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

12 In the Matter of: )  
13 ) CFLL License No.: 603-G363  
14 JOHN BUWALDA, dba BUWALDA )  
MORTGAGE, and BUWALDA MORTGAGE ) CFLL Application No.: 60DBO-45389  
15 SERVICES, INC. )  
16 )  
17 Respondents. )

18  
19 This Consent Order (“Consent Order”) is entered into between the Commissioner of Business  
20 Oversight (“Commissioner”) and JOHN BUWALDA, dba BUWALDA MORTGAGE (“Buwalda”),  
21 and BUWALDA MORTGAGE SERVICES, INC. (“BMSI”), and is made with respect to the  
22 following facts:

23 RECITALS

- 24 A. The Commissioner has jurisdiction over the licensing and regulation of persons and entities  
25 engaged in the business of lending pursuant to the California Finance Lenders Law (“CFLL”) (Fin.  
26 Code, § 22000 et seq.).  
27 B. Buwalda is a sole proprietorship operated by John Buwalda. Buwalda holds CFLL lender and  
28 broker license number 603-G363.

1 C. John Buwalda is also a co-owner of BMSI. BMSI applied for a CFLL license on or about  
2 June 24, 2015 (CFLL application no. 60DBO-45389). The application is currently pending and has  
3 not been approved. Consequently, BMSI is not licensed as a CFLL lender or broker.

4 D. BMSI provided to the Commissioner a report of loans brokered from October 11, 2013  
5 through June 24, 2015 (“Report”). The Report showed that BMSI had brokered a total of 47 loans  
6 while unlicensed.

7 E. The Report also showed that on at least 42 of the loans brokered by BMSI, BMSI used  
8 Buwalda’s CFLL license number.

9 F. Six of the forty-two loans brokered by BMSI were brokered to Endeavor America Loan  
10 Services dba The Money Source, Inc. (“Endeavor”). Endeavor did not hold a CFLL license when  
11 these six loans were brokered by BMSI.

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

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

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

18 TERMS AND CONDITIONS

19 1. Purpose

20 The purpose of this Consent Order is to resolve Buwalda and BMSI’s violations of the CFLL  
21 in a manner that avoids the expense of court proceedings and a hearing, is in the public interest,  
22 protects consumers, and is consistent with the purposes, policies, and provisions of the CFLL.

23 2. Finality of Order

24 Buwalda and BMSI agree to comply with this Consent Order and, further, stipulate that this  
25 Consent Order is hereby deemed a final and enforceable order issued pursuant to the Commissioner’s  
26 authority under Financial Code section 22705.5.

27 3. Waiver of Hearing Rights

28 Buwalda and BMSI acknowledge that the Commissioner is ready, willing, and able to proceed

1 with an administrative hearing based on the facts contained in this Consent Order, and Buwalda and  
2 BMSI hereby waive the right to a hearing, and to any reconsideration, appeal, or other right to review  
3 which may be afforded pursuant to the CFLL. Buwalda and BMSI further expressly waive any  
4 requirement for the filing of an Accusation that may be afforded by Government Code section  
5 11415.60, subdivision (b), the California Administrative Procedure Act, the California Code of Civil  
6 Procedure, or any other provision of law; and by waiving such rights, Buwalda and BMSI effectively  
7 consent to this Consent Order becoming final.

8 4. Order to Desist and Refrain from CFLL Violations

9 The Commissioner hereby orders that Buwalda and BMSI desist and refrain from further  
10 violations of CFLL section 22151, subdivision (b), by Buwalda assigning its CFLL license to BMSI  
11 or any other broker or lender. Buwalda and BMSI are also hereby ordered to desist and refrain from  
12 violating California Code of Regulations, title 10, section 1422, by engaging in brokering activity  
13 with a lender not licensed under the CFLL. This order is effective as of the date this Consent Order is  
14 executed by all parties. Buwalda and BMSI hereby waive any notice and hearing rights to contest this  
15 Order that may be afforded under the California Financial Code, the California Administrative  
16 Procedure Act, the California Code of Civil Procedure, or any other legal provisions.

17 5. Penalties

18 Buwalda and BMSI hereby agree to pay \$5,000.00 pursuant to CFLL section 22707.5, for  
19 their violations of CFLL section 22151, subdivision (b) and California Code of Regulations, title 10,  
20 section 1422 (“Penalties”). The Penalties shall be received within 30 days of the date this Order is  
21 effective. The Penalties shall be made payable to the Department of Business Oversight and shall be  
22 sent, via traceable method, to Joanne Ross, Senior Counsel, Department of Business Oversight, 1515  
23 K Street, Suite 200, Sacramento, California 95814.

24 6. Full and Final Settlement

25 The parties hereby acknowledge and agree that this Consent Order is intended to constitute a  
26 full, final, and complete resolution of the violations identified in this Consent Order, and that no  
27 further proceedings or actions will be brought by the Commissioner in connection with these matters  
28 either under the CFLL, or any other provision of law, excepting therefrom any proceeding to enforce

1 compliance with the terms of this Consent Order, or action if such proceeding or action is based upon  
2 discovery of violations of the CFLL which do not form the basis for this Consent Order or which  
3 were knowingly concealed from the Commissioner by Buwalda and BMSI.

4 7. Binding

5 This Consent Order is binding on all heirs, assigns, and/or successors in interest.

6 8. Commissioner's Duties

7 The parties further acknowledge and agree that nothing contained in this Consent Order shall  
8 operate to limit the Commissioner's ability to assist any other agency (city, county, state or federal)  
9 with any prosecution, administrative, civil or criminal, brought by any such agency against Buwalda,  
10 BMSI, or any other person based upon any of the activities alleged in these matters or otherwise.

11 9. Third Party Actions

12 It is the intent and understanding between the parties that this Consent Order does not create  
13 any private rights or remedies against Buwalda or BMSI, create any liability for Buwalda or BMSI,  
14 or limit defenses of Buwalda or BMSI for any person or entity not a party to this Consent Order.

15 10. Future Actions by Commissioner

16 The Commissioner may pursue any and all remedies available under law against Buwalda or  
17 BMSI if the Commissioner later discovers that Buwalda or BMSI knowingly or willfully withheld  
18 information used for and relied upon in this Consent Order. Further, Buwalda and BMSI agree that  
19 this Consent Order does not resolve any penalties that may be assessed by the Commissioner upon  
20 discovery of future or concealed violations of the CFLL.

21 11. Independent Legal Advice

22 Each of the parties represents, warrants, and agrees that it has received independent advice  
23 from its attorney(s) and/or representatives with respect to the advisability of executing this Consent  
24 Order.

25 12. Counterparts

26 The parties agree that this Consent Order may be executed in one or more separate  
27 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall  
28 together constitute and be one and the same instrument.

1 13. Waiver, Modification, and Qualified Integration

2 The waiver of any provision of this Consent Order shall not operate to waive any other  
3 provision set forth herein. No waiver, amendment, or modification of this Consent Order shall be  
4 valid or binding to any extent unless it is in writing and signed by all of the parties affected by it.

5 14. Headings and Governing Law

6 The headings to the paragraphs of this Consent Order are inserted for convenience only and  
7 will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof.  
8 This Consent Order shall be construed and enforced in accordance with and governed by California  
9 law.

10 15. Full Integration

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

20 16. Presumption from Drafting

21 In that the parties have had the opportunity to draft, review and edit the language of this  
22 Consent Order, no presumption for or against any party arising out of drafting all or any part of this  
23 Consent Order will be applied in any action relating to, connected to, or involving this Consent Order.  
24 Accordingly, the parties waive the benefit of Civil Code section 1654 and any successor or amended  
25 statute, providing that in cases of uncertainty, language of a contract should be interpreted most  
26 strongly against the party who caused the uncertainty to exist.

27 17. Voluntary Agreement

28 Buwalda and BMSI enter into this Consent Order voluntarily and without coercion and

1 acknowledge that no promises, threats or assurances have been made by the Commissioner or any  
2 officer, or agent thereof, about this Consent Order.

3 18. Effective Date

4 This Consent Order shall not become effective until signed by all parties and delivered by the  
5 Commissioner’s counsel by email to John Buwalda at johnbmsinc@gmail.com.

6 19. Public Record

7 Buwalda and BMSI acknowledge that this Consent Order is a public record.

8 20. Authority to Execute

9 Each signatory hereto covenants that he/she possesses all necessary capacity and authority to  
10 sign and enter into this Consent Order.

11 Dated: 1/5/17 JAN LYNN OWEN  
12 Commissioner of Business Oversight

13  
14 By \_\_\_\_\_  
15 MARY ANN SMITH  
16 Deputy Commissioner  
17 Enforcement Division

18 Dated: 1/3/17 JOHN BUWALDA,  
19 dba BUWALDA MORTGAGE

20  
21 By \_\_\_\_\_

22  
23  
24 Dated: 1/3/17 BUWLADA MORTGAGE SERVICES, INC.

25  
26  
27 By \_\_\_\_\_  
28 JOHN BUWALDA