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

12 In the Matter of:) NMLS ID: 801846
13) OAH Case No. 2014120309
14 THE COMMISSIONER OF BUSINESS)
OVERSIGHT OF THE STATE OF)
15 CALIFORNIA,)
16) SETTLEMENT AGREEMENT
Complainant,)
17)
vs.)
18)
19 TIMOTHY HURLBUT,)
20 Respondent.)

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25 This Settlement Agreement is entered into between Timothy Hurlbut (“Hurlbut”) and the
26 Commissioner of Business Oversight (“Commissioner”) and is made with respect to the following
27 facts:
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RECITALS

A. On or around January 18, 2014, Hurlbut filed an application for a mortgage loan originator (“MLO”) license with the Commissioner pursuant to the California Finance Lenders Law (“CFLL”) (Fin. Code § 22000 et seq.) and California Residential Mortgage Lending Act (“CRMLA”) (Fin. Code § 50000 et seq.). The application was submitted to the Commissioner by filing a Form MU4 through the Nationwide Mortgage Licensing System and Registry (“NMLS”).

B. On May 2, 2014, the Commissioner approved Hurlbut’s MLO license.

C. On October 24, 2014, the Commissioner, pursuant to Financial Code sections 22714 and 50327, issued a Notice of Intention to Issue Order Revoking Mortgage Loan Originator License, Accusation, and related documents (“Accusation”). The Commissioner served a copy of the Accusation and related documents on Hurlbut by certified mail, on October 24, 2014.

D. On or around December 1, 2014, Hurlbut requested an administrative hearing regarding the Accusation.

E. The Department of Business Oversight (“Department”), through the Commissioner, has jurisdiction over the licensing and regulation of persons and entities engaged in the business of lending and/or servicing pursuant to the CRMLA and lending and/or brokering pursuant to the CFLL, including mortgage loan originators.

F. The Commissioner finds that this action is appropriate in the public interest and consistent with the purposes fairly intended by the policy and provisions of this law.

G. It is the intention and desire of the parties to resolve this matter without the necessity of a hearing and/or other litigation.

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

TERMS AND CONDITIONS

1. This Settlement Agreement is entered into for the purpose of judicial economy and expediency, and to avoid the expense of a hearing, and possible further court proceedings.

1 2. Hurlbut, by entering into this Settlement Agreement, does not admit or deny any of
2 the allegations set forth in the Accusation.

3 3. Hurlbut agrees to withdraw his request for an administrative hearing made on or
4 around December 1, 2014. Hurlbut acknowledges his right to an administrative hearing under the
5 CRMLA and the CFLL in connection with the Accusation and hereby waives that right to a
6 hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant to the
7 CRMLA, the CFLL, the California Administrative Procedure Act, the California Code of Civil
8 Procedure, or any other provision of law in connection with these matters.

9 4. Hurlbut agrees that for the 60 months immediately following full execution of this
10 Settlement Agreement, if the Department makes a finding that Hurlbut has violated or is violating
11 any provision of the CRMLA or CFLL, the Commissioner may, in her discretion automatically
12 revoke Hurlbut’s MLO license. Hurlbut waives all notice and hearing rights to contest an automatic
13 revocation initiated pursuant to this provision, which may be afforded under the CRMLA, the
14 CFLL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any
15 other provision of law in connection with these matters.

16 5. Hurlbut agrees to take at least 16 hours of continuing education offered by an NMLS
17 approved vendor annually for the next 60 months and agrees to submit proof of compliance to
18 Danielle A. Stoumbos, 320 West Fourth Street, Suite 750, Los Angeles, California 90013. The first
19 report is due on December 31, 2015. The second report is due on December 31, 2016. The third
20 report is due on December 31, 2017. The fourth report is due on December 31, 2018 and the final
21 report is due on December 31, 2019. Failure to fulfill the minimum hours of continuing education
22 required under this Settlement Agreement or failure to submit any of the required compliance
23 reports by their specified dates shall be cause for the Commissioner to automatically revoke
24 Hurlbut’s MLO license. Hurlbut waives any notice and hearing rights to contest an automatic
25 revocation initiated pursuant to this provision which may be afforded under the CRMLA, the
26 CFLL, the California Administrative Procedure Act, and the California Code of Civil Procedure.

27 6. The parties hereby acknowledge and agree that this Settlement Agreement is
28 intended to constitute a full, final and complete resolution of the Accusation and that no further

1 proceedings or actions will be brought by the Commissioner in connection with these matters either
2 under the CRMLA or CFLL or any other provision of law, excepting therefrom any proceeding or
3 action if such proceeding or action is based upon facts not presently known to the Commissioner or
4 which were knowingly concealed from the Commissioner by Hurlbut.

5 7. In consideration of the information provided to the Commissioner by Hurlbut as
6 described in the paragraphs above, the Commissioner hereby agrees that except as set forth in this
7 Settlement Agreement, she shall not revoke Hurlbut’s MLO license nor take any further action
8 based on the violations cited in this Settlement Agreement.

9 8. The parties hereby acknowledge and agree that this Settlement Agreement is
10 intended to constitute a full, final and complete resolution of the Accusation, excepting therefrom
11 any proceeding or action if such proceeding or action is based upon facts not presently known to the
12 Commissioner. The parties further acknowledge and agree that nothing contained in this Settlement
13 Agreement shall operate to limit the Commissioner’s ability to assist any other agency, (city,
14 county, state or federal) with any prosecution, administrative, civil or criminal, brought by any such
15 agency against Hurlbut based upon any of the activities alleged in these matters or otherwise.

16 9. Each of the parties represents, warrants, and agrees that it has had an opportunity to
17 seek independent advice from its attorney(s) and/or representatives with respect to the advisability
18 of executing this Settlement Agreement.

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

1 11. This Settlement Agreement is the final written expression and the complete and
2 exclusive statement of all the agreements, conditions, promises, representations, and covenants
3 between the parties with respect to the subject matter hereof, and supersedes all prior or
4 contemporaneous agreements, negotiations, representations, understandings, and discussions
5 between and among the parties, their respective representatives, and any other person or entity, with
6 respect to the subject matter covered hereby.

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

14 13. Hurlbut enters into this Settlement Agreement voluntarily and without coercion and
15 acknowledges that no promises, threats or assurances have been made by the Commissioner or any
16 officer, or agent thereof, about this Settlement Agreement.

17 14. The waiver of any provision of this Settlement Agreement shall not operate to waive
18 any other provision set forth herein, and any waiver, amendment and/or change to the terms of this
19 Settlement Agreement must be in writing and signed by the parties.

20 15. The parties agree that this Settlement Agreement may be executed in one or more
21 separate counterparts, each of which when so executed, shall be deemed an original. A fax
22 signature shall be deemed the same as an original signature. Such counterparts shall together
23 constitute and be one and the same instrument.

24 16. This Settlement Agreement shall be construed and enforced in accordance with and
25 governed by California law.

26 17. This Settlement Agreement shall not become effective until signed and delivered by
27 all parties.

28 18. Each signator hereto covenants that he/she possesses all necessary capacity and

1 authority to sign and enter into this Settlement Agreement.

2 19. This Settlement Agreement is binding on all heirs, assigns and/or successors in
3 interest.

4 20. This Settlement Agreement may be revoked and the Commissioner may pursue any
5 and all remedies available under law against Hurlbut if the Commissioner later discovers that
6 Hurlbut knowingly or willfully withheld information used and relied upon in this Settlement
7 Agreement.

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9 Dated: June 24, 2015

JAN LYNN OWEN
Commissioner of Business Oversight

11 By _____
12 MARY ANN SMITH
13 Deputy Commissioner
14 Enforcement Division

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16 Dated: June 22, 2015

TIMOTHY HURLBUT

17 By _____
18 Timothy Hurlbut

19
20 **APPROVED AS TO FORM AND CONTENT:**

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22 _____
23 STEVEN C. VONDRAN
24 Law Offices of Steven C. Vondran, P.C.
25 Counsel for Timothy Hurlbut

26 _____
27 DANIELLE A. STOUMBOS
28 Counsel for Commissioner of Business Oversight