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FILED

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DEPARTMENT OF REAL ESTATE
By R. Mar

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of

13 BENJAMIN F. DIAZ,

14 Respondent.

No. H-2776 FR

ACCUSATION

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16 The Complainant, BRENDA SMITH, in her official capacity as a Deputy Real
17 Estate Commissioner of the State of California, for cause of Accusation against BENJAMIN F.
18 DIAZ, is informed and alleges as follows:

19 1

20 Respondent BENJAMIN F. DIAZ, ("Respondent"), is presently licensed by the
21 Department of Real Estate ("the Department") and/or has license rights under the Real Estate
22 Law, Part 1 of Division 4 of the Business and Professions Code ("the Code"), as a real estate
23 broker and has a mortgage loan originator license endorsement ("License Endorsement") and
24 license endorsement rights issued by the Department.

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26 At no time prior to April 26, 2012, did Respondent have a license endorsement
27 issued by the Department authorizing him to act as a mortgage loan originator.

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At all times mentioned herein, Respondent had the following fictitious business names registered with the Department: "Benjamin's Real Estate" and "Central Mortgage".

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Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent, such allegation shall be deemed to mean that the employees, agents, real estate licensees, and others employed by or associated with Respondent committed such act or omission while engaged in furtherance of the business or operations of Respondent and while acting within the course and scope of their authority and employment.

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At all times mentioned herein, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker, in the State of California, within the meaning of:

Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage and/or loan modification business with the public wherein Respondent solicited lenders and borrowers for or negotiated loans or collected payments and/or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property for or in expectation of compensation; and,

Section 10131.2 of the Code, including the claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a loan or loans thereon.

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Beginning on or about January 12, 2011, and continuing intermittently until June 23, 2011, an audit was conducted at Respondent's office located in Bakersfield, CA, and at the

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Department's Fresno District Office, wherein the Auditor examined Respondent's records for the period of November 1, 2009 through May 1, 2011.

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While acting in the course and scope of a real estate broker as described in Paragraph 5, above, and within three years prior to the filing of this Accusation, Respondent accepted or received funds in trust ("trust funds"), within the meaning of Section 10145 of the Code, from or on behalf of borrowers, lenders, and/or others in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, for or in expectation of compensation, as alleged herein, and thereafter from time-to-time made disbursements of said trust funds, and engaged in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of advance fees, which constitute trust funds, within the meaning of Sections 10026, 10131.2 and 10146 of the Code.

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While acting in the course and scope of a real estate broker as described in Paragraph 5, above, and within three years prior to the filing of this Accusation, Respondent claimed, demanded, charged, collected, and/or received advance fees in connection with loan modification services after October 10, 2009, in violation of Section 10085.6 (unlawful collection of advance fees related to loan modifications) of the Code and Section 2945.4 (unlawful collection of advance fees related to loan modifications) of the California Civil Code (hereinafter "Civil Code"), for transactions, including but not limited to the following:

Borrower	Property	Advance Fee	Date Received	Status of Loan Modification
E. Villicana	940 90 th Ave., Oakland, CA	\$750	10/15/09	Not Obtained
G. Bejines	1267 Cathay Dr., San Jose, CA	\$750	10/15/09	Not Obtained
J. Garcia	1545 B St., Fresno, CA	\$750	10/25/09	Not Obtained

1	J. Salinas	432 N. Hester Ave., Farmersville, CA	\$750	10/31/09	Not Obtained
2	M. Ochoa	2510 N. Hermosa Ct., Visalia, CA	\$750	11/02/09	Not Obtained
3	M. Zamora	1717 Custer Ave., Bakersfield, CA	\$750	11/02/09	Not Obtained
4	L. Gomez	Delano, CA	\$550	11/02/09	Not Obtained
5	A. Gonzalez	317 San Pedro St., McFarland, CA	\$750	11/11/09	Not Obtained
6	M. Jacobo	301 McMathew Ave., Farmersville, CA	\$750	11/11/09	Not Obtained
7	M. Jacobo	301 McMathew Ave., Farmersville, CA	\$750	11/12/09	Not Obtained
8	E. De Hogas	1574 Orob St., Hanford, CA	\$400	11/15/09	Not Obtained
9	A. Lopez	13675 Ave. 420, Orosi, CA and 16465 Hudson Ave., Woodville, CA	\$1,300	12/01/09	Not Obtained
10	R. Gonzalez	Lenore St., Hanford, CA	\$450	12/06/09	Not Obtained
11	R. Santillan	Cederwood St., Hanford, CA	\$750	12/20/09	Not Obtained
12	M. Aponte	8334 Ora Belle Ln., El Cajon, CA	\$750	12/29/09	Not Obtained
13	C. Obeso	248 Pacific St., Shafter, CA	\$750	01/01/10	Not Obtained
14	G. Barlanza	Unknown	\$200	01/07/10	Not Obtained
15	E. Rendon	John Ct, Arvin, CA	\$350	01/08/10	Not Obtained
16	J. Perez	601 E. Sierra St., Earlimart, CA	\$750	01/11/10	Not Obtained
17	D. Arguello	9921 Estobaugh St., Lamont, CA	\$750	01/14/10	Not Obtained
18	C. Hernandez	327 N. El Dorado Cir., Delano, CA	\$750	01/14/10	Not Obtained
19	M. Caldera	706 Hayslett Ave., Bakersfield, CA	\$750	01/19/10	Not Obtained
20	S. Guevara	15515 Avenue 330, Ivanhoe, CA	\$1,550	01/23/10	Not Obtained
21	J. Nance	752 Valencia Ave., Lemoore, CA	\$750	01/25/10	Not Obtained
22	M. Valdovinos	1216 N. Park Ave., Visalia, CA	\$750	01/26/10	Not Obtained
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1	N. Aliu	10121 E. Glendon Cr., Santee, CA	\$750	01/28/10	Not Obtained
2	A. Ayala	400 E. Stanislaus St., Avenal, CA	\$800	02/02/10	Not Obtained
3	A. Sabedra	23411 Avenue 88, Terra Bella, CA	\$750	02/07/10	Not Obtained
4	R. Gonzalez	16736 Road 168, Woodville, CA	\$750	02/11/10	Not Obtained
5	F. Valenzuela	302 Mark Ave., Shafter, CA	\$750	02/24/11	Not Obtained
6	R. Serda	5614 Sicily Ct., Bakersfield, CA	\$750	03/05/10	Not Obtained
7	D. Martinez	1332 Oak Ave., Wasco, CA	\$750	03/05/10	Not Obtained
8	S. Garcia	1208 El Camino Real, Arvin, CA	\$750	03/26/10	Not Obtained
9	W. Lopez	8621 Butternut Ave., Bakersfield, CA	\$200	03/27/10	Not Obtained
10	O. Candolfi	2090 W. Garden Ln., Porterville, CA	\$750	03/30/10	Not Obtained
11	S. Beadle	3027 Virginia Ave., Bakersfield, CA	\$750	04/06/10	Not Obtained
12	O. Castillo	414 N. Shasta Ave., Farmersville, CA	\$500	04/12/10	Not Obtained
13	J. Toledo	416 Oswell St., Bakersfield, CA	\$750	05/05/10	Not Obtained
14	J. Garcia	323 Olive St., Bakersfield, CA	\$750	05/10/10	Not Obtained
15	R. Arias	860 S. Johnson Ave., El Cajon, CA	\$750	05/17/10	Not Obtained
16	R. Ceballos	14008 Ave 64, Earlimart, CA	\$750	05/26/10	Not Obtained
17	M. Rama	780 Ballantyne St., El Cajon, CA	\$750	05/28/10	Not Obtained
18	F. Guliex	10416 Tatum St., Lamont, CA	\$1,500	05/30/10	Not Obtained
19	E. Nunez	10416 Tatum St., Lamont, CA	\$750	06/13/10	Not Obtained
20	F. Navarro	14247 Eberle Rd., Bakersfield, CA	\$750	06/16/10	Not Obtained
21	D. Garcia	3818 Brea Burn Dr., Bakersfield, CA	\$750	06/23/10	Not Obtained
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M. Paramo	2266 Cleo Ave., Porterville, CA	\$400	07/05/10	Not Obtained
R. Hernandez	122 S. Milham Dr., Bakersfield, CA	\$750	07/05/10	Not Obtained
J. Cisneros	2550 Flower St., Wasco, CA	\$750	09/28/10	Not Obtained
R. Bailey	615 Hewlett St., Bakersfield, CA	\$750	11/12/10	Not Obtained
D. Magallanes	1833 5 th Dr., Delano, CA	\$750	11/17/10	Not Obtained
J. Rodarte	7601 Brett Ave., Lamont, CA	\$500	01/17/11	Not Obtained
R. Martinez	1606 Palm Ave., National City, CA	\$750	02/21/11	Not Obtained
J. Beltran	485 Klassen St., Shafter, CA	\$750	03/08/11	Not Obtained
M. Gallegos	6571 Lowry St., Bakersfield, CA	\$750	04/09/11	Not Obtained
I. Meza	956 W. Mammoth Pool, Hanford, CA	\$750	05/14/11	Not Obtained
M. Ayala	1920 Fern Tree Close, Wasco, CA	\$750	05/18/11	Not Obtained

In connection with the operation and conduct of the activities and transactions described in Paragraph 8, above, and within three years prior to the filing of this Accusation, Respondent:

(a) claimed, demanded, charged, received, collected and/or contracted for advance fees in connection with loan modification services and failed to submit the advance fee agreements and all materials used in obtaining the advance fee agreements to the Department prior to use, without first obtaining a "No Objection Letter" as required by Sections 10085 (failure to submit materials used in collection of advance fees to Department) of the Code, and Section 2970 (materials used in collection of advance fees must be approved by Department prior to use) of Title 10 of the California Code of Regulations ("the Regulations");

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1 (b) collected advance fees, trust funds, from principals for providing loan
2 modification services, and deposited those funds into Respondent's general business bank
3 account instead of immediately depositing said funds into a designated trust account or neutral
4 escrow depository, in violation of Sections 10145 (trust fund handling) and 10146 (handling of
5 advance fees as trust funds) of the Code;

6 (c) collected advance fees from principals for providing loan modification
7 services, and did not maintain and provide an accounting to those principals showing the services
8 rendered, identification of the trust account into which the funds were deposited and details of
9 how those funds were disbursed, in violation of Section 10146 (handling of advance fees as trust
10 funds) of the Code and 2972 (verified accounting of advance fee handling to principals) of the
11 Regulations;

12 (d) failed to notify the Department by January 31, 2010 of Respondent's loan
13 arranging activities for properties containing one to four residential units, in violation of Section
14 10166.02(a) (failure to notify Department of loan activity) of the Code; and,

15 (e) engaged in business as a mortgage loan originator as that term is defined
16 by Section 10166.01(b)(1) (activities related to loan modifications) of the Code, which includes
17 but is not limited to the conduct of mortgage loan modification activities, and failed to obtain and
18 maintain a real estate license endorsement identifying that Respondent is a licensed mortgage
19 loan originator, in violation of Section 10166.02(b) (failure to obtain license endorsement) of the
20 Code.

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22 A. R. Gonzalez

23 On or about November 11, 2009, Respondent met with A. R. Gonzalez (herein
24 "Gonzalez") in order to provide loan modification services to save Gonzalez's home located on
25 San Pedro Street in McFarland, CA, from being lost to foreclosure. Respondent informed
26 Gonzalez that Respondent was authorized by the Department to perform loan modification
27 services and promised that the loan modification would be complete within four (4) months. In

1 reliance on Respondent's aforementioned representations, Gonzalez entered into an agreement
2 with Respondent for the performance of a loan modification. On or about November 11, 2009,
3 Respondent collected advance fees from Gonzalez for a loan modification in the amount of
4 \$750.00. However, the Department had in fact not authorized Respondent to perform loan
5 modification services as represented, and Respondent failed to provide the loan modification as
6 promised. Respondent failed to refund the advance fees collected and failed to provide Gonzalez
7 with an accounting for said advance fees.

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9 I. Meza

10 On or about May 14, 2011, Respondent met with I. Meza (herein "Meza") in order
11 to provide loan modification services to save Meza's home located on Mammoth Pool Way in
12 Hanford, CA, from being lost to foreclosure. Respondent informed Meza that Respondent was
13 authorized by the Department to perform loan modification services and promised that the loan
14 modification would be complete within four (4) months. In reliance on Respondent's
15 aforementioned representations, Meza entered into an agreement with Respondent for the
16 performance of a loan modification. On or about May 14, 2011, Respondent collected advance
17 fees from Meza for a loan modification in the amount of \$750.00. However, the Department had
18 in fact not authorized Respondent to perform loan modification services as represented, and
19 Respondent failed to provide the loan modification as promised. Respondent failed to refund the
20 advance fees collected and failed to provide Meza with an accounting for said advance fees.

21 12

22 J. Beltran

23 On or about March 8, 2011, Respondent met with J. Beltran (herein "Beltran") in
24 order to provide loan modification services to save Beltran's home located on Klassen Street in
25 Shafter, CA, from being lost to foreclosure. Respondent informed Beltran that Respondent was
26 authorized by the Department to perform loan modification services and promised that the loan
27 modification would be complete within thirty (30) to sixty (60) days. In reliance on

1 Respondent's aforementioned representations, Beltran entered into an agreement with
2 Respondent for the performance of a loan modification. On or about March 8, 2011, Respondent
3 collected advance fees from Beltran for a loan modification in the amount of \$750.00. However,
4 the Department had in fact not authorized Respondent to perform loan modification services as
5 represented, and Respondent failed to provide the loan modification as promised. Respondent
6 failed to refund the advance fees collected and failed to provide Beltran with an accounting for
7 said advance fees.

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9 M. Gallegos

10 On or about April 9, 2011, Respondent met with M. Gallegos (herein "Gallegos")
11 in order to provide loan modification services to save Gallegos' home located on Lowry Street in
12 Bakersfield, CA, from being lost to foreclosure. Respondent informed Gallegos that Respondent
13 was authorized by the Department to perform loan modification services and promised that the
14 loan modification would be complete within thirty (30) to sixty (60) days. In reliance on
15 Respondent's aforementioned representations, Gallegos entered into an agreement with
16 Respondent for the performance of a loan modification. On or about April 9, 2011, Respondent
17 collected advance fees from Gallegos for a loan modification in the amount of \$750.00.
18 However, the Department had in fact not authorized Respondent to perform loan modification
19 services as represented, and Respondent failed to provide the loan modification as promised.
20 Respondent failed to refund the advance fees collected and failed to provide Gallegos with an
21 accounting for said advance fees.

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23 M. Ayala

24 On or about May 18, 2011, Respondent met with M. Ayala (herein "Ayala") in
25 order to provide loan modification services to save Ayala's home located on Fern Tree Close in
26 Wasco, CA, from being lost to foreclosure. Respondent informed Ayala that Respondent was
27 authorized by the Department to perform loan modification services and promised that the loan

1 modification would be complete within thirty (30) to sixty (60) days. In reliance on
2 Respondent's aforementioned representations, Ayala entered into an agreement with Respondent
3 for the performance of a loan modification. On or about May 18, 2011, Respondent collected
4 advance fees from Ayala for a loan modification in the amount of \$750.00. However, the
5 Department had in fact not authorized Respondent to perform loan modification services as
6 represented, and Respondent failed to provide the loan modification as promised. Respondent
7 failed to refund the advance fees collected and failed to provide Ayala with an accounting for
8 said advance fees.

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10 The acts and/or omissions of Respondent as alleged in Paragraphs 8 through 14,
11 above, constitute grounds for the suspension or revocation of all licenses and license rights of
12 Respondent, and all license endorsements and license endorsement rights of Respondent,
13 pursuant to the following provisions of the Code and Regulations:

14 (a) As to Paragraph 8, under Section 10177(d) (willful disregard or violation
15 of Real Estate Law) and/or 10177(g) (negligence or incompetence in performing licensed act) of
16 the Code, and Section 10177(q) (violation of Civil Code) of the Code, in conjunction with
17 Section 10085.6 (unlawful collection of advance fees related to loan modifications) of the Code
18 and Section 2945.4 (unlawful collection of advance fees related to loan modifications) of the
19 Civil Code;

20 (b) As to Paragraph 9(a), under Sections 10177(d) (willful disregard or
21 violation of Real Estate Law) and/or 10177(g) (negligence or incompetence in performing
22 licensed act) of the Code, in conjunction with Section 10085 (failure to submit materials used in
23 collection of advance fees to Department) of the Code and Section 2970 (materials used in
24 collection of advance fees must be approved by Department prior to use) of the Regulations;

25 (c) As to Paragraph 9(b), under Sections 10177(d) (willful disregard or
26 violation of Real Estate Law) and/or 10177(g) (negligence or incompetence in performing

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1 licensed act) of the Code, in conjunction with Sections 10145 (trust fund handling) and 10146
2 (handling of advance fees as trust funds) of the Code;

3 (d) As to Paragraph 9(c), under Sections 10177(d) (willful disregard or
4 violation of Real Estate Law) and/or 10177(g) (negligence or incompetence in performing
5 licensed act) of the Code in conjunction with Section 10146 (handling of advance fees as trust
6 funds) of the Code and Section 2972 (verified accounting of advance fee handling to principals)
7 of the Regulations;

8 (e) As to Paragraph 9(d), under Sections 10166.051 (grounds for discipline-
9 violation of license endorsement and notice requirements) of the Code and Section 10177(d)
10 (willful disregard or violation of Real Estate Law) and/or 10177(g) (negligence or incompetence
11 in performing licensed act) of the Code, in conjunction with Section 10166.02(a) (failure to
12 notify Department of loan activity) of the Code;

13 (f) As to Paragraph 9(e), under Section 10166.051 (grounds for discipline-
14 violation of license endorsement and notice requirements) of the Code and Section 10177(d)
15 (willful disregard or violation of Real Estate Law) and/or 10177(g) (negligence or incompetence
16 in performing licensed act) of the Code, in conjunction with Section 10166.02(b) (failure to
17 obtain license endorsement) of the Code;

18 (g) As to Paragraph 10, under Sections 10166.051 (grounds for discipline-
19 violation of license endorsement and notice requirements), 10176(a) (substantial
20 misrepresentation), 10176(b) (false promise likely to induce), 10176(i) (fraud or dishonest
21 dealing), 10177(d) (willful disregard or violation of Real Estate Law) and/or 10177(g)
22 (negligence or incompetence in performing licensed act), and 10177(j) (fraud or dishonest
23 dealing) of the Code, in conjunction with Sections 10085 (failure to submit materials used in
24 collection of advance fees to Department), 10085.6 (unlawful collection of advance fees related
25 to loan modifications), 10166.02(b) (failure to obtain license endorsement) of the Code,
26 Sections 2970 (materials used in collection of advance fees must be approved by Department
27 prior to use) and 2972 (verified accounting of advance fee handling to principals) of the

1 Regulations, and Section 2945.4 (unlawful collection of advance fees related to loan
2 modifications) of the Civil Code;

3 (h) As to Paragraph 11, under Sections 10166.051 (grounds for discipline-
4 violation of license endorsement and notice requirements), 10176(a) (substantial
5 misrepresentation), 10176(b) (false promise likely to induce), 10176(i) (fraud or dishonest
6 dealing), 10177(d) (willful disregard or violation of Real Estate Law) and/or 10177(g)
7 (negligence or incompetence in performing licensed act), and 10177(j) (fraud or dishonest
8 dealing) of the Code, in conjunction with Sections 10085 (failure to submit materials used in
9 collection of advance fees to Department), 10085.6 (unlawful collection of advance fees related
10 to loan modifications), 10166.02(b) (failure to obtain license endorsement) of the Code,
11 Sections 2970 (materials used in collection of advance fees must be approved by Department
12 prior to use) and 2972 (verified accounting of advance fee handling to principals) of the
13 Regulations, and Section 2945.4 (unlawful collection of advance fees related to loan
14 modifications) of the Civil Code;

15 (i) As to Paragraph 12, under Sections 10166.051 (grounds for discipline-
16 violation of license endorsement and notice requirements), 10176(a) (substantial
17 misrepresentation), 10176(b) (false promise likely to induce), 10176(i) (fraud or dishonest
18 dealing), 10177(d) (willful disregard or violation of Real Estate Law) and/or 10177(g)
19 (negligence or incompetence in performing licensed act), and 10177(j) (fraud or dishonest
20 dealing) of the Code, in conjunction with Sections 10085 (failure to submit materials used in
21 collection of advance fees to Department), 10085.6 (unlawful collection of advance fees related
22 to loan modifications), 10166.02(b) (failure to obtain license endorsement) of the Code,
23 Sections 2970 (materials used in collection of advance fees must be approved by Department
24 prior to use) and 2972 (verified accounting of advance fee handling to principals) of the
25 Regulations, and Section 2945.4 (unlawful collection of advance fees related to loan
26 modifications) of the Civil Code;

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1 (j) As to Paragraph 13, under Sections 10166.051 (grounds for discipline-
2 violation of license endorsement and notice requirements), 10176(a) (substantial
3 misrepresentation), 10176(b) (false promise likely to induce), 10176(i) (fraud or dishonest
4 dealing), 10177(d) (willful disregard or violation of Real Estate Law) and/or 10177(g)
5 (negligence or incompetence in performing licensed act), and 10177(j) (fraud or dishonest
6 dealing) of the Code, in conjunction with Sections 10085 (failure to submit materials used in
7 collection of advance fees to Department), 10085.6 (unlawful collection of advance fees related
8 to loan modifications), 10166.02(b) (failure to obtain license endorsement) of the Code,
9 Sections 2970 (materials used in collection of advance fees must be approved by Department
10 prior to use) and 2972 (verified accounting of advance fee handling to principals) of the
11 Regulations, and Section 2945.4 (unlawful collection of advance fees related to loan
12 modifications) of the Civil Code; and,

13 (k) As to Paragraph 14, under Sections 10166.051 (grounds for discipline-
14 violation of license endorsement and notice requirements), 10176(a) (substantial
15 misrepresentation), 10176(b) (false promise likely to induce), 10176(i) (fraud or dishonest
16 dealing), 10177(d) (willful disregard or violation of Real Estate Law) and/or 10177(g)
17 (negligence or incompetence in performing licensed act), and 10177(j) (fraud or dishonest
18 dealing) of the Code, in conjunction with Sections 10085 (failure to submit materials used in
19 collection of advance fees to Department), 10085.6 (unlawful collection of advance fees related
20 to loan modifications), 10166.02(b) (failure to obtain license endorsement) of the Code,
21 Sections 2970 (materials used in collection of advance fees must be approved by Department
22 prior to use) and 2972 (verified accounting of advance fee handling to principals) of the
23 Regulations, and Section 2945.4 (unlawful collection of advance fees related to loan
24 modifications) of the Civil Code;

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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 discipline on all
3 licenses and license rights, including all license endorsements and license endorsement rights, of
4 Respondent under the Real Estate Law (Part 1 of Division 4 of the Business and Professions
5 Code), for the cost of the investigation and enforcement of this case as permitted by law, for the
6 cost of the Department's audit as permitted by law, and for such other and further relief as may
7 be proper under the provisions of law.

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10 
11 BREND A SMITH
Deputy Real Estate Commissioner

12 Dated at Fresno, California,
13 this 30 day of August, 2012.
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