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FILED

1 Bureau of Real Estate
2 320 West 4th Street, Ste. 350
3 Los Angeles, California 90013-1105
4 Telephone: (213) 576-6982

DEC - 9 2013

DEPARTMENT OF REAL ESTATE
BY: [Signature]

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7
8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-38638 LA
)	L-2013020357
12 FIRST AMERICAN HOME LOANS INC.; and)	
)	
13 MARK H. BRYAN, individually and as)	<u>STIPULATION</u>
14 designated officer of First American Home Loans Inc.;)	<u>AND</u>
)	<u>AGREEMENT</u>
15 Respondents.)	
)	

16
17 It is hereby stipulated by and between Respondents FIRST AMERICAN HOME
18 LOAN INC. and MARK H. BRYAN, individually and as designated officer of First American
19 Home Loans Inc. (sometimes collectively referred to as "Respondents"), represented by Frank M.
20 Buda, Esq., and the Complainant, acting by and through Elliott Mac Lennan, Counsel for the
21 Bureau of Real Estate, as follows for the purpose of settling and disposing of the Accusation
22 ("Accusation") filed on January 4, 2013, in this matter:

23 1. All issues which were to be contested and all evidence which was to be
24 presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing
25 was to be held in accordance with the provisions of the Administrative Procedure Act ("APA"),
26 shall instead and in place thereof be submitted solely on the basis of the provisions of this
27 Stipulation and Agreement ("Stipulation").

1 2. Respondents have received, read and understand the Statement to Respondent,
2 the Discovery Provisions of the APA and the Accusation filed by the Bureau of Real Estate in
3 this proceeding.

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

12 4. This Stipulation is based on the factual allegations contained in the Accusation.
13 In the interest of expedience and economy, Respondents choose not to contest these allegations,
14 but to remain silent and understand that, as a result thereof, these factual allegations, without
15 being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to
16 herein. The Real Estate Commissioner shall not be required to provide further evidence to prove
17 said factual allegations.

18 5. This Stipulation is made for the purpose of reaching an agreed disposition of
19 this proceeding and is expressly limited to this proceeding and any other proceeding or case in
20 which the Bureau of Real Estate ("Bureau"), the state or federal government, or any agency of
21 this state, another state or federal government is involved.

22 6. It is understood by the parties that the Real Estate Commissioner may adopt
23 this Stipulation as his Decision in this matter thereby imposing the penalty and sanctions on
24 Respondents' real estate licenses and license rights as set forth in the "Order" herein below. In
25 the event that the Commissioner in his discretion does not adopt the Stipulation, it shall be void
26 and of no effect and Respondents shall retain the right to a hearing and proceeding on the
27 Accusation under the provisions of the APA and shall not be bound by any stipulation or waiver

1 made herein.

2 7. The Order or any subsequent Order of the Real Estate Commissioner made
3 pursuant to this Stipulation shall not constitute an estoppel, merger or bar to any further
4 administrative or civil proceedings by the Bureau of Real Estate with respect to any matters
5 which were not specifically alleged to be causes for Accusation in this proceeding but do
6 constitute a bar, estoppel and merger as to any allegations actually contained in the Accusations
7 against Respondent herein.

8 8. Respondents understand that by agreeing to this Stipulation, Respondents agree
9 to pay, pursuant to Business and Professions Code Section 10106, the cost of the investigation
10 and enforcement of this matter. The amount of said cost is \$2,308.00.

11 DETERMINATION OF ISSUES

12 By reason of the foregoing, it is stipulated and agreed that the following
13 determination of issues shall be made:

14 I.

15 The conduct, acts or omissions of FIRST AMERICAN HOME LOAN INC. and
16 MARK H. BRYAN, as described in Paragraph 4, herein above, are in violation of Section
17 10236.4(b) of the Business and Professions Code ("Code") and is a basis for discipline of
18 Respondent's license and license rights as a violation of the Real Estate Law pursuant to Code
19 Section 10177(d).

20 ORDER

21 WHEREFORE, THE FOLLOWING ORDER is hereby made:

22 I.

23 All licenses and licensing rights of Respondents FIRST AMERICAN HOME
24 LOAN INC. and MARK H. BRYAN, under the Real Estate Law are suspended for a period of
25 thirty (30) days from the effective date of this Decision, provided however; said suspension shall
26 be stayed for two (2) years upon the following terms and conditions:

27 ///

1 Commissioner shall afford Respondents the opportunity for a hearing pursuant to the
2 Administrative Procedure Act to present such evidence.

3 (B) To the extent that restitution repayment is applicable:

4 (1) Respondents shall deliver or mail the restitution payments, by certified mail,
5 return receipt requested, to the Borrowers last address on file with or known to Respondents in
6 the table(s), below.

7
8 (2) If any of the payments are returned by the Post Office marked "unable to
9 deliver," Respondents shall employ a locator service (that may include or be limited to the
10 Internet or other database retrieval search) to try and locate the aforesaid borrowers. Repayments
11 shall then be made to the addresses recommended by the locator service.

12
13 (3) If unable to effect repayment after using a locator service, Respondents shall
14 provide reasonable proof satisfactory to the Commissioner of their efforts to comply with the
15 provisions of this Paragraph.

16 (4) If the Commissioner determines that proof to be unsatisfactory, the
17 Commissioner shall so advise Respondents, and indicate what additional reasonable efforts
18 should be made to make repayment to the Borrowers.

19
20 (5) If Respondents fail to satisfy this condition, the Commissioner may order
21 suspension of Respondents' license until Respondents effect compliance herein and/or may order
22 that undeliverable or undelivered restitution payments escheat to the State of Virginia.

23 (6) If the Commissioner determines that proof to be unsatisfactory and that
24 reasonable efforts have not been made to locate the Borrowers, the Commissioner may, by
25 separate order, suspend Respondents' license for thirty (30) days.
26
27

Table: Restitution per Accusation

Borrowers	Licensed Activity	Advance Fee Collected
J/E Delgado	Loan Modification	\$1,600.00
Henderson	Loan Modification	\$ 450.00
Total		\$2,050.00

IV.

All proof required by this Order, shall be sent to the attention of Elliott Mac Lennan, Counsel, Legal Section, Bureau of Real Estate, 320 W. Fourth St., Suite 350, Los Angeles, California 90013-1105.

DATED: 10-10-13

E L L
ELLIOTT MAC LENNAN, Counsel for
Bureau of Real Estate

EXECUTION OF THE STIPULATION

We have read the Stipulation and Agreement and have discussed it with our attorney. Its terms are understood by us and are agreeable and acceptable to us. We understand that we are waiving rights given to us by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and we willingly, intelligently and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which we would have the right to cross-examine witnesses against us and to present evidence in defense and mitigation of the charges.

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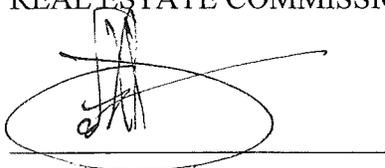
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The foregoing Stipulation and Agreement is hereby adopted as my Decision as to
Respondents FIRST AMERICAN HOME LOAN INC. and MARK H. BRYAN, and shall
become effective at 12 o'clock noon on December 23, 2013.

IT IS SO ORDERED ~~NOVEMBER~~ 17, 2013.

REAL ESTATE COMMISSIONER

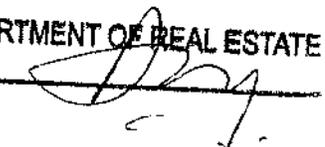
A handwritten signature in black ink, appearing to be 'JM', is written over a horizontal line. The signature is enclosed within a hand-drawn oval.

By: JEFFREY MASON
Chief Deputy Commissioner

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JAN -4 2013

DEPARTMENT OF REAL ESTATE

BY: 

1 ELLIOTT MACLENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)
6 (213) 576-6982 (office)

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	
)	
12 FIRST AMERICAN HOME LOANS INC; and,)	No. H- 38638 LA
)	
13 MARK H. BRYAN, individually and as)	
14 designated officer of First American Home Loans Inc.;)	<u>ACCUSATION</u>
)	
15 Respondents.)	
)	
)	

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

21 1.

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

24 2.

25 All references to the "Code" are to the California Business and Professions Code
26 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.
27

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

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

8 FIRST CAUSE OF ACCUSATION
9 (Audit Examination)

10 4.

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

18 Trust Account

19 5.

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

26 ///

27 ///

1 "First American Home Loans Inc. ("G/A 1")
2 *****08410"
3 Bank of America
4 Anaheim Hills, California

5 "First American Home Loans Inc. ("G/A 2")
6 *****94926"
7 Wells Fargo Bank
8 Portland, Oregon

8 Audit Violations

9 6.

10 In the course of activities described in Paragraphs 3 and 5, above, and during the
11 examination period described in Paragraph 4, Respondents FAHLI and BRYAN acted in
12 violation of the Code and the Regulations in which Respondents:

13 (a) Failed to retain a true and correct copy of a Department of Real Estate
14 approved Mortgage Loan Disclosure Statement signed by the broker, in violation of Code
15 Section 10240.

16 (b) Failed to display the FAHLI's license number and/or Mortgage Loan
17 Originator unique identifier on the Mortgage Loan Disclosure Statements, in violation of Code
18 Section 10236.4(b).

19 (c) Collected advance fees within the meaning of Code Section 10026 from
20 homeowners seeking loan modification services wherein FAHLI failed to provide loan
21 modification applicants with a pre-approved advance fee agreement from the Department in the
22 form of a no objection letter, in violation of Code Section 10085 and Regulation 2970.

23 (d) With reference to the lack of an advance fee agreement, FAHLI failed to
24 provide a complete description of services to be rendered provided to each homeowner-borrower
25
26
27

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

3 (e) Mixed and commingled trust funds and FAHLI's funds by depositing advance
4 fees received for loan modification service fees into FAHLI's general operating accounts, in
5 violation of Code Sections 10145 and 10176(e) and Regulation 2832.

6 (f) Failed to maintain a control record through the instrumentality of a daily
7 journal in chronological order for each beneficiary or transaction, thereby failing to account for
8 advance fees collected for loan modification services, in violation of Code Section 10145 and
9 Regulation 2831.
10

11 (g) Failed to maintain a separate record for each beneficiary or transaction,
12 thereby failing to account for all advance fees collected for loan modification services, in
13 violation of Code Section 10145 and Regulation 2831.1.
14

15 (h) Failed to perform a monthly reconciliation of the balance of all separate
16 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all
17 trust funds received and disbursed by the bank accounts that contain trust funds for advance fees
18 collected for loan modification services, in violation of Code Section 10145 and Regulation
19 2831.2.
20

21 (i) Claimed, charged and collected advance fees after October 10, 2009, the SAFE
22 ACT Initiation Date, for negotiating, arranging and/or offering to broker mortgage loans and loan
23 modifications and other forms of mortgage loan forbearance for fees paid by the borrower
24 J&E D. Respondents received and collected advance fees totaling \$800.00 from homeowner
25 J&E D before FAHLI had fully performed each and every service for which FAHLI had
26 contracted to perform or represented that would be performed during the period of October 11,
27

1 2009 to January 31, 2011, in violation of Code Sections 10085.6, 10145 and 10146 and
2 Regulation 2832.

3 (j) FAHLI ostensibly performed acts for which a real estate license is
4 required, including loss mitigation and loan modification services for prospective loan
5 modification applicants after FAHLI's broker license cancelled and before reissuance, in
6 violation of Code Section 10130. FAFHI was originally licensed by the Department on
7 November 28, 2000 to act as a corporate broker. BRYAN cancelled FAHLI's license with the
8 Department effective September 12, 2003. FAHLI's was relicensed effective June 17, 2010.
9 During the interregnum, FAFHI and BRYAN conducted loan modification activity for the two
10 borrowers tabled below:
11

12
13 Table: Advance Fees Collected for Loan Modifications unlicensed period

14

	Name	Advance Fee Paid	Time Period Collected	
15				
16	1	J&E D	\$1600.00	Prior to and after June 17, 2010
17				
18				
19	2	Henderson	\$ 450.00	Prior to and after June 17, 2010
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1 FIFTH CAUSE OF ACCUSATION
2 (Supervision and Compliance)

3 15.

4 The overall conduct of Respondent BRYAN constitutes a failure on said
5 Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable
6 supervision and control over the licensed activities of FAHLI, as required by Code Section
7 10159.2 and Regulation 2725, and to keep FAHLI in compliance with the Real Estate Law, and
8 is cause for discipline of the real estate license and license rights of Respondent BRYAN
9 pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

10 PRIOR DEPARTMENT ACTION

11 16.

12 On January 20, 2012, in Departmental Case No. H-37103 LA, a Stipulation and
13 Agreement became effective for violations of Sections 10085, 10145 and 10146 of the California
14 Business and Professions Code and Sections 2832, 2832.1, 2970 and 2972 of Title 10, Chapter 6,
15 California Code of Regulations s based on an Accusation filed on March 3, 2011. Respondent
16 BRYAN's real estate broker license were revoked with a right to restricted real estate salesperson
17 license, issued on February 17, 2012, and suspended for ninety (90) days on terms and conditions
18 including commutation by a monetary penalty.
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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against the license and license rights of Respondents FIRST AMERICAN HOME LOANS
4 INC. and MARK H. BRYAN, under the Real Estate Law (Part 1 of Division 4 of the Business
5 and Professions Code) and for such other and further relief as may be proper under other
6 applicable provisions of law including but not limited to: (1) restitution; (2) costs of audit
7 pursuant to Code Section 10148; and (3) costs of investigation and enforcement pursuant to Code
8 Section 10106.

9 Dated at Los Angeles, California

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11 this *11th day of December 2012.*
12 
13 Deputy Real Estate Commissioner
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22

23 cc: First American Home Loans Inc.
24 c/o John Paul Rock designated officer
25 Mark H. Bryan former designated officer
26 Maria Suarez
27 Sacto
Enforcement – Eleazar Galano
Audits – Gina King