

1 MARY ANN SMITH
Deputy Commissioner
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Assistant Chief Counsel
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4 Senior Counsel
5 Department of Business Oversight
320 W. 4th Street, Suite 750
6 Los Angeles, CA 90013-2344
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7
8 Attorneys for Complainant

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

12	In the Matter of:)	OAH CASE NO. 2020040509
13)	
14	THE COMMISSIONER OF BUSINESS OVERSIGHT,)	NMLS LICENSE NO. 398551
15)	SETTLEMENT AGREEMENT
16	Complainant,)	
17	v.)	Hearing Dates: August 24, 2020
18)	Hearing Time: 9:00 a.m.
19	JACK GRANT SMITH,)	Location: OAH Los Angeles
20)	320 W. 4th Street
21	Respondent.)	Sixth floor, Suite 630
22)	Los Angeles, CA 90013-2344
23)	ALJ: Unassigned

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25 This Settlement Agreement (the Settlement Agreement) is entered between the
26 Commissioner of Business Oversight (Commissioner) and Jack Grant Smith (Smith), and is made
27 with respect to the following facts.

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1 **I.**

2 **Recitals**

3 A. The Commissioner has jurisdiction over the licensing and regulation of persons
4 engaged in the business of making, servicing, or brokering residential mortgage loans, including
5 mortgage loan originators (MLO or MLOs), under the California Financing Law (CFL) (Fin. Code, §
6 22000 et seq.) and the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000
7 et seq.).

8 B. On June 20, 2019, Smith applied for a MLO license with the Commissioner.

9 C. The Commissioner sought to deny Smith’s MLO application under the provisions of
10 Financial Code section 22109.1 of the CFL and Financial Code sections 50141 and 50513 of the
11 CRMLA, because (1) Smith was not employed by, and subject to the supervision of, a CFL or
12 CRMLA-licensed lender, servicer, or broker, and therefore did not meet the minimum criteria to
13 receive a MLO license; (2) Smith withheld information and made material misstatements in his
14 application for a license; and (3) Smith had not demonstrated such financial responsibility, character,
15 and general fitness as to command the confidence of the community and to warrant a determination
16 that he will operate honestly, fairly, and efficiently as a MLO.

17 D. On March 17, 2020, the Commissioner issued Smith his Notice of Intention to deny
18 Smith’s MLO application, Statement of Issues, and other supporting pleadings (collectively,
19 Statement of Issues).

20 E. Under Government Code section 11506, Smith timely filed his Notice of Defense
21 with the Commissioner on April 7 for the purpose of requesting an administrative hearing on the
22 allegations set forth in the Statement of Issues. The administrative hearing is currently set to begin
23 trial before the Office of Administrative Hearings (OAH) on August 24, 2020, OAH case number
24 2020040509.

25 NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set
26 forth herein, the parties agree as follows.

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1 **II.**

2 **Terms**

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 and CRMLA.

7 2. **Acknowledgment.** Smith acknowledges that the Commissioner issued and served
8 him with the Statement of Issues in which the Commissioner alleged Smith did not meet the
9 minimum criteria to hold a MLO license under Financial Code sections 22109.1, 50141, and 50513,
10 as set forth above.

11 3. **Waiver of Hearing Rights.** Smith agrees that this Settlement Agreement shall have
12 the effect of withdrawing his request for an administrative hearing on the matter set forth herein.
13 Smith acknowledges his right to an administrative hearing under the CFL and CRMLA in
14 connection with the Statement of Issues and hereby waives such right to a hearing and to any
15 reconsideration, appeal, or other rights which may be afforded him under the CFL, CRMLA, the
16 Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.), the Code of Civil Procedure
17 (CCP) (Code Civ. Proc., § 1 et seq.), or any provision of law in connection with this matter.

18 4. **Revocation of License.** Smith agrees that for the 36-month period from the effective
19 date of the Settlement Agreement, should the Commissioner make a finding that Smith has violated
20 or is violating any provision of the CFL, the CRMLA, or any rule, regulation, or law under the
21 jurisdiction of the Commissioner, the state of California, the United States of America, and every
22 state and foreign government (and political subdivision thereof), the Commissioner may, in his
23 discretion, automatically revoke any license held by or deny any pending application(s) of Smith.
24 Smith hereby waives any notice and hearing rights to contest such revocation or denial(s) which
25 may be afforded him under the CFL, CRMLA, APA, CCP, or any other provision of law in
26 connection with this matter. Smith further expressly waives any requirement for the filing of an
27 accusation under Government Code section 11415.60, subdivision (b), in connection with the
28 Commissioner's revocation of his license under this paragraph.

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

6 6. Continuing Education. Smith agrees to annually take at least 16 hours of continuing
7 education offered by a NMLS approved vendor for the next 36 months and agrees to submit proof
8 of compliance to the Commissioner. The first report is due on December 31, 2020. The second
9 report is due on December 31, 2021. The third report is due on December 31, 2022. Should the
10 reporting deadline fall on a Saturday, Sunday, or state holiday, the report must be received by the
11 Commissioner's agent by the following business day.

12 7. Remedy for Breach. Smith acknowledges and agrees that his failure to satisfy the
13 reporting requirement under paragraph 5., above, or his failure to satisfy the continuing education
14 requirement under paragraph 6., above, shall be deemed a breach and cause for the Commissioner
15 to immediately revoke any license held by or deny any pending application(s) of Smith. Smith
16 hereby waives any notice and hearing rights to contest such revocation or denial(s) which may be
17 afforded him under the CFL, CRMLA, APA, CCP, or any other provision of law in connection with
18 this matter. Smith further expressly waives any requirement for the filing of an accusation under
19 Government Code section 11415.60, subdivision (b), in connection with the Commissioner's
20 revocation of his license under this paragraph.

21 8. Approval of MLO Application. The Commissioner hereby acknowledges that
22 Smith's MLO application is ready to be approved, and the Commissioner hereby agrees to approve
23 it concurrently with the execution of the Settlement Agreement.

24 9. Full and Final Settlement. The parties hereby acknowledge and agree that the
25 Settlement Agreement is intended to constitute a full, final, and complete resolution of Smith's
26 alleged violations of the CFL and the CRMLA as identified herein. No further proceedings or
27 actions will be brought by the Commissioner in connection with the Statement of Issues under the
28 CFL, the CRMLA, or any other provision of law, excepting any proceeding to enforce compliance

1 with the terms of the Settlement Agreement.

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

6 11. Assisting Other Agencies. The parties further acknowledge and agree that nothing in
7 the Settlement Agreement shall limit the Commissioner’s ability to assist any other agency (city,
8 county, state, or federal) with any prosecution, administrative, civil, or criminal, brought by any
9 such agency against Smith or any other person based upon any of the activities alleged in this matter
10 or otherwise.

11 12. Binding. The Settlement Agreement is binding on all heirs, assigns, or successors in
12 interest.

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

16 14. Counterparts. The parties agree that the Settlement Agreement may be executed in
17 one or more separate counterparts, each of which shall be deemed an original when so executed.
18 Such counterparts shall together constitute and be one and the same instrument.

19 15. Waiver, Modification, and Qualified Integration. The waiver of any provision of the
20 Settlement Agreement shall not operate to waive any other provision set forth herein. No waiver,
21 amendment, or modification of the Settlement Agreement shall be valid or binding to any extent
22 unless it is in writing and signed by all the parties affected by it.

23 16. Headings and Governing Law. The headings to the paragraphs of the Settlement
24 Agreement are inserted for convenience only and will not be deemed a part hereof or affect the
25 construction or interpretation of the provisions hereof. The Settlement Agreement shall be construed
26 and enforced in accordance with and governed by California law.

27 17. Full Integration. Each of the parties represents, warrants, and agrees that in executing
28 the Settlement Agreement he, she, or it has relied solely on the statements set forth herein and the

1 advice of its own counsel. Each of the parties further represents, warrants, and agrees that in
2 executing the Settlement Agreement he, she, or it has placed no reliance on any statement,
3 representation, or promise of any other party, or any other person or entity not expressly set forth
4 herein, or upon the failure of any party or any other person or entity to make any statement,
5 representation, or disclosure of anything whatsoever. The parties have included this clause (1) to
6 preclude any claim that any party was in any way fraudulently induced to execute the Settlement
7 Agreement and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or
8 contradict the terms of the Settlement Agreement.

9 18. Presumption from Drafting. In that the parties have had the opportunity to draft,
10 review, and edit the language of the Settlement Agreement, no presumption for or against any party
11 arising out of drafting all or any part of the Settlement Agreement will be applied in any action
12 relating to, connected to, or involving the Settlement Agreement. Accordingly, the parties waive the
13 benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases of
14 uncertainty, language of a contract should be interpreted most strongly against the party that caused
15 the uncertainty to exist.

16 19. Voluntary Agreement. Smith enters into the Settlement Agreement voluntarily and
17 without coercion and acknowledges that no promises, threats, or assurances have been made by the
18 Commissioner, or any officer or agent thereof, about the Settlement Agreement.

19 20. Effective Date. The Settlement Agreement shall become final and effective when
20 signed by all parties and delivered by the Commissioner's agent via e-mail to Smith at
21 jackgrantsmith@gmail.com.

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

- | | | |
|----|----------------------------|-----------------------------------|
| 24 | If to Respondent to: | Jack Grant Smith |
| 25 | | 6060 La Goleta Road, Suite B |
| 26 | | Goleta, California 93117 |
| 27 | If to the Commissioner to: | Blaine A. Noblett, Senior Counsel |
| 28 | | Department of Business Oversight |
| | | 320 W. 4th Street, Suite 750 |

Los Angeles, California 90013-2344

22. Authority to Execute. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into the Settlement Agreement.

[Signature page to follow]

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

MANUEL P. ALVAREZ
Commissioner of Business Oversight

Dated: June 11, 2020

By _____

MARY ANN SMITH
Deputy Commissioner
Enforcement Division

JACK GRANT SMITH, Respondent

Dated: June 11, 2020

By _____

JACK GRANT SMITH