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SETTLEMENT AGREEMENT AND CONSENT ORDER

Marc Phayne
NMLS ID # 384598

WHEREAS, Marc Phayne ("Respondent") is engaged in the activity of a mortgage loan originator and assigned an NMLS identifier number of 384598.

WHEREAS, the States, Commonwealths, and/or Territories of California-DFPI, California-DRE, Florida, Oregon (individually, a "Participating State," and collectively, the "Participating States") have each agreed, through its respective state mortgage regulatory agency, to negotiate and enter into this Settlement Agreement and Consent Order (hereinafter referred to as the "Agreement" or "Order").

WHEREAS, the state mortgage regulators of the Participating States (hereinafter referred to individually as a "State Mortgage Regulator," and collectively as the "State Mortgage Regulators") are respective members of the Conference of State Bank Supervisors ("CSBS") and the American Association of Residential Mortgage Regulators ("AARMR") and have agreed to address enforcement concerns with Respondent in a collective and coordinated manner, pursuant to their respective statutory authorities, and in accordance with the protocols established by the CSBS/AARMR Nationwide Cooperative Protocol for Mortgage Supervision as well as the Nationwide Cooperative Agreement for Mortgage Supervision (collectively, the "CSBS/AARMR Protocol and Agreement"). The State Mortgage Regulators and Respondent are collectively referred to herein as the ("Parties").

WHEREAS, Respondent is licensed as a mortgage loan originator under the respective laws of each Participating State, or, where applicable, has obtained an endorsement from a Participating State to engage in loan origination activity as part of Respondent's pre-existing authority to engage in regulated activity under a different licensing regime ("MLO Activity Endorsement").

WHEREAS, the State Regulatory Registry LLC ("SRR"), a wholly owned subsidiary of CSBS, owns and operates the Nationwide Multistate Licensing System & Registry ("NMLS"). SRR administers pre-licensure ("PE") and continuing education ("CE") and Uniform State Test protocols. Title V of Public Law 110-289, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "SAFE Act"), requires that

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state-licensed mortgage loan originators ("MLOs") complete PE prior to initial licensure and annual CE thereafter. In order to meet PE requirements contemplated under the SAFE Act, state-licensed MLOs must complete 20 hours of NMLS–approved education. In order to meet CE requirements contemplated under the SAFE Act, state-licensed MLOs must complete eight hours of NMLS approved education.

WHEREAS, the Mortgage Testing and Education Board ("MTEB"), which was created by SRR, has approved "Administrative Action Procedures for S.A.F.E. Testing and Education Requirements" and NMLS-Approved course providers ("AAP"), which extends administrative authority to the MTEB to investigate alleged violations of the NMLS Rules of Conduct ("ROC"). The AAP also extends administrative authority to the MTEB/SRR to investigate alleged violations of the NMLS Standards of Conduct ("SOC"), which apply to all NMLS-Approved course providers.

WHEREAS, in late 2020, MTEB obtained information concerning suspicious activity and that information identified a possible MLO education cheating scheme coordinated by and implemented through Danny Yen, d/b/a Real Estate Educational Services, an NMLS-Approved course provider that is assigned an NMLS-Approved course provider identifier number of 1405046 ("REES"). Based on that information, and pursuant to the AAP, the Investigative Review Committee ("IRC") approved opening and pursuing an investigation into this matter.

WHEREAS, SRR's IRC issued a memorandum report on its investigation into the REES coordinated MLO education fraud scheme. The IRC found that REES fraudulently provided course credit to MLOs who had never attended and completed REES's eight-hour in-person CE course in Westminster, California (the "In-person Education Scheme"). The IRC also found that REES helped MLOs cheat on online PE and/or CE courses by taking those courses on behalf of those MLOs. In each of the schemes orchestrated by REES, the MLOs accepted credit for SAFE-Act-required education courses that they had either not taken or completed on their own behalf in violation of the ROC, and state and federal law (collectively, the "MLO Education Schemes").

WHEREAS, based on the initial findings of the IRC, pursuant to the CSBS/AARMR Protocol and Agreement this matter was referred from the IRC for further investigation and possible enforcement action, and to which the CSBS Non-Depository

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Supervisory Committee authorized the creation of a regulator taskforce to coordinate the multi-state investigation and enforcement activity in this matter ("REES Regulatory Taskforce"). Specifically, the REES Regulatory Taskforce adopted the work of the IRC investigation and engaged in additional investigatory work that included a demand from Respondent for a statement in writing under oath as to all the facts and circumstances concerning the MLO Education Schemes coordinated by and implemented through REES.

WHEREAS, as a result of the REES Regulatory Taskforce investigation as it pertains to Respondent, the following relevant facts and determinations were made, including, but not limited to:

1) That Respondent admitted being a knowing and active participant in the MLO Education Schemes coordinated by and implemented through REES;
2) That Respondent in fact had PE and/or CE requirements completed by REES on Respondent's behalf in violation of federal and state law. Specifically, that Respondent had 5 PE and/or CE completed by REES on Respondent's behalf under the In-person Education Scheme;
3) That by participating in the MLO Education Scheme coordinated by and implemented through REES, Respondent had in fact violated the ROC; and
4) That by participating in the MLO Education Scheme coordinated by and implemented through REES, Respondent violated state and federal laws concerning competing certain PE and/or CE requirements as a mandatory qualification for licensure.

WHEREAS, Respondent enters into this Agreement solely for the purpose of resolving disputes with the State Mortgage Regulators, including concerning the conduct described in this Agreement, and does not admit to or deny any wrongdoing, allegations or implications of fact and does not admit to or deny any violations of applicable laws, regulations and/or rules governing the conduct described herein. Respondent acknowledges that the State Mortgage Regulators have and maintain jurisdiction over the underlying dispute, including all matters referred to in these recitals, and therefore have the authority to fully resolve the matter.

WHEREAS, Respondent represents to the State Mortgage Regulators that Respondent will comply with Respondent's obligations under this Agreement, and that

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Respondent will hereafter continue to comply with all regulatory requirements imposed by each State Mortgage Regulator.

WHEREAS, Respondent acknowledges that the State Mortgage Regulators are relying, in part, upon Respondent's representations and warranties stated herein in making their determinations in this matter. Respondent further acknowledges that this Agreement may be revoked and the State Mortgage Regulators may pursue any and all remedies available under the law against Respondent if the State Mortgage Regulators later find that Respondent knowingly or willfully withheld information from the State Mortgage Regulators.

WHEREAS, the State Mortgage Regulators have legal authority to initiate administrative actions based on the conduct identified by the REES Regulatory Taskforce investigation as described in herein.

WHEREAS, the intention of the State Mortgage Regulators in effecting this settlement is to fully resolve the violations and misconduct described herein pertaining to Respondent's participation in the MLO Education Scheme coordinated by and implemented through REES. The State Mortgage Regulators reserve all of their rights, duties, and authority to enforce all statutes, rules, and regulations under their respective jurisdictions against Respondent regarding any mortgage loan origination activities outside the scope of this Agreement. Additionally, a State Mortgage Regulator may consider this Agreement and the facts set forth herein in connection with, and in deciding, any action, or proceeding under the jurisdiction of that State Mortgage Regulator, if the basis of such action, or proceeding is not a direct result of the specific activity identified herein; and that this Agreement may, if relevant to such action or proceeding, be admitted into evidence in any matter before a State Mortgage Regulator.

WHEREAS, Respondent hereby knowingly, willingly, voluntarily, and irrevocably consents to the entry of this Order, which is being entered pursuant to the authority vested in each State Mortgage Regulator and agrees that Respondent understands all of the terms and conditions contained herein. Respondent acknowledges that Respondent has full knowledge of Respondent's rights to notice and a hearing pursuant to the laws of the respective Participating States. By voluntarily entering into this Agreement, Respondent waives any right to notice and a hearing, and review of such hearing, and also

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herein waives all rights to any other judicial appeal concerning the terms, conditions, and related obligations set forth in this Agreement. Respondent further acknowledges that Respondent has had an opportunity to consult with independent legal counsel in connection with Respondent's waiver of rights and with the negotiation and execution of this Agreement, and that Respondent has either consulted with independent legal counsel or has knowingly elected not to do so.

NOW, **THEREFORE**, this Agreement having been negotiated by the Parties in order to resolve the issues identified herein, without incurring the costs, inconvenience and delays associated with protracted administrative and judicial proceedings, it is by the State Mortgage Regulators listed below hereby **ORDERED**:

I. JURISDICTION

1. That pursuant to the licensing and supervision laws of the Participating States, the Participating States have jurisdiction over Respondent as described herein and may enforce the terms of this Agreement thereon unless otherwise stated in this Agreement.

II. LICENSE SURRENDER AND APPLICATION WITHDRAWAL

1. *Surrender of License and Withdrawal of Application*. On the Effective Date of this Agreement, Respondent agrees to the surrender of Respondent's mortgage loan originator license or any MLO Activity Endorsement issued by each State Mortgage Regulator in the corresponding Participating State. On the Effective Date of this Agreement, Respondent further agrees to the withdrawal of any application for a mortgage loan originator license or MLO Activity Endorsement pending with each State Mortgage Regulator in the corresponding Participating State. This surrender will go into effect on or after the effective date of this agreement as processed and reflected through the NMLS. Respondent further agrees that Respondent will not apply for a new mortgage loan originator license or, as applicable, petition for the reinstatement of any MLO Activity Endorsement in any of the Participating States for a period of three months from the Effective Date of this Agreement. Should the Respondent apply for such a license or petition for the reinstatement of an MLO Activity Endorsement during that three-month period, that license application or MLO

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Activity Endorsement petition, as consented to by the Respondent herein, shall be deemed denied.

2. *New Application for Licensure.* Any time after the three-month period has lapsed from the Effective Date of this Agreement and Respondent has paid the Administrative Penalty set forth in Section III, Paragraph 1 of this Order, Respondent may apply for a new mortgage loan originator license or, as applicable, petition for the reinstatement of an MLO Activity Endorsement in any or all of the Participating States with the understanding that each State Mortgage Regulator reserves the rights to fully investigate such application for licensure or petition for reinstatement of an MLO Activity Endorsement and may either approve or deny such application or petition pursuant to the normal process for such licensing or endorsement investigations. No license application or petition described in this paragraph will be denied solely based on the facts, circumstances, or consensual resolution provided for in this Agreement. Respondent further agrees that Respondent must satisfy the Administrative Penalty provision prior to submitting an application for a new mortgage loan originator license or, as applicable, petition for the reinstatement of an MLO Activity Endorsement.

III. ADMINISTRATIVE PENALTY

1. *Administrative Penalty*. That Respondent shall pay an Administrative Penalty of $4,000.00 to the Participating States to be distributed equally amongst the Participating States (the "per-state payment").

2. That in the event that Respondent fails to submit any Administrative Penalty set forth in this Agreement, in the amounts specified herein and in accordance with the applicable deadlines, or if any transfer of any monetary amount required under this Agreement is voided by a Court Order, including a Bankruptcy Court Order, Respondent agrees not to object to a Participating State submitting a claim, nor attempt to defend or defeat such authorized claim, for any unpaid amounts, including against any surety bond that Respondent may maintain in such Participating State as a condition of maintaining a license or MLO Activity Endorsement under the jurisdiction of that State Mortgage Regulator. Respondent further agrees to restrictions being placed on Respondent's NMLS account unless and until the Administrative Penalty is paid in full.

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3. That a State Mortgage Regulator may elect to have its allocation of the Administrative Penalty set forth in Paragraph 1 of this section to be applied towards the respective Participating State's consumer relief, and/or other such alternatives authorized under the respective Participating State's law. Should a State Mortgage Regulator elect to apply its allocation of administrative penalties in such an alternative manner, solely for the purpose of ensuring the effective administration of payments pursuant to the terms of this Agreement, that State Mortgage Regulator shall notify the REES Regulatory Taskforce in writing of such election on or before the Effective Date of this Agreement.

IV. MORTGAGE LOAN ORIGINATOR EDUCATION

1. Prior to the submission of a new application for any new mortgage loan originator license or, as applicable, the filing of a petition for the reinstatement of an MLO Activity Endorsement in any Participating State as provided for in Section II, Paragraph 2 of this Order, the Respondent will be required to complete the following mortgage loan originator education requirements:

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

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

2. Respondent may not take any of the PE or CE provided for in Paragraph 1 of this Section in an online self-study format ("OSS").

3. For a period three years from the Effective Date of this Order, Respondent shall be required to complete any additional required PE and/or CE in a format other than OSS.

V. ENFORCEMENT

1. *General Enforcement Authority*: That the terms of this Agreement shall be enforced in accordance with the provisions, terms and authorities provided in this Agreement and under the respective laws and regulations of each Participating State.

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2. *No Restriction on Existing Examination and Investigative Authority.* That this Agreement shall in no way preclude any State Mortgage Regulator from exercising its examination or investigative authority authorized under the laws of the corresponding Participating State in the instance a determination is made wherein Respondent is found not to be adhering to the requirements of the Agreement, other than inadvertent and isolated errors that are promptly corrected by Respondent, or involving any unrelated matter not subject to the terms of this Agreement. The Parties agree that the failure of Respondent to comply with any term or condition of this Agreement with respect to a particular State shall be treated as a violation of an Order of the State and may be enforced as such. Moreover, Respondent acknowledges and agrees that this Agreement is only binding on the State Mortgage Regulators and not any other Local, State or Federal Agency, Department or Office.

4. *Information Requests.* This Agreement shall not limit Respondent's obligations, as a licensee of the State Mortgage Regulators, to cooperate with any examination or investigation, including but not limited to, any obligation to timely provide requested information or documents to any State Mortgage Regulator.

5. *Revocation of License*. To the extent the Respondent engages in similar activity that was the basis for this Agreement, Respondent affirmatively consents to the immediate revocation of any impacted mortgage loan originator license. Respondent further agrees to waive his or her right to a hearing, and to any reconsideration, appeal, or other rights which may be afforded to contest the revocation of the impacted mortgage loan originator license under this provision.

VI. GENERAL PROVISIONS

1. *Effective Date.* That this Agreement shall become effective upon execution by all of the State Mortgage Regulators for the Participating States and when posted on the NMLS (the "Effective Date").

2. *Public Record*. That this Agreement shall become public upon the Effective Date.

3. *Binding Nature*. The provisions of this Agreement shall remain effective and enforceable except to the extent that, and until such time as, any provisions of this Agreement shall have been modified, terminated, suspended, or set aside, in writing by

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mutual agreement of the State Mortgage Regulators, collectively, and Respondent.

4. *Standing and Choice of Law.* That each State Mortgage Regulator has standing to enforce this Agreement in the judicial or administrative process otherwise authorized under the laws and regulations of the corresponding Participating State. Upon entry, this Agreement shall be deemed a final order of each respective State Mortgage Regulator unless adoption of a subsequent order is necessary under the laws of the corresponding Participating State. In the event of any disagreement between any State Mortgage Regulator and Respondent regarding the enforceability or interpretation of this Agreement and compliance therewith, the courts or administrative agency authorized under the laws of the corresponding Participating State shall have exclusive jurisdiction over the dispute, and the laws of the Participating State shall govern the interpretation, construction, and enforceability of this Agreement.

5. *Adoption of Subsequent Orders to Incorporate Terms.* That a State Mortgage Regulator, if deemed necessary under the laws and regulations of the corresponding Participating State, may issue a separate administrative order to adopt and incorporate the terms and conditions of this Agreement. A State Mortgage Regulator may *sua sponte* issue such subsequent order without the review and approval of Respondent provided the subsequent order does not amend, alter, or otherwise change the terms of the Agreement. In the event a subsequent order amends, alters, or otherwise changes the terms of the Agreement, the terms of the Agreement, as set forth herein, will control.

6. *Privilege.* That this Agreement shall not constitute a waiver of any applicable attorney-client or work product privilege, confidentiality, or any other protection applicable to any negotiations relative to this Agreement.

7. *Titles.* That the titles used to identify the paragraphs of this Agreement are for the convenience of reference only and do not control the interpretation of this Agreement.

8. *Final Agreement*. That this Agreement is the final written expression and the complete and exclusive statement of all the agreements, conditions, promises, representations, and covenants between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, negotiations, representations, understandings, and discussions between and among the Parties, their respective representatives, and any other person or entity, with respect to the subject matter

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covered herein, excepting therefrom any proceeding or action if such proceeding or action is based upon facts not presently known to a State Mortgage Regulator. The Parties further acknowledge and agree that nothing contained in this Agreement shall operate to limit a State Mortgage Regulator's ability to assist any other Local, State or Federal Agency, Department or Office with any investigation or prosecution, whether administrative, civil or criminal, initiated by any such Agency, Department or Office against Respondent or any other person based upon any of the activities alleged in these matters or otherwise.

9. *Waiver*. That the waiver of any provision of this Agreement shall not operate to waive any other provision set forth herein, and any waiver, amendment and/or change to the terms of this Agreement must be in writing signed by the Parties.

10. *Costs*. That except as otherwise agreed to in this Agreement, each party to this Agreement will bear its own costs and attorneys' fees associated with this enforcement action.

11. *Notices*. That any notice to Respondent and/or the State Mortgage Regulators required or contemplated by this Agreement shall be delivered, if not otherwise described herein, by electronic copy to Respondent through the NMLS, or similar contact system, and to the State Mortgage Regulators by direct written notification.

12. *Counterparts*. That this Agreement may be executed in separate counterparts, by facsimile or by PDF. A copy of the signed Agreement will be given the same effect as the originally signed Agreement.

13. That nothing in this Agreement shall relieve Respondent of Respondent's obligation to comply with applicable State and Federal law.

It is so **ORDERED**.

IN WITNESS WHEREOF, in consideration of the foregoing, including the recital paragraphs, and with the Parties intending to be legally bound, do hereby execute this Agreement.

Marc Phayne

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DocuSigned by:
Marc Phayne
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By: _____
Marc Phayne
Individually

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Signatures continue on the next page.

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California Department of Real Estate:

By: DocuSigned by: Douglas R. McCauley E0EB224C6DC942A...

Name: Douglas R. McCauley

Title: Commissioner

Date: 12/30/2021

California Department of Financial Protection and Innovation:

By: DocuSigned by: Mary Ann Smith 2BA07EF2FA24408...

Name: Mary Ann Smith

Title: Deputy Commissioner

Date: 12/22/2021

Florida Office of Financial Regulation:

By: DocuSigned by: Gregory C. Oaks 7413268CF30C463...

Name: Gregory C. Oaks

Title: Director of Consumer Finance

Date: 12/28/2021

Oregon Department of Consumer and Business Services, Division of Financial Regulation:

By: DocuSigned by: Dorothy Bean 3ABBDAE5B42B41B...

Name: Dorothy Bean

Title: Chief of Enforcement

Date: 12/22/2021