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DEPARTMENT OF REAL ESTATE
By R. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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11
12 In the Matter of the Accusation of)
13 LEGACY HOME LOANS & REAL ESTATE,)
14 BRETT JOSEPH TOLIVER, ANGELINA)
15 MIRELES and JULISSA GARCIA,)
16 Respondents.)

NO. H-5456 SAC

FIRST AMENDED
ACCUSATION

17 The Complainant, TRICIA D. SOMMERS, in her official capacity as a Deputy
18 Real Estate Commissioner of the State of California ("Complainant"), for Accusation against
19 Respondents LEGACY HOME LOANS & REAL ESTATE ("LEGACY HOME LOANS"),
20 BRETT JOSEPH TOLIVER ("TOLIVER"), ANGELINA MIRELES ("MIRELES") and
21 JULISSA GARCIA ("GARCIA") (collectively "Respondents"), is informed and alleges as
22 follows:

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24 At all times herein mentioned, LEGACY HOME LOANS was licensed by the
25 State of California Department of Real Estate ("the Department") as a corporate real estate
26 broker, by and through TOLIVER as designated broker-officer of LEGACY HOME LOANS to
27 qualify said corporation to act as a real estate broker.

At all times mentioned herein, TOLIVER was and now is licensed by the Department as a real estate broker, individually and to and until January 31, 2011, as the designated broker-officer of LEGACY HOME LOANS. As said designated broker-officer, TOLIVER was at all times mentioned herein responsible pursuant to Section 10159.2 of the California Business and Professions Code ("the Code") for the supervision of the activities of the officers, agents, real estate licensees and employees of LEGACY HOME LOANS for which a license is required.

At all times mentioned herein, MIRELES was and now is licensed as a real estate salesperson to and until March 9, 2013.

At all times mentioned herein, GARCIA was and now is licensed as a real estate salesperson.

At all times mentioned, Respondents TOLIVER and LEGACY HOME LOANS engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Section 10131(d) of the Code (performing services for borrows and/or lenders in connection with loans secured by real property), including performing services for one or more borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation: negotiate one or more loans for, or perform services for, borrowers and/or lenders with respect to the collection of advance fees and loan modification, loan refinance, principal reduction, foreclosure abatement or short sale services and/or those borrowers' lenders in connection with loans secured directly or collaterally by one or more liens on real property; and charged, demanded or collected an advance fee for any of the services offered.

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1 FIRST CAUSE OF ACTION

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3 In connection with the operation and conduct of the real estate activities described
4 in Paragraph 5, above, Respondents engaged in the business of claiming, demanding, charging,
5 receiving, collecting or contracting for the collection of advance fees within the meaning of
6 Sections 10026 and 10131.2 ("advance fee") of the Code including but not limited to the
7 following:

8 (a) On or about February 24, 2009, LEGACY HOME LOANS entered into a
9 contract with Ismael A. and Aracely M. for LEGACY HOME LOANS to represent Ismael A. and
10 Aracely M. for loan modification services upon receipt of a \$2,500 advance fee. A check dated
11 March 16, 2009, in the amount of \$2,500, was paid to LEGACY HOME LOANS by Ismael A.
12 During their interactions with LEGACY HOME LOANS, Ismael A. and Aracely M. dealt
13 directly with MIRELES, who was employed by and representing LEGACY HOME LOANS.
14 Respondents failed to obtain a loan modification for Ismael A. and Aracely M. and no refund of
15 their advance fee was ever made.

16 (b) On or about February 13, 2009, LEGACY HOME LOANS received a
17 payment of \$2,500 in advance from May Kao B. and Robert Edward B. for loan modification
18 services. During their interactions with LEGACY HOME LOANS, May Kao B. and Robert
19 Edward B. dealt directly with MIRELES, who was employed by and representing LEGACY
20 HOME LOANS. In addition, during the loan modification process May Kao B. and Robert
21 Edward B. had occasion to interact with MAGDALENA SALAS ("SALAS"), the President and
22 Secretary of LEGACY HOME LOANS. Respondents failed to obtain a loan modification for
23 May Kao B. and Robert Edward B. and no refund of their advance fee was ever made.

24 (c) On or about August 18, 2008, LEGACY HOME LOANS entered into a
25 contract with Iqtadar A. which indicated that LEGACY HOME LOANS would provide loan
26 modification services to Iqtadar A. According to that contract, a fee of \$950 was due in advance,
27 with the remaining balance of \$950 due at the end of the contract agreement. LEGACY HOME

1 LOANS received a payment of \$950 from Iqtadar A. on August 21, 2008. During his interaction
2 with LEGACY HOME LOANS, Iqtadar A. dealt directly with MIRELES, who was employed by
3 and representing LEGACY HOME LOANS. In addition, Iqtadar A. had occasion to interact with
4 SALAS during the loan modification process. Respondents failed to obtain a loan modification
5 for Iqtadar A. and no refund of his advance fee was ever made.

6 (d) On or about August 28, 2009, LEGACY HOME LOANS entered into an
7 agreement with Ruben G. which indicated that LEGACY HOME LOANS would provide loan
8 modification services to Ruben G. On or about that same date, Ruben G. paid \$2,500 to
9 LEGACY HOME LOANS in exchange for those loan modification services to be provided by
10 LEGACY HOME LOANS. During his interaction with LEGACY HOME LOANS, Ruben G.
11 dealt directly with GARCIA, who was employed by and acting on behalf of LEGACY HOME
12 LOANS. Respondents failed to obtain a loan modification for Ruben G. and no refund of his
13 advance fee was ever made.

14 (e) On or about February 21, 2011, LEGACY HOME LOANS entered into an
15 agreement with Gabriel C. in which LEGACY HOME LOANS would provide loan modification
16 services to Gabriel C. On or about that same date, Gabriel C. paid \$1,500 to LEGACY HOME
17 LOANS as part of the advance fee for LEGACY HOME LOANS to provide those loan
18 modification services. On or about March 11, 2011, Gabriel C. paid an additional \$1,000 to
19 LEGACY HOME LOANS as the final installment payment for LEGACY HOME LOANS' loan
20 modification services. During his interaction with LEGACY HOME LOANS, Gabriel C. dealt
21 directly with GARCIA, who was employed by and representing LEGACY HOME LOANS.
22 Respondents failed to obtain a loan modification for Gabriel C. and no refund of his advance fee
23 was ever made.

24 (f) On or about November 24, 2009, LEGACY HOME LOANS entered into
25 an agreement with Estrellilita B. which indicated that LEGACY HOME LOANS would provide
26 loan modification services to Estrellilita B. On or about that same date, Estrellilita B. paid
27 \$2,500 to LEGACY HOME LOANS in exchange for those loan modification services to be

1 provided by LEGACY HOME LOANS. During her interaction with LEGACY HOME LOANS,
2 Estrellilita B. dealt directly with GARCIA, who was employed by and acting on behalf of
3 LEGACY HOME LOANS. Respondents failed to obtain a loan modification for Estrellilita B.
4 and no refund of her advance fee was ever made.

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6 In connection with the collection and handling of said advance fees, Respondents
7 failed to perform the services that they promised to the borrowers listed in Paragraph 6, above,
8 after receiving advance fee payments from each of the borrowers listed above. Respondents did
9 not repay the advance fees received from these borrowers. Respondents' failure to provide the
10 services promised or to refund the borrowers' funds constitutes an ongoing pattern of fraud and
11 dishonest dealing and are grounds for the revocation or suspension of Respondents' real estate
12 licenses or license rights under Sections 10176(b) (making false promises), 10176(c) (continued
13 and flagrant course of misrepresentation or making of false promises), 10176(i) (fraud or
14 dishonest dealing), 10177(d) (willful disregard of Real Estate Law) and/or 10177(g) (negligence
15 or incompetence) of the Code. Such acts and/or omissions by Respondents are cause for the
16 suspension or revocation of Respondents' licenses and license rights.

17 SECOND CAUSE OF ACTION

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19 In connection with the collection and handling of advance fees, as set forth in
20 Paragraph 6, above, Respondents failed to submit the advance fee contract and all materials used
21 in obtaining those advance fee agreements to the Department of Real Estate prior to their use in
22 obtaining advance fees from clients.

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24 The acts and/or omissions of Respondents described above constitute violations
25 of Sections 10085.5 (collection of advance fee without compliance to advance fee regulations)
26 and 10177(d) (suspension or revocation of license for willful disregard or violation of Real
27 Estate Law or the Regulations) in conjunction with Section 10085 (submission of advance fee

1 agreements and materials) of the Code, and Sections 2970 (submission of advance fee
2 agreements and materials) and 2972 (content requirements of verified accounting) of Title 10,
3 Chapter 6, California Code of Regulations, and are cause for the suspension or revocation of
4 Respondents' licenses and license rights.

5 THIRD CAUSE OF ACTION

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7 At all time mentioned herein, VERNON JUNIEL ("JUNIEL") was not and is not
8 licensed by the Department of Real Estate to conduct activities which require a real estate license
9 in the State of California.

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11 Beginning on or about September 2007, Respondents LEGACY HOME LOANS
12 and TOLIVER allowed JUNIEL to act in a licensed capacity for or on behalf of LEGACY
13 HOME LOANS by soliciting and providing leads for loan modification clients to LEGACY
14 HOME LOANS. Overall, JUNIEL referred approximately 20 to 25 clients to LEGACY HOME
15 LOANS, including:

| <u>Clients</u> | <u>Property Address</u> | <u>Date</u> |
|-----------------------------------|---|---------------|
| 17 Auther T. and 18 Dorethy H. | 2421 67 th Avenue Oakland, CA | December 2007 |
| 19 Vera M. | 1474 E Street 20 Tracy, CA | November 2008 |

21
22 JUNIEL was paid \$3,000 in cash from Respondents LEGACY HOME LOANS and TOLIVER
23 for the transaction involving Auther T. and Dorethy H. JUNIEL's primary contact person at
24 LEGACY HOME LOANS was MIRELES.

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26 The acts and/or omissions by Respondents LEGACY HOME LOANS and
27 TOLIVER as set forth in Paragraphs 10 and 11, above, constitute violations of Sections 10130

1 (broker license requirement), 10131(d) and 10137 (employment and/or payment of compensation
2 to unlicensed person) of the Code and are cause for the suspension or revocation of Respondents'
3 licenses and license rights.

4 FOURTH CAUSE OF ACTION

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6 SALAS was previously licensed as a real estate salesperson by the Department of
7 Real Estate. SALAS' real estate salesperson license was revoked by the Department, effective
8 September 8, 2004.

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10 SALAS is the President and Secretary of LEGACY HOME LOANS, and has a
11 10% ownership of LEGACY HOME LOANS.

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13 As a part of her employment with LEGACY HOME LOANS, SALAS acted in a
14 licenced capacity for LEGACY HOME LOANS by performing activities involving loan
15 modifications and the solicitation of advance fees, as set forth in Paragraph 6, above.

16 16

17 On the Corporate License Applications for LEGACY HOME LOANS, dated
18 September 5, 2006; January 31, 2007 and May 29, 2008, the designated officers, Dolores Maria
19 Rossiter-Garcia and TOLIVER, failed to file a Corporation Background Statement regarding
20 SALAS and her revoked real estate salesperson's license.

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22 Respondents' acts and/or omissions as set forth in Paragraphs 6, 15 and 16, above,
23 constitute violations of Sections 10130, 10131(d) and 10137 of the Code, and Section 2746
24 (requirement to file background statement of information for directors and officers) of the
25 Regulations, and are cause for the suspension or revocation of Respondents' licenses and license
26 rights.

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1 FIFTH CAUSE OF ACTION

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3 At all times mentioned herein, TOLIVER failed to exercise reasonable
4 supervision over the acts of MIRELES, GARCIA, and LEGACY HOME LOANS and its agents
5 and employees in such a manner as to allow the acts and omissions on the part of LEGACY
6 HOME LOANS, JUNIEL, SALAS, GARCIA and MIRELES, described above, to occur.

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8 The acts and/or omissions alleged above are grounds for the suspension or
9 revocation of the license or license rights of TOLIVER under Sections 10177(d), 10177(g)
10 (demonstrated negligence or incompetence in performing an act for which he or she is required to
11 hold a license), 10177(h) (broker supervision) and 10159.2 (designated broker/officer
12 supervision) of the Code, and Section 2725 (broker supervision) of the Regulations.

13 SIXTH CAUSE OF ACTION

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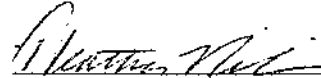
15 On or about July 10, 2012, in the Superior Court of the State of California, County
16 of San Joaquin, Case Nos. SF119035A, SF119035B and SF119035C, MIRELES and GARCIA
17 were each convicted of one count of violating Penal Code Section 182(a)(1)/Civil Code Section
18 2944.7 (conspiracy to claim, demand, charge, collect or receive upfront fees for loan
19 modification services), misdemeanors and crimes which bear a substantial relationship under
20 Section 2910, Title 10, California Code of Regulations, to the qualifications, functions or duties
21 of a real estate licensee.

22 21

23 The facts alleged in Paragraph 20, above, constitute a cause under Sections 490
24 (conviction of crime) and 10177(b) (conviction of crime substantially related to qualifications,
25 functions or duties of real estate licensee) of the Code for suspension or revocation of all licenses
26 and license rights of MIRELES and GARCIA under the Real Estate Law.

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1 WHEREFORE, Complainant prays that a hearing be conducted on the
2 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
3 disciplinary action against all licenses and license rights of Respondents under the Code and for
4 such other and further relief as may be proper under other provisions of law.

5
6  For Tricia Sommers
7 TRICIA D. SOMMERS
8 Deputy Real Estate Commissioner

9 Dated at Sacramento, California,
10 this 21st day of November, 2012.