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FILED

JUL 18 2014

BUREAU OF REAL ESTATE

By *[Signature]*

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7
8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of)	CalBRE No. H-39302 LA
)	OAH No. 2014020975
12	MICHAEL PELIMIANO SORIANO,)	
	individually, and as designated)	
13	officer of MSM Services, Inc.;)	<u>FIRST AMENDED ACCUSATION</u>
)	
14	MSM SERVICES, INC.;)	
)	
15	LYDIA FRANCISCO SORIANO,)	
	individually, and as designated)	
16	officer of MSM Services, Inc.;)	
)	
17	AGUSTIN NAVARRA ALAYON; and)	
	JOSEPH ANTHONY OLIVA,)	
18)	
	Respondents.)	
19)	

20 This First Amended Accusation amends the Accusation filed on February 7, 2014.

21 MSM SERVICES, INC. and LYDIA FRANCISCO SORIANO are included as new respondents
22 in this First Amended Accusation. The Complainant, Robin Trujillo, a Deputy Real Estate
23 Commissioner of the State of California, for cause of Accusation against MICHAEL
24 PELIMIANO SORIANO, individually, and as designated officer of MSM Services, Inc.; MSM

1 SERVICES, INC.; LYDIA FRANCISCO SORIANO, individually, and as designated officer of
2 MSM Services, Inc.; AGUSTIN NAVARRA ALAYON; and JOSEPH ANTHONY OLIVA
3 (collectively "Respondents"), is informed and alleges as follows:

4 1.

5 The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the
6 State of California, makes this Accusation in her official capacity.

7 2.

8 All references to the "Code" are to the California Business and Professions Code
9 and all references to "Regulations" are to the Regulations of the Real Estate Commissioner, Title
10 10, Chapter 6, California Code of Regulations.

11 3.

12 From April 10, 2007, through the present, Respondent MICHAEL PELIMIANO
13 SORIANO ("SORIANO") has been licensed and/or has license rights by the Bureau of Real
14 Estate ("Bureau") as a real estate broker, License ID 01133773. At all times relevant,
15 Respondent was not licensed to do business under a fictitious business name or with any branch
16 offices. Respondent's main office address was listed as 18616 Bloomfield Avenue, Cerritos,
17 California 90703.

18 4.

19 From February 3, 2005, through the present, Respondent MSM SERVICES, INC.
20 ("MSM") has been licensed and/or has license rights by the Bureau as a real estate corporation,
21 License ID 01477431. MSM is licensed to do business as MSM Financial Service, MSM
22 Mortgage Co., and MSM Realty Depot.

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From July 5, 1991, through the present, Respondent LYDIA FRANCISCO PELIMIANO SORIANO (“L. SORIANO”) has been licensed and/or has license rights by the Bureau as a real estate broker, License ID01062848.

6.

From June 16, 2009, through the present, Respondent M. SORIANO as the officer designated by Respondent MSM pursuant to Section 10211 of the Code, was responsible for the supervision and control of the activities conducted on behalf of Respondent MSM by its officers and employees as necessary to secure full compliance with Real Estate Law as set forth in Section 10159.2 of the Code.

7.

From June 15, 2005, through the present, Respondent L. SORIANO, as the officer designated by Respondent MSM pursuant to Section 10211 of the Code, was responsible for the supervision and control of the activities conducted on behalf of Respondent MSM by its officers and employees as necessary to secure full compliance with Real Estate Law as set forth in Section 10159.2 of the Code.

8.

From December 1, 2001, through November 30, 2013, Respondent AGUSTIN NAVARRA ALAYON (“ALAYON”) was licensed by the Bureau as a real estate salesperson, License ID 01324865. Respondent ALAYON’s salesperson license expired on November 30, 2013. Respondent has renewal rights pursuant to Code section 10201. The Bureau retains jurisdiction pursuant to Code section 10103. Respondent ALAYON’s employing broker from April 10, 2006, to June 11, 2012, was Ann Marjorie Alayon. Respondent’s employing broker

1 from June 12, 2012, to November 30, 2013, was MSM.

2 9.

3 From December 12, 2006, through the present, Respondent JOSEPH ANTHONY
4 OLIVA (“OLIVA”) has been licensed and/or has license rights by the Bureau as a real estate
5 salesperson, License ID 01785075. Respondent OLIVA’s employing broker from March 18,
6 2011, to the present has been Ibis Universal Corporation. From July 18, 2010, through March
7 17, 2011, Respondent OLIVA was licensed as “NBA” or no broker affiliation which precluded
8 OLIVA from engaging in activities that required a real estate license.

9 FIRST CAUSE OF ACCUSATION

10 (Suspended Corporate Status-MSM)

11 10.

12 Respondent MSM is a California corporation formed on November 12, 2004.
13 Respondents M. SORIANO and L. SORIANO are officers, directors, or person owning ten
14 percent or more of Respondent MSM’s stock.

15 11.

16 The California Secretary of State suspended the corporate powers, rights and
17 privileges of Respondent MSM. MSM’s corporate status remains suspended.

18 12.

19 The suspension of Respondent MSM’s corporate status is in violation of
20 Regulation 2742, subdivision (c), and constitutes grounds to suspend or revoke Respondent
21 MSM’s real estate corporation license pursuant to Code Sections 10177(d) (violation of the Real
22 Estate Law) and/or 10177(g) (negligence).

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1 SECOND CAUSE OF ACCUSATION

2 (Failure to Retain Records - MSM)

3 13.

4 There is hereby incorporated in this Second, separate and distinct Cause of
5 Accusation, all of the allegations contained in Paragraphs 1 through 12, with the same force and
6 effect as if herein fully set forth.

7 14.

8 On or about February 26, 2014, the Bureau attempted to audit the real estate
9 activities of Respondent MSM. The Bureau's auditor made several attempts to schedule an audit
10 with MSM's designated officers, M. SORIANO and L. SORIANO. The Bureau's auditor
11 requested all records required to be retained by MSM pursuant to Code section 10148.
12 Respondent MSM failed to retain any records related to activities requiring a real estate license.

13 15.

14 MSM's failure to retain for three years copies of all records in connection with
15 transactions for which a real estate broker license is required, is in violation of Code section
16 10148 and constitutes cause to suspend or revoke Respondent MSM's corporate real estate
17 corporation license pursuant to Code Sections 10177(d) (violation of the Real Estate Law) and/or
18 10177(g) (negligence).

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1 THIRD CAUSE OF ACCUSATION

2 (Unlicensed Activity/Advance Fee Violations/Dishonest Dealing- Respondents)

3 16.

4 There is hereby incorporated in this Third, separate and distinct Cause of
5 Accusation, all of the allegations contained in Paragraphs 1 through 15, with the same force and
6 effect as if herein fully set forth.

7 17.

8 Code Section 10131 defines a real estate broker as a person who:

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

12 (d) Solicits borrowers or lenders for or negotiates loans or collects
13 payments or performs services for borrowers or lenders in connection with
loans secured directly or collaterally by liens on real property; or

14 (e) Sells or offers to sell, buys or offers to buy or exchanges
15 or offers to exchange a real property sales contract, or a promissory note
16 secured directly or collaterally by a lien on real property or on a business
17 opportunity, and performs services for the holders thereof.

18 18.

19 Code Section 10131.1, subdivision (a) further defines a real estate broker as

20 "a person who engages as a principal in the business of making
21 loans or buying from, selling to, exchanging with the public, real property
22 sales contracts or promissory notes secured directly or collaterally by liens
23 on real property, or who makes agreements with the public for the
24 collection of payments or for the performance of services in connection
with real property sales contracts or promissory notes secured directly or
collaterally by liens on real property."

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Code section 10131.2 states:

“A real estate broker within the meaning of this part is also 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 an 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.”

20.

Code Section 10085.5, subdivision (a) states:

“It shall be unlawful for any person to claim, demand, charge receive, collect, or contract for an advance fee (1) for soliciting lenders on behalf of borrowers or performing services for borrowers in connection with loans to be secured directly or collaterally by a lien on real property, before the borrower becomes obligated to complete the loan or, (2) for performing any other activities for which a license is required, unless the person is a licensed real estate broker and has complied with the provisions of this part.”

21.

Code Section 10085.6, subdivision (a) states:

“Notwithstanding any other provision of law, it shall be unlawful for any licensee who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:

- (1) Claim, demand, charge, collect or receive any compensation until after the licensee has fully performed each and every service the licensee contracted to perform or represented that he, she, or it would perform.
- (2) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation.”

1 (3) Take any power of attorney from the borrower for any
purpose.”¹

2 22.

3
4 Code Section 10137 states:

5 “It is unlawful for any licensed real estate broker to compensate,
6 directly or indirectly, any person for performing any of the acts within the
7 scope of this chapter who is not a licensed real estate broker, or a real
estate salesperson licensed under the broker employing or compensating
him or her...

8 No real estate salesperson shall be employed by or accept
9 compensation from any person other than the broker under whom he or
she is at the time licensed.”

10 23.

11 On or about May 7, 2010, Respondent M. SORIANO and Raissa Soriano, an
12 unlicensed person, formed Cyberlink Diamond Group, LLC (“Cyberlink”), an unlicensed entity.
13 Cyberlink used an office address located at 17011 Beach Blvd., Suite #900, Huntington Beach,
14 California 92647.

15 24.

16 Cyberlink used various other fictitious business names including, but not limited
17 to, Cyberlink LLC and CDG. Cyberlink employed or compensated various individuals who
18 acted as agents, representatives, independent contractors, or employees of Cyberlink including,
19 but not limited to Jennifer Lane, Rachel Lane, Maan Cho, Zenaida Bermejo, and Respondents
20 ALAYON and OLIVA.

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23 _____
24 ¹ Civil Code section 2944.7(a) prohibits any *person*, including foreclosure consultants, from similar
conduct.

1 25.

2 For an unknown period of time that includes the previous three years,
3 Respondents, while doing business as Cyberlink, solicited borrowers and offered to perform loan
4 modifications, negotiations, purchase notes, and/or foreclosure forbearance services in
5 connection with loans secured directly or collaterally by liens on real property. Respondents
6 referred to this scheme as the HLC Program.

7 26.

8 In furtherance of their scheme, Respondents induced borrowers to sign
9 agreements entitled "HLC Preparation Retainer Fee Agreement" or "Service Value Guarantee"
10 wherein homeowners were promised a loan modification or purchase of their notes, a lower
11 interest rate on a thirty (30) year fully amortized fixed-rate loan, and/or a reduced principal
12 balance from their current mortgage loan.

13 27.

14 Respondents charged and collected advance fees ranging from \$8,000 to \$25,000
15 from borrowers for said services. Borrowers were promised that their advance fees were 100%
16 refundable if they did not qualify for financing. In an effort to circumvent existing laws that
17 prohibited the collection of advance fees for loan modification and foreclosure forbearance
18 services, Respondents deliberately included verbiage in their agreements which stated that clients
19 agreed that "no advance fees have been paid."

20 28.

21 Borrowers were told that the process could take up to one year. Borrowers
22 requested refunds after realizing or becoming informed that they had not, or would not, receive
23 the services promised by Cyberlink's representatives. Respondents acted in bad faith by failing
24

1 to respond to borrowers' requests for their refunds or refusing to refund the borrowers' requests
 2 for refunds of their advance fees. Respondents charged and collected an estimated \$1.4 million
 3 in advance fees from borrowers. Some of the victims of Cyberlink's scheme, include, without
 4 limitation, the following borrowers:

5	BORROWER	ADDRESS	ADVANCE FEE	DATE PAID
6	Precioso P.	436 Gavin Ct.	\$9,000	07/06/2011
7	Solito S.	1105 Maserati Dr.	\$1,000	05/31/2011
8			\$8,000	03/16/2011
9	Victoria N.	2112 N. Frederic St.	\$8,000	03/29/2011
10	Angelito A.	7504 Longhorn Lodge Ave.	\$4,500	07/05/2011
11			\$4,500	07/12/2011

12
 13 29.

14 On or about March 6, 2011, Respondent ALAYON, while acting as an agent on
 15 behalf of Cyberlink, solicited the HLC program to borrower, Solito S. ALAYON, acting on
 16 behalf of Cyberlink, charged or collected \$9,000 from Solito S.

17 30.

18 On or about July 4, 2011, Respondent OLIVA, while acting as an agent on behalf
 19 of Cyberlink, solicited the HLC program to borrower, Precioso P. OLIVA, acting on behalf of
 20 Cyberlink, charged or collected \$9,000 from Precisio P.

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31.

The conduct, acts and/or omissions of Respondents M. SORIANO, ALAYO, and OLIVA as set forth above in Paragraphs 23 through 30, are in violation of Code sections 10085.5, 10085.6, and/or Civil Code section 2944.7, and constitute cause for the suspension or revocation of the licenses and license rights of Respondents M. SORIANO, ALAYO, and OLIVA pursuant to Code Sections 10177(d) (violation of the Real Estate Law) and/or 10177(g) (negligence).

32.

Respondents' conduct, acts and/or omissions as set forth above in Paragraphs 23 through 30, constitute grounds for the suspension or revocation of the licenses and license rights of Respondents M. SORIANO, ALAYO, and OLIVA pursuant to Code Sections 10176(a) (making any substantial misrepresentation), 10176(b) (making any false promises of a character likely to influence, persuade or induce), and/or 10176(i) (conduct...which constitutes fraud or dishonest dealing).

33.

The conduct, acts and/or omissions of Respondents M. SORIANO, ALAYO and OLIVA, while doing business as Cyberlink, as set forth above in Paragraphs 23 through 30, are in violation of Code sections 10130 and 10137 and constitute cause for the suspension or revocation of the licenses and license rights of Respondents M. SORIANO, ALAYO, and OLIVA pursuant to Code Sections 10139 (penalties for unlicensed person), 10177(d) (violation of the Real Estate Law) and/or 10177(g) (negligence).

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1 34.

2 The conduct, acts and/or omissions of Respondent M. SORIANO, while doing
3 business as Cyberlink, as set forth above in Paragraphs 23 through 30, are in violation of Code
4 sections 10145 (handling of trust funds), 10146 (advance fees to be deposited in trust account),
5 10159.5 (unlicensed fictitious name), 10163 (unlicensed branch office), and 10137 (unlawful
6 employment or compensation), and constitute cause for the suspension or revocation of the
7 license and license rights of Respondent M. SORIANO pursuant to Code Sections 10139
8 (penalties for unlicensed person), 10177(d) (violation of the Real Estate Law) and/or 10177(g)
9 (negligence).

10 FOURTH CAUSE OF ACCUSATION

11 (Failure to Supervise)

12 35.

13 There is hereby incorporated in this Fourth, separate and distinct Cause of
14 Accusation, all of the allegations contained in Paragraphs 1 through 34, with the same force and
15 effect as if herein fully set forth.

16 36.

17 The conduct, acts and/or omissions of Respondents M. SORIANO and L.
18 SORIANO, in allowing MSM to violate the Real Estate Law, as set forth in Paragraphs 3
19 through 34 above, constitutes a failure by Respondents M. SORIANO and L. SORIANO to
20 exercise the supervision and control over the activities of Respondents MSM as required by
21 Code Section 10159.2 and Regulation 2725, and are cause to suspend or revoke the real estate
22 license and license rights of Respondents M. SORIANO and L. SORIANO under Code Sections
23
24

1 10177(h) (broker supervision), 10177(d) (violation of the Real Estate Law) and/or 10177(g)
2 (negligence).

3 37.

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

8 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this
9 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
10 against all licenses and/or license rights of Respondents MICHAEL PELIMIANO SORIANO,
11 individually, and as designated officer of MSM Services, Inc.; MSM SERVICES, INC.; LYDIA
12 FRANCISCO SORIANO, individually, and as designated officer of MSM Services, Inc.;
13 AGUSTIN NAVARRA ALAYON; and JOSEPH ANTHONY OLIVA under the Real Estate
14 Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of investigation
15 and enforcement as permitted by law, and for such other and further relief as may be proper
16 under other provisions of law.

17 Dated at Los Angeles, California

18 this 16 day of July, 2014.

19
20 
21 ROBIN TRUJILLO
22 Deputy Real Estate Commissioner
23
24

1 cc: Michael Pelimiano Soriano
MSM Services, Inc.
2 Lydia Francisco Soriano
Agustin Navarra Alayon
3 Joseph Anthony Oliva
Ibis Universal Corporation
4 Robin Trujillo
Sacto
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