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9 Attorneys for Complainant

10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA
12

13 In the Matter of:)	OAH Case No. 2020060936
)	Agency Case No. 1289509
14 THE COMMISSIONER OF BUSINESS)	
15 OVERSIGHT,)	SETTLEMENT AGREEMENT
)	
16 Complainant,)	
)	
17 v.)	Date: October 14-15, 2020
)	Time: 9:00 a.m.
18 JERMAINE LAMONT WHIGHAM,)	Place: Office of Administrative Hearings
)	2349 Gateway Oaks Dr., Suite 200
19 Respondent.)	Sacramento, CA 95833
)	Judge: Unassigned
)	
)	
)	

22 This Settlement Agreement (Agreement) is entered into between the Commissioner of
23 Financial Protection and Innovation (Commissioner) and Jermaine Lamont Whigham (Whigham, and
24 collectively the Parties) and is made with respect to the following facts:

25 **I.**

26 **Recitals**

27 A. The Commissioner has jurisdiction over the licensing and regulation of persons
28 engage in the business of making or servicing residential mortgage loans, including mortgage loan

1 originators under the California Financing Law (CFL) (Fin. Code section 22000, et seq.) and the
2 California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.)

3 B. On February 15, 2019, Whigham applied through the Nationwide Multistate Licensing
4 System / Nationwide Mortgage Licensing System and Registry (“NMLS”) for a California mortgage
5 loan originator (MLO) license under the CFL and CRMLA by filing a Form MU4, a uniform form
6 prescribed by the NMLS to furnish, among other things, information regarding personal history and
7 experience, financial responsibility, and any past or pending administrative, civil, or criminal actions
8 involving the applicant.

9 C. On March 19, 2019, Whigham’s MLO license application was approved by the
10 Commissioner, who issued Whigham MLO license number CA-DBO1289509 under the CFL and the
11 CRMLA.

12 D. On March 20, 2019, the Idaho Department of Finance (“Idaho”) issued to Whigham a
13 Notice of Intent to Issue Order of Denial of [MLO] License Application (“Notice”) based on (1)
14 material misrepresentations in response to Question D regarding the existence of two undisclosed and
15 outstanding California tax liens, and (2) a finding of a lack of financial responsibility, character and
16 general fitness sufficient to meet Idaho’s MLO licensing standards.

17 E. Whigham did not contest the Notice, and Idaho issued a final order denying the
18 application and posted it on NMLS on April 6.

19 F. On April 9, the Commissioner posted a license item – a request on the NMLS website
20 to a licensee or applicant to respond to a question or take an action – prompting Whigham to update
21 his Form MU4 to address Idaho’s application denial.

22 G. On April 17, Whigham changed his Form MU4 “no” response for Question D to
23 “yes,” but failed to provide required details or documents explaining the liens in violation of the CFL
24 and CRMLA, California Financial Code (FC) sections 22755 and 50502, and California Code of
25 Regulations, Title 10, sections (CCR) 1409.1 subdivision (a) and 1950.122.9. He also violated these
26 sections and regulations by not changing any of his Question K responses to reflect the Idaho
27 disciplinary action and by omitting required details and documents explaining his Question D and
28 Question K responses.

1 H. On April 23, Whigham filed another updated Form MU4 to reflect a change of
2 employer, but he did not make any further disclosures regarding the liens or the Idaho disciplinary
3 action in violation of FC sections 22755 and 50502, and CCR 1409.1 subdivision (a) and 1950.122.9.

4 I. On July 25, the Department again prompted Whigham via license item to update his
5 Form MU4 responses regarding the Idaho disciplinary action, but he neglected to do so in violation of
6 FC sections 22755 and 50502, and CCR 1409.1 subdivision (a) and 1950.122.9.

7 J. On January 15, 2020, Whigham submitted his annual Form MU4, in which he finally
8 amended his response to Question K(6) to reflect the Idaho application denial. He further violated FC
9 sections 22755 and 50502, and CCR 1409.1 subdivision (a) and 1950.122.9, however, by failing to
10 amend any other applicable disclosure question responses related to the Idaho administrative action,
11 including K(1), K(2), and K(9).

12 K. Whigham further violated FC sections 22755 and 50502, and CCR 1409.1 subdivision
13 (a) and 1950.122.9 by falsely stating in the “Disclosure Explanations” portion of the 2020 Form MU4
14 that Idaho denied his MLO application because of a low credit score, and by providing no
15 explanation or documents at all regarding the other “no” responses.

16 L. On June 8, 2020, the Commissioner issued an Accusation and accompanying
17 documents, and served the documents by certified mail at Whigham’s address provided by Whigham
18 on his Form MU4s.

19 M. The Commissioner received Whigham’s Notice of Defense by mail on June 25, 2020,
20 a hearing was set for July 21, 22, and 23, the Parties filed on July 14 a stipulated request to continue
21 the hearing, and this matter is currently set for a two-day hearing at the Office of Administrative
22 Hearings on October 14 and 15, 2020.

23 N. The Commissioner finds that entering into this Agreement is in the public interest and
24 consistent with the purposes fairly intended by the policies and provisions of the CFL and the
25 CRMLA.

26 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
27 contained herein, the Parties agree as follows:
28

1 II.

2 **Terms and Conditions**

3 1. **Purpose.** The Agreement resolves the issues before the Commissioner described above
4 in a manner that avoids the expense of a hearing and other possible court proceedings, protects
5 consumers, is in the public interest, and is consistent with the purposes and provisions of the CFL and
6 the CRMLA.

7 2. **Waiver of Hearing Rights.** Whigham agrees that this Agreement shall have the effect
8 of withdrawing his request for an administrative hearing on the matter set forth herein. Whigham
9 acknowledges his right to an administrative hearing under the CFL and the CRMLA in connection
10 with the Accusation set forth above, and hereby waives such right to hearing, and to any
11 reconsideration, appeal, or other rights which may be afforded to him under the CFL; the CRMLA;
12 the Administrative Procedure Act (APA) (Govt. Code, § 11370 et seq.); the Code of Civil Procedure
13 (CCP) (Code of Civ. Proc., § 1 et seq.); or any other provision of law in connection with these
14 matters. By waiving such rights, Whigham effectively consents to the finality of this Agreement.

15 3. **Dismissal of Accusation.** Except as otherwise provided herein, the Parties
16 acknowledge that this Agreement shall have the effect of dismissing the Accusation and
17 accompanying documents cited above. The dismissal shall become effective on the Effective Date of
18 this Agreement, as such date is defined in Paragraph 24.

19 4. **Order to Discontinue Violations.** Whigham hereby agrees that in accordance with
20 Financial Code sections 22712 and 50321, he will immediately discontinue the violations set forth
21 herein.

22 5. **Revocation of License.** Whigham agrees that for the 36-month period from the
23 effective date of the Agreement, should the Commissioner make a finding that Whigham has violated
24 or is violating any provision of the CFL, the CRMLA, or any rule, regulation, or law under the
25 jurisdiction of the Commissioner, the state of California, the United States of America, and every
26 state and foreign government (and political subdivision thereof), the Commissioner may, in his
27 discretion, automatically revoke any license held by or deny any pending application(s) of Whigham.
28 Whigham hereby waives any notice and hearing rights to contest such revocation or denial(s) which

1 may have been afforded him under the CFL, CRMLA, APA, CCP, or any other provision of law in
2 connection with this matter. Whigham further expressly waives any requirement for the filing of an
3 accusation under Government Code section 11415.60, subdivision (b), in connection with the
4 Commissioner's revocation of his license under this paragraph.

5 6. Continuing Education. Whigham agrees that for 36 months immediately following the
6 Effective Date of this Agreement, Whigham shall annually complete at least 12 hours of continuing
7 education, in addition to those required to maintain his license, offered by a vendor approved by the
8 NMLS. Proof of annual compliance shall be submitted no later than September 30 of each year to the
9 Commissioner's agent specified in Paragraph 21.

10 7. Administrative Penalties. In consideration of the dismissal of the Accusation effected
11 by Paragraph 3 above, Whigham agrees to pay an administrative penalty to the Commissioner in the
12 amount of \$2,500.00 (Administrative Penalty). Whigham shall pay the Administrative Penalty to be
13 received by the Commissioner no later than 30 days from the effective date of the Agreement.
14 Payment in the form of a cashier's check shall be made payable to "The Department of Financial
15 Protection and Innovation" and mailed to the Commissioner's agent specified in Paragraph 21 below.
16 In the event the payment due date falls on a weekend or holiday, the payment shall be due the next
17 business day. Whigham acknowledges that failure to timely pay the Administrative Penalty shall be a
18 violation of this Agreement and constitute cause for the Commissioner to immediately issue an order
19 under Paragraph 8 below.

20 8. Commissioner's Remedy for Violation. Whigham agrees that for 36 months
21 immediately following the Effective Date of this Agreement, if the Commissioner makes a finding
22 that Whigham has violated or is violating any provision of this Agreement, or of the CRMLA, or of
23 any rule, regulation, or law under the jurisdiction of the Commissioner or that he is subject to a
24 disciplinary action taken by the State of California (or any legal subdivision thereof, including city
25 and county), another state, any agency of the federal government, or another country for any action
26 substantially related to the activity regulated under the CRMLA, the Commissioner may, in his sole
27 discretion, issue to Whigham a final order revoking his MLO license. Whigham waives all notice and
28 hearing rights to contest any revocation order issued under this provision, which may be afforded

1 under the CRMLA, the APA, the CCP, or any other provision of law in connection with these
2 matters.

3 9. Full and Final Settlement. The Parties hereby acknowledge and agree that this
4 Agreement is intended to constitute a full, final, and complete resolution of the Accusation, and that
5 no further proceedings or actions will be brought by the Commissioner in connection with the
6 Accusation under the CFL, CRMLA, the regulations promulgated thereunder, or any other provision
7 of law, excepting therefrom any proceeding to enforce compliance with the terms of this Agreement.

8 10. Information Willfully Withheld or Misrepresented. This Agreement may be revoked,
9 and the Commissioner may pursue any and all remedies available under the law against Whigham, if
10 the Commissioner discovers that Whigham knowingly or willfully withheld or misrepresented
11 information used for and relied upon in this Agreement.

12 11. Future Actions by Commissioner. If Whigham fails to comply with any terms of the
13 Agreement, the Commissioner may institute proceedings for any and all violations otherwise resolved
14 under this Agreement. The Commissioner reserves the right to bring any future actions against
15 Whigham for any and all unknown violations of the CFL, the CRMLA, or the regulations
16 promulgated thereunder.

17 12. Assisting Other Agencies. Nothing in this Agreement limits the Commissioner's
18 ability to assist a government agency (whether city, county, state, or federal) or official self-
19 regulatory organization with any administrative, civil or criminal prosecutions brought by that agency
20 or official organization against Whigham based upon any of the activities alleged in this matter or
21 otherwise.

22 13. Headings. The headings to the paragraphs of this Agreement are inserted for
23 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
24 the provisions hereof.

25 14. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
26 Agreement he has relied solely on the statements set forth herein and the advice of his own counsel.
27 Each of the Parties further represents, warrants, and agrees that in executing this Agreement he has
28 placed no reliance on any statement, representation, or promise of any other party, or any other

1 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
2 entity to make any statement, representation or disclosure of anything whatsoever. The Parties have
3 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to
4 execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret,
5 supplement, or contradict the terms of this Agreement.

6 15. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
7 this Agreement will be valid or binding unless it is in writing and signed by each of the Parties. The
8 waiver of any provision of this Agreement will not be deemed a waiver of any other provision. No
9 waiver by either party of any breach of, or of compliance with, any condition or provision of this
10 Agreement by the other party will be considered a waiver of any other condition or provision or of
11 the same condition or provision at another time.

12 16. Full Integration. This Agreement is the final written expression and the complete and
13 exclusive statement of all the agreements, conditions, promises, representations, and covenants
14 between the Parties with respect to the subject matter hereof, and supersedes all prior or
15 contemporaneous agreements, negotiations, representations, understandings, and discussions between
16 and among the Parties, their respective representatives, and any other person or entity, with respect to
17 the subject matter covered hereby.

18 17. Governing Law. This Agreement will be governed by and construed in accordance
19 with California law. Each of the Parties hereto consents to the jurisdiction of such court, and hereby
20 irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the
21 maintenance of such action or proceeding in such court.

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

25 19. Effect Upon Future Proceedings. If Whigham applies for any license, permit or
26 qualification under the Commissioner's current or future jurisdiction, or are the subject of any future
27 action by the Commissioner to enforce this Agreement, then the subject matter hereof shall be
28 admitted for the purpose of such application(s) or enforcement proceedings(s).

1 20. Voluntary Agreement. Whigham enters into this Agreement voluntarily and without
2 coercion, and acknowledge that no promises, threats, or assurances have been made by the
3 Commissioner, or any officer or agent thereof, about this Agreement. Each of the Parties represents
4 and acknowledges that he is executing this Agreement completely voluntarily and without any duress
5 or undue influence of any kind from any source.

6 21. Notice. Any notice/report required under this Agreement shall be addressed as
7 follows:

8 To Whigham: Lindsay Johnson, Esq.
9 Ray & Bishop, PLC
10 5000 Birch Street, Suite 7000
11 Newport Beach, CA 92660

12 To the Commissioner: Noah M. Bean, Esq.
13 Senior Counsel
14 Department of Financial Protection and
15 Innovation
16 2101 Arena Blvd.
17 Sacramento, California 95834
18 noah.bean@dfpi.ca.gov

19 22. Signatures. An electronic signature, or a faxed, photocopied, or scanned copy of an
20 original signature, shall be deemed the same as an original signature.

21 23. Public Record. Whigham hereby acknowledges that this Agreement is and will be a
22 matter of public record.

23 24. Effective Date. This Agreement shall become final and effective when signed by each
24 of the Parties and delivered by the Commissioner’s counsel via e-mail to Whigham’s counsel at
25 lindsay@rayandbishop.com.

26 25. Authority to Sign. Each signatory hereto covenants that he/she/they possess(es) all
27 necessary capacity and authority to sign and enter into this Agreement and undertake(s) the
28 obligations set forth herein.

Signature Page Follows

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Dated: October 13, 2020

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation

By: _____
MARY ANN SMITH
Deputy Commissioner

Dated: October 13, 2020

JERMAINE LAMONT WHIGHAM

By: _____
JERMAINE LAMONT WHIGHAM

APPROVED AS TO FORM:

By: _____
Lindsay Johnson, Esq.
Attorney for Jermaine Lamont Whigham