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**FILED**

JUL 18 2012

DEPARTMENT OF REAL ESTATE

By R. Max

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of

13 CALWIDE REALTY, INC. and  
14 MICHAEL FRANKLIN PALUBA,

15 Respondents.

No. H-4380 SD

ACCUSATION

16 The Complainant, VERONICA KILPATRICK, in her official capacity as a  
17 Deputy Real Estate Commissioner of the State of California, for cause of Accusation against  
18 CALWIDE REALTY, INC. and MICHAEL FRANKLIN PALUBA (collectively referred to  
19 herein as "Respondents"), is informed and alleges as follows:

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21 Respondent CALWIDE REALTY, INC., (hereinafter "CALWIDE"), is presently  
22 licensed by the Department of Real Estate (hereinafter "the Department") and/or has license  
23 rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code  
24 (hereafter "the Code"), as a real estate corporation, acting by and through MICHAEL  
25 FRANKLIN PALUBA as its designated officer. At no time has the Department issued  
26 CALWIDE a mortgage loan originator license endorsement or license endorsement rights under  
27 the Code.

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At all times relevant herein, CALWIDE had approximately thirty-three (33) fictitious business names registered with the Department, including "HOA Realty".

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Respondent MICHAEL FRANKLIN PALUBA (hereinafter "PALUBA") is presently licensed by the Department and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate broker, and has a license endorsement and/or has license endorsement rights under the Code as a mortgage loan originator.

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At all times herein mentioned, PALUBA was licensed by the Department as the designated officer of CALWIDE. As the designated officer, PALUBA was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of CALWIDE for which a real estate license and mortgage loan originator endorsement is required.

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

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At all times mentioned herein, CALWIDE engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers 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 each of them solicited  
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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.

FIRST CAUSE OF ACTION

(As Against CALWIDE)

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Each and every allegation in Paragraphs 1 through 6, inclusive, above, is incorporated by this reference as if fully set forth herein.

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Beginning on or about December 14, 2010, and continuing intermittently until April 29, 2011, an audit was conducted at Stone Coast Lane, Fallbrook, California, and the Department's Los Angeles and San Diego District Offices, wherein the Auditor examined CALWIDE's records for the period of November 1, 2009 through December 31, 2010 (hereinafter "the audit period").

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While acting as a real estate broker as described in Paragraph 6, above, and within the audit period, CALWIDE accepted or received funds in trust (hereinafter "trust funds") 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.

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In connection with the operation and conduct of the activities described in Paragraph 6, above, and within the audit period, CALWIDE 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 and 10131.2 of the Code, including but not limited to the following:

<b>Borrower</b>	<b>Advance Fee</b>	<b>Date Received</b>
Andrew M.	\$1,200	10/29/10
Raul M.	\$1,600	10/18/10
Ramon D.	\$1,000	08/10/10
Nancy B.	\$1,500	06/05/10
Salvador C.	\$3,000	04/26/10 & 05/07/10
Armando G. and Marcella V.	\$1,500	04/26/10
Gladys W.	\$1,500	04/24/09
Claudia C.	\$1,500	04/19/10
Milton B.	\$1,200	10/06/10

The trust funds accepted or received by CALWIDE as described in Paragraphs 9 and 10, above, were deposited or caused to be deposited by CALWIDE into three bank accounts which were maintained for the handling of general business funds and trust funds, and thereafter from time-to-time CALWIDE made disbursements of said trust funds, identified as follows:

(a) Bank Account #1: entitled "Calwide Realty-North Island Credit Union", bank name "North Island Credit Union", account ending in 5103.

(b) Bank Account #2: entitled "Calwide Home Loans", bank name "North Island Credit Union."

(c) Bank Account #3: entitled "HOA Realty", bank name "North Island Credit Union."

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In the course of the activities described in Paragraph 6, above, and within the audit period, CALWIDE:

(a) failed to properly designate Bank Accounts #1, #2 and #3 as trust accounts in the name of CALWIDE or its fictitious business name, as trustee, in violation of Section 10145 of the Code and Section 2832 of Title 10 of the California Code of Regulations (hereafter "the Regulations");

(b) failed to maintain records of all trust funds received and disbursed, for Bank Accounts #1, #2 and #3, in violation of Section 10145 of the Code and Section 2831 of the Regulations;

(c) failed to maintain separate records for each beneficiary of funds held in Bank Accounts #1, #2 and #3, in violation of Section 10145(g) of the Code and Section 2831.1 of the Regulations;

(d) failed to reconcile the total of separate beneficiary records with a control record on at least a monthly basis for Bank Accounts #1, #2 and #3, in violation of Section 10145 of the Code and Section 2831.2 of the Regulations;

(e) failed to retain for three years certain documents and records related to CALWIDE's loan modification activities, including but not limited to its general bank account statements, that were requested by the Auditor pursuant to a Subpoena Duces Tecum served upon PALUBA on January 6, 2011 and requiring production of said documents by January 20, 2011, in violation of Section 10148 of the Code;

(f) engaged in business requiring a real estate license, including but not limited to providing loan modification services to consumers, while CALWIDE's corporate powers, rights, and privileges were suspended by the California Secretary of State, in violation of Section 2742(c) of the Regulations;

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(g) collected advance fees, trust funds, from principals for providing loan modification services, and deposited those funds into Bank Accounts #1, #2 and #3 instead of immediately depositing said funds into a designated trust account or neutral escrow depository, in violation of Sections 10145 and 10146 of the Code;

(h) Collected advance fees in connection with loan modification services after October 10, 2009, in violation of Section 10085.6 of the Code and Section 2945.4 of the California Civil Code (hereinafter "Civil Code"), for transactions, including but not limited to the following:

<b>Borrower</b>	<b>Advance Fee</b>	<b>Date Advance Fee Received</b>
Andrew M.	\$1,200	10/29/10
Raul M.	\$1,600	10/18/10
Ramon D.	\$1,000	08/10/10
Nancy B.	\$1,500	06/05/10
Salvador C.	\$3,000	04/26/10 & 05/07/10
Armando G. and Marcella V.	\$1,500	04/26/10
Claudia C.	\$1,500	04/19/10
Milton B.	\$1,200	10/06/10

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The acts and/or omissions of CALWIDE as alleged in Paragraph 12, above, constitute grounds for the suspension or revocation of all licenses and license rights of CALWIDE pursuant to the following provisions of the Code and Regulations:

As to Paragraph 12(a), under Section 10177(d) and/or 10177(g) of the Code in conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

As to Paragraph 12(b), under Section 10177(d) and/or 10177(g) of the Code in conjunction with Section 10145 of the Code and Section 2831 of the Regulations;

As to Paragraph 12(c), under Section 10177(d) and/or 10177(g) of the Code in conjunction with Section 10145(g) of the Code and Section 2831.1 of the Regulations;

As to Paragraph 12(d), under Section 10177(d) and/or 10177(g) of the Code in conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations;

1 As to Paragraph 12(e), under Section 10177(d) and/or 10177(g) of the Code in  
2 conjunction with Section 10148 of the Code;

3 As to Paragraph 12(f), under Section 10177(d) and/or 10177(g) of the Code in  
4 conjunction with Section 2742(c) of the Regulations;

5 As to Paragraph 12(g), under Section 10177(d) and/or 10177(g) of the Code in  
6 conjunction with Section 10145 and 10146 of the Code; and,

7 As to Paragraph 12(h), under Section 10177(d) and/or 10177(g) of the Code, and  
8 Section 10177(q) of the Code, in conjunction with Section 10085.6 of the Code and Section  
9 2945.4 of the Civil Code.

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11 The acts and/or omissions of CALWIDE as alleged in Paragraph 12, above, entitle  
12 the Department to reimbursement of the costs of its audit pursuant to Section 10148 of the Code,  
13 in conjunction with Section 10145 of the Code.

14 SECOND CAUSE OF ACTION

15 (As Against PALUBA)

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17 Each and every allegation in Paragraphs 1 through 14, inclusive, above, is  
18 incorporated by this reference as if fully set forth herein.

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20 At all times relevant herein, PALUBA, as the designated officer of CALWIDE,  
21 was required to exercise reasonable supervision and control over the activities of CALWIDE and  
22 its employees pursuant to Section 10159.2 of the Code and Section 2725 of the Regulations.

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24 PALUBA failed to exercise reasonable supervision over the acts and/or omissions  
25 of CALWIDE and its employees in such a manner as to allow the acts and/or omissions as  
26 described in Paragraph 12, above, to occur, which constitutes grounds for the suspension or

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1 revocation of the licenses and license rights of PALUBA under Sections 10177(d) and/or  
2 10177(g) of the Code, and Section 10177(h) of the Code, in conjunction with Section 10159.2 of  
3 the Code and Section 2725 of the Regulations.

4 COST RECOVERY

5 Section 10106 of the Code provides, in pertinent part, that in any order issued in  
6 resolution of a disciplinary proceeding before the Department, the Commissioner may request the  
7 Administrative Law Judge to direct a licensee found to have committed a violation of this part to  
8 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

9 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
10 of this Accusation and that upon proof thereof, a decision be rendered revoking all licenses and  
11 license rights of all Respondents named herein under the Real Estate Law (Part 1 of Division 4 of  
12 the Business and Professions Code), including all mortgage loan originator license endorsements  
13 and license endorsement rights of Respondents under the Code, for the cost of investigation and  
14 enforcement as permitted by law, and for such other and further relief as may be proper under  
15 other provisions of law.

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19 VERONICA KILPATRICK  
Deputy Real Estate Commissioner

20 Dated at San Diego, California,  
21 this 28 day of June, 2012.  
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