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**FILED**

OCT 24 2019

DEPT. OF REAL ESTATE

By



9 BEFORE THE DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

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|                                       |   |                   |
|---------------------------------------|---|-------------------|
| 11 In the Matter of the Accusation of | ) | No. H-41492 LA    |
| 12 DOWNEY HOME LOANS                  | ) |                   |
| 13 CORPORATION. and FERNANDO          | ) | <u>ACCUSATION</u> |
| 14 GOMEZ, individually and as         | ) |                   |
| 15 designated officer of Downey Home  | ) |                   |
| Loans Corporation,                    | ) |                   |
| <u>Respondents.</u>                   | ) |                   |

16 The Complainant, Maria Suarez, a Supervising Special Investigator for the  
17 Department of Real Estate ("Department" or "DRE") of the State of California, for cause of  
18 Accusation against DOWNEY HOME LOANS CORPORATION ("DHLC") and FERNANDO  
19 GOMEZ ("GOMEZ"), also known as Fernando Alberto Gomez (collectively "Respondents"),  
20 alleges as follows:

- 21 1. The Complainant, Maria Suarez, acting in her official capacity as a Supervising  
22 Special Investigator, makes this Accusation against Respondents.
- 23 2. All references to the "Code" are to the California Business and Professions Code  
24 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

25 LICENSE HISTORY

- 26 3. Respondent DHLC has been licensed by the Department as a real estate  
27 corporation, License ID 01853805, from October 27, 2008 through the present, with DHLC's  
28 license scheduled to expire on October 26, 2020 unless renewed. DHLC is licensed through

1 GOMEZ's real estate broker ("REB") license, ID 01359587, and GOMEZ is the designated officer  
2 ("D.O."). DHLC has a mortgage loan originator license endorsement from the Department, and is  
3 licensed through the Nationwide Multistate Licensing System & Registry ("NMLS"), NMLS No.  
4 308433. DHLC has maintained two (2) branch offices located at 10011 Tecum Rd, Downey CA  
5 90240 and 10015 Tecum Rd., Downey CA 90240. The following six (6) fictitious business names  
6 are licensed to DHLC with the Department:

- 7 a. "Downey Home Loans," effective from March 12, 2009;
- 8 b. "Downey Home Loans-Loan Processing," effective from December 23,  
9 2014;
- 10 c. "Downey Realtors," effective from December 29, 2008;
- 11 d. "FJF Capital Group," effective from December 29, 2008;
- 12 e. "Garfield Mortgage," effective from December 29, 2008; and
- 13 f. "North Downey Escrow Services, a non-independent broker escrow."  
14 effective from March 17, 2009.

15 4. Respondent GOMEZ has been licensed by the Department as a real estate broker,  
16 from on or about July 22, 2008 through the present, with GOMEZ's license scheduled to expire on  
17 July 21, 2020, unless renewed. GOMEZ has a mortgage loan originator license endorsement from  
18 the Department, and is licensed through the NMLS, NMLS No. 308218. GOMEZ has no fictitious  
19 business names licensed with the Department.

#### 20 BROKERAGE: DHLC

21 5. At all times mentioned, in the City of Downey, County of Los Angeles, DHLC  
22 acted as a real estate broker, conducting licensed activities within the meaning of Code section  
23 10131(a): selling and buying real property for others. In addition, , DHLC conducted broker-  
24 controlled escrows under the exemption set forth in California Financial Code section 17006(a)(4)  
25 for real estate brokers performing escrows incidental to a real estate transaction where the broker  
26 is a party and where the broker is performing acts for which a real estate license is required. At all  
27 times mentioned, DHLC was acting by and through GOMEZ as its designated officer pursuant to  
28 Code section 10159.2 who was responsible for ensuring compliance with the Real Estate Law.

AUDIT: DHLC, LA170205

6. On August 30, 2018, the Department completed an audit examination of the books and records of DHLC's real estate activities that require a corporate real estate broker license under Code section 10131. The audit examination covered the time period January 1, 2017 to May 2, 2018 ("audit period").

7. The purpose of the audit examination was to determine whether DHLC handled and accounted for trust funds and conducted its real estate activities in accordance with the Real Estate Law and the Regulations.

8. Based on the Department's licensing records for DHLC, as noted above in paragraph 3, DHLC maintains six (6) active fictitious business names, and maintain two branch offices. As of August 19, 2019, DHLC had one licensed broker associate and four licensed real estate salespersons ("RES").

9. Based on the Department's licensing records as of August 19, 2019, GOMEZ maintains no fictitious business names and no branch offices, and there are no salespersons licensed under GOMEZ's individual broker's license.

10. Based on discussions between the Department's auditor and GOMEZ, and an examination of records, DHLC was incorporated in California on September 11, 2008, and its corporate structure as of April 11, 2018 was as follows:

| <u>Name</u> | <u>Title</u> | <u>License Status</u>                                      | <u>Shareholder %</u> |
|-------------|--------------|------------------------------------------------------------|----------------------|
| GOMEZ       | President    | D.O./REB                                                   | 75%                  |
| Rosie Urzua | Secretary    | Broker Associate<br>(REB ID No. 01470747, NMLS No. 308280) | 25%                  |

11. According to DHLC's escrow log, during the last twelve (12) months of the audit period, DHLC closed about thirty-one (31) escrow transactions and collected about \$3.1 million annually in trust funds related to DHLC's broker escrow activity.

12. According to GOMEZ, DHLC maintained one (1) multi-beneficiary trust fund bank account ("BA1") for handling the receipts and disbursements of trust funds in connection with the broker escrow activity during the audit period. According to the bank signature card, BA1 was opened on July 25, 2014. The information for BA1, the sole trust fund bank account, is as follows:

1       Bank Account #1 ("BA1")

2           Bank:                   City National Bank  
3                                   5601 East Slauson Ave.  
4                                   Commerce, CA 90040  
5           Account Name:       Downey Home Loans Corporation,  
6                                   DBA North Downey Escrow Services  
7                                   A Non Independent Broker Escrow, A CA Corporation  
8           Account #:           XXXXXXXXXX9921  
9           Signatories:         GOMEZ  
10                                Rosie Urzua  
11           Signatures required: One (1) signature

12           13.     The audit examination in Audit No. LA170205 revealed violations of the Code and  
13           the Regulations as set forth in the following paragraphs, and as more fully discussed in Audit  
14           Report LA170205 and the exhibits and work papers attached to the audit report.

15                    AUDIT FINDINGS: VIOLATIONS OF THE REAL ESTATE LAW

16           14.     In the course of their real estate activities during the audit period January 1, 2017 to  
17           May 2, 2018, Respondents DHLC and GOMEZ acted in violation of the Code and the Regulations  
18           as follows:

19           Issue One (1). Code section 10145 and Regulations 2832.1, 2950(g), and 2951: Trust Fund  
20           Handling for Multiple Beneficiaries: When Broker Handles Escrow

21           15.     As of May 2, 2018, BA1 had a trust fund shortage of \$185,714.36. The shortage  
22           was caused by a negative escrow account balance of <\$185,714.36>. The accountability was  
23           determined based on the separate records provided by DHLC escrow officer Rosie Urzua  
24           ("Urzua").

25               a.     DHLC made an unauthorized deposit of \$185,714.36 into its general bank  
26           account ("GA1") at City National Bank, with account number ending in 9905, and  
27           commingled trust funds in GA1 for Escrow No. 3193-RU for buyer Enrique Lopez. A  
28           cashier's check, check No. 0010801848, from Maria G. Herrera-Nava dated April 26, 2018  
          in the amount of \$185,714.36 intended for Escrow No. 3193-RU was deposited into GA1  
          instead of BA1 on April 27, 2018. On May 2, 2018, disbursements for Escrow No.

3193-RU totaling \$262,675.51 were made from BA1 when there were insufficient funds in BA1, causing a trust fund shortage of \$185,714.36 as of May 2, 2018. The Department's auditor provided the following reconciliation for BA1 with the cutoff date of May 2, 2018:

|                                    |                 |
|------------------------------------|-----------------|
| BA1 Bank Balance, 5/2/2018         | \$ 78,966.01    |
| Add Deposits in Transit            | \$ 0.00         |
| Less Outstanding Checks            | \$ <264,680.37> |
| Adjusted bank balance, 05/02/2018  | \$ <185,714.36> |
| Accountability, 5/2/2018           |                 |
| Identified Accountability          | \$ 0.00         |
| Trust fund shortage as of 5/2/2018 | \$ <185,714.36> |
| Cause of Trust Fund Shortage:      |                 |
| Negative balance of escrow account | \$ <185,714.36> |

b. According to GOMEZ's written statement dated June 15, 2018, "In the process of making the deposit via desktop scanner the Escrow Officer, Rosie Urzua mistakenly selected the wrong account number, therefore depositing the check in the amount of \$185,714.36 to our Escrow General Account [ending in 9905]."

c. The following are examples of disbursements made from BA1 for escrow No. 3193-RU:

| <u>Check Date</u> | <u>Check No.</u> | <u>Payee</u>                    | <u>Amount</u>        |
|-------------------|------------------|---------------------------------|----------------------|
| 5/2/2018          | 9927             | Farmers Insurance               | \$ 808.51            |
| 5/2/2018          | 9928             | B & J Capital Group Investments | \$ 217,292.00        |
| 5/2/2018          | 9929             | E Real Estate Corp              | \$ 2,875.00          |
| 5/2/2018          | 9930             | Jorge Lara                      | \$ 25,426.00         |
| 5/2/2018          | 9931             | Real Estate Risk Management     | \$ 149.00            |
| 5/2/2018          | 9932             | Jan S. Tomas                    | \$ 300.00            |
| 5/2/2018          | 9933             | North Downey Escrow             | \$ 4,125.00          |
| 5/2/2018          | 9934             | Downey Home Loans Corporation   | \$ 5,830.00          |
| 5/2/2018          | 9935             | Downey Home Loans Corporation   | \$ 1,500.00          |
| 5/2/2018          | 9936             | Downey Home Loans Corporation   | \$ 120.00            |
| 5/2/2018          | 9937             | Kristine Urzua                  | \$ 250.00            |
| 5/2/2018          | 9941             | Enrique G. Lopez                | \$ 1,536.89          |
| 5/2/2018          | 9942             | Jesus Valdovinos Arreola        | \$ 1,363.11          |
| 5/2/2018          | 9943             | Antonio Acabal                  | \$ 1,100.00          |
| <b>Total:</b>     |                  |                                 | <b>\$ 262,675.51</b> |

16. The Department's auditor also prepared the following bank reconciliation for BA1 with the cutoff date of April 30, 2018:

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|                                      |                              |
|--------------------------------------|------------------------------|
| Adjusted BA1 Bank Balance, 4/30/2018 | \$ 2,000.00                  |
| Accountability, 4/30/2018            |                              |
| Identified Accountability            | <u>\$ &lt;185,714.36&gt;</u> |
| Trust fund shortage as of 4/30/2018  | <u>\$ &lt;185,714.36&gt;</u> |
| Cause of Trust Fund Shortage:        |                              |
| Commingled Funds with GA1            | <u>\$ &lt;185,714.36&gt;</u> |

a. As of April 30, 2018, there was a trust fund shortage in BA1 of \$185,714.36. The shortage was caused by Urzua depositing \$185,714.36 into GA1 on April 27, 2018.

b. The Department's auditor found no evidence in the files examined that the owners of the trust funds had given their written consent to allow DHLC to reduce the balance of funds in BA1 to an amount less than the existing aggregate trust fund liability of DHLC.

17. On or about May 3, 2018, DHLC cured the trust fund shortage by transferring \$185,714.36 from GA1 to BA1.

18. DHLC's failure to obtain the written consent of the owners of the trust funds to reduce the balance of the funds in BA1 to an amount less than the existing aggregate trust fund liability was in violation of **Code section 10145 and Regulations 2832.1, 2950(g), and 2951. Issue Two (2). Code sections 10145 and 10176(e), and Regulations 2832, 2950(g), and 2951: Trust Fund Handling; Commingling of Funds; When Broker Handles Escrow**

19. The Complainant realleges and incorporates by reference all of the allegations contained in paragraphs 15 through 17 above, with the same force and effect as though fully set forth herein.

20. Based on records examined, DHLC made an unauthorized deposit and commingled escrow trust funds into GA1 for Escrow No. 3193-RU for Buyer Enrique Lopez. The cashier's check described above in paragraph 15(a) was deposited into GA1 instead of into BA1 on April 27, 2018. DHLC commingled \$185,714.36 of trust funds with DHLC's funds in GA1 after this deposit.

21. DHLC's commingling of escrow trust funds with its own funds in GA1 was in violation of **Code sections 10145 and 10176(e), and Regulations 2832, 2950(g), and 2951.** Issue Three (3). Code section 10145 and Regulation 2831, 2950(d), and 2951: Trust Fund Records to be Maintained; When Broker Handles Escrow

22. Based on records examined, DHLC failed to maintain complete and accurate records of all trust fund receipts and disbursements (control record) for BA1 in connection with broker escrow activity. The control record did not set forth the daily balance and did not include the date that trust funds were received for BA1.

23. DHLC's failure to maintain a complete and accurate control record of trust funds for BA1 in connection with broker escrow activity was in violation of **Code section 10145 and Regulations 2831, 2950(d), and 2951.**

Issue Four (4). Code section 10145 and Regulations 2831.1, 2950(d), and 2951: Separate Record for Each Beneficiary or Transaction; When Broker Handles Escrow

26. Based on records examined, the separate record maintained for BA1 by DHLC was inaccurate. When compared with BA1's bank statement, the date deposited for escrow trust funds received was recorded inaccurately on the separate record for Escrow No. 3193-RU. The Department's auditor prepared the following example:

| <u>Date Recorded by DHLC</u> | <u>Amount</u> | <u>Bank Statement Deposit Date</u> | <u>Escrow No.</u> |
|------------------------------|---------------|------------------------------------|-------------------|
| 4/27/2018                    | \$185,714.36  | 5/2/2018                           | 3193-RU           |

27. DHLC's failure to maintain an accurate separate record for BA1 in connection with broker escrow activity was in violation of **Code section 10145 and Regulations 2831.1, 2950(d), and 2951.**

Issue Five (5). Code section 10145 and Regulations 2831.2, 2950(d), and 2951: Trust Account Reconciliation; When Broker Handles Escrow

28. During the audit period, based on records examined, DHLC did not perform and maintain a monthly reconciliation comparing the balance of all separate records to the balance of the control record of all trust funds received and disbursed for BA1 in connection with the broker escrow activity as required.

29. DHLC's failure to perform and maintain a monthly reconciliation comparing the balance of all separate records to the balance of the control record of all trust funds received and disbursed for BA1 in connection with the broker escrow activity was in violation of **Code section 10145 and Regulations 2831.2, 2950(d), and 2951.**

Issue Six (6). Code section 10145 and Regulations 2832 and 2951: Trust Fund Handling; When Broker Handles Escrow

23. According to the bank signature card maintained at City National Bank dated July 25, 2014 for BA1, which was used for handling the trust funds received and disbursed in connection with the broker escrow activity, BA1 was not set up as a trust account, and was not in the name of the broker as trustee..

24. DHLC's failure to set up BA1 as a trust account was in violation of **Code section 10145 and Regulations 2832 and 2951.**

Issue Seven (7). Code section 10145 and Regulations 2832, 2950(f), and 2951: Trust Fund Handling; When Broker Handles Escrow

25. On or about April 26, 2018, based on records examined, DHLC received escrow funds in the form of a cashier's check, check No. 0010801848, from Maria G. Herrera-Nava dated April 26, 2018 for \$185,714.36 intended for Escrow No. 3193-RU. DHLC failed to deposit the \$185,714.36 into BA1 within one (1) business day following the receipt of funds. The Department's auditor provided the following to depict what occurred:

| <u>Date Received</u> | <u>Amount</u> | <u>Date Deposited</u> | <u>Escrow No.</u> |
|----------------------|---------------|-----------------------|-------------------|
| 04/26/2018           | \$185,714.36  | 05/03/2018            | 3193-RU           |

26. DHLC's failure to deposit escrow trust funds into Escrow No. 3193-RU no later than the next business day following the receipt of funds was in violation of **Code section 10145 and 2832, 2950(f), and 2951.**

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1 Issue Nine (9)<sup>1</sup>. Regulation 2950(h): When Broker Handles Escrow

2 27. Based on an examination of records, DHLC and GOMEZ did not provide a full  
3 written disclosure to advise all parties that DHLC and/or GOMEZ have an interest as a  
4 stockholder, officer, partner, or owner of the agency holding the escrow.

5 28. The Department's auditor found that examples of such failure to provide a full  
6 written disclosure appear in Escrow Numbers 3189-RU, 3182-RU, 3144-KU, 3193-RU, 3158-KU,  
7 3169-RU, 3149-KU, and 3186-RU.

8 29. DHLC's and GOMEZ's failure to provide a full written disclosure to advise all  
9 parties that DHLC and/or GOMEZ have an interest as a stockholder, officer, partner, or owner of  
10 the agency holding the escrow was in violation of **Regulation 2950(h)**.

11 Issue Ten (10). Code section 10159.5 and Regulation 2731: Use of False or Fictitious

12 Business Name

13 30. Based on records examined, DHLC conducted its broker escrow activity using the  
14 unlicensed fictitious business name, "North Downey Escrow Services," when DHLC was not the  
15 holder of a license bearing this fictitious name, and did so without including the term "a non-  
16 independent broker" following the name. While DHLC is the holder of a license bearing the  
17 fictitious business name, "North Downey Escrow Services, a non-independent broker escrow,"  
18 DHLC just used the unlicensed name "North Downey Escrow Services" without the phrase "a  
19 non-independent broker escrow." Not only is DHLC not licensed to use the fictitious business  
20 name "North Downey Escrow Services," but use of any fictitious business name containing the  
21 term "escrow" must also include the term, "a non-independent broker escrow" following the  
22 name, as required by Regulation 2730(d).

23 31. The Department's auditor found several examples of DHLC using the unlicensed  
24 name "North Downey Escrow Services," including the following: escrow instructions, buyer and  
25 seller closing statements, balancing reports, and escrow trust account receipts for escrow numbers  
26 3189-RU, 3182-RU, 3144-KU, 3193-RU, 3158-KU, 3169-RU, 3149-KU, and 3186-RU.

27 <sup>1</sup> Issue Eight (8) was skipped intentionally. Complainant has decided not to pursue the violation alleged in Issue Eight  
28 at this time. Complainant reserves the right to conduct further investigation and to amend the Accusation should  
further evidence be acquired in support of Issue Eight, as well as potential causes of accusation not alleged in this  
Accusation at the time of filing.

1           32.     DHLC's conducting of broker escrow activity using an unlicensed fictitious  
2 business name and using a name that includes term "escrow" without including the term "a non-  
3 independent broker escrow" following the name, was in violation of **Code section 10159.5 and**  
4 **Regulation 2731.**

5 Issue Eleven (11). Code sections 10159.2 and 10177(h) and Regulation 2725: Responsibility of  
6 Corporate Officer in Charge / Broker Supervision

7           33.     The Complainant realleges and incorporates by reference all of the allegations  
8 contained in paragraphs 14 through 32 above, with the same force and effect as though fully set  
9 forth herein.

10          34.     Based on the above audit findings in Issues 1 through 10 above, as alleged in  
11 paragraphs 15 through 32 above, as the broker and designated officer of DHLC, GOMEZ did not  
12 exercise adequate supervision and control over the broker escrow activity conducted on behalf of  
13 DHLC by its employees and licensees to ensure compliance with the Real Estate Laws and  
14 Regulations.

15          35.     GOMEZ's acts and/or omissions, as alleged above in paragraphs 35 through 43  
16 above were in violation of **Code sections 10159.2 and 10177(h), and Regulation 2725.**

#### 17                   **INVESTIGATION AND ENFORCEMENT COSTS**

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

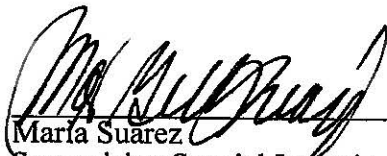
#### 22                   **AUDIT COSTS**

23          44.     Code section 10148(b) provides, in pertinent part, the Commissioner shall charge a  
24 real estate broker for the cost of any audit, if the Commissioner has found in a final decision  
25 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation or  
26 rule of the Commissioner interpreting said section.

27                   WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
28 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action

1 against all the licenses and license rights of DOWNEY HOME LOANS CORPORATION and  
2 FERNANDO GOMEZ under the Real Estate Law, for the costs of investigation and enforcement,  
3 and audit as permitted by law, and for such other and further relief as may be proper under other  
4 applicable provisions of law, and for costs of audit.

5  
6 Dated at Los Angeles, California this 11<sup>th</sup> day of September, 2019.

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11 Maria Suarez  
12 Supervising Special Investigator

13 cc: DOWNEY HOME LOANS CORPORATION  
14 FERNANDO GOMEZ  
15 Maria Suarez  
16 Sacto.  
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