

1 TRULY SUGHRUE, Counsel  
2 State Bar No. 223266  
3 Department of Real Estate  
4 P.O. Box 187007  
5 Sacramento, CA 95818-7007

6 Telephone: (916) 227-0789  
7 (916) 227-0781 (Direct)

FILED

JAN 10 2011

DEPARTMENT OF REAL ESTATE

By 

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

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13 In the Matter of the Accusation of )

No. H-11051 SF

14 MARCO A. GUTIERREZ, and )  
15 JENNIFER V. GUTIERREZ, )

ACCUSATION

16 Respondents. )  
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18 The Complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the  
19 State of California, for cause of Accusation against MARCO A. GUTIERREZ, and  
20 JENNIFER V. GUTIERREZ (hereinafter "Respondents"), is informed and alleges as follows:

21 PRELIMINARY ALLEGATIONS

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23 The Complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the  
24 State of California, makes this Accusation in his official capacity.

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Respondents are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code").

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At no times mentioned has The Home Retention Team been licensed by the Department in any capacity.

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At all times mentioned, Respondent MARCO A. GUTIERREZ (hereinafter "MARCO") was and is licensed by the Department individually as a real estate broker. From on or about February 6, 2009 to May 5, 2010, MARCO's real estate broker license was suspended pursuant to Family Code Section 17520.

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At all times mentioned until October 17, 2009, Respondent JENNIFER V. GUTIERREZ (hereinafter "JENNIFER") was and is licensed by the Department individually as a real estate salesperson. At no time after October 17, 2009, has JENNIFER been licensed by the Department in any capacity.

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At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in the State of California, within the meaning of Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage and/or loan modification business with the public wherein each of them solicited lenders and borrowers for or negotiated loans or collected payments and/or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property for or in expectation of compensation.

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1 FIRST CAUSE OF ACTION

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3 Each and every allegation in Paragraphs 1 through 6, is incorporated by this  
4 reference as if fully set forth herein.

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6 Beginning on or about November 23, 2009, Respondents, and/or unknown  
7 representatives of The Home Retention Team, in the course of the real estate resale brokerage  
8 activities described in Paragraph 6, solicited and/or performed services for borrowers, in  
9 connection with loans secured directly or collaterally by liens on real property or on a business  
10 opportunity, for or in expectation of compensation. Such activities include, but are no limited to:

11 PROPERTY OWNER

PROPERTY ADDRESS

12 Oscar G.

2596 Marie Antonette Lane, Tracy

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14 By the commission of the acts alleged above, Respondents engaged in the  
15 business and acted in the capacity of a real estate broker within the State of California as defined  
16 by Section 10131(a) of the Code.

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18 The facts alleged in the First Cause of Action are grounds for the suspension or  
19 revocation of the licenses of Respondents under Section 10130 of the Code in conjunction with  
20 10177(d) of the Code.

21 SECOND CAUSE OF ACTION

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23 Each and every allegation in Paragraphs 1 through 10, is incorporated by this  
24 reference as if fully set forth herein.

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26 In connection with the operation and conduct of the real estate activities described  
27 in Paragraph 6, MARCO engaged in the business of claiming, demanding, charging, receiving,

collecting, or contracting for the collection of advance fees within the meaning of Sections 10026 and 10131.2 (hereinafter "advance fees") of the Code including but not limited to the following:

<u>Property Owner</u>	<u>Property Address</u>	<u>Date</u>	<u>Advance Fee</u>
Oscar G..	2596 Marie Antonette Lane, Tracy	11/25/09	\$500

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In connection with the collection and handling of said advance fee, MARCO failed to cause the advance fee contract and all materials used in obtaining the advance fee agreement to be submitted to the Department of Real Estate prior to use as required by Section 10085 of the Code and Section 2970 of Title 10 of the California Code of Regulations (hereinafter "the Regulations").

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The acts and/or omissions of MARCO described in the Second Cause of Action, constitute violation of Section 10177(d) of the Code in conjunction with Sections 10085, 10085.5, and 10085.6 of the Code and Section 2970 of the Regulations, and are cause for the suspension or revocation of the license and license rights of MARCO.

### THIRD CAUSE OF ACTION

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Each and every allegation in Paragraphs 1 through 14, is incorporated by this reference as if fully set forth herein.

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On or about May 13, 2010, Respondents, without the knowledge and consent of Oscar G., made an unauthorized charge to Oscar G.'s Wells Fargo checking account in the amount of \$800.36 to pay Sprint.

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On or about May 14, 2010, Respondents, without the knowledge and consent of Oscar G., made an unauthorized charge to Oscar G.'s Wells Fargo checking account in the amount of \$821.57 to pay Comcast.

The acts and omissions of Respondents described in the Third Cause of Action constitutes fraud and/or dishonest dealing, and constitutes cause to suspend or revoke all licenses and license rights of Respondents pursuant to the provisions of Sections 10176(i), and/or 10177(j) 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 licenses and license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) of Respondents, and for such other and further relief as may be proper under applicable provisions of law.

  
E. J. HABERER II  
Deputy Real Estate Commissioner

Dated at Oakland, California,  
this 5<sup>th</sup> day of January, 2011.