1 2 3	Elliott Mac Lennan, Counsel (SBN 66674) Department of Real Estate 320 West 4th Street, Suite 350 Los Angeles, California 90013-1105 OCT 26 2011		
4 5 6	Telephone: (213) 576-6982 (Direct) (213) 576-6911 DEPARTMENT OF REAL ESTATE BY:		
8	BEFORE THE DEPARTMENT OF REAL ESTATE		
9 10	STATE OF CALIFORNIA		
11	In the Matter of the Accusation of) SUNCOAST MORTGAGE CORP.,) No. H- 37626 LA		
13 14 15	doing business as Suncoast Investments) Realty; and LOAN TUONG NGUYEN) individually and as designated) officer of Suncoast Mortgage Corp.,)		
16 17	Respondents.		
18	The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State		
19	of California, for cause of Accusation against SUNCOAST MORTGAGE CORP. ("SMC") dba		
20 21	Suncoast Investments Realty and LOAN TUONG NGUYEN, aka Lynn Loan Nguyen ("NGUYEN"), individually and as designated officer of Suncoast Mortgage Corp. (collectively		
22	"Respondents"), is informed and alleges as follows:		
23	1.		
. 24	The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State		
25	of California, makes this Accusation in her official capacity.		
26			

From August 17, 2000, through the present, Respondent SMC has been licensed as a real estate corporation. At all times relevant herein, SMC was acting by and through Respondent NGUYEN as its designated broker-officer pursuant to Business and Professions Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law. Respondent SMC is licensed to do business as Suncoast Investments Realty.

3.

From August 17, 2000 through the present, Respondent NGUYEN has been licensed as a real estate broker.

Whenever reference is made in an allegation in this Accusation to an act or omission of "Respondents", such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with Respondents committed such act or omission while engaged in the furtherance of the business or operations of Respondents and while acting within the course and scope of their corporate authority and employment.

FIRST CAUSE OF ACCUSATION

(Substantial Misrepresentations/Fraud/Dishonest Dealing via Sham Escrow)

5.

At no time mentioned herein have Direct Investments, LLC, D.I. Investments, LLC, D.I. Financial Services, LLC and Lynn Eichenberger ever been licensed by the Department in any capacity.

7705 Timber Cir.

6.

On or about September 17, 2009, Respondent NGUYEN induced buyer Donna Doan to enter into a purchase and sale agreement with joint escrow instructions ("purchase agreement") for the purchase of real property located at 7705 Timber Cir., Huntington Beach,

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California ("7705 Timber Cir. property"). The purchase agreement listed Donna Doan as the buyer and Suncoast Investments Realty as the seller of the 7705 Timber Cir. property. The purchase agreement stated that Donna Doan's earnest money deposit of \$93,125 was to be wired to Bank Account No. xxxxxxx0819 at First Vietnamese American Bank. SMC's escrow division was to handle the escrow. Escrow was to close on or before November 30, 2009, at which time the seller was to deliver a grant deed for the 7705 Timber Cir. property to the buyer.

7.

Respondent NGUYEN made various misrepresentations to Donna Doan including that Suncoast Investments Realty held title to the 7705 Timber Cir. property. Suncoast Investments Realty was not the true owner of the 7705 Timber Cir. property. Respondent NGUYEN transferred some or all of Donna Doan's earnest money deposit to D.I. Financial Services, LLC prior to the close of escrow. Escrow never closed on this transaction and Suncoast Investments Realty never delivered a grant deed for the 7705 Timber Cir. property to Donna Doan. Respondents refused to refund any part of Donna Doan's earnest money deposit.

1721 Park Street

8.

On or about September 17, 2009, Respondent NGUYEN induced buyers John Truong and Katrina Pham to enter into a purchase agreement for the purchase of real property located at 1721 Park Street, Huntington Beach, California ("1721 Park St. property"). The purchase agreement listed Suncoast Investments Realty as the seller of the 1721 Park St. property. The purchase agreement stated that the buyers' earnest money deposit of \$331,250 was to be wired to Bank Account No. xxxxxxx0819 at First Vietnamese American Bank. SMC's escrow division was to handle the escrow. Escrow was to close on or before November 30, 2009 at which time the seller was to deliver a grant deed for the 1721 Park St. property to the buyers.

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Respondent NGUYEN made various misrepresentations to buyers John Truong and Katrina Pham including that Suncoast Investments Realty held title to the 1721 Park St. property. Suncoast Investments Realty was not the true owner of the 1721 Park St. property. Respondent NGUYEN transferred some or all of John Truong and Katrina Pham's earnest money deposit to D.I. Financial Services, LLC prior to the close of escrow. Escrow never closed on this transaction and Suncoast Investments Realty never delivered a grant deed for the 1721 Park St. property to John Truong and Katrina Pham. Respondents refused to refund any part of John Truong and Katrina Pham's earnest money deposit.

18648 Cedar Cir.

10.

On or about October 6, 2009, Respondent NGUYEN induced buyers Lyndon Phar and Phuong-Ly Bui to enter into a purchase agreement for the purchase of real property located at 18648 Cedar Cir., Fountain Valley, California ("18648 Cedar Cir. property"). The purchase agreement listed Suncoast Investments Realty as the seller of the 18648 Cedar Cir. property. The purchase agreement stated that the buyers' earnest money deposit of \$240,000 was to be held by SMC's escrow division. Escrow was to close on or before December 10, 2009, at which time the seller was to deliver a grant deed for the 18648 Cedar Cir. property to the buyers.

11.

Respondent NGUYEN made various misrepresentations to buyers Lyndon Phan and Phuong-Ly Bui including that Suncoast Investments Realty held title to the 18648 Cedar Cir. Property. Suncoast Investments Realty was not the true owner of the 18648 Cedar Cir. property. Respondent NGUYEN transferred some or all of Lyndon Phan and Phuong-Ly Bui's earnest money deposit to D.I. Financial Services, LLC prior to the close of escrow. Escrow never closed on this transaction and Suncoast Investments Realty never delivered a grant deed for the 18648 Cedar Cir. property to Lyndon Phan and Phuong-Ly Bui. Respondents refused to refund any part of Lyndon Phan and Phuong-Ly Bui's earnest money deposit.

1800 N. Holbrook St.

12.

On or about October 26, 2009, Respondent NGUYEN induced buyers Lyndon Phan and Phuong-Ly Bui, to enter into a purchase agreement for the purchase of real property located at 1800 N. Holbrook Street, Anaheim, California ("1800 N. Holbrook St. property".) The purchase agreement listed Suncoast Investments Realty as the seller of the 1800 N. Holbrook St. property. The purchase agreement stated that the buyers' earnest money deposit of \$138,000 was to be held in escrow by SMC's escrow division. Escrow was to close on or before December 31, 2009, at which time the seller was to deliver a grant deed for the 1800 N. Holbrook St. property to the buyers.

13.

Respondent NGUYEN made various misrepresentations to buyers Lyndon Phan and Phuong-Ly Bui including that Suncoast Investments Realty held title to the 1800 N. Holbrook St. property. Suncoast Investments Realty was not the true owner of the 1800 N. Holbrook St. property. Respondent NGUYEN transferred some or all of Lyndon Phan and Phuong-Ly Bui's earnest money deposit to D.I. Financial Services, LLC prior to the close of escrow. Escrow never closed on this transaction and Suncoast Investments Realty never delivered a grant deed for the 1800 N. Holbrook St. property to Lyndon Phan and Phuong-Ly Bui. Respondents refused to refund any part of Lyndon Phan and Phuong-Ly Bui's earnest money deposit.

12041 Gilbert St.

14.

On or about November 16, 2009, Respondent NGUYEN induced buyer Hanh Dao to enter into a purchase agreement for the purchase of real property located at 12041 Gilbert Street, Garden Grove, California ("12041 Gilbert St. property"). The purchase agreement listed Hanh Dao as the buyer and Suncoast Investments Realty as the seller of the 12041 Gilbert St.

property. The purchase agreement stated that Hanh Dao's earnest money deposit of \$207,500 would be held in escrow by SMC's escrow division. Escrow was to close on or before February 28, 2010, at which time the seller was to deliver a grant deed for the 12041 Gilbert St. property to the buyer.

15.

Respondent NGUYEN made various misrepresentations to Hanh Dao including that Suncoast Investments Realty held title to the 12041 Gilbert St. property. Suncoast Investments Realty was not the true owner of the 12041 Gilbert St. property. Respondent NGUYEN transferred some or all of Hanh Dao's earnest money deposit to D.I. Financial Services, LLC prior to the close of escrow. Escrow never closed on this transaction and Suncoast Investments Realty never delivered a grant deed for the 12041 Gilbert St. property to Hanh Dao. Respondents refused to refund any part of Hanh Dao's earnest money deposit.

134 S. Magnolia Ave. #19C

16.

On or about November 6, 2009, Respondent NGUYEN induced buyer Helen Hoa Nguyen to enter into a purchase agreement for the purchase of real property located at 134 S. Magnolia Ave. #19C, Anaheim, California ("134 S. Magnolia Ave. #19C property"). The purchase agreement listed Helen Hoa Nguyen as the buyer and Suncoast Investments Realty as the seller of the 134 S. Magnolia Ave. #19C property. The purchase agreement stated that Helen Hoa Nguyen's earnest money deposit of \$80,000 would be held in escrow by SMC's escrow division. Escrow was to close and the seller was to deliver possession of the 134 S. Magnolia Ave. #19C property to the buyer by January 15, 2010.

17.

Respondent NGUYEN made various misrepresentations to Helen Hoa Nguyen including that Suncoast Investments Realty held title to the 134 S. Magnolia Ave. #19C property. Suncoast Investments Realty was not the true owner of the 134 S. Magnolia Ave. #19C property.

Respondent NGUYEN transferred some or all of Helen Hoa Nguyen's earnest money deposit to D.I. Financial Services, LLC prior to the close of escrow. Escrow never closed on this transaction and Suncoast Investments Realty never delivered a grant deed or possession for the 134 S. Magnolia Ave. #19C property to Helen Hoa Nguyen. Respondents refused to refund any part of Helen Hoa Nguyen's earnest money deposit.

19342 Baywater Lane

18.

On or about November 2, 2009, Respondent NGUYEN induced homeowner Oanh Nguyen to enter into a "Cash for Keys" agreement with Direct Investments, LLC for the sale of real property located at 19342 Baywater Lane, Huntington Beach, California ("19342 Baywater Lane property"). The 19342 Baywater Lane property was in default and facing foreclosure. Said Cash for Keys agreement listed Oanh Nguyen as the seller of the 19342 Baywater Lane property. The purchase agreement stated that Oanh Nguyen would receive six (6) percent of the sale price for the 19342 Baywater Lane property and that Oanh Nguyen's current lender would be paid in full. Respondent NGUYEN further induced Oanh Nguyen to sign a limited power of attorney for D.I. Financial Services, LLC.

19.

Oanh Nguyen subsequently discovered that a Deed of Trust and Assignment of Rents for the 19342 Baywater Lane property containing her forged signature had been notarized and recorded on November 9, 2009.

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TABLE: SHAM ESCROW VICTIMS

3 Deposit Fraudulent Date **Earnest Money** Escrow Victim/Buyer Seller; Status **Deposits Paid** Pavee True Agent 4 Into Escrow Owner? 5 D. Doan D.I. Financial Converted; \$ 93,125.00 In House 9/17/09 7705 Timber Cir. Suncoast refund 6 Services, Escrow Investments refused LLC Realty; No \$ 93,125.00 7 Sub-Total 8 J/K Pham Converted; D.I. Financial \$ 331,250.00 In House 9/17/09 1721 Park Street Suncoast Services, refund Escrow Investments 9 LLC refused Realty; No \$ 424,375.00 Sub-Total 10 Phan/Bui 11 D.I. Financial Converted; \$ 240,000.00 9/6/09 Suncoast In House 18648 Cedar Cir. refund Services. Escrow Investments 12 refused LLC Realty; No Converted: D.I. Financial In House 9/26/09 \$ 138,000.00 Suncoast 1800 N. Holbrook 13 refund Services, Escrow Investments LLC refused Realty; No 14 Or unknown \$ 802,375.00 Sub-Total 15 H. Dao Converted; 16 D.I. Financial 11/6/09 \$ 207,500.00 In House 12041 Gilbert Street Suncoast refund Services, Escrow Investments refused LLC 17 Realty; No \$1,009,875.00 18 Sub-Total 19 H. Hoa Converted; D.I. Financial \$ 80,000.00 In House 11/6/09 20 134 S. Magnolia Suncoast refund Services, Escrow Investments #19 C refused LLC Realty; No 21 \$ 1,089,875 Sub-Total 22 O. Nguyen O. Nguyen Cash for Keys n/a 11/2/09 In House O. Nguyen 19342 Baywater 23 promised (no deposit) Escrow 6% of Sale 24 Price; none received 25 No proceeds Sub-Total 26 \$1,089,875.00 Total

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The conduct, acts and/or omissions of Respondents SMC and NGUYEN as alleged above, constitute making substantial misrepresentations, false promises, willful violations of the Real Estate Law, fraud, dishonest dealing and/or negligence and conversion and are grounds for the suspension or revocation of Respondents SMC and NGUYEN's licenses under Code Sections 10176(a), 10176(b), 10176(i) and/or 10177(g).

SECOND CAUSE OF ACCUSATION (Audit of SUNCOAST MORTGAGE CORP.)

22.

There is hereby incorporated in this second, separate Cause of Accusation, all of the allegations contained in Paragraphs 1 though 21 above, with the same force and effect as if herein fully set forth.

23.

At all times mentioned, in the State of California, Respondent SMC acted as a corporate real estate broker and conducted licensed activities within the meaning of:

- A. Code Section 10131(a). SMC operated a residential resale brokerage;
- B. Code Section 10131(b). SMC solicited and/or offered to negotiate the sale, purchase or exchange of leases on real property or on a business opportunity;
 - C. Code Section 10131(d). SMC operated a mortgage and loan brokerage; and
- D. In addition, SMC conducted broker-controlled in-house escrows through its escrow division, under the exemption set forth in California Financial Code Section 17006(a)(4) for real estate brokers performing escrows incidental to a real estate transaction where the broker was a party and where the broker was performing acts for which a real estate license is required.

AUDIT

On January 27, 2011, the Department completed an audit examination of the books and records of Respondent SMC pertaining to the broker-escrow activities described in Paragraph 23, which require a real estate license. The audit examination covered a period of time beginning on July 1, 2007 to August 31, 2010. The audit examination revealed violations of the Code and the Title 10, Chapter 6, California Code of Regulations ("Regulations") set forth in the following paragraphs, and more fully set forth in Audit Report LA 100043 and the exhibits and work papers attached thereto.

TRUST ACCOUNT

25.

At all times mentioned, in connection with the activities described in Paragraph 23, above, SMC accepted or received funds including funds in trust ("trust funds") from or on behalf of actual or prospective parties to transactions including buyers, sellers, lenders and borrowers handled by SMC and thereafter made deposits and or disbursements of such funds. From time to time herein mentioned, during the audit period, said trust funds were deposited and/or maintained by SMC in the bank account as follows:

"SUNCOAST MORTGAGE CORP. Escrow Trust Acct. ("escrow trust account")

XXXXXXX0819"

First Vietnamese American Bank

Westminster, California

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VIOLATIONS OF THE REAL ESTATE LAW

26.

In the course of activities described in Paragraphs 23 and 25, above, and during the examination period, described in Paragraph 24, Respondents SMC and NGUYEN, acted in violation of the Code and the Regulations in that Respondents:

- (a) Permitted, allowed or caused the disbursement of trust funds from the escrow trust account, where the disbursement of funds reduced the total of aggregate funds in the escrow trust account, to an amount which, on August 31, 2010, was at a minimum \$3,575,908.08, less than the existing aggregate trust fund accountability of SMC to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, in violation of Code Section 10145(a) and Regulations 2832.1, 2950(d), 2950(g) and 2951.
- (b) Failed to maintain a control record in the form of a columnar record in chronological order of all trust funds received, deposited and disbursed by SMC's in-house through the instrumentality of SMC's escrow trust account, in violation of Code Section 10145 and Regulations 2831, 2950(d) and 2951.
- (c) Failed to maintain a separate record for each beneficiary or escrow transaction, thereby failing to account for all trust funds collected, in violation of Code Section 10145 and Regulations 2831.1, 2950(d) and 2951.
- (d) Failed to maintain the monthly reconciliation of all the separate records to the control record of all trust funds received and disbursed for the broker escrow activity, in violation of Code Section 10145 and Regulations 2831.2, 2950(d) and 2951.

(e) Allowed Thang Vy Nguyen to be a signatory on the trust account, when he was not licensed by the Department in any capacity and was not covered by a fidelity bond, in violation of Code Section 10145 and Regulations 2834 and 2951.

- (f) Failure to have buyers and sellers sign or initial escrow instructions or amended escrow instructions, in violation of Code Section 10145 and Regulation 2950(b).
- (g) Failed to deliver to buyers and sellers copies of escrow instructions, amended instructions and/or supplemental escrow instructions, in violation of Code Section 10145 and Regulation 2950(c).
- (h) Failed to advise all parties in writing that Respondent NGUYEN had an interest as a stockholder, officer, partner or owner of the agency holding the escrow, in violation of Code Section 10145 and Regulation 2950(h).
- (i) Collected initial earnest money deposits from buyers to purchase properties.

 SMC provided purchase contracts to buyers and the purchase contracts indicated that SMC's dba

 Suncoast Investments Realty was the seller; however, Suncoast Investments Realty was not the

 owner of said properties, in violation of Code Section 10176(a).
- (j) Collected money from buyers and transferred \$1,456,500 of said funds from SMC's escrow trust account to others. Additionally, SMC provided escrow instructions and amended instructions that were not signed by the buyer or seller which instructed SMC to wire trust funds from SMC's escrow trust account to Direct Investments Financial, LLC, in violation of Code Sections 10176(i) and 10145.
- (k) Respondent NGUYEN disbursed funds from SMC's escrow trust account and transferred funds in the amount of \$155,000 to Respondent NGUYEN's personal and business accounts including but not limited to D.I. Financial Services Inc. without documentation to

explain or account for said transfers, in violation of Code Sections 10176(e), 10145 and Regulation 2832.

- (l) Failed to disclose SMC's license number on solicitation materials that were intended to be the first point of contact with consumers, in violation of Code Section 10140.6 and Regulation 2773.
- (m) SMC failed to make the licenses of seven of its real estate salespersons available for inspection during the audit, in violation of Code Section 10160 and Regulation 2753
- (n) SMC failed to notify the Department of the termination of employment of its salesperson Ta Trung Nguyen (Department License No. 01259034) within five (5) days, as required under Code Section 10161.8 and Regulation 2752 and in violation thereunder.
- (o) SMC failed to have a written broker-salesperson relationship agreement with its salesperson Ta Trung Nguyen, as required under Regulation 2726 and in violation thereunder.
- (p) Failure to retain all required records including, but not limited to, escrow files trust fund records, escrow receipts, invoices, canceled checks, and records of disbursements related to trust funds, salesperson license certificates and agreements, in violation of Code Section 10148 and Regulation 2950(e).
- (q) Respondent NGUYEN failed to exercise reasonable control and supervision over the activities conducted by SMC's employees and/or licensees as necessary to secure full compliance with the Real Estate laws, as required under Code Section 10159.2 and Regulation 2725, is in violation of Code Section 10177(h).

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1		27.	
2	The conduct of Respondents SMC and NGUYEN, described in Paragraph 26,		
3	above, violated the Code and the Regulations as set forth below:		
4	<u>PARAGRAPH</u>	PROVISIONS VIOLATED	
6		Code Section 10145 and Regulations 2832.1,	
7	26(a)	2950(d), 2950(g) and 2951	
8	26(b)	Code Section 10145 and Regulations 2831, 2950(d) and 2951	
10	<i>y</i>	Code Section 10145 and Regulations 2831.1, 2950(d) and 2951	
11	26(c)		
12	26(d)	Code Section 10145 and Regulations 2831.2, 2950(d) and 2951	
13			
14 15	26(e)	Code Section 10145 and Regulations 2834 and 2951	
16		Code Section 10145 and Regulation 2950(b)	
17	26(f)	Code Section 10143 and Regulation 2930(0)	
18	26(g)	Code Section 10145 and Regulation 2950(c)	
19	26(h)	Code Section 10145 and Regulation 2950(h)	
20			
22	26(i)	Code Section 10176(a)	
23	26 (j)	Code Sections 10176(i) and 10145	
24	26(14)	Code Sections 10176(e) and 10145 and	
25	26(k)	Regulation 2832	
26	26 (l)	Code Section 10140.6 and Regulation 2773	
		14	

1	26 (m) Code Section 10160 and Regulation 2753	
2		
3	26 (n) Code Section 10161.8 and Regulation 2725	
4	26 (o) Regulation 2726	
5		
6	26 (p) Code Section 10148 and Regulation 2950(e)	
7		
8	26 (q) Code Sections 10177(h) and 10159.2 and Regulation 2725	
9	28.	
10	The foregoing violations constitute cause for the suspension or revocation of the	
11	real estate licenses and license rights of Respondents SMC and NGUYEN under the provisions of	
12	Code Sections 10148, 10176(a), 10176(e), 10176(i), 10177(d) and/or 10177(g).	
13	THIRD CAUSE OF ACCUSATION	
14	(Negligence)	
15	29.	
	The overall conduct of Respondents SMC and NGUYEN constitutes negligence	
16	and is cause for discipline of the real estate license and license rights of said Respondents	
17		
18	pursuant to the provisions of Code Section 10177(g).	
19	FOURTH CAUSE OF ACCUSATION (Fiduciary Duty)	
. 20	30.	
21	The conduct, acts and omissions of Respondents SMC and NGUYEN constitute a	
22	breach of fiduciary duty, owed to SMC's clients, of good faith, trust, confidence and candor,	
23	within the scope of their contractual relationship and for falsely misrepresenting property	
24	ownership and for failing to render services promised, in violation of Code Sections 10176(i)	
25		
26	and/or 10177(g) and constitutes cause for discipline of the real estate license and license rights of	
۷۷	said Respondents pursuant to the provisions of Code Section 10177(g).	

FIFTH CAUSE OF ACCUSATION

(Supervision and Compliance)

31.

The overall conduct of Respondent NGUYEN constitutes a failure on said Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of SMC and its officers and employees, as required by Code Section 10159.2 and Regulation 2725, and to keep SMC in compliance with the Real Estate Law, with specific regard to trust fund and advance fee handling, mortgage and loan brokering and loan modification services, and is cause for discipline of the real estate license and license rights of Respondent pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

SIXTH CAUSE OF ACCUSATION (World Wide Affinity Fraud) (NGUYEN)

32.

Under the ruse of seeking buyers for properties facing foreclosure, Respondent Nguyen advertised to the world wide Vietnamese community soliciting deposits for properties she falsely claimed she owned, placed collected buyer deposits would-be purchasers, into SMC's in-house escrow controlled by her, then converted those trust funds by paying them out to other entities unconnected to SMC's escrow or to herself, in violation of Code Section 10176(c) and 10176(i) and/or 10177(j), for a continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons and for fraud and dishonest dealing.

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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/or license rights of Respondents SUNCOAST MORTGAGE CORP. and LOAN TUONG NGUYEN, individually and as designated officer of Suncoast Mortgage Corp., under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law, including but not limited to, restitution and costs of audit.

Dated at Los Angeles, California.

MARIA SUAREZ

Deputy Real Estate Commissioner

cc: Suncoast Mortgage Corp.
Loan Tuong Nguyen
Maria Suarez
Eleazar Galano
Audits - Isabel Beltran
Sacto