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

12 In the Matter of:) NMLS LICENSE NO. 728755
13)
14 THE COMMISSIONER OF BUSINESS) CONSENT ORDER
OVERSIGHT,)
15)
16 Complainant,)
17 v.)
18 TROY W. BERKLEY,)
Respondent.)
19)
20)
21)
22)
23)

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25 This Consent Order (the Consent Order) is entered between the Commissioner of Business
26 Oversight (Commissioner) and Troy W. Berkley (Berkley), and is made with respect to the
27 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.)

7 B. Berkley first applied for an MLO license with the Commissioner on March 22, 2016.

8 C. The Commissioner denied Berkley’s MLO license application by order dated July 28,
9 2017, when Berkley failed to meet the financial responsibility, character, and general fitness
10 requirements of an MLO under Financial Code section 22109.1, subdivision (a)(3) and when Berkley
11 was convicted of felony theft in Colorado state court in 1998, a felony conviction involving acts of
12 fraud, dishonesty, and a breach of trust under Financial Code section 22109.1, subdivision (a)(2)(A).
13 Berkley did not contest the Commissioner’s findings.

14 D. On November 26, 2020, Berkley again applied for a MLO license with the
15 Commissioner. Berkley’s MLO application is sponsored by Pacific Lending, LLC, a residential
16 mortgage lender licensed under the CFL.

17 E. Berkley’s 2020 MLO application disclosed that on or about July 18, 2019, the El
18 Paso County District Court of Colorado, under section 24-72-702 of the Colorado Revised Statutes,
19 sealed Berkley’s arrest and criminal records related to his 1998 felony conviction for theft. Under
20 Colorado law, Berkley is no longer required to disclose his felony conviction on any state license
21 application, including the MU4.

22 F. Financial Code section 22109.1, subdivision (a)(2)(B) provides that an expunged or
23 pardoned felony conviction shall not require the denial of an MLO license application. However,
24 the Commissioner may consider the underlying crime, facts, or circumstances of an expunged or
25 pardoned felony conviction when determining the eligibility of an applicant for licensure under the
26 CFL.

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1 revocation of his license under this paragraph.

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

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

13 6. Remedy for Breach. Berkley acknowledges and agrees that his failure to satisfy the
14 reporting requirement under paragraph 4., above, or his failure to satisfy the continuing education
15 requirement under paragraph 5., above, shall be deemed a breach and cause for the Commissioner
16 to immediately revoke any license held by or deny any pending application(s) of Berkley. Berkley
17 hereby waives any notice and hearing rights to contest such revocation or denial(s) which may be
18 afforded him under the CFL, CRMLA, APA, CCP, or any other provision of law in connection with
19 this matter. Berkley further expressly waives any requirement for the filing of an accusation under
20 Government Code section 11415.60, subdivision (b), in connection with the Commissioner's
21 revocation of his license under this paragraph.

22 7. Approval of MLO Application. The Commissioner hereby acknowledges that
23 Berkley's MLO application is ready to be approved, and the Commissioner hereby agrees to
24 approve it concurrently with the execution of the Consent Order.

25 8. Full and Final Settlement. The parties hereby acknowledge and agree that the
26 Consent Order is intended to constitute a full, final, and complete resolution of Berkley's alleged
27 violations of the CFL as identified herein. No further proceedings or actions will be brought by the
28 Commissioner in connection with this matter, or any other provision of law, excepting any

1 proceeding to enforce compliance with the terms of the Consent Order.

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

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

11 11. Binding. The Consent Order is binding on all heirs, assigns, or successors in interest.

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

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

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

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

26 16. Full Integration. Each of the parties represents, warrants, and agrees that in executing
27 the Consent Order he, she, or it has relied solely on the statements set forth herein and the advice of
28 its own counsel. Each of the parties further represents, warrants, and agrees that in executing the

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

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

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

18 19. Effective Date. The Consent Order shall become final and effective when signed by
19 all parties and delivered by the Commissioner's agent via e-mail to Berkley at
20 troyberkley46@gmail.com.

21 20. Notice. Any notice required under the Consent Order shall be provided to each party at
22 the following addresses:

23 If to Respondent to: Troy W. Berkley
24 11239 E. Grant Road
25 Franktown, Colorado 80116

26 If to the Commissioner to: Blaine A. Noblett, Senior Counsel
27 Department of Business Oversight
28 320 W. 4th Street, Suite 750
Los Angeles, California 90013-2344

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