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FILED
JUN -9 2005

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
MARCO ANTONIO REYES,) No. H-8854 SF
Respondent.)

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On August 6, 2004, an Accusation was filed in this matter against Respondents STEPHEN GARY DUNCAN, ANABELLE BERRIOS RIVERA, and MARCO ANTONIO REYES.

On May 5, 2005, Respondent MARCO ANTONIO REYES only petitioned the Commissioner to voluntarily surrender his real estate salesperson license pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent MARCO ANTONIO REYES's petition for voluntary surrender of his real estate salesperson license is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in the Declaration executed by Respondent

///

1 MARCO ANTONIO REYES on May 5, 2005 (attached as Exhibit "A"
2 hereto).

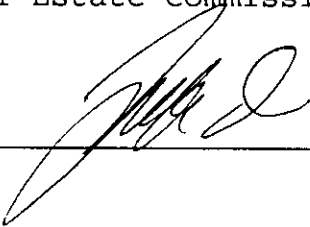
3 Respondent MARCO ANTONIO REYES's license certificate
4 and pocket card shall be sent to the below-listed address so
5 that they reach the Department on or before the effective date
6 of this Order:

7 DEPARTMENT OF REAL ESTATE
8 Attention: Licensing Flag Section
9 P. O. Box 187000
Sacramento, CA 95818-7000

10 This Order shall become effective at 12 o'clock
11 noon on JUNE 30, 2005.

12 DATED: 6-1-05

13 JEFF DAVI
14 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) No. H-8854 SF
MARCO ANTONIO REYES,)
Respondent.)

DECLARATION

My name is MARCO ANTONIO REYES and that I am currently licensed as a real estate salesperson and have license rights with respect to said license. I am represented by in this matter by Adam G. Slote, Esq.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Business and Professions Code), I wish to voluntarily surrender my real estate license issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

///
///



1 I understand that by so voluntarily surrendering my
2 license, that it can only be reinstated in accordance with the
3 provisions of Section 11522 of the Government Code. I also
4 understand that by so voluntarily surrendering my license, I
5 agree to the following:

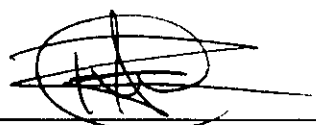
6 The filing of this Declaration shall be deemed as my
7 petition for voluntary surrender. It shall also be deemed to be
8 an understanding and agreement by me that, I waive all rights I
9 have to require the Commissioner to prove the allegations
10 contained in the Accusation filed in this matter at a hearing
11 held in accordance with the provisions of the Administrative
12 Procedures Act (Government Code Sections 11400 et seq.), and
13 that I also waive other rights afforded to me in connection with
14 the hearing such as the right to discovery, the right to present
15 evidence in defense of the allegations in the Accusation and the
16 right to cross examine witnesses. I further agree that upon
17 acceptance by the Commissioner, as evidenced by an appropriate
18 order, all affidavits and all relevant evidence obtained by the
19 Department in this matter prior to the Commissioner's
20 acceptance, and all allegations contained in the Accusation
21 filed in the Department Case No. H-8854 SF, other than the
22 allegations of Paragraphs VIII(b) and XVIII(b) of the
23 Accusation, may be considered by the Department to be true and
24 correct for the purpose of deciding whether or not to grant
25 reinstatement of my license pursuant to Government Code Section
26 11522.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that I freely and voluntarily surrender my license and all license rights attached thereto.

DATED: 5/5/05



MARCO ANTONIO REYES
Respondent

FILED
MAY - 4 2005

DEPARTMENT OF REAL ESTATE

By *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

| | | |
|------------------------------------|---|---------------|
| In the Matter of the Accusation of |) | |
| |) | No. H-8854 SF |
| ANABELLE BERRIOS RIVERA, |) | |
| |) | |
| Respondent. |) | |
| |) | |

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On August 9, 2004, an Accusation was filed in this matter against Respondents STEPHEN GARY DUNCAN, ANABELLE BERRIOS RIVERA, and MARCO ANTONIO REYES.

On March 28, 2005, Respondent ANABELLE BERRIOS RIVERA only petitioned the Commissioner to voluntarily surrender her real estate salesperson license pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent ANABELLE BERRIOS RIVERA's petition for voluntary surrender of her real estate salesperson license is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in the Declaration executed by Respondent

///

1 ANABELLE BERRIOS RIVERA on March 28, 2005 (attached as Exhibit
2 "A" hereto).


3 Respondent ANABELLE BERRIOS RIVERA's license
4 certificate and pocket card shall be sent to the below-listed
5 address so that they reach the Department on or before the
6 effective date of this Order:

7 DEPARTMENT OF REAL ESTATE
8 Attention: Licensing Flag Section
9 P. O. Box 187000
10 Sacramento, CA 95818-7000

11 This Order shall become effective at 12 o'clock
12 noon on MAY 24 2005

13 DATED: M-28 05

14 JEFF DAVI
15 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
ANABELLE BERRIOS RIVERA,) No. H-8854 SF
Respondent.)

DECLARATION

My name is ANABELLE BERRIOS RIVERA and that I am currently licensed as a real estate salesperson and have license rights with respect to said license. I am represented by in this matter by Frank Petteway, Esq.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Business and Professions Code), I wish to voluntarily surrender my real estate license issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

///
///



1 I understand that by so voluntarily surrendering my
2 license, that it can only be reinstated in accordance with the
3 provisions of Section 11522 of the Government Code. I also
4 understand that by so voluntarily surrendering my license, I
5 agree to the following:

6 The filing of this Declaration shall be deemed as my
7 petition for voluntary surrender. It shall also be deemed to be
8 an understanding and agreement by me that, I waive all rights I
9 have to require the Commissioner to prove the allegations
10 contained in the Accusation filed in this matter at a hearing
11 held in accordance with the provisions of the Administrative
12 Procedures Act (Government Code Sections 11400 et seq.), and
13 that I also waive other rights afforded to me in connection with
14 the hearing such as the right to discovery, the right to present
15 evidence in defense of the allegations in the Accusation and the
16 right to cross examine witnesses. I further agree that upon
17 acceptance by the Commissioner, as evidenced by an appropriate
18 order, all affidavits and all relevant evidence obtained by the
19 Department in this matter prior to the Commissioner's
20 acceptance, and all allegations contained in the Accusation
21 filed in the Department Case No. H-8854 SF, may be considered by
22 the Department to be true and correct for the purpose of
23 deciding whether or not to grant reinstatement of my license
24 pursuant to Government Code Section 11522.

25 ///

26 ///

27 ///

1 I declare under penalty of perjury under the laws of
2 the State of California that the above is true and correct, and
3 that I freely and voluntarily surrender my license and all
4 license rights attached thereto.

5 DATED: 3/28/25
6

7 Anabelle Berrios Rivera
8 ANABELLE BERRIOS RIVERA
9 Respondent
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1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
MAY - 4 2005

DEPARTMENT OF REAL ESTATE

By 

7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of) DRE No. H-8854 SF
11) OAH No. N-2004090439
12 STEPHEN GARY DUNCAN,)
13 Respondent.) STIPULATION AND AGREEMENT

14 It is hereby stipulated by and between Respondent
15 STEPHEN GARY DUNCAN (hereinafter "DUNCAN" or "Respondent"),
16 represented by J. Anne Rawlins, Esq., and the Complainant,
17 acting by and through James L. Beaver, Counsel for the
18 Department of Real Estate, as follows for the purpose of
19 settling and disposing of the Accusation filed on August 6,
20 2004 in this matter ("the Accusation"):

21
22 1. All issues which were to be contested and all
23 evidence which was to be presented by Complainant and
24 Respondent at a formal hearing on the Accusation, which hearing
25 was to be held in accordance with the provisions of the
26 Administrative Procedure Act (APA), shall instead and in place

27 DRE No. H-8854 SF

STEPHEN GARY DUNCAN

1 thereof be submitted solely on the basis of the provisions of
2 this Stipulation and Agreement.

3 2. Respondent has received, read and understands
4 the Statement to Respondent, the Discovery Provisions of the
5 APA and the Accusation filed by the Department of Real Estate
6 in this proceeding.

7 3. On August 19, 2004, Respondent filed a Notice of
8 Defense pursuant to Section 11505 of the Government Code for
9 the purpose of requesting a hearing on the allegations in the
10 Accusation. Respondent hereby freely and voluntarily withdraws
11 said Notice of Defense. Respondent acknowledges that
12 Respondent understands that by withdrawing said Notice of
13 Defense Respondent will thereby waive Respondent's right to
14 require the Commissioner to prove the allegations in the
15 Accusation at a contested hearing held in accordance with the
16 provisions of the APA and that Respondent will waive other
17 rights afforded to Respondent in connection with the hearing
18 such as the right to present evidence in defense of the
19 allegations in the Accusation and the right to cross-examine
20 witnesses.
21

22 4. This stipulation is based on the factual
23 allegations contained in the Accusation. In the interest of
24 expediency and economy, Respondent chooses not to contest these
25 factual allegations, but to remain silent and understands that,
26 as a result thereof, these factual allegations, without being
27

I

1 The acts and omissions of Respondent STEPHEN GARY
2 DUNCAN described in the Accusation are grounds for the
3 suspension or revocation of the licenses and license rights of
4 Respondent under the provisions of Section 10177(h) of the
5 California Business and Professions Code.
6

7 ORDER

8 I

9 All licenses and licensing rights of Respondent
10 STEPHEN GARY DUNCAN under the Real Estate Law are revoked;
11 provided, however, a restricted real estate broker license
12 shall be issued to said Respondent pursuant to Section 10156.5
13 of the Business and Professions Code if, within 90 days from
14 the effective date of the Decision entered pursuant to this
15 Order, Respondent makes application for the restricted license
16 and pays to the Department of Real Estate the appropriate fee
17 therefor.
18

19 The restricted license issued to Respondent shall be
20 subject to all of the provisions of Section 10156.7 of the
21 Business and Professions Code and to the following limitations,
22 conditions and restrictions imposed under authority of Section
23 10156.6 of that Code:

24 A. Any restricted license issued to Respondent
25 pursuant to this Decision may be suspended prior to hearing by
26 Order of the Commissioner in the event of Respondent's conviction
27

DRE No. H-8854 SF

STEPHEN GARY DUNCAN

1 or plea of nolo contendere to a crime which is substantially
2 related to Respondent's fitness or capacity as a real estate
3 licensee.

4 B. Any restricted license issued to Respondent
5 pursuant to this Decision may be suspended prior to hearing by
6 Order of the Commissioner on evidence satisfactory to the
7 Commissioner that Respondent has violated provisions of the
8 California Real Estate Law, the Subdivided Lands Law, Regulations
9 of the Commissioner or conditions attaching to the restricted
10 license.

11 C. Respondent shall not be eligible to apply for the
12 issuance of an unrestricted real estate license nor for the
13 removal of any of the conditions, limitations or restrictions of
14 a restricted license until two (2) years has elapsed from the
15 effective date of this Decision.

16
17 D. Respondent shall, within nine months from the
18 effective date of the Decision, present evidence satisfactory to
19 the Commissioner that Respondent has, since the most recent
20 issuance of an original or renewal real estate license, taken and
21 successfully completed the continuing education requirements of
22 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
23 real estate license. If Respondent fails to satisfy this
24 condition, the Commissioner may order the suspension of the
25 restricted license until the Respondent presents such evidence.
26 The Commissioner shall afford Respondent the opportunity for a

1 hearing pursuant to the Administrative Procedure Act to present
2 such evidence.

3 B. Respondent shall, within six (6) months from the
4 issuance of the restricted license, take and pass the
5 Professional Responsibility Examination administered by the
6 Department, including the payment of the appropriate examination
7 fee. If Respondent fails to satisfy this condition, the
8 Commissioner may order the suspension of the restricted license
9 until Respondent passes the examination.

10 April 18, 2005
11 DATED

James L. Beaver
12 JAMES L. BEAVER, Counsel
13 Department of Real Estate
14 . . .

15 I have read the Stipulation and Agreement and
16 discussed it with my attorney and its terms are understood by
17 me and are agreeable and acceptable to me. I understand that I
18 am waiving rights given to me by the California Administrative
19 Procedure Act (including but not limited to Sections 11506,
20 11508, 11509, and 11513 of the Government Code), and I
21 willingly, intelligently, and voluntarily waive those rights,
22 including the right of requiring the Commissioner to prove the
23 allegations in the Accusation at a hearing at which I would
24 have the right to cross-examine witnesses against me and to
25 present evidence in defense and mitigation of the charges.

26 4/18/05
27 DATED

Stephen Gary Duncan
STEPHEN GARY DUNCAN
Respondent

1 ///

2 * * *

3 I have reviewed the Stipulation and Agreement as to
4 form and content and have advised my client accordingly.

5 4-18-05

6 DATED

J. Anne Rawlins

7 J. ANNE RAWLINS
8 Attorney for Respondent:

9 * * *

10 The foregoing Stipulation and Agreement is hereby
11 adopted by as my Decision in this matter as to Respondent
12 STEPHEN GARY DUNCAN and shall become effective at 12 o'clock
13 noon on MAY 24 2005

14 IT IS SO ORDERED 5-4, 2005.

15 JEFF DAVI
16 Real Estate Commissioner

17 [Signature]
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27 DRE No. H-8854 SF

STEPHEN GARY DUNCAN

FILED
DEC 10 2004

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

DEPARTMENT OF REAL ESTATE

Laurel J. Z...

In the Matter of the Accusation of

STEPHEN GARY DUNCAN,
ANABELLE BERRIOS RIVERA, AND
MARCO ANTONIO REYES,

}
}

Case No. H-8854 SF

OAH No. N-2004090439

Respondents

**FIRST AMENDED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612** on **APRIL 19 THROUGH 21, 2005**, at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: DECEMBER 10, 2004

By *James L. Beaver*
JAMES L. BEAVER, Counsel (17)

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
OCT 22 2004

DEPARTMENT OF REAL ESTATE

By Lauriel J. Jiri

In the Matter of the Accusation of

STEPHEN GARY DUNCAN,
ANABELLE BERRIOS RIVERA, AND
MARCO ANTONIO REYES,

}

Case No. H-8854 SF

OAH No. N-2004090439

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612** on **DECEMBER 20 & 21, 2004**, at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: OCTOBER 22, 2004

By James L. Beaver
JAMES L. BEAVER, Counsel (L2)

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II

At all times herein mentioned, Respondents DUNCAN, RIVERA and REYES (herein "Respondents") were and now are licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

III

At all times mentioned herein Respondent DUNCAN was and now is licensed by the Department of Real Estate of the State of California (herein "the Department") as a real estate broker.

IV

At all times mentioned herein Respondents RIVERA and REYES were and now are licensed by the Department as real estate salespersons, and at all times mentioned herein were so licensed in the employ of Respondent DUNCAN.

V

At all times herein mentioned, Respondent DUNCAN, individually and by and through Respondents RIVERA and REYES as the agents and employees of Respondent DUNCAN, engaged in the business of, acted in the capacity of, advertised, and/or assumed to act as a real estate broker within the State of California within the meaning of:

(a) Section 10131(a) of the Code, including the operation and conduct of a real estate resale brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents sold and offered to

1 sell, bought and offered to buy, solicited prospective sellers
2 and purchasers of, solicited and obtained listings of, and
3 negotiated the purchase and sale of real property; and

4 (b) Section 10131(d) of the Code, including the
5 operation and conduct of a mortgage loan brokerage with the
6 public wherein, on behalf of others, for compensation or in
7 expectation of compensation, Respondents solicited lenders and
8 borrowers for loans secured directly or collaterally by liens on
9 real property, and wherein Respondents arranged, negotiated,
10 processed, and consummated such loans.

11 VI

12 Between on or about July 29, 2002 and on or about
13 September 28, 2002, in course of the brokerage activities
14 described in Paragraph V, above, Respondents RIVERA and REYES
15 induced Inoscensio Miramontes and Teresa Miramontes (herein
16 "Buyers") to execute sales agreement forms and other documents
17 wherein Buyers became or ostensibly became obligated to purchase
18 residential real property at 669 North 11th Street, San Jose,
19 California (herein "the North 11th property"), to be occupied by
20 Buyers as their principal residence, for a purchase price of
21 \$294,000.00, and to obtain first and second mortgage loans in
22 the amount of \$235,200.00 and \$58,800.00, respectively, from
23 Chapel Funding Corporation (herein "Chapel") to finance such
24 purchase.

25 ///

26 ///

27 ///

1 VII

2 Between on or about July 29, 2002 and on or about
3 September 28, 2002, in course of the brokerage activities
4 described in Paragraph V, above, Respondent REYES induced Chapel
5 to make the mortgage loans to Buyers described in Paragraph VI,
6 above, by representing to Chapel that:

7 (a) The monthly income of Inoscencio and Teresa
8 Miramontes consisted of the sum of \$8,550.00, including
9 \$6,550.00 earned monthly by Inoscencio Miramontes as proprietor
10 of "Inoscencio's Painting", a house painting concern, and
11 \$2,000.00 earned monthly by Inoscencio Miramontes as proprietor
12 of "Mariachi Garibaldi 2000", a mariachi band; and

13 (b) Don Sutherland, Jr. doing business as Sutherland
14 Tax Service, a Registered Tax Preparer (herein "Sutherland")
15 issued an authentic letter dated September 6, 2002 confirming
16 that Sutherland had prepared tax returns for Inoscencio
17 Miramontes for eight years and that Inoscencio Miramontes was
18 self employed as the operator of "Inoscencio's Painting" and
19 "Mariachi Garibaldi 2000".

20 VIII

21 Each and every representation described in Paragraph
22 VII, above, was false when made, as Respondent REYES well and
23 truly knew at the time he made each such representation. In
24 truth and fact:

25 (a) The monthly income of Inoscencio and Teresa
26 Miramontes was substantially less than the sum of \$8,550.00,
27 Inoscencio Miramontes was primarily employed delivering cars for

1 a car rental company, and Inoscencio Miramontes did not operate
2 and was not employed by "Inoscencio's Painting" or any other
3 painting company; and

4 (b) The letter ostensibly from Sutherland described
5 in Paragraph VII(b), above, was fabricated or caused to be
6 fabricated by Respondent REYES without the knowledge or consent
7 of Sutherland.

8 IX

9 The acts and omissions of Respondent REYES described
10 in Paragraphs VII and VIII, inclusive, above, constitute the
11 substantial misrepresentation of material facts and fraud and
12 dishonest dealing.

13 X

14 To induce Buyers to act as described in Paragraph VII,
15 above, Respondent RIVERA falsely represented to Buyers that the
16 North 11th property was a residence Respondent RIVERA had shown
17 Buyers in early July, 2002, which Buyers wished to occupy as
18 their principal residence, whereas in fact the property RIVERA
19 had shown the Buyers was located on South 11th Street in San
20 Jose. All documents executed by Buyers evidencing their contract
21 to purchase the North 11th Property were made in reasonable
22 reliance on said representation.

23 XI

24 Respondent RIVERA made the representation described in
25 Paragraph X, above, knowing said representation was false or
26 without a reasonable basis for believing said representation to
27 be true.

1 XII

2 The acts and omissions of Respondent RIVERA described
3 in Paragraphs VI through XI, above, constitute the substantial
4 misrepresentation of a material fact and demonstrated negligence
5 and incompetence in performing acts for which Respondent RIVERA
6 is required to hold a real estate license.

7 XIII

8 On or about September 28, 2002, prior to the close of
9 the escrow consummating their purchase of the 11th Street
10 Property:

11 (a) Buyers discovered that the property RIVERA had
12 shown the Buyers was located on South 11th Street in San Jose,
13 that Buyers' contract was not for the purchase of the house
14 Respondent RIVERA had shown them, and that Buyers did not wish
15 to occupy the North 11th Property as their principal residence;
16 and

17 (b) Respondents REYES and RIVERA learned of the
18 discoveries by Buyers described in Paragraph XIII(a), above.

19 XIV

20 Between on or about September 28, 2002 and on or about
21 October 31, 2002, in course of the brokerage activities
22 described in Paragraph V, above, Respondents RIVERA and REYES
23 induced Buyers:

24 (a) To suffer and permit escrow to close consummating
25 their purchase of the North 11th Street Property as well as the
26 two mortgage loans from Chapel to finance such purchase;

27 ///

1 (b) To offer, contract for and purchase residential
2 real property at 3066 Shadow Springs Place, San Jose, California
3 (herein "the Shadow Springs property"), to be occupied by Buyers
4 as their principal residence, for a purchase price of
5 \$262,000.00, and to apply for and obtain first and second
6 mortgage loans in the amount of \$209,000.00 and \$52,400.00,
7 respectively, from First NLC Financial Services (herein "First
8 NLC") to finance such purchase; and thereafter,

9 (c) Respondent RIVERA negotiated and arranged such
10 contract and purchase; and

11 (d) Respondent REYES solicited First NLC, negotiated
12 and arranged such mortgage loans.

13 XV

14 In order to induce Buyers to perform the acts and
15 complete the purchases and loans described in Paragraph XIV,
16 above, Respondents RIVERA and REYES promised Buyers and
17 Represented to Buyers that Respondents would not charge Buyers
18 anything to arrange their purchase of the Shadow Place property
19 and the resale of the North 11th property.

20 XVI

21 Each and every representation and/or promise described
22 in Paragraph XV, above, was false when made, was of a character
23 likely to influence, persuade or induce, involved the
24 substantial misrepresentation of a material fact, and involved
25 fraud and/or dishonest dealing. In truth and fact, as
26 Respondents RIVERA and REYES well and truly knew when said
27 representations and promises were made, Respondents RIVERA and

1 REYES intended to receive and thereafter did receive commissions
2 and fees in substantial amounts at close of escrow at the
3 expense of Inoscencio and Teresa Miramontes for arranging the
4 purchase and sale of the Shadow Place property and the loans by
5 First NLC to finance such purchase.

6 XVII

7 Between on or about September 28, 2002 and on or about
8 October 31, 2002, in order to induce First NLC to make the
9 mortgage loans described in Paragraph XIV, above, Respondent
10 REYES represented to First NLC that:

11 (a) The monthly income of Inoscencio Miramontes
12 consisted of the sum of \$9,000.00, including \$6,000.00 earned
13 monthly by Inoscencio Miramontes as proprietor of "Mariachi
14 Garibaldi 2000", a mariachi band, and \$3,000.00 earned monthly
15 by Inoscencio Miramontes working for a car rental company;

16 (b) Sutherland issued an authentic letter dated
17 October 10, 2002 confirming that Sutherland had prepared tax
18 returns for Inoscencio Miramontes for three years and that
19 Inoscencio Miramontes was self employed as the operator of
20 "Mariachi Garibaldi 2000".

21 XVIII

22 Each and every representation described in Paragraph
23 XVII, above, was false when made, as Respondent REYES well and
24 truly knew at the time he made each such representation. In
25 truth and fact:

26 (a) The monthly income of Inoscencio Miramontes was
27 substantially less than the sum of \$9,000.00, Inoscencio

1 Miramontes was primarily employed delivering cars for a car
2 rental company, and Inoscencio Miramontes earned substantially
3 less than \$2,000.00 per month as proprietor of "Mariachi
4 Garibaldi 2000"; and

5 (b) The letter ostensibly from Sutherland described
6 in Paragraph XV(b), above, was fabricated or caused to be
7 fabricated by Respondent REYES without the knowledge or consent
8 of Sutherland.

9 XIX

10 Between on or about September 28, 2002 and on or about
11 October 31, 2002, in order to induce First NLC to make the
12 mortgage loans described in Paragraph XIV, above, Respondent
13 REYES concealed and failed to disclose to First NLC that the
14 liabilities of Inoscencio Miramontes included the mortgage
15 loans, described above, made by Chapel to Buyers to finance the
16 purchase of the North 11th Street property.

17 XX

18 The acts and omissions of Respondent REYES described
19 in Paragraphs XIV, and XVII through XIX, inclusive, above,
20 constitute the substantial misrepresentation of material facts
21 and fraud and dishonest dealing.

22 XXI

23 On or about October 3, 2002, in reliance on the
24 representations by RIVERA and REYES described above, Chapel
25 completed the mortgage loans to Buyers described above, and
26 Buyers caused, suffered and permitted escrow to close
27 consummating their purchase of the North 11th Street property.

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XXII

On or about October 31, 2002, in reliance on the representations by RIVERA and REYES described above, First NLC completed the mortgage loans to Inoscencio Miramontes described above, and Inoscencio Miramontes caused, suffered and permitted escrow to close consummating his purchase of the Shadow Springs Property.

XXIII

At all times mentioned herein, in course of the mortgage loan transactions described above, Respondent DUNCAN failed to comply with, and Respondent REYES willfully disregarded, the provisions of Section 10240 of the Code, in that said Respondents:

(a) Failed to sign as broker and failed to obtain the signature of Buyers on the statement required by Section 10240 (herein "Written Disclosure Statement");

(b) Failed to deliver a copy of the required Written Disclosure Statement to Buyers, signed by such Respondents; and/or

(c) Failed to retain on file for a period of three years a true and correct copy of the required Written Disclosure Statement signed by such Respondents and Buyers.

XXIV

Respondent DUNCAN failed to exercise reasonable supervision over the acts of Respondents RIVERA and REYES in such a manner as to allow the acts and events described above to occur.

1 XXV

2 The facts alleged above are grounds for the suspension
3 or revocation of the licenses and license rights of Respondents
4 under the following provisions of the Code:

5 (a) As to Respondent REYES and Paragraphs VI through
6 IX, inclusive, of the Accusation under Sections 10176(a) and/or
7 10176(i) of the Code;

8 (b) As to Respondent RIVERA and Paragraphs VI and X
9 through XII, inclusive, of the Accusation under Sections
10 10176(a) and/or 10177(g) of the Code;

11 (c) As to Respondents RIVERA and REYES and Paragraphs
12 XIII through XVI, inclusive, of the Accusation under Sections
13 10176(a), 10176(b), and/or 10176(i) of the Code;

14 (d) As to Respondent REYES and Paragraphs XVII
15 through XX, inclusive, of the Accusation under Sections 10176(a)
16 and/or 10176(i) of the Code;

17 (e) As to Respondents DUNCAN and REYES and Paragraph
18 XXIII of the Accusation under Section 10240 of the Code in
19 conjunction with Section 10177(d) of the Code; and

20 (f) As to Respondent DUNCAN and Paragraph XXIV of the
21 Accusation under Sections 10177(g) and/or 10177(h) of the Code.

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

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9 
10 JANICE WADDELL
11 Deputy Real Estate Commissioner

11 Dated at Los Angeles, California,
12 this 4th day of August, 2004.

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