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

10
11 In the Matter of:) OAH No. 2017050693
) NMLS ID: 323371
12 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) STIPULATION
13)
14 Complainant,)
15 v.)
16 WILLIAM RICHARD HOGARTY,)
17 Respondent.)
18)
19

20 This Stipulation is entered into by and between the Commissioner of Business Oversight
21 (Commissioner) and William Richard Hogarty (Hogarty) (hereafter, the parties) and is made pursuant
22 to the following facts:

23 **RECITALS**

24 A. Hogarty applied for mortgage loan originator license on September 10, 2016 by
25 submitting a Form MU4 through the National Mortgage System and Registry (NMLS).

26 B. In connection with this application, Hogarty was requested to provide additional
27 information and materials pertaining to (1) a prior personal bankruptcy, (2) a plea of nolo contendere
28 to a misdemeanor, (3) a civil lawsuit in which Hogarty was named as a defendant in a consumer

1 initiated financial services related case, and (4) the circumstances related to the voluntarily surrender
2 of Hogarty's BRE license.

3 C. While Hogarty supplied some additional information, the Commissioner determined the
4 application for a mortgage loan originator license should be denied because Hogarty had a financial
5 history that included a dismissed bankruptcy filing, a surrender of his license following the filing of a
6 BRE Accusation of improper conduct while holding his real estate license, civil claims arising out of
7 his business with his real estate license and a nolo contendere plea to a violation of Business and
8 Professions Code section 2944.6.

9 D. The Commissioner further determined that Hogarty made a false statement of a
10 material fact in his application for a mortgage loan originator license.

11 E. On April 7, 2017, the Commissioner issued a Notice of Intent to Deny the Mortgage
12 Loan Originator Application of Hogarty (Administrative Action) pursuant to section 22109 of the
13 California Finance Lenders Law (CFL) (Fin. Code, § 22000 et seq.).

14 F. On May 4, 2017, Hogarty requested a hearing with regard to the Administrative
15 Action and waived time for the hearing. The hearing is presently scheduled for September 18-19,
16 2017 before the Office of Administrative Hearings.

17 G. It is the intent and desire of the parties to resolve this matter without the necessity of a
18 hearing or other litigation.

19 NOW THEREFORE, in consideration of the foregoing, and the terms and conditions set forth
20 herein, the parties agree and stipulate as follows:

21 **TERMS AND CONDITIONS**

22 1. Purpose: This Stipulation is entered into for the purpose of judicial economy and
23 efficiency, and to avoid the expense and uncertainties of a hearing, and other possible court
24 proceedings.

25 2. Jurisdiction and Issuance of Final Order: Hogarty admits to the jurisdiction of the
26 Commissioner over him and further stipulates to the finality of the Order Denying Mortgage Loan
27 Originator License attached as Exhibit A (Order).
28

1 3. Waiver of Hearing: Hogarty acknowledges that the Commissioner granted a hearing
2 in relation to the Administrative Action and hereby waives his right to a hearing in relation to the
3 Administrative Action and withdraws his request for an administrative hearing. Hogarty agrees to
4 waive all rights to hearing, appeal, or judicial review of the Administrative Action which may be
5 afforded under the Administrative Procedures Act (Gov. Code, § 11400 et seq.) or section 22109 of
6 the CFLL.

7 4. Future Applications to Commissioner: If Hogarty applies for any license, permit, or
8 qualification under the Commissioner’s current or future jurisdiction, or is the subject of an action by
9 the Commissioner, then the allegations contained in the Administrative Action shall be admitted for
10 the purpose of such application(s) or enforcement proceeding(s). This Stipulation shall not prohibit
11 Hogarty from filing a future application for a mortgage loan originator license; however, Hogarty
12 understands and agrees that the Administrative Action may be considered by the Commissioner when
13 reviewing the merits of any such application.

14 5. Full and Final Settlement: The parties hereby acknowledge and agree that this
15 Stipulation is intended to constitute a full, final and complete resolution of this matter.

16 6. Commissioner’s Duties: The parties further acknowledge and agree that nothing
17 contained in this Stipulation shall operate to limit the Commissioner's ability to assist any other
18 agency, (county, state or federal) with any prosecution, administrative, civil or criminal, brought by
19 any such agency against Hogarty based upon any of the activities alleged in this matter or otherwise.
20 This Stipulation shall not limit the ability of the Commissioner to bring any administrative or civil
21 action to enforce compliance with the orders attached hereto or seek penalties for their violation.

22 7. Independent Legal Advice. Hogarty represents, warrants, and agrees that he has had
23 the opportunity to seek independent advice from legal counsel and/or representative with respect to
24 the advisability of executing this Stipulation.

25 8. Full Integration. Each of the parties represents, warrants, and agrees that in executing
26 this Stipulation each has relied solely on the statements set forth herein and the advice of its own
27 counsel and/or representative. Each of the parties further represents, warrants, and agrees that in
28 executing this Stipulation it has placed no reliance on any statement, representation, or promise of

1 any other party, or any other person or entity not expressly set forth herein, or upon the failure of any
2 party or any other person or entity to make any statement, representation or disclosure of anything
3 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
4 any way fraudulently induced to execute this Stipulation; and (2) to preclude the introduction of parol
5 evidence to vary, interpret, supplement, or contradict the terms of this Stipulation.

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

12 10. Voluntary Agreement. Hogarty enters into this Stipulation voluntarily and without
13 coercion and acknowledge that no promises, threats or assurances have been made by the
14 Commissioner or any officer, or agent thereof, about this Stipulation.

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

21 12. Counterparts: This Stipulation may be executed in one or more counterparts, each of
22 which shall be an original but all of which, together, shall be deemed to constitute a single document.

23 13. Public Record: Hogarty acknowledges that this Stipulation and the Order referenced
24 herein are public records.

25 14. Authority to Bind: Each signator hereto covenants that he/she possesses all necessary
26 capacity and authority to sign and enter into this Stipulation.

27 15. Service: Service to Hogarty of this Stipulation shall be effected by an agent for the
28 Commissioner sending copies by electronic mail to Hogarty at Hogarty@proofsmartfood.com.

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16. Effective Date: This Stipulation shall become effective once signed by all parties and service to Hogarty has been executed pursuant to Paragraph 15.

JAN LYNN OWEN
Commissioner of Business Oversight

Dated: 6/20/17

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 6/19/17

By _____
WILLIAM RICHARD HOGARTY, as an individual