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**FILED**  
  
JUN 30 2015  
BUREAU OF REAL ESTATE  
By 

BEFORE THE BUREAU<sup>1</sup> OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

<p>In the Matter of the Accusation of</p> <p>MAXIMILLION JOHN PELAYO, doing business as co-registered fictitious business names of: Direct Mortgage Counseling, Direct Home Counseling, and Direct Loan Counseling,</p> <p style="text-align: center;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>No. H-39773 LA</p> <p><u>FIRST AMENDED ACCUSATION</u></p>
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The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the State of California, acting in her official capacity, for cause of Accusation against MAXIMILLION JOHN PELAYO doing business as unregistered fictitious business names of Direct Mortgage Counseling, Direct Home Counseling, and Direct Loan Counseling, is informed

<sup>1</sup> Effective July 1, 2013, the California Department of Real Estate became the Department of Consumer Affairs, Bureau of Real Estate ("Bureau"). References in this Accusation are to the successor entity.

Accusation of Maxmillion John Pelayo

1 and alleges as follows:

2 1.

3 All references to the "Code" are to the California Business and Professions Code  
4 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations,  
5 unless otherwise specifically stated.

6 2.

7 At all times mentioned, MAXIMILLION JOHN PELAYO ("PELAYO") was  
8 licensed or had license rights issued by the Bureau of Real Estate ("Bureau") as a real estate  
9 broker. On January 22, 1997, PELAYO was originally licensed as a real estate broker.

10 3.

11 Whenever reference is made in an allegation in this Accusation to an act or  
12 omission of "Respondent" such allegation shall be deemed to mean that the officers, directors,  
13 employees, agents and real estate licensees employed by or associated with the Respondent  
14 committed such act or omission while engaged in the furtherance of the business or operations  
15 of the Respondent and while acting within the course and scope of their corporate authority and  
16 employment, including revoked salesperson David Kashani aka David Anderson, and aka  
17 David Mooshighi Kashani, and unlicensed persons Irene E. Smith, Charles A. Smith, Jason  
18 Henry, Alan Rose, and other persons known or unknown persons operating under fictitious  
19 names.

20 4.

21 At all times mentioned, in the City of Perris, County of Riverside, Respondent  
22 PELAYO acted as a real estate broker and conducted licensed activities within the meaning of  
23 Code Sections 10131(d) and 10131.2. Through the unlicensed fictitious business names of  
24 Direct Mortgage Counseling, Direct Home Counseling, and Direct Loan Counseling, Respondent  
25 advertised, solicited and offered to provide loss mitigation and loan modification services to  
26

1 economically distressed homeowners seeking adjustments to the terms and conditions of their  
2 home loans.

3 FIRST CAUSE OF ACCUSATION

4 (Audit)

5 5.

6 On April 30, 2013, the Bureau completed an audit examination of the books and  
7 records of PELAYO, pertaining to loan modification and advance fee activities and brokerage  
8 described in Paragraph 4, which require a real estate license. The audit examination covered a  
9 period of time beginning on January 1, 2012 and ending on January 31, 2013. The audit  
10 examination revealed violations of the Code and the Regulations as set forth below, and more  
11 fully discussed in Audit Report SD 120024 and the exhibits and work papers attached.

12 ///

13 6.

14 At all times mentioned, in connection with the activities described in Paragraph  
15 4A, above, PELAYO accepted or received funds including funds in trust (hereinafter “trust  
16 funds”) from or on behalf of actual or prospective parties to transactions handled by PELAYO  
17 including loan modification applicants. PELAYO was not aware of any bank accounts and did  
18 not provide any information with respect to bank accounts into which trust funds including  
19 advanced fees were deposited.

20 7.

21 With respect to the licensed activities referred to in Paragraphs 4A, and the audit  
22 examination including the exhibits and work papers referenced in Paragraph 5, it is alleged that  
23 Respondent PELAYO:

24 (a) Purported to provide loan modification services and collected advance fees  
25 totaling \$4,250.00 in May and June 2012 from Samantha B. for her real property located at  
26 15399 Road 29 ½, Madea, CA 93636, in violation of Code Section 10085.6 referencing Civil  
27

1 Code Section 2944.7 (Loan Modification Services – Prohibition of Advance Fees);

2 (b) Conducted loan modification activities at 11312 Santa Monica Blvd. #3, Los  
3 Angeles, CA 90025, prior to obtaining a branch office license from the Bureau, in violation of  
4 Code Section 10163 and Regulation 2715;

5 (c) Used the fictitious name of "Direct Home Counseling" to conduct licensed  
6 activities, without first obtaining from the Bureau a license bearing said fictitious business name,  
7 in violation of Code Section 10159.5 and Regulation 2731;

8 (d) Failed to retain copies of loan modification brokerage documentation, and  
9 retain bank account records and bank statements in relation to advance fee trust fund handling, in  
10 violation of Code Section 10148; and

11 (e) Failed to exercise reasonable control and supervision over the activities of his  
12 branch office and conducted by his employees and/or licensees as necessary to secure full  
13 compliance with the Real Estate laws, with respect to his brokerage activity, as required by and  
14 pursuant to Code Section 10159.2 and Regulation 2725, in violation of Code Section 10177(h);

15  
16  
17 8.

18 The conduct of Respondent PELAYO described in Paragraph 7, violated the Code  
19 and the Regulations as set forth:

21	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
22	7(a)	Code Section 10085.6, referencing Civil Code Section 2944.7
23	7(b)	Code Section 10163 and Regulation 2715
24	7(c)	Code Section 10159.5 and Regulation 2731
25	7(d)	Code Section 10148
26	7(e)	Code Section 10177(h) and Regulation 2725

1 Each of the foregoing violations constitute cause for discipline of the real estate license and  
2 license rights of Respondent PELAYO under the provisions of Code Sections 10177(d),  
3 10177(g) and 10177(h).  
4

5 SECOND CAUSE OF ACCUSATION  
6 (Loan Modification Fraud Scheme)

7 9.

8 A Bureau of Real Estate investigation in conjunction with the audit violations set  
9 forth above in Paragraph 7, revealed that at all times mentioned herein, Respondent PELAYO  
10 engaged in the business of a loan modification and an advance fee brokerage requiring a real  
11 estate license to operate, within the definition of Code Sections 10131(d) and 10131.2, as set  
12 forth in Paragraph 4A, above.

13 10.

14 During the investigation period and continuing thereafter beginning on or about  
15 January 1, 2013 through August 2013, Respondent PELAYO, dba Direct Mortgage Counseling,  
16 Direct Home Counseling, and Direct Loan Counseling, interchangeable entities with common  
17 ownership and management, employed unlicensed salespersons who: solicited economically  
18 distressed homeowners facing foreclosure and eviction from their homes; offered and negotiated  
19 loss mitigation and loan modification services, and foreclosure rescue; and charged, claimed and  
20 collected advance fees for loan modification services not rendered, for fees not refunded, and for  
21 loan modifications not obtained.

22 11.

23 Working with revoked salesperson David Kashani aka David Anderson,  
24 unlicensed Charles A. Smith, unlicensed Irene E. Smith, and Jason Henry, Respondent PELAYO  
25 solicited and offered loss mitigation, loan modification, loan refinancing and foreclosure rescue  
26 services to homeowner-applicants. Respondent PELAYO collected advanced fees from said  
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1 homeowner- applicants after the proscriptive date of October 10, 2009, pursuant to Code Section  
 2 10085.5. Thereafter, Respondent PELAYO failed to provide said services to the applicant-  
 3 borrowers below. To date none of the below tabled homeowners have received a refund or  
 4 restitution of their advanced fees paid.

5  
 6 Table DMC: Advance Fees Loan Modification/Fraud Scheme: Direct Mortgage Counseling

Complainant	Agent	Advance Fee Paid to DMC	Loan Modification Status
Michael D.	Charles Smith/David Anderson	\$3,480 May/June 2012	Not obtained; no refund
Samantha B.	Charles Smith/David Anderson	\$4,250 May/June 2012	Not obtained; no refund
Anthony S.	Charles Smith/David Anderson	\$3,500 May/August 2012	Not obtained; no refund
John P.	Charles Smith/David Anderson	Solicitation March 2013	
Total		\$ 11,230	

17 Table DHC: Advance Fees Loan Modification/Fraud Scheme: Direct Home Counseling

Complainant	Agent	Advance Fee Paid to DHC	Loan Modification Status
Helen H.	Charles Smith/David Anderson	\$2,000 November/December 2012	Not obtained; no refund
Boyd P.	Charles Smith/David Anderson	\$3,000 January 3, 2013	Not obtained; no refund
Janet S.	Charles Smith/David Anderson	Solicitation February 2013	Not obtained; no refund
Marie N.	Charles Smith/David Anderson	\$3,500 January 2013	

1		Charles/Irene Smith/David		
2	Susie S.	Anderson, Jason Henry	\$3,000 November 11, 2012	False Representatio n
3		Charles/Irene Smith/David		
4	Cassandra P.	Anderson, Jason Henry	\$3,500 April 24, 2012	
5	Total		\$ 15,000	

6  
7 Violations and Disciplinary Statutes

8 12.

9 The conduct of Respondent PELAYO violated the Code and the Regulations as  
10 set forth below in the following paragraphs.

11 9-11 (a) Code Section 10176(a) for substantial misrepresentation of loan  
12 modification services contracted for but not provided or advance fees refunded; or for solicitation  
13 sought by fraudulent scheming including but not limited to representing Direct Mortgage  
14 Counseling, and referring to Direct Mortgage Counseling, as a "law firm."

15 9-11 (b) Code Section 10176(i) for fraud and dishonest dealing for influencing,  
16 persuading or inducing the tabled homeowner-applicant(s) to pay advance fees for loan  
17 modification services contracted for but not provided.

18 9-11 (c) Code Section 10085.5 and 10085.6.

19 9-11 (d) Code Section 10177(d) for violation of the Real Estate Law.

20 9-11 (e) Code Section 10177(g) for negligence.

21 9-11 (f) Code Section 10176(i) and 10177(g) for breach of fiduciary duty.

22 9-11 (g) Code Section 10176(i) and 10177(g) for fraud and dishonest dealing.

23 9-11 ((h) Code Section 10137 for unlawful employment/compensation.

24 9-11 (i) Code Section 10176(i) for conversion of trust funds

25 9-11 (j) Code Section 10177(h) for failure to supervise.

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THIRD CAUSE OF ACCUSATION

(Negligence/Incompetence)

18.

The overall conduct of Respondent PELAYO constitutes negligence or incompetence. This conduct and violation is cause for the suspension or revocation of the real estate license and license rights of said Respondent pursuant to Code Section 10177(g).

FOURTH CAUSE OF ACCUSATION

(Breach of Fiduciary Duty)

19.

The conduct, acts and omissions of Respondent PELAYO constitutes a breach of fiduciary duty, owed to the loan modification borrower-applicants of Direct Mortgage Counseling, Direct Home Counseling, and Direct Loan Counseling of good faith, trust, confidence and candor, within the scope of brokerage relationship, in violation of Code Section 10177(g) and constitutes cause for discipline of the real estate license and license rights of Respondent pursuant to the provisions of said section.

FIFTH CAUSE OF ACCUSATION

(Failure to Supervise)

20.

The overall conduct of Respondent PELAYO constitutes a failure to exercise supervision and control over the licensed activities of Respondent's brokerages: Direct Mortgage Counseling, Direct Home Counseling, and Direct Loan Counseling. Nor did Respondent maintain a system in place for regularly monitoring his compliance with the Real Estate Law especially in regard to establishing policies to reviewing trust fund handling for advance fees, including but not limited to ascertaining the license status of the owners and salesperson of the aforesaid entities, in violation of Code Sections 10177(d), 10177(g) and/or 10177(h).



1  
2 Code Section 10106 provides, in pertinent part, that in any order issued in  
3 resolution of a disciplinary proceeding before the Bureau of Real Estate, the Commissioner may  
4 request the administrative law judge to direct a licensee found to have committed a violation of  
5 this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of  
6 the case.

7  
8 WHEREFORE, Complainant prays that a hearing be conducted on the  
9 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing  
10 disciplinary action against the license and license rights of Respondent MAXIMILLION JOHN  
11 PELAYO, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions  
12 Code) and for such other and further relief as may be proper under other applicable provisions  
13 of law including restitution in minimum amount of \$26,230.00, and for costs of investigation  
14 and enforcement pursuant to Code Section 10106, pursuant to Government Code Section  
15 11519(d).  
16

17  
18 Dated San Diego, California

19 this 30<sup>th</sup> day of June, 2015

20  
21   
22 VERONICA KILPATRICK  
Deputy Real Estate Commissioner

23 cc: Maximillion John Pelayo  
24 Wlpiano Miranda  
25 Veronica Kilpatrick  
26 Zaky Wanis  
27 Sacto