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FILED

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DEPARTMENT OF REAL ESTATE

By H. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

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12 In the Matter of the Accusation of )  
13 LEGACY HOME LOANS & REAL ESTATE, ) NO. H-5456 SAC  
14 BRETT JOSEPH TOLIVER and ) ACCUSATION  
15 ANGELINA MIRELES, )  
16 Respondents. )

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

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23 Complainant makes this Accusation against Respondents in her official capacity.

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25 At all times herein mentioned, LEGACY HOME LOANS was and now is  
26 licensed by the State of California Department of Real Estate (hereafter "the Department") as a

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1 corporate real estate broker, by and through TOLIVER as designated broker-officer of LEGACY  
2 HOME LOANS to qualify said corporation to act as a real estate broker.

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

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

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15 At all times mentioned, Respondents TOLIVER and LEGACY HOME LOANS  
16 engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate  
17 broker in the State of California within the meaning of Section 10131(d) of the Code (Performing  
18 Services for Borrowers and/or Lenders in Connection with Loans Secured by Real Property),  
19 including performing services for one or more borrowers and negotiated to do one or more of the  
20 following acts for another or others, for or in expectation of compensation: negotiate one or  
21 more loans for, or perform services for, borrowers and/or lenders with respect to the collection of  
22 advance fees and loan modification, loan refinance, principal reduction, foreclosure abatement or  
23 short sale services and/or those borrowers' lenders in connection with loans secured directly or  
24 collaterally by one or more liens on real property; and charged, demanded or collected an  
25 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 (hereafter "advance fee") of the Code including but not limited to  
7 the following:

8 (a) On or about February 24, 2009, LEGACY HOME LOANS entered into a  
9 contract with Ismael Azua and Aracely Membreno for LEGACY HOME LOANS to represent  
10 Ismael Azua and Aracely Membreno for loan modification services upon receipt of a \$2,500  
11 advance fee. A check dated March 16, 2009, in the amount of \$2,500, was paid to LEGACY  
12 HOME LOANS by Ismael Azua. During their interactions with LEGACY HOME LOANS,  
13 Ismael Azua and Aracely Membreno dealt directly with MIRELES. Respondents failed to obtain  
14 a loan modification for Ismael Azua and Aracely Membreno and no refund of their advance fee  
15 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 Bush and Robert Edward Bush for loan  
18 modification services. During their interactions with LEGACY HOME LOANS, May Kao Bush  
19 and Robert Edward Bush dealt directly with MIRELES. In addition, during the loan  
20 modification process May Kao Bush and Robert Edward Bush had occasion to interact with  
21 MAGDALENA SALAS (hereafter "SALAS"), the President and Secretary of LEGACY HOME  
22 LOANS. Respondents failed to obtain a loan modification for May Kao Bush and Robert  
23 Edward Bush 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 Ahmed which indicated that LEGACY HOME LOANS would provide loan  
26 modification services to Iqtadar Ahmed. According to that contract, a fee of \$950 was due in  
27 advance, with the remaining balance of \$950 due at the end of the contract agreement. LEGACY

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

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7 In connection with the collection and handling of said advance fees, Respondents  
8 failed to perform the services that they promised to the borrowers listed in Paragraph 6, above,  
9 after receiving advance fee payments from each of the borrowers listed above. Respondents did  
10 not repay the advance fees received from these borrowers. Respondents' failure to provide the  
11 services promised or to refund the borrowers' funds constitutes dishonest dealing and are  
12 grounds for the revocation or suspension of Respondents' real estate licenses or license rights  
13 under Sections 10176(i) (grounds for revocation or suspension – engaged in any other conduct,  
14 whether of the same or different character than specified in this section, constituting fraud or  
15 dishonest dealing) and/or 10177(j) (further grounds for disciplinary action – engaged in any  
16 other conduct, while acting in a licensed capacity whether of the same or different character than  
17 specified in this section, constituting fraud or dishonest dealing) of the Code. Such acts and/or  
18 omissions by Respondents are cause for the suspension or revocation of Respondent's licenses  
19 and license rights.

20 SECOND CAUSE OF ACTION

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

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The acts and/or omissions of Respondents described above constitute violations of Sections 10085.5 (collection of advance fee without compliance to advance fee regulations) and 10177(d) (suspension or revocation of license for willful disregard or violation of Real Estate Law or the Regulations) in conjunction with Section 10085 (submission of advance fee agreements and materials) of the Code, and Sections 2970 (submission of advance fee agreements and materials) and 2972 (content requirements of verified accounting) of Title 10, Chapter 6, California Code of Regulations, and are cause for the suspension or revocation of Respondents' licenses and license rights.

### THIRD CAUSE OF ACTION

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

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

<u>Clients</u>	<u>Property Address</u>	<u>Date</u>
Auther Thomas and Dorethy Hicks	2421 67 <sup>th</sup> Avenue Oakland, CA	December 2007
Vera Monferdini	1474 E Street Tracy, CA	November 2008

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1 JUNIEL was paid \$3,000 in cash from Respondents LEGACY HOME LOANS and TOLIVER  
2 for the transaction involving Auther Thomas and Dorethy Hicks. JUNIEL's primary contact  
3 person at LEGACY HOME LOANS was MIRELES.

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5 The acts and/or omissions by Respondents LEGACY HOME LOANS and  
6 TOLIVER as set forth in Paragraphs 10 and 11, above, constitute violations of Sections 10130  
7 (License Required to Act as Broker), 10131(d) and 10137 (Employment and/or Payment of  
8 Compensation to Unlicensed Person) of the Code and are cause for the suspension or revocation  
9 of Respondents' licenses and license rights.

10 FOURTH CAUSE OF ACTION

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

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16 SALAS is the President and Secretary of LEGACY HOME LOANS, and has a  
17 10% ownership of LEGACY HOME LOANS.

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

22 16

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

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Respondents' acts and/or omissions as set forth in Paragraphs 6, 15 and 16, above, constitute violations of Sections 10130, 10131(d) and 10137 of the Code, and Section 2746 (Requirement to File Background Statement of Information for Directors and Officers) of the Regulations, and are cause for the suspension or revocation of Respondents' licenses and license rights.

## FIFTH CAUSE OF ACTION

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

The acts and/or omissions alleged above are grounds for the suspension or revocation of the license or license rights of TOLIVER under Sections 10177(d), 10177(g) (demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license), 10177(h) (suspension or revocation for broker or designated broker/officer who fails to exercise reasonable supervision of licensed employees or licensed activities of broker corporation) and 10159.2 (designated broker/officer responsible for supervision and control of activities conducted on behalf of corporation by officers, licensed salespersons and employees to secure compliance with the Real Estate Law) of the Code, and Section 2725 (broker shall exercise reasonable supervision over licensed employees; establish policies and procedures for compliance with Real Estate Law; supervise transactions requiring a real estate license; trust fund handling; etc.) of the Regulations.

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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.

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7 TRICIA D. SOMMERS  
8 Deputy Real Estate Commissioner

9 Dated at Sacramento, California,  
10 this 18<sup>th</sup> day of August, 2010.