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

10 In the Matter of:

NMLS NO.: 86345

11 THE COMMISSIONER OF FINANCIAL
12 PROTECTION AND INNOVATION,

CONSENT ORDER

13 Complainant,

14 v.

15 BENEDICT GUTHRIE OLBERDING a/k/a
GUS OLBERDING

16 Respondent.

17
18 This Consent Order is entered into between the Commissioner of Financial Protection and
19 Innovation (Commissioner) and Benedict Guthrie Olberding, also known as Gus Olberding
20 (Olberding), and is made with respect to the following facts:

21 **RECITALS**

22 A. The Commissioner has jurisdiction over the licensing and regulation of persons
23 engaged in the business of making or brokering residential mortgage loans, including mortgage loan
24 originators, under the California Financing Law (CFL) (Fin. Code, § 22000 et seq.).

25 B. Olberding applied to the Commissioner for a mortgage loan originator (MLO)
26 license under the CFL (Application) on February 12, 2021. The Application disclosed that
27 Olberding had pled guilty to one count of felony bank fraud in 2011 in the District Court of South
28 Carolina. Olberding surrendered his North Carolina mortgage loan originator license as a result.

1 C. On January 19, 2021, Olberding was granted a full and unconditional pardon by
2 President Donald J. Trump.

3 D. The Commissioner finds that entering into this Consent Order is in the public interest
4 and consistent with the purposes fairly intended by the policy and provisions of the CFL.

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

7 **TERMS AND CONDITIONS**

8 1. Purpose. This Consent Order resolves the issues before the Commissioner in a
9 manner that avoids the expense of a hearing and other possible court proceedings, protects
10 consumers, is in the public interest, and is consistent with the purposes and provisions of the CFL.

11 2. Waiver of Hearing Rights. Olberding acknowledges that the Commissioner is ready,
12 willing, and able to proceed with the filing of an administrative enforcement action to deny the
13 Application. Olberding hereby waives the right to any hearings and to any reconsideration, appeal,
14 or other right to review which may be afforded by the CFL, the California Administrative Procedure
15 Act (APA), the California Code of Civil Procedure (CCP), or any other provision of law. By
16 waiving such rights, Olberding effectively consents to the finality of this Consent Order.

17 3. Probationary Period. Olberding agrees that during the 36-month period from the
18 effective date of this Consent Order as defined in paragraph 24 (Probationary Period), if the
19 Commissioner finds that Olberding has violated or is violating any provision of the CFL or any
20 rule, regulation, or law under the jurisdiction of the Commissioner, the state of California, the
21 United States of America, or any state or foreign government or political subdivision thereof, the
22 Commissioner may summarily revoke or deny any license held by or applied for by Olberding.
23 Olberding hereby waives any notice and hearing rights to contest any such revocation or denial
24 which may be afforded under the CFL, APA, CCP, or any other provision of law. Olberding further
25 waives any requirement for the filing of an accusation or statement of issues under Government
26 Code section 11415.60, subdivision (b), in connection with any revocation or denial under this
27 paragraph.

28 4. Reporting Requirement. During the Probationary Period, Olberding shall report to

1 the Commissioner any disciplinary investigation or action against him by any licensing agency; any
2 criminal investigation, prosecution, or conviction; or any civil judgment against him no later than
3 30 days after discovering such investigation, proceeding, action, or judgment. Olberding is not
4 required to report any traffic citations. Notice is to be given in accordance with Paragraph 21.

5 5. Continuing Education. During the Probationary Period, Olberding shall take at least
6 eight hours of continuing education in addition to the eight hours required under Financial Code
7 section 22109.5. In accordance with section 22109.5, subdivision (b), courses and course providers
8 must be approved by the Nationwide Mortgage Licensing System and Registry (NMLS). Olberding
9 shall submit a report of compliance to the Commissioner no later than 12 months after the effective
10 date of this Consent Order as defined in paragraph 24 (Effective Date), and annually on such
11 anniversary thereafter. If the reporting date falls on a Saturday, Sunday, or a state holiday, Olberding
12 must submit the report no later than the following business day. Notice of is to be given in
13 accordance with Paragraph 21.

14 6. Remedy for Breach. Olberding agrees that failure to satisfy the reporting or
15 continuing-education requirements in paragraphs 4 and 5 is a breach and cause for the
16 Commissioner to summarily revoke or deny any license held by or applied for by Olberding.
17 Olberding hereby waives any notice and hearing rights to contest any such revocation or denial
18 which may be afforded under the CFL, APA, CCP, or any other provision of law. Olberding further
19 waives any requirement for the filing of an accusation or statement of issues under Government
20 Code section 11415.60, subdivision (b), in connection with any revocation or denial under this
21 paragraph.

22 7. Approval of Application. The Commissioner acknowledges that Olberding’s pending
23 MLO application is ready to be approved, and the Commissioner agrees to approve it on or around
24 the Effective Date.

25 8. Information Willfully Withheld or Misrepresented. This Consent Order may be
26 rescinded, and the Commissioner may pursue any and all remedies available under law against
27 Olberding, if the Commissioner discovers that Olberding knowingly or willfully withheld or
28 misrepresented information used for and relied upon in this Consent Order.

1 9. Future Actions by Commissioner. If Olberding fails to comply with any terms of this
2 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
3 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
4 against Olberding for any and all unknown violations of the CFL.

5 10. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
6 ability to assist any other government agency (city, county, state, or federal) with any
7 administrative, civil, or criminal prosecution brought by that agency against Olberding or any other
8 person based upon any of the activities alleged in this matter or otherwise.

9 11. Headings. The headings to the paragraphs of this Consent Order are inserted for
10 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
11 the provisions hereof.

12 12. Binding. This Consent Order is binding on all heirs, assigns, or successors in
13 interest.

14 13. Reliance. Each of the parties represents, warrants, and agrees that in executing this
15 Consent Order it has relied solely on the statements set forth herein and the advice of its own
16 counsel. Each of the parties further represents, warrants, and agrees that in executing this Consent
17 Order it has placed no reliance on any statement, representation, or promise of any other party, or
18 any other person or entity not expressly set forth herein, or upon the failure of any party or any
19 other person or entity to make any statement, representation, or disclosure of anything whatsoever.
20 The parties have included this clause: (1) to preclude any claim that any party was in any way
21 fraudulently induced to execute this Consent Order and (2) to preclude the introduction of parol
22 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

23 14. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
24 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
25 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
26 provision. No waiver by either party of any breach of, or of compliance with, any condition or
27 provision of this Consent Order by the other party will be considered a waiver of any other
28 condition or provision or of the same condition or provision at another time.

1 15. Full Integration. This Consent Order is the final written expression and the complete
2 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
3 between the parties with respect to the subject matter hereof, and supersedes all prior or
4 contemporaneous agreements, negotiations, representations, understandings, and discussions
5 between and among the parties, their respective representatives, and any other person or entity, with
6 respect to the subject matter covered hereby.

7 16. Governing Law. This Consent Order will be governed by and construed in
8 accordance with California law. Each of the parties consents to the jurisdiction of a court in
9 California, and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an
10 inconvenient forum to the maintenance of such action or proceeding in such court.

11 17. Counterparts. This Consent Order may be executed in one or more separate
12 counterparts, each of which will be deemed an original when so executed. Such counterparts
13 together will be deemed to constitute a single document.

14 18. Mandatory Disclosure in Future Applications. Olberding agrees to disclose this
15 Consent Order in any application for a license, permit, or qualification under the Commissioner’s
16 current or future jurisdiction.

17 19. Effect Upon Future Proceedings. If Olberding applies for any license, permit, or
18 qualification under the Commissioner’s current or future jurisdiction or is the subject of any future
19 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
20 admitted for the purpose of such application or action.

21 20. Voluntary Agreement. Olberding enters into this Consent Order voluntarily and
22 without coercion and acknowledges that no promises, threats, or assurances have been made by the
23 Commissioner or any officer or agent thereof about this Consent Order. The parties each represent
24 and acknowledge that he, she, or it is executing this Consent Order completely voluntarily and
25 without any duress or undue influence of any kind from any source.

26 21. Notice. Any notice required under this Consent Order shall be provided to Olberding
27 at gus@statesmortgage.com, or to the Commissioner at Francis Scollan, Senior Counsel,
28 Department of Financial Protection and Innovation, 320 West 4th Street, Suite 750, Los Angeles,

1 California 90013 and frank.scollan@dfpi.ca.gov.

2 22. Signatures. A fax or electronic-mail signature will be deemed an original signature.

3 23. Public Record. Olberding hereby acknowledges that this Consent Order is and will
4 be a matter of public record.

5 24. Effective Date. This Consent Order shall become final and effective when signed by
6 all parties and delivered by the Commissioner’s agent via electronic mail to Olberding at
7 gus@statesmortgage.com.

8 25. Authority to Sign. Each signatory hereto covenants that he or she possesses all
9 necessary capacity and authority to sign and enter into this Consent Order and undertake the
10 obligations set forth herein.

11
12 Dated: February 8, 2022

COMMISSIONER OF FINANCIAL PROTECTION
AND INNOVATION

13
14 By: _____
15 MARY ANN SMITH
16 Deputy Commissioner

17 Dated: February 7, 2022

BENEDICT GUTHRIE OLBERDING

18
19 By: _____
20 BENEDICT GUTHRIE OLBERDING