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BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, v. OCTAVIO AGUIRRE CAPACETE. Respondent.	File No.: 173983 **ACCUSATION IN SUPPORT OF REVOKING MORTGAGE LOAN ORIGINATOR LICENSE NO. 173983 ISSUED TO OCTAVIO AGUIRRE CAPACETE PURSUANT TO CALIFORNIA FINANCIAL CODE SECTIONS 50141, 50327 and 50513**

I.

INTRODUCTION

The Complainant, California Corporations Commissioner ("Commissioner"), is informed and believes, and based upon such information and belief, alleges and charges as follows:

This Accusation is submitted in support of the Commissioner's Notice of Intent to Revoke California Residential Mortgage Lending Act[1] ("CRMLA") Mortgage Loan Originator License No. 173983 ("License") issued to Respondent OCTAVIO AGUIRRE CAPACETE ("Respondent") pursuant to California Financial Code sections 50141, 50301, 50327 and 50513.

[1] California Financial Code §50000 *et seq*.

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The Commissioner has continuous authority to exercise powers granted pursuant to the CRMLA and make general rules, regulations, specific rulings, demands, and findings for the enforcement of those laws. *Cal. Fin. Code §50146, §50301.* Without limitation, the functions, powers, and duties of the Commissioner include the power to revoke any license with cause as provided by the CRMLA[2].

II.

PROCEDURAL HISTORY

On or about August 10, 2010, Respondent took the California State component of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 Mortgage Loan Originator Exam ("SAFE MLO Exam" or "Exam")[3] in Lake Forrest, California. Respondent passed the SAFE MLO Exam with a score of eighty percent (80%). However, during the Exam, Respondent engaged in misconduct as prohibited by the Nationwide Mortgage Licensing System & Registry ("NMLS") Rules of Conduct, the Mortgage Testing and Education Board of the Conference of State Bank Supervisors and the CRMLA ("Respondent's Exam Misconduct[4]").

Respondent applied to the Commissioner for a Mortgage Loan Originator License on or about August 17, 2010 by filing a "MU4 Form" through the NMLS Licensing Unit at the Department of Corporations ("Original License Application" or "U4 Form"). The passing score was reported to the Commissioner. However, Respondent's Exam Misconduct was not reported to the Commissioner by Respondent or Mortgage Testing and Education Board of the Conference of State Bank Supervisors.

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[2] Pursuant to California Financial Code §50301.

[3] The SAFE Mortgage Loan Originator Exam is comprised of two parts - a National Component and a State Component. All state licensed MLO's are required to pass the National Component of the SAFE MLO Exam. All state licensed MLOs are required to pass a State Component of the SAFE MLO Exam for each jurisdiction in which they hold a license. In this particular case, the California portion of the SAFE MLO Exam must be passed by the examination candidate. The SAFE MLO Exam is administrated, reviewed and provided by the Mortgage Testing and Education Board of the Conference of State Bank Supervisors, located at 1155 Connecticut Ave., NW, 5th Floor, Washington, D.C., 20036. The Mortgage Testing and Education Board of the Conference of State Bank Supervisors also implements administrative action procedures, takes and investigates complaints regarding violations, takes disciplinary action upon confirmation of misconduct of candidates and other similar actions.

[4] The following acts executed on August 10, 2010 by Respondent are herein collectively referred to as "Respondent's Exam Misconduct" or "Respondent's Acts of Exam Misconduct" or "Acts of Exam Misconduct": (1) Disobeying Rules of Conduct and Being In A Prohibited Area During the Exam; (2) Disobeying Rules of Conduct and Receiving Aid During The Exam; and (3) the Attempted Bribery of A Test Center Administrator.

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Thus, Respondent was issued Mortgage Loan Originator License No.173983 on September 1, 2010, based upon Respondent's Original License Application and passing Exam score. The License was issued to Respondent for employment with loanDepot.com, LLC., located at 3344 Michelson Drive, Suite 300, Irvine, California, 92612. The License was reissued on or about October 12, 2010 for Respondent's employment with Greenlight Financial Services located at 8105 Irvine Center Drive, Suite 150, Irvine, California, 92618.

Meanwhile, the testing center reported Respondent's Exam Misconduct to the Mortgage Testing and Education Board of the Conference of State Bank Supervisors. On or about September 16, 2010, the Review Committee of the Mortgage Testing and Education Board of the Conference of State Bank Supervisors commenced an investigation regarding Respondent's Exam Misconduct.

In January 2011, the initial Mortgage Testing and Education Board of the Conference of State Bank Supervisors investigation, disciplinary and appeal process concluded with a final finding that Respondent violated NMLS Rule of Conduct No.3[5] ("Final Finding"). The Final Finding was forwarded to all mortgage regulators in states where Respondent was licensed. Thus, the Commissioner was notified of the Final Finding and Respondent's Exam Misconduct by April, 2011.

Based upon the results of a complete and separate California Department of Corporations investigation into Respondent's Exam Misconduct, the Commissioner herein submits this Accusation in support of the Commissioner's Notice of Intent to Revoke Mortgage Loan Originator License No. 173983 issued to Respondent, pursuant to California Financial Code section 50141, 50301, 50327, and 50513.

III.

FACTUAL HISTORY

On or about August 10, 2010, the Respondent arrived at Prometric[6] testing center located at 24551 Raymond Way, Suite 180, in Lake Forrest, California, to take the SAFE MLO Exam. All

[5] NMLS Rule of Conduct No. 3: "I must not receive any form of assistance during the test or restroom breaks".
[6] Prometric is an independent examination testing center which administers different types of examinations for various purposes and entities to California residents.

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SAFE MLO Exam candidates must read and agree to the NMLS Rules of Conduct prior to taking the Exam. Respondent read and agreed to the NMLS Rules of Conduct prior to taking the Exam.

A. Exam Rules of Conduct

The NMLS Rules of Conduct No.3 states the following: "I must not receive any form of assistance during the test or restroom breaks". *NMLS Rule of Conduct No. 3.* Also, The NMLS Rules of Conduct No.6 states the following: "During restroom breaks, I must not leave the premises and may go only to the restroom." *NMLS Rule of Conduct No. 6.* Thus, Exam candidates are permitted to take restroom breaks during the California component of the SAFE MLO Exam. However, Examination candidates are only permitted to go to the restroom area for those breaks. Examination candidates may not go to any other area during the Exam. Exam candidates may not go to the parking lot during the Exam.

B. Respondent's Exam Misconduct[7]

1. Disobeying Rules of Conduct and Being In A Prohibited Area During The Exam.

Respondent checked out of the Exam area for a permissible restroom break during the Exam session. However, instead of going to the restroom and restroom area as permitted, Respondent went to parking lot area and remained in the parking lot for some time, in violation of Exam rules of conduct.

2. Disobeying Rules of Conduct and Receiving Aid During The Exam.

While in the parking lot, Respondent went to a vehicle believed to be Respondent's vehicle. Respondent picked up a packet of over sixty (60) documents located at or near the vehicle and reviewed and studied the documents. The packet of documents was comprised of study materials relating to and regarding the subject matter of the SAFE MLO Exam ("Documents"). While Respondent was in the parking lot reviewing the Documents, a Prometric Test Center Administrator ("Administrator") approached Respondent. Upon seeing the Administrator, Respondent quickly discarded the Documents in or on a nearby dumpster.

[7] See Footnote No. 4

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3. Attempted Bribery of A Test Center Administrator.

The Administrator came upon the Respondent in the parking lot and conferred with Respondent regarding Respondent's actions. In doing so, the Administrator informed Respondent that: (1) Respondent's actions were in violation of Exam rules; (2) Respondent must cease his behavior; and (3) the Administrator must file a report regarding Respondent's Exam Misconduct. The Administrator also confiscated the Documents.

Respondent addressed the Administrator and adamantly requested that the Administrator not disclose the incident of Respondent's Exam Misconduct. Respondent also requested that the Administrator refrain from filing any and all reports regarding the Respondent's Exam Misconduct. Upon making these requests and in compensation for complying with these requests, Respondent offered the Administrator fifty (50) dollars ($50.00). The Administrator refused the $50.00 and refused to agree to Respondent's requests.

C. Conclusion of Exam

Respondent returned to the test center and the Exam room. Respondent stated he was already done with the Exam upon reentering the Exam room and only needed to electronically submit the Exam. The Administrator determined that Respondent was permitted to continue the Exam and thus submit the Exam, despite Respondent's Exam Misconduct, pursuant to and as required by the NMLS testing rules. Respondent then submitted his Exam without altering the Exam or Exam answers, signed out of the Exam, and vacated the premises. On August 17, 2010, Respondent applied to the Commissioner for the License by completing a U4 Form without disclosing the Exam Misconduct.

IV.

ARGUMENT

A. The Commissioner May Revoke The License Because Facts Exist That Would Reasonably Warrant The Commissioner To Refuse To Issue The License If Such Facts Existed At The Time Of The Original Application, Pursuant to California Financial Code Section 50327(a)(2).

The Commissioner may revoke the License if the Commissioner finds that facts exist that, if existed at the time of the Original Application for the License, would reasonably have warranted the Commissioner in originally refusing to issue the License. *Cal. Fin. Code §50327(a)(2).* Thus, in this

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case therefore, one must look back specifically to the time of the Original License Application in 2010 and discern whether Respondent's Acts of Exam Misconduct establish a reasonable basis to deny the Original Application for License on September 1, 2010.

Here, such facts clearly exist. Respondent engaged in Acts of Exam Misconduct[8] on August 10, 2010. Respondent's Original License Application was dated on or about August 17, 2010. Therefore, the facts regarding Respondent's Acts of Exam Misconduct existed at the time of the Original License Application. Therefore, Respondent's Exam Misconduct may be considered by the Commissioner in determining the approval or denial of the Original License Application.

1. Reasonable Basis Exists to Deny Respondent's Original License Application Pursuant to California Financial Code Section 50141.

When considering a license application for approval, the Commissioner shall not issue a license where an applicant does not demonstrate financial responsibility, character and general fitness so as to command the confidence of the community as a mortgage loan originator and to warrant a determination that the applicant will operate honestly, fairly, and efficiently within the purposes of the Mortgage Loan Originator Law of California. *Cal. Fin.Code §50141*.

Respondent's Acts of Exam Misconduct clearly establish that, at the time of the Original License Application, Respondent did not possess the requisite character and general fitness as to command the confidence of the community and to warrant a determination that Respondent would operate honestly, fairly, and efficiently within the purposes of the Mortgage Loan Originator Law of California, as required by California Financial Code section 50141.Thus, a reasonable basis exists to deny the Original License Application, as follows:

a. Mortgage Loan Originator

The duties and obligations of a mortgage loan originator require a high degree of good character, trustworthiness, fairness, and professionalism. A mortgage loan originator must act in a quasi fiduciary duty capacity. Also, a mortgage loan originator is often privy to confidential financial information and to methods in which to access financial resources. Further, mortgage loan originators

[8] See Footnote No. 4

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also have and are able to have access to large financial transactions and information regarding such transactions. Finally, mortgage loan originators must work with other mortgage loan professionals in the industry to serve the needs of consumers and the community fairly when considering their financial needs and abilities. Therefore, it is imperative that a mortgage loan originator license candidate possess and display a high degree of character, fairness, trustworthiness, professionalism, honesty, financial responsibility and ethics.

b. Respondent's Acts of Exam Misconduct Are Probative

Respondent's Acts of Exam Misconduct are extremely probative in determining the approval of the Original License Application when considering the close nexus between the need for a high degree of character, fairness, trustworthiness, professionalism, honesty, financial responsibility, and ethics, within the duties of a mortgage loan originator. Here, Respondent's Acts of Exam Misconduct are highly indicative of and display dishonest, unfair, untrustworthy, unprofessional, financially irresponsible and unethical behavior and character.

(1) Disobeying Rules

First, Respondent agreed to follow the NMLS Rules of Conduct during the SAFE MLO Exam. Then, Respondent knowingly violated the same rules, thus exhibiting Respondents' dishonest, untrustworthiness nature and unprofessional disregard for the mortgage loan originator profession and its' rules. Also, Respondent disobeyed the rules of the exam and knowingly went away from a permitted area into an unpermitted area of the test center – the parking lot. This act also exemplifies that Respondent has a disregard for rules set forth by the profession.

(2) Respondent's Attempt to Secure Aid During the Exam

Respondent reviewed study aids during the Exam attempting to secure aid during the Exam. In engaging in this act, Respondent not only exhibited a disregard for the rules, Respondent exhibited a lack of fairness, lack of professionalism, and lack of trustworthiness to the Commissioner, the people of California, the profession and other Exam candidates.

Specifically, Respondent attempted to secure an added advantage against his fellow Exam candidates and the Commissioner as other Exam candidates did not reference materials during the Exam and are required to take the Exam without aid. In attempting to gain this added advantage,

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Respondent compromised the integrity of the Exam in which the people of California rely on to exhibit the true and correct financial and regulatory acumen and good character of all mortgage loan originator licenses, thus ultimately breaching the trust of the people of California.

Also in attempting to gain this added advantage, Respondent essentially attempted to represent to the profession, the public and the Commissioner that, in taking the Exam, Respondent possessed the requisite financial and regulatory knowledge to pass the Exam from memory and thus be a qualified mortgage loan originator without aid, as all Exam candidates must do. However, in actuality, Respondent attempted to gain the added advantage of assistance during the Exam, thus exhibiting a lack of honesty, trustworthiness, general fitness and fairness required.

(3) Attempted Bribery of Administrator

Attempting to bribe an Administrator thus requesting that someone abandon their duties for profit exemplifies that Respondent is not trustworthy and is dishonest in that Respondent sees it fit to secure personal gain by dishonest means by engaging in such an act. This act also demonstrates again that Respondent had no regard for rules, the integrity of the Administrator or his obligations under the CRMLA. Also, this act is void of good character as it exemplifies Respondent's belief that ones duties may be purchased. Such an act, of course, demonstrates that the Respondent would be willing to engage in similar acts while licensed to achieve personal gain or money to the detriment of a California consumer while in the licensed position of a mortgage loan originator, contrary to his obligations under the CRMLA. Finally, this act exemplifies a disregard for the profession and for other colleagues who sat for the exam free from rule violations or the gain of an unfair advantage by means of attempted bribery.

c. Findings and Conclusions Regarding Probative Acts of Exam Misconduct

The Commissioner finds that Respondent's Acts of Exam Misconduct exhibit a lack of character required by a California Mortgage Loan Originator, as well as a blatant disregard for the NMLS Rules of Conduct. The Commissioner also finds that Respondent's Acts of Exam Misconduct are inherently void of good character, trustworthiness, fairness, honesty, financial responsibility, general fitness and professionalism. Thus, Respondent's Acts of Exam Misconduct demonstrate the lack of general fitness and character required to ultimately establish that Respondent has the good

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character and general fitness required by the CRMLA and thus approve the Original License Application.

d. Conclusion That Existing Facts Are Reasonable To Warrant Action

California Financial Code section 50141 permitted the non-issuance of a mortgage loan originator license at the time of Respondent's application where the applicant has not demonstrated financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the Mortgage Loan Originator Law of California. The foregoing establishes that, at the time of the Original License Application, Respondent did not demonstrate financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that he would operate honestly, fairly, and efficiently within the purposes of the Mortgage Loan Originator Law of California. As such, reasonable basis exists to revoke the License issued to Respondent, pursuant to California Finance Code sections 50141, 50327, and 50513.

V.

STATUTORY AUTHORITY

California Financial Code section 50141 in effect as of the time of the Respondent's Original License Application provides in pertinent part:

> The commissioner shall not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:
> (3) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.

California Financial Code section 50301 provides in pertinent part:

> Without limitation, the functions, powers, and duties of the commissioner include the following:
> (b) To revoke or suspend for cause any license as provided by this division.

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California Financial Code section 50327 provides in pertinent part:

> (a) The commissioner may, after notice and a reasonable opportunity to be heard, suspend or revoke any license if the commissioner finds that: (1) the licensee has violated any provision of this division or any rule or order of the commissioner thereunder; or (2) any fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.

California Financial Code section 50513 provides in pertinent part:

> (a) The commissioner may do one or more of the following: (1) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license for a violation of this division, or any rules or regulations adopted thereunder.

VI.

CONCLUSION

Complainant finds that each and every above stated act by Respondent OCTAVIO AGUIRRE CAPACETE is reasonable and sufficient grounds to revoke the California mortgage loan originator license no. 173983 issued to OCTAVIO AGUIRRE CAPACETE, pursuant to California Financial Code sections 50301, 50327, and 50513.

WHEREFORE, IT IS PRAYED that the mortgage loan originator license issued to OCTAVIO AGUIRRE CAPACETE be revoked.

DATED: November 16, 2011
Sacramento, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By_____

Marisa I. Urteaga-Watkins
Corporations Counsel

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