging the conviction.

3 The attached Colorado arrest record showed only that Berkley had been arrested in 1998 for

4 one count of felony theft and three counts of felony forgery; it did not indicate the dispositions of

5 the charges. Thus, Berkley was verbally instructed by the Commissioner to upload documentation

6 showing the dispositions.

7 On May 27, 2016, Berkley filed a second amended Form MU4, this time attaching a copy of

8 the court docket. According to the docket, Berkley pleaded guilty on May 4, 1999, to felony theft

9 under Colorado Revised Statutes section 18-4-401(4), which provides that multiple thefts

10 committed within a six-month period may be aggregated and charged in a single count. The three

11 counts of forgery were dismissed.

III.

Applicable Law

Financial Code section 50141 provides in relevant part:

> (a) The commissioner *shall deny* an application for a mortgage loan originator license unless the commissioner makes at a minimum the following findings:
>
> . . .
>
> (2)(A) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing and registration, or at any time preceding the date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.
>
> (B) For purposes of this paragraph, an expunged or pardoned felony conviction shall not require denial of an application. However, the commissioner may consider the underlying crime, facts, or circumstances of an expunged or pardoned felony conviction when determining the eligibility of an applicant for licensure under this paragraph or paragraph (3).

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       (3) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.

4 (Emphasis added.)

5 **IV.**

6 **Discussion**

7 A.   Felony Conviction

8   On his application, Berkley disclosed that he "pled guilty to a crime of theft and fraud in

9 1998." Documents obtained by the Commissioner in connection with Berkley's application show

10 that in May 1999, he pleaded guilty to one count of felony theft in violation of Colorado Revised

11 Statutes section 18-4-401(4). According to Berkley's own statements, the felony involved forging

12 of signatures on real-estate documents, which are acts of fraud, dishonesty, and a breach of trust.

13   Because Berkley has been convicted of a felony involving an act of fraud, dishonesty, a

14 breach of trust, or money laundering within the meaning of Financial Code section 50141,

15 subdivision (a)(2), his application must be denied.

16 B.   Financial Responsibility, Character, and General Fitness

17   On his application, Berkley disclosed that within the past 10 years he had been the subject of

18 a foreclosure action and had filed a personal bankruptcy petition. Indeed, documents obtained by

19 the Commissioner in connection with Berkley's application show that he was the subject of a

20 foreclosure action beginning in April 2008. Berkley filed for Chapter 7 bankruptcy on September

21 16, 2008, and received a discharge of his debts on January 14, 2009.

22   In light of the foregoing, Berkley has not demonstrated such financial responsibility,

23 character, and general fitness as to command the confidence of the community and to warrant a

24 determination that he will operate honestly, fairly, and efficiently as a mortgage loan originator.

25 Under Financial Code section 50141, subdivision (a)(3), Berkeley's application must be denied.

26 **V.**

27 **Conclusion**

28   For the foregoing reasons, the Commissioner finds that Berkley does not meet the

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1   requirements for issuance of a mortgage loan originator license. Accordingly, the Commissioner

2   must deny Berkley's application for a mortgage loan originator license.

3   WHEREFORE, IT IS PRAYED that Berkley's application for a mortgage loan originator

4   license be denied.

5   Dated: May 26, 2017
              Los Angeles, California   JAN LYNN OWEN
6   Commissioner of Business Oversight

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8   By:_____
                                                        SAMUEL J. PARK
9   Counsel
                                                        Enforcement Division
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