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

11 In the Matter of:
12 THE COMMISSIONER OF BUSINESS
OVERSIGHT,

13 Complainant,

14 v.

15 ZACHARY ANDREW MILLER,

16 Respondent.

) NMLS No.: 1400462

) **STATEMENT OF ISSUES IN SUPPORT OF**
) **DENIAL OF MORTGAGE LOAN**
) **ORIGINATOR LICENSE APPLICATION**

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20 The Commissioner of Business Oversight (“Commissioner” or “Complainant”) is informed
21 and believes, and based upon such information and belief, alleges and charges Respondent Zachary
22 Andrew Miller (“Respondent” or “Miller”) as follows:

23 **I.**

24 **INTRODUCTION**

25 Complainant hereby determines not to issue a mortgage loan originator (“MLO”) license to
26 Miller pursuant to Financial Code section 50141, subdivision (a)(3) because Respondent has not
27 demonstrated financial responsibility, character, and general fitness as to command the confidence of
28 the community and to warrant a determination that the applicant will operate honestly, fairly, and

1 efficiently within the purposes of the California Residential Mortgage Lending Act (“CRMLA”) (Fin.
2 Code, § 50000 *et. seq.*).

3 **II.**

4 **THE APPLICATION**

5 On January 4, 2016, Respondent filed an application for an MLO license with the
6 Commissioner pursuant to the CRMLA, in particular, Financial Code section 50140 (“Application”).
7 The Application was for the purpose of the Respondent’s employment with or working on behalf of
8 two (2) companies: (1) Oxbow Mortgage Company, L.L.C., Nationwide Mortgage Licensing
9 System (“NMLS”) ID No. 3296, at a branch located at 4007 Bridgeport Way West, University
10 Place, Washington, 98466, as a MLO; and with (2) Mark 1 Real Estate, Inc., NMLS ID No.
11 1126356, at a branch located at 1428 E. Chapman Avenue, Orange, CA, 92866, also as a MLO since
12 February, 2016. The Application was submitted to the Commissioner by filing Form MU4
13 Application through the NMLS. Respondent signed the Form MU4 swearing that the answers were
14 true and complete to the best of Respondent’s knowledge.

15 The Form MU4 at Section K, “Regulatory Action” specifically asks: *“Has any state or*
16 *federal regulatory agency or foreign financial regulatory authority or self-regulatory organization*
17 *(SRO) ever:(2)found you to have been involved in a violation of a financial services-related business*
18 *regulation(s) or statute(s); (3) found you to have been a cause of a financial services-related business*
19 *having its authorization to business denied, suspended, revoked or restricted?; (4) entered an order*
20 *against you in connection with a financial services-related activity?; ... (9) entered an order*
21 *concerning you in connection with any license or registration?”* The Form MU4 at Section M,
22 specifically asks: *“Based upon activities that occurred while you exercised control over an*
23 *organization, has any State of federal regulatory agency or foreign financial regulatory authority or*
24 *self-regulatory organization (SRO) ever taken any of the actions listed in (k) through (L) above*
25 *against any organization?”*

26 Respondent answered “yes” to all the aforementioned inquiries. Respondent then provided a
27 disclosure explanation and uploaded supporting documentation for his “yes” responses. Respondent
28 disclosed that he was the subject of a desist and refrain order issued by the Department of Business

1 Oversight (“Department”) on April 17, 2008 for violations of Corporations Code sections 25110 and
2 25401 (“Order”). A true and correct copy of the Order is attached hereto as “Exhibit 1.”

3 The Order alleged the following: Miller was the manager of Active Capital. Miller and
4 Active Capital were in the business of pooling capital for the purpose of investing in entrepreneurial
5 business opportunities or multimedia marketing. Beginning in or about 2006, Miller and Active
6 Capital offered and sold securities to California investors in the form of promissory notes, debentures
7 or evidences of indebtedness, with Active Capital as the borrower for a period of twelve (12) months
8 yielding at least a twenty percent (20%) return profit on monies invested. California consumers
9 invested at least two hundred thousand dollars (\$200,000.00) in Active Capital. Beginning in or
10 about 2006, Miller and Active Capital offered and sold the above described securities in California to
11 investors. These securities were offered and sold in California in issuer transactions. The
12 Department of Corporations¹ did not issue a permit or other form of qualification authorizing any
13 person to offer and sell these securities in California. Based on the foregoing findings, the
14 Corporations Commissioner² found that the promissory notes, debentures or evidences of
15 indebtedness sold by Miller and Active Capital, are securities subject to qualification under the
16 Corporations Code. These securities were offered and sold without being qualified or exempt, in
17 violation of section 25110 of the Corporations Code.

18 The Order also alleged the following: beginning in or about 2006, Miller and Active Capital
19 represented to investors that Active Capital was a profitable “stable” business, investors would
20 receive a profitable return on the securities and all monies invested would be easily returned to
21 investors at any time they requested in an effort to entice persons to invest. Beginning in or about
22 2007, Miller and Active Capital failed to disclose to potential investors that Active Capital
23 experienced financial hardships, which ultimately led to Active Capital’s purported insolvency.
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26 ¹ Effective July 1, 2013, the Department of Corporations and the Department of Financial Institutions
27 had merged to form the Department of Business Oversight.

28 ² Effective July 1, 2013, the Corporations Commissioner became the Commissioner of Business
Oversight.

1 The Commissioner is of the opinion that the securities representing promissory notes, debentures or
2 evidences of indebtedness were offered or sold in this State by means of a written or oral
3 communication which included an untrue statement of material fact or omitted to state a material fact
4 necessary to make the statement made, in the light of the circumstances under which they were made,
5 not misleading, in violation of section 25401 of the Corporate Securities Law of 1968.

6 Miller and Active Capital were duly served with the Order on April 28, 2008. Although
7 Miller requested a hearing, he subsequently withdrew his request for hearing in August 2008. The
8 Order and its findings were uncontested and became final in August 2008.

9 Also, the Form MU4 at Section K, "Regulatory Action" specifically asked: *"Has any state or*
10 *federal regulatory agency or foreign financial regulatory authority or self-regulatory organization*
11 *(SRO) ever: "(1) found you to have made a false statement or omission or been dishonest, unfair, or*
12 *unethical? ... (8) issued a final order against you based on violations of any law or regulations that*
13 *prohibit fraudulent, manipulative, or deceptive conduct?"* Respondent answered "No."

14 Contrary to Respondent's answer "no" to the Section K questions, Respondent was in fact
15 found to have made false statements or omissions and found to be in violation of laws that prohibit
16 fraudulent, manipulative, or deceptive conduct. As stated in the Order, Miller violated Corporations
17 Code section 25401 by representing to investors that Active Capital was a profitable "stable"
18 business, investors would receive a profitable return on the securities and all monies invested would
19 be easily returned to investors at any time they requested in an effort to entice persons to invest.

20 Also as stated in the Order, Miller and Active Capital also failed to disclose to investors that
21 Active Capital experienced financial hardships, which ultimately led to Active Capital's insolvency.
22 Therefore, based on the Order, Respondent should have answered "yes" to the Section K numbers (1)
23 and (8) questions.

24 Finally, the Form MU4 at Sections A and D, "Financial Disclosure" specifically asked: *"(1)*
25 *Have you filed a personal bankruptcy petition or been the subject of an involuntary bankruptcy*
26 *petition within the past 10 years?(2) Based upon events that occurred while you exercised control*
27 *over an organization, has any organization filed a bankruptcy petition or been the subject of an*
28 *involuntary bankruptcy petition within the past 10 years?"*

1 Respondent answered “Yes” to each of these. Miller disclosed that he filed for federal
2 bankruptcy in 2010 “due to a failed business in 2007.” Miller also disclosed that he filed for
3 bankruptcy to prevent creditors from attaching his personal assets and unrelated business assets.
4 Miller finally disclosed that as the General Partner, he was personally liable for the debts of the
5 business.

6 **III.**

7 **APPLICABLE LAW**

8 Financial Code section 50141 provides in pertinent part:

9 (a) The commissioner shall deny an application for a mortgage loan
10 originator license unless the commissioner makes, at a minimum,
11 the following findings:

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

15 **IV.**

16 **CONCLUSION**

17 Complainant finds, by reason of the foregoing, that Respondent Zachary Andrew Miller has
18 failed to demonstrate such financial responsibility, character, and general fitness as to command the
19 confidence of the community and warrant a determination that he will operate honestly, fairly, and
20 efficiently as a MLO in light of his actions under the meaning of Financial Code section 50141.

21 Complainant finds that each and every above stated act by Respondent Zachary Andrew
22 Miller is sufficient grounds to not issue a MLO license to Respondent Zachary Andrew Miller,
23 pursuant to Financial Code section 50141.

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THEREFORE, Complainant asserts that Financial Code section 50141 mandates that the Commissioner deny Respondent’s application for a MLO license. WHEREFORE IT IS PRAYED that the determination of the Commissioner to deny Respondent’s Application for a MLO license be upheld.

Dated: October 10, 2016

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____
MARISA I. URTEAGA-WATKINS
Counsel