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2 MARY ANN SMITH
Deputy Commissioner
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10 Attorneys for Complainant

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

13 In the Matter of:)	
	)	NMLS LICENSE NO.: 233703
14 THE COMMISSIONER OF FINANCIAL)	
15 PROTECTION AND INNOVATION,	)	SETTLEMENT AGREEMENT
)	
16 Complainant,	)	OAH Case No.: 2022020483
)	
17 v.	)	Hearing Dates: August 1 - 3, 2022
	)	Hearing Time: 9:00 a.m.
	)	Location: 320 West 4th Street, Suite 630
18 MARK L. BRANDENBURGER,	)	Los Angeles, CA 90013
	)	Call-In No.: (916) 245-8850
	)	Conf. ID: 565 198 277 #
19 Respondent.	)	Judge: Unassigned
)	

22
23 This Settlement Agreement (the Settlement Agreement) is entered into between the
24 Commissioner of Financial Protection and Innovation (Commissioner) and Mark L. Brandenburger
25 (Respondent) and is made with respect to the following facts.

26 **I.**

27 **Recitals**

28 A. The Commissioner has jurisdiction over the licensing and regulation of persons

1 engaged in the business of making, servicing, or brokering residential mortgage loans, including
2 mortgage loan originators (MLO or MLOs), under the California Financing Law (CFL) (Fin. Code, §
3 22000 et seq.) and the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000
4 et seq.).

5 B. Respondent first received an MLO license from the Commissioner on June 3, 2020.

6 C. The Commissioner issued Respondent her notice of intention and accusation to revoke
7 Respondent's MLO license on December 20, 2021, at which time Respondent maintained an
8 approved MLO license.

9 D. Respondent timely filed his notice of defense with the Commissioner on or about
10 December 28, 2021.

11 E. The Commissioner's first amended accusation was issued and served on Respondent
12 on March 14, 2022 (the Accusation).

13 F. Under the provisions of Financial Code sections 22109.1, 22172, and 22755 of the
14 CFL, the Commissioner sought to revoke Respondent's MLO license because Respondent violated
15 the Nationwide Mortgage Licensing System and Registry (NMLS) student Rules of Conduct (ROC)
16 by using the services of Danny Yen, d/b/a Real Estate Educational Services (Yen) to complete
17 Respondent's NMLS-approved continuing education (CE) courses, which in turn was a violation of
18 the MLO licensing requirements under the CFL.

19 G. Specifically, Respondent used and compensated Yen to obtain course credit through
20 both an online fraud scheme and an in-person fraud scheme (collectively, the education fraud
21 schemes). In the online fraud scheme, Respondent used Yen to complete an online course on his
22 behalf in 2020. The course for which Respondent received credit was completed by Yen through an
23 IP address associated with Yen.

24 H. Additionally, under the in-person fraud scheme, Respondent paid Yen to annually
25 report completion of an in-person course for four years from 2017 to 2020. Yen did not teach the in-
26 person course and Respondent never attended the in-person course nor completed the course work or
27 test, which he was required to complete in order to receive course credit.

28 I. The Commissioner has made the following findings of relevant facts, which include

1 but are not limited to:

2 1. That Respondent was a knowing and active participant in the education fraud
3 schemes coordinated by and implemented by and through Yen;

4 2. That Respondent in fact had CE requirements completed by Yen on
5 Respondent's behalf in violation of the CFL and federal law;

6 3. That by participating in the education fraud schemes coordinated by and
7 implemented through Yen, Respondent had in fact violated the ROC; and

8 4. That by participating in the education fraud scheme coordinated by and
9 implemented through Yen, Respondent violated the CFL concerning completing certain CE
10 requirements as a mandatory qualification for licensure as an MLO.

11 J. This matter is currently set for a three-day hearing from August 1-3, 2022, to be held
12 via videoconference before the Office of Administrative Hearings, Los Angeles.

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

15 **II.**

16 **Terms**

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

21 2. Acknowledgment. Respondent acknowledges that the Commissioner issued and
22 served Respondent with the Accusation in which the Commissioner determined that Respondent had
23 violated the CFL and that Respondent did not meet the minimum criteria to hold an MLO license
24 under Financial Code sections 22109.1, 22172, and 22755 and that Respondent's license should be
25 revoked as set forth above. Respondent admits that Respondent did not complete all CE requirements
26 necessary for licensure.

27 3. Waiver of Hearing Rights. Respondent agrees that the Settlement Agreement shall
28 have the effect of withdrawing Respondent's request for an administrative hearing on the matters set

1 forth herein. Respondent acknowledges Respondent’s right to an administrative hearing under the
2 CFL in connection with the Accusation and hereby waives such right to a hearing and to any
3 reconsideration, appeal, or other rights which may be afforded Respondent under the CFL, the
4 Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.), the Code of Civil Procedure
5 (CCP) (Code Civ. Proc., § 1 et seq.), or any provision of law in connection with this matter.

6 4. Administrative Penalty. Respondent shall pay to the Commissioner an administrative
7 penalty of \$1,000.00 (the Penalty). The Penalty shall be due prior to or concurrent with the execution
8 of the Settlement Agreement and should be made payable to the Commissioner in the form of a
9 cashier’s check or Automated Clearing House deposit and transmitted to the attention of Accounting
10 – Enforcement Division, Department of Financial Protection & Innovation, 2101 Arena Boulevard,
11 Sacramento, California 95834. Notice of such payment shall promptly be sent to the attention of
12 Allard Chu, Senior Counsel, at allard.chu@dfpi.ca.gov. Should Respondent fail to execute the
13 Settlement Agreement by July 15, 2022, but execute the agreement after July 15, 2022, the Penalty
14 shall increase to \$3,000.00 and shall be due prior to or concurrent with the execution of the
15 Settlement Agreement.

16 5. Surrender of License. Respondent hereby agrees, as a resolution of this matter, to
17 voluntarily surrender Respondent’s MLO license to the Commissioner. No later than seven calendar
18 days after the Effective Date of the Settlement Agreement, Respondent shall complete all necessary
19 steps to surrender Respondent’s MLO license to the Commissioner.

20 6. Stipulation Not to Apply for an MLO License for One Year. Respondent further
21 agrees, as a resolution of this matter, that Respondent will not apply for a new MLO license from
22 the Commissioner for a period of one year from the Effective Date of this Agreement. Should
23 Respondent apply for such a license during that one-year period, that license application, as
24 consented to by Respondent herein, shall be deemed denied and Respondent waives any hearing
25 rights Respondent may have to contest such denial under the CFL, CRMLA, APA, CCP, or any
26 other provision of law in connection with this matter.

27 7. Education. Prior to the submission of an application for a new MLO license,
28 Respondent must complete the following MLO education requirements (the education provision):

1 a. Twenty hours of non-state-specific NMLS-approved PE, which shall consist
2 of 14 hours of federal law curriculum, three hours of ethics curriculum, and three hours of non-
3 traditional mortgage lending curriculum. None of these 20 hours of PE may be state-specific
4 curriculum; and

5 b. Eight hours of non-state-specific NMLS-approved CE, which shall consist of
6 four hours of federal law curriculum, two hours of ethics curriculum, and two hours of non-
7 traditional mortgage lending curriculum. None of these eight hours of CE may be state-specific
8 curriculum.

9 d. Respondent may not take any of the PE or CE provided for under the
10 Settlement Agreement in an online self-study format (OSS).

11 e. Respondent further agrees that in order to receive the course credit under the
12 Settlement Agreement, Respondent must complete the courses in one of a traditional classroom
13 format; classroom equivalent (live webinar) format; or an online instructor-led format. The formats
14 require that the instructor be able to see the Respondent, verify the Respondent's identity, and
15 confirm that the Respondent is present throughout the entirety of the course.

16 f. For a period three years from the Effective Date of the Settlement
17 Agreement, Respondent shall be required to complete any additional required PE and/or CE in a
18 format other than OSS.

19 g. Should Respondent apply for a new MLO license without having satisfied the
20 education provision as set forth in this paragraph, that license application, as consented to by
21 Respondent herein, shall be deemed denied and Respondent waives any hearing rights Respondent
22 may have to contest such denial under the CFL, CRMLA, APA, CCP, or any other provision of law
23 in connection with this matter.

24 8. New Application for Licensure. Any time after the one year period has lapsed from
25 the Effective Date of the Settlement Agreement; Respondent has paid the Penalty as set forth in the
26 Settlement Agreement; and satisfied the education provision as set forth in the Settlement
27 Agreement, Respondent may apply for a new MLO license with the understanding that the
28 Commissioner reserves the right to fully investigate such application for licensure and may either

1 approve or deny such application pursuant to the normal process for such licensing investigations.
2 No license application described in this paragraph will be denied solely based on the facts,
3 circumstances, or consensual resolution provided for in the Settlement Agreement. Respondent
4 further acknowledges and agrees that Respondent must satisfy the education provision prior to
5 submitting an application for a new MLO license.

6 9. Revocation of License. To the extent that Respondent engages in similar activity,
7 which was the basis for the Settlement Agreement, Respondent affirmatively consents to the
8 immediate revocation of the impacted MLO license. Respondent further agrees to waive
9 Respondent' right to a hearing, and to any reconsideration, appeal, or other rights which may be
10 afforded Respondent to contest such revocation of the impacted license under the CFL, CRMLA,
11 APA, CCP, or any other provision of law, including the requirement that the Commissioner issue an
12 accusation under Government Code section 11415.60.

13 10. Full and Final Settlement. The parties hereby acknowledge and agree that the
14 Settlement Agreement is intended to constitute a full, final, and complete resolution of the activities
15 alleged in the Accusation as identified herein. No further proceedings or actions will be brought by
16 the Commissioner in connection with this matter, or any other provision of law, excepting any
17 proceeding to enforce compliance with the terms of the Settlement Agreement.

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

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

27 13. Binding. The Settlement Agreement is binding on all heirs, assigns, or successors in
28 interest.

1 14. 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 15. 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 16. 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
13 between and among the parties, their respective representatives, and any other person or entity, with
14 respect to the subject matter covered hereby.

15 17. 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
18 the 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 18. Mandatory Disclosure in Future Applications. Respondent agrees to disclose the
23 Settlement Agreement in any application for a license, permit, or qualification under the
24 Commissioner’s current or future jurisdiction.

25 19. Voluntary Agreement. Respondent enters into the Settlement Agreement voluntarily
26 and without coercion and acknowledges that no promises, threats, or assurances have been made by
27 the Commissioner, or any officer or agent thereof, about the Settlement Agreement.
28

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

3 Respondent: Mark L. Brandenburger
4 2135 N Pami Circle
5 Orange, California 92867
6 markbrande@aol.com

7 Commissioner: Allard C Chu
8 Senior Counsel
9 Department of Financial Protection and Innovation
10 320 W. 4th Street, Suite 750
11 Los Angeles, California 90013
12 allard.chu@dfpi.ca.gov

13 21. 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 22. Signatures. A facsimile or electronic mail signature shall be deemed the same as an
16 original signature.

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

19 24. 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 Respondent at the
21 following email address: markbrande@aol.com.

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

24 CLOTHILDE V. HEWLETT
25 Commissioner of Financial Protection and
26 Innovation

27 Dated: July 11, 2022

28 By _____
29 MARY ANN SMITH
30 Deputy Commissioner
31 Enforcement Division

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MARK L. BRANDENBURGER

Dated: July 7, 2022

By _____
MARK L. BRANDENBURGER, Respondent

Approved as to Form and Content:

Dated: July 8, 2022

By: _____

Dennis Doss, Esq.

Doss Law, LLP

Attorneys on behalf of

Mark L. Brandenburger