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1 MICHAEL B. RICH, Counsel  
2 State Bar No. 84257  
3 Department of Real Estate  
4 P. O. Box 187007  
5 Sacramento, CA 95818-7007  
6  
7 Telephone: (916) 227-0789

**FILED**  
AUG 10 2009  
DEPARTMENT OF REAL ESTATE  
By L. Frost

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of )  
12 ) NO. H-10750 SF  
13 )  
14 MARTHA LOPEZ-CHUBB dba )  
15 SURF CITY REAL ESTATE AND HOME LOANS, )  
Respondent. )

16 The Complainant, E. J. HABERER II, a Deputy Real Estate Commissioner of the  
17 State of California, for Causes of Accusation against MARTHA LOPEZ-CHUBB doing  
18 business under the fictitious name of SURF CITY REAL ESTATE AND HOME LOANS, is  
19 informed and alleges as follows:

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21 Respondent MARTHA LOPEZ-CHUBB doing business under the fictitious  
22 name of SURF CITY REAL ESTATE AND HOME LOANS (hereinafter "Respondent") is  
23 presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of  
24 the California Business and Professions Code (hereinafter "the Code").

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

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

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At all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the meaning of Section 10131(d) of the Code, including soliciting borrowers or lenders for or negotiating loans or collecting payments or performing services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

FIRST CAUSE OF ACTION

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

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At all time herein mentioned, while acting as a real estate broker as described in Paragraph 4, above, Respondent accepted or received funds in trust (hereinafter "trust funds") from or on behalf of lenders, borrowers and/or others in connection with mortgage lending activities.

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Within the three year period prior to the filing of this Accusation, in connection with the collection and disbursement of trust funds, the aforesaid trust funds accepted or received by Respondent were deposited or caused to be deposited by Respondent into a bank account maintained by Respondent at Bank of America, 4525 Scotts Valley Drive, in Scotts Valley, California, entitled "Home Resolution & Credit Services," and identified as account number 11293-67772 (hereinafter "Account #1).

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2           Within the three year period prior to the filing of this Accusation, in connection  
3 with the collection and disbursement of trust funds, Respondent failed to deposit into and  
4 maintain the trust funds in a trust account or neutral escrow depository, or to deliver the trust  
5 funds into the hands of the owners of the funds, as required by Section 10145 of the Code, when  
6 such funds were deposited to Account #1.

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8           Within the three year period prior to the filing of this Accusation, in connection  
9 with the collection and disbursement of trust funds, as alleged above, Respondent:

- 10           (a) Failed to designate Account #1 as a trust account in the name of the  
11 broker as trustee and deposited client trust funds into that account in  
12 violation of Chapter 6, Title 10, California Code of Regulations, Section  
13 2832 (hereinafter "Regulations") and Section 10145 of the Code;
- 14           (b) Failed to keep a separate record for each beneficiary or transaction,  
15 accounting for all funds that have been deposited to Account #1  
16 containing all of the information required by Section 2831.1 of the  
17 Regulations, including, but not limited to an accurate daily balance after  
18 posting transactions, amounts disbursed, and dates of disbursement;
- 19           (c) Failed to reconcile the balance of separate beneficiary or transaction  
20 records with the control records of trust funds received and disbursed at  
21 least once a month, and/or failed to maintain a record of such  
22 reconciliations as required by Section 2831.2 of the Regulations for  
23 Account #1; and,
- 24           (d) Permitted Monica Martinez, a person licensed by the Department as a real  
25 estate salesperson, but who was not on record with the Department of  
26 Real Estate as having been licensed with Respondent, to be a signatory on  
27 Account #1 in violation of Section 2834 of the Regulations.

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The acts and/or omissions of Respondent as alleged above constitute cause for the suspension or revocation of the licenses and license rights of Respondent under the following provisions:

- (a) As alleged in Paragraph 8, under Section 10145 of the Code and Section 2832 of the Regulations in conjunction with Section 10177(d) of the Code;
- (b) As alleged in Paragraph 9(a), under Section 2832 of the Regulations in conjunction with Section 10177(d) of the Code;
- (c) As alleged in Paragraph 9(b) under Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (d) As alleged in Paragraph 9(c), under Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code; and,
- (e) As alleged in Paragraph 9(d), under Section 2834 of the Regulations in conjunction with Section 10177(d) of the Code.

SECOND CAUSE OF ACTION

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

Within the three year period prior to the filing of this Accusation, Respondent maintained more than one place of business and failed to apply for and procure an additional license for the branch office Respondent maintained at 2110 Story Road, Suite 201, in San Jose, California, in violation of Section 2715 of the Regulations and Section 10163 of the Code.

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Within the three year period prior to the filing of this Accusation, Respondent employed Jorge Zegarra, Rossana Marvin, and Maria Casillas as licensed real estate salespersons. Respondent did not notify the Commissioner of the Department of Real Estate of her employment of Jorge Zegarra, Rossana Marvin, and Maria Casillas in violation of Section 10161.8 of the Code and Section 2752 of the Regulations.

The acts and/or omissions of Respondent as alleged above constitute cause for the suspension or revocation of the licenses and license rights of Respondent under the following provisions:

- (a) As alleged in Paragraph 12, under the provisions of Section 10163 in conjunction with Section 10165 and Section 10177(d) of the Code; and,
- (b) As alleged in Paragraph 13, under Section 2752 of the Regulations in conjunction with Section 10177(d) of the Code and under Section 10161.8 of the Code in conjunction with Sections 10165 and 10177(d) 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 14, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

At no time prior to August 26, 2008, was Home Resolution and Credit Services, Inc., a California corporation (hereinafter "HRCSD), licensed by the Department as a real estate broker.

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Within the three year period prior to the filing of this Accusation and prior to August 26, 2008, Respondent employed HRCSI to perform and engage in the activities set forth in Paragraph 4, above, for which a real estate license is required, for or in expectation of compensation.

Within the three year period prior to the filing of this Accusation and prior to August 26, 2008, in the course of the activities described in Paragraphs 4 and 17, above, HRCSI, while unlicensed, solicited borrowers and lenders and/or negotiated loans secured directly or collaterally by liens on real property, wherein such loans were brokered, arranged, processed, and/or consummated on behalf of others pursuant to Section 10131(d) of the Code, for or in expectation of compensation, including, but not limited to, the following transaction:

<u>Borrower</u>	<u>Property</u>	<u>Lender</u>	<u>Modification Request to Lender</u>
Pedro Nuño and Xiomara Nuño	386 Gloria Avenue San Jose, California	Indymac	7/18/08

The facts alleged in Paragraphs 16, 17 and 18, above, constitute cause for the suspension or revocation of the licenses and license rights of Respondent under Sections 10130 and 10137 of the Code in conjunction with Section 10177(d) the Code.

FOURTH CAUSE OF ACTION

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

Within the three period prior to the filing of this Accusation, in connection with the real estate activities described in Paragraph 4, above, Respondent claimed, demanded,

1 charged, received, collected, and contracted in writing for advance fees from borrowers for  
 2 services Respondent was to perform thereafter in obtaining modifications of loans secured or to  
 3 be secured directly or collaterally by liens on the borrowers' real property including, but not  
 4 limited to, the following transactions:

<u>Borrower</u>	<u>Property</u>	<u>Contract Date</u>	<u>Advance Fee Collected</u>
6 Pedro Nuño and 7 Xiomara Nuño	386 Gloria Avenue San Jose, California	7/4/08	\$2,500.00
8 Ezequiel Hernandez	27021 Jennings Way Hayward, California	10/21/08	\$2,500.00
9 Franklin Castillo	133 Aguacate Court San Jose, California	11/22/08	\$2,500.00
11 Gilberto Orihuela	1751 Eugenia Avenue Hayward, California	11/12/08	\$2,500.00
13 Jorge Figuerora and 14 Maria Aguirre	3287 Arthur Avenue San Jose, California	12/20/08	\$2,500.00
15 Mariel Cabaoig	2886 El Monte Way San Jose, California	12/30/08	\$2,500.00
17 Calvin Ly and 18 Kristina Khuu	1972 Moriset Way San Jose, California	12/31/08	\$2,500.00
19 Amadeo Cruz Luna	2148 Terilyn Avenue San Jose, California	12/31/08	\$2,500.00
20 Fidencio Guzman	13541 Woodburn Way San Jose, California	3/5/09	\$2,500.00

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23 Each of the fees described in Paragraph 21, above, constituted an "advance fee"  
 24 within the meaning of Sections 10026 and 10131.2 of the Code. Said fees constituted trust funds  
 25 within the meaning of Sections 10145 and 10146 of the Code.

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Within the three year period prior to the filing of this Accusation, in each written advance fee contract described in Paragraph 21, above, Respondent represented to each borrower that: 1.) Respondent would "comply with all applicable laws in regards to handling of trust accounts;" 2.) Respondent would deposit the advance fees "when collected in a trust account with a bank or other recognized depository;" and, 3.) the trust account had "been established in the name of *Martha Lopez-Chubb . . . .*"

Respondent's representations as described in Paragraph 23, above, were false or misleading and were known by Respondent to be false or misleading when made or were made by Respondent with no reasonable grounds for believing said representations to be true. In truth and in fact: 1.) Respondent failed to comply with all applicable laws in regard to the handling of said borrowers' trust funds as set forth in Paragraphs 8 and 9, above; and, 2.) Respondent failed to immediately deliver said trust funds into a neutral escrow depository, or into an account designated as a trust account in the name of the broker in violation of Sections 10145 and 10146 of the Code.

Respondent failed to disclose to the borrowers the true facts that: 1.) Borrowers' funds were not deposited into a bank account designated as a trust account as set forth in Paragraphs 8 and 9, above; 2.) the account into which said funds were deposited was not in Respondent's name as broker as set forth in Paragraph 9, above; 3.) Respondent failed to keep separate beneficiary records as set forth in Paragraph 9, above; 4.) Respondent failed to reconcile the balance of separate beneficiary transactions as set forth in Paragraph 9, above; and, 5.) Respondent had allowed a salesperson licensee not employed under Respondent's broker's license to be a signatory on the account where trust funds were held as set forth in Paragraph 9, above.

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Respondent's acts and omissions as described in Paragraphs 23, 24, and 25, above, constituted misrepresentations, fraud, and dishonest dealing.

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The facts alleged in Paragraphs 23, 24, 25, and 26, above, are grounds for the suspension or revocation of the license and license rights of Respondent under Sections 10176(a), 10176(i), 10177(g), and/or 10177(j) of the Code, and Section 10146 of the Code in conjunction with Section 10177(d) of the Code.

FIFTH CAUSE OF ACTION

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

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In connection with the collection and handling of said advance fees, Respondent submitted an advance fee contract to the Department prior to use as required by Sections 10085 and 10085.5 of the Code and Section 2970 of the Regulations. On June 24, 2008, the Department issued a letter of "no objection" after review of the advance fee contract as submitted by Respondent.

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At all times herein mentioned, the Department issued the "no objection" letter set forth in paragraph 29, above, in part, on the grounds the advance fee contract expressly provided that: 1.) Respondent as the licensed broker would provide all services set forth in the contract to the borrowers executing said contract; 2.) Respondent as the licensed broker would negotiate on behalf of said borrowers for loan modifications; and, 3.) upon completion of the services, the advance fee trust funds would be disbursed to Respondent.

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In connection with the collection and handling of said advance fees, Respondent provided to borrowers an advance fee contract that was modified by the inclusion of additional terms stating HRCSI, as a licensed corporate real estate broker, "negotiates loan modifications for {Respondent} and clients of {Respondent}" and that the advance fees "placed in {Respondent's} trust account will be used to pay for said services rendered by {HRCSI}." Respondent required said borrowers to execute or accept the aforesaid additional terms in writing. The contract that included the aforesaid additional terms was not submitted to the Department of Real Estate prior to use as required by Sections 10085 and 10085.5 of the Code and Section 2970 of the Regulations.

Within the three year period prior to the filing of this Accusation, in connection with the real estate activities described in Paragraph 4, above, utilizing the modified advance fee contract set forth in Paragraph 31, above, Respondent claimed, demanded, charged, received, collected, and contracted in writing for advance fees from borrowers for services that Respondent assigned to HRCSI to perform thereafter in obtaining modifications of loans secured or to be secured directly or collaterally by liens on the borrowers' real property including, but not limited to, the following transactions:

<b>Borrower</b>	<b>Property</b>	<b>Contract Date</b>	<b>Additional Terms Date</b>
Jorge Figuerora and Maria Aguirre	3287 Arthur Avenue San Jose, California	12/20/08	1/14/09
Mariel Cabaoig	2886 El Monte Way San Jose, California	12/30/08	No Date
Margarita Hernandez	184 S. Capitol Avenue San Jose, California	1/12/09	1/12/09
Fidencio Guzman	13541 Woodburn Way San Jose, California	3/5/09	3/5/09

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2 In connection with the collection and handling of advance fees as set forth in  
3 Paragraphs 31 and 32, above, Respondent failed to cause the advance fee contract as described  
4 in Paragraph 31 and/or all materials used in obtaining the advance fee agreements to be  
5 submitted to the Department of Real Estate prior to use as required by Sections 10085 and  
6 10085.5 of the Code and Section 2970 of the Regulations.

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8 The acts and/or omissions of Respondent described in Paragraphs 31 and 32,  
9 above, are grounds for the suspension or revocation of the license and license rights of  
10 Respondent under Sections 10085 and 10085.5 of the Code and Section 2970 of the Regulations  
11 in conjunction with Section 10177(d) of the Code.

12 SIXTH CAUSE OF ACTION

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14 There is hereby incorporated in this Sixth, separate and distinct, Cause of Action,  
15 all of the allegations contained in Paragraphs 1 through 34, inclusive, of the Accusation with the  
16 same force and effect as if herein fully set forth.

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18 Within the three year period prior to the filing of this Accusation, in connection  
19 with the collection and handling of advance fees described in Paragraph 21, above, Respondent  
20 was required to provide to each borrower a verified accounting of the advance fee trust funds  
21 disbursed as required by Section 10146 of the Code and containing the information required by  
22 Section 2972 of the Regulations.

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24 Within the three year period prior to the filing of this Accusation, in each written  
25 advance fee contract described in Paragraph 21, above, Respondent represented to each  
26 borrower that pursuant "to California Business and Professions Code section 10146,  
27 {Respondent} shall provide Client with a complete verified accounting of services that have

1 been provided by {Respondent} on a quarterly basis and upon completion of all services under  
 2 this Agreement.” Each advance fee contract described in Paragraph 21, above, included as  
 3 Exhibit A “the form for verified accounting” expressly representing that the amounts of trust  
 4 funds disbursed, the date of trust fund disbursement, the commission paid, and overhead and  
 5 profit would be disclosed on the verified accounting.

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7 Within the three year period prior to the filing of this Accusation, in connection  
 8 with the collection and handling of advance fees described in Paragraphs 21 and 37, above, in  
 9 truth and in fact, Respondent failed to deposit the advance fees into a trust account, Respondent  
 10 disbursed 90% of borrowers’ advance fee trust funds and failed to record on the verified  
 11 accounting provided to the borrowers the amounts disbursed, dates of disbursement,  
 12 commission paid to agents, and overhead and profit, and Respondent signed the verifications  
 13 prior to the disbursements, in, but not limited to, the following transactions:

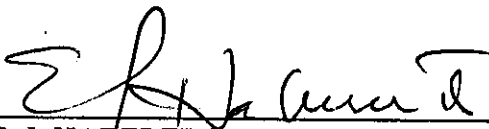
14 Borrower	Property	Date of Disbursement	Amount Disbursed	Verification Signed
16 Franklin Castillo	133 Aguacate Court San Jose, California	12/3/08	\$2,250.00	11/22/08
18 Jorge Figuerora and Maria Aguirre	3287 Arthur Avenue San Jose, California	12/31/08	\$2,250.00	12/20/08
19 Mariel Cabaoig	2886 El Monte Way San Jose, California	1/15/09	\$2,250.00	12/30/08
21 Calvin Ly and Kristina Khuu	1972 Moriset Way San Jose, California	1/15/09	\$2, 250.00	12/31/08
23 Fidencio Guzman	13541 Woodburn Way San Jose, California	3/19/09	\$2,250.00	3/16/09

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26 The acts and omissions of Respondent described in Paragraphs 37 and 38, above,  
 27 constituted misrepresentations, deceit, fraud, and dishonest dealing.

The facts alleged in Paragraphs 37, 38 and 39, above, are grounds for the suspension or revocation of all licenses and license rights of Respondent under Sections 10176(a), 10176(i), 10177(g), and/or 10177(j) of the Code, and Section 10146 of the Code and Section 2972 of the Regulations in conjunction with Section 10177(d) of the Code.

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

  
E. J. HABERER II  
Deputy Commissioner

Dated at Oakland, California

this 6<sup>th</sup> day of August, 2009