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9 BEFORE THE DEPARTMENT OF CORPORATIONS

10 OF THE STATE OF CALIFORNIA

11 In the Matter of the Accusation of THE )  
CALIFORNIA CORPORATIONS )  
12 COMMISSIONER, )

13 Complainant, )

14 v. )

15 OCTAVIO AGUIRRE CAPACETE. )  
16 )

17 Respondent. )  
18 )

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**

19 **I.**

20 **INTRODUCTION**

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

23 This Accusation is submitted in support of the Commissioner's Notice of Intent to Revoke  
24 California Residential Mortgage Lending Act<sup>1</sup> ("CRMLA") Mortgage Loan Originator License No.  
25 173983 ("License") issued to Respondent OCTAVIO AGUIRRE CAPACETE ("Respondent")  
26 pursuant to California Financial Code sections 50141, 50301, 50327 and 50513.

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28 <sup>1</sup> California Financial Code §50000 *et seq.*

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

## 6 II.

### 7 PROCEDURAL HISTORY

8 On or about August 10, 2010, Respondent took the California State component of the Secure  
9 and Fair Enforcement for Mortgage Licensing Act of 2008 Mortgage Loan Originator Exam (“SAFE  
10 MLO Exam” or “Exam”)<sup>3</sup> in Lake Forrest, California. Respondent passed the SAFE MLO Exam  
11 with a score of eighty percent (80%). However, during the Exam, Respondent engaged in misconduct  
12 as prohibited by the Nationwide Mortgage Licensing System & Registry (“NMLS”) Rules of  
13 Conduct, the Mortgage Testing and Education Board of the Conference of State Bank Supervisors  
14 and the CRMLA (“Respondent’s Exam Misconduct<sup>4</sup>”).

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

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21 <sup>2</sup> Pursuant to California Financial Code §50301.

22 <sup>3</sup> The SAFE Mortgage Loan Originator Exam is comprised of two parts - a National Component and a State Component.  
23 All state licensed MLO’s are required to pass the National Component of the SAFE MLO Exam. All state licensed  
24 MLOs are required to pass a State Component of the SAFE MLO Exam for each jurisdiction in which they hold a license.  
25 In this particular case, the California portion of the SAFE MLO Exam must be passed by the examination candidate. The  
26 SAFE MLO Exam is administrated, reviewed and provided by the Mortgage Testing and Education Board of the  
27 Conference of State Bank Supervisors, located at 1155 Connecticut Ave., NW, 5<sup>th</sup> Floor, Washington, D.C., 20036. The  
28 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.

<sup>4</sup> 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.



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

3 **A. Exam Rules of Conduct**

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

12 **B. Respondent’s Exam Misconduct<sup>7</sup>**

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

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

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

19 While in the parking lot, Respondent went to a vehicle believed to be Respondent’s vehicle.  
20 Respondent picked up a packet of over sixty (60) documents located at or near the vehicle and  
21 reviewed and studied the documents. The packet of documents was comprised of study materials  
22 relating to and regarding the subject matter of the SAFE MLO Exam (“Documents”). While  
23 Respondent was in the parking lot reviewing the Documents, a Prometric Test Center Administrator  
24 (“Administrator”) approached Respondent. Upon seeing the Administrator, Respondent quickly  
25 discarded the Documents in or on a nearby dumpster.  
26  
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28 <sup>7</sup> See Footnote No. 4



1 case therefore, one must look back specifically to the time of the Original License Application in  
2 2010 and discern whether Respondent's Acts of Exam Misconduct establish a reasonable basis to  
3 deny the Original Application for License on September 1, 2010.

4 Here, such facts clearly exist. Respondent engaged in Acts of Exam Misconduct<sup>8</sup> on August  
5 10, 2010. Respondent's Original License Application was dated on or about August 17, 2010.  
6 Therefore, the facts regarding Respondent's Acts of Exam Misconduct existed at the time of the  
7 Original License Application. Therefore, Respondent's Exam Misconduct may be considered by the  
8 Commissioner in determining the approval or denial of the Original License Application.

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

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

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

22 **a. Mortgage Loan Originator**

23 The duties and obligations of a mortgage loan originator require a high degree of good  
24 character, trustworthiness, fairness, and professionalism. A mortgage loan originator must act in a  
25 quasi fiduciary duty capacity. Also, a mortgage loan originator is often privy to confidential financial  
26 information and to methods in which to access financial resources. Further, mortgage loan originators  
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28 <sup>8</sup> See Footnote No. 4

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

7 **b. Respondent's Acts of Exam Misconduct Are Probative**

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

14 **(1) Disobeying Rules**

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

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

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

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

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

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

### 10 (3) Attempted Bribery of Administrator

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

### 22 c. Findings and Conclusions Regarding Probative Acts of Exam Misconduct

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

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

3 **d. Conclusion That Existing Facts Are Reasonable To Warrant Action**

4 California Financial Code section 50141 permitted the non-issuance of a mortgage loan  
5 originator license at the time of Respondent's application where the applicant has not demonstrated  
6 financial responsibility, character, and general fitness as to command the confidence of the  
7 community and to warrant a determination that the mortgage loan originator will operate honestly,  
8 fairly, and efficiently within the purposes of the Mortgage Loan Originator Law of California. The  
9 foregoing establishes that, at the time of the Original License Application, Respondent did not  
10 demonstrate financial responsibility, character, and general fitness as to command the confidence of  
11 the community and to warrant a determination that he would operate honestly, fairly, and efficiently  
12 within the purposes of the Mortgage Loan Originator Law of California. As such, reasonable basis  
13 exists to revoke the License issued to Respondent, pursuant to California Finance Code sections  
14 50141, 50327, and 50513.

15 **V.**

16 **STATUTORY AUTHORITY**

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

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

24 California Financial Code section 50301 provides in pertinent part:

25 Without limitation, the functions, powers, and duties of the  
26 commissioner include the following:  
27 (b) To revoke or suspend for cause any license as provided by this  
28 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                           PRESTON DuFAUCHARD  
                          Sacramento, CA                               California Corporations Commissioner

By \_\_\_\_\_  
  
Marisa I. Urteaga-Watkins  
Corporations Counsel