



1 of the Administrative Procedure Act ("APA"), shall instead and  
2 in place thereof be submitted solely on the basis of the  
3 provisions of this Stipulation and Agreement ("Stipulation").

4           2. Respondents have received, read and understand the  
5 Statement to Respondent, the Discovery Provisions of the APA and  
6 the Accusation, filed by the Department of Real Estate  
7 ("Department") in this proceeding.

8           3. Respondents filed a Notice of Defense pursuant to  
9 Section 11506 of the Government Code for the purpose of  
10 requesting a hearing on the allegations in the Accusation.  
11 Respondents hereby freely and voluntarily withdraw said Notice  
12 of Defense. Respondents acknowledge that they understand that  
13 by withdrawing said Notice of Defense they will thereby waive  
14 their right to require the Commissioner to prove the allegations  
15 in the First Amended Accusation at a contested hearing held in  
16 accordance with the provisions of the APA and that they will  
17 waive other rights afforded to them in connection with the  
18 hearing such as the right to present evidence in defense of the  
19 allegations in the First Amended Accusation and the right to  
20 cross-examine witnesses.

21           4. This Stipulation is based on the factual  
22 allegations contained in the First Amended Accusation filed in  
23 this proceeding. In the interest of expedience and economy,  
24 Respondents choose not to contest these factual allegations, but  
25 to remain silent and understand that, as a result thereof, these  
26 factual statements, will serve as a prima facie basis for the  
27 disciplinary action stipulated to herein. The Real Estate

1 Commissioner shall not be required to provide further evidence  
2 to prove such allegations.

3           5. This Stipulation and Respondents' decision not to  
4 contest the First Amended Accusation are made for the purpose of  
5 reaching an agreed disposition of this proceeding and are  
6 expressly limited to this proceeding and any other proceeding or  
7 case in which the Department, or another licensing agency of  
8 this state, another state or if the federal government is  
9 involved and otherwise shall not be admissible in any other  
10 criminal or civil proceedings.

11           6. It is understood by the parties that the Real  
12 Estate Commissioner may adopt the Stipulation as his decision in  
13 this matter thereby imposing the penalty and sanctions on  
14 Respondents' real estate licenses and license rights as set  
15 forth in the below "Order". In the event that the Commissioner  
16 in his discretion does not adopt the Stipulation, the  
17 Stipulation shall be void and of no effect, and Respondents  
18 shall retain the right to a hearing on the First Amended  
19 Accusation under all the provisions of the APA and shall not be  
20 bound by any stipulation or waiver made herein.

21           7. The Order or any subsequent Order of the Real  
22 Estate Commissioner made pursuant to this Stipulation shall not  
23 constitute an estoppel, merger or bar to any further  
24 administrative or civil proceedings by the Department with  
25 respect to any conduct which was not specifically alleged to be  
26 causes for accusation in this proceeding.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I

All licenses and licensing rights of Respondent PLAYAS DEL PACIFICO 201-A, INC. under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this Decision; provided, however, that if Respondent petitions, the last fifteen (15) days of said suspension shall be stayed upon condition that:

1. Respondent PLAYAS DEL PACIFICO 201-A, INC. pays a monetary penalty pursuant to Section 10175.2 of the Code at the rate of \$250 for each day of the suspension for a total monetary penalty of \$3,750.

2. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.

3. No further cause for disciplinary action against the real estate license of Respondent PLAYAS DEL PACIFICO 201-A, INC. occurs within one year from the effective date of the Decision in this matter.

4. If Respondent PLAYAS DEL PACIFICO 201-A, INC. fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the Respondent shall not be

1 entitled to any repayment nor credit, prorated or otherwise, for  
2 money paid to the Department under the terms of this Decision.

3 5. If Respondent PLAYAS DEL PACIFICO 201-A, INC. pays  
4 the monetary penalty and if no further cause for disciplinary  
5 action against the real estate license of Respondent occurs  
6 within one year from the effective date of the Decision, the stay  
7 hereby granted shall become permanent.

8 II

9 All licenses, mortgage loan originator endorsements,  
10 and licensing rights of Respondent MICHAEL EDWARD HARRISON under  
11 the Real Estate Law are suspended for a period of thirty (30)  
12 days from the effective date of this Decision; provided,  
13 however, that if Respondent petitions, the last fifteen (15)  
14 days of said suspension shall be stayed upon condition that:

15 1. Respondent MICHAEL EDWARD HARRISON pays a monetary  
16 penalty pursuant to Section 10175.2 of the Code at the rate of  
17 \$250 for each day of the suspension for a total monetary penalty  
18 of \$3,750.

19 2. Said payment shall be in the form of a cashier's  
20 check or certified check made payable to the Recovery Account of  
21 the Real Estate Fund. Said check must be received by the  
22 Department prior to the effective date of the Decision in this  
23 matter.

24 3. No further cause for disciplinary action against  
25 the real estate license of Respondent MICHAEL EDWARD HARRISON  
26 occurs within one year from the effective date of the Decision in  
27 this matter.



1 the continuing education requirements of Article 2.5 of Chapter  
2 3 of the Real Estate Law for renewal of a real estate license.  
3 If Respondent fails to satisfy this condition, the Commissioner  
4 may order the suspension of the restricted license until the  
5 Respondent presents such evidence. The Commissioner shall  
6 afford Respondent the opportunity for a hearing pursuant to the  
7 Administrative Procedures Act to present such evidence.

8 V

9 All licenses and licensing rights of Respondent MICHAEL  
10 EDWARD HARRISON are suspended unless or until Respondent MICHAEL  
11 EDWARD HARRISON provides proof satisfactory to the Commissioner  
12 of having taken and successfully completed the continuing  
13 education course on trust fund accounting and handling specified  
14 in paragraph (3) of subdivision (a) of Section 10170.5 of the  
15 Business and Professions Code. Proof of satisfaction of this  
16 requirement includes evidence that the respondent has  
17 successfully completed the trust fund account and handling  
18 continuing education course within 120 days prior to the  
19 effective date of the Decision in this matter.

20 VII

21 Respondents PLAYAS DEL PACIFICO 201-A, INC. and MICHAEL  
22 EDWARD HARRISON, shall jointly or severally, by the effective of  
23 the Decision herein, provide proof of paying restitution of  
24 \$999.99 to Roy and Peggy Barnard as follows:

25 (a) Respondents shall deliver or mail the restitution  
26 payment, by certified mail, return receipt requested, to Roy and  
27

1 Peggy Barnards' last address on file with or known to  
2 Respondents.

3 (b) If the payment is returned by the Post Office marked  
4 "unable to deliver," Respondents shall employ a locator service  
5 (that may include or be limited to the Internet or other database  
6 retrieval search) to try and locate Roy and Peggy Barnard.  
7 Repayment shall then be made to the addresses recommended by the  
8 locator service.

9 (c) If unable to effect repayment after using a locator  
10 service, Respondents shall provide reasonable proof satisfactory  
11 to the Commissioner of their efforts to comply with the  
12 provisions of this Paragraph.

13 (d) If the Commissioner determines that proof to be  
14 unsatisfactory, he shall so advise Respondents, and indicate what  
15 additional reasonable efforts should be made to make repayment to  
16 Roy and Peggy Barnard.

17 (e) If Respondents fail to satisfy this condition, the  
18 Commissioner may order suspension of Respondents' licenses and/or  
19 mortgage loan originator endorsements until Respondents effect  
20 compliance herein; and

21 (f) Restitution payments not made to Roy and Peggy Barnard  
22 shall escheat to the State of California.

23 VIII

24 Pursuant to California Business and Professions Code  
25 Section 10106, Respondents PLAYAS DEL PACIFICO 201-A, INC. and  
26 MICHAEL EDWARD HARRISON, shall jointly or severally, pay the  
27 Commissioner's reasonable cost for investigation and enforcement

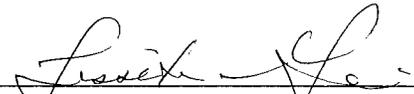
1 of the matter. The investigation and enforcement cost which led  
2 to this disciplinary action is \$778.75. Said payment shall be  
3 made within sixty (60) days after the effective date of this  
4 Decision.

5 The Commissioner may suspend the licenses and/or  
6 mortgage loan originator endorsements of Respondents pending a  
7 hearing held in accordance with California Government Code  
8 Section 11500, et seq., if payment is not timely made as provided  
9 for herein, or as provided for in a subsequent agreement between  
10 the Respondents and the Commissioner. The suspension shall  
11 remain in effect until payment is made in full or until  
12 Respondents enters into an agreement satisfactory to the  
13 Commissioner to provide for payment, or until a decision  
14 providing otherwise is adopted following a hearing held pursuant  
15 to this condition.

16 IX

17 All proofs of payment shall be submitted to Department  
18 Counsel Lissete Garcia, Attention: Legal Section, Department of  
19 Real Estate, 320 W. Fourth St., Suite 350, Los Angeles,  
20 California 90013-1105, on or before the dates set forth above.

21  
22 DATED: May 21, 2013

23   
24 LISSETE GARCIA, Counsel for  
the Department of Real Estate

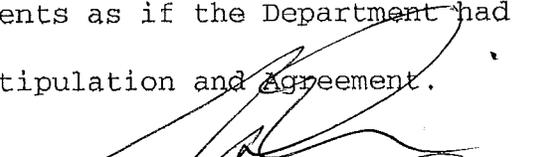
25 \* \* \*

26 We have read the Stipulation and Agreement, have  
27 discussed it with our counsel, and its terms are understood by

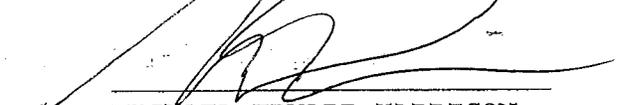
1 us and are agreeable and acceptable to us. We understand that  
2 we are waiving rights given to us by the California  
3 Administrative Procedure Act (including but not limited to  
4 Sections 11506, 11508, 11509 and 11513 of the Government Code),  
5 and we willingly, intelligently and voluntarily waive those  
6 rights, including the right of requiring the Commissioner to  
7 prove the allegations in the First Amended Accusation at a  
8 hearing at which we would have the right to cross-examine  
9 witnesses against us and to present evidence in defense and  
10 mitigation of the charges.  
11

12 Respondents can signify acceptance and approval of the  
13 terms and conditions of this Stipulation and Agreement by faxing  
14 a copy of the signature page, as actually signed by Respondents,  
15 to the Department at the following telephone/fax number:  
16 (213) 576-6917. Respondents agree, acknowledge and understand  
17 that by electronically sending to the Department a fax copy of  
18 their actual signature as they appear on the Stipulation and  
19 Agreement, that receipt of the faxed copy by the Department  
20 shall be as binding on Respondents as if the Department had  
21 received the original signed Stipulation and Agreement.  
22

23 DATED: 5/15/13

  
For Respondent PLAYAS DEL  
PACIFICO 201-A, INC.

25  
26 DATED: 5/15/13

  
MICHAEL EDWARD HARRISON  
Respondent

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I have reviewed the Stipulation and Agreement as to  
form and content and have advised my clients accordingly.

DATED: 5/10/13

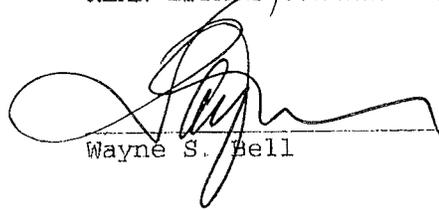
  
Steven C. Vondran, Attorney for  
Respondents Playas Del Pacifico 201-A,  
Inc. and Michael Edward Harrison

\* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted as my Decision in this matter, and shall become  
effective at 12 o'clock noon on August 8, 2013.

IT IS SO ORDERED 7/13/2013

REAL ESTATE COMMISSIONER

  
Wayne S. Bell

5AC

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

**FILED**

JUL 30 2012

DEPARTMENT OF REAL ESTATE  
BY: C.S.

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	No. H-38085 LA
PLAYAS DEL PACIFICO 201-A INC. )	<u>FIRST AMENDED ACCUSATION</u>
and MICHAEL EDWARD HARRISON, )	
individually and as designated )	
officer of Playas Del Pacifico )	
201-A Inc., )	
Respondents. )	

This First Amended Accusation amends the Accusation filed on April 26, 2012. The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against PLAYAS DEL PACIFICO 201-A INC. and MICHAEL EDWARD HARRISON, individually and as designated officer of Playas Del Pacifico 201-A Inc. (collectively "Respondents"), is informed and alleges as follows:

1.

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

1 2.

2 Respondents are presently licensed and/or have license  
3 rights under the Real Estate Law (Part 1 of Division 4 of the  
4 California Business and Professions Code, "Code").

5 3.

6 From June 9, 2009, through the present, Respondent  
7 PLAYAS DEL PACIFICO 201-A INC. ("PLP") has been licensed by the  
8 Department of Real Estate ("Department") as a real estate  
9 corporation, Department ID 01864286. AlCon Real Estate Services  
10 is a fictitious business name of PLP.

11 4.

12 From June 8, 2002, through the present, Respondent  
13 MICHAEL EDWARD HARRISON ("HARRISON") has been licensed by the  
14 Department as a real estate broker, Department ID 01133305.  
15 Respondent Harrison also obtained a mortgage loan originator  
16 endorsement on December 10, 2010, Nationwide Mortgage Licensing  
17 System ("NMLS") ID 340789. At all times relevant herein,  
18 Respondent PLP was authorized to act by and through Respondent  
19 HARRISON as its broker designated pursuant to Code Section  
20 10159.2 to be responsible for ensuring compliance with the Real  
21 Estate Law.  
22

23 5.

24 From February 6, 2003, through January 31, 2012,  
25 Robert Guy Mc Lellan ("Mc Lellan") was licensed by the  
26 Department as a restricted real estate salesperson, license no.  
27 00520763. The Department issued a restricted real estate  
28 salesperson license to Mc Lellan in Department Case No. H-29550

1 LA. On January 3, 2012, Mc Lellan's restricted real estate  
2 salesperson license was revoked in Department Case No. H-37153

3 LA. From March 6, 2009, through August 16, 2009, Mc Lellan was  
4 licensed under the employment of broker Dove Capital  
5 Corporation, license no. 01316943.

6 6.

7 At no time mentioned herein, have Kenneth A. Steele  
8 ("Steele") or AlCon Real Estate ("AlCon") ever been licensed by  
9 the Department in any capacity. Steele owns and is a director  
10 of PLP.

11 FIRST CAUSE OF ACCUSATION

12 (Advance Fee Violations)

13 7.

14 Code Section 10132 defines a real estate salesperson  
15 as a person who, for compensation or in expectation of  
16 compensation, is employed by a licensed real estate broker to do  
17 one or more of the acts set forth in Sections 10131, 10131.1,  
18 10131.2, 10131.3, 10131.4, and 10131.6. Code Section 10131  
19 defines a real estate broker as a person who: (d) solicit  
20 borrowers, negotiate loans, collect payments or perform services  
21 for borrowers in connection with loans secured directly or  
22 collaterally by liens on real property.

23 8.

24 Code Section 10026, in pertinent part, defines an  
25 advance fee as a fee that is claimed, demanded, charged,  
26 received, or collected by a licensee for services requiring a  
27 license. A person who proposes to collect an advance fee as  
28

1 defined in Code Section 10026 must submit to the Commissioner  
2 not less than ten calendar days before publication or other use,  
3 all materials to be used in advertising, promoting, soliciting  
4 and negotiating an agreement calling for the payment of an  
5 advance fee including the form of advance fee agreement proposed  
6 for use, pursuant to Section 2970, Regulations of the Real  
7 Estate Commissioner, Title 10, Chapter 6, Code of Regulations  
8 ("Regulations"). Code Section 10085 also allows the  
9 Commissioner to require that any all materials used in obtaining  
10 advance fee agreements, including contract forms, be submitted  
11 at least 10 calendar days before they are used.  
12

13 9.

14 For an unknown period of time beginning no later than  
15 May 12, 2009, Respondent PLP engaged in the business of  
16 soliciting to modify or negotiate loans secured by real  
17 property, and claimed, demanded, charged, received, collected or  
18 contracted for the collection of advance fees, within the  
19 meaning of Code Section 10026, for including, but not limited  
20 to, the following borrowers:

21 10.

22 Roy and Peggy Barnard

23 On or about May 12, 2009, Mc Lellan solicited and  
24 offered to assist borrowers Roy and Peggy Barnard with loan  
25 modification and negotiation services on behalf of "AlCon Real  
26 Estate." The Barnards entered into a written advance fee  
27 agreement with AlCon Real Estate for loan modification and  
28 negotiation services in connection with a loan secured by a lien

1 on real property. The Barnards paid an initial advance fee of  
2 \$999.99 to AlCon Real Estate. The Barnards subsequently  
3 received a letter from AlCon Real Estate which contained  
4 numerous substantial misrepresentations regarding efforts made  
5 by AlCon's agents to negotiate a modification with the Barnards'  
6 lender. AlCon failed to perform the loan modification and  
7 negotiation services that had been promised to the Barnards.  
8 Respondent PLP and Mc Lellan refused the Barnards' request for a  
9 refund of the advance fee paid to AlCon Real Estate.

10  
11 11.

12 Respondent PLP collected the advance fees described in  
13 Paragraph 10, above, pursuant to the provisions of a written  
14 agreement which constitutes an advance fee agreement within the  
15 meaning of Code Section 10085.

16 12.

17 Respondent PLP failed to submit the written agreement  
18 referred to in Paragraphs 10 and 11, above, to the Commissioner  
19 ten days before using it in violation of Code Section 10085 and  
20 Regulation Section 2970.

21 13.

22 The conduct, acts and/or omissions of Respondent PLP,  
23 while doing business as AlCon Real Estate, as set forth above,  
24 are in violation of Code Section 10085 and Regulation Section  
25 2970 and constitute grounds for the suspension or revocation of  
26 the license and license rights of Respondent PLP pursuant to  
27 Code Sections 10177(d) and/or 10177(g).  
28

1 14.

2 Respondent PLP's conduct, acts and/or omissions, as  
3 set forth above, constitute grounds for the suspension or  
4 revocation of the license and license rights of Respondent PLP  
5 pursuant to Code Sections 10176(a) (making any substantial  
6 misrepresentation), 10176(b) (making any false promises of a  
7 character likely to influence, persuade or induce), 10176(i)  
8 (conduct... which constitutes fraud or dishonest dealing) 10177(d)  
9 (violation of the Real Estate Law) or 10177(g) (negligence).  
10

11 15.

12 The conduct, acts and/or omissions of Respondent  
13 HARRISON, in allowing Respondent PLP to violate the Real Estate  
14 Law, as set forth above, constitutes a failure by Respondent  
15 HARRISON, as the officer designated by the corporate broker  
16 licensee, to exercise the supervision and control over the  
17 activities of Respondent PLP, as required by Code Section  
18 10159.2 and Regulation 2725, and is cause to suspend or revoke  
19 the real estate licenses and license rights of Respondent  
20 HARRISON under Code Sections 10166.051(a), 10166.05(c),  
21 10177(h), 10177(d) and/or 10177(g).  
22

23 SECOND CAUSE OF ACCUSATION

24 (AUDIT LA 100172)

25 16.

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

1 17.

2 On June 30, 2011, the Department completed an audit  
3 examination of the books and records of Respondent PLP's real  
4 estate activities. The audit examination covered a period of  
5 time from June 9, 2009 to April 30, 2011. The audit examination  
6 revealed violations of the Code as set forth in the following  
7 paragraphs, and more fully discussed in Audit Report LA 100172  
8 and the exhibits and work papers attached to said Audit Report.  
9

10 18.

11 In connection with the activities described in  
12 Paragraphs 10 and 17, above, PLP, while doing business as "AlCon  
13 Real Estate", employed or compensated Kenneth A. Steele, an  
14 unlicensed person, and Mc Lellan, a restricted salesperson who  
15 was not licensed under the employ of PLP, for activities that  
16 require a real estate license in violation of Code Section  
17 10137.

18 19.

19 In connection with the activities described in  
20 Paragraphs 10 and 17, above, PLP used an unlicensed fictitious  
21 business name "AlCon Real Estate" to conduct activities that  
22 require a real estate license in violation of Code Section  
23 10159.5 and Regulation Section 2731.

24 20.

25 The foregoing violations constitute cause for the  
26 suspension or revocation of the real estate license and license  
27 rights of Respondent PLP, as aforesaid, under the provisions of  
28 Code Sections 10177(d) for violation of the Real Estate Law

1 and/or 10177(g) for negligence.

2 21.

3 The conduct, acts and/or omissions of Respondent  
4 HARRISON, in allowing Respondent PLP to violate the Real Estate  
5 Law, as set forth above, constitutes a failure by Respondent  
6 HARRISON, as the officer designated by the corporate broker  
7 licensee, to exercise the supervision and control over the  
8 activities of Respondent PLP, as required by Code Section  
9 10159.2 and Regulation 2725, and is cause to suspend or revoke  
10 the real estate licenses and license rights of Respondent  
11 HARRISON under Code Sections 10166.051(a), 10166.05(c),  
12 10177(h), 10177(d) and/or 10177(g).  
13

14 22.

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

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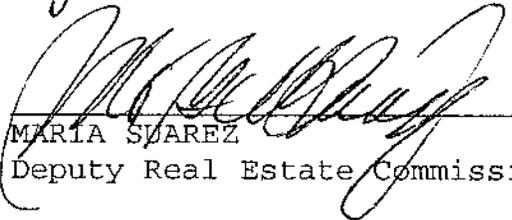
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1           WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against all licenses and/or license rights of Respondents  
5 PLAYAS DEL PACIFICO 201-A INC. and MICHAEL EDWARD HARRISON,  
6 individually and as designated officer of Playas Del Pacifico  
7 201-A Inc., under the Real Estate Law, that Complainant be  
8 awarded its costs of investigation and prosecution of this case,  
9 and for such other and further relief as may be proper under the  
10 provisions of law.

11 this 29<sup>th</sup> day of July, 2012.

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15 MARIA SUAREZ  
16 Deputy Real Estate Commissioner  
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24 cc: Playas Del Pacifico 201-A Inc.  
25 Michael Edward Harrison  
26 Maria Suarez  
27 Sacto.  
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2.

Respondents are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code, "Code").

3.

From June 9, 2009, through the present, Respondent PLAYAS DEL PACIFICO 201-A INC. ("PLP") has been licensed by the Department of Real Estate ("Department") as a real estate corporation, license no. 01864286. AlCon Real Estate Services is a fictitious business name of PLP.

4.

From June 8, 2002, through the present, Respondent MICHAEL EDWARD HARRISON ("HARRISON") has been licensed by the Department as a real estate broker, license no. 01133305. At all times relevant herein, Respondent PLP was authorized to act by and through Respondent HARRISON as its broker designated pursuant to Code Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

5.

From February 6, 2003, through January 31, 2012, Robert Guy Mc Lellan ("Mc Lellan") was licensed by the Department as a restricted real estate salesperson, license no. 00520763. The Department issued a restricted real estate salesperson license to Mc Lellan in Department Case No. H-29550 LA. On January 3, 2012, Mc Lellan's restricted real estate salesperson license was revoked in Department Case No. H-37153 LA. From March 6, 2009, through August 16, 2009, Mc Lellan was

1 licensed under the employment of broker Dove Capital  
2 Corporation, license no. 01316943.

3 6.

4 At no time mentioned herein, have Kenneth A. Steele  
5 ("Steele") or AlCon Real Estate ("AlCon") ever been licensed by  
6 the Department in any capacity. Steele owns and is a director  
7 of PLP.

8 FIRST CAUSE OF ACCUSATION

9 (Advance Fee Violations)

10 7.

11 Code Section 10132 defines a real estate salesperson  
12 as a person who, for compensation or in expectation of  
13 compensation, is employed by a licensed real estate broker to do  
14 one or more of the acts set forth in Sections 10131, 10131.1,  
15 10131.2, 10131.3, 10131.4, and 10131.6. Code Section 10131  
16 defines a real estate broker as a person who: (d) solicit  
17 borrowers, negotiate loans, collect payments or perform services  
18 for borrowers in connection with loans secured directly or  
19 collaterally by liens on real property.

20 8.

21 Code Section 10026, in pertinent part, defines an  
22 advance fee as a fee that is claimed, demanded, charged,  
23 received, or collected by a licensee for services requiring a  
24 license. A person who proposes to collect an advance fee as  
25 defined in Code Section 10026 must submit to the Commissioner  
26 not less than ten calendar days before publication or other use,  
27 all materials to be used in advertising, promoting, soliciting  
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1 and negotiating an agreement calling for the payment of an  
2 advance fee including the form of advance fee agreement proposed  
3 for use, pursuant to Section 2970, Regulations of the Real  
4 Estate Commissioner, Title 10, Chapter 6, Code of Regulations  
5 ("Regulations"). Code Section 10085 also allows the  
6 Commissioner to require that any all materials used in obtaining  
7 advance fee agreements, including contract forms, be submitted  
8 at least 10 calendar days before they are used.

9  
10 9.

11 For an unknown period of time beginning no later than  
12 May 12, 2009, Respondent PLP engaged in the business of  
13 soliciting to modify or negotiate loans secured by real  
14 property, and claimed, demanded, charged, received, collected or  
15 contracted for the collection of advance fees, within the  
16 meaning of Code Section 10026, for including, but not limited  
17 to, the following borrowers:

18 10.

19 Roy and Peggy Barnard

20 On or about May 12, 2009, Mc Lellan solicited and  
21 offered to assist borrowers Roy and Peggy Barnard with loan  
22 modification and negotiation services on behalf of "AlCon Real  
23 Estate." The Barnards entered into a written advance fee  
24 agreement with AlCon Real Estate for loan modification and  
25 negotiation services in connection with a loan secured by a lien  
26 on real property. The Barnards paid an initial advance fee of  
27 \$999.99 to AlCon Real Estate. The Barnards subsequently  
28 received a letter from AlCon Real Estate which contained

1 numerous substantial misrepresentations regarding efforts made  
2 by AlCon's agents to negotiate a modification with the Barnards'  
3 lender. AlCon failed to perform the loan modification and  
4 negotiation services that had been promised to the Barnards.  
5 Respondent PLP and Mc Lellan refused the Barnards' request for a  
6 refund of the advance fee paid to AlCon Real Estate.

7  
8 11.

9 Respondent PLP collected the advance fees described in  
10 Paragraph 10, above, pursuant to the provisions of a written  
11 agreement which constitutes an advance fee agreement within the  
12 meaning of Code Section 10085.

13  
14 12.

15 Respondent PLP failed to submit the written agreement  
16 referred to in Paragraphs 10 and 11, above, to the Commissioner  
17 ten days before using it in violation of Code Section 10085 and  
18 Regulation Section 2970.

19  
20 13.

21 The conduct, acts and/or omissions of Respondent PLP,  
22 while doing business as AlCon Real Estate, as set forth above,  
23 are in violation of Code Section 10085 and Regulation Section  
24 2970 and constitute grounds for the suspension or revocation of  
25 the license and license rights of Respondent PLP pursuant to  
26 Code Sections 10177(d) and/or 10177(g).

27  
28 14.

Respondent PLP's conduct, acts and/or omissions, as  
set forth above, constitute grounds for the suspension or  
revocation of the license and license rights of Respondent PLP

1 pursuant to Code Sections 10176(a) (making any substantial  
2 misrepresentation), 10176(b) (making any false promises of a  
3 character likely to influence, persuade or induce), 10176(i)  
4 (conduct... which constitutes fraud or dishonest dealing) 10177(d)  
5 (violation of the Real Estate Law) or 10177(g) (negligence).

6  
7 15.

8 The conduct, acts and/or omissions of Respondent  
9 HARRISON, in allowing Respondent PLP to violate the Real Estate  
10 Law, as set forth above, constitutes a failure by Respondent  
11 HARRISON, as the officer designated by the corporate broker  
12 licensee, to exercise the supervision and control over the  
13 activities of Respondent PLP, as required by Code Section  
14 10159.2 and Regulation 2725, and is cause to suspend or revoke  
15 the real estate licenses and license rights of Respondent  
16 HARRISON under Code Sections 10177(h), 10177(d) and/or 10177(g).

17 SECOND CAUSE OF ACCUSATION

18 (AUDIT LA 100172)

19 16.

20 There is hereby incorporated in this Second, separate  
21 Cause of Accusation, all of the allegations contained in  
22 Paragraphs 1 through 15, above, with the same force and effect  
23 as if herein fully set forth.

24 17.

25 On June 30, 2011, the Department completed an audit  
26 examination of the books and records of Respondent PLP's real  
27 estate activities. The audit examination covered a period of  
28 time from June 9, 2009 to April 30, 2011. The audit examination

1 revealed violations of the Code as set forth in the following  
2 paragraphs, and more fully discussed in Audit Report LA 100172  
3 and the exhibits and work papers attached to said Audit Report.

4 18.

5 In connection with the activities described in  
6 Paragraphs 10 and 17, above, PLP, while doing business as "AlCon  
7 Real Estate", employed or compensated Kenneth A. Steele, an  
8 unlicensed person, and Mc Lellan, a restricted salesperson who  
9 was not licensed under the employ of PLP, for activities that  
10 require a real estate license in violation of Code Section  
11 10137.

12 19.

13 In connection with the activities described in  
14 Paragraphs 10 and 17, above, PLP used an unlicensed fictitious  
15 business name "AlCon Real Estate" to conduct activities that  
16 require a real estate license in violation of Code Section  
17 10159.5 and Regulation Section 2731.

18 20.

19 The foregoing violations constitute cause for the  
20 suspension or revocation of the real estate license and license  
21 rights of Respondent PLP, as aforesaid, under the provisions of  
22 Code Sections 10177(d) for violation of the Real Estate Law  
23 and/or 10177(g) for negligence.

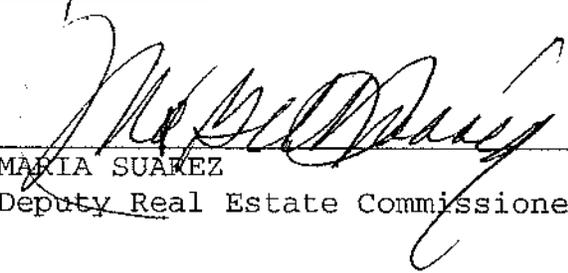
24 21.

25 The conduct, acts and/or omissions of Respondent  
26 HARRISON, in allowing Respondent PLP to violate the Real Estate  
27 Law, as set forth above, constitutes a failure by Respondent  
28

1 HARRISON, as the officer designated by the corporate broker  
2 licensee, to exercise the supervision and control over the  
3 activities of Respondent PLP, as required by Code Section  
4 10159.2 and Regulation 2725, and is cause to suspend or revoke  
5 the real estate licenses and license rights of Respondent  
6 HARRISON under Code Sections 10177(h), 10177(d) and/or 10177(g).

7 WHEREFORE, Complainant prays that a hearing be  
8 conducted on the allegations of this Accusation and that upon  
9 proof thereof, a decision be rendered imposing disciplinary  
10 action against all licenses and/or license rights of Respondents  
11 PLAYAS DEL PACIFICO 201-A INC. and MICHAEL EDWARD HARRISON,  
12 individually and as designated officer of Playas Del Pacifico  
13 201-A Inc., under the Real Estate Law, that Complainant be  
14 awarded its costs of investigation and prosecution of this case,  
15 and for such other and further relief as may be proper under the  
16 provisions of law.

17 this 24<sup>TH</sup> day of April, 2012.

18  
19  
20  
21   
22 MARIA SUAREZ  
23 Deputy Real Estate Commissioner

24 cc: Playas Del Pacifico 201-A Inc.  
25 Michael Edward Harrison  
26 Maria Suarez  
27 Sacto.  
28