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

11 In the Matter of:	) OAH CASE NO. 2019100146
	)
12 THE COMMISSIONER OF BUSINESS	) MLO LICENSE NO.: 876322
13 OVERSIGHT,	)
	) SETTLEMENT AGREEMENT
14 Complainant,	)
15 v.	) Hearing Date: February 18, 2020
	) Hearing Time: 9:00 a.m.
16 RACHEL SYKES, an Individual,	) Location: OAH - Los Angeles
	) 320 West 4th Street, Suite 630
17 Respondent.	) Los Angeles, CA 90013
	) Judge: Hon. Erlinda Shrenger
	)

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20 This Settlement Agreement (Settlement Agreement) is entered between the Commissioner of  
21 Business Oversight (Commissioner) and Rachel Sykes (Sykes) and is made with respect to the  
22 following facts:

23 **I.**

24 **Recitals**

25 A. The Commissioner has jurisdiction over the licensing and regulation of persons and  
26 entities engaged in the business of issuing and brokering mortgage loans under the California  
27 Financing Law (CFL) (Fin. Code, § 22000 et seq.), including mortgage loan originators (MLOs).  
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1 B. On July 31, 2018, Sykes applied for an MLO license through the Nationwide  
2 Multistate Licensing System (the NMLS) seeking licensure as an MLO before the Department.

3 C. Sykes declined to answer a termination disclosure question, Q (1)-(2) on her  
4 application form, which asks whether the applicant has voluntarily resigned, been discharged, or  
5 permitted to resign after allegations were made that accused the applicant of violating statutes(s),  
6 regulation(s), rule(s) or industry standards of conduct or fraud, dishonesty, theft, or the wrongful  
7 taking of property.

8 D. The Department investigates each mortgage loan originator license application it  
9 receives. The Department's investigation of Sykes' application disclosed that on or about October  
10 24, 2012, Sykes' prior employer, Wells Fargo Bank (WFB) terminated Sykes' employment for  
11 allegedly willfully manipulating WFB's source code system, resulting in compensation that was  
12 unearned in violation of WFB's "Code of Ethics and Business Conduct: Act with Honesty Integrity,  
13 & Trustworthiness."

14 E. On August 10, 2018, the Commissioner's staff requested through the NMLS that  
15 Sykes respond to the termination disclosure question (Q) (1)-(2). On August 13, 2018, Sykes  
16 responded by email stating that she did not have to answer "yes" to the termination disclosure  
17 question because she resigned from WFB. Based on the information Sykes provided and her  
18 attestation to the accuracy of her application, the Commissioner issued Sykes an MLO license on  
19 August 16, 2018.

20 F. On or about November 29, 2018, the State of Nebraska, Department of Banking and  
21 Finance issued an Order denying Sykes' application for a MLO license with the state of Nebraska  
22 (Nebraska Order). The Nebraska Order determined that Sykes was discharged from WFB on or  
23 about October 24, 2012, following allegations that she willfully manipulated source code system in  
24 violation of WFB's code and ethics policies.

25 G. The Nebraska Order stated that Sykes made misrepresentations on her application for  
26 an MLO license and submitted false filings with the State of Nebraska. The Nebraska Order  
27 determined that Sykes' false filing and "the intentional incorrect coding of loan files/mortgage  
28 resulting in unearned compensation reflects adversely upon Sykes' character and fitness and

1 demonstrates Sykes’ lack of ability to operate “honestly, fairly, and efficiently within the purposes of  
2 the Act.”

3 H. On Nov. 30, 2018, the Department placed a license item in NMLS directing Sykes to  
4 amend her response to the Regulatory Action Disclosure questions (K) (1-9) on her MU4 and  
5 provide supporting documentation regarding the Nebraska Order. Sykes has not provided the  
6 Commissioner any explanation or an amended application amending her response to the Regulatory  
7 Action Disclosure questions (K) (1-9).

8 I. The Commissioner concluded that Sykes did not meet the minimum requirements to  
9 hold a MLO license under Financial Code sections 50513, subdivision (a)(1)(2), and 50141,  
10 subdivision (a)(3) on the basis in that she withheld information or made a material misstatement in  
11 her application by failing to disclose WFB’s termination of her employment in her application, or  
12 amending her application to disclose the Nebraska Order. Accordingly, the Commissioner  
13 determined that Sykes failed to demonstrate such financial responsibility, character, and general  
14 fitness as to command the confidence of the community and to warrant a determination that she will  
15 operate honestly, fairly, and efficiently as an MLO.

16 J. On August 8, 2019, the Commissioner issued Sykes his Notice of Intention to deny  
17 Sykes’ MLO application, Statement of Issues, and other supporting pleadings (collectively,  
18 Statement of Issues).

19 K. Sykes timely filed her Notice of Defense with the Commissioner on September 26,  
20 2019 and this matter is currently set for a one-day hearing on February 18, 2020, at 9:00 a.m., before  
21 the Office of Administrative Hearings, Los Angeles.

22 L. NOW, THEREFORE, in consideration of the foregoing and the terms and  
23 conditions set forth herein, the parties agree as follows:

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**II.****Terms and Conditions**

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3 1. Purpose. The Settlement Agreement resolves the issues before the Commissioner  
4 described above in a manner that avoids the expense of a hearing and other possible court  
5 proceedings, protects consumers, is in the public interest, and is consistent with the purposes and  
6 provisions of the CFL.

7 2. Acknowledgment. Sykes acknowledges that the Commissioner issued and served her  
8 with the Statement of Issues in which the Commissioner alleged Sykes did not meet the minimum  
9 criteria to hold an MLO license under Financial Code sections 50513, subdivision (a)(1)(2), and  
10 50141, subdivision (a)(3), as set forth above.

11 3. Administrative Penalty. Sykes shall pay an administrative penalty to the  
12 Commissioner in the amount of \$2,000.00, which shall be due and payable on the effective date of  
13 this Settlement Agreement, as such date is defined in Paragraph 25. The administrative penalty must  
14 be made payable in the form of a cashier's check or Automated Clearing House deposit to the  
15 Department of Business Oversight and transmitted to the attention of Accounting – Litigation, at the  
16 Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice  
17 of the payment must be concurrently sent to Uche Enenwali, Senior Counsel, Department of  
18 Business Oversight, 320 W. Fourth Street, Suite 750, Los Angeles, California 90013.

19 4. Revocation of License. Sykes agrees that for the 36-month period from the effective  
20 date of the Settlement Agreement, should the Commissioner make a finding that Sykes has violated  
21 or is violating any provision of the CFL, the California Residential Mortgage Lending Act  
22 (CRMLA) (Fin. Code, § 50000 et seq.), or any rule, regulation, or law under the jurisdiction of the  
23 Commissioner, the state of California, the United States of America, and every state and foreign  
24 government (and political subdivision thereof), the Commissioner may, in his discretion,  
25 automatically revoke any license held by or deny any pending application(s) of Sykes. Sykes hereby  
26 waives any notice and hearing rights to contest such revocation or denial(s) which may have been  
27 afforded him under the CFL, CRMLA, APA, CCP, or any other provision of law in connection with  
28 this matter. Sykes further expressly waives any requirement for the filing of an accusation under

1 Government Code section 11415.60, subdivision (b), in connection with the Commissioner’s  
2 revocation of his license under this paragraph.

3 5. Reporting Requirement. During the 36-month period from the effective date of the  
4 Settlement Agreement, Sykes shall report to the Commissioner within 30 days any disciplinary  
5 investigations or actions against him by any licensing agencies, any criminal investigations,  
6 prosecutions, or convictions against Sykes, or any civil judgments against Sykes. Traffic citations  
7 are excluded.

8 6. Continuing Education. Sykes agrees to annually take at least 16 hours of continuing  
9 education offered by a NMLS approved vendor for the next 36 months and agrees to submit proof of  
10 compliance to Uche Enenwali, Senior Counsel, Enforcement Division. The first report is due on  
11 March 31, 2021. The second report is due on March 31, 2022. The third report is due on March 31,  
12 2023. Should the reporting deadline fall on a Saturday, Sunday, or state holiday, the report must be  
13 received by the Commissioner’s agent by the following business day.

14 7. Waiver of Hearing Rights. Sykes acknowledges that the Commissioner is ready,  
15 willing and able to proceed with the administrative enforcement action described above in  
16 Paragraphs J-K, and Sykes hereby waives the right to a hearing, and to any reconsideration, appeal,  
17 or other right to review which may be afforded pursuant to the CFL; the California Administrative  
18 Procedure Act, the California Code of Civil Procedure, or any other provision of law; and by  
19 waiving such rights, Sykes effectively consents to this Agreement becoming final.

20 8. Failure to Comply with Settlement Agreement. Sykes acknowledges and agrees that if  
21 she fails to comply with the terms of this Settlement Agreement, the Commissioner may, in addition  
22 to all other available remedies he may invoke under the CRMLA and CFL, summarily  
23 suspend/revoke the MLO licenses of Sykes until Sykes is in compliance. Sykes waives any notice  
24 and hearing rights to contest such summary suspensions which may be afforded under the CFL, the  
25 California Administrative Procedure Act, the California Code of Civil Procedure, or any other  
26 provision of law in connection therewith.

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1           9.     Approval of MLO Application. The Commissioner hereby acknowledges that Sykes’  
2 MLO application is ready to be approved, and the Commissioner hereby agrees to approve it  
3 concurrently with the execution of the Settlement Agreement.

4           10.    Information Willfully Withheld or Misrepresented. The Settlement Agreement may  
5 be revoked, and the Commissioner may pursue any and all remedies under the CFL against Sykes if  
6 the Commissioner discovers that Sykes knowingly or willfully withheld information use for and  
7 relied upon in the Settlement Agreement.

8           11.    Future Actions by Commissioner. If Sykes fails to comply with any terms of the  
9 Settlement Agreement, the Commissioner may institute proceedings for any and all violations  
10 otherwise resolved under this Settlement Agreement. The Commissioner reserves the right to bring  
11 any future actions against Sykes, or any of her partners, owners, officers, shareholders, directors,  
12 employees or successors for any and all unknown violations of the CFL.

13           12.    Assisting Other Agencies. The parties further acknowledge and agree that nothing in  
14 the Settlement Agreement shall limit the Commissioner’s ability to assist any other agency (city,  
15 county, state, or federal) with any prosecution, administrative, civil, or criminal, brought by any such  
16 agency against Sykes or any other person based upon any of the activities alleged in this matter or  
17 otherwise.

18           13.    Headings. The headings to the paragraphs of this Settlement Agreement are inserted  
19 for convenience only and will not be deemed a part hereof or affect the construction or interpretation  
20 of the provisions hereof.

21           14.    Binding. This Settlement Agreement is binding on all heirs, assigns, and/or  
22 successors in interest.

23           15.    Reliance: Each of the parties represents, warrants, and agrees that in executing this  
24 Agreement s/he has relied solely on the statements set forth herein and the advice of his or her own  
25 counsel. Each of the parties further represents, warrants, and agrees that in executing this Settlement  
26 Agreement s/he has placed no reliance on any statement, representation, or promise of any other  
27 party, or any other person or entity not expressly set forth herein, or upon the failure of any party or  
28 any other person or entity to make any statement, representation or disclosure of anything

1 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in  
2 any way fraudulently induced to execute this Agreement; and (2) to preclude the introduction of  
3 parol evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

4 16. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of  
5 this Settlement Agreement will be valid or binding unless it is in writing and signed by each of the  
6 parties. The waiver of any provision of this Settlement Agreement will not be deemed a waiver of  
7 any other provision. No waiver by either party of any breach of, or of compliance with, any  
8 condition or provision of this Agreement by the other party will be considered a waiver of any other  
9 condition or provision or of the same condition or provision at another time.

10 17. Full Integration. This Settlement Agreement is the final written expression and the  
11 complete and exclusive statement of all the agreements, conditions, promises, representations, and  
12 covenant between the parties with respect to the subject matter hereof, and supersedes all prior or  
13 contemporaneous agreements, negotiations, representations, understandings, and discussions  
14 between and among the parties, their respective representatives, and any other person or entity, with  
15 respect to the subject matter covered hereby.

16 18. Governing Law. This Settlement Agreement will be governed by and construed in  
17 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court,  
18 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient  
19 forum to the maintenance of such action or proceeding in such court.

20 19. Counterparts. This Settlement Agreement may be executed in one or more separate  
21 counterparts, each of which when: so executed, shall be deemed an original. Such counterparts shall  
22 together constitute a single document.

23 20. Effect Upon Future Proceedings. If Respondent applies for any license, permit or  
24 qualification under the Commissioner's current or future jurisdiction, or are the subject of any future  
25 action by the Commissioner to enforce this Settlement Agreement, then the subject matter hereof  
26 shall be admitted for the purpose of such application(s) or enforcement proceedings(s).

27 21. Voluntary Agreement. Sykes enters into this Settlement Agreement voluntarily and  
28 without coercion and acknowledges that no promises, threats or assurances have been made by the

1 Commissioner or any officer, or agent thereof, about this Settlement Agreement. The parties each  
2 represent and acknowledge that he, she or it is executing this Agreement completely voluntarily and  
3 without any duress or undue influence of any kind from any source.

4 22. Notice. Any notices required under the Settlement Agreement shall be provided to  
5 each party at the following addresses:

6 If to Respondent: Rachel Sykes  
7 7511 Hamilton Bridge Road  
8 Charlotte, North Carolina 28279

9 If to the Commissioner: Uche Enenwali, Senior Counsel  
10 Department of Business Oversight  
11 320 W. 4<sup>th</sup> Street, Suite 750  
12 Los Angeles, California 90013-2344

13 23. Signatures. A fax or electronic mail signature shall be deemed the same as an original  
14 signature.

15 24. Public Record. Sykes hereby acknowledges that this Settlement Agreement is and  
16 will be a matter of public record.

17 25. Effective Date. This Settlement Agreement shall become final and effective when  
18 signed by all parties and delivered by the Commissioner's agent via e-mail to Fred M. Ray, attorney  
19 for Rachel Sykes, at fred@rayandbishop.com.

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26. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement and undertake the obligations set forth herein.

IN WITNESS WHEREOF, the parties hereto have approved and executed the Settlement Agreement on the dates set forth opposite their respective signatures.

Dated: 2/18/20

MANUEL P. ALVAREZ  
Commissioner of Business Oversight

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

Dated: 2/18/20

By \_\_\_\_\_  
RACHEL SYKES, an Individual  
Respondent

APPROVED AS TO FORM

\_\_\_\_\_  
Fredrick M. Ray Esq., Senior Partner  
RAY & BISHOP, PLC  
Attorneys for Rachel Sykes