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

12 In the Matter of:)	OAH CASE NO.: 2021060159
)	
13 THE COMMISSIONER OF FINANCIAL)	NMLS LICENSE NO.: 1421356
14 PROTECTION AND INNOVATION,)	
)	SETTLEMENT AGREEMENT
15 Complainant,)	
)	Hearing Dates: December 2-3, 2021
16 v.)	Hearing Time: 9:00 a.m.
)	Location: Sacramento office of the Office
17 JOSEPH A. BORUNDA,)	of Administrative Hearings
)	Telephone or Videoconference
18 Respondent.)	
)	Judge: Hon. Heather M. Rowan
)	
)	

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22 This Settlement Agreement (Settlement Agreement) is entered into between the
23 Commissioner of Financial Protection and Innovation (Commissioner) and Joseph A. Borunda
24 (Borunda), 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 engaged in the business of making, servicing, or brokering residential mortgage loans, including

1 mortgage loan originators (MLO or MLOs), under the California Financing Law (CFL) (Fin. Code, §
2 22000 et seq.), and the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000
3 et seq.). The Commissioner is also authorized to administer the CFL and CRMLA and the rules and
4 regulations promulgated in title 10 of the California Code of Regulations (CCR).

5 B. Borunda first received his MLO license from the Commissioner on June 7, 2017.

6 C. In 2020, Borunda failed to renew his MLO license issued by the Commissioner and
7 the license lapsed as of January 1, 2021. Borunda had until March 1 to renew his license before his
8 licensing rights permanently expired. (See CCR, §§ 1422.6.3, subd. (a), 1422.11, 1950.122.5.3, subd.
9 (a), and 1950.122.5.4.)

10 D. The Commissioner discovered that Borunda had defrauded a former client out of
11 \$51,969.15 after working as a loan officer on a cash-out refinance transaction of the former client's
12 mortgage.

13 E. Borunda has represented to the Commissioner that he has repaid the full amount of
14 \$51,969.15 back to Borunda's former client.

15 F. Furthermore, the Commissioner determined that Borunda failed to demonstrate such
16 financial responsibility, character, and general fitness as to command the confidence of the
17 community and to warrant a determination that he would operate honestly, fairly, and efficiently as
18 an MLO under Financial Code section 22109.1, subdivision (a)(3) and section 50141, subdivision
19 (a)(3).

20 G. On April 7, 2021, the Commissioner issued a notice of intention and accusation
21 (collectively, Accusation) under Financial Code sections 22172 and 50513 to revoke Borunda's MLO
22 license.

23 H. Borunda filed his notice of defense with the Commissioner, and this matter is
24 currently set for hearing on December 2, 2021, before the Office of Administrative Hearings.

25 I. Borunda neither admits nor denies the findings contained in the accusation, but agrees
26 to enter into this Settlement Agreement to resolve this matter amicably and without the necessity of a
27 hearing or litigation.

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

3 **II.**

4 **Terms**

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

9 2. Acknowledgment. Borunda acknowledges that the Commissioner issued and served
10 him with the Accusation in which the Commissioner determined that Borunda had violated the CFL
11 and CRMLA, and did not meet the minimum criteria to hold an MLO license under Financial Code
12 sections 22109.1, 50141, 22172, and 50513 as set forth above.

13 3. Waiver of Hearing Rights. Borunda agrees that the Settlement Agreement shall have
14 the effect of withdrawing his request for an administrative hearing on the matter set forth herein.
15 Borunda acknowledges his right to an administrative hearing under the CFL and CRMLA in
16 connection with the Accusation and hereby waives such right to a hearing and to any reconsideration,
17 appeal, or other rights which may be afforded him under the CFL and CRMLA, the Administrative
18 Procedure Act (APA) (Gov. Code, § 11340 et seq.), the Code of Civil Procedure (CCP) (Code Civ.
19 Proc., § 1 et seq.), or any provision of law in connection with this matter.

20 4. Surrender of License. Borunda shall surrender his MLO license to the Commissioner
21 no later than November 29, 2021. If at any time prior to the surrender of Borunda’s license, the
22 Department makes a finding that Borunda has violated or is violating any provision of the CFL,
23 CRMLA, or any law, rule, or regulation under the jurisdiction of the Commissioner, the
24 Commissioner may revoke any license held by Borunda or deny any pending application(s) of
25 Borunda, provided that the Commissioner give Borunda five days’ written notice of such a finding.
26 Borunda hereby waives any hearing rights to contest such revocation or denial(s) under the CFL,
27 CRMLA, APA, CCP, or any other provision of law in connection with this matter.

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1 5. Stipulation Not to Apply for an MLO License for Three Years. Borunda agrees that he
2 will not reapply for an MLO license before the Commissioner, or, as applicable, petition for the
3 reinstatement of his MLO license for a period of three years from the date of surrender of his MLO
4 license. Should Borunda apply for an MLO license prior to the expiration of the three-year period, the
5 Commissioner shall automatically deny Borunda’s MLO application and Borunda hereby waives any
6 hearing rights he may have to contest such denial under the CFL, CRMLA, APA, CCP, or any other
7 provision of law in connection with this matter. Borunda further acknowledges that the
8 Commissioner will consider all facts, including but not limited to the facts given rise to this
9 Accusation, if Borunda applies for a MLO license. Borunda also acknowledges that there is no
10 guarantee that the Commissioner will approve any future MLO license application filed by Borunda.

11 6. Reporting Requirement. Should Borunda receive an MLO license from the
12 Commissioner, for 36 months effective from the date of the licensure, Borunda shall report to the
13 Commissioner any disciplinary investigation or action against him by any licensing agency; any
14 criminal investigation, prosecution, or conviction; or any civil judgment against him no later than 30
15 days after discovering such investigation, proceeding, action, or judgment. Borunda is not required to
16 report any traffic citations.

17 7. Education. Borunda hereby agrees that if he submits an MLO license application with
18 the Commissioner in the future, that prior to applying for the MLO license application, Borunda must
19 show proof that he has successfully completed at least 20 hours of education approved by the
20 Nationwide Mortgage Licensing System and Registry. Should Borunda receive an MLO license from
21 the Commissioner, for 36 months effective from the date of the licensure, Borunda shall take eight
22 additional hours of continuing education per year in addition to the eight hours required under
23 Financial Code sections 22109.4, 22109.5, 50144 and 50145. The courses and course providers must
24 be approved by the Nationwide Mortgage Licensing System and Registry. Borunda shall submit
25 proof of compliance to the Commissioner no later than December 31st of each year. If the reporting
26 date falls on a Saturday, Sunday, or a state holiday, Borunda must submit the report no later than the
27 following business day.

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1 8. Remedy for Breach. Borunda acknowledges that failure to comply with the terms of
2 this Settlement Agreement, including, but not limited to failure to timely surrender his MLO license,
3 failure to satisfy the stipulation provision, or failure to satisfy the reporting or continuing-education
4 requirements in paragraphs 4 through 7, above, shall be deemed a breach and cause for the
5 Commissioner to immediately revoke any license held by or deny any pending application(s) of
6 Borunda. Borunda hereby waives any notice and hearing rights to contest any such revocation or
7 denial which may be afforded under the CFL, CRMLA, APA, CCP, or any other provision of law.
8 Borunda further waives any requirement for the filing of an accusation or statement of issues under
9 Government Code section 11415.60, subdivision (b), in connection with any revocation or denial
10 under this paragraph.

11 9. Full and Final Settlement. The parties hereby acknowledge and agree that the
12 Settlement Agreement is intended to constitute a full, final, and complete resolution of Borunda’s
13 violations of the CFL and CRMLA as identified herein. No further proceedings or actions will be
14 brought by the Commissioner in connection with this matter, or any other provision of law, excepting
15 any proceeding to enforce compliance with the terms of the Settlement Agreement.

16 10. Information Willfully Withheld. The Settlement Agreement may be revoked, and the
17 Commissioner may pursue any and all remedies under the CFL and CRMLA against Borunda if the
18 Commissioner discovers Borunda knowingly or willfully withheld information or misrepresented
19 information used for and relied upon in this Settlement Agreement.

20 11. Assisting Other Agencies. The parties further acknowledge and agree that nothing in
21 the Settlement Agreement shall limit the Commissioner’s ability to assist any other agency (city,
22 county, state, or federal) with any prosecution, administrative, civil, or criminal, brought by any such
23 agency against Borunda or any other person based upon any of the activities alleged in this matter or
24 otherwise.

25 12. Binding. The Settlement Agreement is binding on all heirs, assigns, or successors in
26 interest.

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1 13. Waiver, Amendments, and Modifications. The waiver of any provision of the
2 Settlement Agreement shall not operate to waive any other provision set forth herein. No waiver,
3 amendment, or modification of this Settlement Agreement shall be valid or binding unless it is in
4 writing and signed by each of the parties.

5 14. Headings and Governing Law. The headings to the paragraphs of the Settlement
6 Agreement are inserted for convenience only and will not be deemed a part hereof or affect the
7 construction or interpretation of the provisions hereof. The Settlement Agreement shall be construed
8 and enforced in accordance with and governed by California law.

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

15 16. No Presumption Against Drafter. Each party acknowledges that he or she has had the
16 opportunity to draft, review, and edit the language of the Settlement Agreement. Accordingly, the
17 parties intend no presumption for or against the drafting party will apply in construing any part of the
18 Settlement Agreement. The parties waive the benefit of Civil Code section 1654 as amended or
19 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
20 language of a contract should be interpreted most strongly against the party who caused the
21 uncertainty to exist.

22 17. Mandatory Disclosure in Future Applications. Borunda agrees to disclose the
23 Accusation and this Settlement Agreement in any application for a license, permit, or qualification
24 under the Commissioner’s current or future jurisdiction.

25 18. Voluntary Agreement. Borunda enters into the Settlement Agreement voluntarily and
26 without coercion and acknowledges that no promises, threats, or assurances have been made by the
27 Commissioner, or any officer or agent thereof, about the Settlement Agreement.

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1 19. Notice. Any notice required under the Settlement Agreement shall be provided to each
2 party at the following addresses:

3 Respondent: Joseph A. Borunda
4 6982 W Browning Avenue
5 Fresno, California 93723
6 closewjoeb@outlook.com

7 Commissioner: Affi Eghbaldari
8 Senior Counsel
9 Department of Financial Protection and Innovation
10 1455 Frazee Road, Suite 315
11 San Diego, California 92108
12 Affi.eghbaldari@dfpi.ca.gov

13 20. Authority to Execute. Each signatory hereto covenants that he or she possesses all
14 necessary capacity and authority to sign and enter into the Settlement Agreement.

15 21. Signatures. A facsimile or electronic mail signature shall be deemed the same as an
16 original signature.

17 22. Public Record. Borunda hereby acknowledges that the Settlement Agreement is and
18 will be a matter of public record.

19 23. Effective Date. The Settlement Agreement shall become final and effective when
20 signed by all parties and delivered by the Commissioner’s agent via e-mail to Borunda’s counsel at
21 the following email address: has@sw2law.com.

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1 IN WITNESS WHEREOF, the parties hereto have approved and executed this Settlement
2 Agreement on the dates set forth opposite their respective signatures.

3 CHRISTOPHER S. SHULTZ
4 Acting Commissioner of Financial Protection and
5 Innovation

6 Dated: November 29, 2021

By _____
7 MARY ANN SMITH
8 Deputy Commissioner
9 Enforcement Division

10 JOSEPH A. BORUNDA

11 Dated: November 27, 2021

By _____
12 JOSEPH A. BORUNDA, Respondent

13 APPROVED AS TO FORM AND CONTENT:

14 By _____
15 Howard Sagaser, Esq.
16 Sagaser, Watkins & Wieland PC
17 Attorneys on behalf of
18 Joseph A. Borunda

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