

1 MARY ANN SMITH
Deputy Commissioner
2 DANIEL P. O'DONNELL
Assistant Chief Counsel
3 JEREMY F. KOO (State Bar No. 300225)
Counsel
4 Department of Financial Protection and Innovation
5 2101 Arena Blvd
6 Sacramento, California 95834
7 Telephone: (916) 936-7582
Facsimile: (916) 928-7929
8 Attorneys for Complainant

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

13 In the Matter of:) NMLS ID NO. 484714
14 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,) CONSENT ORDER
15)
16 Complainant,)
17 v.)
18 ANTONIO IDERVAL ALENCAR, JR.)
19 Respondent.)
20)
21)
22)
23)
24)

25
26 The Commissioner of Financial Protection and Innovation (Commissioner) and Antonio
27 Iderval Alencar, Jr. (Alencar), enter into this Consent Order (the Consent Order) with respect to the
28 following facts.

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.), and California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et
7 seq.).

8 B. On May 10, 2021, Alencar applied for an MLO license with the Commissioner
9 sponsored by Guaranteed Rate Affinity, LLC, a CRMLA licensee.

10 C. Alencar initially answered “No” to Criminal Disclosure Question F, “Have you ever
11 been convicted of or pled guilty or nolo contendere (‘no contest’) in a domestic, foreign, or military
12 court to any felony?” This answer was incorrect because Alencar had pled guilty to a felony drug
13 charge in 2010 to obtain pre-trial diversion pursuant to Penal Code section 1000 et seq., and no
14 exemption from disclosure was applicable to this question. Alencar’s felony case was dismissed after
15 successful completion of diversion.

16 D. After the Commissioner’s staff notified Alencar that that his response was incorrect
17 and requested an explanation for his incorrect response, Alencar amended his response and explained
18 he initially answered “No” on the advice of an attorney that represented him in that 2010 criminal
19 case that no disclosure was required due to the completion of pre-trial diversion.

20 E. Financial Code section 50513, subdivision (a)(2) provides that the Commissioner may
21 “deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license if an
22 applicant or licensee fails at any time to meet the requirements of Section 50141 or 50144, or
23 withholds information or makes a material misstatement in an application for a license or license
24 renewal.”

25 F. Financial Code section 50141, subdivision (a) provides that the Commissioner shall
26 deny an application for a MLO when determining the eligibility of an applicant for licensure under
27 the CRMLA unless the applicant has “demonstrated such financial responsibility, character, and
28 general fitness as to command the confidence of the community and to warrant a determination that

1 the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this
2 division.”

3 G. Because of Alencar’s initial incorrect response to Criminal Disclosure Question F, the
4 Commissioner has grounds to deny or condition Alencar’s MLO license application for (1) making a
5 material misstatement in an application for a license and (2) creating doubt as to Alencar’s financial
6 responsibility, character, and general fitness as to command the confidence of the community and to
7 warrant a determination that Alencar will operate honestly, fairly, and efficiently within the purposes
8 of this division.”

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

11 **II.**

12 **Terms**

13 1. Purpose. The Consent Order resolves the issues before the Commissioner described
14 above in the Recitals in a manner that avoids the expense of a hearing and other possible court
15 proceedings, protects consumers, is in the public interest, and is consistent with the purposes and
16 provisions of the CRMLA.

17 2. Probationary Period. Alencar agrees that for the 12-month period from the effective
18 date of the Consent Order, should the Commissioner make a finding that Alencar has violated or is
19 violating any provision of the CRMLA, or any rule, regulation, or law under the jurisdiction of the
20 Commissioner, the state of California, the United States of America, and every state and foreign
21 government (and political subdivision thereof), the Commissioner may, in his discretion,
22 automatically revoke any license held by or deny any pending application(s) of Alencar. Alencar
23 hereby waives any notice and hearing rights to contest such revocation or denial(s) which may be
24 afforded him under the CRMLA, Administrative Procedures Act, Code of Civil Procedure, or any
25 other provision of law in connection with this matter. Alencar further expressly waives any
26 requirement for the filing of a statement of issues under Government Code section 11415.60,
27 subdivision (b), in connection with the Commissioner’s revocation of his license under this
28 paragraph.

1 3. Reporting Requirement. During the 12-month period from the effective date of the
2 Consent Order, Alencar shall report to the Commissioner within 30 days any disciplinary
3 investigations or actions against him by any licensing agencies, any criminal investigations,
4 prosecutions, or convictions against Alencar, or any civil judgments against Alencar. Traffic citations
5 shall be excluded.

6 4. Approval of MLO Application. The Commissioner hereby acknowledges that
7 Alencar's MLO application will be conditionally approved, and the Commissioner hereby agrees to
8 maintain its approval concurrently with the execution of the Consent Order.

9 5. Waiver of Hearing Rights. Alencar acknowledges that the Commissioner is ready,
10 willing, and able to proceed with the filing of an administrative enforcement action on the findings
11 described in the Recitals above. Alencar hereby waives the right to any hearings, and to any
12 reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the
13 CRMLA, the Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other
14 provision of law. By waiving such rights, Alencar effectively consents to the Consent Order
15 becoming final.

16 6. Failure to Comply. Alencar acknowledges and agrees that his failure to satisfy the
17 reporting requirement under paragraph 3, above, shall be deemed a breach and cause for the
18 Commissioner to immediately revoke any license held by or deny any pending application(s) of
19 Alencar. Alencar hereby waives any notice and hearing rights to contest such revocation or denial(s)
20 which may be afforded him under the CFL, CRMLA, APA, CCP, or any other provision of law in
21 connection with this matter. Alencar further expressly waives any requirement for the filing of an
22 accusation under Government Code section 11415.60, subdivision (b), in connection with the
23 Commissioner's revocation of his license under this paragraph.

24 7. Information Willfully Withheld. The Consent Order may be revoked, and the
25 Commissioner may pursue any and all remedies under the CRMLA or any other provision of law
26 against Alencar if the Commissioner discovers Alencar knowingly or willfully withheld information
27 or misrepresented information used for and relied upon in this Consent Order.

28 8. Future Actions by Commissioner. If Alencar fails to comply with any terms of this

1 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
2 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
3 against Alencar for any and all unknown violations of the CRMLA.

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

9 10. No Presumption Against Drafter. Each party acknowledges that it has had the
10 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
11 intend no presumption for or against the drafting party will apply in construing any part of this
12 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
13 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
14 language of a contract should be interpreted most strongly against the party who caused the
15 uncertainty to exist.

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

17 12. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
18 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
19 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
20 provision. No waiver by either party of any breach of, or of compliance with, any condition or
21 provision of this Consent Order by the other party will be considered a waiver of any other condition
22 or provision or of the same condition or provision at another time.

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

27 14. Full Integration. This Consent Order is the final written expression and the complete
28 and exclusive statement of all the agreements, conditions, promises, representations, and covenants

1 between the parties with respect to the subject matter hereof, and supersedes all prior or
2 contemporaneous agreements, negotiations, representations, understandings, and discussions between
3 and among the parties, their respective representatives, and any other person or entity, with respect to
4 the subject matter covered hereby.

5 15. Mandatory Disclosure in Future Applications. Alencar agrees to disclose this Consent
6 Order in any application for a license, permit, or qualification under the Commissioner’s current or
7 future jurisdiction.

8 16. Voluntary Agreement. Alencar enters into the Consent Order voluntarily and without
9 coercion and acknowledges that no promises, threats, or assurances have been made by the
10 Commissioner, or any officer or agent thereof, about the Consent Order.

11 17. Notice. Any notice required under the Consent Order shall be provided to each party at
12 the following addresses:

13 Respondent: Antonio I. Alencar, Jr.
14 

15 Commissioner: Jeremy F. Koo, Counsel
16 Department of Financial Protection and Innovation
17 2101 Arena Blvd
18 Sacramento, California 95834
Jeremy.Koo@dfpi.ca.gov

19 18. Authority to Execute. Each signatory hereto covenants that he/she possesses all
20 necessary capacity and authority to sign and enter into the Consent Order.

21 19. Signatures. A fax or electronic mail signature shall be deemed the same as an original
22 signature.

23 20. Public Record. Alencar hereby acknowledges that the Consent Order is and will be a
24 matter of public record.

25 21. Effective Date. This Consent Order shall become final and effective when signed by
26 all parties and delivered by the Commissioner’s agent via e-mail to Alencar at the following email
27 address: Tony.alencar71@gmail.com.

28

1 22. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary
2 capacity and authority to sign and enter into this Consent Order, and to undertake the obligations set
3 forth herein.

4 IN WITNESS WHEREOF, the parties hereto have approved and executed the Consent Order
5 on the dates set forth opposite their respective signatures.

6 Dated: September 9, 2021

CHRISTOPHER S. SHULTZ
Acting Commissioner
of Financial Protection and Innovation

7
8
9
10 By

MARY ANN SMITH
Deputy Commissioner
Enforcement Division

11
12
13
14 Dated: September 8, 2021

ANTONIO IDERVAL ALENCAR, JR.

15
16 By

ANTONIO IDERVAL ALENCAR, JR.