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8 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
9 OF THE STATE OF CALIFORNIA

| | | | |
|----|-------------------------------|---|--------------------------------|
| 11 | In the Matter of: |) | NMLS No.: 217948 |
| | |) | |
| 12 | THE COMMISSIONER OF FINANCIAL |) | MLO License No.: 60DBO93110 |
| 13 | PROTECTION AND INNOVATION, |) | |
| | |) | |
| 14 | Complainant, |) | ACCUSATION IN SUPPORT OF ORDER |
| | |) | REVOKING MORTGAGE LOAN |
| 15 | v. |) | ORIGINATOR LICENSE OF |
| | |) | ROBERT MARK RACUSEN |
| 16 | |) | |
| 17 | ROBERT MARK RACUSEN, |) | |
| | |) | |
| 18 | Respondent. |) | |
| 19 | |) | |

20
21 The Complainant, the Commissioner of Financial Protection and Innovation, formerly
22 known as the Commissioner of the Department of Business Oversight, files this Accusation to
23 revoke the mortgage loan originator (MLO) license of Respondent Robert Mark Racusen
24 (Racusen). The Commissioner alleges and charges as follows:

25 **I.**
26 **Jurisdiction and Venue**

27 1. The Commissioner licenses and regulates MLOs, finance lenders, and brokers under
28 the California Financing Law (Fin. Code, § 22000 et seq.) (CFL). The Commissioner also licenses

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2 and regulates MLOs, residential mortgage lenders, and residential loan servicers under the California
3 Residential Mortgage Lending Act (Fin. Code, § 50000 et seq.) (CRMLA).

4 2. Under Financial Code sections 22172 and 50513, the Commissioner brings this action
5 to revoke the MLO license issued to Racusen, Nationwide Multistate Licensing System (NMLS) No.
6 217948, pursuant to Financial Code sections 22109.1 and 50141, and the rules and regulations
7 promulgated thereunder.

8 **II.**
9 **Statement of Facts**

10 3. On or around February 11, 2020, Racusen filed a Form MU4 (Application) through
11 NMLS for an MLO license with the Commissioner pursuant to Financial Code section 22105.1.

12 4. In his Application, Racusen answered “No” to Regulatory Action Disclosure
13 Questions K (2) and (4-9) which ask, in pertinent part: Has any State or federal regulatory agency or
14 foreign financial regulatory authority or self-regulatory agency (SRO) ever:

15 (2) found you to have been involved in a violation of a financial
16 services-related business regulation(s) or statute(s)?

17 . . .

18 (4) entered an order against you in connection with a financial
19 services-related activity?

20 (5) revoked your registration or license?

21 (6) denied or suspended your registration or license or application for
22 licensure, disciplined you, or otherwise by order, prevented you from
23 associating with a financial services-related business or restricted your
24 activities?

25 (7) barred you from association from an entity regulated by such
26 commissions, authority, agency, or officer, or from engaging in a
27 financial services-related business?

28 (8) issued a final order against you based on violations of any law or
regulations that prohibit fraudulent, manipulative, or deceptive
conduct?

(9) entered an order concerning you in connection with any license or
registration?

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2 5. In submitting his Application, Racusen was required to sign an oath and attestation
3 agreeing “to keep the information contained in this [Application] form current and to file accurate
4 supplementary information on a timely basis . . .”

5 6. Based on the information provided in his Application and his agreement to keep the
6 information current or to supplement, the Commissioner issued Racusen an MLO license on or
7 around March 11, 2020.

8 7. As a prerequisite to having the MLO license, Racusen was sponsored by his
9 employer, Mutual of Omaha Mortgage, Inc., which is licensed under the CFL, license number
10 60DBO93110, and is also licensed under the CRMLA, license number 4131356. Racusen was
11 licensed as an MLO in several states.

12 8. On or around April 21, 2020, the Commissioner received a notification from NMLS
13 that the State of Idaho issued an administrative action against Racusen.

14 9. On April 21, 2020, the Department created a license item in NMLS and notified him
15 to update his Application to address the Idaho action, the revocation of a state securities registration,
16 and a bar from associating with any National Association of Securities Dealers (NASD) member
17 entity. The Department instructed Racusen to provide a detailed explanation of the circumstances
18 and to upload any applicable supporting documentation.

19 10. Racusen filed several amended applications on NMLS. On April 21, 2020, Racusen
20 filed his Seventh Amended Application where he answered “Yes” to Regulatory Disclosure
21 Question K(6) that asked whether any state, federal, foreign financial regulatory authority, or self-
22 regulatory organization has denied or suspended his registration or license, disciplined, or issue an
23 order restricting his association or his activities with a financial services-related business. Racusen
24 provided the following event explanation:

25 Back in 2002 I was licensed as a Stockbroker, I have since surrendered
26 my license due to an erroneous customer complaint. That was over 15
27 years ago. The State of Idaho, Finance dept requested more
28 information on this issue as to why I withdrew my license. I am
currently awaiting the official denial letter to be received from the
state.

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1 11. On or around April 22, 2020, Racusen filed his Ninth Amended Application on
2 NMLS where he uploaded from the State of Idaho an Order Denying Loan Mortgage Loan
3 Originator License Application effective April 20, 2020 (Idaho Denial Order).

4 12. The Idaho Denial Order determined that Racusen made material misstatements in his
5 MLO application by responding “no” to Regulatory Disclosure Questions K (2) and (4-9). The State
6 of Idaho also found that Racusen failed to disclose the following regulatory actions:

7 a. National Association of Securities Dealers (NASD)¹ Letter of Acceptance,
8 Waiver, and Consent to Suspension effective on or around October 17, 2004, Robert M. Racusen
9 Central Registration Depository (CRD) No. 1601853, Case No. C8A040089 (NASD Consent to
10 Suspension);

11 b. Illinois Secretary of State Securities Department, Consent Order of
12 Revocation entered May 19, 2005, File No. 04400778, Robert M. Racusen CRD No. 1601853,
13 Revocation of Illinois Registration as a Salesperson Effective August 11, 2004 (Illinois Revocation
14 Order);

15 c. NASD Letter of Acceptance, Waiver and Consent Disbarment dated October
16 12, 2005, Robert M. Racusen CRD No. 1601853, Case No. EA20004089001, Consent to Bar from
17 Association with Any NASD Member in Any Capacity (NASD Consent to Disbarment); and

18 d. State of Indiana Office of the Secretary of State Securities Division, *In the*
19 *Matter of Robert Mark Racusen*, Case No. 99-147 OP, Order of Restrictive Agreement filed on June
20 9, 1999 (Indiana Restrictive Order and Agreement).

21 13. On April 20, 2020, the State of Idaho denied an MLO license to Racusen finding that
22 he lacked the character and fitness sufficient to command the confidence of the community and to
23 warrant a determination that Racusen will operate honestly, fairly, and efficiently within the
24 purposes of the Idaho Residential Mortgage Practice Act.

25 14. On or around June 3, 2020, Racusen filed his Twelfth Amended Application on
26 NMLS, where he changed his response from “no” to “yes” for Regulatory Disclosure Question K(9)

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28 ¹ In July 2007, the U.S. Securities and Exchange Commission approved the formation of a new self-regulating

1 which asked whether any state, federal, foreign-financial, or self-regulatory organization has ever
2 entered an order against Racusen in connection with any license or registration.

3 15. Racusen provided the following explanation for ID NASD/FINRA:

4 Please be advised over 17 years ago, I was issued a revocation of a
5 state securities registration and a bar from association with any NASD
6 member entity. I do not have any documentation for this matter as it
7 was over 10 years ago. Since this was not NMLS related, I have
8 previously answered no this question. As requested by CA-DBO i am
9 marking this answer as Yes.

10 **III.**
11 **Applicable Law**

12 16. Paragraphs 1-15 are hereby realleged and incorporated herein by reference as if set
13 forth in their entirety.

14 17. Financial Code section. 22172, subdivision (a)(2), authorizes the Commissioner to
15 revoke an MLO license under the CFL if a “licensee fails at any time to meet the requirements of
16 Section 22109.1” and if the applicant withholds information or makes a material misstatement in an
17 application for a license.

18 18. Financial Code section 50327, subdivision (a)(2), authorizes the Commissioner to
19 revoked an MLO license under the CRMLA if he finds “[a]ny fact or condition exists that, if it had
20 existed at the time of the original application for the license, reasonably would have warranted the
21 commissioner in refusing to issue the license originally.”

22 19. Financial Code section 50513, subdivision (a)(2), authorizes the Commissioner to
23 revoke an MLO license under the CRMLA, if a “licensee fails at any time to meet the requirements
24 of Section 50141” and if the applicant withholds information or makes a material misstatement in an
25 application for a license.

26 20. Section 22109.1 of the CFL and section 50141 of the CRMLA provide in relevant
27 part:

28 (a) The commissioner shall deny an application for a mortgage loan
originator license unless the commissioner makes, at a minimum, the
following findings:
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(3) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.

(Fin. Code, §§ 22109.1 and 50141)

21. California Code of Regulations, title 10, section 1422.6.2, provides in relevant part:

(a) The Commissioner’s finding required by Section 22109.1(c) of the California Financing Law relates to any matter, personal or professional, that may impact upon an applicant’s propensity to operate honestly, fairly, and efficiently when engaging in the role of a mortgage loan originator.

...

(c) An applicant may be precluded from obtaining a mortgage loan originator license where his or her personal history includes:

- (1) Any liens or judgments for fraud, misrepresentation, dishonest dealing, and/or mishandling of trust funds, or
- (2) Other liens, judgments, or financial or professional conditions that indicate a pattern of dishonesty on the part of the applicant.

(Cal. Code Reg., tit. 10, § 1422.6.2, subdivisions (a) and (c))

V.

Failure to Demonstrate Requisite Financial Responsibility, Character, and General Fitness

22. Paragraphs 1- 21 are hereby realleged and incorporated herein by reference as if set forth in their entirety.

23. The Commissioner finds Racusen’s failure to disclose his disciplinary actions: (i) NASD Suspension Order; (ii) NASD Consent to Disbarment; (iii) Illinois Revocation Order; (iv) Indiana Restrictive Order and Agreement, and (v) the Idaho Order Denying MLO License – constitutes grounds under Financial Code sections 22172, subdivision (a)(2), 50327, subdivision (a)(2), and 50513, subdivision (a)(2), to revoke Racusen’s MLO license.

24. The Commissioner also finds that Racusen’s pattern of dishonest conduct and disciplinary history demonstrates that Racusen lacks the required qualifications of financial responsibility, character, and general fitness as to command the confidence of the community and to

1 warrant a determination that he would operate honestly, fairly, and efficiently under Financial Code
2 sections 22109.1 and 50141; and Cal. Code Reg., tit. 10, section 1422.6.2, subdivisions (a) and (c).

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4 **V.**
Conclusion

5 The Commissioner finds that Racusen fails to meet the minimum standards for issuance of an
6 MLO license under Financial Code section 22109.1, subdivision (a)(2), and that such findings
7 support revocation of Racusen’s MLO license pursuant to Financial Code section 22172, subdivision
8 (a)(2).

9 The Commissioner finds that a fact or condition exists presently that, if it had existed at the
10 time of Racusen’s original application for an MLO license, reasonably would have warranted the
11 Commissioner in refusing to issue the license originally, and that such a finding supports revocation
12 of Racusen’s MLO license pursuant to Financial Code section 50327, subdivision (a)(2).

13 The Commissioner finds Racusen also fails to demonstrate the requisite financial
14 responsibility, character and general fitness required under Financial Code sections 50141 and
15 22109.1, and Cal. Code Reg., title 10, section 1422.6.2, based upon his NASD Suspension and Bar
16 Order, Illinois Revocation Order, Indiana Restrictive Order and Agreement, and Idaho Order
17 Denying MLO License.

18 The Commissioner finds that Racusen fails to meet the minimum standard for an MLO
19 license and that such findings support revocation of Racusen’s MLO license pursuant to Financial
20 Code section 50513, subdivision (a)(2).

21 WHEREFORE IT IS PRAYED that the MLO license issued to Mark Robert Racusen be
22 revoked.

23 Dated: October 20, 2020

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

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25 By _____

26 Vanessa T. Lu
27 Counsel
28 Enforcement Division