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7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT

9 OF THE STATE OF CALIFORNIA

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11
12 In the Matter of the Petition for Reinstatement) NMLS NO.: 173983
of:)
13)
14 OCTAVIO AGUIRRE CAPACETE) SETTLEMENT AGREEMENT
15)
16)
17)
18)

19 This Settlement Agreement (“Agreement”) is entered into between Octavio Aguirre
20 Capacete (“Capacete” or “Respondent”) and the Commissioner of Business Oversight
21 (“Commissioner”) and is made with respect to the following facts:

22 **RECITALS**

23 A. On April 23, 2015, Capacete filed a Petition for Reinstatement of Mortgage Loan
24 Originator (“MLO”) License with the Commissioner pursuant to the California Residential
25 Mortgage Lending Act (“CRMLA”) (Fin. Code, § 50000 et seq.). On October 2, 2015, Capacete
26 filed a Supplement to Petition for Reinstatement of MLO License (Petition for Reinstatement of
27 MLO License and Supplement to Petition for Reinstatement of MLO License collectively referred
28 to herein as “Petition”).

1 B. On January 5, 2016, the Department of Business Oversight (“Department”) issued an
2 Order Denying the Petition to Capacete. The Order Denying the Petition was duly served on
3 January 15, 2016.

4 C. Respondent submitted a timely written hearing request and statutory time waiver to
5 the Department on January 22, 2016.

6 D. The Commissioner finds that this action is appropriate in the public interest and
7 consistent with the purposes fairly intended by the policy and provisions of this law.

8 E. It is the intention and desire of the parties to resolve this matter without the necessity
9 of a hearing and/or other litigation.

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. This Agreement is entered into for the purpose of judicial economy and expediency,
14 and to avoid the expense of a hearing, and possible further court proceeding.

15 2. Capacete agrees to withdraw his request for an administrative hearing made on
16 January 22, 2016. Capacete understands and acknowledges his right to an administrative hearing
17 under the CRMLA in connection with the Petition. Capacete hereby waives his right to a hearing,
18 and to any reconsideration, appeal, or other rights which may be afforded pursuant to the CRMLA,
19 the Administrative Procedure Act, the Code of Civil Procedure, or any other provision of law in
20 connection with these matters.

21 3. The Department hereby grants Capacete’s Petition and issues a MLO license to
22 Capacete, pursuant to Financial Code section 50513 (“MLO License”). In consideration for the
23 issuance of the MLO License, Capacete hereby understands and agrees that retention of the MLO
24 License is predicated on Capacete’s compliance with and/or performance of the following duties,
25 requirements, and restrictions set forth herein (“Requirements”):

26 a. Education. Capacete shall take at least sixteen (16) hours of continuing education
27 offered by an NMLS approved vendor annually for a period of five (5) years, commencing on
28 January 1, 2017.

1 b. Administrative Cost Payments. Capacete shall pay to the Department the sum
2 of five hundred dollars (\$500.00) each year for five (5) years as payment for Department
3 administration costs (“Administrative Cost Payment”). Capacete hereby agrees to pay the
4 Administrative Cost Payment on or before the anniversary date of this Agreement’s effective date as
5 defined in Paragraph 15 for five (5) consecutive years. The first payment of the Administrative Cost
6 Payment is due by Capacete to the Department on September 1, 2016, by 5:00p.m. If any of the four
7 subsequent payments is not received by the Department before the anniversary date of the
8 Agreement’s effective date as described in Paragraph 15 that will be considered a violation of the
9 terms of this Agreement. Capacete shall remit the five (5) required Administrative Cost Payments to
10 the Department via certified cashier's check made payable to The Department of Business Oversight
11 and sent to the same, Attn: Marisa I. Urteaga-Watkins, Esq., 1515 K Street, Suite 200, Sacramento,
12 CA 95814. Payments of the Administrative Cost Payment in the form of monthly installment
13 payments are prohibited.

14 c. Employment Disclosure. Capacete shall disclose to any prospective or current
15 employer in or associated with the real estate, mortgage, financial lending, and banking industries
16 that the issuance of the MLO License is predicated on compliance with the terms of this Agreement
17 for the period of five (5) years from the effective date of this Agreement. Capacete hereby agrees to
18 submit proof of that disclosure in the Compliance Report.

19 d. Supervision. Capacete shall be under the supervision and control of a licensee
20 of the Department or the California Bureau of Real Estate when employed as a mortgage loan
21 originator for the period of five (5) years from the effective date of this Agreement. Capacete shall
22 submit confirmation of employment and supervision in the Compliance Report.

23 e. Compliance Report. Respondent agrees to submit proof of compliance with
24 this Agreement (“Compliance Report”) annually to the Department of Business Oversight, attention
25 Marisa I. Urteaga-Watkins, Esq., 1515 K Street, Suite 200, Sacramento, CA 95814. Respondent
26 shall submit the reports to the Department by way of first class United States mail. Compliance
27 Reports are due and must be received on each of the following dates: December 31, 2017;
28 December 31, 2018; December 31, 2019; December 31, 2020; and December 31, 2021. Compliance

1 Reports shall contain the following:

- 2 i. Proof of continuing education classes completed.
- 3 ii. Proof of payment of the Administrative Costs.
- 4 iii. Proof of disclosure of this Agreement to prospective and current
5 employers in or associated with the real estate, mortgage, financial lending, and banking industries.
- 6 iv. Proof that Capacete, if employed as an MLO, is under the supervision
7 and control of a licensee.
- 8 v. Report any arrest or conviction of any misdemeanor or felony.
- 9 vi. Report any action taken by any state or federal regulator against
10 Capacete alleging Capacete violated or is violating any provision of the CRMLA, California Finance
11 Lender Law, or any other state or federal law in his employment as a mortgage loan originator.

12 Failure to report on the above list of issues or failure to disclose any item listed above will
13 constitute a violation of this Agreement.

14 4. Any one of the following shall be grounds for automatic revocation of the MLO
15 License for the period of five (5) years from the effective date of this Agreement: (a) Capacete’s
16 failure to fulfill each and every Requirement in the manner set forth in the Agreement; (b) a finding
17 by the Commissioner that Capacete has violated or is violating any provision of the CRMLA, or the
18 California Finance Lender Law, or any state or federal law relating to his employment as a MLO;
19 (c) any arrest or conviction of any misdemeanor or felony; and (d) a finding by the Commissioner
20 that Capacete has committed any act of fraud, dishonesty or deceit. Capacete also understands and
21 hereby waives all notice and hearing rights to contest an immediate or automatic revocation
22 initiated pursuant to this provision, which may be afforded under the CRMLA, the Administrative
23 Procedure Act, the Code of Civil Procedure, or any other provision of law in connection with these
24 matters.

25 5. The parties hereby acknowledge and agree that this Agreement is intended to
26 constitute a full, final and complete resolution of the Petition and that no further proceedings or
27 actions will be brought by the Commissioner in connection with these matters either under the
28 CRMLA or any other provision of law, excepting therefrom any proceeding or action if such

1 proceeding or action is based upon facts not presently known to the Commissioner or which were
2 concealed from the Commissioner by Capacete.

3 6. The parties hereby acknowledge and agree that this Agreement is intended to
4 constitute a full, final and complete resolution of the Petition, excepting therefrom any proceeding
5 or action if such proceeding or action is based upon facts not presently known to the Commissioner.
6 The parties further acknowledge and agree that nothing contained in this Agreement shall operate to
7 limit the Commissioner’s ability to assist any other agency (city, county, state or federal) with any
8 prosecution, administrative, civil or criminal, brought by any such agency against Capacete based
9 upon any of the activities alleged in these matters or otherwise.

10 7. Each of the parties represents, warrants, and agrees that it has had an opportunity to
11 seek independent advice from its attorney(s) and/or representatives with respect to the advisability
12 of executing this Agreement.

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

23 9. This Agreement is the final written expression and the complete and exclusive
24 statement of all the agreements, conditions, promises, representations, and covenants between the
25 parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous
26 agreements, negotiations, representations, understandings, and discussions between and among the
27 parties, their respective representatives, and any other person or entity, with respect to the subject
28 matter covered hereby.

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

7 11. Capacete enters into this Agreement voluntarily and without coercion and
8 acknowledges that no promises, threats or assurances have been made by the Commissioner or any
9 officer, or agent thereof, about this Agreement.

10 12. The waiver of any provision of this Agreement shall not operate to waive any other
11 provision set forth herein, and any waiver, amendment and/or change to the terms of this
12 Agreement must be in writing and signed by the parties.

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

17 14. This Agreement shall be construed and enforced in accordance with and governed by
18 California law.

19 15. This Agreement shall not become effective until signed and delivered by all parties.

20 16. Each signator hereto covenants that he/she possesses all necessary capacity and
21 authority to sign and enter into this Agreement.

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[Section Intentionally Left Blank]

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17. This Agreement is binding on all heirs, assigns and/or successors in interest.

18. This Agreement may be revoked and the Commissioner may pursue any and all remedies available under law against Capacete if the Commissioner later discovers that Capacete knowingly or willfully withheld information used and relied upon in this Agreement.

Dated: 6/20/16 JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 6/13/16 OCTAVIO AGUIRRE CAPACETE

By _____
Octavio Aguirre Capacete

APPROVED AS TO FORM AND CONTENT:

MARISA I. URTEAGA-WATKINS
Counsel, Commissioner of Business Oversight