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6 Attorneys for Complainant

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8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues of THE) OAH Case No.: 2011010285
CALIFORNIA CORPORATIONS) Agency Case No.: 326868
11 COMMISSIONER,)
12 Complainant,)
13 vs.) ORDER DISMISSING STATEMENT OF
14 VICTOR MELGOZA GALLARDO,) ISSUES IN SUPPORT OF NON-ISSUANCE
15 Respondent.) OF MORTGAGE LOAN ORIGINATOR
16) LICENSE
17)
18)

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20 Pursuant to the Settlement Agreement entered into between the California Corporations
21 Commissioner and Victor Melgoza Gallardo on February 2, 2012, the Statement of Issues in Support
22 of Non-Issuance of Mortgage Loan Originator License issued by the Commissioner on January 5,
23 2011 is hereby dismissed without prejudice.

24 DATED: February 8, 2012 JAN LYNN OWEN
California Corporations Commissioner

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27 By _____
ALAN S. WEINGER
28 Deputy Commissioner

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10 In the Matter of the Statement of Issues of THE) OAH Case No.: 2011010285
CALIFORNIA CORPORATIONS) Agency Case No.: 326868
11 COMMISSIONER,)
12 Complainant,)
13 vs.) **SETTLEMENT AGREEMENT**
14 VICTOR MELGOZA GALLARDO,)
15 Respondent.)
16)
17)

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19 This Settlement Agreement is entered into between Victor Melgoza Gallardo (“Gallardo”) and
20 the California Corporations Commissioner ("Commissioner") and is made with respect to the
21 following facts:

22 **RECITALS**

23 A. On or about August 11, 2010, Gallardo filed an application for a mortgage loan
24 originator license with the Commissioner pursuant to the California Residential Mortgage Lending
25 Act (California Financial Code § 50000 et. seq.), in particular, Financial Code section 50140. The
26 application was for employment or working on behalf of International City Mortgage, Inc. as a
27 mortgage loan originator, which has its principal place of business located at 333 S Anita, Ste. 300,
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1 Orange, California 92868. Gallardo submitted his application to the Commissioner by filing Form
2 MU4 through the Nationwide Mortgage Licensing System (“NMLS”).

3 B. Form MU4 at Question 8. (D)(1) specifically asked: “Have you ever been convicted
4 of or pled guilty or nolo contendere (“no contest”) in a domestic, foreign, or military court to any
5 felony?” Respondent answered “no.” Respondent signed the Form MU4 swearing that the answers
6 were true and complete to the best of Respondent’s knowledge. However, during the application
7 process, the Department discovered that on October 10, 1995, Gallardo pled guilty to one count
8 unlawful taking of a vehicle in violation of Vehicle Code section 10851, subdivision (a), a felony and
9 one count receiving stolen property in violation of Penal Code section 496, subdivision (a), a felony.

10 C. Financial Code section 50141 provides in relevant part:

11 The commissioner shall not issue a mortgage loan originator license
12 unless the commissioner makes at a minimum the following findings:

13 . . .

14 (b) The applicant has not been convicted of, or pled guilty or nolo
15 contendere to, a felony in a domestic, foreign, or military court
16 during the seven-year period preceding the date of the application
17 for licensing and registration, or at any time preceding the date of
18 application, if such felony involved an act of fraud, dishonesty, a
19 breach of trust, or money laundering. . . .

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

25 D. Based on the foregoing, the Commissioner determined not to issue a mortgage loan
26 originator license to Gallardo pursuant to Financial Code section 50141 in that Gallardo pled guilty to
27 a felony involving an act of fraud, dishonesty, or a breach of trust.

28 E. On January 5, 2011, the Commissioner issued a Statement of Issues in Support of
Non-Issuance of Mortgage Loan Originator License. Subsequently, Gallardo requested an

1 opportunity to be heard, and thus a hearing was held on August 11, 2011. The Commissioner has not
2 yet adopted the proposed decision.

3 F. It is the intention and desire of the parties to resolve this matter before the
4 Commissioner issues a decision.

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

7 **TERMS AND CONDITIONS**

8 1. Gallardo hereby agrees to withdraw his application for a mortgage loan originator
9 license on or before February 8, 2012, by filing with the Commissioner a signed letter stating that he
10 hereby withdraws his mortgage loan originator license application and thereafter, filing a withdrawal
11 request through NMLS.

12 2. Upon receipt of Gallardo's request to withdraw his application for a mortgage loan
13 originator license, the Commissioner agrees to immediately withdraw his decision to not issue a
14 mortgage loan originator license to Gallardo and to dismiss the instant litigation without adopting a
15 decision on the hearing.

16 3. Nothing in this Agreement shall affect the right of Gallardo to apply for another
17 mortgage loan originator license.

18 4. Nothing in this Agreement shall affect the right of the Commissioner, in the future, to
19 deny Gallardo a mortgage loan originator license on any grounds permitted by law.

20 5. Each of the parties represents, warrants, and agrees that it has received independent
21 advice from its attorney(s) and/or representatives with respect to the advisability of executing this
22 Settlement Agreement.

23 6. Each of the parties represents, warrants, and agrees that in executing this Settlement
24 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel
25 and/or representative. Each of the parties further represents, warrants, and agrees that in executing
26 this Settlement Agreement it has placed no reliance on any statement, representation, or promise of
27 any other party, or any other person or entity not expressly set forth herein, or upon the failure of any
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1 party or any other person or entity to make any statement, representation or disclosure of anything
2 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in any
3 way fraudulently induced to execute this Settlement Agreement; and (2) to preclude the introduction
4 of parol evidence to vary, interpret, supplement, or contradict the terms of this Settlement Agreement.

5 7. This Settlement Agreement is the final written expression and the complete and
6 exclusive statement of all the agreements, conditions, promises, representations, and covenants
7 between the parties with respect to the subject matter hereof, and supersedes all prior or
8 contemporaneous agreements, negotiations, representations, understandings, and discussions between
9 and among the parties, their respective representatives, and any other person or entity, with respect to
10 the subject matter covered hereby.

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

18 9. This Settlement Agreement shall not become effective until signed by all parties and
19 delivered by all parties.

20 10. This Settlement Agreement may be executed in one or more counterparts, each of
21 which shall be an original but all of which, together, shall be deemed to constitute a single document.
22 This Settlement Agreement may be executed by facsimile signature, and any such facsimile signature
23 by any party hereto shall be deemed to be an original signature and shall be binding on such party to
24 the same extent as if such facsimile signature were an original signature.

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3 11. Each signatory hereto covenants that he/she possesses all necessary capacity and
4 authority to sign and enter into this Settlement Agreement.

5 DATED: February _2_, 2012

JAN LYNN OWEN
California Corporations Commissioner

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By _____
ALAN S. WEINGER
Deputy Commissioner

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11 DATED: February _2_, 2012

By _____
VICTOR MELGOZA GALLARDO
An individual

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1 PRESTON DuFAUCHARD
California Corporations Commissioner
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8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues of THE) NMLS No.: 326868
11 CALIFORNIA CORPORATIONS)
12 COMMISSIONER,) Sponsor File No.: 413 0570
13 Complainant,) STATEMENT OF ISSUES IN SUPPORT OF
14 vs.) NON-ISSUANCE OF MORTGAGE LOAN
15 VICTOR MELGOZA GALLARDO,) ORIGINATOR LICENSE
16 Respondent.)
17)

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19 The Complainant is informed and believes, and based upon such information and belief,
20 alleges and charges Respondent as follows:

21 I.

22 INTRODUCTION

23 On or about November 15, 2010, Complainant determined not to issue a mortgage loan
24 originator license to Victor Melgoza Gallardo ("Respondent" and/or "Gallardo") pursuant to
25 Financial Code section 50141 in that Gallardo pled guilty to a felony involving an act of fraud,
26 dishonesty, or a breach of trust.

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II.

THE APPLICATION

On August 11, 2010, Respondent filed an application for a mortgage loan originator license with the California Corporations Commissioner (“Complainant” or “Commissioner”) pursuant to the California Residential Mortgage Lending Act (“CRMLA”)(Financial Code, §§ 50000 et. seq.), in particular, Financial Code section 50140. The application was for employment or working on behalf of International City Mortgage, Inc. as a mortgage loan originator, which has its principal place of business located at 333 S Anita Dr., Ste 300, Orange, California 92868. Gallardo submitted his application to the Commissioner by filing Form MU4 through the Nationwide Mortgage Licensing System (“NMLS”).

Form MU4 at Question 8. (D)(1) specifically asked: “Have you ever been convicted of or pled guilty or nolo contendere (“no contest”) in a domestic, foreign, or military court to any felony?” Respondent answered “no.” Respondent signed the Form MU4 swearing that the answers were true and complete to the best of Respondent’s knowledge. However, during the application process, the Department discovered that on October 10, 1995, Gallardo pled guilty to one count unlawful taking of a vehicle in violation of Vehicle Code section 10851, subdivision (a), a felony and one count receiving stolen property in violation of Penal Code section 496, subdivision (a), a felony.

III.

CRIMINAL CONVICTION

As set forth above in section II, Respondent stated that he was not convicted of or pled guilty or no contest in a domestic, foreign, or military court to any felony. The Department, however, discovered during the application process that Respondent, on or about October 10, 1995, in the Municipal Court, Central Judicial District, County of Orange, State of California, pled guilty to the unlawful taking of a vehicle in violation of Vehicle Code section 10851, subdivision (a), a felony and receiving stolen property in violation of Penal Code section 496, subdivision (a), a felony.

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Financial Code section 50141 provides in relevant part:

The commissioner shall not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

...

(b) 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. . . .

(c) 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. . . .

IV.

MATERIAL MISSTATEMENT IN APPLICATION

Form MU4 at Question 8. (D)(1) specifically asked: “Have you ever been convicted of or pled guilty or nolo contendere (“no contest”) in a domestic, foreign, or military court to any felony?” Respondent answered “no.” Respondent signed the Form MU4 swearing that the answers were true and complete to the best of Respondent’s knowledge. However, during the application process, the Department discovered that on October 10, 1995, Gallardo pled guilty to one count unlawful taking of a vehicle in violation of Vehicle Code section 10851, subdivision (a), a felony and one count receiving stolen property in violation of Penal Code section 496, subdivision (a), a felony.

V.

CONCLUSION

Complainant finds, by reason of the foregoing, that Respondent pled guilty to the unlawful taking of a vehicle in violation of Vehicle Code section 10851, subdivision (a), and of receiving stolen property in violation of Penal Code section 496, subdivision (a), which constitutes a felony involving an act of fraud or dishonesty or breach of trust.

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Complainant further finds that by reason of Respondent’s criminal history and his omission of material information in his application about it, he has not demonstrated such 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. Thus, Complainant finds that non-issuance of Respondent’s mortgage loan originator license is supported by evidence that Respondent withheld information or made a material misstatement in his application when he failed to fully disclose his criminal history.

THEREFORE, Complainant asserts that Financial Code section 50141 mandates that Complainant not issue a mortgage loan originator license to Respondent under the California Residential Mortgage Lending Act.

WHEREFORE IT IS PRAYED that the determination of Complainant to not issue a mortgage loan originator license to Respondent in connection with Respondent’s August 11, 2010 application be upheld.

Dated: January 5, 2011
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
MARLOU de LUNA
Senior Corporations Counsel
Enforcement Division