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DEPARTMENT OF REAL ESTATE
By L. Frost

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of	)	NO. H-5327 SAC
12)	
13	LIS MORTGAGE CORPORATION, a California	)	SECOND AMENDED
14	Corporation and BRIAN OLIVER CANADA,	)	ACCUSATION
15)	
16	Respondents.)	

17
18 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
19 of the State of California, for a Second Amended Accusation against Respondent LIS
20 MORTGAGE CORPORATION, a California Corporation, and Respondent BRIAN OLIVER
21 CANADA, is informed and alleges as follows:

22 1

23 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
24 of the State of California, makes this Accusation against Respondents in his official capacity.

25 2

26 Respondents LIS MORTGAGE CORPORATION, a California Corporation, and
27 Respondent BRIAN OLIVER CANADA are presently licensed and/or have license rights under

1 the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code
2 (hereafter "the Code").

3 3

4 At all times herein mentioned, Respondent LIS MORTGAGE CORPORATION
5 (hereafter "Respondent LIS") was and is licensed by the Department of Real Estate (hereinafter
6 "the Department") as a corporate real estate broker.

7 4

8 At all times herein mentioned, Respondent BRIAN OLIVER CANADA
9 (hereinafter "Respondent CANADA") was and is licensed by the Department as an individual
10 real estate broker.

11 5

12 * At all times herein mentioned, Respondent CANADA was and is licensed by the
13 Department as the designated broker/officer of Respondent LIS. As said designated
14 broker/officer, Respondent CANADA was at all times mentioned herein responsible pursuant to
15 Section 10159.2 and Section 10177(h) of the Code and Section 2725 of Chapter 6, Title 10,
16 California Code of Regulations (hereinafter "the Regulations") for the supervision and control
17 of the activities of the officers, agents, real estate licensees, and employees of Respondent LIS
18 and of the activities of the corporation for which a real estate license is required, to maintain
19 their compliance with the Real Estate Law (Sections 10000 et seq. and Sections 11000 et seq. of
20 the Code and the Regulations).

21 6

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

At all times herein mentioned, Respondent LIS was and is the alter ego of Respondent CANADA and whenever a reference is made to an act or omission or representation of Respondent LIS, such allegation shall be deemed to mean that Respondent CANADA was so acting, or failing to act, and/or speaking.

At all times herein mentioned, Respondent LIS and Respondent CANADA engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(d) of the Code, including on behalf of others, for compensation or in expectation of compensation, Respondents solicited borrowers or lenders for or negotiated loans or collected payments or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

FIRST CAUSE OF ACTION

There is hereby incorporated in this First, separate and distinct, Cause of Action, all of the allegations contained in Paragraphs 1 through 8, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

Within the three-year period prior to the filing of this Accusation and at all times herein mentioned, in the course and scope of the activities described in Paragraph 8, above, Respondents solicited borrowers and/or lenders, and/or negotiated loans secured directly or collaterally by liens on real property, wherein such loans were to be brokered, arranged, processed, and/or consummated on behalf of others, and/or solicited and negotiated to perform services for borrowers in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, pursuant to Section 10131(d) of the Code, wherein Respondents claimed, demanded, charged, received, and collected, and provided a written

1 contract for, advance fees from borrowers for services Respondents were to perform thereafter
 2 for or in expectation of compensation, including, but not limited to, the following transactions:

3	Borrower	Property	Advance Fee	Date Collected	Written Fee Agreement
4	Renee & Marcela Zaragoza	6202 Goldeneye Ct. Rocklin, California	\$3,172.84	7/18/08	7/18/08
5					
6	Renee & Marcela Zaragoza	109 Clydesdale Way Roseville, California	\$3,212.50	7/22/08	7/22/08
7					
8	Virgil M. Sterrett	7240 Leonard Ave. Citrus Heights, California	\$2,500.00	8/12/08	8/12/08
9					
10	Robert A. Ceccato	1301 San Clemente Wy. Citrus Heights, California	\$4,433.00	8/14/08	8/14/08
11					
12	Astonio Moreno	7250 Marysville Blvd. Rio Linda, California	\$2,000.00 <u>\$1,900.00</u> <u>\$3,900.00</u>	9/4/08 12/1/08	9/4/08 9/4/08
13					
14	Cloattille & Dewayne Lawson	4950 Whittier Dr. Sacramento, California	\$2,500.00	11/4/08	11/4/08
15					
16	Manuel A. Balderas	5443 Dasco Way & Sacramento, California	\$2,500.00	11/14/08	11/14/08
17					
18	Manuel A. Balderas	293 Arcade Blvd. Sacramento, California	\$1,000.00	11/14/08	11/14/08
19					
20	Robert C. Robinson	7444 Poirier Way Sacramento, California	\$1,800.00 <u>\$1,000.00</u> <u>\$2,800.00</u>	12/9/08 1/5/09	12/9/08 12/9/08
21					
22	Joe & Hope Cornejo	4317 La Mirada Dr. Bakersfield, California	\$1,687.50	12/10/08	None provided
23					
24	Joe & Hope Cornejo	618 El Tejon Bakersfield, California	<u>\$1,687.50</u> <u>\$3,375.00</u>	12/10/08	None provided
25					
26	Mark L. Cottrell	6563 Lake Park Drive Sacramento, California	\$3,170.00	1/7/09	1/7/09
27	Vitaliy Khabatyuk	407 and 409 Yale Drive	\$4,500.00	5/8/09	5/8/09

1
2 The fees described in Paragraph 10, above, constituted an "advance fee" within
3 the meaning of Section 10026 of the Code ("Advance Fee" is fee claimed, demanded, charged,
4 received, collected or contracted from principal for listing, for offer to sell or lease property or
5 business opportunity, for referral to brokers or salesmen, for soliciting borrowers or lenders, for
6 negotiating real estate loans) and 10131.2 of the Code (Real estate broker is a person who
7 engages in business of claiming, demanding, charging, receiving, collecting or contracting for
8 advance fees in connection with any employment to promote sale, lease of real property or
9 business opportunity, or exchange or to obtain loans on real property). Said fees constituted
10 trust funds within the meaning of Section 10145 of the Code (broker accepts funds belonging to
11 others in connection with acts requiring a real estate license) and Section 10146 of the Code
12 (advance fees collected by broker are trust funds).

13
14 In connection with the collection, receipt, and handling of the advance fees as
15 described in Paragraph 10, above, Respondents provided to the borrowers a written advance fee
16 contract that had not been submitted to, reviewed, and approved by, the Department of Real
17 Estate prior to use as required by Sections 10085 and 10085.5 of the Code and Section 2970 of
18 the Regulations.

19
20 Within the three-year period prior to the filing of this Accusation, in connection
21 with the collection, receipt and handling of advance fees described in Paragraph 10, above,
22 Respondents failed to deposit said funds into a trust account, disbursed the advance fee trust
23 funds to themselves or others and failed to provide to the borrowers the required verified
24 accounting of the advance fee trust funds and failed to provide to the borrowers any accounting
25 expressly representing the amounts of trust funds disbursed, the date of trust fund disbursement,
26 the commission paid, and overhead and profit as required by Section 10146 of the Code and
27 containing the information required by Section 2972 of the Regulations.

1
2 Within the three-year period prior to the filing of this Accusation, in connection
3 with the collection, receipt and handling of advance fees described in Paragraph 10, above, in
4 order to induce Renee and Marcela Zaragoza, Virgil M. Sterrett, Robert A. Ceccato, Antonio
5 Moreno, Cloattille & Dewayne Lawson, Manuel A. Balderas, Robert C. Robinson, Joe and
6 Hope Cornejo, and Vitaliy Khabatyuk (hereinafter "Borrowers") to respectively pay the advance
7 fees set forth in Paragraph 10, above, Respondent LIS and Respondent CANADA represented
8 and/or directed or ratified representations that Respondents would contact, respectively, the
9 lenders holding trust deeds encumbering the borrowers' respective real properties and would
10 negotiate with said lenders for favorable loan modifications of said loans to benefit the
11 borrowers set forth in Paragraph 10, above, successfully negotiate on behalf of the borrowers set
12 forth in Paragraph 10, above, for the lowest interest rate and payments, and obtain for and
13 deliver to said borrowers all loan modification documents.

14
15 The representations described in Paragraph 14, above, were false and misleading
16 and were known by Respondents LIS and CANADA to be false and misleading when made or
17 were made by such Respondents with no reasonable grounds for believing said representations
18 to be true, and/or said Respondents should have known at the time through the exercise of
19 reasonable diligence that such representations were false and misleading. In truth and in fact,
20 said Respondents would not and did not contact the lenders, would not and did not negotiate
21 with the respective lenders on behalf of the borrowers set forth in Paragraph 10, above, would
22 not and did not perform any services for said borrowers, and/or could not and failed to obtain
23 modification of loan terms, and converted the said borrowers' advance fee trust funds, as set
24 forth in Paragraph 10, above, to Respondents' own use or benefit or to purposes not authorized
25 by the rightful owner or owners of said funds.

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1
2 The acts and omissions of Respondent LIS and Respondent CANADA described
3 in Paragraphs 10, 13, 14, and 15, above, constitute misrepresentation, fraud, deceit, and
4 dishonest dealing.

5
6 The acts and/or omissions of Respondent LIS and Respondent CANADA as
7 alleged above constitute cause for the suspension or revocation of the licenses and license rights
8 of Respondents under the following provisions:

- 9 (a) As alleged in Paragraph 12, under Sections 10085 and 10085.5 of the
10 Code (Unlawful to claim, demand, receive advance fee for soliciting
11 lenders on behalf of or performing services for borrowers using an
12 advance fee agreement not approved by Department) and Section 2970 of
13 the Regulations (requiring submission to commissioner for approval of all
14 advance fee materials and agreements) all in conjunction with Section
15 10177(d) of the Code (suspension or revocation of license for willful
16 disregard or violation of the Real Estate Law, §§ 10000 et seq. and §§
17 11000 et seq. of the Code, or of the Regulations);
- 18 (b) As alleged in Paragraph 13, under Section 10146 of the Code (advance
19 fees are trust funds and broker collecting advance fees shall deposit such
20 fees into a trust account) and Section 2972 of the Regulations (requiring
21 broker to provide principal with verified accounting of advance fee trust
22 funds collected and disbursed identifying agent name, principal's name,
23 services rendered, trust account into which funds deposited, amount of
24 advance fee, amounts disbursed, commissions paid, overhead, costs, and
25 profit) all in conjunction with Section 10177(d) of the Code;
- 26 (c) As alleged in Paragraphs 10, 14, 15, and 16, under 10176(a) of the Code
27 (making a substantial misrepresentation);

- 1 (d) As alleged in Paragraphs 10, 14, 15, and 16, under Section 10176(b) of
2 the Code (making any false promises of a character likely to influence,
3 persuade or induce);
- 4 (e) As alleged in Paragraphs 10, 13, 14, 15, and 16, under Section 10176(i)
5 of the Code (any other conduct, whether of the same or a different
6 character than specified in this section, which constitutes fraud or
7 dishonest dealing);
- 8 (f) As alleged in Paragraphs 10, 13, 14, 15, and 16, under Section 10177(g)
9 of the Code (demonstrated negligence or incompetence in performing an
10 act for which he or she is required to hold a license); and,
- 11 (g) As alleged in Paragraphs 10, 13, 14, 15, and 16, under Section 10177(j)
12 of the Code (any other conduct, whether of the same or a different
13 character than specified in this section, which constitutes fraud or
14 dishonest dealing).

15 SECOND CAUSE OF ACTION

16 18

17 There is hereby incorporated in this Second, separate and distinct, Cause of
18 Action, all of the allegations contained in Paragraphs 1 through 17, inclusive, of the Accusation
19 with the same force and effect as if herein fully set forth.

20 19

21 At all times herein mentioned Respondent LIS employed Ryan Alexander and
22 Peggy Smith.

23 20

24 At no time herein mentioned was Ryan Alexander licensed by the Department as
25 either a real estate broker or a real estate salesperson.

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27 ///

At no time herein mentioned was Peggy Smith licensed by the Department as either a real estate broker or a real estate salesperson.

Within the three year period prior to the filing of this Accusation and at all times herein mentioned, Respondent LIS and Respondent CANADA employed Ryan Alexander and Peggy Smith to perform and engage in the activities set forth in Paragraph 8, above, for which a real estate license is required, for or in expectation of compensation.

Within the three-year period prior to the filing of this Accusation and at all times herein mentioned, in the course of the activities described in Paragraphs 8 and 10, above, Peggy Smith, while unlicensed, solicited borrowers and/or lenders, and/or negotiated loans secured directly or collaterally by liens on real property, wherein such loans were to be brokered, arranged, processed, and/or consummated on behalf of others, and/or solicited and negotiated to perform services for borrowers in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, pursuant to Section 10131(d) of the Code, wherein Respondents and Peggy Smith claimed, demanded, charged, received, and collected, and provided a written contract for, advance fees from borrowers for services to be performed thereafter by Respondents for or in expectation of compensation, including, but not limited to, the following transactions:

Borrower	Property	Advance Fee	Date Collected	Written Fee Agreement
Renee & Marcela Zaragoza	6202 Goldeneye Ct. Rocklin, California	\$3,172.84	7/18/08	7/18/08
Renee & Marcela Zaragoza	109 Clydesdale Way Roseville, California	\$3,212.50	7/22/08	7/22/08
Cloattille & Dewayne Lawson	4950 Whittier Dr. Sacramento, California	\$2,500.00	11/4/08	11/4/08

1	Robert C. Robinson	7444 Poirier Way	\$1,800.00	12/9/08	12/9/08
		Sacramento, California	<u>\$1,000.00</u>	1/5/09	12/9/08
2			<u>\$2,800.00</u>		
3	Herman H. Barrick	5105 Cherbourg Dr.	\$2,500.00	6/16/09	6/16/09
		Sacramento, California			
4	Kenneth L. Hamilton	1519 Hood Road	\$ 300.00	12/21/09	12/7/09
5		Sacramento, California	<u>\$ 600.00</u>	12/21/09	12/7/09
6			<u>\$ 900.00</u>		
7	Vitaliy Khabatyuk	407 and 409 Yale Drive	\$4,500.00	5/8/09	5/8/09

24

Within the three-year period prior to the filing of this Accusation and at all times herein mentioned, in the course of the activities described in Paragraphs 8 and 10, above, Ryan Alexander, while unlicensed, solicited borrowers and/or lenders, and/or negotiated loans secured directly or collaterally by liens on real property, wherein such loans were to be brokered, arranged, processed, and/or consummated on behalf of others, and/or solicited and negotiated to perform services for borrowers in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, pursuant to Section 10131(d) of the Code, wherein Respondents and Ryan Alexander claimed, demanded, charged, received, and collected, and provided a written contract for, advance fees from borrowers for services to be performed thereafter by Respondents for or in expectation of compensation, including, but not limited to, the following transactions:

Borrower	Property	Advance Fee	Date Collected	Written Fee Agreement
Renee & Marcela Zaragoza	6202 Goldeneye Ct. Rocklin, California	\$3,172.84	7/18/08	7/18/08
Renee & Marcela Zaragoza	109 Clydesdale Way Roseville, California	\$3,212.50	7/22/08	7/22/08
Mark L. Cottrell	6563 Lake Park Drive Sacramento, California	\$3,170.00	1/7/09	1/7/09

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The facts alleged in Paragraphs 19 through 24, inclusive, above, constitute cause for the suspension or revocation of the licenses and license rights of Respondent LIS and Respondent CANADA under Section 10137 of the Code (unlawful for licensed broker to employ or compensate, directly or indirectly, an unlicensed person to perform acts requiring a real estate license), and/or Section 10138 of the Code (misdemeanor to pay or compensate an unlicensed person for performing acts requiring a real estate license) all in conjunction with Section 10177(d) the Code.(suspension or revocation of license for willful disregard or violation of the Real Estate Law, §§ 10000 et seq. and §§ 11000 et seq. of the Code, or of the Regulations).

THIRD CAUSE OF ACTION

26

There is hereby incorporated in this Third, separate and distinct, Cause of Action, all of the allegations contained in Paragraphs 1 through 25, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

27

In acting as real estate brokers as described in Paragraphs 8, 10 and 11, above, Respondent LIS and Respondent CANADA, accepted or received and disbursed funds in trust, including advance fees, (hereinafter "trust funds") from or on behalf of lenders, note owners, buyers, borrowers, and/or others in connection with the said mortgage and loan services activities.

28

Within the three-year period prior to the filing of this Accusation, in connection with the collection and disbursement of trust funds as set forth in Paragraph 27, above, the aforesaid trust funds accepted or received by Respondents LIS and CANADA were deposited or caused to be deposited by said Respondents into bank accounts maintained by Respondents as follows:

- 1 (a) From June 4, 2009 and continuing, Citibank, 9601 Greenback Lane,
2 Folsom, California, Account #203247762, entitled "Lis Mortgage
3 Corporation" (hereinafter "Bank Account 1") with Respondent CANADA
4 and Sheryl Canada as signatories; and,
- 5 (b) From July 2008 through June 4, 2009, Bank of America, 10607 Folsom
6 Blvd., Rancho Cordova, California, Account #05808-68267, entitled "Lis
7 Mortgage Corporation" (hereinafter "Bank Account 2").

8 29

9 Within the three-year period prior to the filing of this Accusation and at all times
10 herein mentioned, in connection with the collection and disbursement of trust funds, as set forth
11 in Paragraphs 10, 11 and 27, above, Respondents LIS and CANADA failed to deposit and
12 maintain the trust funds in a trust account or neutral escrow depository, or to deliver them into
13 the hands of the owners of the funds, in violation of Section 10145 of the Code (broker
14 accepting funds belonging to others shall deposit such funds into neutral escrow, broker's
15 principal or into broker's trust account) and/or Section 10146 of the Code (advance fees are trust
16 funds and broker collecting advance fees shall deposit such fees into a trust account) in such a
17 manner that as of August 31, 2009, there was a trust fund shortage in the sum of \$27,985.08 in
18 Bank Account #1.

19 30

20 In causing or permitting the shortage set forth in Paragraph 29, above,
21 Respondents LIS and CANADA failed to obtain the prior written consents of the principals for
22 the reduction of the aggregate balance of trust funds in Bank Account #1 to an amount less than
23 the existing aggregate trust fund liability to the owners of said funds in conformance with
24 Section 2832.1 of the Regulations (written consent of every principal owner of the funds shall
25 be obtained by broker prior to each disbursement of trust funds if disbursement will reduce
26 balance of trust funds in account to an amount less than existing aggregate trust fund liability of
27 broker to all owners of said funds).

1
2 Within the three-year period prior to the filing of this Accusation and at all times
3 herein mentioned, Respondents LIS and CANADA failed to designate, respectively, Bank
4 Account #1 and Bank Account #2 as trust accounts in the name of Respondent LIS as broker
5 and as trustee and deposited client trust funds into those accounts in violation of Section 2832 of
6 the Regulations (broker shall place trust funds into bank account in the name of broker as trustee
7 not later than three business days after receipt) and Sections 10145 and 10146 of the Code
8 (requiring broker to place trust funds and advance fee trust funds into a trust account).

9
10 Within the three-year period prior to the filing of this Accusation and at all times
11 herein mentioned, in connection with the collection and disbursement of trust funds, as set forth
12 in Paragraphs 10, 11 and 27, above, Respondents LIS and CANADA:

- 13 (a) Failed to maintain a control record for trust funds received and disbursed
14 and containing the information required by Section 2831 of the
15 Regulations (requiring record of trust funds received and disbursed in
16 columnar form, in chronological sequence, dates of receipt, from whom
17 received, dates disbursed, date deposited, identity of depository, daily
18 balance, etc.) for Bank Account #1 and Bank Account #2 for trust funds
19 deposited to said accounts;
- 20 (b) Failed to perform, at least once a month, a reconciliation of all the
21 separate beneficiary records with the control record, and/or failed
22 to maintain a record of such reconciliations as required by Section 2831.2
23 of the Regulations (maintain written record of and perform once each
24 month balance of all separate beneficiary funds and reconcile funds
25 received with funds disbursed, etc.) for Bank Account #1 and Bank
26 Account #2 for trust funds deposited into said accounts; and,
27

1 (c) Permitted Sheryl Canada, a person who neither held a California real
2 estate license nor was bonded, to be a signatory on Bank Account #1 in
3 violation of Section 2834 of the Regulations (requiring withdrawals from
4 trust account to be performed only by authorized signatories who must be
5 broker as trustee, real estate salesperson licensed to broker, or an
6 unlicensed employee having fidelity bond coverage equal to maximum
7 amount of trust funds in account).

8 33

9 The acts and/or omissions of Respondents LIS and CANADA as alleged above,
10 constitute cause for the suspension or revocation of the licenses and license rights of
11 Respondents under the following provisions:

- 12 (a) As alleged against Respondents in Paragraph 29, under Section 10145 of
13 the Code and/or Section 10146 of the Code in conjunction with Section
14 10177(d) of the Code (suspension or revocation of license for willful
15 disregard or violation of the Real Estate Law, §§ 10000 et seq. and §§
16 11000 et seq. of the Code, or of the Regulations);
- 17 (b) As alleged against Respondents in Paragraph 30, under Section 2832.1 of
18 the Regulations in conjunction with Section 10177(d) of the Code;
- 19 (c) As alleged against Respondents in Paragraph 31, under Section 2832 of
20 the Regulations and Section 10145 and 10146 of the Code all in
21 conjunction with Section 10177(d) of the Code;
- 22 (d) As alleged against Respondents in Paragraph 32(a), under Section 2831
23 of the Regulations in conjunction with Section 10177(d) of the Code;
- 24 (e) As alleged against Respondents in Paragraph 32(b), under Section 2831.2
25 of the Regulations in conjunction with Section 10177(d) of the Code;
26 and,

27 ///

1 (f) As alleged against Respondents in Paragraph 32(c), under Section 2834
2 of the Regulations in conjunction with Section 10177(d) of the Code.

3 FOURTH CAUSE OF ACTION

4 34

5 There is hereby incorporated in this Fourth, separate and distinct, Cause of
6 Action, all of the allegations contained in Paragraphs 1 through 33, inclusive, of the Accusation
7 with the same force and effect as if herein fully set forth.

8 35

9 Within the three-year period prior to the filing of this Accusation, in or about
10 November 2008, Respondents relocated the main office of Respondent LIS to a different
11 address.

12 36

13 Respondents failed to maintain on file with the Real Estate Commissioner a new
14 address for the principal place of business of Respondent LIS and/or failed to maintain on file
15 with the Real Estate Commissioner its current mailing address for its real estate brokerage
16 activities.

17 37

18 The facts, as alleged in Paragraphs 35 and 36, above, constitute a violation of
19 Section 2715 of the Regulations (broker shall maintain on file with Commissioner the address of
20 principal place of business and current mailing address, if different from business address, and
21 broker shall notify Commissioner of address change not later than next business day) and are
22 grounds for the suspension or revocation of the real estate broker license of Respondent LIS
23 under the provisions of Section 10177(d) of the Code (suspension or revocation of license for
24 willful disregard or violation of the Real Estate Law, §§ 10000 et seq. and §§ 11000 et seq. of
25 the Code, or of the Regulations).

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1 FIFTH CAUSE OF ACTION

2 38

3 There is hereby incorporated in this Fifth, separate and distinct, Cause of Action,
4 all of the allegations contained in Paragraphs 1 through 37, inclusive, of the Accusation with the
5 same force and effect as if herein fully set forth.

6 39

7 Within the three-year period prior to the filing of this Accusation and at all times
8 herein mentioned, in connection with the loan brokerage activities described in Paragraphs 8, 10
9 and 11, above, Respondents LIS and CANADA failed to provide to the Department's
10 representative and/or failed to retain for a period of three (3) years the transactional documents
11 and/or transactional file for the following transactions:

12 Borrower	Property	Advance Fee	Date	Written Fee
			Collected	Agreement
13 Renee & Marcela	6202 Goldeneye Ct.	\$3,172.84	7/18/08	7/18/08
14 Zaragoza	Rocklin, California			
15 Renee & Marcela	109 Clydesdale Way	\$3,212.50	7/22/08	7/22/08
16 Zaragoza	Roseville, California			

17 40

18 The acts and/or omissions of Respondents LIS and CANADA as alleged in
19 Paragraph 39, above, constitute cause for the suspension or revocation of the licenses and
20 license rights of said Respondents under Section 10148 of the Code (broker shall retain for three
21 years copies of all documents and records executed or obtained by broker in connection with
22 any transaction requiring a real estate license and shall make such available to the
23 Commissioner's representative upon notice) all in conjunction with Section 10177(d) of the
24 Code (suspension or revocation of license for willful disregard or violation of the Real Estate
25 Law, §§ 10000 et seq. and §§ 11000 et seq. of the Code, or of the Regulations).

26 ///

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1 SIXTH CAUSE OF ACTION

2 41

3 There is hereby incorporated in this Sixth, separate and distinct, Cause of Action,
4 all of the allegations contained in Paragraphs 1 through 40, inclusive, of the Accusation with the
5 same force and effect as if herein fully set forth.

6 42

7 Within the three-year period prior to the filing of this Accusation and at all times
8 herein mentioned, in the course and scope of the activities described in Paragraph 8, above,
9 Respondents solicited borrowers and/or lenders, and/or negotiated loans secured directly or
10 collaterally by liens on real property, wherein such loans were to be brokered, arranged,
11 processed, and/or consummated on behalf of others, and/or solicited and negotiated to perform
12 services for borrowers in connection with loans secured directly or collaterally by liens on real
13 property or on a business opportunity, pursuant to Section 10131(d) of the Code, wherein
14 Respondents claimed, demanded, charged, received, and collected, and provided a written
15 contract for, advance fees from borrowers for services Respondents were to perform thereafter
16 for or in expectation of compensation, including, but not limited to, the following transactions:

17

Borrower	Property	Advance Fee	Date Collected	Written Fee Agreement
18 19 Herman H. Barrick	5105 Cherbourg Dr. Sacramento, California	\$2,500.00	6/16/09	6/16/09
20 21 Kenneth L. Hamilton	1519 Hood Road Sacramento, California	\$ 300.00 <u>\$ 600.00</u> <u>\$ 900.00</u>	12/21/09 12/21/09	12/7/09 12/7/09

22

23 43

24 The fees described in Paragraphs 42, above, constituted an "advance fee" within
25 the meaning of Section 10026 of the Code ("Advance Fee" is fee claimed, demanded, charged,
26 received, collected or contracted from principal for listing, for offer to sell or lease property or
27 business opportunity, for referral to brokers or salesmen, for soliciting borrowers or lenders, for

1 negotiating real estate loans) and 10131.2 of the Code (Real estate broker is a person who
2 engages in business of claiming, demanding, charging, receiving, collecting or contracting for
3 advance fees in connection with any employment to promote sale, lease of real property or
4 business opportunity, or exchange or to obtain loans on real property). Said fees constituted
5 trust funds within the meaning of Section 10145 of the Code (broker accepts funds belonging to
6 others in connection with acts requiring a real estate license) and Section 10146 of the Code
7 (advance fees collected by broker are trust funds).

8 44

9 In connection with the collection, receipt, and handling of the advance fees as
10 described in Paragraph 42, above, Respondents provided to the borrowers a written advance fee
11 contract that had not been submitted to, reviewed, and approved by, the Department of Real
12 Estate prior to use as required by Sections 10085 and 10085.5 of the Code and Section 2970 of
13 the Regulations.

14 45

15 Within the three-year period prior to the filing of this Accusation, in connection
16 with the collection, receipt and handling of advance fees described in Paragraph 42, above,
17 Respondents failed to provide any accounting to the borrowers expressly representing the
18 amounts of trust funds disbursed, the date of trust fund disbursement, the commission paid, and
19 overhead and profit as required by Section 10146 of the Code and containing the information
20 required by Section 2972 of the Regulations.

21 46

22 Within the three-year period prior to the filing of this Accusation, in connection
23 with the collection, receipt and handling of advance fees described in Paragraph 42, above, in
24 order to induce, respectively, Herman H. Barrick and Kenneth L. Hamilton (hereinafter
25 "Borrowers") to respectively pay the advance fees set forth in Paragraph 42, above, Respondent
26 LIS and Respondent CANADA represented and/or directed or ratified representations that
27 Respondents:

- 1 1.) Had a 100% success rate because Respondents only accepted borrowers
2 - who met the qualifications for loan modification;
- 3 2.) Would lower Borrower Barrick's monthly loan payment to \$579.00 per
4 month;
- 5 3.) Would lower Borrower Hamilton's monthly loan payment to \$386.00 per
6 month; and,
- 7 4.) Would complete the loan modification within 2 to 3 months on average.

8 47

9 The representations described in Paragraph 46, above, were false and misleading
10 and were known by Respondents LIS and CANADA to be false and misleading when made or
11 were made by such Respondents with no reasonable grounds for believing said representations
12 to be true, and/or said Respondents should have known at the time through the exercise of
13 reasonable diligence that such representations were false and misleading. In truth and in fact:

- 14 1.) Respondents did not have a 100% success rate;
- 15 2.) Borrower Barrick did not meet the lender's qualifications for a loan
16 modification;
- 17 3.) Respondents would not and did not obtain loan modifications for said
18 Borrowers;
- 19 4.) Respondents would not and did not obtain lowered monthly loan
20 payments in any amount for said Borrowers; and,
- 21 5.) Respondents would not and did not complete a loan modification within
22 any period of time.

23 48

24 The acts and omissions of Respondent LIS and Respondent CANADA described
25 in Paragraphs 45, 46 and 47, above, constitute misrepresentation, fraud, deceit, and dishonest
26 dealing.

27 ///

1
2 The acts and/or omissions of Respondent LIS and Respondent CANADA as
3 alleged above constitute cause for the suspension or revocation of the licenses and license rights
4 of Respondents under the following provisions:

- 5 (a) As alleged in Paragraph 44, under Sections 10085 and 10085.5 of the
6 Code (Unlawful to claim, demand, receive advance fee for soliciting
7 lenders on behalf of or performing services for borrowers using an
8 advance fee agreement not approved by Department) and Section 2970 of
9 the Regulations (requiring submission to commissioner for approval of all
10 advance fee materials and agreements) all in conjunction with Section
11 10177(d) of the Code (suspension or revocation of license for willful
12 disregard or violation of the Real Estate Law, §§ 10000 et seq. and §§
13 11000 et seq. of the Code, or of the Regulations);
- 14 (b) As alleged in Paragraph 45, under Section 10146 of the Code (advance
15 fees are trust funds and broker collecting advance fees shall deposit such
16 fees into a trust account) and Section 2972 of the Regulations (requiring
17 broker to provide principal with verified accounting of advance fee trust
18 funds collected and disbursed identifying agent name, principal's name,
19 services rendered, trust account into which funds deposited, amount of
20 advance fee, amounts disbursed, commissions paid, overhead, costs, and
21 profit) all in conjunction with Section 10177(d) of the Code;
- 22 (c) As alleged in Paragraphs 46, 47, and 48, under 10176(a) of the Code
23 (making a substantial misrepresentation);
- 24 (d) As alleged in Paragraphs 46, 47, and 48, under Section 10176(b) of the
25 Code (making any false promises of a character likely to influence,
26 persuade or induce);

27 ///

- 1 (e) As alleged in Paragraphs 45, 46, 47, and 48, under Section 10176(i) of
2 the Code (any other conduct, whether of the same or a different character
3 than specified in this section, which constitutes fraud or dishonest
4 dealing);
- 5 (f) As alleged in Paragraphs 45, 46, 47, and 48, under Section 10177(g) of
6 the Code (demonstrated negligence or incompetence in performing an act
7 for which he or she is required to hold a license); and,
- 8 (g) As alleged in Paragraphs 45, 46, 47, and 48, under Section 10177(j) of
9 the Code (any other conduct, whether of the same or a different character
10 than specified in this section, which constitutes fraud or dishonest
11 dealing).

12 SEVENTH CAUSE OF ACTION

13 50

14 There is hereby incorporated in this Seventh, separate and distinct, Cause of
15 Action, all of the allegations contained in Paragraphs 1 through 50, inclusive, of the Accusation
16 with the same force and effect as if herein fully set forth.

17 51

18 At all times herein mentioned, Respondent CANADA was responsible, as the
19 designated broker officer of Respondent LIS, for the supervision and control of the activities
20 conducted on behalf of the corporation by its officers and employees and of the corporate
21 activities requiring a real estate license. Respondent CANADA failed to exercise reasonable
22 supervision and control over the loan services, mortgage brokering, and advance fee collection
23 activities of Respondent LIS and its employees. In particular, Respondent CANADA
24 participated in, permitted, ratified, and/or caused the conduct described in the First, Second,
25 Third, Fourth, Fifth, and Sixth Causes of Action, above, to occur, and failed to take reasonable
26 steps to insure, including, but not limited to, the proper handling of trust funds, insure proper
27 trust fund record keeping, insure proper review of trust fund records and accounts, insure that all

1 transactional documents would be maintained on file, insure that no false representations would
2 be made to borrowers, insure that quarterly accounting for advance fees would be provided to
3 borrowers, insure proper supervision of employees, insure notification of address change, and to
4 insure the implementation of policies, rules, procedures, and systems to ensure the compliance
5 of the corporation and its employees with the Real Estate Law (Business and Professions Code
6 Sections 10000 et seq. and Sections 11000 et seq.) and the Commissioner's Regulations
7 (Chapter 6, Title 10, California Code of Regulations).

8 52

9 The acts and/or omissions of Respondent CANADA as described in Paragraph
10 51, above, constitute grounds for the suspension or revocation of the licenses and license rights
11 of Respondent CANADA under the provisions Section 10159.2 of the Code (designated
12 broker/officer responsible for supervision and control of activities conducted on behalf of
13 corporation by officers, licensed salespersons and employees to secure compliance with the Real
14 Estate Law) and Section 2725 of the Regulations (broker shall exercise reasonable supervision
15 over: licensed employees; establish policies and procedures for compliance with Real Estate
16 Law; supervise transactions requiring a real estate license; trust fund handling; etc.) in
17 conjunction with Section 10177(d) of the Code and/or of Section 10177(h) of the Code
18 (suspension or revocation for broker or designated broker/officer who fails to exercise
19 reasonable supervision of licensed employees or licensed activities of broker corporation).

20 WHEREFORE, Complainant prays that a hearing be conducted on the
21 allegations of this Accusation and that upon proof thereof a decision be rendered imposing
22 disciplinary action against all licenses and license rights of Respondents under the Real Estate
23 Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further
24 relief as may be proper under other provisions of law.

25 
26 TRICIA D. SOMMERS
27 Deputy Real Estate Commissioner

27 Dated at Sacramento, California,
this 10th day of March, 2011.

FLAG

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6
7 Telephone: (916) 227-1126

FILED

AUG 16 2010

DEPARTMENT OF REAL ESTATE
By L. Just

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of	)	NO. H-5327 SAC
12)	
13	LIS MORTGAGE CORPORATION, a California	)	FIRST AMENDED
14	Corporation and BRIAN OLIVER CANADA,	)	ACCUSATION
15)	
16	Respondents.)	

17
18 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
19 of the State of California, for First Amended Accusation against Respondent LIS MORTGAGE
20 CORPORATION, a California Corporation, and Respondent BRIAN OLIVER CANADA, is
21 informed and alleges as follows:

22 1

23 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
24 of the State of California, makes this Accusation against Respondents in her official capacity.

25 2

26 Respondents LIS MORTGAGE CORPORATION, a California Corporation, and
27 Respondent BRIAN OLIVER CANADA are presently licensed and/or have license rights under

1 the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code
2 (hereafter "the Code").

3 3

4 At all times herein mentioned, Respondent LIS MORTGAGE CORPORATION
5 (hereafter "Respondent LIS") was and is licensed by the Department of Real Estate (hereinafter
6 "the Department") as a corporate real estate broker.

7 4

8 At all times herein mentioned, Respondent BRIAN OLIVER CANADA
9 (hereinafter "Respondent CANADA") was and is licensed by the Department as an individual
10 real estate broker.

11 5

12 At all times herein mentioned, Respondent CANADA was and is licensed by the
13 Department as the designated broker/officer of Respondent LIS. As said designated
14 broker/officer, Respondent CANADA was at all times mentioned herein responsible pursuant to
15 Section 10159.2 and Section 10177(h) of the Code and Section 2725 of Chapter 6, Title 10,
16 California Code of Regulations (hereinafter "the Regulations") for the supervision and control
17 of the activities of the officers, agents, real estate licensees, and employees of Respondent LIS
18 and of the activities of the corporation for which a real estate license is required, to maintain
19 their compliance with the Real Estate Law (Sections 10000 et seq. and Sections 11000 et seq. of
20 the Code and the Regulations).

21 6

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

1
2 At all times herein mentioned, Respondent LIS was and is the alter ego of
3 Respondent CANADA and whenever a reference is made to an act or omission or representation
4 of Respondent LIS, such allegation shall be deemed to mean that Respondent CANADA was so
5 acting, or failing to act, and/or speaking.

6
7 At all times herein mentioned, Respondent LIS and Respondent CANADA
8 engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate
9 broker within the State of California within the meaning of Section 10131(d) of the Code,
10 including on behalf of others, for compensation or in expectation of compensation, Respondents
11 solicited borrowers or lenders for or negotiated loans or collected payments or performed
12 services for borrowers or lenders or note owners in connection with loans secured directly or
13 collaterally by liens on real property or on a business opportunity.

14 FIRST CAUSE OF ACTION

15
16 There is hereby incorporated in this First, separate and distinct, Cause of Action,
17 all of the allegations contained in Paragraphs 1 through 8, inclusive, of the Accusation with the
18 same force and effect as if herein fully set forth.

19
20 Within the three-year period prior to the filing of this Accusation and at all times
21 herein mentioned, in the course and scope of the activities described in Paragraph 8, above,
22 Respondents solicited borrowers and/or lenders, and/or negotiated loans secured directly or
23 collaterally by liens on real property, wherein such loans were to be brokered, arranged,
24 processed, and/or consummated on behalf of others, and/or solicited and negotiated to perform
25 services for borrowers in connection with loans secured directly or collaterally by liens on real
26 property or on a business opportunity, pursuant to Section 10131(d) of the Code, wherein
27 Respondents claimed, demanded, charged, received, and collected, and provided a written

1 contract for, advance fees from borrowers for services Respondents were to perform thereafter
 2 for or in expectation of compensation, including, but not limited to, the following transactions:

3	Borrower	Property	Advance Fee	Date Collected	Written Fee Agreement
4	Renee & Marcela	6202 Goldeneye Ct.	\$3,172.84	7/18/08	7/18/08
5	Zaragoza	Rocklin, California			
6	Renee & Marcela	109 Clydesdale Way	\$3,212.50	7/22/08	7/22/08
7	Zaragoza	Roseville, California			
8	Virgil M. Sterrett	7240 Leonard Ave.	\$2,500.00	8/12/08	8/12/08
9		Citrus Heights, California			
10	Robert A. Ceccato	1301 San Clemente Wy.	\$4,433.00	8/14/08	8/14/08
11		Citrus Heights, California			
12	Antonio Moreno	7250 Marysville Blvd.	\$2,000.00	9/4/08	9/4/08
13		Rio Linda, California	<u>\$1,900.00</u>	12/1/08	9/4/08
			<u>\$3,900.00</u>		
14	Cloattille & Dewayne	4950 Whittier Dr.	\$2,500.00	11/4/08	11/4/08
15	Lawson	Sacramento, California			
16	Manuel A. Balderas	5443 Dasco Way &	\$2,500.00	11/14/08	11/14/08
17		Sacramento, California			
18	Manuel A. Balderas	293 Arcade Blvd.	\$1,000.00	11/14/08	11/14/08
19		Sacramento, California			
20	Robert C. Robinson	7444 Poirier Way	\$1,800.00	12/9/08	12/9/08
21		Sacramento, California	<u>\$1,000.00</u>	1/5/09	12/9/08
			<u>\$2,800.00</u>		
22	Joe & Hope Cornejo	4317 La Mirada Dr.	\$1,687.50	12/10/08	None provided
23		Bakersfield, California			
24	Joe & Hope Cornejo	618 El Tejon	<u>\$1,687.50</u>	12/10/08	None provided
25		Bakersfield, California	<u>\$3,375.00</u>		
26	Mark L. Cottrell	6563 Lake Park Drive	\$3,170.00	1/7/09	1/7/09
27		Sacramento, California			

1
2 The fees described in Paragraph 10, above, constituted an "advance fee" within
3 the meaning of Section 10026 of the Code ("Advance Fee" is fee claimed, demanded, charged,
4 received, collected or contracted from principal for listing, for offer to sell or lease property or
5 business opportunity, for referral to brokers or salesmen, for soliciting borrowers or lenders, for
6 negotiating real estate loans) and 10131.2 of the Code (Real estate broker is a person who
7 engages in business of claiming, demanding, charging, receiving, collecting or contracting for
8 advance fees in connection with any employment to promote sale, lease of real property or
9 business opportunity, or exchange or to obtain loans on real property). Said fees constituted
10 trust funds within the meaning of Section 10145 of the Code (broker accepts funds belonging to
11 others in connection with acts requiring a real estate license) and Section 10146 of the Code
12 (advance fees collected by broker are trust funds).

13
14 In connection with the collection, receipt, and handling of the advance fees as
15 described in Paragraph 10, above, Respondents provided to the borrowers a written advance fee
16 contract that had not been submitted to, reviewed, and approved by, the Department of Real
17 Estate prior to use as required by Sections 10085 and 10085.5 of the Code and Section 2970 of
18 the Regulations.

19
20 Within the three-year period prior to the filing of this Accusation, in connection
21 with the collection, receipt and handling of advance fees described in Paragraph 10, above,
22 Respondents failed to deposit said funds into a trust account, disbursed the advance fee trust
23 funds to themselves or others and failed to provide to the borrowers the required verified
24 accounting of the advance fee trust funds and failed to provide to the borrowers any accounting
25 expressly representing the amounts of trust funds disbursed, the date of trust fund disbursement,
26 the commission paid, and overhead and profit as required by Section 10146 of the Code and
27 containing the information required by Section 2972 of the Regulations.

1
2 Within the three-year period prior to the filing of this Accusation, in connection
3 with the collection, receipt and handling of advance fees described in Paragraph 10, above, in
4 order to induce Renee and Marcela Zaragoza, Virgil M. Sterrett, Robert A. Ceccato, Antonio
5 Moreno, Cloattille & Dewayne Lawson, Manuel A. Balderas, Robert C. Robinson, and Joe &
6 Hope Cornejo (hereinafter "Borrowers") to respectively pay the advance fees set forth in
7 Paragraph 10, above, Respondent LIS and Respondent CANADA represented and/or directed or
8 ratified representations that Respondents would contact, respectively, the lenders holding trust
9 deeds encumbering the borrowers' respective real properties and would negotiate with said
10 lenders for favorable loan modifications of said loans to benefit the borrowers set forth in
11 Paragraph 10, above, successfully negotiate on behalf of the borrowers set forth in Paragraph 10,
12 above, for the lowest interest rate and payments, and obtain for and deliver to said borrowers all
13 loan modification documents.

14
15 The representations described in Paragraph 14, above, were false and misleading
16 and were known by Respondents LIS and CANADA to be false and misleading when made or
17 were made by such Respondents with no reasonable grounds for believing said representations
18 to be true, and/or said Respondents should have known at the time through the exercise of
19 reasonable diligence that such representations were false and misleading. In truth and in fact,
20 said Respondents would not and did not contact the lenders, would not and did not negotiate
21 with the respective lenders on behalf of the borrowers set forth in Paragraph 10, above, would
22 not and did not perform any services for said borrowers, and/or could not and failed to obtain
23 modification of loan terms, and converted the said borrowers' advance fee trust funds, as set
24 forth in Paragraph 10, above, to Respondents' own use or benefit or to purposes not authorized
25 by the rightful owner or owners of said funds.

26 ///

27 ///

1
2 The acts and omissions of Respondent LIS and Respondent CANADA described
3 in Paragraphs 10, 13, 14, and 15, above, constitute misrepresentation, fraud, deceit, and
4 dishonest dealing.

5
6 The acts and/or omissions of Respondent LIS and Respondent CANADA as
7 alleged above constitute cause for the suspension or revocation of the licenses and license rights
8 of Respondents under the following provisions:

- 9 (a) As alleged in Paragraph 12, under Sections 10085 and 10085.5 of the
10 Code (Unlawful to claim, demand, receive advance fee for soliciting
11 lenders on behalf of or performing services for borrowers using an
12 advance fee agreement not approved by Department) and Section 2970 of
13 the Regulations (requiring submission to commissioner for approval of all
14 advance fee materials and agreements) all in conjunction with Section
15 10177(d) of the Code (suspension or revocation of license for willful
16 disregard or violation of the Real Estate Law, §§ 10000 et seq. and §§
17 11000 et seq. of the Code, or of the Regulations);
- 18 (b) As alleged in Paragraph 13, under Section 10146 of the Code (advance
19 fees are trust funds and broker collecting advance fees shall deposit such
20 fees into a trust account) and Section 2972 of the Regulations (requiring
21 broker to provide principal with verified accounting of advance fee trust
22 funds collected and disbursed identifying agent name, principal's name,
23 services rendered, trust account into which funds deposited, amount of
24 advance fee, amounts disbursed, commissions paid, overhead, costs, and
25 profit) all in conjunction with Section 10177(d) of the Code;
- 26 (c) As alleged in Paragraphs 10, 14, 15, and 16, under 10176(a) of the Code
27 (making a substantial misrepresentation);

- 1 (d) As alleged in Paragraphs 10, 14, 15, and 16, under Section 10176(b) of
2 the Code (making any false promises of a character likely to influence,
3 persuade or induce);
- 4 (e) As alleged in Paragraphs 10, 13, 14, 15, and 16, under Section 10176(i)
5 of the Code (any other conduct, whether of the same or a different
6 character than specified in this section, which constitutes fraud or
7 dishonest dealing);
- 8 (f) As alleged in Paragraphs 10, 13, 14, 15, and 16, under Section 10177(g)
9 of the Code (demonstrated negligence or incompetence in performing an
10 act for which he or she is required to hold a license); and,
- 11 (g) As alleged in Paragraphs 10, 13, 14, 15, and 16, under Section 10177(j)
12 of the Code (any other conduct, whether of the same or a different
13 character than specified in this section, which constitutes fraud or
14 dishonest dealing).

15 SECOND CAUSE OF ACTION

16 18

17 There is hereby incorporated in this Second, separate and distinct, Cause of
18 Action, all of the allegations contained in Paragraphs 1 through 17, inclusive, of the Accusation
19 with the same force and effect as if herein fully set forth.

20 19

21 At all times herein mentioned Respondent LIS employed Ryan Alexander and
22 Peggy Smith.

23 20

24 At no time herein mentioned was Ryan Alexander licensed by the Department as
25 either a real estate broker or a real estate salesperson.

26 ///

27 ///

At no time herein mentioned was Peggy Smith licensed by the Department as either a real estate broker or a real estate salesperson.

Within the three year period prior to the filing of this Accusation and at all times herein mentioned, Respondent LIS and Respondent CANADA employed Ryan Alexander and Peggy Smith to perform and engage in the activities set forth in Paragraph 8, above, for which a real estate license is required, for or in expectation of compensation.

Within the three-year period prior to the filing of this Accusation and at all times herein mentioned, in the course of the activities described in Paragraphs 8 and 10, above, Peggy Smith, while unlicensed, solicited borrowers and/or lenders, and/or negotiated loans secured directly or collaterally by liens on real property, wherein such loans were to be brokered, arranged, processed, and/or consummated on behalf of others, and/or solicited and negotiated to perform services for borrowers in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, pursuant to Section 10131(d) of the Code, wherein Respondents and Peggy Smith claimed, demanded, charged, received, and collected, and provided a written contract for, advance fees from borrowers for services to be performed thereafter by Respondents for or in expectation of compensation, including, but not limited to, the following transactions:

Borrower	Property	Advance Fee	Date Collected	Written Fee Agreement
Renee & Marcela Zaragoza	6202 Goldeneye Ct. Rocklin, California	\$3,172.84	7/18/08	7/18/08
Renee & Marcela Zaragoza	109 Clydesdale Way Roseville, California	\$3,212.50	7/22/08	7/22/08
Cloattille & Dewayne Lawson	4950 Whittier Dr. Sacramento, California	\$2,500.00	11/4/08	11/4/08

1	Robert C. Robinson	7444 Poirier Way	\$1,800.00	12/9/08	12/9/08
2		Sacramento, California	<u>\$1,000.00</u>	1/5/09	12/9/08
			<u>\$2,800.00</u>		
3	Herman H. Barrick	5105 Cherbourg Dr.	\$2,500.00	6/16/09	6/16/09
4		Sacramento, California			
5	Kenneth L. Hamilton	1519 Hood Road	\$ 300.00	12/21/09	12/7/09
6		Sacramento, California	<u>\$ 600.00</u>	12/21/09	12/7/09
			<u>\$ 900.00</u>		

24

Within the three-year period prior to the filing of this Accusation and at all times herein mentioned, in the course of the activities described in Paragraphs 8 and 10, above, Ryan Alexander, while unlicensed, solicited borrowers and/or lenders, and/or negotiated loans secured directly or collaterally by liens on real property, wherein such loans were to be brokered, arranged, processed, and/or consummated on behalf of others, and/or solicited and negotiated to perform services for borrowers in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, pursuant to Section 10131(d) of the Code, wherein Respondents and Ryan Alexander claimed, demanded, charged, received, and collected, and provided a written contract for, advance fees from borrowers for services to be performed thereafter by Respondents for or in expectation of compensation, including, but not limited to, the following transactions:

Borrower	Property	Advance Fee	Date Collected	Written Fee Agreement
Renee & Marcela Zaragoza	6202 Goldeneye Ct. Rocklin, California	\$3,172.84	7/18/08	7/18/08
Renee & Marcela Zaragoza	109 Clydesdale Way Roseville, California	\$3,212.50	7/22/08	7/22/08
Mark L. Cottrell	6563 Lake Park Drive Sacramento, California	\$3,170.00	1/7/09	1/7/09
///				
///				

1
2 The facts alleged in Paragraphs 19 through 24, inclusive, above, constitute cause
3 for the suspension or revocation of the licenses and license rights of Respondent LIS and
4 Respondent CANADA under Section 10137 of the Code (unlawful for licensed broker to
5 employ or compensate, directly or indirectly, an unlicensed person to perform acts requiring a
6 real estate license), and/or Section 10138 of the Code (misdemeanor to pay or compensate an
7 unlicensed person for performing acts requiring a real estate license) all in conjunction with
8 Section 10177(d) the Code (suspension or revocation of license for willful disregard or violation
9 of the Real Estate Law, §§ 10000 et seq. and §§ 11000 et seq. of the Code, or of the
10 Regulations).

11 THIRD CAUSE OF ACTION

12
13 There is hereby incorporated in this Third, separate and distinct, Cause of Action,
14 all of the allegations contained in Paragraphs 1 through 25, inclusive, of the Accusation with the
15 same force and effect as if herein fully set forth.

16
17 In acting as real estate brokers as described in Paragraphs 8, 10 and 11, above,
18 Respondent LIS and Respondent CANADA, accepted or received and disbursed funds in trust,
19 including advance fees, (hereinafter "trust funds") from or on behalf of lenders, note owners,
20 buyers, borrowers, and/or others in connection with the said mortgage and loan services
21 activities.

22
23 Within the three-year period prior to the filing of this Accusation, in connection
24 with the collection and disbursement of trust funds as set forth in Paragraph 27, above, the
25 aforesaid trust funds accepted or received by Respondents LIS and CANADA were deposited or
26 caused to be deposited by said Respondents into bank accounts maintained by Respondents as
27 follows:

- 1 (a) From June 4, 2009 and continuing, Citibank, 9601 Greenback Lane,
2 Folsom, California, Account #203247762, entitled "Lis Mortgage
3 Corporation" (hereinafter "Bank Account 1") with Respondent CANADA
4 and Sheryl Canada as signatories; and,
- 5 (b) From July 2008 through June 4, 2009, Bank of America, 10607 Folsom
6 Blvd., Rancho Cordova, California, Account #05808-68267, entitled "Lis
7 Mortgage Corporation" (hereinafter "Bank Account 2").

8 29

9 Within the three-year period prior to the filing of this Accusation and at all times
10 herein mentioned, in connection with the collection and disbursement of trust funds, as set forth
11 in Paragraphs 10, 11 and 27, above, Respondents LIS and CANADA failed to deposit and
12 maintain the trust funds in a trust account or neutral escrow depository, or to deliver them into
13 the hands of the owners of the funds, in violation of Section 10145 of the Code (broker
14 accepting funds belonging to others shall deposit such funds into neutral escrow, broker's
15 principal or into broker's trust account) and/or Section 10146 of the Code (advance fees are trust
16 funds and broker collecting advance fees shall deposit such fees into a trust account) in such a
17 manner that as of August 31, 2009, there was a trust fund shortage in the sum of \$27,985.08 in
18 Bank Account #1.

19 30

20 In causing or permitting the shortage set forth in Paragraph 29, above,
21 Respondents LIS and CANADA failed to obtain the prior written consents of the principals for
22 the reduction of the aggregate balance of trust funds in Bank Account #1 to an amount less than
23 the existing aggregate trust fund liability to the owners of said funds in conformance with
24 Section 2832.1 of the Regulations (written consent of every principal owner of the funds shall
25 be obtained by broker prior to each disbursement of trust funds if disbursement will reduce
26 balance of trust funds in account to an amount less than existing aggregate trust fund liability of
27 broker to all owners of said funds).

1
2 Within the three-year period prior to the filing of this Accusation and at all times
3 herein mentioned, Respondents LIS and CANADA failed to designate, respectively, Bank
4 Account #1 and Bank Account #2 as trust accounts in the name of Respondent LIS as broker
5 and as trustee and deposited client trust funds into those accounts in violation of Section 2832 of
6 the Regulations (broker shall place trust funds into bank account in the name of broker as trustee
7 not later than three business days after receipt) and Sections 10145 and 10146 of the Code
8 (requiring broker to place trust funds and advance fee trust funds into a trust account).

9
10 Within the three-year period prior to the filing of this Accusation and at all times
11 herein mentioned, in connection with the collection and disbursement of trust funds, as set forth
12 in Paragraphs 10, 11 and 27, above, Respondents LIS and CANADA:

- 13 (a) Failed to maintain a control record for trust funds received and disbursed
14 and containing the information required by Section 2831 of the
15 Regulations (requiring record of trust funds received and disbursed in
16 columnar form, in chronological sequence, dates of receipt, from whom
17 received, dates disbursed, date deposited, identity of depository, daily
18 balance, etc.) for Bank Account #1 and Bank Account #2 for trust funds
19 deposited to said accounts;
- 20 (b) Failed to perform, at least once a month, a reconciliation of all the
21 separate beneficiary records with the control record, and/or failed
22 to maintain a record of such reconciliations as required by Section 2831.2
23 of the Regulations (maintain written record of and perform once each
24 month balance of all separate beneficiary funds and reconcile funds
25 received with funds disbursed, etc.) for Bank Account #1 and Bank
26 Account #2 for trust funds deposited into said accounts; and,
27

1 (c) Permitted Sheryl Canada, a person who neither held a California real
2 estate license nor was bonded, to be a signatory on Bank Account #1 in
3 violation of Section 2834 of the Regulations (requiring withdrawals from
4 trust account to be performed only by authorized signatories who must be
5 broker as trustee, real estate salesperson licensed to broker, or an
6 unlicensed employee having fidelity bond coverage equal to maximum
7 amount of trust funds in account).

8 33

9 The acts and/or omissions of Respondents LIS and CANADA as alleged above
10 constitute cause for the suspension or revocation of the licenses and license rights of
11 Respondents under the following provisions:

- 12 (a) As alleged against Respondents in Paragraph 29, under Section 10145 of
13 the Code and/or Section 10146 of the Code in conjunction with Section
14 10177(d) of the Code (suspension or revocation of license for willful
15 disregard or violation of the Real Estate Law, §§ 10000 et seq. and §§
16 11000 et seq. of the Code, or of the Regulations);
- 17 (b) As alleged against Respondents in Paragraph 30, under Section 2832.1 of
18 the Regulations in conjunction with Section 10177(d) of the Code;
- 19 (c) As alleged against Respondents in Paragraph 31, under Section 2832 of
20 the Regulations and Section 10145 and 10146 of the Code all in
21 conjunction with Section 10177(d) of the Code;
- 22 (d) As alleged against Respondents in Paragraph 32(a), under Section 2831
23 of the Regulations in conjunction with Section 10177(d) of the Code;
- 24 (e) As alleged against Respondents in Paragraph 32(b), under Section 2831.2
25 of the Regulations in conjunction with Section 10177(d) of the Code;
26 and,
- 27

1 (f) As alleged against Respondents in Paragraph 32(c), under Section 2834
2 of the Regulations in conjunction with Section 10177(d) of the Code.

3 FOURTH CAUSE OF ACTION

4 34

5 There is hereby incorporated in this Fourth, separate and distinct, Cause of
6 Action, all of the allegations contained in Paragraphs 1 through 33, inclusive, of the Accusation
7 with the same force and effect as if herein fully set forth.

8 35

9 Within the three-year period prior to the filing of this Accusation, in or about
10 November 2008, Respondents relocated the main office of Respondent LIS to a different
11 address.

12 36

13 Respondents failed to maintain on file with the Real Estate Commissioner a new
14 address for the principal place of business of Respondent LIS and/or failed to maintain on file
15 with the Real Estate Commissioner its current mailing address for its real estate brokerage
16 activities.

17 37

18 The facts, as alleged in Paragraphs 35 and 36, above, constitute a violation of
19 Section 2715 of the Regulations (broker shall maintain on file with Commissioner the address of
20 principal place of business and current mailing address, if different from business address, and
21 broker shall notify Commissioner of address change not later than next business day) and are
22 grounds for the suspension or revocation of the real estate broker license of Respondent LIS
23 under the provisions of Section 10177(d) of the Code (suspension or revocation of license for
24 willful disregard or violation of the Real Estate Law, §§ 10000 et seq. and §§ 11000 et seq. of
25 the Code, or of the Regulations).

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1 FIFTH CAUSE OF ACTION

2 38

3 There is hereby incorporated in this Fifth, separate and distinct, Cause of Action,
4 all of the allegations contained in Paragraphs 1 through 37, inclusive, of the Accusation with the
5 same force and effect as if herein fully set forth.

6 39

7 Within the three-year period prior to the filing of this Accusation and at all times
8 herein mentioned, in connection with the loan brokerage activities described in Paragraphs 8, 10
9 and 11, above, Respondents LIS and CANADA failed to provide to the Department's
10 representative and/or failed to retain for a period of three (3) years the transactional documents
11 and/or transactional file for the following transactions:

12 Borrower	Property	Advance Fee	Date	Written Fee
			Collected	Agreement
13 Renee & Marcela	6202 Goldeneye Ct.	\$3,172.84	7/18/08	7/18/08
14 Zaragoza	Rocklin, California			
15 Renee & Marcela	109 Clydesdale Way	\$3,212.50	7/22/08	7/22/08
16 Zaragoza	Roseville, California			

17 40

18 The acts and/or omissions of Respondents LIS and CANADA as alleged in
19 Paragraph 39, above, constitute cause for the suspension or revocation of the licenses and
20 license rights of said Respondents under Section 10148 of the Code (broker shall retain for three
21 years copies of all documents and records executed or obtained by broker in connection with
22 any transaction requiring a real estate license and shall make such available to the
23 Commissioner's representative upon notice) all in conjunction with Section 10177(d) of the
24 Code (suspension or revocation of license for willful disregard or violation of the Real Estate
25 Law, §§ 10000 et seq. and §§ 11000 et seq. of the Code, or of the Regulations).

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1 SIXTH CAUSE OF ACTION

2 41

3 There is hereby incorporated in this Sixth, separate and distinct, Cause of Action,
4 all of the allegations contained in Paragraphs 1 through 40, inclusive, of the Accusation with the
5 same force and effect as if herein fully set forth.

6 42

7 Within the three-year period prior to the filing of this Accusation and at all times
8 herein mentioned, in the course and scope of the activities described in Paragraph 8, above,
9 Respondents solicited borrowers and/or lenders, and/or negotiated loans secured directly or
10 collaterally by liens on real property, wherein such loans were to be brokered, arranged,
11 processed, and/or consummated on behalf of others, and/or solicited and negotiated to perform
12 services for borrowers in connection with loans secured directly or collaterally by liens on real
13 property or on a business opportunity, pursuant to Section 10131(d) of the Code, wherein
14 Respondents claimed, demanded, charged, received, and collected, and provided a written
15 contract for, advance fees from borrowers for services Respondents were to perform thereafter
16 for or in expectation of compensation, including, but not limited to, the following transactions:

17 Borrower	Property	Advance Fee	Date Collected	Written Fee Agreement
18 Herman H. Barrick	5105 Cherbourg Dr. Sacramento, California	\$2,500.00	6/16/09	6/16/09
19 Kenneth L. Hamilton	1519 Hood Road Sacramento, California	\$ 300.00 <u>\$ 600.00</u> <u>\$ 900.00</u>	12/21/09 12/21/09	12/7/09 12/7/09

22 43

23 The fees described in Paragraphs 42, above, constituted an "advance fee" within
24 the meaning of Section 10026 of the Code ("Advance Fee" is fee claimed, demanded, charged,
25 received, collected or contracted from principal for listing, for offer to sell or lease property or
26 business opportunity, for referral to brokers or salesmen, for soliciting borrowers or lenders, for
27

1 negotiating real estate loans) and 10131.2 of the Code (Real estate broker is a person who
2 engages in business of claiming, demanding, charging, receiving, collecting or contracting for
3 advance fees in connection with any employment to promote sale, lease of real property or
4 business opportunity, or exchange or to obtain loans on real property). Said fees constituted
5 trust funds within the meaning of Section 10145 of the Code (broker accepts funds belonging to
6 others in connection with acts requiring a real estate license) and Section 10146 of the Code
7 (advance fees collected by broker are trust funds).

8 44

9 In connection with the collection, receipt, and handling of the advance fees as
10 described in Paragraph 42, above, Respondents provided to the borrowers a written advance fee
11 contract that had not been submitted to, reviewed, and approved by, the Department of Real
12 Estate prior to use as required by Sections 10085 and 10085.5 of the Code and Section 2970 of
13 the Regulations.

14 45

15 Within the three-year period prior to the filing of this Accusation, in connection
16 with the collection, receipt and handling of advance fees described in Paragraph 42, above,
17 Respondents failed to provide any accounting to the borrowers expressly representing the
18 amounts of trust funds disbursed, the date of trust fund disbursement, the commission paid, and
19 overhead and profit as required by Section 10146 of the Code and containing the information
20 required by Section 2972 of the Regulations.

21 46

22 Within the three-year period prior to the filing of this Accusation, in connection
23 with the collection, receipt and handling of advance fees described in Paragraph 42, above, in
24 order to induce, respectively, Herman H. Barrick and Kenneth L. Hamilton (hereinafter
25 "Borrowers") to respectively pay the advance fees set forth in Paragraph 42, above, Respondent
26 LIS and Respondent CANADA represented and/or directed or ratified representations that
27 Respondents:

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- 1.) Had a 100% success rate because Respondents only accepted borrowers who met the qualifications for loan modification;
- 2.) Would lower Borrower Barrick's monthly loan payment to \$579.00 per month;
- 3.) Would lower Borrower Hamilton's monthly loan payment to \$386.00 per month; and,
- 4.) Would complete the loan modification within 2 to 3 months on average.

The representations described in Paragraph 46, above, were false and misleading and were known by Respondents LIS and CANADA to be false and misleading when made or were made by such Respondents with no reasonable grounds for believing said representations to be true, and/or said Respondents should have known at the time through the exercise of reasonable diligence that such representations were false and misleading. In truth and in fact:

- 1.) Respondents did not have a 100% success rate;
- 2.) Borrower Barrick did not meet the lender's qualifications for a loan modification;
- 3.) Respondents would not and did not obtain loan modifications for said Borrowers;
- 4.) Respondents would not and did not obtain lowered monthly loan payments in any amount for said Borrowers; and,
- 5.) Respondents would not and did not complete a loan modification within any period of time.

The acts and omissions of Respondent LIS and Respondent CANADA described in Paragraphs 45, 46 and 47, above, constitute misrepresentation, fraud, deceit, and dishonest dealing.

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1
2 The acts and/or omissions of Respondent LIS and Respondent CANADA as
3 alleged above constitute cause for the suspension or revocation of the licenses and license rights
4 of Respondents under the following provisions:

- 5 (a) As alleged in Paragraph 44, under Sections 10085 and 10085.5 of the
6 Code (Unlawful to claim, demand, receive advance fee for soliciting
7 lenders on behalf of or performing services for borrowers using an
8 advance fee agreement not approved by Department) and Section 2970 of
9 the Regulations (requiring submission to commissioner for approval of all
10 advance fee materials and agreements) all in conjunction with Section
11 10177(d) of the Code (suspension or revocation of license for willful
12 disregard or violation of the Real Estate Law, §§ 10000 et seq. and §§
13 11000 et seq. of the Code, or of the Regulations);
- 14 (b) As alleged in Paragraph 45, under Section 10146 of the Code (advance
15 fees are trust funds and broker collecting advance fees shall deposit such
16 fees into a trust account) and Section 2972 of the Regulations (requiring
17 broker to provide principal with verified accounting of advance fee trust
18 funds collected and disbursed identifying agent name, principal's name,
19 services rendered, trust account into which funds deposited, amount of
20 advance fee, amounts disbursed, commissions paid, overhead, costs, and
21 profit) all in conjunction with Section 10177(d) of the Code;
- 22 (c) As alleged in Paragraphs 46, 47, and 48, under 10176(a) of the Code
23 (making a substantial misrepresentation);
- 24 (d) As alleged in Paragraphs 46, 47, and 48, under Section 10176(b) of the
25 Code (making any false promises of a character likely to influence,
26 persuade or induce);

27 ///

- 1 (e) As alleged in Paragraphs 45, 46, 47, and 48, under Section 10176(i) of
2 the Code (any other conduct, whether of the same or a different character
3 than specified in this section, which constitutes fraud or dishonest
4 dealing);
- 5 (f) As alleged in Paragraphs 45, 46, 47, and 48, under Section 10177(g) of
6 the Code (demonstrated negligence or incompetence in performing an act
7 for which he or she is required to hold a license); and,
- 8 (g) As alleged in Paragraphs 45, 46, 47, and 48, under Section 10177(j) of
9 the Code (any other conduct, whether of the same or a different character
10 than specified in this section, which constitutes fraud or dishonest
11 dealing).

12 SEVENTH CAUSE OF ACTION

13 50

14 There is hereby incorporated in this Seventh, separate and distinct, Cause of
15 Action, all of the allegations contained in Paragraphs 1 through 49, inclusive, of the Accusation
16 with the same force and effect as if herein fully set forth.

17 51

18 At all times herein mentioned, Respondent CANADA was responsible, as the
19 designated broker officer of Respondent LIS, for the supervision and control of the activities
20 conducted on behalf of the corporation by its officers and employees and of the corporate
21 activities requiring a real estate license. Respondent CANADA failed to exercise reasonable
22 supervision and control over the loan services, mortgage brokering, and advance fee collection
23 activities of Respondent LIS and its employees. In particular, Respondent CANADA
24 participated in, permitted, ratified, and/or caused the conduct described in the First, Second,
25 Third, Fourth, Fifth, and Sixth Causes of Action, above, to occur, and failed to take reasonable
26 steps to insure, including, but not limited to, the proper handling of trust funds, insure proper
27 trust fund record keeping, insure proper review of trust fund records and accounts, insure that all

1 transactional documents would be maintained on file, insure that no false representations would
2 be made to borrowers, insure that quarterly accounting for advance fees would be provided to
3 borrowers, insure proper supervision of employees, insure notification of address change, and to
4 insure the implementation of policies, rules, procedures, and systems to ensure the compliance
5 of the corporation and its employees with the Real Estate Law (Business and Professions Code
6 Sections 10000 et seq. and Sections 11000 et seq.) and the Commissioner's Regulations
7 (Chapter 6, Title 10, California Code of Regulations).

8 52

9 The acts and/or omissions of Respondent CANADA as described in Paragraph
10 51, above, constitute grounds for the suspension or revocation of the licenses and license rights
11 of Respondent CANADA under the provisions Section 10159.2 of the Code (designated
12 broker/officer responsible for supervision and control of activities conducted on behalf of
13 corporation by officers, licensed salespersons and employees to secure compliance with the Real
14 Estate Law) and Section 2725 of the Regulations (broker shall exercise reasonable supervision
15 over: licensed employees; establish policies and procedures for compliance with Real Estate
16 Law; supervise transactions requiring a real estate license; trust fund handling; etc.) in
17 conjunction with Section 10177(d) of the Code and/or of Section 10177(h) of the Code
18 (suspension or revocation for broker or designated broker/officer who fails to exercise
19 reasonable supervision of licensed employees or licensed activities of broker corporation).

20 WHEREFORE, Complainant prays that a hearing be conducted on the
21 allegations of this Accusation and that upon proof thereof a decision be rendered imposing
22 disciplinary action against all licenses and license rights of Respondents under the Real Estate
23 Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further
24 relief as may be proper under other provisions of law.

25 
26 TRICIA D. SOMMERS
27 Deputy Real Estate Commissioner

27 Dated at Sacramento, California,
this 12th day of August, 2010.

FILED

JAN 06 2010

DEPARTMENT OF REAL ESTATE

By *[Signature]*

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-1126

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of	)	NO. H-5327 SAC
)	
12 LIS MORTGAGE CORPORATION, a California	)	ACCUSATION
	)	and
13 Corporation and BRIAN OLIVER CANADA,	)	NOTICE OF INTENT TO ISSUE
	)	DEBARMENT ORDER
14 Respondents.	)	(B & P Code § 10087)
)	

16 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
17 of the State of California, for Accusation against Respondent LIS MORTGAGE
18 CORPORATION, a California Corporation, and Respondent BRIAN OLIVER CANADA, is
19 informed and alleges as follows:

20 1

21 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
22 of the State of California, makes this Accusation against Respondents in her official capacity.

23 2

24 Respondents LIS MORTGAGE CORPORATION, a California Corporation, and
25 Respondent BRIAN OLIVER CANADA are presently licensed and/or have license rights under
26 the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code
27 (hereafter "the Code").

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At all times herein mentioned, Respondent LIS MORTGAGE CORPORATION (hereafter "Respondent LIS") was and is licensed by the Department of Real Estate (hereinafter "the Department") as a corporate real estate broker.

4

At all times herein mentioned, Respondent BRIAN OLIVER CANADA (hereinafter "Respondent CANADA") was and is licensed by the Department as an individual real estate broker.

5

At all times herein mentioned, Respondent CANADA was and is licensed by the Department as the designated broker/officer of Respondent LIS. As said designated broker/officer, Respondent CANADA was at all times mentioned herein responsible pursuant to Section 10159.2 and Section 10177(h) of the Code and Section 2725 of Chapter 6, Title 10, California Code of Regulations (hereinafter "the Regulations") for the supervision and control of the activities of the officers, agents, real estate licensees, and employees of Respondent LIS and of the activities of the corporation for which a real estate license is required, to maintain their compliance with the Real Estate Law (Sections 10000 et seq. and Sections 11000 et seq. of the Code and the Regulations).

6

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

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///

At all times herein mentioned, Respondent LIS was and is the alter ego of Respondent CANADA and whenever a reference is made to an act or omission or representation of Respondent LIS, such allegation shall be deemed to mean that Respondent CANADA was so acting, or failing to act, and/or speaking.

At all times herein mentioned, Respondent LIS and Respondent CANADA engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(d) of the Code, including on behalf of others, for compensation or in expectation of compensation, Respondents solicited borrowers or lenders for or negotiated loans or collected payments or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

FIRST CAUSE OF ACTION

There is hereby incorporated in this First, separate and distinct, Cause of Action, all of the allegations contained in Paragraphs 1 through 8, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

Within the three year period prior to the filing of this Accusation and at all times herein mentioned, in the course and scope of the activities described in Paragraph 8, above, Respondents solicited borrowers and/or lenders, and/or negotiated loans secured directly or collaterally by liens on real property, wherein such loans were to be brokered, arranged, processed, and/or consummated on behalf of others, and/or solicited and negotiated to perform services for borrowers in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, pursuant to Section 10131(d) of the Code, wherein Respondents claimed, demanded, charged, received, and collected, and provided a written

1 contract for, advance fees from borrowers for services Respondents were to perform thereafter
 2 for or in expectation of compensation, including, but not limited to, the following transactions:

3	Borrower	Property	Advance Fee	Date Collected	Written Fee Agreement
4	Renee & Marcela Zaragoza	6202 Goldeneye Ct. Rocklin, California	\$3,172.84	7/18/08	7/18/08
5					
6	Renee & Marcela Zaragoza	109 Clydesdale Way Roseville, California	\$3,212.50	7/22/08	7/22/08
7					
8	Virgil M. Sterrett	7240 Leonard Ave. Citrus Heights, California	\$2,500.00	8/12/08	8/12/08
9					
10	Robert A. Ceccato	1301 San Clemente Wy. Citrus Heights, California	\$4,433.00	8/14/08	8/14/08
11					
12	Antonio Moreno	7250 Marysville Blvd. Rio Linda, California	\$2,000.00 <u>\$1,900.00</u> <u>\$3,900.00</u>	9/4/08 12/1/08	9/4/08 9/4/08
13					
14	Cloattille & Dewayne Lawson	4950 Whittier Dr. Sacramento, California	\$2,500.00	11/4/08	11/4/08
15					
16	Manuel A. Balderas	5443 Dasco Way & Sacramento, California	\$2,500.00	11/14/08	11/14/08
17					
18	Manuel A. Balderas	293 Arcade Blvd. Sacramento, California	\$1,000.00	11/14/08	11/14/08
19					
20	Robert C. Robinson	7444 Poirier Way Sacramento, California	\$1,800.00 <u>\$1,000.00</u> <u>\$2,800.00</u>	12/9/08 1/5/09	12/9/08 12/9/08
21					
22	Joe & Hope Cornejo	4317 La Mirada Dr. Bakersfield, California	\$1,687.50	12/10/08	None provided
23					
24	Joe & Hope Cornejo	618 El Tejon Bakersfield, California	<u>\$1,687.50</u> <u>\$3,375.00</u>	12/10/08	None provided
25					
26	Mark L. Cottrell	6563 Lake Park Drive Sacramento, California	\$3,170.00	1/7/09	1/7/09
27	///				

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2 The fees described in Paragraph 10, above, constituted an "advance fee" within
3 the meaning of Section 10026 of the Code ("Advance Fee" is fee claimed, demanded, charged,
4 received, collected or contracted from principal for listing, for offer to sell or lease property or
5 business opportunity, for referral to brokers or salesmen, for soliciting borrowers or lenders, for
6 negotiating real estate loans) and 10131.2 of the Code (Real estate broker is a person who
7 engages in business of claiming, demanding, charging, receiving, collecting or contracting for
8 advance fees in connection with any employment to promote sale, lease of real property or
9 business opportunity, or exchange or to obtain loans on real property). Said fees constituted
10 trust funds within the meaning of Section 10145 of the Code (broker accepts funds belonging to
11 others in connection with acts requiring a real estate license) and Section 10146 of the Code
12 (advance fees collected by broker are trust funds).

13
14 In connection with the collection, receipt, and handling of the advance fees as
15 described in Paragraph 10, above, Respondents provided to the borrowers a written advance fee
16 contract that had not been submitted to, reviewed, and approved by, the Department of Real
17 Estate prior to use as required by Sections 10085 and 10085.5 of the Code and Section 2970 of
18 the Regulations.

19
20 Within the three year period prior to the filing of this Accusation, in connection
21 with the collection, receipt and handling of advance fees described in Paragraph 10, above,
22 Respondents failed to deposit said funds into a trust account, disbursed the advance fee trust
23 funds to themselves or others and failed to provide to the borrowers the required verified
24 accounting of the advance fee trust funds and failed to provide any accounting expressly
25 representing the amounts of trust funds disbursed, the date of trust fund disbursement, the
26 commission paid, and overhead and profit as required by Section 10146 of the Code and
27 containing the information required by Section 2972 of the Regulations.

1
2 Within the three year period prior to the filing of this Accusation, in connection
3 with the collection, receipt and handling of advance fees described in Paragraph 10, above, in
4 order to induce Renee and Marcela Zaragoza, Virgil M. Sterrett, Robert A. Ceccato, Antonio
5 Moreno, Cloattille & Dewayne Lawson, Manuel A. Balderas, Robert C. Robinson, and Joe &
6 Hope Cornejo (hereinafter "Borrowers") to respectively pay the advance fees set forth in
7 Paragraph 10, above, Respondent LIS and Respondent CANADA represented that Respondents
8 would contact, respectively, the lenders holding trust deeds encumbering the borrowers'
9 respective real properties and would negotiate with said lenders for favorable loan modifications
10 of said loans to benefit the borrowers set forth in Paragraph 10, above, successfully negotiate on
11 behalf of the borrowers set forth in Paragraph 10, above, for the lowest interest rate and
12 payments, and obtain for and deliver to said borrowers all loan modification documents.

13
14 The representations described in Paragraph 14, above, were false and misleading
15 and were known by Respondents LIS and CANADA to be false and misleading when made or
16 were made by such Respondents with no reasonable grounds for believing said representations
17 to be true, and/or said Respondents should have known at the time through the exercise of
18 reasonable diligence that such representations were false and misleading. In truth and in fact,
19 said Respondents would not and did not contact the lenders, would not and did not negotiate
20 with the respective lenders on behalf of the borrowers set forth in Paragraph 10, above, would
21 not and did not perform any services for said borrowers, and/or could not and failed to obtain
22 modification of loan terms, and converted the said borrowers' advance fee trust funds, as set
23 forth in Paragraph 10, above, to Respondents' own use or benefit or to purposes not authorized
24 by the rightful owner or owners of said funds.

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1
2 The acts and omissions of Respondent LIS and Respondent CANADA described
3 in Paragraphs 10, 13, 14, and 15, above, constitute misrepresentation, fraud, deceit, and
4 dishonest dealing.

5
6 The acts and/or omissions of Respondent LIS and Respondent CANADA as
7 alleged above constitute cause for the suspension or revocation of the licenses and license rights
8 of Respondents under the following provisions:

- 9 (a) As alleged in Paragraph 12, under Sections 10085 and 10085.5 of the
10 Code (Unlawful to claim, demand, receive advance fee for soliciting
11 lenders on behalf of or performing services for borrowers using an
12 advance fee agreement not approved by Department) and Section 2970 of
13 the Regulations (requiring submission to commissioner for approval of all
14 advance fee materials and agreements) all in conjunction with Section
15 10177(d) of the Code (suspension or revocation of license for willful
16 disregard or violation of the Real Estate Law, §§ 10000 et seq. and §§
17 11000 et seq. of the Code, or of the Regulations);
- 18 (b) As alleged in Paragraph 13, under Section 10146 of the Code (advance
19 fees are trust funds and broker collecting advance fees shall deposit such
20 fees into a trust account) and Section 2972 of the Regulations (requiring
21 broker to provide principal with verified accounting of advance fee trust
22 funds collected and disbursed identifying agent name, principal's name,
23 services rendered, trust account into which funds deposited, amount of
24 advance fee, amounts disbursed, commissions paid, overhead, costs, and
25 profit) all in conjunction with Section 10177(d) of the Code;
- 26 (c) As alleged in Paragraphs 10, 14, 15, and 16, under 10176(a) of the Code
27 (making a substantial misrepresentation);

- 1 (d) As alleged in Paragraphs 10, 14, 15, and 16, under Section 10176(b) of
2 the Code (making any false promises of a character likely to influence,
3 persuade or induce);
- 4 (e) As alleged in Paragraphs 10, 13, 14, 15, and 16, under Section 10176(i)
5 of the Code (any other conduct, whether of the same or a different
6 character than specified in this section, which constitutes fraud or
7 dishonest dealing);
- 8 (f) As alleged in Paragraphs 10, 13, 14, 15, and 16, under Section 10177(g)
9 of the Code (demonstrated negligence or incompetence in performing an
10 act for which he or she is required to hold a license); and,
- 11 (g) As alleged in Paragraphs 10, 13, 14, 15, and 16, under Section 10177(j)
12 of the Code (any other conduct, whether of the same or a different
13 character than specified in this section, which constitutes fraud or
14 dishonest dealing).

15 SECOND CAUSE OF ACTION

16 18

17 There is hereby incorporated in this Second, separate and distinct, Cause of
18 Action, all of the allegations contained in Paragraphs 1 through 17, inclusive, of the Accusation
19 with the same force and effect as if herein fully set forth.

20 19

21 At all times herein mentioned Respondent LIS employed Ryan Alexander and
22 Peggy Smith.

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24 At no time herein mentioned was Ryan Alexander licensed by the Department as
25 either a real estate broker or a real estate salesperson.

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At no time herein mentioned was Peggy Smith licensed by the Department as either a real estate broker or a real estate salesperson.

Within the three year period prior to the filing of this Accusation and at all times herein mentioned, Respondent LIS and Respondent CANADA employed Ryan Alexander and Peggy Smith to perform and engage in the activities set forth in Paragraph 8, above, for which a real estate license is required, for or in expectation of compensation.

Within the three year period prior to the filing of this Accusation and at times herein mentioned, in the course of the activities described in Paragraphs 8 and 10, above, Peggy Smith, while unlicensed, solicited borrowers and/or lenders, and/or negotiated loans secured directly or collaterally by liens on real property, wherein such loans were to be brokered, arranged, processed, and/or consummated on behalf of others, and/or solicited and negotiated to perform services for borrowers in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, pursuant to Section 10131(d) of the Code, wherein Respondents and Peggy Smith claimed, demanded, charged, received, and collected, and provided a written contract for, advance fees from borrowers for services to be performed thereafter by Respondents for or in expectation of compensation, including, but not limited to, the following transactions:

Borrower	Property	Advance Fee	Date Collected	Written Fee Agreement
Renee & Marcela Zaragoza	6202 Goldeneye Ct. Rocklin, California	\$3,172.84	7/18/08	7/18/08
Renee & Marcela Zaragoza	109 Clydesdale Way Roseville, California	\$3,212.50	7/22/08	7/22/08
Cloattille & Dewayne Lawson	4950 Whittier Dr. Sacramento, California	\$2,500.00	11/4/08	11/4/08

1	Robert C. Robinson	7444 Poirier Way	\$1,800.00	12/9/08	12/9/08
2		Sacramento, California	<u>\$1,000.00</u>	1/5/09	12/9/08
			<u>\$2,800.00</u>		

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4 Within the three year period prior to the filing of this Accusation and at times
5 herein mentioned, in the course of the activities described in Paragraphs 8 and 10, above, Ryan
6 Alexander, while unlicensed, solicited borrowers and/or lenders, and/or negotiated loans secured
7 directly or collaterally by liens on real property, wherein such loans were to be brokered,
8 arranged, processed, and/or consummated on behalf of others, and/or solicited and negotiated to
9 perform services for borrowers in connection with loans secured directly or collaterally by liens
10 on real property or on a business opportunity, pursuant to Section 10131(d) of the Code,
11 wherein Respondents and Ryan Alexander claimed, demanded, charged, received, and collected,
12 and provided a written contract for, advance fees from borrowers for services to be performed
13 thereafter by Respondents for or in expectation of compensation, including, but not limited to,
14 the following transactions:

15	Borrower	Property	Advance Fee	Date Collected	Written Fee Agreement
16	Renee & Marcela	6202 Goldeneye Ct.	\$3,172.84	7/18/08	7/18/08
17	Zaragoza	Rocklin, California			
18	Renee & Marcela	109 Clydesdale Way	\$3,212.50	7/22/08	7/22/08
19	Zaragoza	Roseville, California			
20	Mark L. Cottrell	6563 Lake Park Drive	\$3,170.00	1/7/09	1/7/09
21		Sacramento, California			

25

23 The facts alleged in Paragraphs 19 through 24, inclusive, above, constitute cause
24 for the suspension or revocation of the licenses and license rights of Respondent LIS and
25 Respondent CANADA under Section 10130 of the Code (unlawful for any person to engage in
26 the business of a real estate broker or act or assume to act as a real estate broker or salesperson
27 without obtaining real estate license from the Department), Section 10137 of the Code (unlawful

1 for licensed broker to employ or compensate, directly or indirectly, an unlicensed person to
2 perform acts requiring a real estate license), and/or Section 10138 of the Code (misdemeanor to
3 pay or compensate an unlicensed person for performing acts requiring a real estate license) all in
4 conjunction with Section 10177(d) the Code (suspension or revocation of license for willful
5 disregard or violation of the Real Estate Law, §§ 10000 et seq. and §§ 11000 et seq. of the Code,
6 or of the Regulations).

7 THIRD CAUSE OF ACTION

8 26

9 There is hereby incorporated in this Third, separate and distinct, Cause of Action,
10 all of the allegations contained in Paragraphs 1 through 25, inclusive, of the Accusation with the
11 same force and effect as if herein fully set forth.

12 27

13 In acting as real estate brokers as described in Paragraphs 8, 10 and 11, above,
14 Respondent LIS and Respondent CANADA, accepted or received and disbursed funds in trust,
15 including advance fees, (hereinafter "trust funds") from or on behalf of lenders, note owners,
16 buyers, borrowers, and/or others in connection with the said mortgage and loan services
17 activities.

18 28

19 Within the three year period prior to the filing of this Accusation, in connection
20 with the collection and disbursement of trust funds as set forth in Paragraph 27, above, the
21 aforesaid trust funds accepted or received by Respondents LIS and CANADA were deposited or
22 caused to be deposited by said Respondents into bank accounts maintained by Respondents as
23 follows:

- 24 (a) From June 4, 2009 and continuing, Citibank, 9601 Greenback Lane, Folsom,
25 California, Account #203247762, entitled "Lis Mortgage Corporation"
26 (hereinafter "Bank Account 1") with Respondent CANADA and Sheryl
27 Canada as signatories; and,

1 (b) From July 2008 through June 4, 2009, Bank of America, 10607 Folsom
2 Blvd., Rancho Cordova, California, Account #05808-68267, entitled "Lis
3 Mortgage Corporation" (hereinafter "Bank Account 2").

4 29

5 Within the three year period prior to the filing of this Accusation and at all times
6 herein mentioned, in connection with the collection and disbursement of trust funds, as set forth
7 in Paragraphs 10, 11 and 27, above, Respondents LIS and CANADA failed to deposit and
8 maintain the trust funds in a trust account or neutral escrow depository, or to deliver them into
9 the hands of the owners of the funds, in violation of Section 10145 of the Code (broker
10 accepting funds belonging to others shall deposit such funds into neutral escrow, broker's
11 principal or into broker's trust account) and/or Section 10146 of the Code (advance fees are trust
12 funds and broker collecting advance fees shall deposit such fees into a trust account) in such a
13 manner that as of August 31, 2009, there was a trust fund shortage in the sum of \$27,985.08 in
14 Bank Account #1.

15 30

16 In causing or permitting the shortage set forth in Paragraph 29, above,
17 Respondents LIS and CANADA failed to obtain the prior written consents of the principals for
18 the reduction of the aggregate balance of trust funds in Bank Account #1 to an amount less than
19 the existing aggregate trust fund liability to the owners of said funds in conformance with
20 Section 2832.1 of the Regulations (written consent of every principal owner of the funds shall
21 be obtained by broker prior to each disbursement of trust funds if disbursement will reduce
22 balance of trust funds in account to an amount less than existing aggregate trust fund liability of
23 broker to all owners of said funds).

24 31

25 Within the three year period prior to the filing of this Accusation and at all times
26 herein mentioned, Respondents LIS and CANADA failed to designate, respectively, Bank
27 Account #1 and Bank Account #2 as trust accounts in the name of Respondent LIS as broker

1 and as trustee and deposited client trust funds into those accounts in violation of Section 2832 of
2 the Regulations (broker shall place trust funds into bank account in the name of broker as trustee
3 not later than three business days after receipt) and Sections 10145 and 10146 of the Code
4 (requiring broker to place trust funds and advance fee trust funds into a trust account).

5 32

6 Within the three year period prior to the filing of this Accusation and at all times
7 herein mentioned, in connection with the collection and disbursement of trust funds, as set forth
8 in Paragraphs 10, 11 and 27, above, Respondents LIS and CANADA:

- 9 (a) Failed to maintain a control record for trust funds received and disbursed
10 and containing the information required by Section 2831 of the
11 Regulations (requiring record of trust funds received and disbursed in
12 columnar form, in chronological sequence, dates of receipt, from whom
13 received, dates disbursed, date deposited, identity of depository, daily
14 balance, etc.) for Bank Account #1 and Bank Account #2 for trust funds
15 deposited to said accounts; .
- 16 (b) Failed to perform, at least once a month, a reconciliation of all the
17 separate beneficiary records with the control record, and/or failed
18 to maintain a record of such reconciliations as required by Section 2831.2
19 of the Regulations (maintain written record of and perform once each
20 month balance of all separate beneficiary funds and reconcile funds
21 received with funds disbursed, etc.) for Bank Account #1 and Bank
22 Account #2 for trust funds deposited into said accounts; and,
- 23 (c) Permitted Sheryl Canada, a person who neither held a California real
24 estate license nor was bonded, to be a signatory on Bank Account #1 in
25 violation of Section 2834 of the Regulations (requiring withdrawals from
26 trust account to be performed only by authorized signatories who must be
27 broker as trustee, real estate salesperson licensed to broker, or an

1 unlicensed employee having fidelity bond coverage equal to maximum
2 amount of trust funds in account).

3 33

4 The acts and/or omissions of Respondents LIS and CANADA as alleged above
5 constitute cause for the suspension or revocation of the licenses and license rights of
6 Respondents under the following provisions:

7 (a) As alleged against Respondents in Paragraph 29, under Section 10145 of
8 the Code and/or Section 10146 of the Code in conjunction with Section
9 10177(d) of the Code (suspension or revocation of license for willful
10 disregard or violation of the Real Estate Law, §§ 10000 et seq. and §§
11 11000 et seq. of the Code, or of the Regulations);

12 (b) As alleged against Respondents in Paragraph 30, under Section 2832.1 of
13 the Regulations in conjunction with Section 10177(d) of the Code;

14 (c) As alleged against Respondents in Paragraph 31, under Section 2832 of
15 the Regulations and Section 10145 and 10146 of the Code all in
16 conjunction with Section 10177(d) of the Code;

17 (d) As alleged against Respondents in Paragraph 32(a), under Section 2831
18 of the Regulations in conjunction with Section 10177(d) of the Code;

19 (e) As alleged against Respondents in Paragraph 32(b), under Section 2831.2
20 of the Regulations in conjunction with Section 10177(d) of the Code;
21 and,

22 (f) As alleged against Respondents in Paragraph 32(c), under Section 2834
23 of the Regulations in conjunction with Section 10177(d) of the Code.

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1 FOURTH CAUSE OF ACTION

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3 There is hereby incorporated in this Fourth, separate and distinct, Cause of
4 Action, all of the allegations contained in Paragraphs 1 through 33, inclusive, of the Accusation
5 with the same force and effect as if herein fully set forth.

6 35

7 Within the three year period prior to the filing of this Accusation, in or about
8 November 2008, Respondents relocated the main office of Respondent LIS to a different
9 address.

10 36

11 Respondents failed to maintain on file with the Real Estate Commissioner a new
12 address for the principal place of business of Respondent LIS and/or failed to maintain on file
13 with the Real Estate Commissioner its current mailing address for its real estate brokerage
14 activities.

15 37

16 The facts, as alleged in Paragraphs 35 and 36, above, constitute a violation of
17 Section 2715 of the Regulations (broker shall maintain on file with Commissioner the address of
18 principal place of business and current mailing address, if different from business address, and
19 broker shall notify Commissioner of address change not later than next business day) and are
20 grounds for the suspension or revocation of the real estate broker license of Respondent LIS
21 under the provisions of Section 10177(d) of the Code (suspension or revocation of license for
22 willful disregard or violation of the Real Estate Law, §§ 10000 et seq. and §§ 11000 et seq. of
23 the Code, or of the Regulations).

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1 FIFTH CAUSE OF ACTION

2 38

3 There is hereby incorporated in this Fifth, separate and distinct, Cause of Action,
4 all of the allegations contained in Paragraphs 1 through 37, inclusive, of the Accusation with the
5 same force and effect as if herein fully set forth.

6 39

7 Within the three year period prior to the filing of this Accusation and at all times
8 herein mentioned, in connection with the loan brokerage activities described in Paragraphs 8, 10
9 and 11, above, Respondents LIS and CANADA failed to provide to the Department's
10 representative and/or failed to retain for a period of three (3) years the transactional documents
11 and/or transactional file for the following transactions:

12 Borrower	Property	Advance Fee	Date Collected	Written Fee Agreement
13 Renee & Marcela 14 Zaragoza	6202 Goldeneye Ct. Rocklin, California	\$3,172.84	7/18/08	7/18/08
15 Renee & Marcela 16 Zaragoza	109 Clydesdale Way Roseville, California	\$3,212.50	7/22/08	7/22/08

17 40

18 The acts and/or omissions of Respondents LIS and CANADA as alleged in
19 Paragraph 39, above, constitute cause for the suspension or revocation of the licenses and
20 license rights of said Respondents under Section 10148 of the Code (broker shall retain for three
21 years copies of all documents and records executed or obtained by broker in connection with
22 any transaction requiring a real estate license and shall make such available to the
23 Commissioner's representative upon notice) all in conjunction with Section 10177(d) of the
24 Code (suspension or revocation of license for willful disregard or violation of the Real Estate
25 Law, §§ 10000 et seq. and §§ 11000 et seq. of the Code, or of the Regulations).

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1 SIXTH CAUSE OF ACTION

2 41

3 There is hereby incorporated in this Sixth, separate and distinct, Cause of Action,
4 all of the allegations contained in Paragraphs 1 through 40, inclusive, of the Accusation with the
5 same force and effect as if herein fully set forth.

6 42

7 At all times herein mentioned, Respondent CANADA was responsible, as the
8 designated broker officer of Respondent LIS, for the supervision and control of the activities
9 conducted on behalf of the corporation by its officers and employees and of the corporate
10 activities requiring a real estate license. Respondent CANADA failed to exercise reasonable
11 supervision and control over the loan services, mortgage brokering, and advance fee collection
12 activities of Respondent LIS and its employees. In particular, Respondent CANADA
13 participated in, permitted, ratified, and/or caused the conduct described in the First, Second,
14 Third, Fourth, and Fifth Causes of Action, above, to occur, and failed to take reasonable steps to
15 insure, including, but not limited to, the proper handling of trust funds, insure proper trust fund
16 record keeping, insure proper review of trust fund records and accounts, insure that all
17 transactional documents would be maintained on file, insure that no false representations would
18 be made to borrowers, insure that quarterly accounting for advance fees would be provided to
19 borrowers, insure proper supervision of employees, insure notification of address change, and to
20 insure the implementation of policies, rules, procedures, and systems to ensure the compliance
21 of the corporation and its employees with the Real Estate Law (Business and Professions Code
22 Sections 10000 et seq. and Sections 11000 et seq.) and the Commissioner's Regulations
23 (Chapter 6, Title 10, California Code of Regulations).

24 43

25 The acts and/or omissions of Respondent CANADA as described in Paragraph
26 42, above, constitute grounds for the suspension or revocation of the licenses and license rights
27 of Respondent CANADA under the provisions Section 10159.2 of the Code (designated

1 broker/officer responsible for supervision and control of activities conducted on behalf of
2 corporation by officers, licensed salespersons and employees to secure compliance with the Real
3 Estate Law) and Section 2725 of the Regulations (broker shall exercise reasonable supervision
4 over: licensed employees; establish policies and procedures for compliance with Real Estate
5 Law; supervise transactions requiring a real estate license; trust fund handling; etc.) in
6 conjunction with Section 10177(d) of the Code and/or of Section 10177(h) of the Code
7 (suspension or revocation for broker or designated broker/officer who fails to exercise
8 reasonable supervision of licensed employees or licensed activities of broker corporation).

9 NOTICE OF INTENT TO SEEK BAR ORDER

10 44

11 The facts alleged in Paragraphs 1 through 43, above, subject Respondent
12 CANADA to issuance of an Order of Debarment pursuant to Section 10087 of the Code
13 (authorizing Commissioner to issue an order suspending or barring a real estate licensee from
14 any position of employment, management, or control for a period up to 36 months, in any
15 business involving real estate activity or on the premises of a real estate licensee or in the real
16 estate related business activity of a finance lender, mortgage lender, bank, credit union, escrow
17 or title company, or title underwriter). Pursuant to Section 10087(b) of the Code, you,
18 Respondent CANADA, are hereby notified of the intention of the Commissioner to issue an
19 Order of Debarment pursuant to Section 10087(a) of the Code should the facts alleged herein
20 support findings that an Order of Debarment be issued.

21 WHEREFORE, Complainant prays that a hearing be conducted on the
22 allegations of this Accusation and that upon proof thereof a decision be rendered imposing
23 disciplinary action against all licenses and license rights of Respondents under the Real Estate

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1 Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further
2 relief as may be proper under other provisions of law.

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5 TRICIA D. SOMMERS
6 Deputy Real Estate Commissioner

7 Dated at Sacramento, California,
8 this 5th day of January, 2010.

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