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10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:)	OAH CASE NO.: 2020030686
)	
13 THE COMMISSIONER OF BUSINESS)	AGENCY CASE NO.: 1632130
14 OVERSIGHT,)	
)	
15 Complainant,)	SETTLEMENT AGREEMENT
16 v.)	
)	
17 RICARDO ALBERTO)	HEARING DATE: October 6, 2020
18 BARRAZA-WENDLANDT,)	LOCATION: 402 West Broadway
)	Suite 600
)	San Diego, CA 92101
19 Respondent.)	TIME: 9:00 a.m.
)	

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21 This Settlement Agreement is entered into between the Commissioner of Business Oversight
22 (Commissioner) and Respondent Ricardo Alberto Barraza-Wendlandt (Barraza-Wendlandt) and is
23 made with respect to the following facts:

24 **I.**

25 **Recitals**

26 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
27 entities engaged in the business of lending and servicing residential mortgage loans under the
28 California Financing Law (CFL) (Fin. Code, § 22000 et seq.) and the California Residential

1 Mortgage Lending Act (Fin. Code, § 50000 et seq.) (CRMLA), including mortgage loan originators
2 (MLOs).

3 B. On August 18, 2019, Barraza-Wendlandt filed an application for a MLO license with
4 the Commissioner by submitting a Form MU4 (Application) through the Nationwide Mortgage
5 Licensing System (NMLS) under Financial Code section 50140.

6 C. On January 6, 2020, the Commissioner pursuant to Financial Code section 50141
7 issued a Notice of Intention to Deny Mortgage Loan Originator License, Statement of Issues, and
8 related documents (Statement of Issues).

9 D. The Commissioner properly served a copy of the Statement of Issues and related
10 documents on Barraza-Wendlandt by certified mail on January 6, 2020.

11 E. On or around January 22, 2020, Barraza-Wendlandt timely requested an
12 administrative hearing regarding the Statement of Issues. A hearing is currently scheduled for
13 October 6, 2020 at the Office of Administrative Hearings, San Diego.

14 F. On or around May 22, 2020 Barraza-Wendlandt, through NMLS, filed to withdraw
15 his MLO application.

16 G. The Commissioner finds that entering into this Settlement Agreement is in the public
17 interest and consistent with the purposes fairly intended by the policies and provisions of the CFL
18 and CRMLA.

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

21 **II.**

22 **Terms and Conditions**

23 1. Purpose. This Settlement Agreement resolves the issues before the Commissioner
24 findings set forth in paragraphs A - G above in a manner that avoids the expense of a hearing and
25 other possible court proceedings, protects consumers, is in the public interest, and is consistent with
26 the purposes, policies, and provisions of the CFL and CRMLA.

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1 2. Withdrawal of Request for Hearing and Wavier of Hearing Rights. Barraza-
2 Wendlandt agrees to withdraw his request for an administrative hearing on the Statement of Issues.
3 Barraza-Wendlandt acknowledges his right under the CFL and CRMLA to an administrative hearing
4 and hereby waive such right to a hearing and to any reconsideration, appeal, injunction, or other
5 review that may be afforded under the CFL; CRMLA; Administrative Procedure Act, including
6 Government Code section 11415.60, subdivision (b); Code of Civil Procedure; or any other
7 provision of law. By waiving such rights, Barraza-Wendlandt consents to this Settlement Agreement.

8 3. Application Withdrawal. The Commissioner consents to Barraza-Wendlandt’s
9 request filed on or around April 3, 2020 through NMLS to withdraw his MLO application
10 (application withdrawal). In consideration for the Commissioner’s consent to Barraza-Wendlandt’s
11 application withdrawal, Barraza-Wendlandt agrees not to apply for a MLO license with the
12 Commissioner for seven years.

13 4. Automatic Denial of MLO License. Barraza-Wendlandt agrees in the event he
14 applies for a MLO license with the Commissioner within seven years, such application shall be
15 deemed automatically denied and the Statement of Issues will be used against him. In connection
16 with any automatic denial, Barraza-Wendlandt hereby waives his right to any reconsideration,
17 appeal, or other right to review which may be afforded pursuant to the CFL; CRMLA;
18 Administrative Procedure Act; Code of Civil Procedure; or any other provision of law.

19 5. Reimbursement of Litigation Costs. Barraza-Wendlandt shall reimburse the
20 Commissioner for litigation costs incurred and shall pay \$5,000.00 to the Commissioner no later
21 than 30 days after the effective date of this Settlement Agreement as defined in paragraph 26. The
22 litigation costs must be made payable in the form of a cashier’s check or Automated Clearing House
23 deposit to the Department of Business Oversight and transmitted to the attention of Accounting –
24 Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200, Sacramento,
25 California 95814. Notice of the payment must be concurrently sent to Vanessa T. Lu, Counsel,
26 Department of Business Oversight, 1350 Front Street, Room 2034, San Diego, California 92101.

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1 6. Failure to Pay Reimbursement of Litigation Costs. If Barraza-Wendlandt fails to
2 comply with paragraph 5, the Commissioner shall proceed with the Statement of Issues. Barraza-
3 Wendlandt hereby waives any notice or hearing rights afforded under the CFL; CRMLA;
4 Administrative Procedure Act, including Government Code section 11415.60, subdivision (b); Code
5 of Civil Procedure; or any other provision of law to contest the automatic denial of Barraza-
6 Wendlandt’s MLO application contemplated by this paragraph.

7 7. Full and Final Settlement. The parties hereby acknowledge and agree that this
8 Settlement Agreement is intended to constitute a full, final, and complete resolution of the
9 allegations described herein, and that no further proceedings or actions will be brought by the
10 Commissioner in connection with these matters except under the CFL, CRMLA, or any other
11 provision of law, excepting therefrom any proceeding to enforce compliance with the terms of this
12 Settlement Agreement.

13 8. Failure to Comply with Settlement Agreement. Barraza-Wendlandt agrees that if he
14 fails to comply with the terms of this Settlement Agreement, the Commissioner shall, in addition to
15 all other available remedies it may invoke under the CFL and CRMLA, proceed to take disciplinary
16 action on the Statement of Issues. Barraza-Wendlandt waives any notice and hearing which may be
17 afforded under the CFL; CRMLA; the California Administrative Procedure Act; the California Code
18 of Civil Procedure; or any other provision of law.

19 9. Information Willfully Withheld or Misrepresented. This Settlement Agreement may
20 be revoked, and the Commissioner may pursue any and all remedies available under law against
21 Barraza-Wendlandt if the Commissioner discovers that Barraza-Wendlandt knowingly or willfully
22 withheld or misrepresented information used for and relied upon in this Settlement Agreement.

23 10. Future Actions by Commissioner. If Barraza-Wendlandt fails to comply with any
24 terms of the Settlement Agreement, the Commissioner shall institute proceedings for any and all
25 allegations otherwise resolved under this Settlement Agreement. The Commissioner reserves the
26 right to bring any future actions against Barraza-Wendlandt for any and all unknown violations of
27 the CFL and CRMLA.

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1 11. Assisting Other Agencies. Nothing in this Settlement Agreement limits the
2 Commissioner’s ability to assist any other government agency (city, county, state, or federal) with
3 any prosecution, administrative, civil or criminal brought by that agency against Barraza-Wendlandt
4 or any other person based upon any of the activities alleged in this matter or otherwise.

5 12. No Presumption Against Drafting Party. Each party acknowledges that it has had the
6 opportunity to draft, review, and edit the language of this Settlement Agreement. Accordingly, the
7 parties intend that no presumption for or against the drafting party will apply in construing any part
8 of this Settlement Agreement. The parties waive the benefit of Civil Code section 1654 as amended
9 or corresponding provisions of any successor statute, which provide that in cases of uncertainty,
10 language of a contract should be interpreted most strongly against the party that caused the
11 uncertainty to exist.

12 13. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
13 has received independent advice from its attorney(s) and/or representatives with respect to the
14 advisability of executing this Settlement Agreement.

15 14. Headings. The headings to the paragraphs of this Settlement Agreement are inserted
16 for convenience only and will not be deemed a part hereof or affect the construction or interpretation
17 of the provisions hereof.

18 15. Binding. This Settlement Agreement is binding on all heirs, assigns, and/or
19 successors in interest.

20 16. Reliance. Each of the parties represents, warrants, and agrees that in executing this
21 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel.
22 Each of the parties further represents, warrants, and agrees that in executing this Agreement it has
23 placed no reliance on any statement, representation, or promise of any other party, or any other
24 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
25 entity to make any statement, representation or disclosure of anything whatsoever. The parties have
26 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to
27 execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret,
28 supplement, or contradict the terms of this Agreement.

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

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

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

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

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

24 22. Voluntary Agreement. Barraza-Wendlandt enters into this Settlement Agreement
25 voluntarily and without coercion and acknowledges that no promises, threats or assurances have
26 been made by the Commissioner or any officer, or agent thereof, about this Settlement Agreement.
27 The parties each represent and acknowledge that he, she or it is executing this Agreement completely
28 voluntarily and without any duress or undue influence of any kind from any source.

1 23. Notice. Any notice required under this Settlement Agreement be provided to each
2 party at the following addresses:

3 To: Ricardo Alberto Barraza-Wendlandt and His Attorneys of Record
4 Kevin Murphy, Esq.
5 Murphy Jones APC
6 5575 Lake Park Way, Suite 218
7 San Diego, California 91942
8 kcm@murphyjoneslaw.com

9 To the Commissioner: Vanessa T. Lu, Counsel
10 Department of Business Oversight
11 1350 Front Street, Room 2034
12 San Diego, California 92101
13 Vanessa.Lu@dbo.ca.gov

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

16 25. Public Record. Barraza-Wendlandt acknowledges that this Settlement Agreement is
17 and will be a matter of public record.

18 26. Effective Date. This Settlement Agreement shall become final and effective when
19 signed by all parties and delivered by the Commissioner's agent via e-mail to Barraza-Wendlandt at
20 kcm@murphyjoneslaw.com.

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

24 Dated: May 22, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

25 By _____
26 MARY ANN SMITH
27 Deputy Commissioner
28 Enforcement Division

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Dated: May 20, 2020

Ricardo Alberto Barraza-Wendlandt, Respondent

By _____

RICARDO ALBERTO BARRAZA-WENDLANDT

Dated: May 21, 2020

Approved as to Form and Content:

KEVIN MURPHY, ESQ.
Murphy Jones APC
Counsel for Respondent Ricardo Alberto Barraza-Wendlandt