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DEC 13 2012

DEPARTMENT OF REAL ESTATE
BY: [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of BEST FUNDING HOME LOANS, INC.; FERNANDO ARTURO PEREZ, individually and as designated officer of Best Funding Home Loans, Inc.; ARTURO MERCADO; RICARDO DELARIVA; and MONICA VARGAS, Respondents.	)	DRE No. H-36896 LA OAH No. 2011031627

DECISION

The Proposed Decision dated November 8, 2012, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on January 2, 2013.

IT IS SO ORDERED 12/9/2012.

Real Estate Commissioner

[signature]

By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:	Case No. H-36896 LA
BEST FUNDING HOME LOANS, INC.; FERNANDO ARTURO PEREZ, individually and as designated officer of Best Funding Home Loans, Inc.; ARTURO MERCADO; RICARDO DE LA RIVA; and MONICA VARGAS, Respondents.	OAH No. 2011031627

PROPOSED DECISION

This matter was heard on November 9 and 10, 2011, by Erlinda G. Shrenger, Administrative Law Judge with the Office of Administrative Hearings, in Los Angeles.

Lissete Garcia, Staff Counsel, represented Maria Suarez (Complainant), a Deputy Real Estate Commissioner for the Department of Real Estate (Department), State of California.

Fernando Arturo Perez (Respondent Perez), Arturo Mercado (Respondent Mercado), and Ricardo De La Riva (Respondent De La Riva), were present and individually represented themselves. No appearance was made by or on behalf of Monica Vargas or Best Funding Home Loans, Inc., as their respective licenses were revoked by default prior to this hearing.

Prior to the presentation of closing argument, Complainant's counsel amended paragraph 18 on page 6 of the Accusation as follows: (1) At line 8, add the phrase "Perez and Best Funding Home Loans, Inc." between the words "Respondents" and "as"; (2) at line 10, add the phrase "Perez and Best Funding Home Loans, Inc." between the words "Respondents" and "pursuant"; and (3) at line 11, add the following sentence after the period: "The conduct, acts and/or omissions of Respondents De La Riva and Mercado violated Business and Professions Code sections 10130 and 10137, and are cause for the suspension or revocation of the licenses of Respondents De La Riva and Mercado pursuant to Business and Professions Code section 10177, subdivisions (d) and/or (g)."

Oral and documentary evidence was received, and argument was heard. The matter was submitted for decision on November 10, 2011.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant filed the Accusation in her official capacity on November 3, 2010. The Accusation and related notices and documents were served on the respondents named in the Accusation on November 3, 2010. The Department received notices of defense filed, individually, by Respondents Perez, Mercado, and De La Riva.

2. The Department did not receive a notice of defense from either Monica Vargas or Best Funding Home Loans, Inc. Consequently, pursuant to a default decision and order with an effective date of May 24, 2011, the real estate corporation license of Best Funding Home Loans, Inc., and the real estate salesperson license of Monica Vargas, were revoked.

3. The hearing in this matter proceeded against the respective real estate licenses of Respondents Perez, Mercado, and De La Riva (collectively, Respondents).

License History

4. Respondent Perez is licensed by the Department as a real estate broker. His real estate broker license, number B/00907947, was originally issued on September 6, 2000. The license was renewed in 2004 and 2008, and expired on September 5, 2012, unless renewed. Respondent Perez, as a licensed broker, conducts business under the fictitious business names Best Funding and Properties, Best Funding Mortgage Loans, and Best Funding Home Loans.

5. Respondent Perez was also the designated officer for the real estate corporation license issued to Best Funding Home Loans, Inc. (Best Funding). Best Funding's real estate corporation license, number C/01477422, was originally issued on April 18, 2005, and was renewed on April 18, 2009. The license was revoked effective May 24, 2011. Best Funding's main office was on Castleton Street in the City of Industry.

6. Respondent Mercado is licensed by the Department as a real estate salesperson. His real estate salesperson license, number S/01438326, was originally issued on June 12, 2004, with Respondent Perez as the employing broker. The license was renewed in 2008 with Respondent Perez as the employing broker. The license expired on June 11, 2012, unless renewed.

7. Respondent De La Riva is licensed by the Department as a real estate salesperson. His real estate salesperson license, number S/01434852, was originally issued on September 2, 2004 with no employing broker affiliation. On September 10, 2004, the license was activated with Respondent Perez as the employing broker. The license was renewed in 2008 with Respondent Perez as the employing broker. The license expired on September 1, 2012, unless renewed.

8. Monica Varga (Vargas) was licensed by the Department as a real estate salesperson. Her real estate salesperson license, number S/01782939, was originally issued on January 26, 2007. The license was not activated in the employ of Respondent Perez as the employing broker until February 18, 2009. Prior to that date, Vargas's license was activated under two other employing brokers. The license expired on January 25, 2011, and was revoked effective May 24, 2011. Vargas changed her name from "Monica Ortiz" to "Monica Vargas" as of June 1, 2010.

Advance Fee Materials

9. By letter dated January 28, 2009, Respondent Perez submitted a copy of a proposed Advance Fee Agreement to the Department for its approval. The proposed Agreement, by its terms, was to be used by Best Funding to provide "mortgage loan modification services." By letter dated February 19, 2009, the Department notified Respondent Perez, as the designated officer of Best Funding, that the proposed Advance Fee Agreement could not be used because it did not include certain items specified in the Department's letter.

10. By letter dated August 7, 2009, Respondent Perez submitted to the Department for its approval an "Advance Fee Agreement for Loan Modification Services" that he and Best Funding proposed to use. By letter dated August 19, 2009, the Department notified Respondent Perez that it had "no objection" to the use of this advance fee agreement.

11. Thus, prior to August 19, 2009, the Department had not approved any advance fee materials for loan modification services for use by Best Funding or Respondent Perez as its designated officer.

Loan Modification Activities

12. In approximately December 2008 and March 2009, Respondents De La Riva and Mercado solicited loan modification services to two consumers in their capacities as real estate salespersons employed under Perez's broker license. The two consumers, Lucia Da Silva and Gloria De Leon, and their respective transactions are described more fully below.

13. California Mortgage Relief Services, USMS, and US Mortgage Specialists were fictitious business names used by De La Riva and Mercado for their loan modification activities. De La Riva conducted business as a sole proprietor under the fictitious business name California Mortgage Relief Services. No evidence was presented that USMS and US Mortgage Specialists were business entities separate and distinct from California Mortgage Relief Services or De La Riva. De La Riva admitted that USMS stands for US Mortgage Specialists, and the latter name is one that he created for his business card.

14. De La Riva and Mercado had an agreement whereby De La Riva paid Mercado for loan modification clients Mercado referred to De La Riva. The agreement was not in writing, and the agreement did not specify the amount Mercado would receive for each client referral to De La Riva. De La Riva testified that he was paid by USMS for his referral of loan modification clients to USMS.

Da Silva Transaction

15. Lucia Da Silva (Da Silva) is a consumer who sought loan modification services from Best Funding starting in or about December 2008. Da Silva testified at the hearing. Her testimony was credible and consistent with the documentary evidence.

16. In December 2008, Da Silva contacted Best Funding about getting a loan modification of the two loans secured by her residence on Bangor Avenue in Hesperia. The lender on her first mortgage was GMAC, and the lender on the second mortage was Ocwen. Da Silva was not in default on her mortgages but she wanted a fixed rate loan and a lower interest rate. Da Silva knew of Best Funding through its radio ads and because Best Funding handled the refinance of her mother's loan a few years earlier.

17. On December 18, 2008, Da Silva met with Respondent Mercado at Best Funding's office on Castleton Street in the City of Industry. Respondent Mercado represented to Da Silva that Best Funding had a team of lawyers and agents, identified as Vargas, Yessenia Rivas (Rivas), and Respondent De La Riva, who could get her the loan modification she was seeking. Respondent Mercado said the cost of the loan modification was $1,800, which had to be paid up front in order to start the work. Da Silva indicated she did not have all the money and asked if she could pay $900 now and $900 in January. Respondent Mercado agreed to that arrangement after first getting approval from Respondent De La Riva and Vargas.

18. On December 18, 2008, Da Silva gave Respondent Mercado two checks, each for $900. One check was dated December 18, 2008. The other check was post-dated January 19, 2009 and was not to be cashed until that date. Per Respondent Mercado's instructions, Da Silva made both checks payable to USMS. Da Silva was not given a receipt for her payment. Nor was she given an advance fee

contract or contract for a loan modification. According to Da Silva, Respondent Mercado told her to stop paying her mortgage. As of December 18, 2008, the only work done on the Da Silva transaction was the intake of files.

19. The Department has no record of a real estate license issued to USMS. The Department has no record of approving USMS as a fictitious business name for Best Funding or any of Respondents.

20. In or about the first week of January 2009, Da Silva was contacted by Vargas and Rivas, who indicated that they would be working on her loan modification. Vargas identified herself as a real estate agent and lawyer, and Rivas was her assistant. According to Da Silva, Vargas told her the same thing that Respondent Mercado told her on December 18, 2008, specifically, that she should stop paying her mortgage because they were working on her loan modification, and she would not lose her house because they had done hundreds of loan modifications and Da Silva's loan modification would go through.

21. In February 2009, Rivas asked Da Silva to fill out a form authorizing her lender to speak with Vargas, Rivas, and Respondent De La Riva, regarding her loan modification. The form was on the letterhead of California Mortgage Relief Services. Rivas also requested Da Silva to provide documents listed on a checklist on the letterhead of California Mortgage Relief Services. Rivas and Vargas told Da Silva that her loan modification was going well.

22. The Department has no record of a real estate license issued to California Mortgage Relief Services. The Department has no record of approving California Mortgage Relief Services as a fictitious business name for Best Funding or any of Respondents.

23. At the end of February 2009, Vargas contacted Da Silva and demanded that she pay more money or else she would stop the work on her loan modification. Vargas indicated the additional money was demanded by Best Funding and Respondent De La Riva. On or about February 24, 2009, Da Silva's mother delivered a check for $1,000, made payable to USMS, to Best Funding's office in the City of Industry.

24. On or about March 13, 2009, Da Silva received a Notice of Default and Election to Sell Under Deed of Trust that GMAC recorded against her property. At that time, Da Silva understood that Best Funding was still working on her loan modification. Then, on March 23, 2009, Vargas telephoned Da Silva and demanded that she pay another $1,800 to continue her loan modification. Da Silva responded that she could not pay that amount. Later that day, Da Silva spoke by telephone with Respondent Mercado, who told her the worst case scenario was that she would only have to pay $1,400. Da Silva agreed to pay the additional money but indicated she would need a few weeks to get the money.

25. On April 24, 2009, Vargas contacted Da Silva about the status of her payment. Da Silva indicated she would make the payment the following Monday, on April 27, 2009. During the weekend, Da Silva decided to "put an end to things." She did not pay the money on April 27, 2009. Instead, on April 29, 2009, she sent a letter to Best Funding demanding a refund of the $2,800 she had paid for a loan modification.

26. Da Silva was never provided an accounting of the services purportedly provided for the $2,800 she paid for a loan modification. Da Silva never received a refund of the $2,800 she paid. Da Silva did not receive a loan modification through Best Funding, Vargas, Rivas, Respondent Mercado or Respondent De La Riva. In or about July 2009, Da Silva, through her own efforts, obtained a loan modification from her lender, GMAC. (Exh. 10, p. 28.) Da Silva has retained ownership of her residence on Bangor Avenue.

27. Da Silva filed a complaint with the Better Business Bureau against Best Funding. In or about May 2009, Respondent Perez filed a response on behalf of Best Funding to Da Silva's complaint, which stated in part: "A loan modification was successfully obtained on consumer's first trust deed loan, GMAC, . . . and in addition, we successfully negotiated an acceptable loan modification . . . with her 2nd Trust Deed lender, Ocwen."

De Leon Transaction

28. Gloria De Leon (De Leon) is a consumer who sought loan modification services from Best Funding in or about March 13, 2009. De Leon's house was in foreclosure due to financial hardship. According to De Leon, Respondent Mercado, Monica Ortiz (Vargas), and Respondent De La Riva, represented that they would keep her house safe through a loan modification. She was told an attorney would be working on her case, although she was not given an attorney's name. De Leon paid $3,590 to Respondent De La Riva for a loan modification. She was given an Invoice as a receipt for the payment. The letterhead on the invoice showed the name USMS.

29. De Leon never received a loan modification through Best Funding. Her house was sold without her knowledge. When De Leon learned of the sale of her house, De Leon contacted her lender and was able to arrange a loan modification through her own efforts. The sale was rescinded and De Leon was able to save her home. Best Funding refunded to De Leon part of the monies she paid for a loan modification but kept $1,500.

30. In June 2009, De Leon filed a complaint with the Better Business Bureau against Best Funding, alleging that Best Funding charged her in advance for a loan modification that never took place. She also claimed that Best Funding refunded some of her monies only after she indicated she was going to a lawyer, and that Best Funding was still holding $1,500 of her money. In August 2009, Respondent Perez

filed a response on behalf of Best Funding to De Leon's Better Business Bureau complaint. The response indicated, in part, that Best Funding arranged a modification and four postponements of the sale of De Leon's home, she was not charged for any services until the sale of her home was stopped; and Best Funding refunded $2,000 to De Leon so that she could pay the $5,000 requested by her lender as an initial payment. (Exh. 11, p. 8.)

Audit

31. Anna Hartoonian (Hartoonian) is an Auditor II employed by the Department. Hartoonian conducted an audit of Best Funding's records and Respondent Perez's broker activities. She reviewed records at Best Funding's office and interviewed Respondent Perez. The audit was completed on January 7, 2010. Hartoonian prepared a written report summarizing her findings and conclusions. Based on a sampling of the records provided, Hartoonian determined that Best Funding and Respondent Perez, as the designated officer, violated provisions of the Real Estate Law and regulations, as described below.

32. Respondent Perez maintained one general bank account and one trust account. The trust account was held in the name of Respondent Perez and "Best Funding Mortgage Loans." Based on her review of records, Hartoonian found that Best Funding received funds for the loan transactions of four borrowers -- Parco, French, Arellano, and Farnham -- that included trust funds (i.e., funds received by a broker that belongs to others). Specifically, the trust funds were the amounts for credit report fees that were charged to the borrowers at the close of escrow but had not yet been paid to the credit reporting agencies. Respondent Perez deposited the credit report fees in his general account instead of his trust account, and then paid the credit reporting agencies subsequent to depositing the amounts for credit report fees in his general account. For example, for borrower Parco, the $18 credit report fee was deposited in Respondent Perez's general account on April 20, 2009, but the fee was not paid to the credit agency until May 19, 2009. Respondent Perez comingled the credit report fees, which were trust funds, with the funds in his general account. By failing to handle the credit report fees through a trust account, Respondent Perez violated Business and Professions Code sections 10145, subdivision (a), 10176, subdivision (e), and California Code of Regulations, title 10 (CCR), section 2835, subdivision (b).

33. Respondent Perez did not maintain a columnar record for the trust funds that were received from escrow companies, and thereby violated Business and Professions Code section 10145, subdivision (a), and CCR section 2831.

34. Respondent Perez did not maintain a separate record for each beneficiary of trust funds that were received from escrow companies, and thereby violated Business and Professions Code section 10145(a) and CCR section 2831.1.

35. Respondent Perez provided Hartoonian with the signature card for his trust account. The signatories for the trust account were Respondent Perez and his wife, Mayela Mireles (Mireles). Mireles is not a licensee of the Department. Respondent Perez allowed an unlicensed person (Mireles) to be a signer on the trust account without fidelity bond coverage, from approximately November 1, 2006, until November 17, 2009, and thereby violated Business and Professions Code section 10145 and CCR section 2834. This violation was corrected on November 17, 2009.

36. Respondent Perez failed to provide proof within loan files of borrowers of disclosure of yield spread premium or rebates from lender as additional compensation for services rendered to the borrowers.[1] For example, on the Mortgage Loan Disclosure Statements (MLD Statements) for borrowers Farnham and Storer (Exhibits A and B, respectively), the box for "No" is checked in response to "Any Additional Compensation from Lender." However, the attached HUD statement, at line 808, shows that a "yield spread premium" was paid to Best Funding from the lenders in the amount of $3,100 for Storer's loan and $1,585 for Farnham's loan. Respondent Perez was required to provide the borrowers with MLD Statements showing these amounts as "Any Additional Compensation from Lender." Respondent Perez's failure to do so was a violation of in violation of Business and Professions Code section 10240 and CCR section 2840.

37. Respondent Perez failed to have available for inspection the original license certificates for two of his salespersons, Respondents De La Riva and Mercado, in violation of Business and Professions Code section 10160 and CCR section 2753.

Testimony of Respondents

38. Respondent Mercado testified that his only involvement in the Da Silva transaction was to do the initial intake meeting with Da Silva on December 18, 2008, According to Mercado, Da Silva came to see him about doing a refinance to lower her mortgage interest rate. Based on her information and documents, Mercado concluded she would not qualify for a refinance but a loan modification might be something she could do to get a lower interest rate. Da Silva agreed. Respondent Mercado testified he took her information, filled out a loan application for her (standard form 1003), took her W-2 and bank statement, and took one check from her for $900. He did not run a credit report for Da Silva. Respondent Mercado testified he hand delivered Da Silva's documents and check to Respondent De La Riva to process for a loan modification. Respondent Mercado denied having any other contact with Da Silva after the December 18, 2008 meeting. Respondent Mercado testified he did not receive any compensation for referring the Da Silva matter to De La Riva for a loan modification. He does not know what happened to the monies paid by Da Silva.

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[1] According to Hartoonian, the "yield spread premium" is a rebate the broker receives from the lender. The amount of the rebate is the difference between the lender's interest rate versus the government interest rate.

39. Respondent Mercado's testimony regarding the Da Silva transaction was not straightforward and lacked the clarity and consistency that would be indicative of credible testimony. For example, Mercado testified that he filled out a loan application for Da Silva, but on cross-examination he testified that he had Da Silva fill out the loan application. He does not know what happened to the loan application or the monies paid by Da Silva. Mercado's testimony that he received no compensation from the Da Silva transaction was not credible, given the compensation agreement he had with De La Riva to refer loan modification clients to De La Riva and USMS. There was no evidence that Mercado handled the Da Silva transaction for free, as one might do for a family friend or relative. Mercado's testimony was not consistent with the documentary evidence. For example, Da Silva gave two checks to Mercado at the December 18, 2008 meeting, not one as Mercado claimed. Mercado's claim that he had no contact with Da Silva after the December 18, 2008 meeting was contradicted by Da Silva's credible testimony that she met with him on more than three occasions and also faxed documents to him as well. (See Exh. 10, pp. 19-20.)

40. As for the De Leon transaction, Respondent Mercado testified he had no involvement in that transaction and first learned of it during this administrative hearing. However, De Leon, in a letter and declaration, specifically identified Mercado as one of the individuals from Best Funding that she spoke to about her request for a loan modification and who made representations that Best Funding would keep her house safe from foreclosure with a loan modification.

41. Respondent De La Riva testified that Da Silva requested loan modifications for three properties, not just one, with the three properties being Bangor Avenue, 11th Avenue, and Orion Avenue. De La Riva testified that USMS obtained loan modifications for Da Silva's three properties for a total cost of $3,600, which she paid by check in four installments. According to De La Riva, he contacted Da Silva when her check for the fourth installment payment was returned by her bank for insufficient funds. He testified that he received no monies or compensation for the Da Silva transaction. He does not know what happened to Da Silva's checks after Mercado delivered them to him. Respondent De La Riva did testify that he was responsible for the Da Silva transaction because he referred the file out for a loan modification. De La Riva also testified that the De Leon transaction came to him directly, and Mercado was not involved.

42. Respondent De La Riva's testimony regarding the Da Silva transaction was not straightforward and lacked the clarity and consistency that would be indicative of credible testimony. His testimony that Da Silva received the three loan modifications she requested was not credible. Da Silva testified credibly that she requested a loan modification of the first and second trust deeds on her Bangor Avenue property only. She did not request modifications for the 11th Avenue and Orion Avenue properties because those two properties are not owned by her. Those two properties are owned by her mother. This is corroborated by Respondent's exhibit F, which are title company records showing that the 11th Avenue and Orion

Avenue properties are owned by Maria Da Silva, who is Da Silva's mother. No documentary evidence was presented to corroborate De La Riva's testimony that, for Bangor Avenue, USMS got a verbal approval to modify the first trust deed and got a modification of the second trust deed. In fact, the documentary evidence established that a Notice of Default was filed by the lender (GMAC) on the first trust deed in or about March 2009. (Exh. 10, p. 22.) Nor was there documentary evidence to corroborate De La Riva's testimony about Da Silva making four payments, with the fourth payment returned by the bank due to insufficient funds. The evidence established only three payments by check made by Da Silva to USMS. (Exh. 10, p. 13-15.)

43. Respondent De La Riva's testimony was evasive when it came to explaining the ownership and his relationship to California Mortgage Relief Services, USMS, and US Mortgage Specialists. These are fictitious business names under which he conducted business. Yet, he could not clearly explain this. De La Riva's testimony was evasive and unclear when asked if USMS and US Mortgage Specialists were the same business. Initially, he testified they were not the same, but upon cross-examination and further questioning by the Administrative Law Judge, De La Riva finally admitted USMS stands for US Mortgage Specialists and the latter was a name he created for his business card. De La Riva also gave confusing testimony about California Mortgage Relief Services, in that he claimed to be the sole proprietor of California Mortgage Relief Services, then claimed it was a subsidiary of USMS, but then contradicted himself by testifying it was not a subsidiary of USMS.

44. Respondent Perez testified neither he nor Best Funding, nor any of his businesses (i.e., Best Funding and Properties, Best Funding Mortgage Loans, and Best Funding Home Loans) has any relationship to California Mortgage Relief Services or USMS. Perez further testified that neither he, Best Funding, nor any of his businesses received any monies or compensation from the Da Silva or De Leon transactions.

45. Respondent Perez testified that he had no knowledge of the loan modification activities of Respondents Mercado and De La Riva. When he was informed by them of the Da Silva and De Leon transactions, Respondent Perez contends he tried to intercede and attempted to reach a resolution of the problems with the two borrowers. Respondent Perez responded, on behalf of Best Funding, to the Better Business Bureau complaints made by the two borrowers. According to Respondent Perez, at the time of the Da Silva and De Leon transactions, Best Funding was in the process of getting approval from the Department to do loan modifications. According to Perez, in the interim, Best Funding was not doing loan modification, which was why his staff referred Da Silva and De Leon outside of the company for their loan modifications.

46. Respondent Perez's testimony that he had no knowledge of De La Riva and Mercado's loan modification activities was not credible. He knew his staff referred Da Silva and De Leon outside of his company for loan modifications because

Best Funding was still in the process of getting the Department's approval to do loan modifications. The fact that Perez responded to the Better Business Bureau complaints on behalf of Best Funding constitutes an admission by him that Best Funding, in fact, handled the Da Silva and De Leon loan modification transactions. If, as Perez contends, Best Funding was not handling the two transactions, one would have expected Perez's response to the Better Business Bureau complaints to have disavowed any involvement by his company in the two transactions. Perez's response did not do that. On the contrary, Perez's response on behalf of Best Funding defended the actions taken on the two transactions, effectively ratifying the conduct on the transactions. Perez did not terminate the employment of De La Riva and Mercado as a result of the transactions. No evidence was presented that Perez took action to prevent Best Funding's real estate corporation license from being revoked by default based on the Da Silva and De Leon transactions. Perez's claim he did not know of De La Riva and Mercado's activities is undermined by his testimony that, in 2008 and 2009, he supervised the agents in Best Funding's Castleton Street office and was in the office at least eight hours per day.

47. Regarding the audit by Hartoonian, Respondent Perez testified he has made changes as a result of the audit. He now pays the credit report fees before the loans are funded. In addition, he makes new disclosure statements (i.e., MDL Statements) for any changes even as small as one-quarter percent. Respondent Perez testified that he and Best Funding had previously been audited by the Department on two prior occasions, with the audits being random audits and not the result of any consumer complaint.

48. Respondent Perez testified he has been licensed by the Department for 25 years. He has no history of prior complaints against him with the Department. For the last two and one-half years, Respondent has served on the board of the National Association of Hispanic Real Estate Professionals (NAHREP), Inland Empire, which is a position filled by invitation-only and requires a detailed background check. Perez is the Vice President of the Public Relations Committee for NAHREP. Perez is also a special advisor for an organization that specializes in home retention and financial education for the Hispanic community. This also is an invitation-only position.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177 provides, in part, that the commissioner may suspend or revoke the license of a real estate licensee who has done any of the following:

[¶] . . . [¶]

(d) Willfully disregarded or violated the Real Estate Law . . . or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law.

[¶] . . . [¶]

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.[2]

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

[¶] . . . [¶]

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

2. Business and Professions Code section 10176 provides, in part, that the commissioner may suspend or revoke the real estate license of a licensee who, in performing or attempting to perform any of the acts within the scope of this chapter, has been guilty of any of the following:

(a) Making any substantial misrepresentation.

(b) Making any false promises of a character likely to influence, persuade or induce.

[¶] . . . [¶]

(e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her.

[¶] . . . [¶]

(i) Any other conduct, whether the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

3. Respondent Perez was the employing broker for the real estate salesperson licenses of Respondents Mercado and De La Riva at the time of the Da Silva and De Leon transactions. On those transactions, Mercado and De La Riva engaged in activities requiring a real estate broker license pursuant to Business and

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[2] This ground for discipline is alleged in the Accusation. However, no evidence was presented, such as expert testimony, to establish that Respondents committed negligence or incompetence in the subject transactions.

Professions Code sections 10131, subdivision (d) (perform services for borrowers in connection with loans secured by liens on real property), and 10131.2 (collection of advance fees). Consequently, Respondent Perez's real estate broker license is subject to disciplinary action for said activities of Mercado and De La Riva.

FIRST CAUSE OF ACCUSATION

4. Cause exists to suspend or revoke Respondents' real estate licenses, pursuant to Business and Professions Code sections 10177, subdivision (d), and 10085, in that, on the Da Silva and De Leon transactions, Respondents violated section 10085 and California Code of Regulations, title 10, section 2970, by failing to submit a written agreement or any written solicitation for loan modification services and collection of advance fees to the Department prior to use, based on the matters in Factual Findings 9-11, 15-26, 28-29 and Legal Conclusions 3 and 5. Respondents engaged in the Da Silva and De Leon loan modification transactions, including the collection of advance fees, prior to the Department giving approval for Best Funding's advance fee and loan modification materials on August 19, 2009.

5. Discussion. The monies collected by Respondents for the Da Silva transaction ($2,800) and the De Leon transaction ($3,590) were advance fees within the meaning of Business and Professions Code section 10026.

Business and Professions Code section 10026, subdivision (a), defines an advance fee as "a fee, regardless of form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license . . . before fully completing the service the licensee contracted to perform or represented would be performed."

Business and Professions Code section 10085 provides that the commissioner "may require that any or all materials used in obtaining advance fee agreements . . . be submitted to him or her at least 10 calendar days before they are used." Further, section 10085 provides that the commissioner "may determine the form of the advance fee agreements, and all materials used in soliciting prospective owners and sellers . . . ."

California Code of Regulations, title 10, section 2970, subdivision (a), states: "A person who proposes to collect an advance fee as defined in Section 10026 of the [Business and Professions] Code shall 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."

6. Cause exists to suspend or revoke Respondents' real estate licenses, pursuant to Business and Professions Code sections 10176, subdivisions (a), (b), (j), and 10177, subdivision (j), in that Respondents, on the Da Silva and De Leon transactions, made false and misleading representations in order to induce borrowers Da Silva and De Leon to enter into loan modification agreements, and otherwise engaged in fraudulent and dishonest dealing, based on the matters in Factual Findings 15-26, 28-30 and Legal Conclusions 3 and 7.

7. Discussion. Respondents represented to Da Silva that Best Funding and its team of lawyers and agents would get her a loan modification, and represented to De Leon that Best Funding would keep her house safe by getting her a loan modification. These representations were false and misleading and constitute fraudulent and dishonest dealing. The two borrowers believed their transactions were being handled by Best Funding when, in fact, the loan modifications were purportedly being handled outside of the company by California Mortgage Relief Services, USMS, and/or US Mortgage Specialists. Further, although the borrowers paid for their loan modifications up front, neither Da Silva nor De Leon received a loan modification through Best Funding or any of Respondents. Both Da Silva and De Leon ultimately got loan modifications through their own efforts. Da Silva was not refunded any of the monies she paid for a loan modification, and De Leon was not refunded $1,500 of the monies she paid.

SECOND CAUSE OF ACCUSATION

8. Cause exists to suspend or revoke Respondent Perez's real estate broker license, pursuant to Business and Professions Code section 10177, subdivision (d), in that, on the Da Silva and De Leon transactions, Respondents violated Business and Professions Code section 10159.5 and California Code of Regulations, title 10, section 2731, by using the fictitious business names USMS and California Mortgage Relief Services without prior Department authorization, based on the matters in Factual Findings 15-26, 28-29 and Legal Conclusion 3.

9. Cause exists to suspend or revoke the real estate salesperson licenses of Respondents Mercado and De La Riva, pursuant to Business and Professions Code section 10177, subdivision (d), in that, on the Da Silva and De Leon transactions, Respondents Mercado and De La Riva violated Business and Professions Code sections 10130 and 10137, by engaging in loan modification activities requiring a broker license when they did not hold such license, and by accepting compensation from a person other than their employing broker, based the matters in Factual Findings 14-26, 28-29 and Legal Conclusion 10.

10. Discussion. Respondents Mercado and De La Riva, by engaging in the Da Silva and De Leon loan modification transactions, acted in the capacity of a real estate broker without holding a broker's license. Business and Professions Code section 10130 states, in part: "It is unlawful for any person to engage in the business,

act in the capacity of, advertise or assume to act as a real estate broker . . . within this state without first obtaining a real estate license from the department." A real estate broker's license is required for the performance of loan modification activities, which includes the "collect[ion] of payments or perform[ance] of services for borrowers or lenders in connection with loans secured directly or collaterally by liens on real property." (Bus. & Prof. Code, § 10131, subd. (d).) Furthermore, Respondents Mercado and De La Riva, by their testimony, admitted to having a compensation agreement for the referral of loan modification clients between the two of them. Such agreement is in violation of Business and Professions Code section 10137 which states in part: "No real estate salesperson shall be employed by or accept compensation from any person other than the broker under whom he or she is at the time licensed. [¶] It is unlawful for any licensed real estate salesperson to pay any compensation for performing any acts within the scope of this chapter to any real estate licensee except through the broker under whom he or she is at the time licensed."

THIRD CAUSE OF ACCUSATION

11. At all relevant times, Respondent Perez was the designated officer for the real estate corporation license of Best Funding. Under Business and Professions Code section 10159.2, subdivision (a), Respondent Perez, as the designated officer, was "responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division [i.e., the Real Estate Law]."

12. Cause exists to suspend or revoke Respondent Perez's real estate broker license, pursuant to Business and Professions Code section 10177, subdivision (d), in that the Department's audit of the books and records of Best Funding, completed on January 7, 2010, disclosed violations of the Real Estate Law and regulations, based on the matters in Factual Findings 5, 31-37.

FOURTH CAUSE OF ACCUSATION

13. Cause exists to suspend or revoke Respondent Perez's real estate broker license, pursuant to Business and Professions Code section 10177, subdivision (h), in that Respondent Perez failed to exercise reasonable supervision over the activities of his salespersons and, as the designated officer of Best Funding, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license was required, based on the matters in Factual Findings 4-37.

DISPOSITION

14. Administrative proceedings to revoke, suspend or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural*

Examiners (1998) 17 Cal.4th 763, 785-786.) In particular, the statutes relating to real estate licenses are designed to protect the public from any potential risk of harm. (*Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.)

15. A real estate licensee must be truthful, honest, and have integrity at all times. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee." (*Harrington v. Dept. of Real Estate* (1989) 214 Cal.App.3d 394, 402.) "The Legislature intended to ensure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear." (*Ibid.*)

16. Discussion. The revocation of Respondents' real estate licenses is warranted. The violations of the Real Estate Law established by the record of this case reflects poorly on the character for honesty and truthfulness of each of the Respondents. Further, the testimony of Respondents regarding the two subject transactions lacked indicia of credibility. It is apparent that they do not understand and appreciate their obligation to be honest, truthful, and forthright in matters regarding their licensure with the Department. Public protection requires the revocation of Respondents' real estate licenses.

17. Complainant requested an order that Respondents pay restitution to Da Silva and De Leon. An order of restitution is not appropriate. Respondents are not being granted restricted licenses. (Cal. Code Regs., tit. 10, § 2930, subd. (7).)

ORDER

1. All licenses and licensing rights of Respondent Ricardo De La Riva under the Real Estate Law are revoked.

2. All licenses and licensing rights of Respondent Arturo Mercado under the Real Estate Law are revoked.

3. All licenses and licensing rights of Respondent Fernando Arturo Perez under the Real Estate Law are revoked.

DATED: November 8, 2012

Erlinda G. Shrenger

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings

FILED
MAY - 4 2011
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of BEST FUNDING HOME LOANS, INC.; FERNANDO ARTURO PEREZ, individually and as designated officer of Best Funding Home Loans, Inc.; ARTURO MERCADO; RICARDO DELARIVA; and MONICA VARGAS, Respondents.	NO. H-36896 LA

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on March 24, 2011, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

FINDINGS OF FACT

1.

On October 29, 2010, Maria Suarez made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondents, and Notice of Defense were mailed, by certified mail, return receipt requested, to Respondents BEST FUNDING HOME LOANS, INC. and MONICA VARGAS' last known mailing addresses on file with the Department on November 3, 2010. A second attempt at service was made on December 8, 2010, by regular mail.

On March 24, 2011, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondents BEST FUNDING HOME LOANS, INC. and MONICA VARGAS' default was entered herein.

2.

At all times mentioned herein, Respondent BEST FUNDING HOME LOANS, INC. ("BEST FUNDING") was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate corporation. Respondent BEST FUNDING was originally licensed as a real estate corporation on April 18, 2005. At all times relevant herein, Respondent BEST FUDING was authorized to act by and through Respondent FERNANDO ARTURO PEREZ as its broker designated pursuant to Business and Professions Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

3.

At all times mentioned herein, Respondent MONICA VARGAS, formerly Monica Ortiz and also known as Monica O. Vargas ("VARGAS") was licensed or had license rights issued by the Department as a real estate salesperson. Respondent VARGAS was originally licensed as a real estate salesperson on January 26, 2007. On January 25, 2011, Respondent VARGAS' license expired. Respondent VARGAS has renewal rights pursuant to Code Section 10201. The Department retains jurisdiction pursuant to Code Section 10103.

4.

All further references to "Respondents" include Respondents VARGAS and BEST FUNDING, as well as its officers, agents and employees.

5.

At all times mentioned herein, in the State of California, Respondents engaged in the business of a real estate broker conducting activities requiring a real estate license within the meaning of Code Sections 10131(a), 10131(d), and 10131.2. Respondents engaged in operating a residential resale, mortgage loan, advance fee and loan modification service brokerage. For compensation or in expectation of compensation and for fees often collected in advance, Respondents contacted lenders on behalf of distressed homeowners seeking modification or forbearance of the terms of their home loans.

FIRST CAUSE OF ACCUSATION
(Advance Fee Violation/Deceit/Dishonest Dealing)

6.

At no time mentioned herein was "USMS" or "California Mortgage Relief Services" a real estate corporation, licensed by the Department or a licensed fictitious business name with the Department for any of the Respondents.

7.

At all times mentioned herein, in the State of California, Respondents engaged in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of advance fees, within the meaning of Code Section 10026 including, but not limited to, the following loan activities with respect to loans which were secured by liens on real property:

a. On or about February 24, 2009, Lucia Da Silva paid an advance fee totaling $2,800 to Respondents who were doing business as "USMS." The advance fee was collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondents with respect to a loan secured by the real property located in the City of Hesperia, California. The agents authorized to negotiate with Lucia Da Silva's lender included Respondent VARGAS and Yessenia Rivas. Lucia Da Silva cancelled her agreement with Respondents and demanded a refund of her advance fee. Respondents refused to provide Lucia Da Silva with all or a part of said refund.

b. On or about March 13, 2009, Gloria De Leon paid an advance fee of $3,590 to Respondents who were doing business as "USMS." The advance fee was collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondents with respect to a loan secured by real property located in the city of Los Angeles, California. Respondents VARGAS and BEST FUNDING were the agents authorized to negotiate Gloria De Leon's mortgage loan with her lender. Respondent VARGAS acted as agents for BEST FUNDING and demanded advance fees for the loan negotiation and modification for Gloria De Leon. Gloria De Leon cancelled her agreement with Respondents and demanded a refund of her

advance fee. Respondents refused to provide Gloria De Leon with all or a part of said refund.

c. At all times mentioned herein, Respondent VARGAS represented herself as an experienced realtor and agent affiliated with BEST FUNDING.

8.

Respondents charged and collected the advance fees described in Paragraph 7, above, for soliciting borrowers or lenders or negotiating loans secured by real property, which constitute an advance fee within the meaning of Code Section 10026.

9.

On or about August 19, 2009, the Department issued a "no objection" letter of approval of the advance fee agreement and accounting format submitted by Respondent BEST FUNDING. Respondents violated Code Section 10085 and Regulation 2970 by failing to submit a written agreement or any written solicitation for loan negotiation and modification services, as described in Paragraph 7, above, to the Commissioner ten days before using it.

SECOND CAUSE OF ACCUSATION
(Unlicensed Activity and Use of Unauthorized Fictitious Business Name)

10.

The activities described in Paragraph 7, supra, require a real estate license under Code Sections 10131(d) and 10131.2. Use of a fictitious business name for activities requiring the issuance of a real estate license requires the filing of an application for the use of such name with the Department in accordance with the provisions of Code Section 10159.5.

11.

Respondent BEST FUNDING acted without Department authorization in using the fictitious business name "USMS" and "California Mortgage Relief Services" to engage in activities requiring the issuance of a real estate license.

THIRD CAUSE OF ACCUSATION
(Audit)

12.

On January 7, 2010, the Department completed an audit examination of the books and records of Respondent BEST FUNDING pertaining to the mortgage loan, advance fee and loan negotiation and modification service activities described in Paragraph 11, which require a real estate license. The audit examination covered a period of time beginning on November 1, 2006 to October 31, 2009. 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 090049 and the exhibits and work papers attached to said Audit Report.

Violations

13.

In the course of activities described in Paragraph 5, above, and during the examination period described in Paragraph 12, Respondent BEST FUNDING, acted in violation of the Code and the Regulations as follows:

(a) Received funds for credit fees at the close of loan transactions for borrowers David Parco, David and Cinthia French, Jose Arellano, and Daniel Farnham that had not yet been paid and failed to handle said credit fees through a trust account, in violation of Code Sections 10145(a) and 10176(e) and Regulation 2835(b).

(b) Failed to maintain a complete and accurate columnar record for trust funds that were received from escrow companies including, but not limited to, credit report fees for the loan transactions of borrowers David Parco, David and Cinthia French, Jose Arellano, and Daniel Farnham, in violation of Code Section 10145(a) and Regulation 2831.

(c) Failed to maintain a separate record for each beneficiary of trust funds that were received from escrow companies including, but not limited to, credit report fees for the loan transactions of borrowers David Parco, David and Cinthia French, Jose Arellano, and Daniel Farnham, in violation

of Code Section 10145(a) and Regulation 2831.1.

(d) From approximately November 1, 2006, through November 17, 2009, Respondent PEREZ allowed his wife Mireles Perez, a person not licensed in any capacity by the Department, to be a signer on BEST FUNDING's trust account without fidelity bond coverage, in violation of Code Section 10145 and Regulation 2834.

(e) Failed to provide proof within loan files of borrowers including, but not limited to, Daniel Farnham and Rick and Aileen Sorer, of disclosure of yield spread premium or rebates from lender as additional compensation for services rendered to said borrowers, in violation of Code Section 10240 and Regulation 2840.

(f) During the course of the audit period, failed to make available for inspection the original license certificates of Respondent MERCADO and Elvia De La Riva, in violation of Code Section 10160 and Regulation 2753.

DETERMINATION OF ISSUES

1.

The conduct of Respondent BEST FUNDING described in Paragraph 13, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
13(a)	Code Sections 10145, 10176(e) and Regulation 2835(b)
13(b)	Code Section 10145(a) and Regulation 2831
13(c)	Code Section 10145(a)and Regulation 2831.1
13(d)	Code Section 10145 and Regulation 2834
13(e)	Code Section 10240 and Regulation 2840
13(f)	Code Section 10160 and Regulation 2753

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

2.

Respondent BEST FUNDING violated Code Section 10085 and Regulation 2970 by failing to submit a written agreement or any written solicitation for loan negotiation and modification services, as described in Paragraph 7, above, to the Commissioner ten days before using it. Said conduct, acts and/or omissions constitute cause for the suspension or revocation of the license and license rights of Respondent BEST FUNDING pursuant to Code Sections 10085, 10177(d) and 10177(g).

3.

The conduct, acts and/or omissions of Respondents BEST FUNDING and VARGAS as set forth in Paragraph 7 above, of making false and/or misleading representations in order to induce borrowers to enter into a loan modification or refinance agreement, and in otherwise engaging in fraudulent and dishonest dealing, constitutes cause for the suspension or revocation of the licenses and license rights of Respondents BEST FUNDING and VARGAS pursuant to Code Sections 10176(a), 10176(b) and 10176(i).

4.

The conduct, acts and/or omissions of Respondent BEST FUNDING as set forth in Paragraphs 10 and 11, above, violate Code Section 10159.5 and Regulation 2731, and are cause for the suspension or revocation of the license and license rights of Respondent pursuant to Code Sections 10177(d) and 10177(g).

5.

The standard of proof applied was clear and convincing proof to a reasonable certainty.

ORDER

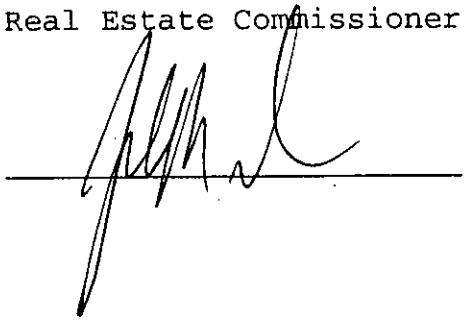
The licenses and license rights of Respondents BEST FUNDING HOME LOANS, INC. and MONICA VARGAS under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

Pursuant to Section 10148 of the Business and Professions Code, Respondent BEST FUNDING HOME LOANS, INC. shall pay the Commissioner's reasonable cost for the audit which led to this disciplinary action. The cost of the audit which led to this disciplinary action is $3,674.95.

This Decision shall become effective at 12 o'clock noon May 24, 2011.

DATED: 4-25, 2011.

JEFF DAVI
Real Estate Commissioner



Department of Real Estate
320 West Fourth Street, Suite 350
Los Angeles, California 90013-1105

FILED
MAR 24 2011
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of BEST FUNDING HOME LOANS, INC., FERNANDO ARTURO PEREZ, individually and as designated officer of Best Funding Home Loans, Inc.; ARTURO MERCADO; RICARDO DELARIVA; and MONICA VARGAS, Respondents.	NO. H-36896 LA DEFAULT ORDER

Respondents, BEST FUNDING HOME LOANS, INC. and MONICA VARGAS, having failed to file a Notice of Defense within the time required by Section 11506 of the Government Code, are now in default. It is, therefore, ordered that a default be entered on the record in this matter.

IT IS SO ORDERED March 24, 2011.

JEFF DAVI
Real Estate Commissioner

By: DOLORES WEEKS
Regional Manager

SAC

LISSETE GARCIA, SBN 211522
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6914 (direct)
-or- (213) 576-6982 (office)

FILED
NOV - 3 2010
DEPARTMENT OF REAL ESTATE
By C. Z

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

BEST FUNDING HOME LOANS, INC.; FERNANDO ARTURO PEREZ, individually and as designated officer of Best Funding Home Loans, Inc.; ARTURO MERCADO; RICARDO DELARIVA; and MONICA VARGAS,

Respondents.

No. H-36896 LA

ACCUSATION

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against BEST FUNDING HOME LOANS, INC.; FERNANDO ARTURO PEREZ, individually and as designated officer of Best Funding Home Loans, Inc.; ARTURO MERCADO; RICARDO DELARIVA; and MONICA VARGAS, 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 against BEST FUNDING HOME LOANS, INC., FERNANDO ARTURO PEREZ, individually and as designated officer of Best Funding Home Loans, Inc., ARTURO MERCADO, RICARDO DELARIVA, and MONICA VARGAS (collectively "Respondents").

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.

3.

At all times mentioned herein, Respondent BEST FUNDING HOME LOANS, INC. ("BEST FUNDING") was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate corporation. Respondent BEST FUNDING was originally licensed as a real estate corporation on April 18, 2005. At all times relevant herein, Respondent BEST FUDING was authorized to act by and through Respondent FERNANDO ARTURO PEREZ as its broker designated pursuant to Code Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

4.

At all times mentioned herein, Respondent FERNANDO ARTURO PEREZ ("PEREZ") was licensed or had license rights issued by the Department as a real estate broker. Respondent PEREZ was originally licensed as a real estate broker on September 6, 2000.

5.

At all times mentioned herein, Respondent ARTURO MERCADO ("MERCADO") was licensed or had license rights issued by the Department of as a real estate salesperson. Respondent MERCADO was originally licensed as a real estate salesperson on June 12, 2004.

6.

At all times mentioned herein, Respondent RICARDO DELARIVA ("DELARIVA") was licensed or had license rights issued by the Department as a real estate salesperson. Respondent DELARIVA was originally licensed as a real estate salesperson on September 2, 2004.

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7.

At all times mentioned herein, Respondent MONICA VARGAS, formerly Monica Ortiz and also known as Monica O. Vargas ("VARGAS") was licensed or had license rights issued by the Department as a real estate salesperson. Respondent VARGAS was originally licensed as a real estate salesperson on January 26, 2007.

8.

All further references to "Respondents" include the parties listed in Paragraphs 1 through 7, above, as well as the officers, agents and employees of the parties listed in Paragraphs 1 through 7, above.

9.

At all times mentioned herein, in the State of California, Respondents engaged in the business of a real estate broker conducting activities requiring a real estate license within the meaning of Code Sections 10131(a), 10131(d), and 10131.2. Respondents engaged in operating a residential resale, mortgage loan, advance fee and loan modification service brokerage. For compensation or in expectation of compensation and for fees often collected in advance, Respondents contacted lenders on behalf of distressed homeowners seeking modification or forbearance of the terms of their home loans.

FIRST CAUSE OF ACCUSATION
(Advance Fee Violation/Deceit/Dishonest Dealing)

10.

At no time mentioned herein was "USMS" or "California Mortgage Relief Services" a real estate corporation licensed by the Department or a licensed fictitious business name with the Department for any of the Respondents.

11.

At all times mentioned herein, in the State of California, Respondents engaged in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of advance fees, within the meaning of Code Section 10026 including, but not limited

to, the following loan activities with respect to loans which were secured by liens on real property:

a. On or about February 24, 2009, Lucia Da Silva paid an advance fee totaling $2,800 to Respondents who were doing business as "USMS." The advance fee was collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondents with respect to a loan secured by the real property located in the City of Hesperia, California. The agents authorized to negotiate with Lucia Da Silva's lender were Respondents VARGAS, DELARIVA and Yessenia Rivas. Respondent MERCADO also acted as an agent for BEST FUNDING and demanded advance fees for the loan negotiation and modification for Lucia Da Silva. Lucia Da Silva cancelled her agreement with Respondents and demanded a refund of her advance fee. Respondents refused to provide Lucia Da Silva with all or a part of said refund.

b. On or about March 13, 2009, Gloria De Leon paid an advance fee of $3,590 to Respondents who were doing business as "USMS." The advance fee was collected pursuant to the provisions of an agreement pertaining to loan solicitation, negotiation, and modification services to be provided by Respondents with respect to a loan secured by real property located in the city of Los Angeles, California. Respondents VARGAS and BEST FUNDING were the agents authorized to negotiate Gloria De Leon's mortgage loan with her lender. Respondents MERCADO, DELARIVA, and VARGAS acted as agents for BEST FUNDING and demanded advance fees for the loan negotiation and modification for Gloria De Leon. Gloria De Leon cancelled her agreement with Respondents and demanded a refund of her advance fee. Respondents refused to provide Gloria De Leon with all or a part of said refund.

c. At all times mentioned herein, Respondents MERCADO, DELARIVA and VARGAS represented themselves as experienced realtors and agents affiliated with BEST FUNDING.

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12.

Respondents charged and collected the advance fees described in Paragraph 11, above, for soliciting borrowers or lenders or negotiating loans secured by real property, which constitute an advance fee within the meaning of Code Section 10026.

13.

On or about August 19, 2009, the Department issued a "no objection" letter of approval of the advance fee agreement and accounting format submitted by Respondents BEST FUNDING and PEREZ. Respondents violated Code Section 10085 and Regulation 2970 by failing to submit a written agreement or any written solicitation for loan negotiation and modification services, as described in Paragraph 11, above, to the Commissioner ten days before using it. Said conduct, acts and/or omissions constitute cause for the suspension or revocation of the licenses and license rights of Respondents pursuant to Code Sections 10085, 10177(d) and/or 10177(g).

14.

The conduct, acts and/or omissions of Respondents as set forth in Paragraphs 11 through 13, above, of making false and/or misleading representations in order to induce borrowers to enter into a loan modification or refinance agreement, and in otherwise engaging in fraudulent and dishonest dealing, constitutes cause for the suspension or revocation of the licenses and license rights of Respondents pursuant to Code Sections 10176(a), 10176(b), 10176(i), and/or 10177(j).

SECOND CAUSE OF ACCUSATION

(Unlicensed Activity and Use of Unauthorized Fictitious Business Name)

15.

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

16.

The activities described in Paragraph 11, supra, require a real estate license under Code Sections 10131(d) and 10131.2. Use of a fictitious business name for activities requiring

the issuance of a real estate license requires the filing of an application for the use of such name with the Department in accordance with the provisions of Code Section 10159.5.

17.

Respondents acted without Department authorization in using the fictitious business name "USMS" and "California Mortgage Relief Services" to engage in activities requiring the issuance of a real estate license.

18.

The conduct, acts and/or omissions of Respondents as set forth in Paragraphs 16 and 17, above, violate Code Section 10159.5 and Regulation 2731, and are cause for the suspension or revocation of the licenses and license rights of Respondents pursuant to Code Sections 10177(d) and /or 10177(g).

THIRD CAUSE OF ACCUSATION
(Audit)

19.

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

20.

On January 7, 2010, the Department completed an audit examination of the books and records of Respondent BEST FUNDING pertaining to the mortgage loan, advance fee and loan negotiation and modification service activities described in Paragraph 11, which require a real estate license. The audit examination covered a period of time beginning on November 1, 2006 to October 31, 2009. 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 090049 and the exhibits and work papers attached to said Audit Report.

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21.

Violations

In the course of activities described in Paragraph 20, above, and during the examination period described in Paragraph 20, Respondents BEST FUNDING and PEREZ, acted in violation of the Code and the Regulations as follows:

(a) Received funds for credit fees at the close of loan transactions for borrowers David Parco, David and Cinthia French, Jose Arellano, and Daniel Farnham that had not yet been paid and failed to handle said credit fees through a trust account, in violation of Code Sections 10145(a) and 10176(e) and Regulation 2835(b).

(b) Failed to maintain a complete and accurate columnar record for trust funds that were received from escrow companies including, but not limited to, credit report fees for the loan transactions of borrowers David Parco, David and Cinthia French, Jose Arellano, and Daniel Farnham, in violation of Code Section 10145(a) and Regulation 2831.

(c) Failed to maintain a separate record for each beneficiary of trust funds that were received from escrow companies including, but not limited to, credit report fees for the loan transactions of borrowers David Parco, David and Cinthia French, Jose Arellano, and Daniel Farnham, in violation of Code Section 10145(a) and Regulation 2831.1.

(d) From approximately November 1, 2006, through November 17, 2009, Respondent PEREZ allowed his wife Mireles Perez, a person not licensed in any capacity by the Department, to be a signer on BEST FUNDING's trust account without fidelity bond coverage, in violation of Code Section 10145 and Regulation 2834.

(e) Failed to provide proof within loan files of borrowers including, but not limited to, Daniel Farnham and Rick and Aileen Sorer, of disclosure of yield spread premium or rebates from lender as additional compensation for services rendered to said borrowers, in violation of Code Section 10240 and Regulation 2840.

(f) During the course of the audit period, failed to make available for inspection the original license certificates of Respondent MERCADO and Elvia De La Riva, in violation of

Code Section 10160 and Regulation 2753.

Disciplinary Statutes

22.

The conduct of Respondents BEST FUNDING and PEREZ described in Paragraph 21, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
21(a)	Code Sections 10145, 10176(e) and Regulation 2835(b)
21(b)	Code Section 10145(a) and Regulation 2831
21(c)	Code Section 10145(a)and Regulation 2831.1
21(d)	Code Section 10145 and Regulation 2834
21(e)	Code Section 10240 and Regulation 2840
21(f)	Code Section 10160 and Regulation 2753

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

23.

The overall conduct of Respondent BEST FUNDING constitutes negligence. This conduct and violations are cause for the suspension or revocation of the real estate license and license rights of said Respondent pursuant to the provisions of Code Section 10177(g).

FOURTH CAUSE OF ACCUSATION
(Failure to Supervise)
(PEREZ)

24.

There is hereby incorporated in this Fourth, separate Cause of Accusation, all of the allegations contained in Paragraphs 1 through 23, above, with the same force and effect as if

herein fully set forth.

25.

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

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 BEST FUNDING HOME LOANS, INC.; FERNANDO ARTURO PEREZ, individually and as designated officer of Best Funding Home Loans, Inc.; ARTURO MERCADO; RICARDO DELARIVA; and MONICA VARGAS 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.

Dated at Los Angeles, California
this 29th day of October, 2010.

MARIA SUAREZ
Deputy Real Estate Commissioner

cc: Best Funding Home Loans, Inc.,
Fernando Arturo Perez,
Arturo Mercado
Ricardo Delariva
Monica Vargas
California Citywide Real Estate Corporation
Maria Suarez
Sacto
Audits -- Anna Hartoonian