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FILED

MAR 06 2012

DEPARTMENT OF REAL ESTATE
BY: *Jessie Valenzuela*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-37654 LA
SUSAN AMY HERMAN,)	L-2012010359
)	
Respondent.)	
)	
)	

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On November 9, 2011, an Accusation was filed in this matter against Respondent SUSAN AMY HERMAN.

On February 7, 2012, Respondent petitioned the Commissioner to voluntarily surrender her real estate broker license(s) pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent SUSAN AMY HERMAN's petition for voluntary surrender of her real estate broker license(s) is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in Respondent's Declaration dated February 7, 2012,

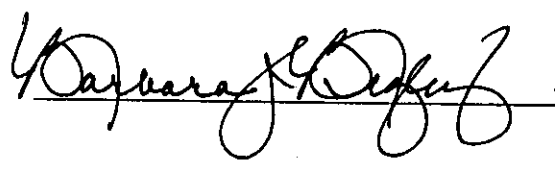
1 (attached as Exhibit "A" hereto). Respondent's license
2 certificate(s), pocket card(s) and any branch office license
3 certificate(s) shall be sent to the below listed address so that
4 they reach the Department on or before the effective date of this
5 Order:

6
7 DEPARTMENT OF REAL ESTATE
8 Attn: Licensing Flag Section
9 P. O. Box 187000
10 Sacramento, CA 95818-7000

11 This Order shall become effective at 12 o'clock noon
12 on MAR 26 2012.

13 DATED: 3/1/12

14 BARBARA J. BIGBY
15 Acting Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	DRE No. H- 37654 LA
SUSAN AMY HERMAN,)	OAH No.L-2012010359
)	
)	
Respondent.)	

DECLARATION

My name is SUSAN AMY HERMAN, and I am currently licensed as a real estate broker and have license rights with respect to said license. I am representing myself in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Government Code), I wish to voluntarily surrender my real estate license(s) issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

1 I understand that by so voluntarily surrendering my license, I may be relicensed as
2 a broker or as a salesperson only by petitioning for reinstatement pursuant to Section 11522 of
3 the Government Code. I also understand that by so voluntarily surrendering my license, I agree
4 to the following:

5 1. The filing of this Declaration shall be deemed as my petition for voluntary
6 surrender.

7 2. It shall also be deemed to be an understanding and agreement by me that I
8 waive all rights I have to require the Commissioner to prove the allegations contained in the
9 Accusation filed in this matter at a hearing held in accordance with the provisions of the
10 Administrative Procedure Act (Government Code Sections 11400 et seq.), and that I also waive
11 other rights afforded to me in connection with the hearing such as the right to discovery, the right
12 to present evidence in defense of the allegations in the Accusation and the right to cross-examine
13 witnesses.

14 3. I agree that upon acceptance by the Commissioner, as evidenced by an
15 appropriate order, all affidavits and all relevant evidence obtained by the Department in this
16 matter prior to the Commissioner's acceptance, and all allegations contained in the Accusation
17 filed in the Department Case No. H-37654 LA may be considered by the Department to be true
18 and correct for the purpose of deciding whether to grant relicensure or reinstatement pursuant to
19 Government Code Section 11522.

20 4. I further agree to pay the Commissioner's reasonable cost for the audit
21 which led to this action. In calculating the amount of the Commissioner's reasonable cost, the
22 Commissioner may use the estimated average hourly salary for all persons performing audits of
23 real estate brokers, and shall include an allocation for travel time to and from the auditor's place
24 of work. I will pay such cost within 60 days of receiving an invoice from the Commissioner
25 detailing the activities performed during the audit and the amount of time spent performing those
26 activities. * I AM unable to pay anything at all
27

ON DISABILITY & SOCIAL SECURITY
[Signature]


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5. I am aware that if I petition for reinstatement in the future, payment of the audit costs will be a condition of reinstatement.

6. I freely and voluntarily surrender all my licenses and license rights under the Real Estate Law.

7. A copy of the Commissioner's Criteria of Rehabilitation is attached hereto. If and when a petition application is made for reinstatement of a surrendered license, the Real Estate Commissioner will consider as one of the criteria of rehabilitation, whether or not restitution has been made to any person who has suffered monetary losses through "substantially related" acts or omissions of Respondents, whether or not such persons are named in the Accusation filed in this case.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration was executed 2/7/12, 20 12 at SANTA MONICA, California.



SUSAN AMY HERMAN

SACTO
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FILED

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

NOV - 9 2011

DEPARTMENT OF REAL ESTATE
BY: *Shirley Baker*

(213) 576-6982
(213) 620-6430

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	No. H-37654 LA
)	
HOME RESCUE PROGRAMS INC., a)	<u>ACCUSATION</u>
corporate real estate broker;)	
SUSAN AMY HERMAN,)	
individually and as former designated)	
officer of Home Rescue Programs Inc.;)	
ANA SAMAYOA POSADAS;)	
GINA MARIE ALCANTAR; and)	
CYNTHIA LYNN CROCKETT,)	
)	
Respondents.)	
)	

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner, for cause of
Accusation against HOME RESCUE PROGRAMS INC.; SUSAN AMY HERMAN,
individually and as former designated officer of Home Rescue Programs Inc.; ANA SAMAYOA
POSADAS; GINA MARIE ALCANTAR; and CYNTHIA LYNN CROCKETT ., is informed
and alleges as follows:

1.

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the

1 State of California, makes this Accusation in her official capacity.

2 2.

3 Respondent HOME RESCUE PROGRAMS INC. ("HOME RESCUE") is a
4 California corporation. At all times relevant herein, Brian Suder was and is the President of
5 HOME RESCUE, and Steven Duplain was Chief Financial Officer.

6 3.

7 Respondent HOME RESCUE is licensed by the Department of Real Estate
8 ("Department") as a corporate real estate broker. HOME RESCUE was originally licensed by
9 the Department on January 26, 2009. Respondent SUSAN AMY HERMAN was the broker-
10 officer designated pursuant to Business and Professions Code ("Code") Section 10159.2 to be
11 responsible for ensuring HOME RESCUE's compliance with the Real Estate Law until she
12 cancelled her designated broker status on or about November 25, 2009. Since November 25,
13 2009, HOME RESCUE has not been broker affiliated, and its license has therefore been inactive.

14 4.

15 Respondent SUSAN AMY HERMAN ("HERMAN") is licensed by the
16 Department as a real estate broker. HERMAN was originally licensed by the Department as a
17 broker on or about August 18, 2007. Between January 26, 2009 and November 25, 2009,
18 Respondent HERMAN was the designated broker-officer of HOME RESCUE.

19 5.

20 Home Rescue Programs LLC is a California Limited Liability company. At all
21 times relevant herein, Brian Suder and Steven Duplain were and are managing partners of Home
22 Rescue Programs LLC. Home Rescue Programs LLC has never been licensed by the
23 Department in any capacity.
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6.

1
2 Brian Suder ("Suder") is not licensed by the Department in any capacity. Suder
3 has never been licensed as a broker. Suder was licensed by the Department as a conditional
4 restricted salesperson between September 2, 2005 and March 2, 2007. On March 3, 2007,
5 Suder's conditional restricted salesperson license was permanently suspended due to his failure
6 to complete education requirements. Suder does not currently have any license rights.
7

7.

8
9 Steven Duplain ("Duplain") is not now and has never been licensed by the
10 Department in any capacity. At times relevant herein, Duplain was an officer and agent for
11 service of process for Respondent HOME RESCUE. At times relevant herein, Duplain was also
12 a managing partner of Home Rescue Programs LLC.
13

8.

14
15 Respondent ANA SAMAYOA POSADAS, dba El Punto Profesional, and dba
16 One Stop Financial Solutions ("POSADAS") is, and at all times relevant herein was, licensed by
17 the Department as a real estate salesperson. Respondent POSADAS was first licensed by the
18 Department in 1991. For the past three years, POSADAS has been licensed to conduct real
19 estate business as an employee of the following supervising brokers: Calabasas Funding
20 Corporation (5/3/2002 – 6/16/09); City Lights Financial Express Inc. (6/17/09 – 1/2/11) and
21 Rafeh Real Estate & Investments Inc. (1/3/11 – present)
22

9.

23
24 Respondent GINA MARIE ALCANTAR ("ALCANTAR") is, and at all times
25 relevant herein was, licensed by the Department as a real estate salesperson. Respondent
26 ALCANTAR was first licensed by the Department in 1991. For the past three years,
27

1 ALCANTAR has been licensed to conduct real estate business as an employee of Jose A. Budet
2 (April 10, 2008-April 2, 2009) and Honeywell Mortgages-Real Estate Inc. (April 28, 2009-
3 present).

4 10.

5 Respondent CYNTHIA LYNN CROCKETT ("CROCKETT") is, and at all times
6 relevant herein was, licensed by the Department as a real estate salesperson. Respondent
7 CROCKETT was first licensed by the Department on or about October 12, 2007. For the past
8 four years, CROCKETT has been licensed to conduct real estate business as an employee of
9 Chrismar Financial Inc. (October 12, 2007-April 12, 2009); LT Realty Services (July 6, 2009-
10 January 30, 2011); and The Pitts Group Inc. (January 31, 2011 to the present). Between
11 April 13, 2009 and July 5, 2009, CROCKETT was not employed under a supervising broker, and
12 was therefore not authorized to conduct activities requiring a real estate license.
13

14 11.

15 The parties and entities listed above have also engaged in real estate activities
16 under numerous other business names, including, but not limited to, the following unlicensed
17 business names:
18

- 19 a) www.hrpapply.com
- 20 b) Home Rescue Programs
- 21 c) Home Rescue Programs LLC

22 12.

23 At all times relevant herein, Respondents engaged in the business of, acted in the
24 capacity of, advertised or assumed to act as real estate brokers in the State of California within
25 the meaning of Code Sections 10131(d) and 10131.2. Their activities included soliciting
26
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1 borrowers or lenders for and/or negotiating loans, collecting payments and/or performing
2 services for borrowers or lenders in connection with loans secured by liens on real property.
3 Their activities also included claiming, demanding, charging, receiving, collecting or contracting
4 for the collection of advance fees within the meaning of Code Sections 10026 and 10085.

5 FIRST CAUSE OF ACCUSATION

6 Audit No. LA090111

7 13.

8 All references to "Respondents" in this First Cause of Accusation include
9 Respondent HOME RESCUE and/or Respondent HERMAN, as well as the officers, agents,
10 affiliates and employees of Respondent HOME RESCUE and/or Respondent HERMAN.
11

12 14.

13 On April 26, 2010, the Department completed an audit examination of
14 Respondent HOME RESCUE's books and records pertaining to the mortgage lending activities
15 described in Paragraph 12 above, covering a period from approximately December 18, 2008 to
16 November 24, 2009. The primary purpose of the examination was to determine Respondent
17 HOME RESCUE and Respondent HERMAN's compliance with the Real Estate Law. The
18 examination, Audit No. LA 090111, revealed violations of the Code and Title 10, Chapter 6 of
19 the California Code of Regulations ("Regulations"), as set forth below, and as more specifically
20 set forth in the Audit Report and Exhibits attached thereto.
21

22 15.

23 During the examination period, Respondent HOME RESCUE, acting by and
24 through HERMAN as its designated broker officer, deposited and/or disbursed funds, including
25 trust funds, into and/or from the following general business accounts:
26
27

1 A. Bank Account 1 (B/A 1): Account number xxxxx-x2839 ("B/A 1"), was
2 named, "Steven Duplain, Home Rescue Programs Inc." B/A 1 was maintained at Bank of
3 America, 4754 Admiralty Way, Marina Del Rey, CA 90292. This account was maintained for
4 the receipt and disbursement of trust funds in the form of advance fees received in connection
5 with HOME RESCUE's loan modification business. Duplain was the only signatory on the
6 account, and only one signature was required. B/A 1 was not identified as a trust account.

7 B. Bank Account 2 (B/A 2): Account number xxxxx-x1664 ("B/A 2") was
8 named "Home Rescue Programs LLC." B/A 2 was maintained at the Bank of America, 4754
9 Admiralty Way, Marina Del Rey, CA 90292. This account was maintained as HOME
10 RESCUE's general operating account, and was also used for the receipt and disbursement of
11 advance fees collected in connection with HOME RESCUE's loan modification activity. Duplain
12 and Suder were signatories on the account, and only one signature was required. B/A 2 was not
13 identified as a trust account.
14

15 16.

16 In the course of activities described in Paragraph 13 above, and during the
17 examination period described in Paragraph 14, Respondents HOME RESCUE and HERMAN
18 acted in violation of the Code and the Regulations in that:
19

20 a) Respondents placed trust funds, in the form of advance fees, into general bank
21 accounts and did not maintain a trust account for the advance fees, in violation of Code Sections
22 10145 and 10146 and Regulation 2832.

23 b) Respondents allowed the balance of the trust funds placed in the general bank
24 accounts to fall below the total aggregate trust fund liability of the broker Respondents to the
25 owners of the trust funds. Based on records provided to the Department during the audit, as of
26

1 the audit cut-off date of November 24, 2009, B/A 1 had a minimum shortage of approximately
2 \$1,643,767.18. As of November 24, 2009, B/A 2 had a minimum shortage of approximately
3 \$84,268.27. There was no evidence that Respondents obtained the written consent of the
4 beneficiary/owners of the trust funds to allow the account balances to fall below the aggregate
5 liability. These shortages were in violation of Code Section 10145 and Regulation 2932.1.

6 c) Respondents collected advance fees from borrowers pursuant to an agreement
7 which was not authorized by the Department, in violation of Code Section 10085 and Regulation
8 2970.
9

10 1) Respondents collected advance fees from borrowers prior to submitting an
11 advance fee agreement and materials to the Department for review and approval
12 on March 20, 2009.

13 2) After receiving a "No Objection Letter" from the Department relating to a
14 proposed advance fee agreement and materials on March 20, 2009, Respondents
15 did not use the advance fee agreement and accounting format as submitted.
16

17 d) Respondents collected trust funds, in the form of advance fees, on behalf of
18 borrowers, which trust funds were deposited into general accounts, and commingled with general
19 funds. Between February 14, 2009 and November 24, 2009, HOME RESCUE collected advance
20 fees totaling \$2,227,314.33 from borrowers, which funds were deposited into B/A 1, an account
21 not designated as a trust account. During that same period, advance fees totaling \$94,885.00
22 were deposited into B/A 2, and commingled with HOME RESCUE's general funds. This was in
23 violation of Code Sections 10145, 10176(e) and Regulation 2832.
24

25 e) Respondents deposited trust funds into general accounts, then disbursed funds
26 from the accounts and converted them to personal use, and/or allowed others to convert them to
27

1 personal use, in violation of Code Sections 10145, 10176(i) and/or 10177(j).

2 1) Based on a review of the records Respondents provided during the audit, there
3 was no evidence maintained in the files regarding the completion of the loan
4 modification transactions. Of the advance fees collected and deposited into B/A 1
5 during the audit period, \$1,643,696.14 were disbursed to HOME RESCUE prior
6 to completion of services, and deposited into B/A 2, HOME RESCUE's general
7 account out of which operating expenses and personal disbursements were made.
8 \$26,840.00 was disbursed to another account ending in "1508," for which further
9 records were not provided during the audit.

10 2) Account balances were reduced below an amount of trust funds deposited.

11 f) Respondents received advance fees from borrowers without maintaining and
12 providing an accounting identifying the name of the agent, name of the principal, services to be
13 rendered, identity of the trust fund account into which the advance fees were deposited, the
14 amount of the fee collected, and the allocation of money disbursed from the advance fee to cover
15 services, commission and overhead. This was in violation of Code Section 10146 and
16 Regulation 2972.

17 g) Between December 18, 2008 and November 24, 2009, Respondent HOME
18 RESCUE negotiated approximately 2000 loan modification transactions and collected fees in
19 advance ranging from \$1,000.00 to \$5,599.00 per transaction. Respondents did not maintain a
20 columnar record of receipts and disbursements of these trust funds received on behalf of
21 borrowers, in violation of Code Section 10145 and Regulation 2831.

22 h) Respondents HOME RESCUE and HERMAN did not maintain complete and
23 accurate separate records for each beneficiary or transaction in which advance fees were
24

1 collected for loan modification services. Respondents' records for trust funds placed in B/A 1
2 and B/A 2 did not include dates of receipts, amounts of deposits, and amounts of disbursements.
3 This was in violation of Code Section 10145 and Regulation 2831.1.

4 i) Respondents HOME RESCUE and HERMAN did not maintain monthly
5 reconciliations of all separate records to the columnar records of receipts and disbursements for
6 the bank accounts that handled advance fees, in violation of Code Section 10145 and Regulation
7 2831.2.

8 j) HOME RESCUE's president, Steven Duplain, was not licensed by the
9 Department and was the sole signatory on B/A 1. He was authorized to sign and make
10 withdrawals on B/A 1 without fidelity bond coverage, in violation of Code Section 10145 and
11 Regulation 2834.

12 k) Respondent HOME RESCUE conducted mortgage loan activities using the
13 fictitious business names "Home Rescue Programs," and "Home Rescue Programs LLC" without
14 first obtaining a license from the Department bearing such fictitious names, in violation of Code
15 Section 10159.5 and Regulation 2731.

16 l) Between October 11, 2009 and November 24, 2009, after the passage and
17 effective date of SB 94, Respondents continued to collect advance fees for loan modification
18 services, in violation of Code Sections 10085.6, 10146 and 10145, and Regulation 2832.

19 m) Respondent HOME RESCUE performed activities requiring a real estate
20 license prior to licensure by the Department. As examples, between December 22, 2008 and
21 January 20, 2009, Respondent HOME RESCUE solicited borrowers, offered loan modification
22 services and collected advance fees from borrowers Jane Tarasovic, Toni Mar, Oscar Aviles and
23 Rickey Gonzalez. This was in violation of Code Section 10130.
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1 n) Respondent HOME RESCUE employed unlicensed agents Infinity Financial
2 Alliance, Carolina Crooks, John Boatman, Derek Forest, DLN Financials, Carmen Kovac,
3 Richard Pavlick and Brian Hollifield to perform activities requiring a real estate license when
4 none of these agents was properly licensed by the Department, in violation of Code Section
5 10137.

6 o) Respondents HOME RESCUE and HERMAN failed to notify the Department
7 of the employment of all salespersons performing licensed activities under its name, including
8 salespersons Ana Posadas, Leslie Thulin and Juan Ferrer, and failed to make available for
9 inspection written Broker/Salesperson agreements with these salespersons. This was in violation
10 of Code Section 10161.8 and Regulations 2726 and 2752.

11 p) Respondents HOME RESCUE and HERMAN failed to maintain copies of all
12 trust fund records relating to the fees collected for loan modifications, in violation of Code
13 Section 10148.

14 q) Respondent HERMAN did not exercise adequate supervision over the
15 activities of HOME RESCUE to ensure compliance with the Real Estate Laws, in violation of
16 Code Sections 10159.2 and 10177(h), and Regulation 2725.

17 17.

18 The conduct, acts and/or omissions of Respondent HOME RESCUE and
19 HERMAN, as described in Paragraph 16, above, violated the Code and Regulations in the
20 following ways:

21 PARAGRAPH

22 PROVISIONS VIOLATED

23 16(a)

24 Code Sections 10145 and 10146;
25 Regulation 2832.

26 16(b)

27 Code Section 10145; Regulation 2832.1.

1	16(c)	Code Section 10085; Regulation 2970.
2	16(d)	Code Sections 10145 and 10176(e);
3		Regulation 2832.
4	16(e)	Code Section 10145, 10176(i) and 10177(j).
5	16(f)	Code Section 10146; Regulation 2972.
6	16(g)	Code Section 10145; Regulation 2831.
7	16(h)	Code Section 10145; Regulation 2831.1.
8	16(i)	Code Section 10145; Regulation 2831.2.
9	16(j)	Code Section 10145; Regulation 2834.
10	16(k)	Code Section 10159.5; Regulation 2731
11	16(l)	Code Sections 10085.6, 10146, and 10145;
12		Regulation 2832.
13	16(m)	Code Section 10130.
14	16(n)	Code Section 10137
15	16(o)	Code Section 10161.8; Regulations 2726
16		and 2752.
17	16(p)	Code Section 10148
18	16(q)	Code Sections 10159.2 and 10177(h);
19		Regulation 2725
20		
21		

22 The foregoing violations constitute cause for the suspension or revocation of the
23 real estate licenses and license rights of Respondents HOME RESCUE and HERMAN under the
24 provisions of Code Sections 10130, 10137, 10145, 10146, 10148, 10177(d), 10176(e), 10176(i),
25 10177(g), 10177(j), 10085, and/or 10085.6.

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18.

1
2 The violations set forth above constitute cause for the suspension or revocation of
3 Respondent HERMAN's real estate license and/or license rights, as the broker-officer of
4 Respondent HOME RESCUE, for failing to supervise the activities of the corporation, in
5 violation of Code Sections 10159.2, in conjunction with 10177(h), 10177(d) and/or 10177(g).

6 SECOND CAUSE OF ACCUSATION:

7 (Advance Fee Violations and Unlicensed Activity)

8
9 19.

10 Complainant incorporates by this reference into this separate Second Cause of
11 Accustion the allegations contained above in the preamble and First Cause of Accusation above
12 in Paragraphs 1 through 18.

13
14 20.

15 Between on or about January 26, 2009 and November 24, 2009, Respondent
16 HOME RESCUE negotiated approximately 2000 loan modification transactions and collected
17 advance fees totaling \$2,326,949.33. As detailed in the FIRST CAUSE OF ACCUSATION,
18 HOME RESCUE, and its designated broker-officer HERMAN, failed to maintain records of or
19 account for those advance fees, which constituted trust funds.

20
21 21.

22 Respondent HOME RESCUE routinely compensated individuals who were not
23 licensed by the Department in any capacity, and/or who were licensed as salespersons employed
24 by brokers other than HOME RESCUE or HERMAN, to advertise, solicit and/or perform loan
25 modification services requiring a real estate license. Respondent HOME RESCUE failed to
26 maintain, retain and/or to provide to the Department copies of the Broker-Salesperson
27

1 Agreements pursuant to which such unlicensed agents and affiliates were employed by HOME
2 RESCUE.

3 22.

4 Licensed real estate salespersons ANA S. POSADAS, GINA ALCANTAR, and
5 CYNTHIA CROCKETT, among others, performed loan modification activities and solicited
6 advance fees as agents and/or affiliates of HOME RESCUE at times when they were employed
7 by supervising brokers of record other than HOME RESCUE.

8 Affiliate ANA SAMAYOA POSADAS

9 23.

10 Respondent POSADAS has never been licensed as a real estate broker and has
11 never been licensed by the Department as a salesperson employed by HOME RESCUE as her
12 supervising broker of record.

13 24.

14 Beginning on or before March 28, 2009, Respondent POSADAS, as an agent or
15 affiliate of HOME RESCUE, solicited borrowers and offered to provide loan modification
16 services in exchange for an advance fee. Borrowers entered into written agreements
17 with HOME RESCUE for loan modification services. POSADAS was referred to in the
18 Agreements and related materials as "Foreclosure Consultant," "Affiliate" and/or "Broker".
19 Borrowers provided HOME RESCUE and POSADAS with financial information and received
20 an extensive package of materials relating to the loan modification negotiations. The following
21 are examples of transactions in which POSADAS solicited advance fees as an agent and/or
22 affiliate of HOME RESCUE for loan modification services:
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<u>Borrowers</u>	<u>Advance Fees Pd.</u>	<u>Agreement Date</u>	<u>Date Dep.</u>
Hernandez, R	\$3,200.00	3/28/09	3/28/09-to Posadas
	(\$1,200.00)		3/30/09 to Home Rescue
Martinez, J	\$1,500.00	5/7/09	5/20/09
Pinto, L	\$5,990.00	7/6/09	7/6/09

25.

HOME RESCUE did not maintain records indicating whether or not loan modification services were provided for these borrowers, or whether they succeed in obtaining a loan modification or debt restructuring. HOME RESCUE did not refund any of the money or provide an accounting of services provided and fees disbursed.

26.

At the time that POSADAS solicited borrowers for loan modification services and collected advance fees, as set forth above in Paragraph 24, POSADAS was not licensed as a real estate broker and was not authorized to conduct activities requiring a real estate salesperson license as an employee of HOME RESCUE.

27.

As set forth above, Respondent POSADAS engaged in activities requiring a real estate license for or in expectation of compensation from HOME RESCUE when it was not her supervising broker of record.

28.

HOME RESCUE and designated officer HERMAN failed to maintain a broker/salesperson agreement and/or to notify the Department of POSADAS' employment as salesperson agent under HOME RESCUE's supervision.

Affiliate GINA ALCANTAR

29.

Respondent ALCANTAR has never been licensed by the Department as a broker or as a salesperson employed by HOME RESCUE or HERMAN as her supervising broker of record.

30.

Beginning on or before August 8, 2009 and continuing through on or after September 11, 2009, Respondent ALCANTAR solicited borrowers for loan modification services and collected advance fees as an agent and/or affiliate of HOME RESCUE. The following are examples of transactions in which ALCANTAR solicited advance fees as an agent and/or affiliate of HOME RESCUE for loan modification services:

<u>Borrowers</u>	<u>Advance Fees Pd.</u>	<u>Agreement Date</u>	<u>Date Dep.</u>
Maciel, M.	\$3,750.00	8/28/09	8/28/09
Marquez, R.	\$1,500.00	8/20/09	8/20-9/9/09
Montano, M.	\$3,750.00	9/9/09	9/9/09

31.

HOME RESCUE did not maintain records indicating whether or not loan modification services were provided to these borrowers, or whether they succeed in obtaining a loan modification or debt restructuring. HOME RESCUE did not refund any of the money or provide an accounting of services provided and fees disbursed.

32.

At the time that ALCANTAR solicited borrowers for loan modification services and collected advance fees, as set forth above in Paragraph 30, ALCANTAR was not licensed as

1 a real estate broker and was not authorized to conduct activities requiring a real estate
2 salesperson license as an employee of HOME RESCUE.

3 33.

4 HOME RESCUE and designated officer HERMAN failed to maintain a
5 broker/salesperson agreement and/or to notify the Department of ALCANTAR's employment as
6 salesperson agent under HOME RESCUE's supervision.

7 34.

8
9 As set forth above, Respondent ALCANTAR engaged in activities requiring a
10 real estate license for or in expectation of compensation from HOME RESCUE when HOME
11 RESCUE was not her supervising broker of record.

12 Affiliate CYNTHIA CROCKETT

13 35.

14 Respondent CROCKETT has never been licensed by the Department as a broker
15 or as a salesperson employed by HOME RESCUE as her supervising broker of record.

16 36.

17
18 Beginning on or before August 8, 2009 and continuing through on or after
19 September 11, 2009, Respondent ALCANTAR solicited borrowers for loan modification
20 services and collected advance fees as an agent and/or affiliate of HOME RESCUE. The
21 following are examples of transactions in which ALCANTAR solicited advance fees as an agent
22 and/or affiliate of HOME RESCUE for loan modification services:

<u>Borrowers</u>	<u>Advance Fees Pd.</u>	<u>Agreement Date</u>	<u>Date Dep.</u>
Sandoval, A.	\$1,995.00	4/30/09	5/23/09

Escudero, J.¹

\$3,750.00

2/25/09

2/25-3/31/09

37.

Between on or about February 25, 2009 and on or about January 19, 2010, HOME RESCUE, through CROCKETT and unlicensed agents and/or affiliates Barrios, Gemma Gozon, Cusie Custis and others, purported to represent Escudero in negotiating with lenders on his behalf to modify the terms of his mortgage loan. HOME RESCUE failed to obtain a loan modification and refused to refund Escudero's money or provide an accounting to him.

38.

Barrios, Gemma Gozon, Cusie Custis were not then and are not now licensed by the Department in any capacity. As set forth above, CROCKETT was not employed by HOME RESCUE as a salesperson authorized to conduct licensed activities under HOME RESCUE's license.

39.

As set forth above, Respondent CROCKETT engaged in activities requiring a real estate license for or in expectation of compensation from HOME RESCUE when HOME RESCUE was not her supervising broker of record.

40.

Between January 20, 2009 and December 1, 2009, HOME RESCUE utilized various unlicensed agents and/or affiliates, as well as salespersons who were employed by brokers other than HOME RESCUE, to collect advance fees from additional borrowers in distress, including but not limited to Eunmi ("Amy") Kim, Marilyn Ruts, Christine Cornwell,

¹ Escudero dealt with several additional unlicensed agents and/or affiliates of HOME RESCUE, including David Barrios, Gemma Gozon and Cusie Custis.

1 Diana and Louis Pino Jr., Thu Le, Daniel Sanchez and Aracely Alvarado, Robert and Deborah
2 Alvarez, Gonzalo Mendez, Paul Lawrence Doolin and Jo Ann Henderson.

3 41.

4 The conduct, acts and/or omissions of Respondent HOME RESCUE in
5 compensating and utilizing agents and affiliates who were either not license to conduct real
6 estate activities, or were licensed as employees of other supervising brokers of record, as set
7 forth above, constitutes grounds to revoke or suspend HOME RESCUE's license and license
8 rights pursuant to Code Sections 10137, 10177(g), 10176(i) and/or 10177(j).
9

10 42.

11 The conduct, acts and/or omissions of Respondent HOME RESCUE in receiving
12 advance fees from borrowers without maintaining and providing an accounting identifying the
13 name of the agent, name of the principal, services to be rendered, identity of the trust fund
14 account into which the advance fees were deposited, the amount of the fee collected, and the
15 allocation of money disbursed from the advance fee to cover services, commission and overhead,
16 constitutes grounds to revoke or suspend HOME RESCUE's license and license rights pursuant
17 to Code Section 10146, 10177(j), 10176(i), and/or 10177(d) in conjunction with Regulation
18 2972.
19

20 43.

21 The conduct, acts and/or omissions of Respondents HOME RESCUE and
22 HERMAN in failing to notify the Department of the employment of all salespersons performing
23 licensed activities under its name, including salespersons POSADAS, ALCANTAR and
24 CROCKETT, and failing to maintain and make available for inspection written
25 Broker/Salesperson agreements with these salespersons, constitutes grounds to discipline
26
27

1 Respondents' broker licenses and license rights pursuant to Code Sections 10176(i), 10177(g),
2 and/or 10177(d) for violation of Code Section 10161.8 and Regulation 2752.

3 44.

4 The conduct, acts and/or omissions of Respondents POSADAS, ALCANTAR,
5 and CROCKETT in soliciting borrowers, collecting advance fees and negotiating loan
6 modifications as agents of HOME RESCUE, and/or accepting compensation from any person
7 other than the broker under whom they were at the time licensed, constitutes grounds to revoke
8 or suspend the real estate salesperson licenses and license rights of Respondents POSADAS,
9 ALCANTAR and CROCKETT pursuant to Code Sections 10137, 10177(d), 10177(g), 10176(i)
10 and/or 10177(j).
11

12 45.

13 The conduct, acts and/or omissions of Respondent HERMAN, as the designated
14 broker officer of HOME RESCUE, in failing to exercise adequate supervision of the activities of
15 HOME RESCUE to ensure compliance with the real estate law, constitutes grounds to revoke or
16 suspend HERMAN's real estate broker license and license rights pursuant to Code Sections
17 10159.2 and 10177(h), in conjunction with Regulation 2725.
18

19 THIRD CAUSE OF ACCUSATION

20 Misleading, False and/or Deceptive Advertising

21 46.

22 Complainant incorporates by this reference into this separate Third Cause of
23 Accusation the allegations contained above in the preamble and the First and Second Causes of
24 Accusation above.
25

26 ///

47.

1
2 Between on or before August 31, 2009 and continuing through on or after
3 November 4, 2009, Respondent HOME RESCUE, also doing business under the unlicensed
4 fictitious business name www.hrpapply.com, knowingly advertised, printed, displayed,
5 published, distributed, or caused or permitted to be advertised, printed, displayed, published,
6 distributed, statements or representations with regard to the rates, terms or conditions for making,
7 purchasing or negotiating loans on real property which were false, misleading, or deceptive.
8 HOME RESCUE did so in order to induce consumers to pay up front, advance fees to engage
9 HOME RESCUE to provide services for loss mitigation services.
10

48.

11
12 Beginning on or before August 9, 2009, HOME RESCUE doing business as
13 www.hrpapply.com, circulated through the United States Postal Service advertisements soliciting
14 consumers, which mail solicitations contained deceptive, misleading and materially false
15 representations, which Respondents knew, or should have known, were false. These mail
16 solicitations, entitled, "Lender Investigation Notification," urged homeowners who were
17 borrowers under residential mortgage loans to contact HOME RESCUE to participate in a
18 lawsuit against lenders that would entitle them to a reduction of the principal amount of their
19 loan, lower their interest rates, and eliminate or reduce delinquent amounts.
20

49.

21
22 Between August 8, 2009 and December 28, 2009, the Department received
23 samples of mail solicitations sent to consumers of loans issued by Sun America Mortgage,
24 Citibank, and Nevada State Bank, which solicitations were deceptive, misleading and/or false in
25 the following ways:
26
27

1 a) The solicitations were formatted and presented in a manner suggesting they
2 were from a governmental agency, when they were not;

3 b) The solicitations did not clearly and conspicuously state that the solicitor was
4 not sponsored or affiliated with the lender and that the solicitation was not authorized by the
5 lender, in violation of Code Section 14701;

6 b) The solicitations did not clearly identify HOME RESCUE and were
7 deceptively structured as if they were official legal documents and not a solicitation;

8 c) The solicitations falsely notified the consumers that their lenders were under
9 investigation for predatory lending practices;

10 d) The offers enumerated a number of benefits to the consumer, implying a
11 guarantee of outcomes which the solicitor was unable to guarantee; and

12 e) the solicitation referred consumers to a HOME RESCUE website which used
13 quotes from then FDIC Chairman Sheila Bair and California Governor Arnold Schwarzenegger,
14 implying government support of their services.
15

16 50.

17
18 The conduct, acts and omissions set forth above in Paragraphs 46 through 49
19 constitute grounds to suspend or revoke the real estate licenses and license rights of Respondents
20 HOME RESCUE and HERMAN pursuant to Code Sections 10235, 10176(a), 10176(c),
21 10176(i), 10177(j) and/or 10177(g) for fraud and dishonest dealing, false advertising,
22 misrepresentation, and/or negligence.
23

24 51.

25 The violations set forth above constitute cause for the suspension or revocation of
26 Respondent HERMAN's real estate license and/or license rights, as the broker-officer of
27

1 Respondent HOME RESCUE, for failing to supervise the activities of the corporation, in
2 violation of Code Sections 10159.2, in conjunction with 10177(h), 10177(d) and/or 10177(g).

3 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
4 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
5 action against all licenses and/or license rights of Respondents HOME RESCUE PROGRAMS
6 INC., SUSAN AMY HERMAN, ANA POSADAS, GINA MARIE ALCANTAR and
7 CYNTHIA CROCKETT under the Real Estate Law and for such other and further relief as may
8 be proper under other applicable provisions of law.
9

10 Dated at Los Angeles, California

11 this 4 day of November, 2011.
12

13 
14
15 Robin Trujillo
16 Deputy Real Estate Commissioner
17
18
19
20
21

22 cc: HOME RESCUE PROGRAMS INC.
23 Susan Amy Herman
24 Ana Posadas
25 Gina Marie Alcantar
26 Cynthia L. Crockett
27 Robin Trujillo
Sacto.
Audits