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DEPARTMENT OF REAL ESTATE

BY: C-3

LISSETE GARCIA, Counsel (SBN 211552)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
(Direct) (213) 576-6914
(Fax) (213) 576-6917

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	NO. H-37997 LA
)	
JMM FINANCIAL, INC.,)	<u>ACCUSATION</u>
JOSE F. CASARES, individually)	
and as former designated officer)	
of JMM Financial, Inc.,)	
LILIA MARTINI,)	
MARTIN MANUEL MARQUEZ, and)	
TIM J. PISCITELLO,)	
)	
Respondents.)	

The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against JMM FINANCIAL, INC., JOSE F. CASARES, individually and as former designated officer of JMM Financial, Inc., LILIA MARTINI, MARTIN MANUEL MARQUEZ, and TIM J. PISCITELLO (collectively "Respondents") is informed and alleges as follows:

1.

The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

2.

At all times herein mentioned, Respondents were licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code).

3.

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

4.

From December 28, 2006, through December 27, 2010, JMM FINANCIAL, INC. ("JFI") was licensed as a corporate real estate broker, License No. 01788706. From December 27, 2010, through December 28, 2010, Respondent JFI was licensed to act by and through Respondent JOSE F. CASARES as its officer pursuant to Code Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law. Respondent JFI's license expired on December 27, 2010. The Department of Real Estate ("Department") retains jurisdiction pursuant Code Section 10103.

5.

From October 13, 2006, through the present, Respondent JOSE F. CASARES ("CASARES") has been licensed as a real estate broker, License No. 01415285.

6.

From August 30, 2004, through the present, Respondent LILIA MARTINI ("MARTINI") has been licensed as a real estate salesperson, License No. 01440375. Respondent MARTINI was licensed under Respondent JFI as her employing broker from April 18, 2009, through August 8, 2010.

7.

From June 27, 2005, through the present, Respondent MARTIN MANUEL MARQUEZ ("MARQUEZ") has been licensed as a real estate salesperson, License No. 01507390. From June 30, 2009, through February 27, 2011, Respondent MARQUEZ was

1 licensed under the employ of Respondent JFI.

2 8.

3 From June 17, 1997, through the present, TIM J. PISCITELLO ("PISCITELLO")
4 has been licensed by the Department as a real estate salesperson, license no. 01222885. From
5 January 8, 2006, through the present, Respondent PISCITELLO has been licensed as no business
6 activity (NBA) with no employing broker.

7
8 FIRST CAUSE OF ACCUSATION
9 (Suspended Corporation)
10 (JFI/CASARES)

11 9.

12 Regulation 2742, subdivision (c) states: "[A] corporation licensed under Section
13 10211 of the Code shall not engage in the business of a real estate broker while not in good legal
14 standing with the Office of the Secretary of State."

15 10.

16 Respondent JFI's corporate rights were suspended by the California Franchise
17 Tax Board on October 1, 2009. No notice of the change in corporate status was provided to the
18 Department by either JFI or CASARES.

19 11.

20 The suspension of Respondent JFI's corporate status is in violation of Regulation
21 2742, subdivision (c) and constitutes grounds to suspend or revoke Respondent JFI's corporate
22 real estate broker license pursuant to Code Sections 10177(d) and/or 10177(g).

23 12.

24 The conduct, acts and/or omissions of Respondent CASARES as set forth in
25 Paragraph 10, above, in failing to adequately supervise the activities of Respondent JFI to ensure
26 compliance with the Real Estate Law, is in violation of Code Section 10159.2 and constitutes
27 grounds to discipline the license and/or license rights of Respondent CASARES pursuant to
28 Code Sections 10177(h), 10177(d) and/or 10177(g).

SECOND CAUSE OF ACCUSATION
ADVANCE FEE VIOLATIONS/FRAUD/DISHONEST DEALING
(Respondents JFI, CASARES, MARTINI, and MARQUEZ)

13.

There is hereby incorporated in this Second, separate Cause of Accusation, all of the allegations contained in Paragraphs 1 through 12 above, with the same force and effect as if herein fully set forth.

14.

Code Section 10131 defines a real estate broker as a person who: (a) sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listing of, or negotiates the purchase, sale or exchange of real property or a business opportunity; or (d) solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property. Code Section 10131.2 defines a real estate broker as a person who engages in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a loan or loans thereon.

15.

Code Section 10026, in pertinent part, defines an advance fee as a fee that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license. A person who proposes to collect an advance fee as defined in Code Section 10026 must submit to the Commissioner not less than ten calendar days before publication or other use, all materials to be used in advertising, promoting, soliciting and negotiating an agreement calling for the payment of an advance fee including the form of advance fee agreement proposed for use, pursuant to Section 2970, Regulations of the Real Estate Commissioner, Title 10, Chapter 6, California Code of Regulations. Code Section 10085 also allows the Commissioner to require

1 that any all materials used in obtaining advance fee agreements, including contract forms, be
2 submitted at least 10 calendar days before they are used.

3 16.

4 Home Solutions Financial is a fictitious business name of Respondent JFI.

5 17.

6 Home Financial Solutions, LLC, Home Solutions Financial, LLC, Impact
7 Marketing Alliance, LLC, LM Casitas Realty, LM Casitas Real Estate, Inc., and Martini Real
8 Estate Financial Services have never been licensed by the Department in any capacity.

9 18.

10 Respondent PISCITELLO owns and is a director of Home Financial Solutions,
11 LLC, Home Solutions Financial, LLC, and Impact Marketing Alliance, LLC. Respondent
12 MARTINI owns and is a director of LM Casitas Realty, LM Casitas Real Estate, Inc., and
13 Martini Real Estate Financial Services.

14 19.

15 2023 Lakeridge Circle #202

16 On or about April 6, 2009, Respondent MARTINI offered to assist Enrique C.
17 Martin with the short sale purchase of real property located at 2023 Lakeridge Circle #202,
18 Chula Vista, California ("Lakeridge property"). MARTINI instructed Enrique C. Martin to pay a
19 deposit of \$2,800 toward the purchase of the Lakeridge property. MARTINI instructed Martin to
20 make the \$2,800 cashier's check payable to Home Solutions Financial, LLC. MARTINI gave
21 Enrique C. Martin an acknowledgement and receipt form under the letterhead of Impact
22 Marketing Alliance, LLC and Home Solutions Financial, LLC. The receipt form falsely
23 indicated that the \$2,800 deposit received by MARTINI from Enrique C. Martin was for a
24 forensic loan audit. Enrique C. Martin received a business card from MARTINI for LM Casitas
25 Realty.

26 20.

27 Respondents CASARES, MARTINI, and MARQUEZ, each made
28 misrepresentations to Enrique C. Martin about the status of his purchase of the Lakeridge

1 property. Respondents never placed Enrique C. Martin's \$2,800 deposit in escrow or a trust
2 account. A residential purchase agreement for the Lakeridge property was never provided to
3 Enrique C. Martin and Respondents never gave Enrique C. Martin an accounting of what
4 happened to his \$2,800 deposit. Respondents refused to refund Enrique C. Martin's deposit to
5 him after he requested a refund of his money.

6
7 21.

8 The acknowledgement and receipt form provided to Enrique C. Martin constitutes
9 an advance fee agreement which was not submitted to the Department prior to use as was
10 required under Code Section 10085 and Regulation Section 2970.

11 22.

12 The advance fees collected by Respondents were not deposited in a trust account
13 as required under Code Section 10146. Respondents did not provide an accounting to principals,
14 in violation of Code Section 10146 and Regulation Section 2972.

15 23.

16 The conduct, acts and/or omissions of Respondents JFI and CASARES, as set
17 forth above, in collecting advance fees from prospective purchasers or borrowers pursuant to a
18 written fee agreement, which agreement was not submitted to the Department for review prior to
19 use, is in violation of Code Section 10085 and Regulation Section 2970, and constitutes grounds
20 for the suspension or revocation of the licenses and license rights of Respondents JFI and
21 CASARES, pursuant to Code Sections 10177(d) or 10177(g).

22 24.

23 The conduct, acts and/or omissions of Respondents JFI and CASARES, as set
24 forth above, in collecting advance fees from prospective purchasers or borrowers and failing to
25 deposit the advance fees into a trust account and provide an accounting to principals, is in
26 violation of Code Section 10146 and Regulation Section 2972, and constitutes grounds for the
27 suspension or revocation of the licenses and license rights of Respondents JFI and CASARES
28 pursuant to Code Sections 10177(d) or 10177(g).

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25.

The conduct, acts and/or omissions of Respondents MARTINI, MARQUEZ, and CASARES as set forth above, in making misrepresentations and engaging in fraud or dishonest dealing with purchaser Enrique C. Martin, constitutes grounds for the suspension or revocation of the licenses and license rights of Respondents MARTINI, MARQUEZ, and CASARES pursuant to Code Sections 10176(a), 10176(b), and 10176(i).

26.

Respondent MARTINI's use of unlicensed fictitious business names LM Casitas Realty, LM Casitas Real Estate, Inc. or Martini Real Estate Financial Services to perform or offer to perform activities that require a real estate broker license is a violation of Code Section 10130 and constitutes grounds for the suspension or revocation of the license and license rights of Respondent MARTINI pursuant to Code Sections 10177(d) and/or 10177(g).

27.

Respondent PISCITELLO's use of unlicensed fictitious business names Home Financial Solutions, LLC, Home Solutions Financial, LLC, and Impact Marketing Alliance, LLC, to perform or offer to perform activities that require a real estate broker license is a violation of Code Section 10130 and constitutes grounds for the suspension or revocation of the license and license rights of Respondent PISCITELLO pursuant to Code Sections 10177(d) and/or 10177(g).

892 Camino La Pas

28.

On or about October 14, 2009, Maria Oliva ("Oliva") received a notice of default on real property she owned located at 892 Camino La Pas, Chula Vista, California ("Camino La Pas property"). Oliva was referred to Respondent MARTINI for assistance to avoid foreclosure of the Camino La Pas property. Respondent MARTINI offered to assist Oliva and instructed Oliva to sign several documents. Unbeknownst to Oliva, MARTINI recorded a grant deed for

1 the Camino La Pas property which transferred ownership to MARTINI. MARTINI instructed
2 Oliva and her son to move out of the Camino La Pas property. Thereafter, MARTINI used the
3 Camino La Pas property for her own personal benefit.

4 29.

5 The conduct, acts and/or omissions of Respondents MARTINI as set forth above,
6 in making misrepresentations and engaging in fraud or dishonest dealing with borrower Maria
7 Oliva, constitutes grounds for the suspension or revocation of the license and license rights of
8 Respondent MARTINI pursuant to Code Sections 10176(a), 10176(b), and 10176(i).

9
10 THIRD CAUSE OF ACCUSATION
11 (Use of Unlicensed Fictitious Business Name)

12 30.

13 There is hereby incorporated in this Third, separate, Cause of Accusation, all of
14 the allegations contained in Paragraphs 1 through 29 above, with the same force and effect as if
15 herein fully set forth.

16 31.

17 The activities described in Paragraphs 19 and 20, above, require a real estate
18 license under Code Section 10131, subdivision (d). Use of a fictitious business name for
19 activities requiring the issuance of a real estate license requires the filing of an application for the
20 use of such name with the Department in accordance with the provisions of Code Section
21 10159.5 and Regulation 2731.

22 32.

23 Respondents JFI and CASARES acted without Department authorization in using
24 the fictitious business names Home Financial Solutions, LLC, Home Solutions Financial, LLC,
25 Impact Marketing Alliance, LLC to engage in activities requiring the issuance of a real estate
26 license.

1 33.

2 The conduct, acts and/or omissions of Respondents JFI and CASARES, as set
3 forth in Paragraphs 31 and 32 above, violate Code Section 10159.5 and Regulation 2731, and are
4 cause for the suspension or revocation of the licenses and license rights of Respondents JFI and
5 CASARES pursuant to Code Sections 10177(d) and/or 10177(g).

6
7 FOURTH CAUSE OF ACCUSATION
8 (AUDIT LA 100085)

9 34.

10 There is hereby incorporated in this Fourth, separate Cause of Accusation, all of
11 the allegations contained in Paragraphs 1 through 33, above, with the same force and effect as if
12 herein fully set forth.

13 Audit LA 100085

14
15 35.

16 On October 28, 2011, the Department completed an audit examination of the
17 books and records of Respondent JFI's loan modification activities. The audit examination
18 covered a period of time from September 1, 2008 to February 28, 2011. The audit examination
19 revealed violations of the Code and the Regulations as set forth in the following paragraphs, and
20 more fully discussed in Audit Report LA 100085 and the exhibits and work papers attached to
21 said Audit Report.

22 36.

23 At all times mentioned, in connection with the activities described in Paragraph
24 35, above, JFI accepted or received funds including funds in trust ("trust funds") from or on
25 behalf of actual or prospective parties to transactions including buyers, sellers, lenders and
26 borrowers handled by JFI and thereafter made deposits and or disbursements of such funds.
27 From time to time herein mentioned during the audit period, said trust funds were deposited
28 and/or maintained by JFI in the bank accounts as follows:

1 Bank Account 1

2 JMM FINANCIAL INC DBA Home Solutions Financial

3 Account No. 1894091162

4 Comerica Bank

5 Brea, California

6 Bank Account 2

7 Milburn Associates LLC DBA HSF Marketing

8 Account No. 1894091089

9 Comerica Bank

10 Brea, California

11 Bank Account 3

12 JMM FINANCIAL INC DBA Home Solutions

13 Account No. 02090-75095

14 Bank of America

15 San Francisco, California

16 37.

17 Violations

18 In the course of JFI's loan modification activities during the examination period
19 described in Paragraph 35, Respondent JFI acted in violation of the Code and the Regulations as
20 follows:
21

22 (A) Bank Account 1 (B/A-1) had a minimum shortage of \$1,000 as of January
23 22, 2010. Bank Account 2 (B/A-2) had a minimum shortage of \$2,500 as of October 8, 2009.
24 B/A -1 and B/A-2 were used for the handling of advance fees related to JFI's loan modification
25 activities. Respondent JFI permitted, allowed or caused the disbursement of trust funds from
26 B/A -1 and B/A-2, where the disbursement of funds reduced the total of aggregate funds in the
27 accounts, to an amount which was less than the existing aggregate trust fund liability of JFI to
28 every principal who was an owner of said funds, without first obtaining the prior written consent

1 of the owners of said funds, as required by Code Section 10145 and Regulations 2832.1 and
2 2951.

3 (B) Respondent JFI charged and collected advance fees for loan modification
4 activities prior to submitting an advance fee agreement to the Department for review. The
5 Department issued a no-objection letter to JFI on June 11, 2009. After June 11, 2009,
6 Respondent JFI used a different advance fee agreement for loan modifications than the advance
7 fee agreement that had been reviewed by the Department, in violation of Code Section 10085
8 and Regulation 2970.

9 (C) Respondent JFI deposited trust funds into JFI's general operating accounts
10 B/A-1 and B/A-2 and failed to itemize accounting content as required by Code Section 10146
11 and Regulation 2972.

12 (D) Respondent JFI charged and collected advance fees for loan modification
13 activities after October 10, 2009, in violation of Code Sections 10085.6, 10146 and Regulation
14 2832.

15 (E) Respondent JFI failed to establish and/or maintain a trust account at a bank or
16 other recognized financial institution in the name of the broker for deposit of advance fees
17 collected by JFI, thereby depositing trust funds in JFI's general accounts (B/A-1, B/A-2 & B/A-
18 3) and thus commingling trust funds with JFI's funds, in violation of Code Sections 10145 and
19 10176(e) and Regulation 2832.

20 (F) Advance fees that were collected from borrowers in connection with loan
21 modification transactions were deposited into Respondent JFI's general business account (B/A-
22 1) and used for JFI's general operating expenses. The balance of JFI's general business account
23 was reduced to an amount that was less than the amount of trust funds deposited, thus,
24 conversion of trust funds, in violation of Code Sections 10145 and 10177(j).
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1 (G) Respondent JFI failed to maintain a control record in the form of a columnar
2 record in chronological order of all trust funds including advance fees received, deposited and
3 disbursed, in violation of Code Section 10145 and Regulation 2831.

4 (H) Respondent JFI failed to maintain a separate record for each beneficiary or
5 transaction, thereby failing to account for all advance fees collected, in violation of Code Section
6 10145 and Regulation 2831.1.

7 (I) Respondent CASARES was not an authorized signor on B/A-2 from May 18,
8 2009 to October 7, 2009. Respondent JFI allowed Tina P. Nguyen to be a signatory on JFI's
9 general business accounts (B/A-1 & B/A-3), at a time when she was not licensed by the
10 Department in any capacity, in violation of Code Section 10145 and Regulation 2834.

11 (J) Respondent JFI employed or compensated unlicensed individuals, Roxana
12 Carreon, Armando Villasenor, Natalie Contreras, Maria Datan, Stephanie St. Mary, Virginia
13 Tapia, Meagan Quesada, Bene Resincoy, Dora Almazan, Maria Zacarias, Sotero Trejo and
14 Haidu Gaza, to act in the capacity of loan agents for JFI, in violation of Code sections 10130 and
15 10137.

16 (K) Respondent JFI conducted real estate activities by using unlicensed fictitious
17 business names "HSF Marketing", "Home Solutions Financial, LLC", "Impact Marketing
18 Alliance", and "Milburn Associates, LLC", in violation of Code Section 10159.5 and Regulation
19 2731.

20 (L) JFI conducted loan modification activities out of a branch office located at
21 1551 N. Tustin Ave., Suite 150, Santa Ana, California, prior to obtaining a branch office license
22 from the Department, in violation of Code section 10163.

23 (M) JFI engaged in real estate activities while not in good legal standing with the
24 Office of the Secretary of State after October 1, 2009, in violation of Regulation 2742.
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(N) After being given reasonable notice, Respondent JFI failed to retain records in connection with its real estate activities requested by the Department, in violation of Code Section 10148.

(O) Respondent CASARES failed to exercise reasonable control and supervision over the activities conducted on behalf of JFI and its licensees and employees as necessary to secure full compliance with the Real Estate Law, in violation of Code Sections 10177(h) and 10159.2 and Regulation 2725.

Disciplinary Statutes

38.

The conduct of Respondent JFI described in Paragraph 37, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
37(A)	Code Section 10145 and Regulation 2832.1, 2951
37(B)	Code Section 10085 and Regulation 2970
37(C)	Code Section 10146 and Regulation 2972
37(D)	Code Sections 10085.6, 10145 and 10146 and Regulation 2832
37(E)	Code Sections 10145 and 10176(e) and Regulations 2832
37(F)	Code Section 10145 and 10177(j)
37(G)	Code Section 10145 and Regulation 2831
37(H)	Code Section 10145 and Regulation 2831.1
37(I)	Code Section 10145 and Regulation 2834
37(J)	Code Section 10130 and 10137
37(K)	Code Section 10159.5 and Regulation 2731
37(L)	Code Section 10163
37(M)	Regulation 2742
37(N)	Code Section 10148

1 39.

2 The foregoing violations constitute cause for the suspension or revocation of the
3 real estate license and license rights of Respondent JFI, as aforesaid, under the provisions of
4 Code Sections 10176(e) for commingling, 10177(d) for violation of the Real Estate Law and/or
5 10177(g) for negligence.

6 40.

7 The conduct, acts and/or omissions of Respondent CASARES, in allowing
8 Respondent JFI to violate the Real Estate Law, as set forth above, constitutes a failure by
9 Respondent CASARES, as the officer designated by the corporate broker licensee, to exercise
10 the supervision and control over the activities of Respondent JFI, as required by Code Section
11 10159.2 and Regulation 2725, and is cause to suspend or revoke the real estate licenses and
12 license rights of Respondent CASARES under Code Sections 10177(h), 10177(d) and/or
13 10177(g).

14 FIFTH CAUSE OF ACCUSATION

15 (AUDIT LA 100086)

16 41.

17 There is hereby incorporated in this Fifth, separate Cause of Accusation, all of the
18 allegations contained in Paragraphs 1 through 40, above, with the same force and effect as if
19 herein fully set forth.

20 Audit LA 100086

21 42.

22 On October 12, 2011, the Department completed an audit examination of the
23 books and records of Respondent CASARES' real estate activities. The audit examination
24 covered a period of time from September 1, 2008 to February 28, 2011. The audit examination
25 revealed a violation of the Code as set forth in the following paragraph, and more fully discussed
26 in Audit Report LA 100086 and the exhibits and work papers attached to said Audit Report.
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28

1 43.

2 In connection with the activities described in Paragraph 42, above, CASARES did
3 not maintain a definite place of business to serve as his office for the transaction of business and
4 the place where his license is displayed since June 18, 2010, in violation of Code Section 10162
5 and Regulation 2715.

6 44.

7 The foregoing violations constitutes cause for the suspension or revocation of the
8 real estate license and license rights of Respondent CASARES, as aforesaid, under the
9 provisions of Code Sections 10177(d) for violation of the Real Estate Law and/or 10177(g) for
10 negligence.

11 45.

12 Code Section 10106 provides, in pertinent part, that in any order issued in
13 resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner
14 may request the administrative law judge to direct a licensee found to have committed a violation
15 of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement
16 of the case.

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all licenses and license rights of Respondents JMM FINANCIAL, INC., JOSE F.
4 CASARES, individually and as former designated officer of JMM Financial, Inc., LILIA
5 MARTINI, MARTIN MANUEL MARQUEZ, and TIM J. PISCITELLO under the Real Estate
6 Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of investigation
7 and enforcement as permitted by law, and for such other and further relief as may be proper
8 under other provisions of law.

9 Dated at Los Angeles, California

10 this 12 day of March, 2012.

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14 VERONICA KILPATRICK
15 Deputy Real Estate Commissioner
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23 cc: JMM Financial, Inc.
24 Jose F. Casares
25 Lilia Martini
26 Martin Manuel Marquez
27 Tim J. Piscitello
28 Veronica Kilpatrick
Sacto.
Andy Chen-Audits