

FILED

SEP 15 2009

1 Department of Real Estate
2 P.O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0781

DEPARTMENT OF REAL ESTATE

[Signature]
By _____

7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10
11 In the Matter of the Accusation of)
12)
13 AMERICAN PREMIER FUNDING INC.)
14 and ERIC WILLIAM VACA,)
Respondents.)

No. H-3856 SD

STIPULATION AND AGREEMENT

15
16 It is hereby stipulated by and between AMERICAN PREMIER FUNDING
17 INC. and ERIC WILLIAM VACA (hereinafter "Respondents"), and the Complainant, acting
18 by and through Truly Sughrue, Counsel for the Department of Real Estate, as follows for the
19 purpose of settling and disposing the Accusation filed on August 25, 2008 in this matter:

- 20
21 1. All issues which were to be contested and all evidence which was to be
22 presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing
23 was to be held in accordance with the provisions of the Administrative Procedure Act (APA),
24 shall instead and in place thereof be submitted solely on the basis of the provisions of this
25 Stipulation and Agreement.
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2. Respondents have received, read and understand the Statement to Respondent, and the Discovery Provisions of the APA filed by the Department of Real Estate in this proceeding.

3. Respondents filed a Notice of Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents acknowledge that they understand that by withdrawing said Notice of Defense they will thereby waive their rights to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA, and that they will waive other rights afforded to them in connection with the hearing such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

4. This stipulation is based on the factual allegations contained in the Accusation. In the interest of expediency and economy, Respondents choose not to contest these factual allegations, but to remain silent and understand that, as a result thereof, these factual statements will serve as a prima facie basis for the "Determination of Issues" and "Order" set forth below. The Real Estate Commissioner shall not be required to provide further evidence to prove such allegations.

5. This Stipulation and Respondents decision not to contest the Accusation are made for the purpose of reaching an agreed disposition of this proceeding and are expressly limited to this proceeding and any other proceeding or case in which the Department of Real Estate (herein "the Department"), the state or federal government, an agency of this state, or an agency of another state is involved.

1 6. It is understood by the parties that the Real Estate Commissioner may adopt
2 the Stipulation and Agreement as his decision in this matter thereby imposing the penalty and
3 sanctions on the real estate licenses and license rights of Respondent as set forth in the below
4 "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation and
5 Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing
6 and proceeding on the Accusation under all the provisions of the APA and shall not be bound by
7 any admission or waiver made herein.
8

9 7. The Order or any subsequent Order of the Real Estate Commissioner made
10 pursuant to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any
11 further administrative or civil proceedings by the Department of Real Estate with respect to any
12 matters which were not specifically alleged to be causes for accusation in this proceeding.
13

14 8. In lieu of proceeding in this matter in accordance with the provisions of
15 the Administrative Procedure Act (Sections 11400 et seq., of the Business and Professions
16 Code), AMERICAN PREMIER FUNDING INC. (hereinafter "AMERICAN") wishes to
17 voluntarily surrender its corporate real estate broker license issued by the Department of Real
18 Estate (hereinafter "Department"), pursuant to Business and Professions Code (hereinafter "the
19 Code") Section 10100.2. ERIC WILLIAM VACA (hereinafter "VACA") is the designated
20 broker-officer of AMERICAN, designated pursuant to Section 10211 of the Code, and is
21 authorized to sign this declaration on behalf of AMERICAN.
22

23 9. VACA understands that by so voluntarily surrendering AMERICAN's
24 license, AMERICAN may be relicensed as a broker corporation only by petitioning for
25 reinstatement pursuant to Section 11522 of the Government Code. VACA also understands that
26 by so voluntarily surrendering AMERICAN's license, Respondents agree to the following:
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A. The filing of this Stipulation and Agreement shall be deemed as Respondent AMERICAN's declaration and petition for voluntary surrender.

B. It shall also be deemed to be an understanding and agreement by AMERICAN that it waives all rights AMERICAN has to require the Commissioner to prove the allegations contained in the Accusation filed in this matter at a hearing held in accordance with the provisions of the Administrative Procedure Act (Government Code Sections 11400 et seq.), and that AMERICAN also waives other rights afforded to AMERICAN in connection with the hearing such as the right to discovery, the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

10. VACA on behalf of AMERICAN further agrees that upon acceptance by the Commissioner, as evidenced by an appropriate order, all affidavits and all relevant evidence obtained by the Department in this matter prior to the Commissioner's acceptance, and all allegations contained in the Accusation filed in the Department Case No. H-3856 SD, may be considered by the Department to be true and correct for the purpose of deciding whether to grant relicensure or reinstatement pursuant to Government Code Section 11522.

11. VACA on behalf of AMERICAN freely and voluntarily surrenders all AMERICAN's licenses and license rights under the Real Estate Law.

DETERMINATION OF ISSUES

By reason of the foregoing stipulations and waivers and solely for the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed that the following determination of issues shall be made:

I

1
2 The acts and omissions of Respondents as described in the First Cause of Action
3 in the Accusation are grounds for the suspension or revocation of Respondents licenses and
4 license rights under the following sections of the Code and Regulations:

- 5
- 6 (a) As to Paragraphs VII(a) and VIII(a) under Sections 17533.6 of the Code and Section
7 2848(12) of the Regulations in conjunction with Section 10177(d) of the Code;
- 8 (b) As to Paragraphs VII(b), VIII(c), IX(a), and X(a) under Section 10159.5 of the Code
9 and Section 2731 of the Regulations in conjunction with Section 10177(d) of the
10 Code;
- 11 (c) As to Paragraphs VII(c), VII(e), VII(g), VII(i), VII(j), VII(k), VII(m), VIII(d), VIII(f),
12 VIII(j), IX(c), IX(d), IX(g), IX(h), IX(i), X(e), X(f), X(g), XI(c), XI(d), XI(e), and
13 XI(g) under Section 10235 of the Code in conjunction with Section 10177(d) of the
14 Code;
- 15 (d) As to Paragraphs VII(d), VIII(e), IX(b), and XI(b) under Section 14702 of the Code in
16 conjunction with Section 10177(d) of the Code;
- 17 (e) As to Paragraph VII(f) under Section 2848(2) of the Regulations in conjunction with
18 Section 10177(d) of the Code;
- 19 (f) As to Paragraphs VII(h), VIII(i), and X(d) under Section 2848(16) of the Regulations
20 in conjunction with Section 10177(d) of the Code;
- 21 (g) As to Paragraphs VII(l), VIII(k), IX(j), X(h), and XI(h) under Section 2847.3 of the of
22 the Regulations in conjunction with Section 10177(d) of the Code;
- 23 (h) As to Paragraphs VIII(b), X(b), and XI(a) under Section 17533.6 of the of the Code
24 in conjunction with Section 10177(d) of the Code;
- 25 (i) As to Paragraphs VIII(g) and IX(e) under Section 2848(6) of the of the Regulations in
26 conjunction with Section 10177(d) of the Code;
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- 1 (j) As to Paragraphs VIII(i), IX(f), and XI(f) under Section 2848(17) of the of the
- 2 Regulations in conjunction with Section 10177(d) of the Code;
- 3 (k) As to Paragraphs VIII(l) and X(c) under Section 2848(18) of the of the Regulations in
- 4 conjunction with Section 10177(d) of the Code.
- 5 (l) As to Paragraphs VIII(m), IX(k), X(i), and XI(i) under Section 2848(4) of the of the
- 6 Regulations in conjunction with Section 10177(d) of the Code.

II

7

8 The acts and omissions of Respondent VACA, as described in the Second Cause

9 of Action of the Accusation are grounds for the suspension or revocation of Respondents

10 licenses and license rights under Sections Section 10177(d) of the Code in conjunction with

11 Section 10159.2 of the Code.

12 * * *

13 ORDER

14 I

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16 AMERICA's petition for voluntary surrender of its corporate real estate broker

17 license is accepted as of the effective date of this Order as set forth below, based upon the

18 understanding and agreement expressed in Respondent's Declaration incorporated herein as part

19 of this Stipulation and Agreement. Respondent's license certificates, pocket cards and any

20 branch office license certificates shall be sent to the below listed address so that they reach the

21 Department on or before the effective date of this Order:

22

23

24 DEPARTMENT OF REAL ESTATE

25 Attn: Licensing Flag Section

26 P. O. Box 187000

27 Sacramento, CA 95818-7000

II

1
2 All licenses and licensing rights of Respondent VACA under the Real Estate Law are
3 suspended for a period of fifty (50) days from the effective date of this Order; provided, however,
4 that:

5 1) Fifty (50) days of said suspension shall be stayed, upon the condition that VACA petition
6 pursuant to Section 10175.2 of the Business and Professions Code and pays a monetary
7 penalty pursuant to Section 10175.2 of the Business and Professions Code at a rate of \$200
8 for each day of the suspension for a total monetary penalty of \$10,000.

9
10 a) Said payment shall be in the form of a cashier's check or certified check made payable to
11 the Recovery Account of the Real Estate Fund. Said check must be delivered to the
12 Department prior to the effective date of the Order in this matter.

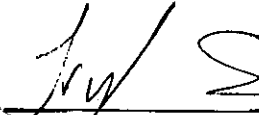
13
14 b) No further cause for disciplinary action against the Real Estate licenses of said
15 Respondent occurs within two (2) years from the effective date of the decision in this
16 matter.

17
18 c) If VACA fails to pay the monetary penalty as provided above prior to the effective date of
19 this Order, the stay of the suspension shall be vacated as to that Respondent and the order
20 of suspension shall be immediately executed, under this Order, in which event the said
21 Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for
22 the money paid to the Department under the terms of this Order.

23
24 d) If VACA pays the monetary penalty and any other moneys due under this Stipulation and
25 Agreement and if no further cause for disciplinary action against the real estate license of
26 said Respondent occurs within two (2) years from the effective date of this Order, the
27

entire stay hereby granted under this Order, as to said Respondent only, shall become permanent.

28 July 09
DATED

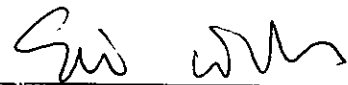

TRULY SUGHRUE
Counsel for Complainant

I have read the Stipulation and Agreement, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act, and I willingly, intelligently and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

7/22/09
DATED


AMERICAN PREMIER FUNDING INC.
Respondent

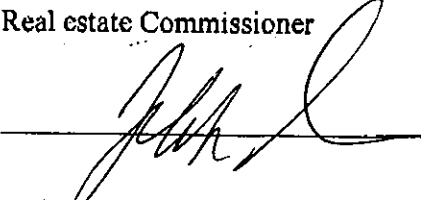
7/22/09
DATED


ERIC WILLIAM VACA
Respondent

The foregoing Stipulation and Agreement is hereby adopted as my Decision and shall become effective at 12 o'clock noon on OCT - 6 2009.

IT IS SO ORDERED 9-2, 2009.

JEFF DAVI
Real estate Commissioner



1 TRULY SUGHRUE, Counsel
2 SBN 223266
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007
6 Telephone: (916) 227-0781

FILED

AUG 25 2008

DEPARTMENT OF REAL ESTATE

By K. Mar

7
8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 AMERICAN PREMIER FUNDING INC.) NO. H-3856 SD
14 and ERIC WILLIAM VACA,)
15 Respondents.) ACCUSATION

16
17 The Complainant, JOSEPH AIU, a Deputy Real Estate Commissioner of the
18 State of California, for causes of Accusation against AMERICAN PREMIER FUNDING INC.,
19 and ERIC WILLIAM VACA (hereafter "Respondents"), are informed and alleges as follows:

20 PRELIMINARY ALLEGATIONS

21 I

22 Respondents are presently licensed and/or have license rights under the Real
23 Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereafter "the
24 Code").

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1 II

2 The Complainant, JOSEPH AIU, a Deputy Real Estate Commissioner of the
3 State of California, makes this Accusation against Respondents in his official capacity and not
4 otherwise.

5 III

6 At all times mentioned, Respondent AMERICAN PREMIER FUNDING INC.
7 (hereafter "AMERICAN") was licensed by the State of California Department of Real Estate
8 (hereafter "the Department") as a real estate broker corporation.

9 IV

10 At all times mentioned, Respondent ERIC WILLIAM VACA (hereafter
11 "VACA") was licensed by the Department as an individual real estate broker, and as the
12 designated broker officer of AMERICAN. As said designated officer-broker, VACA was
13 responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the
14 officers, agents, real estate licensees and employees of AMERICAN for which a license is
15 required.

16 V

17 At all times mentioned, Respondents engaged in the business of, acted in the
18 capacity of, advertised or assumed to act as a real estate broker in the State of California within
19 the meaning of Section 10131(d) of the Code, including the operation and conduct of a mortgage
20 loan brokerage business with the public wherein Respondents solicited lenders and borrowers for
21 loans secured directly or collaterally by liens on real property or a business opportunity, and
22 wherein such loans were arranged, negotiated, processed, and consummated by Respondents on
23 behalf of others for compensation or in expectation of a compensation.

24 FIRST CAUSE OF ACTION

25 VI

26 Each and every allegation in Paragraphs I through V, inclusive, above are
27 incorporated by this reference as if fully set forth herein.

VII

In the course of activities described in Paragraph V, on or about, October 25, 2007, November 2, 2007, and February 8, 2008, Respondents caused to be mailed advertisements which included statements or representations with regard to rates, terms, or conditions for making or negotiating loans which are not in compliance with the law, including but not limited to:

- (a) The advertisements and envelopes implied an official government communication, and the required disclosure are not equally prominent on the advertisement or the envelope in violation of Section 17533.6 of the Code and Section 2848(12) of the Commissioner's Regulations (Title 10 of the California Code of Regulations) (hereafter "the Regulations");
- (b) The advertisements used the names "NAPF" and/or "NAPF Program" which were not properly licensed fictitious business names of AMERICAN in violation of Section 10159.5 of the Code and Section 2731 of the Regulations;
- (c) The advertisements were false, misleading, and/or deceptive, to wit, "Based on City and County records your adjustable mortgage of ... which funded on ... is converting to a higher rate with an increased monthly payment and potential loan balance."
This statement is false and misleading in that not all of the recipients have adjustable rate loans or the adjustable rate loan is not adjusting in the near term, and you have insufficient information about the recipients' financial status to determine whether the recipients will have a higher rate, higher payment, or higher potential loan balance, and is in violation of Section 10235 of the Code;
- (d) The advertisements stated the consumers loan amount without the consent of the owner or the required discloses in violation of Section 14702 of the Code;
- (e) The advertisements were false, misleading, and/or deceptive, to wit, "Under the NAPF Program you have become eligible to avoid this by a low fixed rate

1 which consolidates and lowers your monthly payment.”

2 This statement is false and misleading as it does not disclose on what basis the
3 recipients are eligible, and you have insufficient information about the recipients’
4 financial status to determine whether the recipients are eligible for a new loan, or a
5 low rate, or to consolidate or lower their monthly payment, and is in violation of
6 Section 10235 of the Code;

7 (f) The advertisements contained superlatives and comparatives such as “low” without
8 further explanation, which render them unambiguous in the context they are used, and
9 are in violation of Section 2848(2) of the Regulations;

10 (g) The advertisements were false, misleading, and/or deceptive, to wit,
11 “Through Federal and State Lending guidelines and the NAPF Program homeowners
12 located in the ... area are now reducing their monthly payment with a low payment
13 rate starting at ... Fixed.””

14 This statement is false and misleading as it does not disclose on what basis and how
15 homeowners are reducing their monthly payments, does not disclose how long the
16 payment starting rate will be available, and is unclear if the term “fixed” means a fully
17 amortized level term payment, and is in violation of Section 10235 of the Code;

18 (h) The advertisements quote an interest rate, such as 1.95%, without an equally
19 prominent Annual Percentage Rate (hereafter “APR”) in violation of Section
20 2848(16) of the Regulations;

21 (i) The advertisements were false, misleading, and/or deceptive, to wit,
22 “Under the NAPF Program 30 year mortgages are now being paid off at a fraction of
23 the time of your current mortgage.”

24 This statement is false and misleading as you have insufficient information about the
25 recipients’ current mortgage principal amount or amortization of the recipients’ loan
26 to determine whether others are being paid off in less time, and is in violation of
27 Section 10235 of the Code;

1 (j) The advertisements were false, misleading, and/or deceptive, to wit,
2 "The NAPF Program is offered and available to eligible homeowners located in
3 qualifying communities."

4 This statement is false and misleading as it does not disclose the qualifications to be
5 eligible, and is in violation of Section 10235 of the Code;

6 (k) The advertisements were false, misleading, and/or deceptive, to wit,
7 "The NAPF Program is based on lowest available national average APR with 10, 15,
8 30 and 40 year fixed options available with a lower than national average fixed rate."

9 This statement is false and misleading as it does not disclose on what basis the lowest
10 available national average APR was determined, and is in violation of Section 10235
11 of the Code;

12 (l) The required statement, "Real Estate Broker, California Department of Real Estate" is
13 not included in the advertisements and is in violation of Section 2847.3 of the
14 Regulations; and

15 (m) The advertisements were false, misleading, and/or deceptive, to wit,
16 "Program savings available upon confirmed qualifications."

17 This statement is false and misleading in that it implies the recipients will receive all
18 of the savings when the loan qualification is confirmed rather than over the term of
19 the loan, and you have insufficient information about the recipients' current financial
20 status to determine whether they will realize any savings, and is in violation of
21 Section 10235 of the Code.

22 VIII

23 In the course of activities described in Paragraph V, on or about, February 2008,
24 March 2008, and April 2008, Respondents caused to be mailed advertisements which included
25 statements or representations with regard to rates, terms, or conditions for making or negotiating
26 loans which are not in compliance with the law, including but not limited to:

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- 1 (a) The advertisements implied an official government communication, and the required
2 disclosure are not equally prominent on the advertisement or the envelope in violation
3 of Section 17533.6 of the Code and Section 2848(12) of the Regulations;
- 4 (b) The advertisements included an icon that resembles the Housing and Urban
5 Development logo and includes language which implies a government seal, and is in
6 violation of Section 17533.6 of the Code;
- 7 (c) The advertisements used the names "APF", "APF/OV", "NAPF" and/or "American
8 Premier Funding" which are not properly licensed fictitious business names of
9 AMERICAN in violation of Section 10159.5 of the Code and Section 2731 of the
10 Regulations;
- 11 (d) The advertisements were false, misleading, and/or deceptive, in that they included a
12 "Department of Housing and Urban Development" heading and quotes section 204(a)
13 of Title 18 of the United States Code. This statement is false and misleading in that it
14 attempts to convey the false impression that such name or business has some
15 connection with, or authorization from the Department of Housing and Urban
16 Development, the Government of the United States, or any agency thereof, and is in
17 violation of Section 10235 of the Code;
- 18 (e) The advertisements stated the consumers loan amount without the consent of the
19 owner or the required discloses in violation of Section 14702 of the Code;
- 20 (f) The advertisements were false, misleading, and/or deceptive, to wit,
21 "YOU HAVE BEEN PRE-APPROVED TO PARTICIPATE IN THIS
22 GOVERNMENT BACKED PROGRAM."
23 This statement is false and misleading as it does not clearly disclose recipients must
24 apply and qualify for a new loan, you have insufficient information about the financial
25 status of the recipients to determine if they qualify for the loan, and the advertisement
26 implies the recipients will be involved in a governmental program, and is in violation
27 of Section 10235 of the Code;

- 1 (g) The advertisements represent a "NEW Reduced Monthly Payment", such as \$966,
2 without setting forth the loan's lien priority and is in violation of Section 2848(6) of
3 the Regulations;
- 4 (h) The advertisements make representations of an installment in repayment of an
5 adjustable rate, interest only, or payment-option loan without an equally prominent
6 disclosures containing the requirements of Section 2848(17) of the Regulations;
- 7 (i) The advertisements quote an interest rate, such as 4.5%, without an equally prominent
8 APR in violation of Section 2848(16) of the Regulations;
- 9 (j) The advertisements were false, misleading, and/or deceptive, to wit,
10 "The program is offered and available to eligible homeowners located in qualifying
11 communities and is based on the lowest available national average."
12 This statement is false and misleading as is does not disclose the qualifications to be
13 eligible, and it does not disclose on what basis the lowest available national average
14 was determined, and is in violation of Section 10235 of the Code;
- 15 (k) The required statement, "Real Estate Broker, California Department of Real Estate" is
16 not included in the advertisements, and is in violation of Section 2847.3 of the
17 Regulations;
- 18 (l) The advertisements provide, "No Income Verification Required," without a statement
19 that these products may have a higher rate, more points, or more fees than other
20 products requiring documentation, and is in violation of Section 2848(18) of the
21 Regulations; and
- 22 (m) The advertisements imply it is from a lender in violation of Section 2848(4) of the
23 Regulations.

24 IX

25 In the course of activities described in Paragraph V, on or about, May 12, 2008, May
26 19, 2008, and June 10, 2008, Respondents caused to be mailed advertisements which included

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1 statements or representations with regard to rates, terms, or conditions for making or negotiating
2 loans which are not in compliance with the law, including but not limited to:

3 (a) The advertisements use the names "APF", "APF/OV", "American Premier" and/or
4 "American Premier Funding" which are not properly licensed fictitious business
5 names of AMERICAN in violation of Section 10159.5 of the Code and Section 2731
6 of the Regulations;

7 (b) The advertisements stated the consumers loan amount without the consent of the
8 owner or the required discloses in violation of Section 14702 of the Code;

9 (c) The advertisements were false, misleading, and/or deceptive, to wit,
10 "ATTENTION: INTEREST RATE REDUCTION NOTIFICATION
11 US-400-0013164 Urgent Notice."

12 This statement is false and misleading in that the statement implies the notice is from
13 the lender, and the recipients have an established relationship with the sender, and is
14 in violation of Section 10235 of the Code;

15 (d) The advertisements were false, misleading, and/or deceptive, to wit,
16 "YOUR NEGATIVE AMORTIZATION LOAN IS COSTING YOU THOUSANDS
17 OF DOLLARS EACH YEAR."

18 This statement is false and misleading in not all of the recipients have negatively
19 amortizing loans and is in violation of Section 10235 of the Code;

20 (e) The advertisements represent a "NEW PAYMENT", such as \$1,981, without setting
21 forth the loan's lien priority and is in violation of Section 2848(6) of the Regulations;

22 (f) The advertisements made representation of an installment in repayment of an
23 adjustable rate, interest only, or payment-option loan without an equally prominent
24 disclosure containing the requirements of Section 2848(17) of the Regulations;

25 (g) The advertisements were false, misleading, and/or deceptive, to wit,
26 "Our APF Advantage Rate System allows you to lock in the lowest rate available
27 nationwide." and

1 "Eliminate all revolving debt and consolidate into a lower than average national
2 FIXED RATE."

3 These statements are false and misleading as all recipients will not qualify for low
4 rates, and you cannot know all rates that are available nationwide or the average
5 national fixed rate that is currently being offered as average rates are published after
6 the rates are reported, and is in violation of Section 10235 of the Code;

- 7 (h) The advertisements were false, misleading, and/or deceptive, to wit,
8 "YOUR PRE-APPROVED AUTHORIZED PROGRAM OPTIONS AND
9 BENEFITS."

10 This statement is false and misleading as you have insufficient information about the
11 financial status of the recipients to determine if they qualify for the new loan, and is in
12 violation of Section 10235 of the Code;

- 13 (i) The advertisements represent a "NEW SAVINGS", such as \$792. This statement is
14 false and misleading as you have insufficient information about the financial status of
15 the recipients to determine if they qualify for the new loan and what savings the
16 recipients may have from the loan payment, and is in violation of Section 10235 of
17 the Code;

- 18 (j) The required statement, "Real Estate Broker, California Department of Real Estate" is
19 not included in the advertisements and is in violation of Section 2847.3 of the
20 Regulations; and

- 21 (k) The advertisements imply it is from a lender in violation of Section 2848(4) of the
22 Regulations.

23 X

24 In the course of activities described in Paragraph V, on or about, April 24, 2008,
25 Respondents caused to be mailed advertisements which included statements or representations
26 with regard to rates, terms, or conditions for making or negotiating loans which are not in
27 compliance with the law, including but not limited to:

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- (a) The advertisements used the names “APF”, “NAPF”, “APF” and/or “American Premier Funding” which are not properly licensed fictitious business names of AMERICAN in violation of Section 10159.5 of the Code and Section 2731 of the Regulations;
- (b) The advertisements stated it is from “NAPF Federal Housing Administration” and thereby implies it is an official government communication, and the required disclosure are not equally prominent on the advertisement, and is in violation of Section 17533.6 of the Code;
- (c) The advertisements provide, “No Income or Asset Info Needed,” without a statement that these products may have a higher rate, more points or more fees than other products requiring documentation, and is in violation of Section 2848(18) of the Regulations; and
- (d) The advertisements quote an interest rate, such as 4.375%, without an equally prominent APR in violation of Section 2848(16) of the Regulations;
- (e) The advertisements were false, misleading, and/or deceptive, to wit, “Any Credit Scores Accepted.”
This statement is false and misleading in that some recipients will have credit scores that are too low to qualify for a loan, and is in violation of Section 10235 of the Code;
- (f) The advertisements were false, misleading, and/or deceptive, to wit, “ADDITIONAL INCOME IMMEDIATELY AVAILABLE FOR: ...”
This statement is false and misleading in the broker does not provide income to the recipients, and any funds provided to the recipients from the loan proceeds would not be immediately available, and is in violation of Section 10235 of the Code;
- (g) The advertisements were false, misleading, and/or deceptive, to wit, “PRE-QUALIFICATION: YES.”
This statement is false and misleading as you have insufficient information about the

- 1 (h) financial status of the recipients to determine if they qualify for the new loan, and is in
2 violation of Section 10235 of the Code;
- 3 (i) The required statement, "Real Estate Broker, California Department of Real Estate" is
4 not included in the advertisements and is in violation of Section 2847.3 of the
5 Regulations; and
- 6 (j) The advertisements imply it is from a lender in violation of Section 2848(4) of the
7 Regulations.

8 XI

9 In the course of activities described in Paragraph V, on or about, August 1, 2008,
10 Respondents caused to be mailed advertisements which included statements or representations
11 with regard to rates, terms, or conditions for making or negotiating loans which are not in
12 compliance with the law, including but not limited to:

- 13 (a) The advertisements and envelopes implied an official government communication,
14 and the required disclosure are not equally prominent on the advertisement or the
15 envelope in violation of Section 17533.6 of the Code;
- 16 (b) The advertisements stated the consumers loan amount without the consent of the
17 owner or the required discloses in violation of Section 14702 of the Code;
- 18 (c) The advertisements were false, misleading, and/or deceptive, to wit,
19 "Our records indicate that your Adjustable Rate mortgage (ARM) is likely converting
20 to an increased rate and monthly payment as well as potential loan balance."
21 This statement is false and misleading in it implies the communication is from a
22 governmental agency or the current lender who have the recipients' records, and is in
23 violation of Section 10235 of the Code;
- 24 (d) The advertisements were false, misleading, and/or deceptive, to wit,
25 "You may now be available to avoid this by taking advantage of the 2008 Economic
26 Stimulus Loan Modification. Congress has authorized a temporary increase of funds
27 available for single family residences to the lesser of \$729,750 or 125% of the

1 average home value within the MSA.”

2 This statement is false and misleading as the advertisement implies the recipient is
3 eligible to receive cash, such as the economic stimulus cash, and does not disclose the
4 recipient must qualify for and obtain a new loan, and is in violation of Section 10235
5 of the Code;

- 6 (e) The advertisements were false, misleading, and/or deceptive, to wit,
7 “What this means to you is you are now available to convert your Adjustable Rate
8 Mortgage (ARM) to a low Fixed-Rate Program within this Program saving you
9 thousands of dollars each year. This change is only available through December 31,
10 2008.”

11 This statement is false and misleading as the advertisement implies the recipients’
12 current loan terms will be changed by the current lender, and you have insufficient
13 information about the financial status of the recipients to determine if they qualify for
14 the new loan, fixed rate, or if it will save the recipient money, and is in violation of
15 Section 10235 of the Code;

- 16 (f) The advertisements make representation of an installment in repayment of an
17 adjustable rate, interest only, or payment-option loan without an equally prominent
18 disclosure containing the requirements of Section 2848(17) of the Regulations;

- 19 (g) The advertisements represent a “NEW SAVINGS”, such as \$524. This statement is
20 false and misleading as the claim of savings is not for a fully amortized payment of
21 principal and interest, and you have insufficient information about the financial status
22 of the recipients to determine if they qualify for the new loan and what savings the
23 recipients may have from the loan payment, and is in violation of Section 10235 of
24 the Code;

- 25 (h) The required statement, “Real Estate Broker, California Department of Real Estate” is
26 not included in the advertisements and is in violation of Section 2847.3 of the
27 Regulations; and

- 1 (i) The advertisements imply it is from a lender in violation of Section 2848(4) of the
2 Regulations.

3 XII

4 The acts and/or omissions of Respondents as alleged above constitute grounds for
5 disciplinary action under the following provisions:

- 6 (a) As to Paragraphs VII(a) and VIII(a) under Sections 17533.6 of the Code and Section
7 2848(12) of the Regulations in conjunction with Section 10177(d) of the Code;
- 8 (b) As to Paragraphs VII(b), VIII(c), IX(a), and X(a) under Section 10159.5 of the Code
9 and Section 2731 of the Regulations in conjunction with Section 10177(d) of the
10 Code;
- 11 (c) As to Paragraphs VII(c), VII(e), VII(g), VII(i), VII(j), VII(k), VII(m), VIII(d), VIII(f),
12 VIII(j), IX(c), IX(d), IX(g), IX(h), IX(i), X(e), X(f), X(g), X(h), XI(c), XI(d), XI(e),
13 and XI(g) under Section 10235 of the Code in conjunction with Section 10177(d) of
14 the Code;
- 15 (d) As to Paragraphs VII(d), VIII(e), IX(b), and XI(b) under Section 14702 of the Code in
16 conjunction with Section 10177(d) of the Code;
- 17 (e) As to Paragraph VII(f) under Section 2848(2) of the Regulations in conjunction with
18 Section 10177(d) of the Code;
- 19 (f) As to Paragraphs VII(h), VIII(i), and X(d) under Section 2848(16) of the Regulations
20 in conjunction with Section 10177(d) of the Code;
- 21 (g) As to Paragraphs VII(l), VIII(k), IX(j), X(i), and XI(h) under Section 2847.3 of the of
22 the Regulations in conjunction with Section 10177(d) of the Code;
- 23 (h) As to Paragraphs VIII(b), X(b), and XI(a) under Section 17533.6 of the of the Code
24 in conjunction with Section 10177(d) of the Code;
- 25 (i) As to Paragraphs VIII(g) and IX(e) under Section 2848(6) of the of the Regulations in
26 conjunction with Section 10177(d) of the Code;
- 27

1 (j) As to Paragraphs VIII(h), IX(f), and XI(f) under Section 2848(17) of the of the
2 Regulations in conjunction with Section 10177(d) of the Code;

3 (k) As to Paragraphs VIII(l) and X(c) under Section 2848(18) of the of the Regulations in
4 conjunction with Section 10177(d) of the Code.

5 (l) As to Paragraphs VIII(m), IX(k), X(j), and XI(i) under Section 2848(4) of the of the
6 Regulations in conjunction with Section 10177(d) of the Code.

7 SECOND CAUSE OF ACTION

8 XIII

9 Each and every allegation in Paragraphs I through XII, inclusive, above, are
10 incorporated by this reference as if fully set forth herein.

11 XIV

12 Respondent VACA failed to exercise reasonable supervision over the acts of
13 AMERICAN in such a manner as to allow the acts and events described above to occur.

14 XV

15 The acts and/or omissions of VACA described in Paragraphs VI through XIV,
16 constitute failure on the part of VACA, as designated broker-officer for AMERICAN, to exercise
17 reasonable supervision and control over the licensed activities of AMERICAN as required by
18 Section 10159.2 of the Code.

19 XVI

20 The facts described in Paragraphs XIII through XV constitute cause for the
21 suspension or revocation of the licenses and license rights of Respondent VACA under Section
22 10177(g) and/or Section 10177(h) of the Code and Section 10159.2 of the Code in conjunction
23 with Section 10177(d) of the Code.

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1 PRIOR PROCEEDING

2 XVIII

3 On or about may 12, 2007, in Case No. H-2258 FR before the Department of Real
4 Estate, the Real Estate Commissioner issued an Order to Desist and Refrain against Respondent
5 for violation of Sections 10159.5, 10235, 104702, and 17533.6 of the Code, and Section 2731,
6 2847.3, 2848(2), 2848(12), and 2848(16) of the Regulations.

7 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
8 of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary
9 action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of
10 Division 4 of the Business and Professions Code), and for such other and further relief as may be
11 proper under other provisions of law.

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14 _____
15 JOSEPH AIU
16 Deputy Real Estate Commissioner

16 Dated at San Diego, California,
17 this 22 day of August, 2008.
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