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

11 In the Matter of:	) NMLS NO.: 1613996
12 THE COMMISSIONER OF BUSINESS	)
OVERSIGHT,	) STATEMENT OF ISSUES
13	)
Complainant,	)
14 v.	)
15 MICHAEL JAMES HERNANDEZ,	)
16 Respondent.	)
17	)

18  
19 The Commissioner of Business Oversight (Commissioner) is informed and believes, and  
20 based upon such information and belief, alleges and charges Respondent as follows:

21 **I.**

22 **Jurisdiction**

23 1. The Commissioner has jurisdiction over the licensing and regulation of persons  
24 engaged in the business of making or brokering residential mortgage loans, including mortgage loan  
25 originators, under the California Financing Law (CFL) (Fin. Code, § 22000 et seq.).

26 2. On February 12, 2019, Respondent Michael James Hernandez (Hernandez) applied  
27 to the Commissioner for a mortgage loan originator (MLO) license under the CFL.  
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1 3. The Commissioner brings this action to deny the issuance of an MLO license to  
2 Hernandez under Financial Code sections 22109.1 and 22172 because Hernandez: (1) was  
3 convicted of felonies involving an act of fraud, dishonesty, a breach of trust, or money laundering;  
4 (2) withheld information and made material misstatements in his application for a license; and (3)  
5 has not demonstrated such financial responsibility, character, and general fitness as to command the  
6 confidence of the community and to warrant a determination that he will operate honestly, fairly,  
7 and efficiently as an MLO.

8 **II.**

9 **Statement of Facts**

10 4. To become licensed by the Commissioner as an MLO, an individual must submit a  
11 uniform application form (known as the MU2 or MU4 form) through the Nationwide Mortgage  
12 Licensing System and Registry (NMLS).

13 5. On February 12, 2019, Hernandez applied for an MLO license by filing a Form MU4  
14 through NMLS. His application was sponsored by a lender licensed under the CFL.

15 6. Form MU4 question (F)(1) asked: “Have you ever been convicted of or pled guilty  
16 or nolo contendere (‘no contest’) . . . to any felony?”

17 7. Hernandez answered “No” to question (F)(1).

18 8. Form MU4 question (H)(1) asked: “Have you ever been convicted of or pled guilty  
19 or nolo contendere (‘no contest’) . . . to committing or conspiring to commit a misdemeanor  
20 involving: (i) financial services or a financial services-related business, (ii) fraud, (iii) false  
21 statements or omissions, (iv) theft or wrongful taking of property, (v) bribery, (vi) perjury, (vii)  
22 forgery, (viii) counterfeiting, or (ix) extortion?”

23 9. Hernandez answered “Yes” to question (H)(1).

24 10. In the event explanation for question (H)(1) concerning misdemeanors, Hernandez  
25 stated that he pleaded guilty to a felony “over 10 years ago for unlawful taking of a vehicle.”  
26 Hernandez described the event as “theft or wrongful taking of property.” He stated that he had “not  
27 been convicted [of] any crime after the incident.” Hernandez did not provide supporting  
28 documentation for his explanation.

1           11.     On February 25, 2019, the Commissioner placed license items on Hernandez’s  
2 NMLS account, noting several arrests from 2007 to 2009 that were discovered during a background  
3 check. The Commissioner requested that Hernandez provide “a detailed explanation of the  
4 circumstances” of the criminal proceedings and upload “certified copies of the minute order or  
5 other court or police documents” showing their disposition in an amended Form MU4.

6           12.     On February 26, February 27, March 14, and March 27, 2019, Hernandez filed  
7 amended Form MU4s. Except for the March 14 amendment, which involved minor changes, the  
8 amendments contained uploads of records related to Hernandez’s criminal history.

9           13.     Records obtained from Hernandez and the Commissioner’s investigation show the  
10 following criminal convictions:

11           a.     On January 3, 2008, Hernandez pleaded guilty to misdemeanor receiving  
12 stolen property in violation of Penal Code section 496, subdivision (a).

13           b.     On August 15, 2008, Hernandez pleaded guilty to felony burglary in  
14 violation of Penal Code section 459.

15           c.     On September 18, 2009, Hernandez pleaded guilty to two felonies: burglary  
16 and unlawful taking of a vehicle in violation of Penal Code section 459 and Vehicle Code section  
17 10851, subdivision (a), respectively. He also pleaded guilty to a Vehicle Code misdemeanor.

18           14.     Although Hernandez uploaded court records disclosing these criminal convictions  
19 with his amended Form MU4s on February 26, February 27, March 14, and March 27, 2019, he did  
20 not provide any additional detailed explanations of the circumstances leading to the convictions as  
21 requested by the Commissioner. In particular, Hernandez did not explain the circumstances of his  
22 2008 felony conviction for burglary and 2008 misdemeanor conviction for receiving stolen  
23 property. His event explanation for question (H)(1) in his initial February 12, 2019 Form MU4, in  
24 which he described only the circumstances of his 2009 felony convictions, remained unchanged in  
25 subsequent amended filings.

26           15.     Despite admitting prior felony convictions, Hernandez did not change his “No”  
27 answer to question (F)(1) concerning felonies on any of his Form MU4s.

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### III.

#### Felony Convictions

16. The Commissioner “shall deny” an application for an MLO license unless he makes, at a minimum, specified findings, including that the applicant has not been convicted of, or pleaded guilty or no contest to, a felony during the seven-year period preceding the date of the application, or at any time preceding the date of the application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. (Fin. Code, § 22109.1, subd. (a)(2).)

17. As described in paragraphs 10 to 13, Hernandez was convicted in 2008 of felony burglary in violation of Penal Code section 459. He was also convicted in 2009 of felony burglary and felony unlawful taking of a vehicle in violation of Penal Code section 459 and Vehicle Code section 10851, subdivision (a), respectively. Hernandez described the 2009 felonies as “theft or wrongful taking of property.”

18. Theft is an act of dishonesty. (*People v. Wheeler* (1992) 4 Cal.4th 284, 297; *People v. Mireles* (2018) 21 Cal.App.5th 237, 247.) Burglary is also an act of dishonesty. (*People v. Muldrow* (1988) 202 Cal.App.3d 636, 645; see *People v. Collins* (1986) 42 Cal.3d 378, 395.)

19. Thus, Hernandez’s 2008 felony burglary, 2009 felony burglary, and 2009 felony unlawful taking of a vehicle all involved an act of dishonesty.

20. Accordingly, before the date of his application, Hernandez was convicted of three felonies involving an act of fraud, dishonesty, a breach of trust, or money laundering. Under Financial Code section 22109.1, subdivision (a)(2), the Commissioner must deny Hernandez’s application.

### IV.

#### Withheld Information and Material Misstatements

21. The Commissioner may deny an application for an MLO license if the applicant withholds information or makes a material misstatement in the application. (Fin. Code, § 22172, subd. (a)(2).)

22. As described in paragraphs 5 to 15, Hernandez answered “No” to question (F)(1) in his initial form MU4 on February 12, 2019, although he was supposed to answer “Yes” because of

1 his felony convictions. Hernandez failed to change his “No” answer in subsequent amended Form  
2 MU4s on February 26, February 27, March 14, and March 27, 2019.

3 23. As described in paragraphs 5 to 15, Hernandez failed to provide detailed  
4 explanations of the circumstances leading to his 2008 felony conviction for burglary and 2008  
5 misdemeanor conviction for receiving stolen property, as the Commissioner had requested.

6 24. Thus, Hernandez withheld information and made material misstatements in his  
7 application for a license. Under Financial Code section 22172, subdivision (a)(2), Hernandez’s  
8 application should be denied.

9 **V.**

10 **Financial Responsibility, Character, and General Fitness**

11 25. The Commissioner “shall deny” an application for an MLO license unless he makes,  
12 at a minimum, specified findings, including that the applicant has demonstrated such financial  
13 responsibility, character, and general fitness as to command the confidence of the community and to  
14 warrant a determination that the applicant will operate honestly, fairly, and efficiently as a mortgage  
15 loan originator. (Fin. Code, § 22109.1, subd. (a)(3).)

16 26. As described in paragraphs 10 to 13 and 17 to 19, Hernandez was convicted in 2008  
17 of felony burglary and in 2009 of felony burglary and felony unlawful taking of a vehicle, which  
18 involve acts of dishonesty. Hernandez was also convicted in 2008 of misdemeanor receiving stolen  
19 property, which involves theft and dishonesty. (Pen. Code, § 496, subd. (a) [crime committed when  
20 person “buys or receives any property that has been stolen or that has been obtained in any manner  
21 constituting theft or extortion, knowing the property to be so stolen or obtained”]; *People v. Kemper*  
22 (1981) 125 Cal.App.3d 451, 456.) Hernandez’s criminal history militates against finding that he has  
23 demonstrated the character and general fitness required for licensure as an MLO.

24 27. Further, as described in paragraphs 5 to 15, Hernandez did not disclose his 2008  
25 felony burglary conviction and 2008 misdemeanor conviction for receiving stolen property in his  
26 application until after the Commissioner discovered them and asked Hernandez about them. And  
27 Hernandez failed to provide detailed explanations of the circumstances leading to his criminal  
28 convictions as requested by the Commissioner despite filing numerous amended Form MU4s. Thus,

1 although Hernandez’s criminal convictions occurred some time ago, his recent failure to fully  
2 disclose and explain them further weighs against finding the requisite character and fitness.

3 28. Accordingly, Hernandez has not demonstrated such financial responsibility,  
4 character, and general fitness as to command the confidence of the community and to warrant a  
5 determination that he will operate honestly, fairly, and efficiently as an MLO. Under Financial  
6 Code section 22109.1, subdivision (a)(3), Hernandez’s application must be denied.

7 **VI.**

8 **Commissioner’s Authority to Deny Application**

9 29. Financial Code section 22109.1, subdivision (a), provides in relevant part:

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

12 . . .

13 (2) (A) The applicant has not been convicted of, or pled guilty or nolo  
14 contendere to, a felony in a domestic, foreign, or military court during  
15 the seven-year period preceding the date of the application for licensing  
16 and registration, or at any time preceding the date of application, if such  
17 felony involved an act of fraud, dishonesty, a breach of trust, or money  
18 laundering. Whether a particular crime is classified as a felony shall be  
19 determined by the law of the jurisdiction in which an individual is  
20 convicted.

18 (B) For purposes of this paragraph, an expunged or pardoned felony  
19 conviction shall not require denial of an application. However, the  
20 commissioner may consider the underlying crime, facts, or  
21 circumstances of an expunged or pardoned felony conviction when  
22 determining the eligibility of an applicant for licensure under this  
23 paragraph or paragraph (3).

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

24 30. Financial Code section 22172, subdivision (a), provides in relevant part:

25 (a) The commissioner may do one or more of the following:

26 . . .

27 (2) Deny, suspend, revoke, condition, or decline to renew a mortgage  
28 loan originator license if an applicant or licensee fails at any time to  
meet the requirements of Section 22109.1 or 22109.4, or withholds  
information or makes a material misstatement in an application for a  
license or license renewal.

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**VII.**

**Prayer**

For the foregoing reasons, the Commissioner finds that before the date of his application for a mortgage loan originator license, Michael James Hernandez was convicted of three felonies involving an act of fraud, dishonesty, a breach of trust, or money laundering within the meaning of Financial Code section 22109.1, subdivision (a)(2).

The Commissioner also finds that Hernandez withheld information and made material misstatements in his application within the meaning of Financial Code section 22172, subdivision (a)(2).

The Commissioner also finds that Hernandez has not demonstrated the financial responsibility, character, and general fitness required under Financial Code section 22109.1, subdivision (a)(3).

Accordingly, the Commissioner must deny Hernandez’s application for a mortgage loan originator license.

WHEREFORE, IT IS PRAYED that Hernandez’s application for a mortgage loan originator license be denied.

Dated: July 26, 2019  
Los Angeles, California

MANUEL P. ALVAREZ  
Commissioner of Business Oversight

By: \_\_\_\_\_  
SAMUEL J. PARK  
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