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

10 * * *

11 In the Matter of the Accusation of) NO. H-38299 LA
12)
13 PATRIOT FINANCIAL SERVICING GROUP) A C C U S A T I O N
14 INC.; ZACH CHRISTOPHER)
15 SOUTHALL, individually and as)
16 former designated officer of)
17 Patriot Financial Servicing Group,) Inc.; and CLINTON W. PHIPPS,)
18)
19 Respondents.)
20)

21 The Complainant, Maria Suarez, a Deputy Real Estate
22 Commissioner of the State of California, for cause of Accusation
23 against PATRIOT FINANCIAL SERVICING GROUP, INC., ZACH
24 CHRISTOPHER SOUTHALL, individually and as former designated
25 officer of Patriot Financial Servicing Group, Inc., and CLINTON
26 W. PHIPPS ("Respondents"), is informed and alleges as follows:

27 1.

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

1 2.

2 From August 11, 2008, through the present, Respondent
3 PATRIOT FINANCIAL SERVICING GROUP, INC. ("PATRIOT") has been
4 licensed by the Department of Real Estate ("Department") as a
5 corporate real estate broker, Department license no. 01850412.
6 From August 17, 2009, through December 16, 2009, PATRIOT was
7 licensed to do business as US Loan Assistance Center. PATRIOT
8 was formerly licensed as PFS Financial Corp.

9 3.

10 From October 15, 2004, through the present, Respondent
11 ZACH CHRISTOPHER SOUTHALL ("SOUTHALL") has been licensed by the
12 Department as a real estate broker, Department license no.
13 01254722.

14 4.

15 From August 11, 2008 through January 28, 2010,
16 Respondent PATRIOT was acting by and through Respondent SOUTHALL
17 as its officer pursuant to Code Section 10159.2 to be
18 responsible for ensuring compliance with the Real Estate Law.

19 5.

20 From April 25, 2003, through April 24, 2011,
21 Respondent CLINTON W. PHIPPS, aka Clint Phipps ("PHIPPS") was
22 licensed by the Department as a real estate salesperson,
23 Department license no. 01352267. Respondent PHIPPS' license
24 expired on April 24, 2011. Respondent PHIPPS has renewal rights
25 under Code Section 10201. The Department retains jurisdiction
26 pursuant Code Section 10103.

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6.

Respondent PATRIOT is a California corporation formed on or about May 30, 2008. Respondent PHIPPS is the president and a director of PATRIOT.

FIRST CAUSE OF ACCUSATION
(ADVANCE FEE VIOLATIONS)

7.

US Loan Assistance Corp., Deanna Martin and Omar Adwar have never been licensed in any capacity by the Department.

8.

Business and Professions Code ("Code") Section 10132 defines a real estate salesperson as a person who, for compensation or in expectation of compensation, is employed by a licensed real estate broker to do one or more of the acts set forth in Code Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, and 10131.6.

9.

Pursuant to Code Section 10131, a real estate broker is defined 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.

1 10.

2 Code Section 10131.2 defines a real estate broker as a
3 person who engages in the business of claiming, demanding,
4 charging, receiving, collecting or contracting for the
5 collection of an advance fee in connection with any employment
6 undertaken to promote the sale or lease of real property or of a
7 business opportunity by advance fee listing, advertisement or
8 other offering to sell, lease, exchange or rent property or a
9 business opportunity, or to obtain a loan or loans thereon.

10 11.

11 Code Section 10026, in pertinent part, defines an
12 advance fee as a fee that is claimed, demanded, charged,
13 received, or collected by a licensee for services requiring a
14 license. A person who proposes to collect an advance fee as
15 defined in Code Section 10026 must submit to the Commissioner
16 not less than ten calendar days before publication or other use,
17 all materials to be used in advertising, promoting, soliciting
18 and negotiating an agreement calling for the payment of an
19 advance fee including the form of advance fee agreement proposed
20 for use, pursuant to Section 2970, Regulations of the Real
21 Estate Commissioner, Title 10, Chapter 6, California Code of
22 Regulations ("Regulations"). Code Section 10085 also allows the
23 Commissioner to require that any and all materials used in
24 obtaining advance fee agreements, including contract forms, be
25 submitted at least 10 calendar days before they are used.

26 12.

27 On or about February 13, 2009, on behalf of Respondent
28 PATRIOT, Respondent SOUTHALL submitted an advance fee agreement

1 and accounting format to the Department for approval. On March
2 5, 2009, the Department issued a "no objection" letter of
3 approval of the advance fee agreement and accounting format
4 submitted by Respondent PATRIOT. Said advance fee agreement
5 included a provision that the advance fee paid was fully
6 refundable until earned by the broker. Furthermore, if any of
7 the agreed upon services were not completed by the broker by the
8 agreed upon completion dates, the unearned portion of the
9 advance fee would be refunded to the principal within 5 business
10 days.

11 13.

12 On October 11, 2009, then Governor Arnold
13 Schwarzenegger signed Senate Bill 94 (Calderon), and the
14 legislation took effect immediately upon his signature. Thus,
15 California law prohibited any person, including real estate
16 licensees and attorneys, from demanding or collecting an advance
17 fee from a consumer for loan modification or mortgage loan
18 forbearance services affecting 1 - 4 unit residential dwellings.

19 14.

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

22 "IF YOU ARE A REAL ESTATE BROKER, OR THE DESIGNATED
23 OFFICER OF A LICENSED CORPORATION, WHO HAS BEEN ISSUED A "NO
24 OBJECTION" LETTER BY THE DEPARTMENT OF REAL ESTATE FOR LOAN
25 MODIFICATION OR OTHER MORTGAGE LOAN FORBEARANCE SERVICES, YOU
26 CAN NO LONGER ENTER INTO THESE AGREEMENTS EFFECTIVE AS OF
27 OCTOBER 11, 2009, NOR CAN YOU COLLECT ANY ADVANCE FEES FOR SUCH
28 SERVICES. Agreements entered into and advance fees collected

1 prior to October 11, 2009 are not affected. Advance fees
2 inadvertently collected after October 11, 2009 must be fully
3 refunded. All real estate licensees should become familiar with
4 the provisions of SB94 as there are substantial administrative
5 and criminal penalties for violations."

6 15.

7 For an unknown period of time beginning no later than
8 October 15, 2009, Respondents, while doing business as US Loan
9 Assistance Corp. or USLAC, solicited and offered loan services
10 to consumers, including services to assist them in negotiating
11 with lenders, foreclosure forbearance, or obtaining a loan
12 modification through national advertisements on television,
13 radio or the internet. Respondents, while licensed to do
14 business in California, engaged in the business of claiming,
15 demanding, charging receiving, collecting or contracting for the
16 collection of advance fees, within the meaning of Code Section
17 10026 including, but not limited to, the following loan
18 activities with respect to loans which were secured by liens on
19 real property.

20 16.

21 On or about October 15, 2009, Deanna Martin, an
22 unlicensed person working on behalf of USLAC, solicited and
23 offered to assist borrower Larry D. Smith ("Smith") with loan
24 modification and negotiation services. Smith entered into a
25 written advance fee agreement with USLAC for loan modification
26 and negotiation services in connection with a loan secured by a
27 lien on real property. Smith paid an advance fee of \$1,725 to
28 USLAC for loan modification and negotiation services. Deanna

1 Martin and Omar Adwar made misrepresentations to Smith in order
2 to induce Smith to enter into the advance fee agreement
3 including, among others, that USLAC could obtain a loan
4 modification for Smith and possibly obtain a lower fixed
5 interest rate on Smith's mortgage. Respondents failed to
6 perform the loan modification and negotiation services that had
7 been promised to Smith. Respondents failed to provide an
8 accounting of any services done for Smith or an accounting of
9 the advance fees collected from Smith.

10 17.

11 The written advance fee agreement provided to Smith
12 was not the agreement reviewed by the Department described in
13 Paragraph 12, above. Respondents provided Smith with a
14 different written agreement in an effort to circumvent existing
15 laws prohibiting the collection of advance fees for loan
16 modification and foreclosure forbearance services.

17 18.

18 Respondents collected the advance fees described in
19 Paragraph 16, above, pursuant to the provisions of a written
20 agreement which constitutes an advance fee agreement within the
21 meaning of Code Section 10085.

22 19.

23 Respondents failed to comply with the requirements for
24 handling of advance fees, in violation of Code Section 10146.

25 20.

26 The conduct, acts and/or omissions of Respondents as
27 set forth above are in violation of Code Sections 10085,
28 10085.5, 10085.6 and 10146 and Regulation Section 2970 and

1 constitute grounds for the suspension or revocation of the
2 license and license rights of Respondents PATRIOT, SOUTHALL, and
3 PHIPPS pursuant to Code Sections 10177(d) and/or 10177(g).

4 21.

5 Respondents' conduct, acts and/or omissions as set
6 forth above constitute grounds for the suspension or revocation
7 of the license and license rights of Respondents PATRIOT,
8 SOUTHALL, and PHIPPS pursuant to Code Sections 10176(a) (making
9 any substantial misrepresentation), 10176(b) (making any false
10 promises of a character likely to influence, persuade or
11 induce), 10176(i) (conduct...which constitutes fraud or dishonest
12 dealing), 10177(d) (violation of the Real Estate Law), and/or
13 10177(g) (negligence).

14 22.

15 The conduct, acts and/or omissions of Respondent
16 SOUTHALL, in allowing Respondent PATRIOT to violate the Real
17 Estate Law, as set forth above, constitutes a failure by
18 Respondent SOUTHALL, as the officer designated by the corporate
19 broker licensee, to exercise the supervision and control over
20 the activities of Respondent PATRIOT, as required by Code
21 Section 10159.2 and Regulation 2725, and is cause to suspend or
22 revoke the real estate license and license rights of Respondent
23 SOUTHALL under Code Sections 10177(h), 10177(d) and/or 10177(g).

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SECOND CAUSE OF ACCUSATION
(Unlicensed activity)

23.

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

24.

The activities described in Paragraph 16, above, require a real estate license under Code Sections 10131(d) and 10131.2. Respondents violated Code Section 10137 by employing and/or compensating Deanna Martin and Omar Adwar, individuals who were not licensed as real estate salespersons or as brokers, to perform activities requiring a license.

25.

The conduct, acts and/or omissions of Respondents as set forth in Paragraph 24, above, violate Code Section 10137, and are cause for the suspension or revocation of the licenses and license rights of Respondents PATRIOT, SOUTHALL, and PHIPPS pursuant to Code Sections 10137, 10177(d) and/or 10177(g).

26.

The conduct, acts and/or omissions of Respondent SOUTHALL, in allowing Respondent PATRIOT to violate the Real Estate Law, as set forth above, constitutes a failure by Respondent SOUTHALL, as the officer designated by the corporate broker licensee, to exercise the supervision and control over the activities of Respondent PATRIOT, as required by Code

1 Section 10159.2 and Regulation 2725, and is cause to suspend or
2 revoke the real estate license and license rights of Respondent
3 SOUTHALL under Code Sections 10177(h), 10177(d) and/or 10177(g).
4

5 THIRD CAUSE OF ACCUSATION
6 (Use of Unlicensed Branch Offices)

7 27.

8 There is hereby incorporated in this Third, separate
9 Cause of Accusation, all of the allegations contained in
10 Paragraphs 1 through 26, above, with the same force and effect
11 as if herein fully set forth.

12 28.

13 Code Section 10163 requires that a real estate broker
14 apply for and procure an additional license for each branch
15 office maintained by the broker.

16 29.

17 Respondents PATRIOT and SOUTHALL acted without
18 Department authorization in using unlicensed branch offices
19 located at 3500 Barranca Parkway, Suite 240, Irvine, California
20 92606 and 438 E. Katella, Suite H, Orange, California 92867, to
21 engage in activities requiring the issuance of a real estate
22 license.

23 30.

24 The conduct, acts and/or omissions of Respondents
25 PATRIOT and SOUTHALL as set forth in Paragraph 29, above,
26 violate Code Section 10163 and are cause for the suspension or
27 revocation of the licenses and license rights of Respondents
28

1 PATRIOT and SOUTHALL pursuant to Code Sections 10177(d) and/or
2 10177(g).

3 31.

4 The conduct, acts and/or omissions of Respondent
5 SOUTHALL, in allowing Respondent PATRIOT to violate the Real
6 Estate Law, as set forth above, constitutes a failure by
7 Respondent SOUTHALL, as the officer designated by the corporate
8 broker licensee, to exercise the supervision and control over
9 the activities of Respondent PATRIOT, as required by Code
10 Section 10159.2 and Regulation 2725, and is cause to suspend or
11 revoke the real estate license and license rights of Respondent
12 SOUTHALL under Code Sections 10177(h), 10177(d) and/or 10177(g).
13

14 Fourth CAUSE OF ACCUSATION
15 (Use of Unlicensed Fictitious Name)

16 32.

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

21 33.

22 Code Section 10159.5 and Regulation 2731 requires that
23 a real estate broker apply for and submit a fictitious business
24 name statement for every fictitious name used to conduct
25 activities that require a real estate license.

26 34.

27 Respondents acted without Department authorization in
28 using the unlicensed business names US Loan Assistance Corp. and

1 USLAC to engage in activities requiring the issuance of a real
2 estate license.

3 35.

4 The conduct, acts and/or omissions of Respondents as
5 set forth in Paragraph 34, above, violate Code Section 10159.5
6 and Regulation 2731 and are cause for the suspension or
7 revocation of the licenses and license rights of Respondents
8 PATRIOT and SOUTHALL pursuant to Code Sections 10177(d) and/or
9 10177(g).

10 36.

11 The conduct, acts and/or omissions of Respondent
12 SOUTHALL, in allowing Respondent PATRIOT to violate the Real
13 Estate Law, as set forth above, constitutes a failure by
14 Respondent SOUTHALL, as the officer designated by the corporate
15 broker licensee, to exercise the supervision and control over
16 the activities of Respondent PATRIOT, as required by Code
17 Section 10159.2 and Regulation 2725, and is cause to suspend or
18 revoke the real estate license and license rights of Respondent
19 SOUTHALL under Code Sections 10177(h), 10177(d) and/or 10177(g).

20 37.

21 Code Section 10106 provides, in pertinent part, that
22 in any order issued in resolution of a disciplinary proceeding
23 before the Department of Real Estate, the Commissioner may
24 request the administrative law judge to direct a licensee found
25 to have committed a violation of this part to pay a sum not to
26 exceed the reasonable costs of the investigation and enforcement
27 of the case.
28

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondents
5 PATRIOT FINANCIAL SERVICING GROUP, INC., ZACH CHRISTOPHER
6 SOUTHALL, individually and as former designated officer of
7 Patriot Financial Servicing Group, Inc., and CLINTON W. PHIPPS
8 under the Real Estate Law (Part 1 of Division 4 of the Business
9 and Professions Code), for the cost of investigation and
10 enforcement as permitted by law, and for such other and further
11 relief as may be proper under other provisions of law.

12 Dated at Los Angeles, California

13 this 25th day of July, 2012.

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16 
17 MARIA SUAREZ
18 Deputy Real Estate Commissioner
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24 cc: Patriot Financial Servicing Group, Inc.
25 Zach Christopher Southall
26 Clinton W. Phipps
27 Maria Suarez
28 Sacto