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

11 In the Matter of:)
12)
13 THE COMMISSIONER OF FINANCIAL) NMLS ID NOS.: 1620881
PROTECTION AND INNOVATION,)
14) ACCUSATION IN SUPPORT OF NOTICE OF
Complainant,) INTENT TO ISSUE ORDER TO REVOKE
15) MORTGAGE LOAN ORIGINATOR LICENSE
16 v.) OF SAMANTHA PENA
17 SAMANTHA PENA,) (Fin. Code §§ 22109.1, 22172, 22174, 22755,
18) 50141, 50204, 50327, and 50513)
Respondent.)
19)

20 Manuel P. Alvarez, the Commissioner of Department of Financial Protection and Innovation
21 (“Commissioner”), alleges and charges as follows:

22 I.

23 **Introduction and Jurisdiction.**

24 1. The Commissioner seeks to revoke the mortgage loan originator (“MLO”) license of
25 Samantha Pena (Pena) under the California Financing Law (CFL) (Fin. Code § 22000, et seq.¹) and
26 the California Residential Mortgage Loan Act (CRMLA) (§ 50000, et seq.).
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¹ Unless stated otherwise, all references to code sections hereinafter are citations to the Financial Code.

1 9. Kenco also informed Pena and Ramirez that it would lend \$10,000 to RS in the form
2 of a note for an earnest money deposit.

3 10. On September 9, 2020, Kenco advised Ramirez it was going to cancel the \$10,000
4 note, and instead would give RS a bonus in an amount comparable to the cancelled note.

5 11. On September 16, 2020, Kenco formalized this with a letter to Ramirez stating that
6 Kenco gave RS a \$12,000 tax-exempt bonus, for the purpose of RS purchasing a home.

7 12. On September 18, 2020, Pena emailed RS, CS (RS's broker for the underlying real
8 estate transaction, who was also employed by Kenco), and Ramirez that the underwriter for RS's
9 loan rejected the employer bonus because there was "no history of employee [the borrower]
10 receiving a bonus in the past." Pena stated in the email that the "bonus" was switched to a "gift," but
11 that the underwriter wanted reserves for the gift, "which we don't have. So we switched it back to a
12 bonus and are crossing our fingers the credit committee accepts it."

13 13. Also on September 18, 2020, CS sent a reply email to Pena and Ramirez, stating:

14 *"I am really upset, you asked this question already, she does not have [sufficient reserves].*
15 *We can gift them but you said they can not be gifted. Were you planning on switching it back*
16 *again. I do NOT understand why it got switched in the first place from a bonus. It is a Bonus.*
17 *All the girls get bonuses at the end of the year, this is traditional. She got a [nominal] bonus*
18 *last year and she had only been here a few weeks. Write a letter stating she is getting it early*
19 *instead of December. I do not understand what the problem is. . . . [W]e need to think outside*
20 *of the box. Maybe we advance her paycheck for reserves?"*

21 14. After the underwriter rejected RS's application based on the bonus, Pena and Ramirez
22 tried a new tact to get RS's loan application approved. On September 18, 2020, Pena emailed CS and
23 Ramirez, stating "Please see letter attached and include company letterhead. . ." The letter stated that
24 [the borrower RS] had been employed at Kenco since 2018, and RS "always received a bonus at the
25 end of the year." The letter indicated that RS received bonuses in 2018 and 2019, but they were
26 nominal amounts compared to the 2020 bonus. The letter also stated that RS "was scheduled to
27 receive her bonus at the end of the year as usual, but when she decided to purchase her own home,
28 we arranged to pay her earlier."

 15. RS then also changed her escrow documents to re-structure her earnest money deposit
to reflect two gifts, and had CS send Pena two blank form gift letters already signed by the borrower.

1 16. Using one of those letters, Samantha Pena’s husband, who was the borrower RS’s
2 godfather but not related to her by blood, signed a letter indicating he gave RS a gift of several
3 thousand dollars. Pena’s husband falsely indicated on the gift letter that RS was his niece.

4 17. Alicia Ramirez’s daughters signed the other gift letter indicating they also gave RS a
5 gift of several thousand dollars. Ramirez did not disclose her relationship with these donors to her
6 employer or the underwriter.

7 18. On or about September 25, 2020, the underwriter found that “there is excessive
8 layered risk with this [RS] transaction and the players are not forthcoming with their relationship
9 with each other.” An underwriting manager noted that “[t]he borrower[’]s income at the increased
10 level was only verified as received after the application and nothing (at this level) prior to the
11 application.” Pena and Ramirez’s employer concluded in its own investigation the borrower would
12 not have met the income required or qualified for the loan without the July 31, 2020 raise.
13 Additionally, the underwriting manager noted that “between seller credits and the gift / bonus from
14 the employer ... the borrower has no funds in the transaction.” The underwriting manager
15 concluded that “the employer [Kenco] is the true purchaser of the property as they have provided the
16 income and assets for closing and not the borrower.”

17 19. On October 1, 2020, Pena informed her employer that her husband called himself an
18 uncle but was not related by blood to RS, instead he was her godfather.

19 20. On or about October 9, 2020, Pena’s and Ramirez’s employer conducted an internal
20 investigation, and concluded that there appeared to be “internal employee misrepresentation and
21 high probability of misrepresentation of income and assets.” Pena’s and Ramirez’s employer was
22 concerned “that the income was fabricated for qualification.”

23 21. On or about October 15, 2020, the lender denied the borrower’s loan application due
24 to insufficient cash and unverifiable information.

25 22. Later that month, Pena and Ramirez resigned from their employment.

26 23. Pena and Ramirez renewed their licenses with DFPI through 2021, but they are
27 presently inactive due to a lack of sponsorship. They have applied for sponsorship through another
28

1 CRMLA-licensed lender or servicer, but their applications are on hold pending the resolution of the
2 instant administrative action.

3 **III.**

4 **The Commissioner has Grounds to Revoke Pena’s MLO License.**

5 24. The CFL requires in section 22714, subdivision (a), that the Commissioner suspend
6 or revoke an MLO license (1) when the licensee has failed to comply with any demand, ruling, or
7 requirement of the commissioner, (2) when the licensee has violated any provision of this division or
8 any rule or regulation made by the commissioner under and within the authority of this division, or
9 (3) when a fact or condition exists that reasonably would have warranted the commissioner in
10 refusing to issue the license originally.

11 25. Similarly, the CRMLA states in section 50327, subdivision (a) that the Commissioner
12 is authorized to suspend or revoke an MLO license (1) when the licensee has violated any provision
13 of this division or any rule or order of the commissioner thereunder, or (2) when any fact or
14 condition exists that reasonably would have warranted the commissioner in refusing to issue the
15 license originally.

16 A. Pena violated a provision of the CFL or a rule or regulation under it (section 22755).

17 26. Section 22755 states in relevant part that it is a violation of the CFL for an MLO to
18 employ any scheme to defraud any person or to defraud any person, to fail to comply with the CFL
19 or any regulation thereunder, or to willfully or negligently make false statements.

20 27. Pena violated section 22755 by creating gifts to support acceptable funds (for a
21 borrower with insufficient cash) to close on a transaction in which they were the loan officer
22 assistant and loan officer, respectively, and by not disclosing information about their relationships
23 with the gift donors. Pena only clarified that her husband was not the borrower’s uncle by blood, but
24 was a godfather, after the underwriter noted the nondisclosure and conflict of interest. Pena knew
25 and failed to disclose that the borrower received an unusually large pay raise less than a month
26 before requesting loan approval. Pena knew and failed to disclose that the borrower annual bonus
27 was unusually large and was awarded five months early specifically to bolster her loan application.
28 Pena knew and failed to disclose that Kenco both employed the loan applicant and served as her

1 broker and escrow agent. All of these facts were material because, together they demonstrated both a
2 clear conflict of interest from Kenco’s financial incentives to misrepresent its employee’s personal
3 finances, as well as its apparent actual manipulation of her finances in an attempt to secure loan
4 approval.

5 28. Because Pena violated section 22755 by attempting to defraud the prospective
6 lender/her employer and by willfully making false statements, pursuant to section 22714, subdivision
7 (a)(2), the Commissioner must suspend or revoke Pena’s MLO license issued under the CFL.

8 B. Pena knowingly misrepresented information on a loan application, violating a provision of
9 the CRMLA or a rule or order of the commissioner thereunder [sections 50204(j) and (k)].

10 29. Section 50204 provides that “A licensee may not do any of the following: . . . (j)
11 Knowingly misrepresent, circumvent, or conceal, through subterfuge or device, any material aspect
12 or information regarding a transaction to which it is a party. [and/or]” or “(k) Do an act, whether of
13 the same or a different character than specified in this section, that constitutes fraud or dishonest
14 dealings[.]”

15 30. Pena violated section 50204 by engaging in the conduct identified in paragraph 30
16 above.

17 31. Because Pena violated section 50204 by knowingly misrepresenting a material aspect
18 of a loan transaction and by committing acts constituting fraud or dishonest dealings, pursuant to
19 section 50327, subdivision (a)(1), the Commissioner must suspend or revoke Pena’s MLO license
20 issued under the CRMLA.

21 C. Pena lacks financial responsibility, character, and general fitness sufficient to meet
22 California’s MLO licensing standards under the CFL or the CRMLA.

23 32. Under sections 22172 and 50513, the Commissioner is authorized to also deny,
24 suspend, or revoke an MLO license if the licensee fails at any time to meet the application
25 requirements provided in sections 22109.1 and 50141, respectively, or withholds information or
26 makes a material misstatement in an application for a license or license renewal.

27 33. Under sections 22109.1 and 50141, the Commissioner must deny any application for
28 an MLO license unless he finds that “[t]he applicant has demonstrated such financial responsibility,
character, and general fitness as to command the confidence of the community and to warrant a

1 determination that the mortgage loan originator will operate honestly, fairly, and efficiently within
2 the purposes of [the CFL and the CRMLA].”

3 34. Pena has not demonstrated the financial responsibility, character, and general fitness
4 sufficient for an MLO license under the CFL or the CRMLA because she:

- 5 i. Arranged for the gifts to falsely demonstrate that the borrower RS had
6 sufficient funds to close;
- 7 ii. Failed to disclose their relationships with the borrower’s gift donors;
- 8 iii. Knew and failed to disclose that the borrower received an unusually large pay
9 raise less than a month before requesting loan approval;
- 10 iv. Knew and failed to disclose that the borrower’s annual bonus was unusually
11 large and was awarded five months early specifically to bolster her loan
12 application; and
- 13 v. Knew and failed to disclose that Kenco both employed the loan applicant and
14 served as her broker and escrow agent in the transaction, thereby creating a
15 clear conflict of interest due to its financial incentives to misrepresent her
16 personal finances, and resulting in its apparent actual manipulation of her
17 finances in an attempt to secure loan approval.

18 Because Pena does not meet the standards set forth in sections 22109.1 and 50141, the
19 Commissioner must suspend or revoke Pena’s license under the CFL and CRMLA pursuant to
20 sections 22172 and 50513.

21 35. Given the knowing, willful, delinquent, and deceitful nature of all the violations
22 outlined above, mere suspension would be inadequate. Rather, the facts and circumstances require
23 revocation of Pena’s MLO license under the CFL and CRMLA.

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IV.

Prayer

WHEREFORE, IT IS PRAYED that: under section 22714 and section 50513, subdivisions (a)(1) and (a)(2), the MLO license issued to Pena be revoked.

Dated: March 29, 2021
Sacramento, CA

MANUEL P. ALVAREZ
Commissioner of Financial Protection and Innovation



By _____
Steven Vong
Counsel
Enforcement Division