

1 Kevin H. Sun, Counsel (SBN 276539) Department of Real Estate 2 320 West 4th Street, Suite 350 FILED Los Angeles, California 90013-1105 3 Telephone: (213) 576-6913 4 Fax: (213) 576-6917 APR 20 2021 Attorney for Complainant 5 **DEPT. OF REAL ESTATE** 6 7 8 BEFORE THE DEPARTMENT OF REAL ESTATE 9 STATE OF CALIFORNIA 10 11 In the Matter of the Application of No. H-41976 LA 12 RAFAEL L VALENZUELA, 13 STATEMENT OF ISSUES 14 Mortgage Loan Originator Respondent. License Endorsement 15 16 The Complainant, Luke Martin, a Supervising Special Investigator of the State 17 of California, for Statement of Issues against RAFAEL L VALENZUELA ("Respondent") 18 alleges as follows: 19 20 1. The Complainant, Luke Martin, a Supervising Special Investigator of the State 21 of California, makes this Statement of Issues in his official capacity. 22 23 2. All references to the "Code" are to the California Business and Professions Code 24 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations. 25 26 /// 27 ///

### LICENSE HISTORY

3.

.

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a restricted real estate salesperson (License ID 01871870). The Department of Real Estate ("Department") of the State of California originally issued a restricted salesperson license to Respondent on or about June 6, 2013, which is set to expire on June 30, 2021, unless renewed.

### (CASE NO. H-36655 LA)

4.

On or about June 1, 2010, the Department filed a Statement of Issues, in Case No. H-36655 LA, denying the issuance of a real estate salesperson license to Respondent.

5.

On or about September 8, 2010, the Real Estate Commissioner issued an Order Denying Application For A Real Estate License in Case No. H-36655 LA, denying the application of Respondent for licensure as a real estate salesperson based on a default.

### (CASE NO. H-38898 LA)

6.

On or about May 28, 2013, the Real Estate Commissioner issued an Order pursuant to a Stipulation and Waiver in Case No. H-38898 LA, denying the application of Respondent for licensure as a real estate salesperson, but granting Respondent the right to a restricted real estate salesperson license.

## MORTGAGE LOAN ORIGINATOR ENDORSEMENT APPLICATION

7.

On or about July 24, 2020, Respondent made application to the Department in an MU4 application seeking an individual mortgage loan originator ("MLO") license endorsement under the Nationwide Mortgage Licensing System ("NMLS") identification number 1912637.

STATEMENT OF ISSUES

GROUNDS FOR D	EXITAT OF	MIOTIGENION	III III OD GIII GIII
OKCOUNDO I OK D	TIME OF	MITO LICENSE	ENDUKSEMENT

8.

3

4 5

1

2

6

7

8

10

11 12

13

14

15

16 17

18

19

20 21

22

23 24

25

26

27

Section 10166.05 of the Code provides, "Notwithstanding any other provision of law, the commissioner shall not issue a license endorsement to act as a mortgage loan originator to an applicant unless the commissioner makes all of the following findings:

(b)(1) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing, or at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering...

(c) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this article."

9.

Section 10166.051 of the Code provides, "the commissioner may do one or more of the following, after appropriate notice and opportunity for hearing:

(b) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license endorsement, if an application or endorsement holder fails at any time to meet the requirements of Section 10166.05 or 10166.09, or withholds information or makes a material misstatement in an application for a license endorsement or license endorsement renewal."

10.

Section 2758.3 of Title 10, Chapter 6, of the Regulations provides, in part, that "The Commissioner's finding required by Section 10166.05(c) of the Business and Professions Code relates to any matter, personal or professional, that may impact upon an applicant's

propensity to operate honestly, fairly, and efficiently when engaging in the fiduciary role of a mortgage loan originator. . . (a) The applicant may be precluded from obtaining a mortgage loan originator license endorsement where his or her personal history includes: (1) any liens or judgments for fraud, misrepresentation, dishonest dealing, and/or mishandling of trust funds, or (2) other liens, judgments, or financial or professional conditions that indicate a pattern of dishonesty on the part of the applicant. (b) Notwithstanding the requirements above, where an applicant for a mortgage loan originator license endorsement (1) is currently holding a restricted real estate license, or (2) has a right to a restricted license and is making a dual application for the restricted license and mortgage loan originator license endorsement, such applicant must demonstrate, where pertinent, the completion of restitution to any person who has suffered monetary losses through acts or omissions of the applicant that include, but are not limited to, those that substantially related to the qualifications, functions or duties of a real estate licensee as defined in Section 2910 of these regulations, and/or the discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others."

# (WITHHELD INFORMATION OR MADE MATERIAL MISSTATEMENTS)

11.

In response to Question (D) in the section entitled "Financial Disclosure" under "Disclosure Questions" of Respondent's MLO license endorsement application submitted on or about February 28, 2020, to wit: "Do you have any unsatisfied judgments or liens against you?" Respondent answered "No," which constitutes the withholding of information or the making of a material misstatement as to his judgments and liens, described in Paragraphs 12 and 13 below.

12.

On or about June 7, 2005, in the Superior Court of California, County of Riverside, Case No. RIC449295, a civil complaint was filed against Respondent, as well as other defendants, for negligence, breach of contract, breach of fiduciary duty, fraud and deceit, and negligent misrepresentation. On or about October 6, 2008, a judgement was entered, pursuant to

a settlement, against Respondent, individually and jointly, along with other defendants, in the 1 amount of \$64,400.00. No evidence shows that this judgment was satisfied. 2 3 13. 4 5 6 the amount of \$9,228.91. No evidence shows that this judgment was satisfied. 7 8 14. In response to Question (K) in the section entitled "Regulatory Disclosure" 9 10 11 12 13 14 15 16 17 Department, described in Paragraphs 4, 5 and 6 above. 18 19 15. 20 10166.051(b).

On or about May 30, 2014, in the Superior Court of California, County of Los Angeles, Case No. 14K07445, a civil complaint was filed against Respondent, for breach of contract. On or about March 16, 2015, a default judgement was entered against Respondent, individually, in

under "Disclosure Questions" of Respondent's MLO license endorsement application submitted on or about February 28, 2020, to wit: "Has any State or federal regulatory agency or foreign regulatory authority or self-regulatory organization (SRO) ever: (1) found you to have made a false statement or omission or been dishonest, unfair or unethical?... (6) denied or suspended your registration or license or application for licensure, disciplined you, or otherwise by order, prevented you from associating with a financial service-related business or restricted your activities?" Respondent answered "No" to both questions, which constitute the withholding of information or the making of a material misstatement as to his prior discipline by the

The facts alleged in Paragraphs 11, 12, 13, and 14 above, constitute cause for the denial of Respondent's application for a MLO license endorsement under Code section

16.

The facts alleged in Paragraphs 12 and 13 above, constitute cause for the denial of Respondent's application for a MLO license endorsement under Code section 10166.05(c).

27

21

22

23

24

25

26

7

8

9 10

11

12

13

14 15

16

17

18 19

20 21

22

23 24

25

26

27

These proceedings are brought under the provisions of Section 10100, Division 4 of the Business and Professions Code of the State of California and Sections 11500 through 11528 of the California Government Code.

#### <u>PRAYER</u>

WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, an MLO license endorsement to Respondent RAFAEL L VALENZUELA and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Sacramento, California this 15th day of formula, 2021.

Luke Martin

Supervising Special Investigator

RAFAEL L VALENZUELA Luke Martin

Sacto.