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11 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
12 OF THE STATE OF CALIFORNIA

13 In the Matter of:) OAH CASE NO.: 2018050414
14 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) NMLS ID.: 319790
15) SETTLEMENT AGREEMENT
16 Complainant,)
17 v.) Hearing Date: March 25 – March 29, 2019
18 BRIAN JOSEPH DECKER,) Hearing Time: 9:00 a.m.
19 Respondent.) Hearing Place: 1350 Front Street, Suite 3005
San Diego, CA 92101
20)

21 This Settlement Agreement (Settlement Agreement) is entered between the Commissioner of
22 Business Oversight (Commissioner) and Brian Joseph Decker (Decker) (collectively, the Parties)
23 and is made with respect to the following facts:

24 RECITALS

25 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
26 entities engaged in the business of lending and servicing residential mortgage loans under the
27 California Residential Mortgage Act (CRMLA) (Fin. Code, § 50000 et seq.) and the California
28

1 Financing Law (CFL) (Fin. Code, §22000 et seq.), including mortgage loan originators in California
2 (MLOs).

3 B. On June 8, 2010, Decker filed an application for an MLO license with the
4 Commissioner under the California Financing Law (CFL) (Fin. Code, §22000 et seq.), in particular,
5 Financial Code section 22105.1. Such application was for employment as an MLO in California
6 (DBO MLO License) and was submitted to the Commissioner when Decker completed and filed a
7 Form MU4 through the Nationwide Mortgage Licensing System & Registry (NMLS).

8 C. In submitting his application, Decker was required to sign an oath and attestation
9 agreeing “to keep the information contained in this [MU4] form current and to file accurate
10 supplementary information on a timely basis[.]”

11 D. Based on the information Decker provided in his application and his agreement to
12 keep the information current or to supplement his application responses, the Commissioner issued
13 Decker a DBO MLO License on August 11, 2010.

14 E. On March 22, 2018, the Commissioner issued Decker a Statement to Respondent;
15 Accusation in Support of Order Revoking Mortgage Loan Originator License of Brian Joseph
16 Decker; and other supporting pleadings (collectively, Accusation). The Commissioner amended the
17 Accusation by issuing a First Amended Accusation in Support of Order Revoking Mortgage Loan
18 Originator License of Brian Joseph Decker dated May 29, 2018 (First Amended Accusation).

19 F. Under the First Amended Accusation, the Commissioner alleged Decker did not meet
20 the requirements of an MLO under sections 50141 and 50513 of the Financial Code and sought to
21 revoke Decker’s DBO MLO License where:

22 (i) Decker failed to obtain consent from many of his former employer’s
23 customers before sharing their confidential financial information with his new employer and made a
24 personal gift/loan to a borrower without identifying to third parties the precise origin of the funds for
25 the gift/loan. The First Amended Accusation further alleged that, on the basis of the foregoing,
26 Decker did not demonstrate the character, or that he could “command the confidence of the
27 community,” or that he could “operate honestly, fairly, and efficiently,” necessary with respect to his
28 job as an MLO operating in California; and

1 (ii) Decker was required by Section (J) of the MU4 form for the DBO MLO
2 License application to disclose the fact that there was a pending financial-services related lawsuit in
3 which Decker was named for any alleged violation in a case in which a court had enjoined Decker in
4 connection with financial-services related activity. The First Amended Accusation further alleged
5 that by virtue of the existence of an action involving his former employer Mount Olympus, Decker
6 had allegedly failed to make such required disclosures in Section (J).

7 G. Decker timely filed his Notice of Defense, and this matter is currently set for hearing
8 on March 25 through March 29, 2019, before the Office of Administrative Hearings, San Diego.

9 H. The Commissioner finds that entering into this Settlement Agreement is in the public
10 interest, protects consumers, and is consistent with the purposes fairly intended by the policies and
11 provisions of the CRMLA and CFL.

12 I. Decker believes that entering into this Settlement Agreement is the best course of
13 action. Decker neither admits nor denies the fact allegations set forth in the First Amended
14 Accusation. Decker agrees to this Settlement Agreement out of a desire to reach an expeditious
15 resolution that is in the best interests of all parties, and to avoid a costly trial that would be
16 unnecessarily disruptive to the consumer services Decker provides and to his family life.

17 NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set
18 forth herein, the Parties agree as follows:

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20 TERMS AND CONDITIONS

21 1. Purpose. The Parties have entered into this Settlement Agreement to resolve the
22 matter described in the Recitals, for the purpose of judicial economy and expedience, and to avoid
23 the expense of a hearing, and further court proceedings.

24 2. Waiver of Hearing Rights. Decker agrees that this Settlement Agreement shall have
25 the effect of withdrawing his request for an administrative hearing concerning the DBO MLO
26 License on the matter described in the Recitals above. Decker acknowledges his right to an
27 administrative hearing under the CRMLA in connection with the First Amended Accusation and
28 hereby waives such right to a hearing and to any reconsideration, appeal, or other rights that may be

1 afforded to him under the CRMLA, CFL, the Administrative Procedure Act (APA) (Gov. Code, §
2 11340 et seq.), the Code of Civil Procedure (CCP) (Code Civ. Proc., § 1 et seq.), or any provision of
3 law in connection with this matter.

4 3. Acknowledgment. Decker acknowledges that the Commissioner issued and served
5 him with the First Amended Accusation, in which the Commissioner sought to revoke Decker's
6 DBO MLO License under Financial Code section 50513 of the CRMLA and alleged Decker did not
7 meet the criteria to hold a DBO MLO License under sections 50141 and 50513 of the Financial
8 Code, as discussed in the Recitals above.

9 4. Surrender of License. Decker shall have 180-days within which to surrender his DBO
10 MLO License to the Commissioner, and the 180-day period shall commence on the Effective Date of
11 this Settlement Agreement. Decker agrees to wind down his business during the 180-day period,
12 prior to the surrender of his license (Wind-Down Period). Decker agrees not to accept any new
13 consumer business during the Wind-Down Period. The Commissioner will not grant an extension of
14 time of the 180-day Wind Down Period. If during the 180-day period, prior to the surrender of
15 Decker's license, the Department makes a finding that Decker has violated or is violating any
16 provision of the CRMLA, CFL, or any law, rule, or regulation under the jurisdiction of the
17 Commissioner, the Commissioner may revoke any DBO MLO License held by Decker or deny any
18 pending application(s) for same of Decker. Decker hereby waives any hearing rights to contest such
19 revocation or denial(s) under the CRMLA, CFL, APA, CCP, or any other provision of law in
20 connection with this matter.

21 5. 24-Month Bar from Reapplying for DBO MLO License. Decker agrees he will not
22 reapply for a DBO MLO License before the Commissioner for a period of 24 months from the date
23 of surrender of his DBO MLO License. Should Decker reapply for a DBO MLO License prior to the
24 expiration of the 24-month period, the Commissioner shall automatically deny the DBO MLO
25 License application and Decker hereby waives any hearing rights he may have to contest such denial
26 under the CRMLA, CFL, APA, CCP, or any other provision of law in connection with this matter.

27 6. Investigative Fees. Decker agrees to pay the Commissioner investigative fees of
28 \$10,000.00 (Investigative Fees). The Investigative Fees shall be due within 10 days of the Effective

1 Date of this Settlement Agreement and made payable in the form of a cashier’s check or Automated
2 Clearing House deposit to the “Department of Business Oversight,” and transmitted to the attention
3 of Accounting – Enforcement Division, Department of Business Oversight, 1515 K Street, Suite
4 200, Sacramento, California 95814. Notice of payment shall be sent via email or letter to Marlou de
5 Luna, Senior Counsel, Department of Business Oversight, 320 West 4th Street, Suite 750, Los
6 Angeles, California 90013.

7 7. Remedy for Breach. Decker acknowledges that failure to surrender his DBO MLO
8 License within 180 days, as set forth in paragraph 4, above; reapplication for a DBO MLO License
9 prior to the expiration of the 24-month bar, as set forth in paragraph 5, above; and failure to comply
10 with the Investigative Fees term of this Settlement Agreement, as set forth in paragraph 6, above,
11 shall be deemed a breach and cause for the Commissioner to immediately revoke any license held by
12 or deny any pending application(s) of Decker. Decker also hereby waives any notice and hearing
13 rights to contest such revocation or denial(s) which may be afforded under the California Residential
14 Mortgage Act, California Financing Law, Administrative Procedure Act, Code of Civil Procedure,
15 or any other provision of law in connection with the DBO MLO License involved in this matter.

16 8. Full and Final Settlement. The Parties hereby acknowledge and agree that this
17 Settlement Agreement is intended to constitute a full, final, and complete resolution of Decker’s
18 alleged violations of the CRMLA as identified herein. No further proceedings or actions will be
19 brought by the Commissioner in connection with these matters under the CRMLA or any other
20 provision of law, except for any (i) proceeding to enforce compliance with the terms of this
21 Settlement Agreement or (ii) proceeding that is based upon discovery of new and further violations
22 of the CRMLA which (a) do not form the basis for this Settlement Agreement or (b) which Decker
23 knowingly concealed from the Commissioner.

24 9. Commissioner’s Duties and Jurisdiction. Pursuant to the CRMLA, the Commissioner
25 has jurisdiction over Decker’s license as a DBO MLO permitted to operate in California. The Parties
26 further acknowledge and agree that nothing in this Settlement Agreement shall limit the
27 Commissioner’s ability to assist any other agency (city, county, state, or federal) with any
28 prosecution, administrative, civil, or criminal, brought by any such agency against Decker or any

1 other person based upon any of the activities alleged in these matters or otherwise.

2 10. Binding. This Settlement Agreement is binding on all heirs, assigns, or successors in
3 interest.

4 11. Independent Legal Advice. Each of the parties represents, warrants, and agrees that
5 he, she, or it has received independent advice from its attorney(s) or representative(s) with respect to
6 the advisability of executing this Settlement Agreement.

7 12. Counterparts. The Parties agree that this Settlement Agreement may be executed in
8 one or more separate counterparts, each of which shall be deemed an original when so executed.
9 Such counterparts shall together constitute and be one and the same instrument.

10 13. Waiver, Modification, and Qualified Integration. The waiver of any provision of this
11 Settlement Agreement shall not operate to waive any other provision set forth herein. No waiver,
12 amendment, or modification of this Settlement Agreement shall be valid or binding to any extent
13 unless it is in writing and signed by all the parties affected by it.

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

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

28 16. Presumption from Drafting. In that the Parties have had the opportunity to draft,

1 review, and edit the language of this Settlement Agreement, no presumption for or against any party
2 arising out of drafting all or any part of this Settlement Agreement will be applied in any action
3 relating to, connected to, or involving this Settlement Agreement. Accordingly, the Parties waive the
4 benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases of
5 uncertainty, language of a contract should be interpreted most strongly against the party that caused
6 the uncertainty to exist.

7 17. Voluntary Agreement. Decker enters into this Settlement Agreement voluntarily and
8 without coercion and acknowledges that no promises, threats, or assurances have been made by the
9 Commissioner, or any officer or agent thereof, about this Settlement Agreement.

10 18. Effective Date. This Settlement Agreement shall become final and effective when
11 signed by all parties and delivered by the Commissioner’s agent to Decker's counsel via e-mail at
12 jenny.lee@arentfox.com.

13 19. Notice. Any notices required under this Settlement Agreement shall be provided to
14 each party at the following addresses:

15 If to Respondent to: Brian Joseph Decker
16 J.H. Jennifer Lee, Partner
17 Susan Tran, Esq.
18 Arent Fox LLP
19 55 Second Street, 21st Floor
20 San Francisco, California 94105-3491

21 If to the Commissioner to: Marlou de Luna, Senior Counsel
22 Department of Business Oversight
23 320 W. 4th Street, Suite 750
24 Los Angeles, California 90013-2344

25 20. Authority to Execute. Each signatory hereto covenants that he/she possesses all
26 necessary capacity and authority to sign and enter into this Settlement Agreement.

27 [Signature Page Follows]
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IN WITNESS WHEREOF, the Parties hereto have approved and executed this Settlement Agreement on the dates set forth opposite their respective signatures.

Dated: 3/15/19

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 3/15/19

BRIAN JOSEPH DECKER, Respondent

By _____
BRIAN JOSEPH DECKER

Approved as to Form and Content

By _____
J.H. Jennifer Lee, Esq.
Arent Fox LLP, Attorneys at Law
on behalf of Brian Joseph Decker