

1 MARY ANN SMITH
Deputy Commissioner
2 SEAN M. ROONEY
Assistant Chief Counsel
3 SAMUEL J. PARK (State Bar No. 293902)
Counsel
4 Department of Business Oversight
320 West 4th Street, Suite 750
5 Los Angeles, California 90013
Telephone: (213) 576-7683
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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)
13 OVERSIGHT,) ORDER DENYING APPLICATION FOR
14 Complainant,) MORTGAGE LOAN ORIGINATOR LICENSE
15 v.)
16 MICHAEL JAMES HERNANDEZ,)
17 Respondent.)

18
19 The Commissioner of Business Oversight (Commissioner) finds:

20 1. On February 12, 2019, Respondent Michael James Hernandez (Hernandez) applied
21 to the Commissioner for a mortgage loan originator (MLO) license under the California Financing
22 Law (CFL) (Fin. Code, § 22000 et seq.). Hernandez applied by filing a Form MU4 through the
23 Nationwide Mortgage Licensing System and Registry (NMLS).

24 2. As described in more detail below, the Commissioner denies the issuance of an MLO
25 license to Hernandez under Financial Code sections 22109.1 and 22172 because Hernandez: (1)
26 was convicted of felonies involving an act of fraud, dishonesty, a breach of trust, or money
27 laundering; (2) withheld information and made material misstatements in his application for a
28 license; and (3) has not demonstrated such financial responsibility, character, and general fitness as

1 to command the confidence of the community and to warrant a determination that he will operate
2 honestly, fairly, and efficiently as an MLO.

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

5 4. In his initial Form MU4 on February 12, 2019, Hernandez answered “No” to
6 question (F)(1).

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

12 6. In his initial Form MU4 on February 12, 2019, Hernandez answered “No” to
13 question (H)(1).

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

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

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

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

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

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

5 c. On September 18, 2009, Hernandez pleaded guilty to two felonies: burglary
6 and unlawful taking of a vehicle in violation of Penal Code section 459 and Vehicle Code section
7 10851, subdivision (a), respectively. He also pleaded guilty to a Vehicle Code misdemeanor.

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

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

18 **Felony Convictions**

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

24 14. As described in paragraphs 7 to 10, Hernandez was convicted in 2008 of felony
25 burglary in violation of Penal Code section 459. He was also convicted in 2009 of felony burglary
26 and felony unlawful taking of a vehicle in violation of Penal Code section 459 and Vehicle Code
27 section 10851, subdivision (a), respectively. Hernandez described the 2009 felonies as “theft or
28 wrongful taking of property.”

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

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

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

10 **Withheld Information and Material Misstatements**

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

14 19. As described in paragraphs 3 to 12, Hernandez answered “No” to question (F)(1) in
15 his initial form MU4 on February 12, 2019, although he was supposed to answer “Yes” because of
16 his felony convictions. Hernandez failed to change his “No” answer in subsequent amended Form
17 MU4s on February 26, February 27, March 14, and March 27, 2019.

18 20. As described in paragraphs 3 to 12, Hernandez failed to provide detailed
19 explanations of the circumstances leading to his 2008 felony conviction for burglary and 2008
20 misdemeanor conviction for receiving stolen property, as the Commissioner had requested.

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

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

25 22. The Commissioner “shall deny” an application for an MLO license unless he makes,
26 at a minimum, specified findings, including that the applicant has demonstrated such financial
27 responsibility, character, and general fitness as to command the confidence of the community and to

28 ///

1 warrant a determination that the applicant will operate honestly, fairly, and efficiently as a
2 mortgage loan originator. (Fin. Code, § 22109.1, subd. (a)(3).)

3 23. As described in paragraphs 7 to 10 and 14 to 16, Hernandez was convicted in 2008
4 of felony burglary and in 2009 of felony burglary and felony unlawful taking of a vehicle, which
5 involve acts of dishonesty. Hernandez was also convicted in 2008 of misdemeanor receiving stolen
6 property, which involves theft and dishonesty. (Pen. Code, § 496, subd. (a) [crime committed when
7 person “buys or receives any property that has been stolen or that has been obtained in any manner
8 constituting theft or extortion, knowing the property to be so stolen or obtained”]; *People v. Kemper*
9 (1981) 125 Cal.App.3d 451, 456.) Hernandez’s criminal history militates against finding that he has
10 demonstrated the character and general fitness required for licensure as an MLO.

11 24. Further, as described in paragraphs 3 to 12, Hernandez did not disclose his 2008
12 felony burglary conviction and 2008 misdemeanor conviction for receiving stolen property in his
13 application until after the Commissioner discovered them and asked Hernandez about them. And
14 Hernandez failed to provide detailed explanations of the circumstances leading to his criminal
15 convictions as requested by the Commissioner despite filing numerous amended Form MU4s. Thus,
16 although Hernandez’s criminal convictions occurred some time ago, his recent failure to fully
17 disclose and explain them further weighs against finding the requisite character and fitness.

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

22 26. For the foregoing reasons, the Commissioner finds that Hernandez: (1) was
23 convicted of three felonies involving an act of fraud, dishonesty, a breach of trust, or money
24 laundering before the date of his application for a license; (2) withheld information and made
25 material misstatements in his application; and (3) has not demonstrated such financial
26 responsibility, character, and general fitness as to command the confidence of the community and to
27 warrant a determination that he will operate honestly, fairly, and efficiently as an MLO. Under

28 ///

1 Financial Code sections 22109.1, subdivision (a)(2) and (a)(3), and 22172, subdivision (a)(2), the
2 Commissioner has grounds to deny Hernandez’s application.

3 27. On July 26, 2019, the Commissioner issued a Notice of Intention to Issue Order
4 Denying Application for Mortgage Loan Originator License, Statement of Issues, and
5 accompanying documents. On July 29, 2019, the documents were served by certified mail at
6 Hernandez’s latest address on file with the Commissioner.

7 28. Hernandez has not requested a hearing, and the time for doing so has expired.
8 NOW GOOD CAUSE APPEARING THEREFORE, it is hereby ordered that Michael
9 James Hernandez’s application for a mortgage loan originator license is denied. This Order is
10 effective immediately.

11
12 Dated: August 22, 2019
13 Los Angeles, California

MANUEL P. ALVAREZ
Commissioner of Business Oversight

14
15 By: _____
16 MARY ANN SMITH
17 Deputy Commissioner
18 Enforcement Division
19
20
21
22
23
24
25
26
27
28