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DEPARTMENT OF REAL ESTATE
BY:

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

FIRST AMERICAN HOME LOANS INC; and,

MARK H. BRYAN, individually and as designated officer of First American Home Loans Inc.;

Respondents.

ACCUSATION

Respondents.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against FIRST AMERICAN HOME LOANS INC. and MARK H. BRYAN, individually and as designated officer of Direct Mortgage Funders Inc., alleges as follows:

1.

The Complainant, Maria Suarez, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation.

2.

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.

License Status

A. FIRST AMERICAN HOME LOANS INC ("FAHLI"). At all times mentioned, Respondent FAHLI was licensed or had license rights issued by the Department of Real Estate (Department) as a real estate broker. On November 28, 2000, FAHLI was originally licensed as a corporate real estate broker. At all times mentioned, Respondent FAHLI was authorized to act by and through Respondent MARK H. BRYAN as FAHLI's designated broker pursuant to Business and Professions Code (hereinafter "Code") Sections 10159.2 and 10211 to be responsible for ensuring compliance with the Real Estate Law.

B. MARK H. BRYAN ("BRYAN"). At all times mentioned, Respondent BRYAN was licensed or had license rights issued by the Department as a real estate broker. On August 25, 2000, BRYAN was originally licensed as a real estate broker. Since its inception on November 28, 2000, BRYAN became the designated officer of FAHLI.

On March 3, 2011, in Departmental Case No. H-37103 LA, an Accusation was filed against Respondent BRYAN that resulted in discipline by way of revocation of Respondent's broker license effective January 20, 2012, and issuance of a restricted salesperson license on February 17, 2012, on terms and conditions as more fully set forth below in Paragraph 17.

D. At all times mentioned, MARK H. BRYAN is FAHLI's president, director, treasurer, secretary, designated officer and sole shareholder.

Brokerage

3.

At all times mentioned, in the City and County of Orange, FAHLI and BRYAN acted as real estate brokers conducting licensed activities within the meaning of:

A. Code Section 10131(d). Respondents engaged in activities with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed and consummated on

behalf of others for compensation or in expectation of compensation and for fees often collected in advance.

B. Code Section 10131(d) and 10131.2. Respondents advertised, solicited and offered to provide loss mitigation and loan modification services to economically distressed homeowners seeking adjustments to the terms and conditions of their home loans including, but not limited to, repayment plans, forbearance plans, partial claims, and reduction in principal or interest, extenuations, foreclosure prevention and short sales.

FIRST CAUSE OF ACCUSATION (Audit Examination)

4.

On May 22, 2012, the Department completed an audit examination of the books and records of FAHLI limited to the mortgage loan brokerage/loan modification activities only, as described in Paragraph 3, which require a real estate license. The audit examination covered a period of time beginning on January 1, 2010 to February 16, 2012. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 110111 and the exhibits and work papers attached to said audit report.

Trust Account

5.

At all times mentioned, in connection with the activities described in Paragraph 4, above, FAHLI accepted or received funds including funds in trust ("trust funds") from or on behalf of actual or prospective parties to transactions including buyers, sellers, lenders and borrowers and loan modification applicants handled by FAHLI and thereafter made deposits and or disbursements of such funds. From time to time herein mentioned, during the audit period, said trust funds were deposited and/or maintained by FAHLI in the bank accounts as follows:

1 "First American Home Loans Inc. *******08410" 2 Bank of America 3 Anaheim Hills, California 4 "First American Home Loans Inc. 5 ******94926" 6 Wells Fargo Bank Portland, Oregon 7 8 **Audit Violations** 9 6. 10 In the course of activities described in Paragraphs 3 and 5, above, and during the 11 examination period described in Paragraph 4, Respondents FAHLI and BRYAN acted in 12 violation of the Code and the Regulations in which Respondents: 13 (a) Failed to retain a true and correct copy of a Department of Real Estate 14 approved Mortgage Loan Disclosure Statement signed by the broker, in violation of Code 15 Section 10240. 16 (b) Failed to display the FAHLI's license number and/or Mortgage Loan 17 18 Originator unique identifier on the Mortgage Loan Disclosure Statements, in violation of Code 19 Section 10236.4(b). 20 (c) Collected advance fees within the meaning of Code Section 10026 from 21 homeowners seeking loan modification services wherein FAHLI failed to provide loan 22 modification applicants with a pre-approved advance fee agreement from the Department in the 23 form of a no objection letter, in violation of Code Section 10085 and Regulation 2970. 24 25 (d) With reference to the lack of an advance fee agreement, FAHLI failed to 26 provide a complete description of services to be rendered provided to each homeowner-borrower

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("G/A 1")

("G/A 2")

in 10 point type font and, an allocation and disbursement of the amount collected as the advance fee for each loan modification, in violation of Code Section 10146 and Regulation 2972.

- (e) Mixed and commingled trust funds and FAHLI's funds by depositing advance fees received for loan modification service fees into FAHLI's general operating accounts, in violation of Code Sections 10145 and 10176(e) and Regulation 2832.
- (f) Failed to maintain a control record through the instrumentality of a daily journal in chronological order for each beneficiary or transaction, thereby failing to account for advance fees collected for loan modification services, in violation of Code Section 10145 and Regulation 2831.
- (g) Failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all advance fees collected for loan modification services, in violation of Code Section 10145 and Regulation 2831.1.
- (h) Failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all trust funds received and disbursed by the bank accounts that contain trust funds for advance fees collected for loan modification services, in violation of Code Section 10145 and Regulation 2831.2.
- (i) Claimed, charged and collected advance fees after October 10, 2009, the SAFE ACT Initiation Date, for negotiating, arranging and/or offering to broker mortgage loans and loan modifications and other forms of mortgage loan forbearance for fees paid by the borrower J&E D. Respondents received and collected advance fees totaling \$800.00 from homeowner J&E D before FAHLI had fully performed each and every service for which FAHLI had contracted to perform or represented that would be performed during the period of October 11,

Regulation 2832.

(j) FAHLI ostensibly performed acts for which a real estate license is required, including loss mitigation and loan modification services for prospective loan modification applicants after FAHLI's broker license cancelled and before reissuance, in violation of Code Section 10130. FAFHI was originally licensed by the Department on November 28, 2000 to act as a corporate broker. BRYAN cancelled FAHLI's license with the Department effective September 12, 2003. FAHLI's was relicensed effective June 17, 2010. During the interregnum, FAFHI and BRYAN conducted loan modification activity for the two borrowers tabled below:

2009 to January 31, 2011, in violation of Code Sections 10085.6, 10145 and 10146 and

Table: Advance Fees Collected for Loan Modifications unlicensed period

	Name	Advance Fee	Time Period
		Paid	Collected
1	J&E D	\$1600.00	Prior to and after June 17, 2010
2	Henderson	\$ 450.00	Prior to and after June 17, 2010

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Discipline Statutes and Regulations

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The conduct of Respondents FAHLI and BRYAN, described in Paragraph 6,

7.

above, violated the Code and the Regulations as set forth below:

5	<u>PARAGRAPH</u>	PROVISIONS VIOLATED
6	7(a)	Code Section 10240 and Regulation 2840
7	7(b)	Code Section 10236.4(b)
8	7(c)	Code Section 10085 and Regulation 2970
9	7(d)	Code Section 10146 and Regulation 2972
10	7(e)	Code Sections 10145 and 10176(e) and Regulation 2832
11	7(f)	Code Section 10145 and Regulation 2831
12	7(g)	Code Section 10145 and Regulation 2831.1
13	7(h)	Code Section 10145 and Regulation 2831.2
14	7(i)	Code Sections 10085.6, 10146 and 10145 and Regulation 2832
15	7(j)	Code Section 10130 (FAHLI)

The foregoing violations constitute cause for discipline of the real estate license and license rights of Respondents FAHLI and BRYAN, as the case may be, under the provisions of Code Sections 10176(e), 10177(d) and/or 10177(g).

SECOND CAUSE OF ACCUSATION

(Loan Modification Services) (Elizabeth/Jose J&E D)

8.

At all times mentioned herein, Respondents FAHLI and BRYAN, engaged in the business of providing loan modification services and an advance fee brokerage requiring a real estate license to operate, within the definition of Code Sections 10131(d) and 10131.2.

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General Allegations

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During the audit period and continuing thereafter to date, FAHLI and BRYAN solicited economically distressed homeowners facing foreclosure and eviction from their homes, offered loss mitigation and loan modification services, charged, claimed and collected advance fees for services not rendered, for fees not refunded, and for loan modifications not obtained.

Specific Allegations

10.

Respondents FAHLI and BRYAN offered loss mitigation/loan modification services to homeowner-applicant(s) seeking pre-foreclosure work-outs' or downward adjustments or payment extenuations to their home mortgage. Respondents collected advanced fees directly from homeowner-applicant Elizabeth and Jose J&E D (J&E D), without possessing a pre-approved advance fee agreement from the Department. Instead, Respondent's agreement with J&E D was oral. Thereafter, Respondents FAHLI and BRYAN failed to provide services or to obtain the loan modification sought, nor fully refund the advance fees collected as tabled below:

Table: Advance Fees for Loan Modification included in Audit Report LA110111: Issue Two

Name	Date of	Advance	Loan	After	Result
	Transaction	Fee Paid	Modification	SB	
			Approved?	94?	
J&E D	May 10, 2010	\$800.	No. No services rendered	Yes	No Refund

	Loan Modification Violations and Disciplinary Statutes	
2	11.	
3	The conduct of Respondents FAHLI and BRYAN violated the Code and the	
4	Regulations as set forth below.	
5	12.	
6	12(a) Code Section 10176(a) for substantial misrepresentation of loan	
7	modification services contracted for but not provided or refunded.	
8	12(b) Code Section 10176(b) for making false promises of a character likely to	
9	influence, persuade or induce the tabled homeowner-applicants to pay advance fees for loan	
10	modification services contracted for but not provided.	
11	12(c) Code Section 10176(i) for fraud and dishonest dealing.	
12	THIRD CAUSE OF ACCUSATION	
13		
14	(Negligence)	
15	13.	
16	The overall conduct of Respondents FAHLI and BRYAN constitutes negligence	
17	and is cause for discipline of the real estate license and license rights of said Respondents	
18	pursuant to the provisions of Code Section 10177(g).	
19	FOURTH CAUSE OF ACCUSATION	
20	(Fiduciary Duty)	
21	14.	
22	The overall conduct of Respondents FAHLI and BRYAN constitute a breach of	
23	their fiduciary duty of good faith, trust, confidence and candor, within the scope of their	
24	brokerage relationship, which is owed to the clientele and beneficiaries of FAHLI's brokerage, in	

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and license rights of said Respondents pursuant to said section.

violation of Code Section 10177(g), and constitutes cause for discipline of the real estate license

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FIFTH CAUSE OF ACCUSATION

(Supervision and Compliance)

15.

The overall conduct of Respondent BRYAN constitutes a failure on said Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of FAHLI, as required by Code Section 10159.2 and Regulation 2725, and to keep FAHLI in compliance with the Real Estate Law, and is cause for discipline of the real estate license and license rights of Respondent BRYAN pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

PRIOR DEPARTMENT ACTION

16.

On January 20, 2012, in Departmental Case No. H-37103 LA, a Stipulation and Agreement became effective for violations of Sections 10085, 10145 and 10146 of the California Business and Professions Code and Sections 2832, 2832.1, 2970 and 2972 of Title 10, Chapter 6, California Code of Regulations s based on an Accusation filed on March 3, 2011. Respondent BRYAN's real estate broker license were revoked with a right to restricted real estate salesperson license, issued on February 17, 2012, and suspended for ninety (90) days on terms and conditions including commutation by a monetary penalty.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of Respondents FIRST AMERICAN HOME LOANS INC. and MARK H. BRYAN, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law including but not limited to: (1) restitution; (2) costs of audit pursuant to Code Section 10148; and (3) costs of investigation and enforcement pursuant to Code Section 10106.

Dated at Los Angeles, California

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this // the day of allewher 2012

Deputy Real Estate, Commissioner

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First American Home Loans Inc. c/o John Paul Rock designated officer Mark H. Bryan former designated officer Maria Suarez Sacto Enforcement - Eleazar Galano Audits - Gina King