

FILED

OCT 27 2009

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
By K. Contreras

In the Matter of the Accusation of)	
)	
ALFREDO BARAJAS,)	
JUAN MANUEL BARAJAS,)	
MARTIN CARRASCO, JR.,)	NO. H-10403 SF
JANET FINANCIAL, a Corporation,)	
RICHARD STEVEN CRAIN, and,)	OAH NO. N-2008100874
JANET KAYE ROCHA,)	
)	
Respondents.)	

DECISION

The Proposed Decision dated September 16, 2009, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on

November 16, 2009

IT IS SO ORDERED

10-26-09

JEFF DAVI
Real Estate Commissioner



OCT 21 2009

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JUAN MANUEL BARAJAS,
MARTIN CARRASCO, JR.,
JANET FINANCIAL, a Corporation,
RICHARD STEVEN CRAIN, and,
JANET KAYE ROCHA,

Respondents.

No. H-10403 SF

OAH No. 2008100874

PROPOSED DECISION

On February 9, 2009, and June 11, 2009, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Mary F. Clarke, Counsel, represented Complainant Joe M. Carrillo, Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Joshua A. Rosenthal, Esq., of Medlin and Hargrave, Attorneys at Law, The Ordway Building, One Kaiser Plaza, Suite 1305, Oakland, California 94612, represented Respondent Alfredo Barajas and Respondent Juan Manuel Barajas, who were present during all phases of the hearing.

Respondent Martin Carrasco, Jr., who was not named as a respondent until Complainant filed the Second Amended Accusation, appeared at the hearing of this matter only on June 11, 2009, but otherwise he was not represented.

The record was held open for the purpose of affording the parties the opportunity to file written closing arguments and rebuttal arguments. On July 3, 2009, OAH received "Complainant's Closing Argument," which was marked as Exhibit "12," and received as argument. On July 17, 2009, OAH received "Respondent Alfredo Barajas and Juan Barajas's Closing Statement," which was marked as Exhibit "F," and received as argument. Because of the granting of the request by Respondent Martin Carrasco for additional time for him to prepare a written closing statement, on August 4, 2009, OAH received Respondent Carrasco's written closing argument, which was marked as Exhibit "AA." On

August 11, 2009, OAH received Complainant's Reply Argument, which was marked as Exhibit "13."

On August 11, 2009, the parties were deemed to have submitted the matter and the record closed.

FACTUAL FINDINGS

1. On May 28, 2008, Complainant E. J. Haberer II, a Deputy Real Estate Commissioner of the State of California, in his official capacity, made the Accusation against Respondents Alfredo Barajas, Juan Manuel Barajas, Janet Financial, a corporation, Richard Steven Crain, and Janet Kaye Rocha. On February 13, 2009, Complainant Joe M. Carrillo (Complainant) filed a First Amended Accusation against the aforementioned respondents. Before the initial day of the hearing of this matter, Respondents Janet Financial, a corporation, Richard Steven Crain, designated officer-broker for Janet Financial, and Janet Kaye Rocha entered into stipulated agreements with the Department that resulted in the voluntary surrender of respective licenses and license rights. On February 9, 2009, the administrative adjudication proceedings began with Complainant's presentation of evidence that contemplated discipline against that the respective licenses held by Respondent Alfredo Barajas and Respondent Juan Manuel Barajas. After the initial day of proceeding and before the matter was submitted for decision, Complainant filed with OAH, on March 4, 2009, a "Motion to Amend First Amended Accusation, [to] Continue the Hearing, and [to] Cancel the Closing Argument Schedule." On March 17, 2009, Complainant filed a Second¹ Amended Accusation that added allegations of unlawful acts and omissions by Respondent Martin Carrasco, Jr.

Alfredo Barajas

2. Respondent Alfredo Barajas² is presently licensed and has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code).

On an unknown date before January 1, 2005, the Commissioner issued Respondent Alfredo Barajas a real estate broker license³ (number 01225474). Since October 4, 2007,

¹ The hearing was set for May 26, 2009, by a Notice of Continued Hearing on Accusation, dated March 18, 2009. On May 20, 2009, Respondent Carrasco sought further continuance of the hearing due to the death of his grandmother. OAH issued an Order Granting Continuance and Notice of Hearing Date, dated May 22, 2009, that set the hearing for June 11, 2009. On June 9, 2009, Respondent Carrasco filed a second motion for continuance on the ground that he lacked legal representation. Complainant as well as Respondent Alfredo Barajas and Respondent Juan Manuel Barajas opposed Respondent Carrasco's motion for a continuance and the matter proceeded to hearing on June 11, 2009.

² Also known as Alfredo Ramirez Barajas.

³ Respondent Alfredo Barajas has been a Department licensee since about 1997 when he became a real estate salesperson. In about late 2004 he acquired a real estate broker license.

Respondent Alfredo Barajas has maintained a main office as a real estate broker at 1652 Alum Rock Avenue, San Jose, California. On October 11, 2007, the Department added to the license of Respondent Alfredo Barajas's fictitious business names of: Barajas Real Estate Services, Prospera Lending, and Prospera Lending & Associates. Also, on October 11, 2007, the Department issued branch licenses to Respondent Alfredo Barajas for 4425 West Ashlan Avenue, Suite 106, Fresno, California, and 4994 Cherry Avenue, San Jose, California. On October 23, 2007, the Department added to the real estate broker license held by Respondent Alfredo Barajas three additional fictitious business names: B.R.E.S., Barajas R.E. Services and Barajas Real Estate.

Respondent Alfredo Barajas's real estate broker license will expire on December 12, 2011.

3. At all times relevant to the transactions described below, Respondent Alfredo Barajas, as a real estate broker, was responsible for the reasonable supervision of the activities of the real estate licensees, agents and employees of the real estate broker's offices to which he associated his license as the broker-in-charge.

Respondent Juan Manuel Barajas

4. On a date before January 1, 2005, the Department issued real estate salesperson license number 01293823 to Respondent Juan Manuel Barajas (Respondent Juan Barajas).

5. Effective March 10, 2005, Respondent Juan Barajas caused his real estate salesperson license to be activated in the employ of Respondent Alfredo Barajas. The real estate salesperson license issued to Respondent Juan Barajas will expire on September 20, 2012.

Respondent Juan Barajas is a co-owner of Barajas Real Estate Services, and other real estate broker operations to which the name and real estate broker license of his brother, Respondent Alfredo Barajas, is associated.

Respondent Martin Carrasco, Jr.

6. On May 17, 2006, the Department issued real estate salesperson license number 01738464 to Respondent Martin Carrasco, Jr. (Respondent Carrasco). The license held by Respondent Carrasco was initially attached to Cal Coast Realty, Inc., a corporate real estate broker.

After discontinuing employment with Cal Coast Realty, Inc., Respondent Carrasco activated employment with Respondent Alfredo Barajas on August 29, 2006. For the times pertinent to this matter, Respondent Carrasco remained in the employ of Respondent Alfredo Barajas, doing business as Barajas Real Estate Services and Prospera Lending and Associates.

On January 9, 2009, the Department suspended the salesperson license that had been issued to Respondent Carrasco under the provisions of Family Code section 17520; but with proof of release from the Department of Child Support's lien, the license of Respondent Carrasco was reinstated on February 18, 2009. (On a certificate of license history, dated June 9, 2009, the Department had no record of any employing broker⁴ for Respondent Carrasco as of February 18, 2009.) The real estate salesperson license will expire on May 16, 2010.

Department Auditor's Findings and Conclusions

7. Mr. Jayendra P. Barbhaiya offered credible and persuasive evidence at the hearing of this matter. Mr. Barbhaiya, who has a qualification as a chartered⁵ accountant, is an auditor with the Department of Real Estate.

8. Beginning on October 17, 2007, and ending on October 24, 2007, Department Auditor Mr. Barbhaiya (Auditor Barbhaiya) performed an examination of the real estate sales files, real estate sales listing files, commission checks paid by the broker and copies of real estate licenses and broker-salesperson agreements as maintained by Respondent Alfredo Barajas, who had conducted business under the fictitious business names, including: Barajas Real Estate Services and Barajas Real Estate. Auditor Barbhaiya conducted the audit examination real estate broker's records of Respondent Alfredo Barajas in San Jose, California, at the Alum Rock Avenue principal offices of the subject licensed real estate broker.

Auditor Barbhaiya selected the time span of January 1, 2005, to September 30, 2007, as the period for which he examined the accounting records and other records of real estate broker's operation for which Respondent Alfredo Barajas acted as the responsible individual broker. Among other purposes, the objective of the auditor's examination was to ascertain whether mortgage loan and property resale activities under the control of the subject real estate broker had been handled and accounted for in accordance with the California Real Estate Law and the Commissioner's Regulations.

9. During the audit examination, Auditor Barbhaiya met with Respondent Alfredo Barajas to gain explanations to questions that arose during the course of the audit of the records and operations of the real estate broker's office.

⁴ At the time of the hearing in this matter, Respondent Carrasco was employed as a senior mortgage consultant with Platinum Investment Partners, 5440 Almaden Expressway, San Jose, California.

⁵ A chartered accountant is the professional designation of a "certified public accountant" in the British Commonwealth nations, such as India, where Mr. Barbhaiya gained his qualifications and education.

10. On November 8, 2007, Auditor Barbhaiya issued an Audit Report, which was reviewed and approved by Supervising Auditor Daniel J. Sandri.

The Audit Report, with files numbered OK070065 and OK070066, and which exclusively pertained to Respondent Alfredo Barajas' real estate broker's operations, contained sections titled "audit scope," "background," "findings," and "conclusions." The Audit Report was reasonable and sound.

In the conclusions portion of the Audit Report, the auditor noted nine peculiarities or deficiencies as follows:

i. As of October 24, 2007, Respondent Alfredo Barajas possessed neither a licensed fictitious business name nor a branch office address on record with the Department. But, Respondent Alfredo Barajas had carried out, or authorized to be carried out under his real estate broker license number, several real estate sales and related loan transactions under the fictitious business names⁶ of, at a minimum⁷: "Barajas Real Estate Services" and "Barajas Real Estate." And the auditor found that Respondent Alfredo Barajas conducted business, at least, from one other address that had not been sent to the Department for recordation.

ii. Between January 1, 2005, and September 30, 2007, Respondent Alfredo Barajas, as a real estate broker, did not open or maintain any trust bank account⁸ for the purpose of conducting real estate activities.

iii. Respondent Alfredo Barajas failed to properly handle an earnest money deposit in a timely manner regarding a real estate transaction for 768 Calla Drive, Santa Clara. Respondent Alfredo Barajas did not collect a check for \$5,000, which represented an earnest money deposit from a potential buyer, for deposit with the named escrow holder within three days of the seller's acceptance of the buyer's offer. Auditor Barbhaiya found that the seller accepted the offer on February 27, 2007; but, Respondent Alfredo Barajas did not deliver to the escrow holder the buyer's \$5,000 deposit until March 9, 2007. The failure

⁶ The Department's auditor learned that Respondent Alfredo Barajas had used DRE form RE204 on October 9, 2007, and October 22, 2007, to apply to the Department for fictitious business name licenses for Prospera Lending, Barajas R.E. Services, and Barajas Real Estate. And on October 9, 2007, by the subject respondent real estate broker's use of DRE form RE203 application had been made for a license for branch offices.

⁷ The records show that before September 30, 2007, Respondent Alfredo Barajas used other fictitious business names including: Barajas Brothers Real Estate, Inc., and BRES.

⁸ Respondent Alfredo Barajas explained that the real estate licensees associated with his license did not collect in advance fees for credit reports or appraisals. When money for such fees was collected the real estate broker's office collected the fees after the completion of the service in the form of reimbursement. When resale transactions occurred, earnest money deposits, which were collected from potential buyers, were received in checks made payable to escrow companies.

existed despite the fact that a written offer document, which had been submitted by Respondent Alfredo Barajas on behalf of his client/buyer, contained a provision that read: "Buyer has given a deposit in the amount of \$5,000 to the agent submitting the written offer document by personal check made payable to Title Company [that] shall be held uncashed until [a]cceptance and then deposited within [three] business days after acceptance with Escrow Holder."

iv. Also as to the transaction regarding the 768 Calla Drive, Santa Clara resale, Auditor Barbhaiya further determined that Respondent Alfredo Barajas substantially misrepresented a critical matter regarding his client, who was a buyer, having tendered an earnest money deposit of \$5,000. An original offer by the buyer was accepted by the Buyer on February 27, 2007, noted that the buyer "has given a deposit in the amount of \$5,000 to the agent submitting the offer. . . ." A reasonable inference was drawn by Auditor Barbhaiya that as February 27, 2007, \$5,000 had been presented to Respondent Alfredo Barajas, but the escrow holder did not receive the money until March 9, 2007, which was after the three-day period for placement of the earnest money with an escrow holder.

v. Respondent Alfredo Barajas failed to properly handle an earnest money deposit in a timely manner regarding a real estate transaction for 1652/1660 Alum Rock, San Jose. Respondent Alfredo Barajas failed to tender a check for \$40,000, which represented an earnest money deposit, for delivery to the named escrow holder within three days of the seller's acceptance of the buyer's offer. Auditor Barbhaiya found that the seller accepted the offer on August 29, 2006; but, Respondent Alfredo Barajas did not deliver to the escrow holder the buyer's \$40,000 deposit until September 6, 2009. The failure existed despite that the offer submitted by Respondent Alfredo Barajas's client/buyer had a provision that read: "Buyer has given a deposit in the amount of \$40,000 to the agent submitting the offer by personal check made payable to Title Company [that] shall be held uncashed until Acceptance and then deposited within [three] business days after acceptance or two days with Escrow Holder."

vi. Also as to the transaction regarding the 1652/1660 Alum Rock, San Jose resale, Auditor Barbhaiya further determined that Respondent Alfredo Barajas substantially misrepresented a critical matter regarding himself as a buyer regarding the ability to promptly tender earnest money deposit of \$40,000. The original offer by the buyer was accepted by the seller on August 29, 2006, noted that the buyer "has given a deposit in the amount of \$40,000 to the agent submitting the offer. . . ." A reasonable inference was drawn by Auditor Barbhaiya that as of August 29, 2006, \$40,000 had been held by Respondent Alfredo Barajas and that the escrow holder did not receive the deposit until September 6, 2006, which was after the three-day period for placement of the earnest money with an escrow holder. Also, of importance, is the fact that Respondent Alfredo Barajas was the buyer in the Alum Rock transaction.

vii. Auditor Barbhaiya noted that 14 real estate salespersons and one other broker were employed by Respondent Alfredo Barajas. However, Alfredo Barajas failed to

evidence possession within the real estate broker's office of the certificate for the real estate salesperson license for one salesperson named Oscar Nunez.

viii. As part of detecting a pattern of dishonesty on the part of Respondent Alfredo Barajas, Auditor Barbhaiya contemplated a complaint by a consumer named Florencia Mojica, who had obtained a mortgage loan that Respondent Alfredo had directed her to secure. The Department's Mortgage Loan Transaction Survey showed Ms. Mojica to complain that mortgage loan terms had not been properly explained to her. She believed that she had received a loan that had not been promised to her. Ms. Mojica was burdened with loan payments that were greater than she was capable of financially addressing.

ix. Before September 30, 2007, as a real estate broker, Respondent Alfredo Barajas did not possess a broker-salesperson agreement with Respondent Juan Barajas. The subject real estate broker did not hold a document, which had been submitted to the Department, that showed Respondent Juan Barajas held a partial ownership interest in the real estate broker's operation to which Respondent Alfredo Barajas's broker license was associated.

11. The findings and conclusion reached through the Department's investigation by Auditor Barbhaiya establish that the acts of Respondent Alfredo Barajas, doing business as Barajas Real Estate Services, made certain substantial misrepresentations, engaged in unethical practices or performed the functions of a real estate broker that fell below the standard of care expected of a licensee of the Department.

12. At the hearing of this matter, Respondent Alfredo Barajas made an admission that the real estate broker's office, which is associated with his broker license, failed to deposit with the designated escrow holder, within three business days of the seller's acceptance of the buyer's offer, a check from Berta A. Alfaro for the purchase of the Calla Drive property.

13. Also at the hearing, Respondent Alfredo Barajas made an admission that the real estate broker's office, which is associated with his license, failed to collect the required earnest money deposit check of Ms. Alfaro contrary to the representation that had been made on a purchase agreement for the Calla Drive property.

14. Also at the hearing, Respondent Alfredo Barajas made an admission that the real estate broker's office, which is associated with his license, failed to possess a certification of licensure on the premises as to real estate salesperson, Oscar Nunez, who was employed through Barajas Real Estate Services.

15. Also at the hearing, Respondent Alfredo Barajas made an admission that he had failed to have attached to his real estate broker's license a fictitious business license for Barajas Real Estate during a period of time before September 30, 2007, when Respondent Alfredo Barajas conducted transactions under various fictitious business names.

16. And at the hearing of this matter, Respondent Alfredo Barajas made an admission that the real estate broker's office, which is associated with his license, failed to possess a broker/salesperson agreement with Respondent Juan Barajas for a period of time before September 30, 2007.

Consumer Lydia Lopez

Deputy Real Estate Commissioner's Findings and Conclusions regarding Respondents Barajas

17. Mr. Kenneth Espell offered credible and persuasive evidence at the hearing of this matter.

Mr. Espell, a Deputy Real Estate Commissioner with the Department's Enforcement Division, investigated allegations of fraud and misrepresentations regarding Respondent Alfredo Barajas and Respondent Juan Barajas with regard to a consumer named Lydia Lopez. As a critical part of his investigation, Mr. Espell performed an examination of the real estate sales files, escrow files and real estate sales listing files maintained by the real estate broker's office known as Barajas Real Estate Services that was managed by Respondent Alfredo Barajas. Mr. Espell's investigation also led to his scrutiny of the real estate salesperson's work of Respondent Juan Barajas.

18. On August 30, 2007, Respondent Alfredo Barajas sent Mr. Espell records that pertained to the real estate transaction, which occurred in 2005, for the purchase of a house at 497 Delridge Drive, San Jose (Delridge Drive property), by Lydia Lopez, who was represented throughout the transaction by Respondent Juan Barajas and Barajas Real Estate Services. During his study of the records, Mr. Espell detected a loan agreement between Ms. Lopez and Barajas Real Estate Services that was not disclosed within the closing documents. Mr. Espell was reasonable in describing the undisclosed loan as being a "silent third loan" that was associated with the closing of the transaction by Ms. Lopez for purchase of the Delridge Drive property.

19. From the immediate foregoing factual finding, it is further found that Respondent Alfredo Barajas, as prompted by Respondent Juan Barajas, engaged in acts that entailed substantial misrepresentations, that were grounded upon the unethical act of extending assistance to a client so that such person could qualify for a loan that the client otherwise could not have secured without the aid of the real estate licensees' financial intercession. The substantial misrepresentations, in this regard, were directed toward the mortgage lender who provided a mortgage loan to Ms. Lopez. Respondent Alfredo Barajas knew, or should have known, that the lending institution had conditioned its mortgage loan to Ms. Lopez on a determination that the buyer-borrower had such independent means to enter the real estate transaction that pertained to a sale price of \$675,000.

20. Also, Mr. Espell's investigation detected that on July 13, 2005, Ms. Lopez signed an installment promissory note for \$10,250. The principal of the installment note was

subject to zero percent interest but was due and payable on July 13, 2005, which was the date that the promissory note was signed by the consumer. But the promissory note was not listed on the HUD One document as a closing statement item. On July 13, 2005, a check was issued by Barajas Brothers Real Estate, Inc., to Ms. Lopez in the amount of \$10,250. Mr. Espell was reasonable in formulating an inference that the \$10,250 private loan to Ms. Lopez as made by Respondent Alfredo Barajas and Respondent Juan Barajas, doing business as Barajas Real Estate Services, was the amount shown on the final "Buyers/Borrowers Closing Statement" under "Total Consideration" and represented as an "additional deposit" of \$10,250 in the document's credit column.

21. From the immediate foregoing factual finding, it is further found that Respondent Alfredo Barajas, as prompted by Respondent Juan Barajas, engaged in acts that entailed misrepresentations that were grounded upon the unethical act of extending interim financing on behalf of an economically distressed client. Such act constituted demonstrable untrustworthiness on the part of Respondent Juan Barajas as a real estate licensee. Extending interim financing to a client in financial straits contributes to perpetuating a fiction to the detriment of both the lender and the buyer. The lender and the mortgage system were harmed by false information regarding the ability of Ms. Lopez to handle such a large debt. And the buyer, Ms. Lopez, was harmed because her financial weakness sets her up for prospective failure to pay the debts so that foreclosure of the real property was foreseeable.

22. Also, Mr. Espell's investigation detected that on July 28, 2005, Ms. Lopez signed an installment note that obligated her to pay "Barajas Real Estate Services or order" the amount of \$64,037.99 through installment payments beginning on August 1, 2005, "until January 1, 2006, at which time the entire balance shall be due and payable in full." The principal amount of the loan was subject to an interest rate of nine percent per annum. That installment note was not listed on the HUD One document as part of the closing statement. On July 28, 2005, a check was issued by Barajas Brothers Real Estate, Inc., to Ms. Lopez in the amount of \$61,787.99. The check included a memo note that read, "497 Delridge," and on the page upon which the endorsed check was affixed a handwritten note read: "See [promissory] note dated 07/28/05."

By the closing date for the transaction that obligated Ms. Lopez to a mortgage for the purchase of the house at Delridge Drive, the "funds to close," was adjusted to \$61,787.99, which was a lesser amount than the promissory note's principal of \$64,037.99 as prescribed on the closing documents as the amount of money needed to complete the transaction for the sale of the Delridge Drive property to Ms. Lopez. That amount (\$61,787.99) represented a substantial portion of the "silent third loan" that Ms. Lopez entered into with Barajas Real Estate Services.

23. Deputy Real Estate Commissioner Espell's investigation led the Department's employee to conclude that all of the money represented as a deposit and "funds to close" as needed by Ms. Lopez to acquire a mortgage from Countrywide Home Loans were provided to her through "silent" or secret loans between the consumer and Barajas Real Estate Services as owned by Respondent Juan Barajas and Respondent Alfredo Barajas.

24. Based upon the immediate foregoing factual findings, it is further found that Respondent Alfredo Barajas, as prompted by Respondent Juan Barajas, engaged in acts that entailed misrepresentations that were grounded upon the unethical act of contributing to falsifying the amount of a down payment by the broker's client, Ms. Lopez. The real estate broker's act, as instigated by the subject real estate salesperson, showed a calculated plan to perpetrate a fraud upon a lending institution by creating the mirage or false appearance that the buyer had the wherewithal to make a substantial down payment on the purchase of real estate, when, in fact, the down payment was fictitious.

25. During the deputy real estate commissioner's investigation, Mr. Espell detected in the files sent to the Department by Respondent Alfredo Barajas documents captioned "Home Buyer Analysis." The documents reflect printed text and handwritten notations, which were made by Respondent Juan Barajas during his meetings with Ms. Lopez. The documents indicate "selling techniques" used to entice Ms. Lopez to enter into a mortgage for the purpose of home priced at \$675,000. Within the printed text under loan information a loan amount of \$540,000 is shown along with an interest rate of "1.100%" for a 30-year term of the mortgage. The handwritten notes, which were confirmed by Ms. Lopez during her testimony, indicate the first year through fifth year of a supposed mortgage loan and the total monthly mortgage payments by the consumer, as:

Year of Mortgage	Monthly Payment by Consumer
1st	\$1,391.00
2nd	\$1,488.37
3rd	\$1,592.55
4th	\$1,704.00
5th	\$1,803.00

26. By drafting, or causing to be drafted, and then by having duly executed by Ms. Lopez a "silent third loan," Respondent Juan Barajas and Respondent Alfredo Barajas engaged in a form of deception, misrepresentation and fraud. Their unethical conduct of misrepresentations entails the concealment from the principal lender, Countrywide Home Loans, at least, a loan for \$61,787.99, that if known by the lender would have resulted, more likely than not, in denial of the loan to Ms. Lopez.

Evidence from Ms. Lydia Lopez

27. Ms. Lydia Lopez offered credible and compelling evidence at the hearing of this matter.

About one and one-half years before she purchased the Delridge Drive property, Ms. Lopez had retained Respondent Juan Barajas to act as her real estate agent. After a protracted search for a house that could accommodate both a personal residence and a child daycare home business, Respondent Juan Barajas showed Ms. Lopez the Delridge Drive property.

28. Ms. Lydia Lopez is an individual who communicates primarily in Spanish. At the hearing of this matter she demonstrated that her comprehension of English is limited. (She required the services of an English-Spanish interpreter to fully participate in the administrative adjudication proceeding.)

29. Despite her earnest effort to offer truthful evidence at the proceeding, during the course of rendering testimony at the hearing, Ms. Lopez showed that she has a limited level of analytical intellect in grasping concepts written in English. And Ms. Lopez demonstrated that she can be overwhelmed by complex written documents or intricate financial transactions, such as the matters associated with the mortgage loan for the Delridge Drive property. At the hearing Ms. Lopez proclaimed that she signed many blank documents or signed many pages regarding the subject sale and mortgage transaction that were not explained or read by her by Respondent Juan Barajas. Further she asserted that many of the mortgage loan-related documents were signed by her at the offices of Respondents Barajas, even though the evidence suggests that Ms. Lopez closed the transactions through usual mechanisms as supervised at a title company's office.

30. Before Respondent Juan Barajas represented the interests of Ms. Lopez as a buyer of the Delridge Drive property, he had represented Ms. Lopez for more than one year as a seller of a mobile home. Although the sale was not finalized by Ms. Lopez, through the aid of Respondent Barajas, they formed a close working relationship that led Ms. Lopez to place a great deal of trust in the advice and recommendations of Respondent Juan Barajas. (Ms. Lopez viewed Respondent Juan Barajas as being her "guardian angel.") Further, through their lengthy relationship Ms. Lopez learned that Respondent Juan Barajas had a child, who was afflicted with very poor health that required a long-term hospitalization, which lasted about one year.

Ms. Lopez's better judgment was clouded by both her sympathy for Respondent Juan Barajas and his ill child and by the length of their working relationship so that the client-buyer became more susceptible to the subject real estate salesperson's exaggerated claims and hyperbolic analysis regarding the ease of securing, and her supposed ability to satisfy, a mortgage debt on the Delridge Drive property.

31. During the course of her effort to purchase the Delridge Drive property, which was offered for sale at \$675,000, Ms. Lopez informed Respondent Juan Barajas that her income came from child daycare services that provided her with between \$2,000 and \$3,000 each month.

32. On or about July 13, 2005, Respondent Alfredo Barajas, doing business as Barajas Real Estate Service, entered into a promissory note with Ms. Lopez whereby Respondent Alfredo Barajas loaned Ms. Lopez \$10,250 at zero percent interest. The entire note was due and payable in full at the close of escrow.

33. Also during the course of Respondent Juan Barajas's explanation of the method by which Ms. Lopez could pay the mortgage on the house, in early July 2005 Ms. Lopez heard Respondent Juan Barajas falsely promised her that during the first year of the mortgage she would pay no more than \$1,762 per month in order to satisfy the first mortgage of \$540,000. Also the real estate salesperson persuaded or enticed Ms. Lopez with a sales pitch that she would have a mortgage interest rate of 1.10 percent. Ms. Lopez understood Respondent Juan Barajas to promise that the monthly mortgage payment would only increase by \$100 each year following the first year of the mortgage.

Respondent Juan Barajas further advised Ms. Lopez that to close the sales transaction for the Delridge Drive property that additional financing through a second mortgage with Countrywide as a line of credit in the amount of \$67,500, that translated into monthly payments of \$568. (Respondent Alfredo Barajas acted as the buyer's agent in Ms. Lopez's transaction shortly before the close because Respondent Juan Barajas had to be absent from the business because his child became very ill so as to require hospitalization of the child. Respondent Alfredo Barajas actually "drew up" the offer on behalf of Ms. Lopez. Thereafter, the subject real estate broker assigned Respondent Juan Barajas to review the "numbers" and to attend to finding a mortgage lender for Ms. Lopez.)

34. Before closing the transaction for Ms. Lopez's purchase of the Delridge Drive property, Respondent Juan Barajas and Respondent Alfredo Barajas learned between June 1, 2005, and July 9, 2005, that Ms. Lopez lacked money to close the transaction within the capital requirements of the mortgage loan's perimeters as set by the lender, Countrywide Home Loans. Whereupon Respondent Alfredo Barajas, following the request of Respondent Juan Barajas, presented Ms. Lopez with a "silent third loan," which did not appear on the closing documents. By that personal loan Ms. Lopez was obligated to repay \$64,037.99 to "Alfredo Barajas, Barajas Brothers Real Estate or order." The repayment terms for the "silent third loan" required Ms. Lopez to make monthly payment of \$480.28, beginning on August 1, 2005 until August 1, 2010, when the unpaid balance of the principal debt would be due and payable as a "balloon payment."

35. After the closing of the sale of the Delridge Drive property to Ms. Lopez, beginning in August 2005, Ms. Lopez became obligated to make payments on the mortgage debt to Countrywide of \$1,762 on the first mortgage, the second mortgage (line of credit) debt to Countrywide of \$568, and the "silent third loan" to Respondent Alfredo Barajas of \$480.28. Therefore, from August 2005 when she began to pay the aggregate amount of the debt of \$2,810.28, Ms. Lopez has found the repayment challenging to such a degree that she has never paid any amount of property tax on the Delridge Drive property.

36. Ms. Lopez understood from the substantial misrepresentations made by Respondent Juan Barajas, which were included on worksheets prepared by the real estate salesperson that her monthly mortgage payment would increase by no more than approximately \$100 per month after the annual anniversary of the commencement date for the primary mortgage. By false promises to entice her, Respondent Juan Barajas led Ms. Lopez to believe that she had a 30-year loan set with a one and one-tenth percent rate of

interest for the original \$1,762 monthly mortgage. In fact, Ms. Lopez received an adjustable rate first mortgage that resulted in significant increases of the monthly payments. Following the inception of the mortgage payment in August 2005, Ms. Lopez now pays about \$1,000 per month more than the original monthly payment

37. In connection with the Delridge Drive property transaction, Respondent Juan Barajas substantially misrepresented the terms of the first mortgage loan that Ms. Lopez became obligated to pay. He made false promises designed to entice the buyer in this regard that constituted a pattern of dishonest dealings.

38. In connection with the Delridge Drive property transaction, Respondent Juan Barajas enticed and advised by false promises Ms. Lopez into a financial arrangement although Respondent Juan Barajas knew, or he should have known, that Ms. Lopez would be unable to satisfy the scheduled monthly payments on the mortgage.

39. In connection with the Delridge Drive property transaction, Respondent Juan Barajas together with Respondent Alfredo Barajas failed to disclose to the mortgage lender of the mortgage secured by Ms. Lopez, the existence of the "silent third loan" in the amount of more than \$64,000 that Barajas Real Estate Services had extended to Ms. Lopez at nine percent annual interest rate with monthly payments of more than \$480.

The acts and omissions by Respondent Juan Barajas and Respondent Alfredo Barajas constituted constructive fraud⁹ upon Ms. Lopez.

Complaint of Francisco J. G. Alvarado against Respondent Juan Barajas

40. Ms. Rene Perryman offered credible and persuasive evidence at the hearing of this matter.

Ms. Perryman, Deputy Real Estate Commissioner, investigated allegations of fraud and misrepresentations regarding Respondent Juan Barajas with regard to a consumer named Francisco Javier Gil Alvarado (Mr. Alvarado).

During the course of her investigation, Ms. Perryman assembled records of the Department that encompassed complaints by Mr. Alvarado. Ms. Perryman exercised her experience and training as a Deputy Commissioner to find and determine that Mr. Alvarado made a compelling complaint against Respondent Juan Barajas as to a transaction for the purchase of a house at 80 Stewart Avenue, San Jose (Stewart Avenue property).

⁹ "The failure of the fiduciary to disclose a material fact to his principal which might affect the fiduciary's motives or the principal's decision, which is known [or should be known] to the fiduciary, may constitute constructive fraud." (*Salahudin v. Valley of California, Inc.* (1994) 24 Cal.App.4th 555, 562.)

i. Respondent Juan Barajas and Respondent Alfredo Barajas had made substantial misrepresentations and false promises of a character likely to influence, persuade or induce Mr. Alvarado and his mother with regard to a real estate transaction for real estate known as Stewart Avenue property. In particular, Respondent Juan Barajas and Respondent Alfredo Barajas led Mr. Alvarado and his mother to believe that the condition of the Stewart Avenue property met habitability standards. Respondent Juan Barajas encouraged Mr. Alvarado and his mother to complete the purchase of the Stewart Avenue property without the house being inspected for structural defects.

ii. After Mr. Alvarado initially did not qualify for as a borrower, Respondent Juan Barajas invited Mr. Alvarado to come to the real estate broker's office known as Barajas to meet a "banker" named Sandoval. The individual named Sandoval in time arranged a mortgage loan for Mr. Alvarado.

iii. After Mr. Alvarado and his family had lived in the house for several months, he discovered several major defects with the structure. The Santa Clara County Association of Realtors conducted an investigation that showed, through a termite report, that \$91,000 of repairs were needed for the Stewart Avenue property. As the real estate broker for the office at which Respondent Juan Barajas worked, Respondent Alfredo Barajas initially promised to pay to Mr. Alvarado \$5,000, which represented the deductible from the broker's errors and omissions insurance policy to resolve the buyer's grievances. But Respondent Alfredo Barajas broke his promise to pay some form of monetary damages to Mr. Alvarado.

41. Mr. Alvarado provided credible and compelling evidence at the hearing of this matter.

42. Mr. Alvarado is limited in comprehending spoken and written English. He made use of an English-Spanish interpreter at the hearing of this matter. (Mr. Alvarado does speak English as a second language. But he seldom reads English. The majority of any of his reading in English relates to his work as a security guard.)

43. Mr. Alvarado and his mother were unsophisticated, first-time home buyers when Mr. Alvarado met Respondent Juan Barajas. Mr. Alvarado was introduced to Respondent Juan Barajas through the buyer's friend named Cuauhtémoc, who sought to sell the house.

44. Between June 2006 and September 2006, Mr. Alvarado and his mother, as prospective buyers of the Stewart Avenue property, used the services of Respondent Juan Barajas and Respondent Alfredo Barajas to close the purchase of the house. Mr. Alvarado and his mother ultimately purchased the Stewart Avenue property with a mortgage loan for \$585,000.

45. When Mr. Alvarado and his mother met with Respondent Juan Barajas to discuss the terms of the purchase agreement for the Stewart Avenue property, the buyers and

the subject real estate salesperson spent only about one-half hour focused on the document. But all of the explanations and interpretation of the document, which was written in English, was done by Respondent Juan Barajas in Spanish for Mr. Alvarado.

Respondent Juan Barajas, who was under the supervision of Respondent Alfredo Barajas, knew, or he should have known, that he would have needed more than one-half hour to explain to Mr. Alvarado the contract for the purchase of the Stewart Avenue property.

46. Respondent Juan Barajas, and Respondent Alfredo Barajas, acted dishonestly when the subject real estate licensees caused Mr. Alvarado to sign the purchase contract on the Stewart Avenue property when they failed to assure that Mr. Alvarado, as buyer, fully understood the document that was written in English.

47. During the meeting with Respondent Juan Barajas regarding the purchase agreement, Mr. Alvarado did not hear or understand the real estate salesperson to explain that the seller was compelled by law to make full disclosure to the buyer of any and all structural defects materially affecting the house.

48. During the course of representing Mr. Alvarado, Respondent Juan Barajas and other personnel of Barajas Real Estate Service, who were supervised by Respondent Alfredo Barajas, failed to follow the real estate broker's customary practice, before the close of escrow, of requesting pest and full-house inspections of a residence by sending a telefax that requested a termite company to make an inspection. Although Barajas Real Estate prepared a telefax form regarding the Stewart Avenue property, the subject real estate broker's office failed to send the request for inspection form because Mr. Alvarado failed to show he had made a sufficient deposit to pay for the inspection services.

Not only did Respondent Juan Barajas and Respondent Alfredo Barajas not request inspections of the Stewart Avenue property, but also the subject real estate licensees failed to inform Mr. Alvarado of the importance of such inspections or the reason that such inspections were not being performed for him.

49. During the course of representing Mr. Alvarado, Respondent Alfredo Barajas noted a close relationship with Mr. Alvarado and the seller of the Stewart Avenue property that was suggestive of a perception that the buyer and seller were "like family." Respondent Alfredo Barajas, as a real estate broker, improperly inferred from the close relationship between the buyer and seller that fewer obligations fell upon the real estate licensee in the subject transaction involving Mr. Alvarado. Respondent Alfredo Barajas breached his obligations as a real estate broker and violated the fiduciary duty owed to Mr. Alvarado as the represented buyer in the transaction on the Stewart Avenue property.

50. On August 17, 2007, which was about one year after the close of the transaction for the purchase of the Stewart Avenue property by the subject house buyer, Mr. Alvarado obtained a termite inspection after he and his family had experienced major problems with the house. The August 2007 termite inspection showed encrustation from

leaky pipes, cracks in tile grout, no fire detectors, a large gap under the main entry door as well as cracked and sagging ceilings. The termite inspection showed that repairs on the Stewart Avenue property in order to solve termite, fungus and dry rot damage would cost \$91,521.

Respondent Juan Barajas and Respondent Alfredo Barajas breached the standard of care for licensed real estate licensees by failing to detect the obvious defects in the house and then failing to insist, on behalf of the buyers, that an inspection, including a termite survey, be performed before the closing of the transaction for Stewart Avenue property.

51. Respondent Alfredo Barajas and Juan Barajas failed to deliver a Transfer Disclosure Statement (TDS) to Mr. Alvarado before the closing of the Stewart Avenue property. And the real estate licensees did not provide the necessary inspections regarding the Stewart Avenue property. Furthermore after the expiration passage of a 12-day contingency clause in the sales contract that allowed for cancellation of the contract, Respondent Juan Barajas failed to communicate with Mr. Alvarado so as to discuss the prospects of canceling the contract when substantial defects in the house were detected by Mr. Alvarado. The failure by Respondent Juan Barajas and Respondent Alfredo Barajas to enter into discussions with Mr. Alvarado and his mother regarding the contingency clause and the right of the buyer to cancel the contract reflected a breach of the fiduciary duty and violated provisions under the Real Estate laws.

52. When they acted for Mr. Alvarado and his mother as the buyers' agents, Respondent Juan Barajas and Respondent Alfredo Barajas knew that the Stewart Avenue property had sold for \$460,000 two months earlier, namely on May 19, 2006, than the date Mr. Alvarado purchased the house for \$592,000 in July 2006. Even though they had knowledge about the previous sale price for the Stewart Avenue property, neither Respondent Juan Barajas nor Respondent Alfredo Barajas had knowledge that improvements had been made to the structure. (From the facts developed at the hearing, it is reasonable to infer that had the subject real estate licensees conducted sight inspections of the premises, either Respondent Juan Barajas or Respondent Alfredo Barajas, or both, would have detected that the house's condition indicated that no improvement of the premises had been made over the period between the date of the earlier purchase by the seller and the date that Mr. Alvarado expressed an interest in buying the Stewart Avenue property.)

While representing Mr. Alvarado, Respondent Juan Barajas and Respondent Alfredo Barajas never negotiated the price for the house on behalf of Mr. Alvarado. And the real estate licensees failed to disclose to Mr. Alvarado that two months earlier than his expressed interest in the house that the property had sold for \$132,000 less than the price that he offered to buy the house. At the hearing of this matter, Mr. Alvarado was compelling that had he known about the poor condition of the house, he would never purchased the Stewart Avenue property.

When Respondent Juan Barajas knew about the sales price of the house on a date that was two months earlier than the date that Mr. Alvarado contemplated the transactions and

when he did not have knowledge regarding any improvements or upgrades to the house, Respondent Juan Barajas, and Respondent Alfredo Barajas, breached the fiduciary duty held by real estate licensees to disclose all material facts.

53. The acts and omissions by Respondent Alfredo Barajas and Respondent Juan Barajas during their dealings with Mr. Alvarado constituted constructive fraud upon the subject buyer.

Complaint of Aristides T. Garcia

54. Deputy Real Estate Commissioner Ms. Perryman investigated allegations of fraud and misrepresentations regarding Respondent Carrasco, as a real estate salesperson employed by Respondent Alfredo Barajas, with respect to a consumer named Aristides Tobias Garcia (Mr. Garcia).

During the course of her investigation, Ms. Perryman assembled records of the Department that encompassed complaints by Mr. Garcia. Ms. Perryman objectively used her experience and training as a Deputy Commissioner to find and determine that Mr. Garcia made a compelling complaint against Respondent Carrasco as to the following:

i. Respondent Carrasco had made substantial misrepresentations and false promises of a character likely to influence, persuade or induce Mr. Garcia with regard to a real estate transaction for real estate known as 43 Harriet Avenue in San Jose (Harriet Avenue property). In particular, Respondent Carrasco, while acting as a salesperson associated with Respondent Alfredo Barajas's real estate broker's office known as Prospera Lending and Associates and Barajas Real Estate Services, engaged in unlawful conduct, that resulted in loss to the potential buyer without a mortgage loan ever being secured by Mr. Garcia. Also, Respondent Carrasco made substantial misrepresentations that resulted in Mr. Garcia incurring a debt for a Yellow Pages advertisement that has been useless for the consumer.

ii. Respondent Carrasco forged, or caused someone associated with Prospera Lending or Barajas Real Estate Services to forge the signature of Mr. Garcia on documents that pertained to the mortgage loan application. Mr. Garcia pointed out to Ms. Perryman that his signature was forged on, at least, the following documents: the Borrower's Signature Authorization; the receipt acknowledgment for the "Notice to Applicant of Right to Receive Copy of Appraisal Report;" pages 1 and 4 of the Uniform Residential Loan Application form; and the Additional Required California Disclosures form.

iii. Respondent Carrasco falsely promised Mr. Garcia payment of \$500 to participate in a fraud upon potential lenders for other persons by Mr. Garcia stating that he employed those other persons even though he had never met them.

55. Mr. Garcia provided credible and reliable evidence at the hearing of this matter.

While seeking the real estate brokerage services, under the fictitious business name of Prospera Lending and Associates, as supervised by Respondent Alfredo Barajas, Respondent Carrasco, in December 2008, offered real estate mortgage loan location services to Mr. Garcia so that the potential buyer might complete the purchase, by way of a mortgage loan, of the Harriet Avenue property. The purchase price for the Harriet Avenue was \$223,000. (A real estate salesperson named Jorge Moreno had acted as the buyer's agent for Mr. Garcia. And Mr. Moreno introduced Mr. Garcia to Respondent Carrasco, who held himself out as securing mortgage loans for potential buyers of real estate.)

56. While acting as real estate salesperson, who sought to secure a mortgage loan for Mr. Garcia, Respondent Carrasco made substantial misrepresentations and false promises regarding the mortgage loan that Mr. Garcia sought in order to purchase the Harriet Avenue property. Respondent Carrasco's misrepresentations, false promises and unethical acts manifested in several distinct instances.

a. After completing a loan application, Mr. Garcia learned through Respondent Carrasco that lenders had declined to extend a mortgage loan to Mr. Garcia because of "red flags." Respondent promised Mr. Garcia that he had solutions to gain the potential buyer a mortgage loan. Because Mr. Garcia only had a business bank account, Respondent Carrasco told Mr. Garcia that it was necessary that he "get onto" an established personal bank account so that he could qualify for a mortgage loan. However, Respondent Carrasco informed Mr. Garcia that he would be required to pay a price to "get onto" an established bank account. Respondent Carrasco directed Mr. Garcia to deposit \$20,000 into the bank account belonging to two other individuals under a notion that in order to secure a mortgage loan Mr. Garcia had to show he had a personal bank account rather than the sole business bank account he possessed. Respondent Carrasco informed Mr. Garcia that he had to pay \$1,000 to each of the two owners of the personal bank account in order to have his name attached to that account. Respondent Carrasco's act caused Mr. Garcia to lose \$2,000 through dishonest dealings that were grounded on substantial misrepresentations and false promises to persuade or entice Mr. Garcia to pursue a mortgage loan.

b. When Respondent Carrasco was retained to act as mortgage loan agent for him, Mr. Garcia had a small business that conducted property maintenance and cleaning work. Respondent Carrasco advised Mr. Garcia that underwriters for potential lenders would be favorably impressed with Mr. Garcia's business having an advertisement in the Yellow Pages. Mr. Carrasco convinced Mr. Garcia that the advertisement in the Yellow Pages would appear only for a period of two weeks and that after the sales transactions closed for the Harriet Avenue property the advertisement would be cancelled. Respondent Carrasco knew, or should have known, that the Yellow Pages advertisement contract could not be cancelled after a two-week period. Respondent Carrasco made a false promise to Mr. Garcia that the salesperson had influence to cause the Yellow Pages advertisement to end. But, Mr. Garcia has not been able to cancel the advertisement so that he has been burdened with a contract with the Yellow Pages for an advertisement for \$425 each month, although the advertisement has been useless for his enterprise.

c. Without receiving the directions from Mr. Garcia, Respondent Carrasco caused to be typed onto the Uniform Residential Loan Application a list of the buyer's assets that Mr. Garcia did not possess and other information that was false. In particular, Respondent Carrasco caused the loan application to falsely show Mr. Garcia's ownership of a 2007 Ford F-250 truck (valued at \$32,000) and a 2005 Ford Explorer truck (valued at \$13,000). And Respondent Carrasco falsely caused to be typed on the loan application that Mr. Garcia was the "superintendent/foreman" of AJ Property Maintenance. Mr. Garcia compellingly asserted that he has never held such a title, although he owns the company.

57. Mr. Garcia was credible at the hearing of this matter that the loan application document was not signed by him. Because the document was in the possession of Respondent Carrasco for some time before the loan application was submitted to lenders, a reasonable inference is drawn that Respondent Carrasco forged, or he caused someone employed with Prospero Lending and Associates who was under his direction to forge, the signature of Mr. Garcia. Forgery is an act of fraud and such act violates the Real Estate laws.

58. Respondent Carrasco asked Mr. Garcia to allow the use of his fictitious business name, AJ Property by other clients of Respondent Carrasco so that those individuals, who were not known by Mr. Garcia, could be shown as being employees of Mr. Garcia in order to qualify those persons for mortgage loans. Respondent Carrasco promised to pay Mr. Garcia \$500 for his participation in the fraud, but no money was received by Mr. Garcia.

Also Respondent Carrasco influenced Mr. Garcia to sign documents, which had been completed by Respondent Carrasco, with the signature of "Eric Perez." Mr. Garcia signed the document as "Eric Perez" that was captioned "request for verification of employment," after Respondent Carrasco promised to pay him \$500 for each "employee verification" form signed by Mr. Garcia. Respondent Carrasco never paid Mr. Garcia the promised fee of \$500. Respondent Carrasco's acts constituted dishonest dealings and false promises.

59. From January 9, 2009, until February 18, 2009, the Department suspended the real estate salesperson license of Respondent Carrasco. But, Respondent Carrasco performed work within the real estate broker's offices operated by Respondent Juan Barajas that required a valid real estate license with regard to the loan for Mr. Garcia. And, in particular, the closing day was January 28, 2009, for the loan of Mr. Garcia, and the documents, which were secured by Respondent Carrasco, were dated as January 23, 2009. Respondent Carrasco violated the Real Estate law when engaged in acts as a real estate salesperson¹⁰ in

¹⁰ Business and Professions Code section 10131, subdivision (a), provides, "A real estate [professional] within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others: . . . [s]ells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity. . . ."

matters that required him to possess a valid license issued by the Department when the license issued to him was suspended.

Further Unlawful Acts of Respondent Alfredo Barajas

60. During times material to the matters mentioned herein, Respondent Alfredo Barajas failed to exercise reasonable supervision of the activities of Respondent Juan Barajas and Respondent Carrasco. Respondent Alfredo Barajas permitted, ratified or caused the unprofessional conduct that is described in factual findings above. And Respondent Alfredo Barajas failed to reasonably or adequately review, oversee, inspect and manage salespersons, Respondent Juan Barajas and Respondent Carrasco. And, Respondent Alfredo Barajas failed to establish reasonable policies, rules, procedures and systems for the review, oversight, inspection and management of salesperson associated with the real estate broker's office as established and managed by Respondent Alfredo Barajas.

61. In particular, the monthly meetings at the subject real estate broker's office, which were of short duration, as between Respondent Alfredo Barajas and Respondent Juan Barajas, were insufficient for the subject real estate broker to prevent the unlawful acts and omissions that occurred in the respective transaction that involved Ms. Lopez, and Mr. Alvarado.

62. Respondent Alfredo Barajas, as a licensed real estate broker, failed to review, or failed to delegate to another experienced real estate licensee, the obligation to review each transaction that was completed through the real estate broker's offices, including Prospera Lending, that were associated with the license issued to Respondent Alfredo Barajas.

63. And with regard to the respective transactions involving Ms. Lopez and Mr. Alvarado, Respondent Alfredo Barajas, by acting as a co-agent for those transactions, knew or he should have known of the dishonest dealings that Respondent Juan Barajas perpetrated upon those consumers.

64. All of the unlawful and unethical acts and omissions committed by Respondent Juan Barajas and Respondent Carrasco, as described above, are imputed to Respondent Alfredo Barajas.

65. Respondent Alfredo Barajas's failure to exercise reasonable supervision of activities within the scope of professional endeavors at the premises of Respondent Barajas Real Estate Services involved, at least, negligence and incompetence. But in many instances, dishonest dealings and fraud were visited upon unsuspecting, inexperienced buyers, whose primary language was not English.

Matters in Mitigation and Extenuation

66. In 1997 Respondent Alfredo Barajas began work as a real estate licensee with Century 21/Contempo. That corporate real estate broker's office was purchased in about 2001 by Coldwell Banker so that Respondent Alfredo Barajas continued to work as a real estate salesperson in the same location until about late 2004.

67. Since January 2005, Respondent Alfredo Barajas has engaged in the provision of real estate services as a licensed broker through offices known as Barajas Real Estate Services, or a similar name. Respondent Alfredo Barajas has been the joint owner of Barajas Real Estate Service along with his brother, Juan Barajas, but Alfredo Barajas has acted as chief executive and broker-in-charge of the office since its creation.

Over the past 10 years of his licensed status, Respondent Alfredo Barajas has not been the subject of disciplinary action by the Department of Real Estate, except for the accusations filed in this matter.

68. Respondent Alfredo Barajas called two character witnesses to provide evidence regarding his proficiency as a real estate licensee.

a. Mr. Don Tornincasa came to the hearing to offer evidence on behalf of Respondent Alfredo Barajas.

Mr. Tornincasa, who is a real estate salesperson, is the manager for a Coldwell Banker Real Estate office in San Jose. He has known Respondent Alfredo Barajas for about six to seven years. Mr. Tornincasa worked closely with Respondent Alfredo Barajas for a number of years until Respondent Alfredo Barajas secured a real estate broker's license and left Coldwell Banker on good terms in about 2005. Mr. Tornincasa recalled Respondent Juan Barajas as being a diligent agent at the Coldwell Banker Real Estate office in San Jose. He has known Respondent Alfredo to have exceeded the standard of care as a real estate salesperson. Mr. Tornincasa gained an impression that Respondent Alfredo Barajas had a good reputation for hard work and sincere concern for his clients' objectives. But Mr. Tornincasa never acted as a manager of Respondent Alfredo Barajas at Coldwell Banker.

b. Ms. Herminia Abdala came to the hearing to offer evidence on behalf of Respondent Alfredo Barajas.

Ms. Abdala is a real estate broker. (She was first licensed as a salesperson by the Department in 1985.) Since the date in 2007 that she secured a real estate broker license, Ms. Abdala has operated Innovo Real Estate Services.

Before becoming a real estate broker, Ms. Abdala worked for the Coldwell Banker office in San Jose, where she met Respondent Alfredo Barajas. They worked together at Coldwell Banker from about 1999 until Respondent left that corporate broker's office. Ms.

Abdala occupied the desk adjacent to the work station assigned to Respondent Alfredo Barajas. Over the course of years, Ms. Abdala observed the interest that Respondent Alfredo Barajas exhibited towards his clients.

After Respondent Alfredo Barajas left Coldwell Banker, Ms. Abdala has maintained close contact with him. She continues to hold him in high regard as a competent and conscientious real estate professional. Ms. Abdala notes Respondent Alfredo Barajas to have had a good reputation for professionalism. She has never learned of any complaint against Respondent Alfredo Barajas.

69. During the course of the Department's audit of the real estate broker's operations, Auditor Barbhैया did not find Respondent Alfredo Barajas to be uncooperative or resistant to the auditor's investigation efforts in October 2007.

71. Complainant offered no competent evidence to show that Respondent Alfredo Barajas unreasonably or unlawfully used trust fund money for his personal use or as the money of the real estate broker's office.

72. After Respondent Alfredo Barajas secured a promissory note for \$64,000 with Ms. Lopez, Respondent Alfredo Barajas contacted an investment bank-type entity for the purpose of selling the promissory note to that other business at a "discount" of \$53,000. As part of the transaction with the other entity, Respondent Alfredo Barajas offered his "verbal personal guarantee" that should Ms. Lopez default on the promissory note that Respondent Alfredo Barajas would buy back the promissory note. Respondent Alfredo Barajas proclaimed that an important aspect of the buy-back provision was to protect Ms. Lopez from a foreclosure action by the investment bank-type entity. Because, Ms. Lopez did default on the promissory note, Barajas Real Estate Services did, in fact, buy back the loan at a considerable loss.

Ms. Lopez informed Respondent Juan Barajas that because of the financial strain experienced by her in making payment on the three separate mortgage-related loans that she could not pay the property taxes on the Delridge Drive property. Thereupon, Respondent Juan Barajas and Respondent Alfredo Barajas suspended the monthly obligation of Ms. Lopez to pay \$480.28 on the "silent third loan" with Barajas Real Estate Services.

Since the default by Ms. Lopez on the promissory note, which was originally set at \$64,000, Respondent Alfredo Barajas has not initiated any collection action or civil lawsuit to enforcement the loan's recovery.

72. Respondent Juan Barajas has no record that the Department has initiated disciplinary action against the real estate salesperson license that was issued to him in 2006.

73. Over a period of more than one year, Respondent Juan Barajas attempted to sell a mobile home owned by Ms. Lopez. But the real estate salesperson's efforts were not successful; yet, he directed Ms. Lopez to a real estate broker who specialized in mobile home

sales. But thereafter Respondent Juan Barajas remained attentive to the requests by Ms. Lopez that the real estate salesperson assist her in the purchase of a larger residence, which would provide her with room to open a more substantial child daycare home than she could operate from a mobile home.

74. Near the end of 2004, it was Ms. Lopez who approached Respondent Juan Barajas for assistance to finance the purchase of a new residence through 100 percent financing by a lender.

75. Respondent Juan Barajas has three children with ages of 14 years, 10 years and four years.

Within weeks of the date of the birth of the youngest child in February 2005, Respondent Juan Barajas learned that the child had a congenital immune system deficiency due to a virus. The child remained hospitalized until February 2006 so that during a one-year span Respondent Juan Barajas was absent from the broker's office for considerable periods of time. (In about May 2005 and for several weeks thereafter, Respondent Juan Barajas actually lived in the child's hospital room.) During the time that he coped with his child's ill health, Ms. Lopez expressed her sincere interest in the welfare of both Respondent Juan Barajas and his child and a strong friendship was fostered between Respondent Juan Barajas and Ms. Lopez.

76. Respondent Juan Barajas has never made a loan with a real estate client other than the "silent third loan" with Ms. Lopez.

77. Respondent Carrasco has never been the subject of a complaint by a client regarding dishonest dealings, misrepresentation, or making false promises to entice a client into a questionable transaction.

Matters in Rehabilitation

78. Respondent Alfredo Barajas has been an active contributor to community affairs in the San Jose area. Over the two past Christmas seasons, he has paid for large parties for the general public whereby he has distributed 700 to 800 gifts to underprivileged children.

79. For about three years, Respondent Alfredo Barajas has been active with HARA (the Hispanic Association of Realtors). He frequently attends meetings of the organization.

80. Respondent Alfredo Barajas has "thousands" of happy clients who generally appreciate the services rendered by the real estate broker's office as operated by him.

81. Recently Respondent Alfredo Barajas has crafted a very thick manual of policies that govern the practices of real estate licensees and staff persons associated with the real estate broker's office that he operates.

82. Respondent Alfredo Barajas has downsized the real estate broker's operations that he has managed for nearly five years. He has discontinued operations as a mortgage broker through Prospero Lending and he has no interest in mortgage loan work.

Matters in Aggravation

83. By his demeanor while testifying, his exaggerated assertions that were inconsistent with more credible evidence, and his attitude towards the proceeding, Respondent Alfredo Barajas was not a credible¹¹ witness in many aspects of his testimony.

84. The wrongful acts and omissions of Respondent Alfredo Barajas did not constitute simple mistakes. Rather the unlawful conduct shown by the evidence established that Respondent Alfredo Barajas substantially departed from the standards expected of a licensed real estate broker, who was the principal officer-broker of a real estate operation that involved resale of residential property and mortgage loan placement.

85. Respondent Alfredo Barajas was not credible when he testified that the only service that he performed for Ms. Lopez was to prepare the offer documents to purchase the property sought by the buyer. His assertion was not believable that he had "very little" to do with Ms. Lopez's loan arrangements, including the crafting of a "silent third loan," namely a promissory note for \$64,000.

86. Respondent Alfredo Barajas was not truthful or candid in asserting that the complaints of Ms. Lopez and other consumers were not accurate. Respondent Alfredo Barajas unpersuasively asserted that for all those transactions that neither he nor the subject real estate salespersons were in positions to decline, to qualify or to grant mortgage loans for buyers because such functions were solely the prerogative of lenders to examine the capability of respective potential buyers who were merely introduced by Barajas Real Estate Services to various lenders.

87. By his demeanor while testifying, his exaggerated assertions that were inconsistent with more credible evidence, and his attitude towards the proceeding, Respondent Juan Barajas was not a credible witness in many aspects of his testimony.

88. Respondent Juan Barajas was not truthful when he claimed at the hearing that when he prepared for Ms. Lopez certain worksheets, which set out representations regarding monthly payments on a prospective loan with an annual interest rate of 1.1 percent, that he had no knowledge of the actual monthly income earned by Ms. Lopez from child care

¹¹ Government Code section 11425.50, subdivision (b), third sentence.

services. And he was not believable when he claimed that Ms. Lopez did not tell him that the extent of her monthly income was about \$2,000 to \$3,000.

89. Respondent Juan Barajas was not believable when he asserted at the hearing that upon making the \$64,000 "silent third loan" to Ms. Lopez that he was not concerned about being repaid because he simply wished to charitably help Ms. Lopez secure a larger house. Respondent Juan Barajas unpersuasively noted that at the time money was not his driving interest because Ms. Lopez had expressed kind wishes about the expectant recovery of his son so that he was only acting "with his heart," and not thinking with his head.

90. Respondent Juan Barajas was not credible when he asserted at the hearing that as a real estate salesperson, whose work is exclusively devoted to resale of existing houses, he never made any inquiry into the income of a potential home buyer who wished to retain him as an agent. Respondent Juan Barajas was implausible with regard to his account that before he aided a potential home buyer that he got a "green light" from a lender or a licensee who specialized in mortgage loans. He was disingenuous with his explanation that he had no interest in the income of Ms. Lopez when he directed the home buyer to the Delridge Drive property.

91. Respondent Juan Barajas showed his disregard for the integrity of the real estate industry, which is grounded upon a viable mortgage lending system, when on cross-examination he proclaimed it was "not my duty" to disclose to a lender the existence of a "silent third loan" that was extended by Barajas Real Estate Services in the amount of \$64,000 so that Ms. Lopez would have the requisite "funds to close" the sales transaction on the Delridge Drive property. Respondent Juan Barajas unbelievably proclaimed that because he was not the loan broker for the transaction for Ms. Lopez he had no duty to disclose the third loan to any lender.

92. Respondent Juan Barajas was not believable when he stated he never told Ms. Lopez that the monthly mortgage payment would increase by only \$100 on each anniversary date of the original mortgage. He unconvincingly professed that it was not his "duty" to discuss the mortgage terms with Ms. Lopez.

93. On the initial day of proceedings, both Respondent Juan Barajas and Alfredo Barajas expressed a desire to "reconvey" to Ms. Lopez the \$64,000 promissory note. But the words as extracted by leading questions were neither repeated in the proceeding's second day nor set out in written form by either of the subject Barajas respondents or in their legal counsel's written closing brief. And Complainant's counsel did not express in her written closing brief that Ms. Lopez had informed her that either Respondent Juan Barajas or Respondent Alfredo Barajas had sent the aggrieved consumer any form of communication that noted the expungement, or partial forgiveness, of the "silent third loan."

94. Regarding the transaction that involved Mr. Alvarado purchasing the Stewart Avenue property absent a termite inspection, Respondent Alfredo Barajas was not credible at the hearing of this matter when he sought to explain that he should have informed Mr.

Alvarado about the buyer's rights to secure a termite inspection and structural inspection of the condition of the house, but that he perceived that Mr. Alvarado had "his mind made up" with respect to the purchase from a seller with whom Mr. Alvarado had a previous close, family-like relationship. But, Mr. Alvarado was credible that had he been made aware of the expensive (\$91,000) termite, fungus and other structure damage to the Stewart Avenue property, that buyer would not have concluded the purchase.

Also, by their failure to delivery a Transfer Disclosure Statement to Mr. Alvarado, Respondent Alfredo Barajas and Respondent Juan Barajas violated the provisions of Civil Code section 1102.12, subdivision (b).¹²

95. By his demeanor while testifying, his exaggerated assertions that were inconsistent with more credible evidence and his attitude towards the proceeding, Respondent Carrasco was not a credible witness in many aspects of his testimony. Mr. Garcia's sincere expressions of frustration and disappointment had greater credibility than the evasive set of explanations by Respondent Carrasco.

Insufficient Evidence to Support Complaint by Florenica Mojica against Respondents Barajas as a Matter in Aggravation

96. Complainant did not call Ms. Florencia Mojica (Ms. Mojica) as a witness to the hearing of this matter. And Complainant did not present reliable documents that indicate the trustworthiness of such records in order to supplement and explain the factual findings, above, that constitute causes of discipline. The records that pertain to Ms. Mojica's dealings with Respondent Juan Barajas and Respondent Alfredo Barajas are not sufficient to serve as matters in aggravation in order to show a pattern of unlawful acts on the part of the subject real estate broker and real estate salesperson.

Other Matters

97. Respondent Juan Barajas did not call as a witness any licensed real estate professional to offer evidence regarding his business ethics, professionalism or commitment to the real estate laws of this state.

98. Since ending his employment relationship with Respondent Alfredo Barajas, Respondent Carrasco has become associated with another real estate broker. But Respondent Carrasco did not call as a witness any licensed real estate professional to offer evidence

¹² Civil Code section 1102.12, subdivision (b), provides: "If a licensed real estate broker responsible for delivering the disclosures under this section cannot obtain the disclosure document required and does not have written assurance from the transferee that the disclosure has been received, the broker shall advise the transferee in writing of his or her rights to the disclosure. A licensed real estate broker responsible for delivering disclosures under this section shall maintain a record of the action taken to effect compliance in accordance with Section 10148 of the Business and Professions Code."

regarding his business ethics, professionalism or commitment to the real estate laws of this state.

Ultimate Findings

99. It would be against the public interest to permit Respondent Alfredo Barajas to maintain a license and licensing rights as a corporate real estate broker.

100. It would be against the public interest to permit Respondent Juan Barajas to maintain a real estate salesperson license.

101. It would be against the public interest to permit Respondent Carrasco to maintain a real estate salesperson license.

LEGAL CONCLUSIONS

The Standard of Proof

1. The standard of proof in an administrative disciplinary action that seeks the suspension or revocation of a real estate professional's license is "clear and convincing evidence to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 583.)

"Clear and convincing evidence" means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered. "Clear and convincing evidence" is a higher standard of proof than proof by "a preponderance of the evidence." (*CACI*¹³ 201.) "Clear and convincing evidence" requires a finding of high probability for the propositions advanced in an accusation against a targeted respondent licensee. It must be so clear as to leave no substantial doubt and to command the unhesitating assent of every reasonable mind. (*In re Michael G.* (1998) 63 Cal.App.4th 700.) And, the standard of proof known as clear and convincing evidence is required where particularly important individual interests or rights are at stake. (*Weiner v. Fleischman* (1991) 54 Cal.3d 476, 487.)

Complainant established by clear and convincing evidence the foregoing factual findings and the legal conclusions below upon which disciplinary action is imposed upon the three respondents herein.

It is important to note the Civil Code section 1102.1, in setting forth its intent regarding the delivery of real estate disclosure statements, the Legislature noted, "It is also the intent of the Legislature that the delivery of a real estate transfer disclosure statement *may not be waived* in an "as is" sale, as held in *Loughrin v. Superior Court* (1993) 15 Cal. App. 4th 1188." (Emphasis added.)

¹³ Judicial Council of California, Civil Jury Instructions.

Nondelegable Duties

2. Respondent Alfredo Barajas attempted to deny responsibility for the failures, omissions, neglect, dishonest dealings and fraud of the real estate salespersons Respondent Juan Barajas and Respondent Carrasco. Respondent Alfredo Barajas contends that he should not be held culpable for the malfeasance or misconduct of Respondent Carrasco or others associated with the real estate broker's office known as Barajas Real Estate Services. Respondent Alfredo Barajas advances that the misfeasance or malfeasance of those other actors were independent of his functions as a real estate broker. But, Respondent Alfredo Barajas's arguments are in error in his perceptions that he is not responsible for the acts of agents and employees of Respondent Juan Barajas and Respondent Carrasco.

Respondent Alfredo Barajas' defense must be viewed in light of the well-established rule of nondelegable duties of a licensee. The rule, which is similar to the rule of *respondeat superior*, advances that "the licensee, if he elects to operate his business through employees, must be responsible to the licensing authority for their conduct in the exercise of his license." (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 295.) "By virtue of the ownership of a . . . license such owner has a responsibility to see to it that the license is not used in violation of law." (*Ford Dealers Assn. v. Dept. of Motor Vehicles* (1982) 32 Cal.3d 347, 360.)

In citing Civil Code section 2330, the court in the *Ford Dealers Association* case commented that: "The settled rule that licensees can be held liable for the acts of their employees comports with the general rule governing principal-agent liability. 'An agent represents his principal for all purposes within the scope of his actual or ostensible authority.' (Civil Code section 2330.)" (*Ford Dealers Assn. v. Dept. of Motor Vehicles, supra*, 32 Cal.3d at p. 360.)

The rule of nondelegable duties of licensees is of common law derivation. (*California Assn. of Health Facilities v. Department of Health Services, supra*, 16 Cal.4th, at p. 296; *Van Arsdale v. Hollinger* (1968) 68 Cal.2d 245, 251.) The essential justification for the rule is to ensure accountability of licensees so as to safeguard the public health, safety or welfare.

More importantly, if a licensee, such as Respondent Alfredo Barajas, were not liable for the acts and omissions of his agents and independent contractors, "effective regulation would be impossible. [The licensee] could contract away the daily operations of his business to independent contractors and become immune to disciplinary action by the licensing authority." (*California Assn. of Health Facilities v. Department of Health Services, supra*, 16 Cal.4th at p. 296.) Such result would undermine effective law enforcement and regulatory oversight.

And, the concept that a licensee will be held liable for the acts of agents is one that has been applied to situations where the agent is an independent contractor or is an

employee. (See *Banks v. Board of Pharmacy* (1984) 161 Cal.App.3d 708, 713; *Rob-Mac, Inc. v. Dept. of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797-798.)

Respondent Alfredo Barajas must bear full responsibility for the acts and omissions of agents or employees of Barajas Real Estate Services, a real estate broker's office for which Respondent Alfredo Barajas assumed the role of licensed designated officer-broker. Respondent Alfredo Barajas was obligated to supervise and control the activities and functions of Respondent Juan Barajas and Respondent Carrasco, who were associated with his real estate broker's license.

Statutory Authority - Violations of the Real Estate Law and Commissioner's Regulations

3. Business and Professions Code section 10177, subdivision (d), establishes that the Department of Real Estate Commissioner may suspend or revoke the license of a real estate licensee, who has . . . , or may suspend or revoke the license of a corporation . . . if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has . . . [w]illfully disregarded or violated the Real Estate Law . . . or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law. . . .”

The concept of “willful” is given broad meaning in the realm of administrative licensure disciplinary proceedings. “Willful” does not imply a malicious intent to do wrong or a consciousness for malfeasance on the part of a licensee to violate a rule, statute or standard of due care. The term “‘willful’ . . . does not necessarily imply anything blamable, or any malice or wrong toward the other party, or perverseness or moral delinquency, but merely that the thing done or omitted to be done was done or omitted intentionally. It amounts to nothing more than this: that the person knows what he is doing, intends to do what he is doing, and is a free agent. . . .” (*Suman v. BMW of North America, Inc.* (1994) 23 Cal.App.4th 1, 12; (See also: *Apollo Estates, Inc. v. Department of Real Estate* (1985) 174 Cal.App.3d 625, 639; *Milner v. Fox* (1980) 102 Cal.App.3d 567, 573-575, fn. 9; *Murrill v. State Board of Accountancy* (1950) 97 Cal.App.2d 709, 713.)

Respondent Alfredo Barajas

4. *Timmeson v. Forest E. Olsen, Inc.* (1970) 6 Cal.App.3d 860, 871, sets out that “[t]he relationship between a broker and his principal is fiduciary in nature, and imposes upon the broker the duty of acting in the highest good faith towards his principal.”

5. Business and Professions Code section 10176, subdivision (a), establishes that the Commissioner may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts for which a license is necessary is found to have been guilty of “[m]aking any substantial misrepresentation.”

By reason of the substantial misrepresentations made by Respondent Juan Barajas and Respondent Carrasco, while they respectively acted as a real estate salesperson, under ostensible¹⁴ authority of the subject real estate broker, and by his own conduct, cause exists to discipline the real estate broker license issued to Respondent Alfredo Barajas, under Business and Professions Code section 10176, subdivision (a), in conjunction with section 10177, subdivision (d), by reason of the matters set out in factual findings above.

6. Business and Professions Code section 10176, subdivision (b) provides, the Commissioner may suspend or revoke a license upon a determination that the licensee is guilty of, “[m]aking any false promises of a character likely to influence, persuade or induce.”

By reason of the false promises made by Respondent Juan Barajas and Respondent Carrasco, while they respectively acted as a real estate salesperson, under ostensible authority of the subject real estate broker, and by his own conduct, cause exists to discipline the real estate broker license issued to Respondent Alfredo Barajas, under Business and Professions Code section 10176, subdivision, subdivision (b), in conjunction with section 10177, subdivision (d), by reason of the matters set out in factual findings above.

7. Business and Professions Code section 10176, subdivision (c), establishes that the Commissioner may suspend or revoke a license upon a determination that the licensee is guilty of, “[a] continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.”

By reason of the continued and flagrant course of misrepresentation or making of false promises by Respondent Juan Barajas and Respondent Carrasco, while they respectively acted as a real estate salesperson, under ostensible authority of the subject real estate broker, and by his own conduct, cause exists to discipline the real estate broker license issued to Respondent Alfredo Barajas, under Business and Professions Code section 10176, subdivision (c), in conjunction with section 10177, subdivision (d), by reason of the matters set out in factual findings above.

8. Business and Professions Code section 10176, subdivision (i), sets out the Commissioner may temporarily suspend or permanently revoke a real estate license where the licensee in performing or attempting to perform any of the acts for which a licensee is found to have been guilty of any conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealing.

¹⁴ Ostensible authority of an agent of a principal is “such authority as the principal, either intentionally or by want of ordinary care, causes or allows a third person to believe the agent possesses. (Civil Code, §§ 2317 and 2318.) And the principal is liable to persons who have in good faith, and without want of ordinary care, relied upon the agent’s ostensible authority to their detriment. Civil Code, § 2334.) . . . [T]he elements necessary to fasten liability upon the principal are those which give rise to an estoppel.” (2 Witkin, *Summary of California Law*, (9th Ed., 1087) Agency, § 93, p. 92.)

Salahutdin v. Valley of California, Inc. (1994) 24 Cal.App.4th 555, 562, sets out that “[A]s a general principle constructive fraud comprises any act, omission, or concealment involving a breach of legal or equitable duty, trust or confidence which results in damage to another even though the conduct is not otherwise fraudulent. Most acts by an agent in breach of his fiduciary duties constitute constructive fraud.”

In re Estate of Arbuckle (1950) 98 Cal.App.2d 562, 569, states that constructive fraud usually arises “whenever trust and confidence is reposed by one person in the integrity and fidelity of another.” The *Arbuckle* court noted that “The acts of an agent are judged with almost the same strictness as those of a trustee.” (*Ibid.*). And that court added, “a violation of duty on the part of a trustee is treated as a fraud upon the beneficiary, and a violation of duty on the part of an agent should be treated in the same manner. . . .” (*Ibid.*)

By reason of the fraud or dishonest dealings by Respondent Juan Barajas and Respondent Carrasco, while they respectively acted as a real estate salesperson, under ostensible authority of the subject real estate broker, and by his own conduct, cause exists to discipline the real estate broker license issued to Respondent Alfredo Barajas, under Business and Professions Code section 10176, subdivision (i), in conjunction with section 10177, subdivision (d), by reason of the matters set out in factual findings above.

9. Business and Professions Code section 10177, subdivision (g), provides that the Commissioner may suspend or revoke the license of a real estate licensee, who has demonstrated negligence or incompetence in performing any act for which he is required to hold a license.

By reason of the negligence or incompetence by Respondent Juan Barajas and Respondent Carrasco, while they respectively acted as a real estate salesperson, under ostensible authority of the subject real estate broker, and by his own conduct that showed a breach of the standards of care for a real estate broker or by his incompetence, cause exists for disciplinary action against the license issued to Respondent Alfredo Barajas under Business and Professions Code section 10177, subdivision (g), in conjunction with section 10177, subdivision (d), by reason of the matters set forth in the factual findings above.

10. Business and Professions Code section 10177, subdivision (j), prescribes, “[e]ngaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.”

By reason of the fraud or dishonest dealings by Respondent Juan Barajas and Respondent Carrasco, while they respectively acted as a real estate salesperson, under ostensible authority of the subject real estate broker, and by his own conduct, cause exists to discipline the real estate broker license issued to Respondent Alfredo Barajas, under Business and Professions Code section 10177, subdivision (j), in conjunction with section 10177, subdivision (d), by reason of the matters set forth in the factual findings above.

11. California Code of Regulations, title 10, section 2832, establishes, rules regarding trust fund handling as follows:

(a) Compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson.

(b) Except as expressly provided by subdivision (d) of Section 10145 of the Code or by a regulation in this article, the account into which the trust funds are deposited shall not be an interest-bearing account for which prior written notice can by law or regulation be required by the financial institution as a condition to the withdrawal of funds.

(c) A check received from the offeror may be held uncashed by the broker until acceptance of the offer if

(1) the check by its terms is not negotiable by the broker or if the offeror has given written instructions that the check shall not be deposited nor cashed until acceptance of the offer and

(2) the offeree is informed that the check is being so held before or at the time the offer is presented for acceptance.

(d) In these circumstances if the offeror's check was held by the broker in accordance with subdivision (c) until acceptance of the offer, the check shall be placed into a neutral escrow depository or the trust fund account, or into the hands of the offeree if offeror and offeree expressly so provide in writing, not later than three business days following acceptance of the offer unless the broker receives written authorization from the offeree to continue to hold the check.

(e) Notwithstanding the provisions of subdivisions (a) and (d), a real estate broker who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial Code) when acting in the capacity of an escrow holder in a real estate purchase and sale, exchange or loan transaction in which the broker is performing acts for which a real estate license is required shall place all funds accepted on behalf of

another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than the next business day following receipt of the funds by the broker or by the broker's salesperson.

Cause exists for disciplinary action against the license issued to Respondent Alfredo Barajas under California Code of Regulations, title 10, section 2832, in conjunction with section 10177, subdivision (d), by reason of the matters set forth in the factual findings above, and in particular Factual Findings 10 and 12.

12. Business and Professions Code section 10160 states that a real estate salesman's license shall remain in the possession of the licensed real estate broker employer until canceled or until the salesman leaves the employ of the broker, and the broker shall make his license and the licenses of his salesman available for inspection by the commissioner or his designated representative.

And, California Code of Regulations, title 10, section 2753, sets out the rules regarding a real estate broker's obligation for retention of a real estate salesperson's license certificate, as follows: "[t]he license certificate of a real estate salesperson licensee shall be retained at the main business office of the real estate broker to whom the salesperson is licensed. Upon the termination of employment of the salesperson, the broker shall return the license certificate to the salesperson within three business days following the termination."

Cause exists for disciplinary action against the licenses issued to Respondent Alfredo Barajas under Business and Professions Code section 10160 and California Code of Regulations, title 10, section 2753, in conjunction with section 10177, subdivision (d), by reason of the matters set forth in the Factual Findings 10vii and 14.

13. Business and Professions Code section 10159.5 provides: "[e]very person applying for a license under this chapter who desires to have such license issued under a fictitious business name shall file with his application a certified copy of his fictitious business name statement filed with the county clerk. . . ."

California Code of Regulations, title 10, section 2731, sets out the Department regulation that pertains to use of a false or fictitious name by a licensed real estate broker. The regulation sets out, in part:

(a) A licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious name.

(b) The Department shall issue a license required under the Real Estate Law only in the legal name of the licensee or in the fictitious business name of a broker who presents evidence of having complied with the provisions of Sections 17910 and 17917 of the Code.

....

Cause exists for disciplinary action against the license issued to Respondent Alfredo Barajas under Business and Professions Code section 10159.5 and California Code of Regulations, title 10, section 2731, subdivision (a), in conjunction with section 10177, subdivision (d), by reason of the matters set forth in the Factual Findings 10i and 15.

14. California Code of Regulations, title 10, section 2726, sets out, “[e]very real estate broker shall have a written agreement with each of his salesmen, whether licensed as a salesman or as a broker under a broker-salesman arrangement. The agreement shall be dated and signed by the parties and shall cover material aspects of the relationship between the parties, including supervision of licensed activities, duties and compensation.”

Cause exists for disciplinary action against the license issued to Respondent Alfredo Barajas under California Code of Regulations, title 10, section 2726 in conjunction with section 10177, subdivision (d), by reason of the matters set forth in the Factual Findings 10ix and 16.

15. California Code of Regulations, title 10, section 2725, sets out the Department’s rules regarding supervision¹⁵ by a real estate broker of licensees associated with the license of the real estate broker. The regulation prescribes, in pertinent part:

A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage: . . . transactions requiring a real estate license; . . . [d]ocuments which may have a material effect upon the rights or obligations of a party to the transaction. . . [f]iling, storage and maintenance of such documents. . . [a]dvertising of any service for which a license is required. . . [r]egular and consistent reports of licensed activities of salespersons. . . A broker shall establish a system for monitoring compliance

¹⁵ Business and Professions Code section 10177, subdivision (h), prescribes that the Commissioner may suspend or revoke the license of a real estate licensee when such person has “as a broker licensee, failed to exercise reasonable supervision over the activities of his . . . salesperson

....”

with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.

Cause exists for disciplinary action against the license issued to Respondent Alfredo Barajas under California Code of Regulations, title 10, section 2725, in conjunction with Business and Professions Code section 10177, subdivision (d), by reason of the matters set forth in the Factual Findings 60 through 65.

Respondent Juan Barajas

16. *Twomey v. Mitchum, Jones & Templeton, Inc.* (1968) 262 Cal.App.2d 690, 709, established that "an agent is a fiduciary. His obligation of diligent and faithful service is the same as that imposed upon a trustee." Contrary to the argument of Respondents Juan Barajas, the *Twomey* decision makes clear that not only is the broker a fiduciary, but also a real estate salesperson is a fiduciary to consumers who retain such licensee to pursue the purchase or sale of real estate.

17. Respondent Juan Barajas made substantial misrepresentations in the conduct of services as a real estate salesperson that affected consumers and a mortgage loan lender. Accordingly, cause exist to discipline the real estate salesperson license issued to Respondent Juan Barajas, under Business and Professions Code section 10176, subdivision (a), in conjunction with section 10177, subdivision (d), by reason of the matters set out in Factual Findings 18 through 26, 31 through 37, 44 through 48, and 50 through 52.

18. Respondent Juan Barajas made false promises of a character that were likely to influence, persuade or induce others in the conduct of services as a real estate salespersons that affected consumers and a mortgage loan lender. Accordingly, cause exists to discipline the real estate salesperson license issued to Respondent Juan Barajas, under Business and Professions Code section 10176, subdivision (b), in conjunction with section 10177, subdivision (d), by reason of the matters set out in Factual Findings 18 through 26, 31 through 38, 44 through 48, and 50 through 52.

19. Respondent Juan Barajas is guilty of a continued and flagrant course of misrepresentation of making of false promises through the work as a real estate salesperson. Accordingly, cause exists to discipline the real estate salesperson license issued to Respondent Juan Barajas, under Business and Professions Code section 10176, subdivision (c), in conjunction with section 10177, subdivision (d), by reason of the matters set out in Factual Findings 18 through 26, 31 through 39, 44 through 53.

20. Respondent Juan Barajas is guilty of conduct that constitutes fraud or dishonest dealings. Accordingly, cause exists to discipline the real estate salesperson license

issued to Respondent Juan Barajas, under Business and Professions Code section 10176, subdivision (i), in conjunction with section 10177, subdivision (d), by reason of the matters set out in Factual Findings 26, 39, 40 and 53.

21. By his own conduct that showed a breach of standards of care for a real estate salesperson that constituted negligence or by his incompetence, cause exists for disciplinary action against the salesperson license issued to Respondent Juan Barajas under Business and Professions Code section 10177, subdivision (g), in conjunction with section 10177, subdivision (d), by reason of the matters set forth in the Factual Findings 18 through 26, 31 through 38, 44 through 48, and 50 through 52.

22. By reason of his acts of fraud or dishonest dealings, cause exists to discipline the real estate salesperson license issued to Respondent Juan Barajas, under Business and Professions Code section 10177, subdivision (j), in conjunction with section 10177, subdivision (d), by reason of the matters set forth in the Factual Findings 26, 39, 40 and 53.

Respondent Martin Carrasco

23. Business and Professions Code section 10130 sets forth:

It is unlawful for any person to engage in the business, act in the capacity of, advertise or assume to act as a . . . real estate salesman within this state without first obtaining a real estate license from the department.

The [Real Estate Commissioner] may prefer a complaint for violation of this section before any court of competent jurisdiction, and the [Real Estate Commissioner] and his counsel, deputies or assistants may assist in presenting the law or facts at the trial....

Cause exist to discipline the real estate salesperson license issued to Respondent Carrasco for disciplinary action under Business and Professions Code section Code sections 10130, in conjunction with section 10177, subdivision (d), by reason of the matters set forth in Factual Finding 59.

24 Respondent Carrasco made substantial misrepresentations in the conduct of services as a real estate salesperson that affected consumers and a mortgage loan lender. Accordingly, cause exist to discipline the real estate salesperson license issued to Respondent Carrasco, under Business and Professions Code section 10176, subdivision (a), in conjunction with section 10177, subdivision (d), by reason of the matters set out in Factual Findings 54 through 56.

25. Respondent Carrasco made false promises of a character that were likely to influence, persuade or induce others in the conduct of services as a real estate salespersons that affected consumers and a mortgage loan lender. Accordingly, cause exists to discipline

the real estate salesperson license issued to Respondent Carrasco, under Business and Professions Code section 10176, subdivision (b), in conjunction with section 10177, subdivision (d), by reason of the matters set out in Factual Findings 54 through 56.

26. Respondent Carrasco is guilty of a continued and flagrant course of misrepresentation of making of false promises through the work as a real estate salesperson. Accordingly, cause exists to discipline the real estate salesperson license issued to Respondent Carrasco, under Business and Professions Code section 10176, subdivision (c), in conjunction with section 10177, subdivision (d), by reason of the matters set out in Factual Findings 54 through 58.

27. Respondent Carrasco is guilty of conduct that constitutes fraud or dishonest dealings. Accordingly, cause exists to discipline the real estate salesperson license issued to Respondent Carrasco, under Business and Professions Code section 10176, subdivision (i), in conjunction with section 10177, subdivision (d), by reason of the matters set out in Factual Findings 56a, 56c, 57 and 58.

28. By his own conduct that showed a breach of standards of care for a real estate salesperson that constituted negligence or by his incompetence, cause exists for disciplinary action against the salesperson license issued to Respondent Carrasco under Business and Professions Code section 10177, subdivision (g), in conjunction with section 10177, subdivision (d), by reason of the matters set forth in the Factual Findings 54 through 59.

29. By reason of his acts of fraud or dishonest dealings, cause exists to discipline the real estate salesperson license issued to Respondent Carrasco, under Business and Professions Code section 10177, subdivision (j), in conjunction with section 10177, subdivision (d), by reason of the matters set forth in the Factual Findings 56a, 56c, 57 and 58.

Other Factors Impacting Legal Conclusions and the Order

30. Matters in mitigation, extenuation, rehabilitation and aggravation, respectively as to the three respondents herein, were considered in making the order below.

Respondents' Irrelevant Arguments and Offers of Proof

31. Administrative adjudication results in a decision that equates to agency action of specific application that determines a legal right or other legal interest of a particular person.¹⁶ Contrary to the arguments and presentation by respondents, administrative adjudication is not identical to nor does it exist for the purpose of civil litigation. Administrative adjudication has as its purpose the protection of the health, safety and welfare of the public. Complainant has met its burden by clear and convincing evidence to a reasonable certainty regarding the factual matters set out above.

¹⁶ Government Code section 11405.50.

Matters raised by respondents that are not specifically addressed above are deemed to be without merit.

Measure of Discipline

32. The purpose of an administrative adjudication proceeding, which contemplates the revocation or suspension of a professional or occupational license, is not to punish the individual licensee. The purpose of the agency action that results from the administrative adjudication proceeding is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance*, *supra*, 135 Cal.App.3d 583.)

ORDER

1. All licenses and licensing rights of Respondent Alfredo Barajas under the Real Estate Law are revoked.

2. All licenses and licensing rights of Respondent Juan Barajas under the Real Estate Law are revoked.

3. All licenses and licensing rights of Respondent Martin Carrasco under the Real Estate Law are revoked.

DATED: September 16, 2009



PERRY O. JOHNSON
Administrative Law Judge

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FILED

APR 24 2009

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
ALFREDO BARAJAS,)
JUAN MANUEL BARAJAS,)
JANET FINANCIAL, a Corporation,)
RICHARD STEVEN CRAIN, and,)
JANET KAYE ROCHA,)
)
Respondents.)

NO. H-10403 SF

ORDER ACCEPTING VOLUNTARY SURRENDER

On May 29, 2008, an Accusation was filed in this matter against Respondents ALFREDO BARAJAS, JUAN MANUEL BARAJAS, JANET FINANCIAL, a Corporation, RICHARD STEVEN CRAIN, and, JANET KAYE ROCHA.

By Declaration signed January 30, 2009, Respondents JANET FINANCIAL and RICHARD STEVEN CRAIN, petitioned the Real Estate Commissioner to voluntarily surrender their real estate license(s) pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that the petition of Respondents JANET FINANCIAL and RICHARD STEVEN CRAIN for the voluntary surrender of their real estate

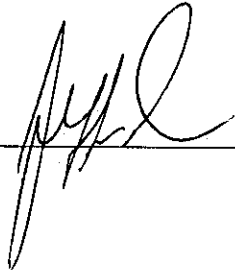
1 license(s) is accepted as of the effective date of this Order as set forth below, based upon the
2 understanding and agreement expressed in the Declaration of Respondents JANET
3 FINANCIAL and RICHARD STEVEN CRAIN dated January 30, 2009 (attached hereto as
4 Exhibit "A").

5 This Order shall become effective at 12 o'clock noon on

6 May 14, 2009.

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8 DATED: 3/24, 2009.

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10 JEFF DAVI
Real Estate Commissioner

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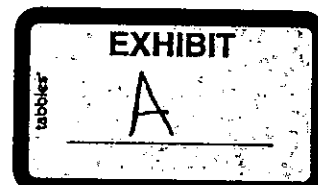
BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	
ALFREDO BARAJAS,)	
JUAN MANUEL BARAJAS,)	NO. H-10403 SF
<u>JANET FINANCIAL</u> , a Corporation,)	
<u>RICHARD STEVEN CRAIN</u> , and,)	
JANET KAYE ROCHA,)	
)	
Respondents.)	

DECLARATION

My name is RICHARD STEVEN CRAIN, and I am currently licensed as a real estate broker individually and as designated officer-broker for JANET FINANCIAL (herein "JL") and have license rights with respect to both licenses. JL and I are represented by James W. Kellenberger, Attorney at Law.

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



1 I understand that by so voluntarily surrendering my license, I may be relicensed as
2 a broker or as a salesperson only by petitioning for reinstatement pursuant to Section 11522 of
3 the Government Code.

4 I understand that by so voluntarily surrendering the license of JL, JL may be
5 relicensed as a broker only by petitioning for reinstatement pursuant to Section 11522 of the
6 Government Code.

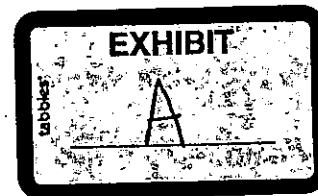
7 I also understand that by so voluntarily surrendering the licenses, JL and I agree to
8 the following:

9 1. The filing of this Declaration shall be deemed as my petition and the
10 petition for JL for voluntary surrender.

11 2. It shall also be deemed to be an understanding and agreement by me on my
12 behalf and on behalf of JL that I and JL waive all rights we have to require the Commissioner to
13 prove the allegations contained in the Accusation filed in this matter at a hearing held in
14 accordance with the provisions of the Administrative Procedure Act (Government Code Sections
15 11400 et seq.), and that I and JL also waive other rights afforded in connection with the hearing
16 such as the right to discovery, the right to present evidence in defense of the allegations in the
17 Accusation and the right to cross-examine witnesses.

18 3. I and JL further agree that upon acceptance by the Commissioner, as
19 evidenced by an appropriate order, all affidavits and all relevant evidence obtained by the
20 Department in this matter prior to the Commissioner's acceptance, and all allegations contained
21 in the Accusation filed in the Department, Case No. H-10403 SF, may be considered by the
22 Department to be true and correct for the purpose of deciding whether to grant relicensure or
23 reinstatement pursuant to Government Code Section 11522.

24 4. JL and I freely and voluntarily surrender all licenses and license rights
25 under the Real Estate Law.
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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 this declaration was executed January 30th, 2009, at Mesquite, California, Reynolds

JANET FINANCIAL
Respondent

By [Signature]
RICHARD STEVEN CRAIN
Designated Officer - Broker

[Signature]
RICHARD STEVEN CRAIN
Respondent



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FILED

APR 24 2009

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
ALFREDO BARAJAS,)
JUAN MANUEL BARAJAS,)
JANET FINANCIAL, a Corporation,)
RICHARD STEVEN CRAIN, and,)
JANET KAYE ROCHA,)
)
Respondents.)

NO. H-10403 SF

ORDER ACCEPTING VOLUNTARY SURRENDER

On May 29, 2008, an Accusation was filed in this matter against Respondents ALFREDO BARAJAS, JUAN MANUEL BARAJAS, JANET FINANCIAL, a Corporation, RICHARD STEVEN CRAIN, and, JANET KAYE ROCHA.

By Declaration signed January 19, 2009, Respondent JANET KAYE ROCHA petitioned the Real Estate Commissioner to voluntarily surrender her real estate license(s) pursuant to Section 10100.2 of the Business and Professions Code.

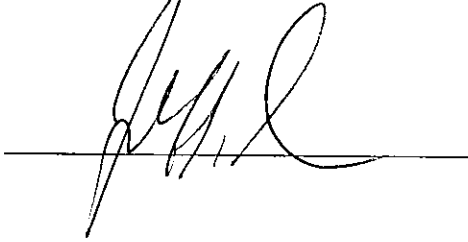
IT IS HEREBY ORDERED that the petition of Respondent JANET KAYE ROCHA for the voluntary surrender of her real estate license(s) is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed

1 in the Declaration of Respondent JANET KAYE ROCHA dated January 19, 2009 (attached
2 hereto as Exhibit "A").

3 This Order shall become effective at 12 o'clock noon on
4 May 14, 2009.

5
6 DATED: 3/27, 2009.

7 JEFF DAVI
8 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

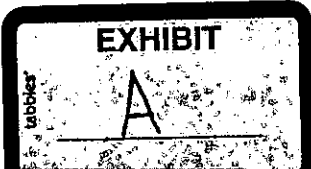
In the Matter of the Accusation of)
)
ALFREDO BARAJAS,)
JUAN MANUEL BARAJAS,) NO. H-10403 SF
JANET FINANCIAL, a Corporation,)
RICHARD STEVEN CRAIN, and,)
JANET KAYE ROCHA,)
)
Respondents.)

DECLARATION

My name is JANET KAYE ROCHA, and I am currently licensed as a real estate broker and have license rights with respect to said license. I am represented by James W. Kellenberger, Attorney at Law.

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

I understand that by so voluntarily surrendering my license, I may be relicensed as a broker only by petitioning for reinstatement pursuant to Section 11522 of the Government Code. I also understand that by so voluntarily surrendering my license, I agree to the following:



1 MARY F. CLARKE, Counsel (SBN 186744)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0791
6 -or- (916) 227-0780 (Direct)

FILED

MAR 17 2009

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13)
14 ALFREDO BARAJAS,)
15 JUAN MANUEL BARAJAS,)
16 MARTIN CARRASCO, JR.,) NO. H-10403 SF
17 JANET FINANCIAL, a Corporation,)
18 RICHARD STEVEN CRAIN, and,) SECOND AMENDED
19 JANET KAYE ROCHA,) ACCUSATION
20)
21 Respondents.)

22 The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of
23 the State of California, for cause of Second Amended Accusation against ALFREDO BARAJAS
24 (herein Respondent "A. BARAJAS"), dba Barajas Real Estate Services (herein Respondent
25 "BRES"), JUAN MANUEL BARAJAS (herein Respondent "J. BARAJAS"), MARTIN
26 CARRASCO, JR. (herein "CARRASCO"), JANET FINANCIAL, a Corporation (herein
27 Respondent "JF"), dba Marina Mortgage, RICHARD STEVEN CRAIN (herein Respondent
"CRAIN"), and JANET KAYE ROCHA (herein Respondent "ROCHA"), (collectively
"Respondents"), is informed and alleges as follows:

1

The Complainant makes this Second Amended Accusation in his official capacity.

At all times mentioned herein Respondents A. BARAJAS, J. BARAJAS, CARRASCO, JF, CRAIN, and ROCHA, were and now are licensed or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (herein the "Code").

At all times herein mentioned:

- (a) Respondent A. BARAJAS was and is licensed by the State of California Department of Real Estate (herein "the Department") as a real estate broker;
- (b) Respondent J. BARAJAS was and is licensed by the Department as a real estate salesperson and in the employ of Respondent A. BARAJAS.
- (c) Respondent CARRASCO was and is licensed by the Department as a salesperson and in the employ of Respondent A. BARAJAS, and whose salesperson license was suspended on about August 11, 2008, for failure to be in compliance with a child support judgment or order, pursuant to Section 17520 of the Family Code.

As a real estate broker, Respondent A. BARAJAS was at all times mentioned herein responsible pursuant to Section 2725 of Title 10, Chapter 6 of the California Code of Regulations (herein "Regulations") for the reasonable supervision of the activities of his agents, real estate licensees, and employees.

At all times herein mentioned:

- (a) Respondent JF was and is licensed by the Department as a corporate real estate broker by and through Respondent CRAIN as designated officer-broker of Respondent JF to qualify said corporation and to act for said corporation as a real estate broker;

- 1 (b) Respondent CRAIN was and is licensed by the Department as a real estate
2 broker, individually, and as designated officer of Respondent JF; and,
3 (c) Respondent ROCHA was and is licensed by the Department as a real estate
4 salesperson and in the employ of Respondent JF.

5 6

6 As said designated officer-broker, Respondent CRAIN was at all times mentioned
7 herein responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of
8 the officers, agents, real estate licensees, and employees of Respondent JF for which a license is
9 required.

10 7

11 Whenever reference is made in an allegation in this Second Amended Accusation
12 to an act or omission of Respondent JF, such allegation shall be deemed to mean that the officers,
13 directors, employees, agents and/or real estate licensees employed by or associated with
14 Respondent JF, including but not necessarily limited to Respondent CRAIN, committed such act
15 or omission while engaged in the furtherance of the business or operations of such corporate
16 Respondent and while acting within the course and scope of their authority and employment.

17 FIRST CAUSE OF ACTION

18 8

19 At all times herein mentioned Respondent A. BARAJAS engaged in the business
20 of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State
21 of California within the meaning of Sections:

- 22 (a) 10131(a) of the Code, the operation and conduct of a real estate brokerage,
23 for compensation or in expectation of compensation, that included the sale
24 or offer of sale, purchase or offer of purchase, solicitation of prospective
25 sellers and purchasers of, solicitation or obtaining listings of, or negotiations
26 of the purchase, sale or exchange of real property or a business opportunity;
27 and,

1 (b) from about October 1, 2006, 10131(d) of the Code, the operation and
2 conduct of a mortgage loan brokerage with the public wherein, on behalf of
3 others, for compensation or in expectation of compensation, wherein
4 Respondents solicited borrowers or lenders for or negotiated loans or
5 collected payments or performed services for borrowers or lenders or note
6 owners in connection with loans secured directly or collaterally by liens on
7 real property.

8 9

9 Between about June 1, 2005 and May 16, 2006, in the course of Respondent
10 A. BARAJAS' real estate brokerage activities, A. BARAJAS and J. BARAJAS (collectively
11 "BARAJAS") represented Lydia Lopez (herein "LOPEZ") in the purchase of real property
12 located at 497 Delridge Drive, San Jose, California (herein "Delridge property"), the purchase
13 price of said real property being \$675,000.00 with a down payment of \$20,250.00.

14 10

15 Between about June 1, 2005 and July 9, 2005, LOPEZ informed Respondent
16 J. BARAJAS, her monthly income from her child care business was between \$2,000.00 and
17 \$3,000.00.

18 11

19 On or about July 9, 2005, Respondent J. BARAJAS represented to LOPEZ,
20 through a Home Buyers Analysis worksheet that he provided to her, that she would obtain a
21 30-year loan (herein the "1st"), with a principal amount of \$540,000.00 with a one and one tenth
22 (1.100) per cent rate of interest, resulting in a monthly loan payment of \$1,762.00. Additionally,
23 Respondent represented to LOPEZ that her monthly payment would go up approximately \$100.00
24 each year. In fact, LOPEZ did not obtain a 30-year loan for a one and one tenth (1.100) per cent
25 rate of interest, contrary to the representation made on Respondent J. BARAJAS's worksheet. In
26 actual fact, LOPEZ received an adjustable rate 1st, which monthly payment, commencing August
27 2005, was \$1,762.00. Said monthly payment increased approximately \$900.00 in the three-year

1 period beginning August 2005, contrary to Respondent J. BARAJAS' representation that it
2 would only increase \$100.00 each year.

3 12

4 On or about July 9, 2005, Respondent J. BARAJAS represented to LOPEZ,
5 through a Home Buyers Analysis worksheet that he provided to her, that she would obtain a
6 30-year loan (herein the "2nd"), with a principal amount of \$67,500.00 at nine and a half (9.5)
7 per cent rate of interest, resulting in a monthly loan payment of \$568.00. In fact, LOPEZ did
8 receive a 2nd with a monthly loan payment of \$568.00, commencing August 2005.

9 13

10 On or about July 9, 2005, Respondent J. BARAJAS represented to LOPEZ,
11 through a Home Buyers Analysis worksheet that he provided to her, that she would obtain a
12 30-year loan (herein the "Barajas 3rd"), with a principal amount of \$67,500.00 at nine and a half
13 (9.5) per cent rate of interest, resulting in a monthly loan payment of \$568.00, commencing
14 August 2005. In fact, LOPEZ did receive the Barajas 3rd.

15 14

16 On about July 9, 2005, after discussing the loan payments with LOPEZ,
17 Respondent J. BARAJAS knew that LOPEZ would have monthly loan payments of about
18 \$2,898.00 (\$1,762.00 + \$568.00 + \$568.00) commencing August 2005, as described in
19 Paragraphs 11 through 13, above, while her income was between \$2,000.00 to \$3,000.00, as
20 described in Paragraph 10, above.

21 15

22 On or about July 9, 2005, LOPEZ, deposited with Commonwealth A LandAmerica
23 Company, a personal check for \$10,000.00 made payable to Land America Common Wealth.

24 16

25 On or about July 13, 2005, LOPEZ and Respondent BRES entered into a loan
26 agreement wherein Respondent BRES loaned LOPEZ \$10,250.00 at zero (0) per cent interest,
27 the entire note to be due and payable in full at the close of escrow.

1 17

2 On or about July 14, 2005, LOPEZ deposited with Commonwealth A
3 LandAmerica Company, by cashier's check, the sum of \$10,250.00, made payable to the Land
4 America Commonwealth Title Company.

5 18

6 On or about July 28, 2005, LOPEZ and Respondent BRES entered into the
7 Barajas 3rd wherein Respondent BRES loaned LOPEZ \$64,037.99 at nine (9) per cent annual rate
8 of interest, interest due beginning August 1, 2005 and continuing until January 1, 2006, at which
9 time the entire note became due and payable, resulting in a monthly payment of about \$480.00.

10 19

11 On or about July 28, 2005, LOPEZ received the sum of \$61,787.99 from
12 Respondent BRES and deposited with Commonwealth A LandAmerica Company, by cashier's
13 check, said sum made payable to Commonwealth Land Title Company.

14 20

15 On or about August 3, 2005, LOPEZ and Respondent BRES, through Respondent
16 A. BARAJAS, entered into the Barajas 3rd, through a Promissory Note Secured By Deed Of
17 Trust for \$64,037.99 at nine (9) per cent annual rate of interest, interest only payments of
18 \$480.28 to commence August 1, 2005, the entire note due and payable on August 1, 2010.

19 21

20 On or about August 3, 2005, LOPEZ commenced making monthly loan payments
21 on all three (3) loans of about \$2,810.00 (\$1,762.00 + \$568.00 + \$480.00).

22 22

23 In connection with the Delridge transaction, as described in Paragraphs 8 through
24 20, above:

- 25 (a) Respondent J. BARAJAS substantially misrepresented the terms of the 1st
26 loan, in violation of Sections 10176(a), (b), (c), and (i) and/or 10177(g)
27 and/or (j) of the Code;

1 (b) Respondent J. BARAJAS steered LOPEZ into a financial arrangement
2 wherein Respondent J. BARAJAS knew or should have known that
3 LOPEZ would be unable to make the scheduled payments, in violation of
4 Sections 10176(a), (b), (c), and (i) and/or 10177(g) and/or (j) of the Code;
5 and,

6 (c) Respondents A. BARAJAS and J. BARAJAS failed to disclose the Barajas
7 3rd to the lender, in violation of Sections 10176(a), (b), (c), and (i) and/or
8 10177(g) and/or (j) of the Code.

9 SECOND CAUSE OF ACTION

10 23

11 There is hereby incorporated in this Second, separate and distinct, Cause of
12 Action all of the allegations contained in Paragraphs 1 through 22 of the Second Amended
13 Accusation with the same force and effect as if herein fully set forth.

14 24

15 Between about September and December 2006, in the course of Respondent
16 A. BARAJAS' real estate brokerage activities, Respondent BARAJAS represented Florencia
17 Mojica (herein "MOJICA") in the purchase of real property located at 1269 Dentwood Drive,
18 San Jose, California 95118 (herein "Dentwood Dr. property"), the purchase price of said real
19 property being about \$650,000.00 with monthly payments of about \$4,300.00. MOJICA informed
20 BARAJAS that her monthly income was about \$3,000.00-\$4,000.00 per month from her business
21 as a housekeeper. Respondent BARAJAS failed to explain to MOJICA that she had a variable
22 rate mortgage and that the rate would increase, leaving her with little chance of refinancing.
23 BARAJAS knew or should have known that MOJICA would have been unable to repay the loan.

24 25

25 At all times mentioned herein, Respondent BARAJAS failed to disclose to
26 MOJICA that the Dentwood Dr. property had a plumbing problem and that the dishwasher did
27 not work, contrary to representations that the dishwasher was in good condition.

Between about December 2007 and March 2008, Respondent BARAJAS advised MOJICA to allow the Dentwood Dr. property to go into foreclosure and purchase another property under someone else's name.

In connection with the Dentwood Dr. property transaction, as described in Paragraphs 23 through 25, above, Respondents BARAJAS:

- (a) substantially misrepresented to MOJICA that she would be able to repay her loan, in violation of Sections 10176(a), (b), (c), and (i) and/or 10177(g) and/or (j) of the Code;
- (b) steered MOJICA into a financial arrangement that BARAJAS knew or should have known would fail, in violation of Sections 10176(a), (b), (c), and (i) and/or 10177(g) and/or (j) of the Code;
- (c) failed to disclose the condition of the Dentwood Dr. property, in violation of Sections 10176(a), (b), (c), and (i) and/or 10177(g) and/or (j) of the Code; and
- (d) Represented that MOJICA should let the Dentwood Dr. property go into foreclosure and purchase another property under the name of someone else, in violation of Sections 10176(i) and/or 10177(g) and/or (j) of the Code.

THIRD CAUSE OF ACTION

There is hereby incorporated in this Third, separate and distinct, Cause of Action all of the allegations contained in Paragraphs 1 through 27 of the Second Amended Accusation with the same force and effect as if herein fully set forth.

Between about June and September 2006, in the course of Respondent A. BARAJAS' real estate brokerage activities, Respondent BARAJAS represented Francisco

1 Javier Gil Alvarado (herein "ALVARADO"), an unsophisticated first time home buyer, in the
2 purchase of real property located at 80 Stewart Ave., San Jose, California 95127 (herein
3 "Stewart Ave. property"), the purchase price of said real property being about \$585,000.00.

4 30

5 On about August 15, 2007, ALVARADO discovered that there was about
6 \$91,521.00 in damages to the property due to dry rot and termite infestations. Respondent
7 BARAJAS failed to provide any information regarding termite, home, or any other inspections,
8 which would have been available to ALVARADO prior to purchase of the property and failed to
9 make appropriate disclosures concerning the condition of the Stewart Ave., property.

10 31

11 In connection with the Stewart Ave., transaction, as described in Paragraphs 28
12 and 29, above Respondent BARAJAS:

- 13 (a) made substantial misrepresentations concerning availability of
14 inspections and the condition of said property, in violation of
15 Sections 10176(a), (b), (c), and (i) and/or 10177(g) and/or (j) of the
16 Code.

17 FOURTH CAUSE OF ACTION

18 32

19 There is hereby incorporated in this Fourth, separate and distinct, Cause of Action
20 all of the allegations contained in Paragraphs 1 through 31 of the Second Amended Accusation
21 with the same force and effect as if herein fully set forth.

22 33

23 Between about November 21, 2008 and January 28, 2009, in the course of
24 Respondent A. BARAJAS' real estate brokerage activities, Respondent CARRASCO
25 represented Aristides T. Garcia (herein "GARCIA"), in the purchase of real property located at
26 43 Harriet Ave., San Jose, California 95127 (herein "Harriet Ave. property"), the purchase price
27 of said real property being about \$223,000.00.

2 At all times mentioned herein, CARRASCO represented to GARCIA that he,
3 GARCIA, would be required to use someone else's bank account, in that GARCIA's funds were
4 in GARCIA's business account and not in his personal account, and that GARCIA would have to
5 pay the sum of \$1,000.00 to each individual on said account for his use of said account.

7 At all times mentioned herein, CARRASCO requested that GARCIA allow
8 CARRASCO the use of GARCIA's business name as an employer for people not employed by
9 GARCIA but who needed to use GARCIA's name in order to qualify for a loan.

11 At all times mentioned herein, GARCIA discovered, when he received his
12 paperwork back from Respondent CARRASCO that his signature had been forged.

14 In connection with the Harriet Ave. property transaction, as described in
15 Paragraphs 33 through 36, above Respondent CARRASCO:

- 16 (a) made substantial misrepresentations concerning GARCIA's loan, in violation of
- 17 Sections 10176(a), (b), (c), and (i) and/or 10177(g) and/or (j) of the Code;
- 18 (b) requested the use of GARCIA's business name to qualify others for loans, in
- 19 violation of Sections 10176(i) and/or 10177(g) and/or (j) of the Code; and,
- 20 (c) performed acts requiring a real estate salesperson license during the time his
- 21 license was suspended, as described in Paragraph 3(c), above, in violation of
- 22 Section 10130 of the Code.

23 FIFTH CAUSE OF ACTION

25 There is hereby incorporated in this Fifth, separate and distinct, Cause of Action
26 all of the allegations contained in Paragraphs 1 through 37 of the Second Amended Accusation
27 with the same force and effect as if herein fully set forth.

At all times mentioned herein, Respondent A. BARAJAS failed to exercise reasonable supervision over the acts of Respondents J. BARAJAS and CARRASCO and his agents and employees in such a manner as to allow the acts and omissions on the part of Respondents J. BARAJAS and CARRASO, described above, to occur, in violation of Section 2725 of the Regulations.

SEVENTH CAUSE OF ACTION

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

At all times herein mentioned Respondents JF and CRAIN engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, wherein Respondents JF and CRAIN 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.

Between approximately January 1, 2005 and September 30, 2007, in connection with Respondent JF's mortgage loan brokerage, Respondent JF:

- (a) prepared a loan application for LOPEZ, through its employee Respondent ROCHA, containing false information, in violation of Sections 10176(a) and (i) of the Code;

\\

1 (b) failed to provide Mortgage Loan Disclosure Statements to the
2 following borrowers:

<u>Borrower</u>	<u>Loan #</u>	<u>Amount</u>
Mello	6440203526	\$295,000
Pelayo, Jose	-----	\$468,000
Barcelos	0092683440	\$573,000
Siviera, Jose/Joao	-----	\$493,600
Vargas	0090528985	\$373,000
Rojo	0091968248	\$100,000
Lopez	9042023713	\$422,400

10 in violation of Section 10240 of the Code;

11 (c) failed to immediately notify the Commissioner in writing that Respondent
12 ROCHA had entered its employ as a real estate salesperson, in violation of
13 Section 10161.8 of the Code and Section 2752 of the Regulations; and,

14 (d) failed to enter into a written broker-salesman relationship agreement
15 with Respondent ROCHA that met all of the requirements of Section
16 2726 of the Regulations.

17 44

18 At all times mentioned herein, Respondent CRAIN failed to exercise reasonable
19 supervision over the acts of Respondent JF and its agents and employees in such a manner as to
20 allow the acts and omissions on the part of Respondent JF, described above, to occur, in violation
21 of Section 10159.2 of the Code and Section 2725 of the Regulations.

22 45

23 The facts alleged above are grounds for the suspension or revocation of the
24 licenses and license rights of Respondents under the following provisions of the Code and/or the
25 Regulations:

26 (a) as to Paragraph 22(a) and BARAJAS under Sections 10176(a), (b), (c), and (i)
27 and/or 10177(g) and/or (j) of the Code;

- 1 (b) as to Paragraph 22(b) and BARAJAS under Sections 10176(a), (b), (c), and (i)
2 and/or 10177(g) and/or (j) of the Code;
- 3 (c) as to Paragraph 22(c) and BARAJAS under Sections 10176(a), (b), (c), and (i)
4 and/or 10177(g) and/or (j) of the Code;
- 5 (d) as to Paragraph 27(a) and BARAJAS under Sections 10176(a), (b), (c), and (i)
6 and/or 10177(g) and/or (j) of the Code;
- 7 (e) as to Paragraph 27(b) and BARAJAS under Sections 10176(a), (b), (c), and (i)
8 and/or 10177(g) and/or (j) of the Code;
- 9 (f) as to Paragraph 27(c) and Respondent J. BARAJAS under Sections 10176(a), (b),
10 (c), and (i) and/or 10177(g) and/or (j) of the Code;
- 11 (g) as to Paragraph 27(d) and BARAJAS under Sections 10176(i) and/or 10177(g)
12 and/or (j) of the Code;
- 13 (h) as to Paragraph 31(a) and BARAJAS under Sections 10176(a), (b), (c), and (i)
14 and/or 10177(g) and/or (j) of the Code;
- 15 (i) as to Paragraph 37(a) and Respondent CARRASCO under Sections 10176(a), (b),
16 (c), and (i) and/or 10177(g) and/or (j) of the Code;
- 17 (j) as to Paragraph 37(b) and Respondents CARRASCO under Sections 10176(a),
18 (b), (c), and (i) and/or 10177(g) and/or (j) of the Code;
- 19 (k) as to Paragraph 37(c) and Respondents CARRASCO under Section 10130 in
20 conjunction with 10177(d) of the Code;
- 21 (l) as to Paragraph 38(a) and Respondent A. BARAJAS under Section 2832 of
22 the Regulations in conjunction with Section 10177(d) of the Code;
- 23 (m) as to Paragraph 38(b) and Respondent A. BARAJAS under Sections 10176(a) and
24 (i) of the Code;
- 25 (n) as to Paragraph 38(c) and Respondent A. BARAJAS under Section 10160 of the
26 Code and Section 2753 of the Regulations in conjunction with Section 10177(d)
27 of the Code;

- 1 (o) as to Paragraph 38(d) and Respondent A. BARAJAS under Section 10159.5 of the
2 Code and Section 2731 of the Regulations in conjunction with Section 10177(d)
3 of the Code;
- 4 (p) as to Paragraph 38(e) and Respondent A. BARAJAS under Section 2726 of the
5 Regulations in conjunction with Section 10177(d) of the Code;
- 6 (q) as to Paragraph 40 and Respondent A. BARAJAS under Section 2725 of the
7 Regulations in conjunction with Section 10177(d) of the Code;
- 8 (r) as to Paragraph 43(a) and Respondent ROCHA under Sections 10176(a) and (i)
9 and/or 10177(j) of the Code;
- 10 (s) as to Paragraph 43(b) and Respondent JF under Section 10240 of the Code in
11 conjunction with Section 10177(d) of the Code;
- 12 (t) as to Paragraph 43(c) and Respondent JF under Section 10161.8 of the Code and
13 Section 2752 of the Regulations in conjunction with Section 10177(d) of
14 the Code;
- 15 (u) as to Paragraph 43(d) and Respondent JF under Section 2726 of the Regulations
16 in conjunction with Section 10177(d) of the Code; and,
- 17 (v) as to Paragraph 44 and Respondent CRAIN under Section 10159.2 and Section
18 2725 of the Regulations in conjunction with Section 10177(d) of the Code.

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

24
25
26 Dated at Sacramento, California
27 this 17th day of March, 2009.



JOE M. CARRILLO
Deputy Real Estate Commissioner

1 MARY F. CLARKE, Counsel (SBN 186744)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0791
6 -or- (916) 227-0780 (Direct)

FILED

FEB 13 2009

DEPARTMENT OF REAL ESTATE

By K. Contreras

7
8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13)
14 ALFREDO BARAJAS,)
15 JUAN MANUEL BARAJAS,) NO. H-10403 SF
16 JANET FINANCIAL, a Corporation,)
17 RICHARD STEVEN CRAIN, and,) FIRST AMENDED
18 JANET KAYE ROCHA,) ACCUSATION
19 Respondents.)
20)

21 The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of
22 the State of California, for cause of First Amended Accusation against ALFREDO BARAJAS
23 (herein Respondent "A. BARAJAS"), dba Barajas Real Estate Services (herein Respondent
24 "BRES"), JUAN MANUEL BARAJAS (herein Respondent "J. BARAJAS"), JANET
25 FINANCIAL, a Corporation (herein Respondent "JF") dba Marina Mortgage, RICHARD
26 STEVEN CRAIN (herein Respondent "CRAIN"), and JANET KAYE ROCHA (herein
27 Respondent "ROCHA") (collectively "Respondents"), is informed and alleges as follows:

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26 The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of
27 the State of California, makes this First Amended Accusation in his official capacity.

At all times mentioned herein Respondents A. BARAJAS, J. BARAJAS, JF, CRAIN, and ROCHA were and now are licensed or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (herein the "Code").

At all times herein mentioned:

- (a) Respondent A. BARAJAS was and is licensed by the State of California Department of Real Estate (herein "the Department") as a real estate broker;
- (b) Respondent J. BARAJAS was and is licensed by the Department as a real estate salesperson and in the employ of Respondent A. BARAJAS.

At all times herein mentioned:

- (a) Respondent JF was and is licensed by the Department as a corporate real estate broker by and through Respondent CRAIN as designated officer-broker of Respondent JF to qualify said corporation and to act for said corporation as a real estate broker;
- (b) Respondent CRAIN was and is licensed by the Department as a real estate broker, individually, and as designated officer of Respondent JF; and,
- (c) Respondent ROCHA was and is licensed by the Department as a real estate salesperson and in the employ of Respondent JF.

As said designated officer-broker, Respondent CRAIN was at all times mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of Respondent JF for which a license is required.

Whenever reference is made in an allegation in this First Amended Accusation to an act or omission of Respondent JF, such allegation shall be deemed to mean that the officers, directors, employees, agents and/or real estate licensees employed by or associated with Respondent JF, including but not necessarily limited to Respondent CRAIN, committed such act or omission while engaged in the furtherance of the business or operations of such corporate Respondent and while acting within the course and scope of their authority and employment.

FIRST CAUSE OF ACTION

At all times herein mentioned Respondent A. BARAJAS 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 Sections:

- (a) 10131(a) of the Code, the operation and conduct of a real estate brokerage, for compensation or in expectation of compensation, that included the sale or offer of sale, purchase or offer of purchase, solicitation of prospective sellers and purchasers of, solicitation or obtaining listings of, or negotiations of the purchase, sale or exchange of real property or a business opportunity; and,
- (b) from about October 1, 2006, 10131(d) of the Code, the operation and conduct of a mortgage loan brokerage with the public wherein, on behalf of others, for compensation or in expectation of compensation, wherein 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.

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Between about June 1, 2005 and May 16, 2006, in the course of Respondent A. BARAJAS' real estate brokerage activities, Respondent J. BARAJAS represented Lydia Lopez (herein "LOPEZ") in the purchase of real property located at 497 Delridge Drive, San Jose, California (herein "Delridge property"), the purchase price of said real property being \$675,000.00 with a down payment of \$20,250.00.

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Between about June 1, 2005 and July 9, 2005, LOPEZ informed Respondent J. BARAJAS, her monthly income from her child care business was between \$2,000.00 and \$3,000.00.

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On or about July 9, 2005, Respondent J. BARAJAS represented to LOPEZ, through a Home Buyers Analysis worksheet that he provided to her, that she would obtain a 30-year loan (herein the "1st"), with a principal amount of \$540,000.00 with a one and one tenth (1.100) per cent rate of interest, resulting in a monthly loan payment of \$1,762.00. Additionally, Respondent represented to LOPEZ that her monthly payment would go up approximately \$100.00 each year. In fact, LOPEZ did not obtain a 30-year loan for a one and one tenth (1.100) per cent rate of interest, contrary to the representation made on Respondent J. BARAJAS's worksheet. Rather, LOPEZ received an adjustable rate 1st, which monthly payment, commencing August 2005, was \$1,762.00. Said monthly payment increased approximately \$900.00 in the three-year period beginning August 2005, contrary to Respondent J. BARAJAS' representation that it would only increase \$100.00 each year.

11

On or about July 9, 2005, Respondent J. BARAJAS represented to LOPEZ, through a Home Buyers Analysis worksheet that he provided to her, that she would obtain a 30-year loan (herein the "2nd"), with a principal amount of \$67,500.00 at a nine and a half (9.5) per cent rate of interest, resulting in a monthly loan payment of \$568.00. In fact, LOPEZ did receive a 2nd with a monthly loan payment of \$568.00, commencing August 2005.

On or about July 9, 2005, Respondent J. BARAJAS represented to LOPEZ, through a Home Buyers Analysis worksheet that he provided to her, that she would obtain a 30-year loan (herein the "Barajas 3rd"), with a principal amount of \$67,500.00 at a nine and a half (9.5) per cent rate of interest, resulting in a monthly loan payment of \$568.00, commencing August 2005. In fact, LOPEZ did receive the Barajas 3rd, as referenced in Paragraphs 17 and 19, below.

On about July 9, 2005, after discussing the loan payments with LOPEZ, Respondent J. BARAJAS knew that LOPEZ would have monthly loan payments of about \$2,898.00 (\$1,762.00 + \$568.00 + \$568.00) commencing August 2005, as described in Paragraphs 10 through 12, above, while her income was between \$2,000.00 to \$3,000.00, as described in Paragraph 9, above.

On or about July 9, 2005, LOPEZ, deposited with Commonwealth A LandAmerica Company, a personal check for \$10,000.00 made payable to Land America Common Wealth.

On or about July 13, 2005, LOPEZ and Respondent BRES entered into a loan agreement wherein Respondent BRES loaned LOPEZ \$10,250.00 at zero (0) per cent interest, the entire note to be due and payable in full at the close of escrow.

On or about July 14, 2005, LOPEZ deposited with Commonwealth A LandAmerica Company, by cashier's check, the sum of \$10,250.00, made payable to the Land America Commonwealth Title Company.

On or about July 28, 2005, LOPEZ and Respondent BRES entered into the Barajas 3rd, wherein Respondent BRES loaned LOPEZ \$64,037.99 at a nine (9) per cent annual

1 rate of interest, interest due beginning August 1, 2005 and continuing until January 1, 2006, at
2 which time the entire note became due and payable, resulting in a monthly payment of about
3 \$480.00.

4 18

5 On or about July 28, 2005, LOPEZ received the sum of \$61,787.99 from
6 Respondent BRES and deposited with Commonwealth A LandAmerica Company, by cashier's
7 check, said sum made payable to Commonwealth Land Title Company.

8 19

9 On or about August 3, 2005, LOPEZ and Respondent BRES, through Respondent
10 A. BARAJAS, entered into the Barajas 3rd, through a Promissory Note Secured By Deed Of
11 Trust for \$64,037.99 at a nine (9) per cent annual rate of interest, interest only payments of
12 \$480.28 to commence August 1, 2005, the entire note due and payable on August 1, 2010.

13 20

14 On or about August 3, 2005, LOPEZ commenced making monthly loan payments
15 on all three (3) loans of about \$2,810 (\$1,762.00 + \$568.00 + \$480.00).

16 21

17 In connection with the Delridge transaction, as described in Paragraphs 8 through
18 20, above:

- 19 (a) Respondent J. BARAJAS substantially misrepresented the terms of the 1st
20 loan, in violation of Sections 10176(a) and (i) and/or 10177(j) of the Code;
- 21 (b) Respondent J. BARAJAS steered LOPEZ into a financial arrangement
22 wherein Respondent J. BARAJAS knew or should have known that LOPEZ
23 would be unable to make the scheduled payments, in violation of Sections
24 10176(i) and or 10177(j) of the Code; and,
- 25 (c) Respondents A. BARAJAS and J. BARAJAS failed to disclose the Barajas
26 3rd to the lender, in violation of Sections 10176(i) and/or 10177(j) of the
27 Code.

1 (e) failed to enter into a written broker-salesman relationship agreement
2 with Respondent J. BARAJAS, in violation of Section 2726 of the
3 Regulations.

4 THIRD CAUSE OF ACTION

5 24

6 There is hereby incorporated in this Third, separate and distinct, Cause of Action
7 all of the allegations contained in Paragraphs 1 through 23 of the First Amended Accusation with
8 the same force and effect as if herein fully set forth.

9 25

10 At all times herein mentioned Respondents JF and CRAIN engaged in the
11 business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within
12 the State of California within the meaning of Section 10131(d) of the Code, including the
13 operation and conduct of a mortgage loan brokerage with the public wherein, on behalf of others,
14 for compensation or in expectation of compensation, wherein Respondents JF and CRAIN
15 solicited borrowers or lenders for or negotiated loans or collected payments or performed
16 services for borrowers or lenders or note owners in connection with loans secured directly or
17 collaterally by liens on real property.

18 26

19 Between approximately January 1, 2005 and September 30, 2007, in connection
20 with Respondent JF's mortgage loan brokerage, Respondent JF:

- 21 (a) prepared a loan application for LOPEZ, through its employee
22 Respondent ROCHA, containing false information, in violation
23 of Sections 10176(a) and (i) of the Code;
- 24 (b) failed to provide Mortgage Loan Disclosure Statements to the
25 following borrowers:

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<u>Borrower</u>	<u>Loan #</u>	<u>Amount</u>
Mello	6440203526	\$295,000
Pelayo, Jose	-----	\$468,000
Barcelos	0092683440	\$573,000
Siviera, Jose/Joao	-----	\$493,600
Vargas	0090528985	\$373,000
Rojo	0091968248	\$100,000
Lopez	9042023713	\$422,400

in violation of Section 10240 of the Code;

- (c) failed to immediately notify the Commissioner in writing that Respondent ROCHA had entered its employ as a real estate salesperson, in violation of Section 10161.8 of the Code and Section 2752 of the Regulations; and,
- (d) failed to enter into a written broker-salesman relationship agreement with Respondent ROCHA that met all of the requirements of Section 2726 of the Regulations.

27

At all times mentioned herein, Respondent CRAIN failed to exercise reasonable supervision over the acts of Respondent JF and its agents and employees in such a manner as to allow the acts and omissions on the part of Respondent JF, described above, to occur, in violation of Section 10159.2 of the Code and Section 2725 of the Regulations.

MATTER IN AGGRAVATION

28

Respondent BRES entered into a loan transaction with Florencia Mojica (herein "MOJICA") and in so doing, failed to explain loan terms and failed to ensure that MOJICA understood: 1) the interest rate, 2) whether the loan was a fixed rate or adjustable rate loan, 3) her minimum payment options, 4) prepayment penalty, 5) term/length of the loan, and 6) loan fees and costs. Additionally, MOJICA did not receive the loan she expected to receive. MOJICA would not obtain this type of loan again.

1
2 The facts alleged above are grounds for the suspension or revocation of the
3 licenses and license rights of Respondents under the following provisions of the Code and/or the
4 Regulations:

- 5 (a) as to Paragraph 21(a) and J. BARAJAS under Sections 10176(a) and
6 (i) and/or 10177(j) of the Code;
- 7 (b) as to Paragraph 21(b) and Respondent J. BARAJAS under Sections
8 10176(i) and/or 10177(j) of the Code;
- 9 (c) as to Paragraph 21(c) and Respondents A. BARAJAS and
10 J. BARAJAS under Sections 10176(i) and/or Section 10177(j) of the
11 Code;
- 12 (d) as to Paragraph 23(a) and Respondent A. BARAJAS under Section
13 2832 of the Regulations in conjunction with Section 10177(d) of the
14 Code;
- 15 (d) as to Paragraph 23(b) and Respondent A. BARAJAS under Sections
16 10176(a) and (i) of the Code;
- 17 (e) as to Paragraph 23(c) and Respondent A. BARAJAS under Section
18 10160 of the Code and Section 2753 of the Regulations in conjunction
19 with Section 10177(d) of the Code;
- 20 (f) as to Paragraph 23(d) and Respondent A. BARAJAS under Section
21 10159.5 of the Code and Section 2731 of the Regulations in
22 conjunction with Section 10177(d) of the Code;
- 23 (g) as to Paragraph 23(e) and Respondent A. BARAJAS under Section
24 2726 of the Regulations in conjunction with Section 10177(d) of the
25 Code;
- 26 (h) as to Paragraph 26(a) and Respondent ROCHA under Sections
27 10176(a) and (i) and/or 10177(j) of the Code;

- 1 (i) as to Paragraph 26(b) and Respondent JF under Section 10240 of the
2 Code in conjunction with Section 10177(d) of the Code;
- 3 (j) as to Paragraph 26(c) and Respondent JF under Section 10161.8 of the
4 Code and Section 2752 of the Regulations in conjunction with Section
5 10177(d) of the Code;
- 6 (k) as to Paragraph 26(d) and Respondent JF under Section 2726 of the
7 Regulations in conjunction with Section 10177(d) of the Code; and,
- 8 (l) as to Paragraph 27 and Respondent CRAIN under Section 10159.2 and
9 Section 2725 of the Regulations in conjunction with Section 10177(d)
10 of the Code.

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

16
17
18 
19 JOE M. CARRILLO
20 Deputy Real Estate Commissioner

21
22 Dated at Sacramento, California
23 this 13th day of February, 2009.

1 MARY F. CLARKE, Counsel (SBN 186744)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

FILED

MAY 29 2008

4 Telephone: (916) 227-0791
5 -or- (916) 227-0780 (Direct)

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

10 In the Matter of the Accusation of)
11)
11 ALFREDO BARAJAS,)
12 JUAN MANUEL BARAJAS,)
12 JANET FINANCIAL, a Corporation,)
13 RICHARD STEVEN CRAIN, and,)
13 JANET KAYE ROCHA,)
14)
14 Respondents.)

NO. H-10403 SF
ACCUSATION

15 The Complainant, E. J. HABERER II, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against ALFREDO BARAJAS (herein Respondent "A. BARAJAS") dba
18 Barajas Real Estate Services (herein Respondent "BRES"), JUAN
19 MANUEL BARAJAS (herein Respondent "J. BARAJAS"), JANET FINANCIAL,
20 a Corporation (herein Respondent "JF") dba Marina Mortgage,
21 RICHARD STEVEN CRAIN (herein Respondent "CRAIN"), and JANET KAYE
22 ROCHA (herein Respondent "ROCHA") (collectively "Respondents"),
23 is informed and alleges as follows:

24 I

25 The Complainant, E. J. HABERER II, a Deputy Real Estate
26 Commissioner of the State of California, makes this Accusation in
27 his official capacity.

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II

At all times mentioned herein Respondents A. BARAJAS, J. BARAJAS, JF, CRAIN, and ROCHA were and now are licensed or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (herein the "Code").

III

At all times herein mentioned:

- (a) Respondent A. BARAJAS was and is licensed by the Department of Real Estate of the State of California (herein "the Department") as a real estate broker;
- (b) Respondent J. BARAJAS was and is licensed by the Department as a real estate salesperson and in the employ of Respondent A. BARAJAS.

IV

At all times herein mentioned:

- (a) Respondent JF was and is licensed by the Department as a corporate real estate broker by and through Respondent CRAIN as designated officer-broker of Respondent JF to qualify said corporation and to act for said corporation as a real estate broker;
- (b) Respondent CRAIN was and is licensed by the Department as a real estate broker, individually, and as designated officer of Respondent JF; and,
- (c) Respondent ROCHA was and is licensed by the Department as a real estate salesperson and in the employ of Respondent JF.

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V

As said designated officer-broker, Respondent CRAIN was at all times mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of Respondent JF for which a license is required.

VI

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent JF, such allegation shall be deemed to mean that the officers, directors, employees, agents and/or real estate licensees employed by or associated with Respondent JF, including but not necessarily limited to Respondent CRAIN, committed such act or omission while engaged in the furtherance of the business or operations of such corporate Respondent and while acting within the course and scope of their authority and employment.

FIRST CAUSE OF ACTION

VII

At all times herein mentioned Respondent A. BARAJAS 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 Sections:

- (a) 10131(a) of the Code, including the operation and conduct of a real estate brokerage, for compensation or in expectation of compensation, that included the sale or offer of sale, purchase or offer of purchase, solicitation of prospective sellers and purchasers of,

1 solicitation or obtaining listings of, or negotiations
2 of the purchase, sale or exchange of real property or
3 a business opportunity; and,

4 (b) 10131(d) of the Code, including the operation and
5 conduct of a mortgage loan brokerage with the public
6 wherein, on behalf of others, for compensation or in
7 expectation of compensation, wherein Respondents
8 solicited borrowers or lenders for or negotiated loans
9 or collected payments or performed services for
10 borrowers or lenders or note owners in connection with
11 loans secured directly or collaterally by liens on
12 real property.

13 VIII

14 Between on or about June 1, 2005 and May 16, 2006, in
15 the course of Respondent A. BARAJAS' real estate brokerage
16 activities, Respondent J. BARAJAS represented Lydia Lopez
17 (herein "LOPEZ") in the purchase of a real property located at
18 497 Delridge Drive, San Jose, California (herein "Delridge
19 property"), the purchase price of said real property being
20 \$675,000.00 with a down payment of \$20,250.00.

21 IX

22 On or about July 9, 2005, LOPEZ, deposited with
23 Commonwealth A LandAmerica Company, a personal check for
24 \$10,000.00 made payable to Land America Common Wealth.

25 X

26 On or about July 13, 2005, LOPEZ and Respondent BRES
27 entered into a loan agreement wherein Respondent BRES loaned

1 LOPEZ \$10,250.00 at 0 per cent interest, the entire note to be
2 due and payable in full at the close of escrow.

3 XI

4 On or about July 14, 2005, LOPEZ deposited with
5 Commonwealth A LandAmerica Company, by cashier's check, the sum
6 of \$10,250.00, made payable to the Land America Commonwealth
7 Title Company.

8 XII

9 On or about July 28, 2005, LOPEZ and Respondent BRES
10 entered into a loan agreement wherein Respondent BRES loaned
11 LOPEZ \$64,037.99 at a nine (9) per cent annual rate of interest,
12 interest due beginning August 1, 2005 and continuing until
13 January 1, 2006, at which time the entire note became due and
14 payable.

15 XIII

16 On or about July 28, 2005, LOPEZ received the sum of
17 \$61,787.99 from Respondent BRES and deposited with Commonwealth A
18 LandAmerica Company, by cashier's check, said sum made payable to
19 Commonwealth Land Title Company.

20 XIV

21 On or about August 3, 2005, LOPEZ and Respondent BRES,
22 through Respondent A. BARAJAS, entered into a Promissory Note
23 Secured By Deed Of Trust for \$64,037.99 at a nine (9) per cent
24 annual rate of interest, interest only payments of \$480.28 to
25 commence August 1, 2005, the entire note due and payable on
26 August 1, 2010 (herein "BRES 3rd").

27 \\\

1 XV

2 In connection with the BRES 3rd loan as described in
3 Paragraph XIII, above, Respondents:

- 4 (a) failed to disclose the BRES 3rd loan to the lender, in
5 violation of Section 10176(a) and (i) of the Code; and,
6 (b) originated a covered loan, as defined in Section 4970
7 of the Financial Code, wherein Respondent J. BARAJAS
8 did not reasonably believe LOPEZ would be able to make
9 the scheduled payments in violation of Section 10176(i)
10 of the Code and Section 4973(f)(1) of the Financial Code.

11 SECOND CAUSE OF ACTION

12 XVI

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

17 XVII

18 Between approximately January 1, 2005 and September 30,
19 2007, in connection with Respondent A BARAJAS' property resale
20 and mortgage loan brokerages, Respondent:

- 21 (a) failed to deposit an earnest money deposit check for
22 the Berta A. Alfaro purchase of 768 Calla Drive,
23 Santa Clara, California (herein "Calla Drive property")
24 within three business days after acceptance of the
25 offer, in violation of Section 2832 of Title 10,
26 Chapter 6 of the California Code of Regulations
27 (herein "Regulations");

1 (b) represented that earnest money deposits had been
2 received for said Calla Drive property on the
3 Residential Purchase Agreement and real property
4 located at 1666 Alum Rock Avenue, Santa Clara,
5 California on the Residential Income Property
6 Purchase Agreement, when, in fact, they had not
7 been received, in violation of 10176(a) and (i) of
8 the Code;

9 (c) failed to maintain possession of the license of
10 Oscar Nunez, a licensed salesperson in his employ,
11 in violation of Section 10160 of the Code and
12 Section 2753 of the Regulations;

13 (d) performed real estate activity under the
14 fictitious business name of "Barajas Real Estate
15 Services" without first obtaining a license
16 bearing such fictitious name, in violation of
17 Section 10159.5 of the Code and Section 2731 of
18 the Regulations; and,

19 (e) failed to enter into a written broker-salesman
20 relationship agreement with Respondent J. BARAJAS,
21 in violation of Section 2726 of the Regulations.

22 THIRD CAUSE OF ACTION

23 XVIII

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

1 XIX

2 At all times herein mentioned Respondents JF and CRAIN
3 engaged in the business of, acted in the capacity of, advertised,
4 or assumed to act as real estate brokers within the State of
5 California within the meaning of Section 10131(d) of the Code,
6 including the operation and conduct of a mortgage loan brokerage
7 with the public wherein, on behalf of others, for compensation
8 or in expectation of compensation, wherein Respondents solicited
9 borrowers or lenders for or negotiated loans or collected
10 payments or performed services for borrowers or lenders or note
11 owners in connection with loans secured directly or collaterally
12 by liens on real property.

13 XX

14 Between approximately January 1, 2005 and September 30,
15 2007, in connection with Respondent JF's mortgage loan brokerage,
16 Respondent JF:

- 17 (a) prepared a loan application for LOPEZ, through its
18 employee Respondent ROCHA, containing false
19 information, in violation of Section 10176(a) and (i)
20 of the Code;
- 21 (b) failed to provide Mortgage Loan Disclosure Statements
22 to the following borrowers:

<u>Borrower</u>	<u>Loan #</u>	<u>Amount</u>
Mello	6440203526	\$295,000
Pelayo, Jose	-----	\$468,000
Barcelos	00926834400	\$573,000
Siviera, Jose/Joao	-----	\$493,600
Vargas	0090528985	\$373,000
Rojo	0091968248	\$100,000
Lopez	9042023713	\$422,400

27 in violation of Section 10240 of the Code;

1 (c) failed to immediately notify the Commissioner in
2 writing that Respondent ROCHA had entered its employ
3 as a real estate salesperson, in violation of
4 Section 10161.8 of the Code and Section 2752 of the
5 Regulations; and

6 (d) failed to enter into a written broker-salesman
7 relationship agreement with Respondent ROCHA that met
8 all of the requirements of Section 2726 of the
9 Regulations.

10 XXI

11 At all times mentioned herein, Respondent CRAIN failed
12 to exercise reasonable supervision over the acts of Respondent JF
13 and its agents and employees in such a manner as to allow the
14 acts and omissions on the part of Respondent JF, described
15 above, to occur, in violation of Section 10159.2 of the Code
16 and Section 2725 of the Regulations.

17 XXII

18 The facts alleged above are grounds for the suspension
19 or revocation of the licenses and license rights of Respondents
20 under the following provisions of the Code and/or the
21 Regulations:

22 (a) as to Paragraph XV(a) and Respondents A. BARAJAS and
23 J. BARAJAS under Section 10176(a) and (i) of the Code;

24 (b) as to Paragraph XV(b) and Respondent J. BARAJAS
25 under Section 4973(f)(1) of the Financial Code and
26 Section 10176(i) of the Code in conjunction with
27 Section 4975 of the Financial Code;

- 1 (c) as to Paragraph XVII(a) and Respondent A. BARAJAS
2 under Section 2832 of the Regulations in conjunction
3 with Section 10177(d) of the Code;
- 4 (d) as to Paragraph XVII(b) and Respondent A. BARAJAS
5 under Sections 10176(a) and (i) of the Code;
- 6 (e) as to Paragraph XVII(c) and Respondent A. BARAJAS
7 under Section 10160 of the Code and Section 2753 of
8 the Regulations in conjunction with Section 10177(d)
9 of the Code;
- 10 (f) as to Paragraph XVII(d) and Respondent A. BARAJAS
11 under Section 10159.5 of the Code and Section 2731 of
12 the Regulations in conjunction with Section 10177(d)
13 of the Code;
- 14 (g) as to Paragraph XVII(e) and Respondent A. BARAJAS
15 under Section 2726 of the Regulations in conjunction
16 with Section 10177(d) of the Code;
- 17 (h) as to Paragraph XX(a) and Respondent ROCHA under
18 Section 10176(a) and (i) of the Code;
- 19 (i) as to Paragraph XX(b) and Respondent JF under
20 Section 10240 of the Code in conjunction with
21 Section 10177(d) of the Code;
- 22 (j) as to Paragraph XX(c) and Respondent JF under
23 Section 10161.8 of the Code and Section 2752 of the
24 Regulations in conjunction with Section 10177(d) of
25 the Code;


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1 (k) as to Paragraph XX(d) and Respondent JF under
2 Section 2726 of the Regulations in conjunction with
3 Section 10177(d) of the Code; and,

4 (l) as to Paragraph XXI and Respondent CRAIN under
5 Section 10159.2 and Section 2725 of the Regulations
6 in conjunction with Section 10177(d) of the Code.

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

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16 
17 E. J. HABERER II
18 Deputy Real Estate Commissioner
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20 Dated at Oakland, California
21 this 28TH day of May, 2008.
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