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MARTHA J. ROSETT, Counsel (SBN 142072)
Department of Real Estate
320 West Fourth St. #350
Los Angeles, CA 90013

FILED

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DEPARTMENT OF REAL ESTATE
BY: CA

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	No. H-38452 LA
)	
CALSTAR LENDING INC., a corporate)	<u>ACCUSATION</u>
real estate broker; and)	
MICHAEL LAWRENCE ACUNA,)	
individually and as designated broker-officer)	
of Calstar Lending Inc.,)	
)	
Respondents.)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner, for cause of Accusation against CALSTAR LENDING INC., a corporate real estate broker; and MICHAEL LAWRENCE ACUNA, individually and as designated broker-officer of CALSTAR LENDING INC., is informed and alleges as follows:

1.

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

2.

Respondent CALSTAR LENDING INC. ("CALSTAR") is a California

1 corporation. At all times relevant herein, MICHAEL LAWRENCE ACUNA was and is the
2 President of CALSTAR. As set forth further below, CALSTAR's corporate status was
3 suspended by the Department of Corporations on or about May 2, 2011, and has remained
4 suspended since that time.

5 3.

6 Respondent CALSTAR is licensed and/or has license rights conferred by the
7 Department of Real Estate ("Department") as a corporate real estate broker. CALSTAR was
8 originally licensed by the Department on January 14, 2004. CALSTAR's real estate license
9 expired on or about January 14, 2012, and it retains renewal rights under the Real Estate Law.
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11 4.

12 Respondent MICHAEL LAWRENCE ACUNA ("ACUNA") is licensed by the
13 Department as a real estate broker. ACUNA was originally licensed by the Department as a
14 broker on or about November 4, 2003, and was licensed as a salesperson prior to that time. At
15 all times relevant herein, ACUNA was the broker-officer designated pursuant to Business and
16 Professions Code ("Code") Section 10159.2 to be responsible for supervising the real estate
17 activities of CALSTAR's officers, agents, affiliates and employees to ensure compliance with
18 the Real Estate Law.
19

20 5.

21 All further references to "Respondents" include Respondent CALSTAR and
22 Respondent ACUNA, as well as their officers, agents, affiliates and employees.
23

24 6.

25 At all times relevant herein, Respondents engaged in the business of, acted in the
26 capacity of, advertised or assumed to act as real estate brokers in the State of California within
27

1 the meaning of Code Sections 10131(d) and 10131.2. Their activities included soliciting
2 borrowers or lenders for and/or negotiating loans, collecting payments and/or performing
3 services for borrowers or lenders in connection with loans secured by liens on real property.

4 Their activities also included claiming, demanding, charging, receiving, collecting or contracting
5 for the collection of advance fees within the meaning of Code Sections 10026 and 10085.

6 FIRST CAUSE OF ACCUSATION:

7 (Advance Fee Violations)

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9 7.

10 Beginning on or before December 18, 2008, and continuing through on or after
11 March 11, 2011, Respondents CALSTAR and ACUNA solicited borrowers and offered to
12 provide loan modification services in exchange for payment of advance fees.

13 8.

14 On or about April 2, 2009, Respondents submitted copies of proposed advance fee
15 agreements and related materials to the Department for review. On or about April 17, 2009, the
16 Department issued a "No Objection Letter," to Respondents indicating that the Department did
17 not object to the use of the submitted advance fee agreements and related material as of that date.
18

19 9.

20 Prior to submitting advance fee materials to the Department for review and prior
21 to the issuance of a "No Objection Letter," by the Department, Respondents solicited and
22 received advance fees for loan modification services from numerous members of the public. Two
23 examples of consumers from whom Respondents collected advance fees prior to obtaining a "No
24 Objection Letter," include, but are not limited to, Brian B. and Sean M., from whom
25 Respondents collected advance fees of \$1,995.00 each prior to April 17, 2009.
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10.

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2 During the time period referred to herein, Respondents collected advance fees for
3 loan modification services from consumers and failed to place those fees into a trust account,
4 failed to maintain proper trust accounting records, failed to provide written accountings, and/or
5 failed to provide refunds upon written requests from consumers.

6
7 11.

8 During the time period referred to herein, Respondents did not maintain a trust
9 account for receipt of trust funds in the form of advance fees collected for loan modification
10 services. Rather, Respondents deposited and/or disbursed funds, including trust funds, into one
11 or more general business accounts, including into Account No. XXXXX3488 (referred to herein
12 as "Acct. 3488"), located at JP Morgan Chase, Washington Mutual Branch, Tustin Financial
13 Center, 615 E. 1st St., Tustin, CA 92780. This account was held in the name of Calstar Lending
14 Inc., and was not identified as a trust account. Respondent ACUNA was a signatory on the
15 account.

16
17 David and Lisa G.

18 12.

19 On or about October 22, 2009, David and Lisa G. ("Consumers G") signed a loan
20 modification agreement pursuant to which Respondents agreed to provide Consumers G with
21 loan modification services in exchange for the payment of advance fees. The agreement, signed
22 by Respondent ACUNA as the designated officer of CALSTAR, stated that the advance fees
23 would be deposited into a broker trust account, Acct. No. 3488, and that the broker would
24 provide a verified accounting of the funds to the consumers at the end of each calendar quarter
25 and at the termination or completion of the agreement.
26

13.

1
2 On or about October 29, 2009, Consumers G paid CALSTAR \$3,990.00 as an
3 advance fee for loan modification services on two properties. Respondents deposited the funds
4 into a general business account and did not maintain trust account records pertaining to the funds
5 collected. Respondents did not perform the services promised, and did not provide Consumers G
6 with an accounting for the fees. As of October 26, 2010, Respondents had not refunded
7 Consumers G's money.
8

14.

9
10 At the time that Respondents collected the advance fees from Consumers G for
11 loan modification services, it was unlawful for real estate brokers to collect advance fees from
12 consumers for loan modification or foreclosure forbearance services.
13

Joseph T.

15.

14
15 On or about December 22, 2009, Joseph T. ("Consumer T") entered into an
16 agreement loan with Respondents pursuant to which Respondents agreed to provide loan
17 modification services in exchange for payment of an advance fee. The agreement, signed by
18 Respondent ACUNA as the designated officer of CALSTAR, stated that the advance fees would
19 be deposited into a broker trust account, Acct. No. 3488, and that the broker would provide a
20 verified accounting of the funds to the consumers at the end of each calendar quarter and at the
21 termination or completion of the agreement.
22
23

16.

24
25 On or about December 28, 2009, Consumer T paid ACUNA \$1,995.00 as an
26 advance fee for loan modification services. Respondents deposited the advance fees into a
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1 general business account and did not maintain trust account records pertaining to the funds
2 collected. Respondents did not perform the services promised, and did not provide an
3 accounting for the fees. As of December 17, 2011, Respondents had not refunded Consumer T's
4 money, despite several requests.

5 17.

6 At the time that Respondents collected the advance fees from Consumer T for
7 loan modification services, it was unlawful for real estate brokers to collect advance fees from
8 consumers for loan modification or foreclosure forbearance services.

9 Mary and Bob W.

10 18.

11 On or about October 1, 2010, Respondent ACUNA, as designated officer of
12 CALSTAR, entered into an agreement with Mary and Bob W ("Consumers W") pursuant to
13 which Respondents agreed to provide mortgage loan modification services in exchange for
14 payment of an advance fee. The agreement, signed by Respondent ACUNA as the designated
15 officer of CALSTAR, stated that the advance fees would be deposited into a broker trust
16 account, Acct. No. 3488, and that the broker would provide a verified accounting of the funds to
17 the consumers at the end of each calendar quarter and at the termination or completion of the
18 agreement.
19
20

21 19.

22 The loan modification agreement for principal reduction services Consumers W
23 signed called for a total fee of \$3,990.00. On or about October 7, 2010, Consumers W paid
24 ACUNA \$1,995.00 as an advance fee for the loan modification services. They paid an additional
25 \$900 on November 2, 2010, which they were told would be for appraisal fees, and would be
26
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1 deposited into a trust account, Acct. No. 3488. On March 11, 2011, at ACUNA's request,
2 Consumers W sent an additional \$990.00 to him.

3 20.

4 Despite several subsequent requests for information via telephone, letters and an
5 attempt at an in person meeting at CALSTAR's office, Consumers W did not receive any further
6 assistance from CALSTAR or ACUNA. Their written requests for a full refund, as called for in
7 the written loan modification agreement, were ignored. As of June 7, 2011, Respondents did not
8 perform the services promised, did not provide an accounting for the fees, and did not refund
9 Consumers W's money.
10

11 21.

12 At the time that Respondents collected the advance fees from Consumers W for
13 loan modification services, it was unlawful for real estate brokers to collect advance fees from
14 consumers for loan modification or foreclosure forbearance services.
15

16 Todd C. and Tracy N.

17 22.

18 On or about July 29, 2009, Todd C. and Tracy N. ("Consumers CN") entered into
19 a loan modification agreement with Respondents pursuant to which Respondents agreed to
20 provide loan modification services in exchange for payment of an advance fee or fees. The
21 agreement called for two phases, including collection and submission of financial information to
22 the borrower and then negotiating and obtaining a modification of the terms of the subject loans.
23 The agreement called for all services, including the obtaining of a loan modification, to be
24 completed by October 29, 2009.
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23.

1
2 On or about July 29, 2009, Consumers CN paid Respondents an advance fee of
3 \$3,500.00. Respondents deposited the funds into Acct. No. 3488, a general business account
4 which was not identified as a trust account. Respondents did not maintain trust accounting
5 records for Acct. No. 3488, or for the advance fee Consumers CN paid.

6
7 24.

8 Respondents did not obtain a modification of Consumers CN's loans for them.
9 On or about June 4, 2010, Consumers CN received written notice from the lender that their
10 request for a loan modification had been denied. On or about June 18, 2010, Consumers CN
11 wrote ACUNA and CALSTAR a letter enclosing a copy of the lender's denial and requesting a
12 refund as promised in the written agreement. Respondents refused to provide Consumers CN
13 with a refund.

14 Brian B

15
16 25.

17 On or about January 16, 2009, Brian B (Consumer B) entered into a loan
18 modification agreement with Respondents pursuant to which Respondents agreed to provide loan
19 modification services to Consumer B in exchange for payment of an upfront fee. Respondents
20 did not submit a copy of the advance fee agreement to the Department prior to use, and had not,
21 as of that time, received a "No Objection Letter."

22
23 26.

24 On or about January 20, 2009, Respondents collected an advance fee of \$1,995.00
25 from Consumer B, which was deposited into Acct. No 3488. The agreement signed by
26 Consumer B and ACUNA called for a refund of all but \$1,445.00 of the advance fee if the loan
27

1 modification was unsuccessful for any reason. Respondents deposited the advance fee into Acct.
2 No. 3488, a general business account which was not a trust account. Respondents failed to
3 maintain trust accounting records for the funds collected from Consumer B.

4 27.

5 On Or about October 15, 2009, Consumer B notified Respondents that he had not
6 obtained a loan modification, and requested a refund of the advance fees he paid. Respondents
7 did not refund any portion of the advance fees Consumer B paid.

8 28.

9 The conduct of Respondents in collecting advance fees from borrowers pursuant
10 to an agreement which was not authorized by the Department, and prior to receiving a "No
11 Objection Letter" from the Department, as set forth above in Paragraphs 9, 25 and 27, constitutes
12 grounds to revoke or suspend Respondent CALSTAR's and Respondent ACUNA's licenses and
13 license rights pursuant to Code Sections 10085, 10177(g), 10177(d) and/or 10176(i), in
14 conjunction with Title 10, Chapter 6 of the California Code of Regulations ("Regulation"),
15 Regulation 2970.
16

17 29.

18 The conduct, acts and/or omissions of Respondent ACUNA and Respondent
19 CALSTAR in depositing advance fees into general business accounts and not into a trust
20 account, failing to maintain proper trust accounting records, and in commingling those funds
21 with personal and general business funds constitutes grounds to revoke or suspend Respondent
22 ACUNA's and Respondent CALSTAR's licenses and/or license rights pursuant to Code Sections
23 10145, 10146, 10176(e), 10177(g), 10176(i), and/or 10177(j).
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30.

The conduct, acts and/or omissions of Respondent ACUNA, as the designated broker-officer of CALSTAR, in failing to exercise adequate supervision of the activities of CALSTAR to ensure compliance with the Real Estate Law, constitutes grounds to revoke or suspend ACUNA' real estate broker license and license rights pursuant to Code Sections 10159.2 and 10177(h), in conjunction with Regulation 2725.

SECOND CAUSE OF ACCUSATION

(Suspension of Corporate Powers)

31.

On or about May 2, 2011, pursuant to the provisions of Section 23302 of the California Revenue and Taxation Code, the corporate rights and privileges of Respondent CALSTAR were suspended by the California Secretary of State. The corporate rights and privileges of Respondent CALSTAR have remained suspended since that time.

32.

The suspension of the corporate powers of Respondent CALSTAR, as set forth in paragraph 31 above, constitutes grounds to suspend or revoke Respondent CALSTAR's corporate real estate broker license pursuant to Code Sections 10177(d), 10177(f), and/or 10177(g) in conjunction with Regulation 2742.


33.

The suspension of Respondent CALSTAR by the California Secretary of State for failure to pay taxes is grounds to suspend or revoke the license and/or license rights of Respondent ACUNA for failure to supervise the activities of the corporation, in violation of Code Sections 10159.2, 10177(h), 10177(d) and/or 10177(g).

1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this
2 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
3 against all licenses and/or license rights of Respondents CALSTAR LENDING INC., and
4 MICHAEL LAWRENCE ACUNA under the Real Estate Law, for the cost of investigation and
5 enforcement as permitted by law (Code Section 10106), and for such other and further relief as
6 may be proper under other applicable provisions of law.

7 Dated at Los Angeles, California

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9 this 18th day of October, 2012.

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12 
13 Maria Suarez
14 Deputy Real Estate Commissioner

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23 cc: Calstar Lending Inc.
24 Michael Acuna
25 Maria Suarez
26 Sacto.
27