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**FILED**

JUL 26 2012

DEPARTMENT OF REAL ESTATE  
BY: C.2

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of ) NO. H-38298 LA  
12 JULIO MANUEL DONAIRE, ) A C C U S A T I O N  
13 Respondent. )  
14 )

15 The Complainant, Maria Suarez, a Deputy Real Estate  
16 Commissioner of the State of California, for cause of Accusation  
17 against JULIO MANUEL DONAIRE ("Respondent"), is informed and  
18 alleges as follows:  
19

20 1.

21 The Complainant, Maria Suarez, a Deputy Real Estate  
22 Commissioner of the State of California, makes this Accusation  
23 in her official capacity.

24 2.

25 From March 1, 2001, through the present, Respondent  
26 has been licensed by the Department of Real Estate  
27 ("Department") as a real estate broker, Department ID 01235212.  
28

(ADVANCE FEE VIOLATIONS)

3.

Business and Professions Code ("Code") Section 10131 defines a real estate broker as a person who:

"(a) sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listing of, or negotiates the purchase, sale or exchange of real property or a business opportunity; or

(d) solicits borrowers or lenders for or negotiates loans or collects payment or performs 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."

4.

Further, Code Section 10131.2 defines a real estate broker as:

"a person who engages in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a loan or loans thereon."

5.

On October 11, 2009, then Governor Arnold Schwarzenegger signed Senate Bill 94 (Calderon), and the legislation took effect immediately upon his signature. Thus, California law prohibited any person, including real estate licensees and attorneys, from demanding or collecting an advance

1 fee from a consumer for loan modification or mortgage loan  
2 forbearance services affecting 1 - 4 unit residential dwellings.

3 6.

4 The following notice was prominently featured on the  
5 Department's website as of October 11, 2009:

6 "IF YOU ARE A REAL ESTATE BROKER, OR THE DESIGNATED  
7 OFFICER OF A LICENSED CORPORATION, WHO HAS BEEN ISSUED A "NO  
8 OBJECTION" LETTER BY THE DEPARTMENT OF REAL ESTATE FOR LOAN  
9 MODIFICATION OR OTHER MORTGAGE LOAN FORBEARANCE SERVICES, YOU  
10 CAN NO LONGER ENTER INTO THESE AGREEMENTS EFFECTIVE AS OF  
11 OCTOBER 11, 2009, NOR CAN YOU COLLECT ANY ADVANCE FEES FOR SUCH  
12 SERVICES. Agreements entered into and advance fees collected  
13 prior to October 11, 2009 are not affected. Advance fees  
14 inadvertently collected after October 11, 2009 must be fully  
15 refunded. All real estate licensees should become familiar with  
16 the provisions of SB94 as there are substantial administrative  
17 and criminal penalties for violations."

18 7.

19 For an unknown period of time beginning no later than  
20 October 24, 2009, Respondent solicited and offered loan services  
21 to consumers including services to assist them in negotiating  
22 with lenders, foreclosure forbearance, or obtaining a loan  
23 modification. Respondent engaged in the business of claiming,  
24 demanding, charging receiving, collecting or contracting for the  
25 collection of advance fees, within the meaning of Code Section  
26 10026 for activities in connection to loans which were secured  
27 by liens on real property.

1 8.

2 On or about October 24, 2009, Respondent solicited and  
3 offered to assist borrowers Albert and Teresa H. with loan  
4 modification and negotiation services. On October 24, 2009,  
5 Respondent collected a \$1,000 advance fee from Albert and Teresa  
6 H. for loan modification and negotiation services in connection  
7 with a loan secured by a lien on real property. On October 8,  
8 2010, Respondent collected another \$1,000 advance fee from  
9 Albert and Teresa H. for loan modification and negotiation  
10 services. Respondent failed to perform the loan modification  
11 and negotiation services that had been promised to Albert and  
12 Teresa H. Respondent failed to provide an accounting of any  
13 services done for Albert and Teresa H. or an accounting of the  
14 advance fees collected from Albert and Teresa H. Respondent  
15 refunded \$2,000 to Albert and Teresa H. on May 18, 2012, after  
16 Albert and Teresa H. made a complaint to the Department against  
17 Respondent.

18 9.

19 Respondent failed to comply with the requirements for  
20 handling of advance fees in violation of Code Section 10146 and  
21 Section 2972, Title 10, Chapter 6, California Code of  
22 Regulations.

23 10.

24 The conduct, acts and/or omissions of Respondent as  
25 set forth above are in violation of Code Sections 10085.6 and  
26 10146 which constitutes grounds for the suspension or revocation  
27 of the license and license rights of Respondent pursuant to Code  
28 Sections 10177(d) or 10177(g).

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11.

Code Section 10106 provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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 Respondent JULIO MANUEL DONAIRE under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under other provisions of law.

Dated at Los Angeles, California  
this 25<sup>th</sup> day of July, 2012.

  
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MARIA SUAREZ  
Deputy Real Estate Commissioner

cc: Julio Manuel Donaire  
Maria Suarez .  
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