

date

FILED

1 Department of Real Estate
2 320 West 4th Street, Ste. 350
3 Los Angeles, California 90013-1105
4 Telephone: (213) 576-6982 (office)

MAY 28 2009

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-34619 LA

12 ALL NATIONS LENDING INC.;)
13 and GARDENIA GUTIERREZ,)
14 individually and as designated)
15 officer of All Nations)
16 Lending Inc.,)

STIPULATION
AND
AGREEMENT

17 Respondents.)
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19 It is hereby stipulated by and between Respondents
20 ALL NATIONS LENDING INC. and GARDENIA GUTIERREZ, individually and
21 as designated officer of All Nations Lending Inc., (sometimes
22 collectively referred to as "Respondents"), and the Complainant,
23 acting by and through Elliott Mac Lennan, Counsel for the
24 Department of Real Estate, as follows for the purpose of settling
25 and disposing of the Accusation ("Accusation") filed on December
26 21, 2007, in this matter:
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1 1. All issues which were to be contested and all
2 evidence which was to be presented by Complainant and Respondents
3 at a formal hearing on the Accusation, which hearing was to be
4 held in accordance with the provisions of the Administrative
5 Procedure Act ("APA"), shall instead and in place thereof be
6 submitted solely on the basis of the provisions of this
7 Stipulation and Agreement ("Stipulation").

8 2. Respondents have received, read and understand the
9 Statement to Respondent, the Discovery Provisions of the APA and
10 the Accusation filed by the Department of Real Estate in this
11 proceeding.

12 3. Respondents timely filed a Notice of Defense
13 pursuant to Section 11506 of the Government Code for the purpose
14 of requesting a hearing on the allegations in the Accusation.
15 Respondents hereby freely and voluntarily withdraw said Notice of
16 Defense. Respondents acknowledge that they understand that by
17 withdrawing said Notice of Defense they thereby waive their right
18 to require the Commissioner to prove the allegations in the
19 Accusation at a contested hearing held in accordance with the
20 provisions of the APA and that they will waive other rights
21 afforded to them in connection with the hearing such as the right
22 to present evidence in their defense and the right to cross-
23 examine witnesses.
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1 4. This Stipulation is based on the factual
2 allegations contained in the Accusation. In the interest of
3 expedience and economy, Respondents choose not to contest these
4 allegations, but to remain silent and understand that, as a
5 result thereof, these factual allegations, without being admitted
6 or denied, will serve as a prima facie basis for the disciplinary
7 action stipulated to herein. The Real Estate Commissioner shall
8 not be required to provide further evidence to prove said factual
9 allegations.

10 5. This Stipulation is made for the purpose of
11 reaching an agreed disposition of this proceeding and is
12 expressly limited to this proceeding and any other proceeding or
13 case in which the Department of Real Estate ("Department"), the
14 state or federal government, or any agency of this state, another
15 state or federal government is involved.

16 6. It is understood by the parties that the Real
17 Estate Commissioner may adopt this Stipulation as his Decision in
18 this matter thereby imposing the penalty and sanctions on
19 Respondents' real estate licenses and license rights as set forth
20 in the "Order" herein below. In the event that the Commissioner
21 in his discretion does not adopt the Stipulation, it shall be
22 void and of no effect and Respondents shall retain the right to a
23 hearing and proceeding on the Accusation under the provisions of
24 the APA and shall not be bound by any stipulation or waiver made
25 herein.
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1 7. The Order or any subsequent Order of the Real
2 Estate Commissioner made pursuant to this Stipulation shall not
3 constitute an estoppel, merger or bar to any further
4 administrative or civil proceedings by the Department of Real
5 Estate with respect to any matters which were not specifically
6 alleged to be causes for Accusation in this proceeding but do
7 constitute a bar, estoppel and merger as to any allegations
8 actually contained in the Accusations against Respondent herein.

9 8. Respondents understand that by agreeing to this
10 Stipulation, Respondents agree to pay, pursuant to Business and
11 Professions Code Section 10148, the cost of the audit. The
12 amount of said cost for the audit is \$3,673.99.

13 9. Respondents have received, read, and understand the
14 "Notice Concerning Costs of Subsequent Audit". Respondents
15 further understand that by agreeing to this Stipulation, the
16 findings set forth below in the Determination of Issues become
17 final, and the Commissioner may charge Respondents for the cost
18 of any subsequent audit conducted pursuant to Business and
19 Professions Code Section 10148 to determine if the violations
20 have been corrected. The maximum cost of the subsequent audit
21 will not exceed \$3,673.99.

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DETERMINATION OF ISSUES

1 By reason of the foregoing, it is stipulated and agreed
2 that the following determination of issues shall be made:
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4 I.

5 The conduct, acts or omissions of ALL NATIONS LENDING
6 INC. and GARDENIA GUTIERREZ, as described in Paragraph 4, above,
7 are in violation of Sections 10145, 10176(g), 10236.4 and 10240
8 of the Business and Professions Code ("Code") and Section 2840 of
9 Title 10, Chapter 6 of the California Code of Regulations
10 ("Regulations") and is a basis for discipline of Respondents'
11 license and license rights as violation of the Real Estate Law
12 pursuant to Code Sections 10177(d) and 10177(g).

13 ORDER

14 WHEREFORE, THE FOLLOWING ORDER is hereby made:

15 I.

16 The license and licensing rights of Respondents ALL
17 NATIONS LENDING INC. and GARDENIA GUTIERREZ, under the Real
18 Estate Law, are suspended for a period of sixty (60) days from
19 the effective date of this Decision.

20
21 A. Provided, however, that if Respondents request, the
22 initial thirty (30) days of said suspension (or a portion
23 thereof) shall be stayed for two (2) years upon condition that:

24 1. Each Respondent pays a monetary penalty pursuant to
25 Section 10175.2 of the Business and Professions Code at the rate
26 of \$33.33 per day for each day of the suspension for a monetary
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1 penalty of \$1,000 each, or \$2,000 total.

2 2. Said payment shall be in the form of a cashier's
3 check or certified check made payable to the Recovery Account of
4 the Real Estate Fund. Said check must be received by the
5 Department prior to the effective date of the Decision in this
6 matter.

7 3. No further cause for disciplinary action against
8 the real estate license of Respondents occur within two (2) years
9 from the effective date of the Decision in this matter.

10 4. If Respondents fail to pay the monetary penalty in
11 accordance with the terms of the Decision, the Commissioner may,
12 without a hearing, order the immediate execution of all or any
13 part of the stayed suspension, in which event the Respondent
14 shall not be entitled to any repayment nor credit, prorated or
15 otherwise, for money paid to the Department under the terms of
16 this Decision.

17 5. If Respondents pay the monetary penalty and if no
18 further cause for disciplinary action against the real estate
19 license of Respondent occurs within two (2) years from the
20 effective date of the Decision, the stay hereby granted shall
21 become permanent.
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1 B. The remaining thirty (30) days of the sixty (60)
2 day suspension shall be stayed for two (2) years upon the
3 following terms and conditions:

4 (a) Respondents shall obey all laws, rules and
5 regulations governing the rights, duties and responsibilities of
6 a real estate licensee in the State of California; and

7 (b) That no final subsequent determination be made
8 after hearing or upon stipulation, that cause for disciplinary
9 action occurred within two (2) years from the effective date of
10 this Decision. Should such a determination be made, the
11 Commissioner may, in his discretion, vacate and set aside the
12 stay order and reimpose all or a portion of the stayed
13 suspension. Should no such determination be made, the stay
14 imposed herein shall become permanent.

15 II.

16 Pursuant to Section 10148 of the Business and
17 Professions Code, Respondents ALL NATIONS LENDING INC. and
18 GARDENIA GUTIERREZ shall pay the Commissioner's reasonable cost
19 for (a) the audit which led to this disciplinary action (b) a
20 subsequent audit to determine if Respondents are now in
21 compliance with the Real Estate Law. The cost of the audit which
22 led to this disciplinary action is \$3,673.99. In calculating the
23 amount of the Commissioner's reasonable cost, the Commissioner
24 may use the estimated average hourly salary for all persons
25 performing audits of real estate brokers, and shall include an
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1 allocation for travel time to and from the auditor's place of
2 work. Said amount for the prior and subsequent audits shall not
3 exceed \$7,347.98.

4 Respondents shall pay such cost within 60 days of
5 receiving an invoice from the Commissioner detailing the
6 activities performed during the audit and the amount of time
7 spent performing those activities.

8 The Commissioner may suspend the license of Respondents
9 pending a hearing held in accordance with Section 11500, et seq.,
10 of the Government Code, if payment is not timely made as provided
11 for herein, or as provided for in a subsequent agreement between
12 the Respondent and the Commissioner. The suspension shall remain
13 in effect until payment is made in full or until Respondents
14 enter into an agreement satisfactory to the Commissioner to
15 provide for payment, or until a decision providing otherwise is
16 adopted following a hearing held pursuant to this condition.
17

18 III.

19 All licenses and licensing rights of Respondent
20 GARDENIA GUTIERREZ are indefinitely suspended unless or until
21 Respondent provides proof satisfactory to the Commissioner, of
22 having taken and successfully completed the continuing education
23 course on trust fund accounting and handling specified in
24 paragraph (3) of subdivision (a) of Section 10170.5 of the
25 Business and Professions Code. Proof of satisfaction of this
26 requirement includes evidence that Respondent has successfully
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1 completed the trust fund account and handling continuing
2 education course by the effective date of the Decision or within
3 120 days prior to the effective date of the Decision.
4
5

6 DATED: 4-16-09 EJL
7 ELLIOTT MAC LENNAN, Counsel for
8 the Department of Real Estate

9 * * *

10 EXECUTION OF THE STIPULATION

11 We have read the Stipulation. Its terms are understood
12 by us and are agreeable and acceptable to us. We understand that
13 we are waiving rights given to us by the California
14 Administrative Procedure Act (including but not limited to
15 Sections 11506, 11508, 11509 and 11513 of the Government Code),
16 and we willingly, intelligently and voluntarily waive those
17 rights, including the right of requiring the Commissioner to
18 prove the allegations in the Accusation at a hearing at which we
19 would have the right to cross-examine witnesses against us and to
20 present evidence in defense and mitigation of the charges.


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MAILING AND FACSIMILE

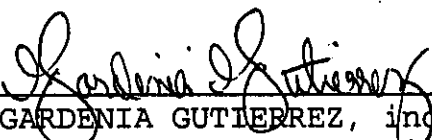
1 Respondents (1) shall mail the original signed
2 signature page of the stipulation herein to Elliott Mac Lennan:
3 Attention: Legal Section, Department of Real Estate, 320 W.
4 Fourth St., Suite 350, Los Angeles, California 90013-1105.
5 Respondents shall also (2) facsimile a copy of signed signature
6 page, to the Department at the following telephone/fax number:
7 (213) 576-6917, Attention: Elliott Mac Lennan.
8

9 A facsimile constitutes acceptance and approval of the
10 terms and conditions of this stipulation. Respondents agree,
11 acknowledge and understand that by electronically sending to the
12 Department a facsimile copy of Respondents' actual signature as
13 it appears on the stipulation that receipt of the facsimile copy
14 by the Department shall be as binding on Respondents as if the
15 Department had received the original signed stipulation.
16

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18 DATED: 04/24/09


ALL NATIONS LENDING INC., a
corporate real estate broker,
BY: GARDENIA GUTIERREZ D.O.,
Respondent

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23 DATED: 04/24/09


GARDENIA GUTIERREZ, individually
and as designated officer of ALL
NATIONS LENDING INC., Respondent

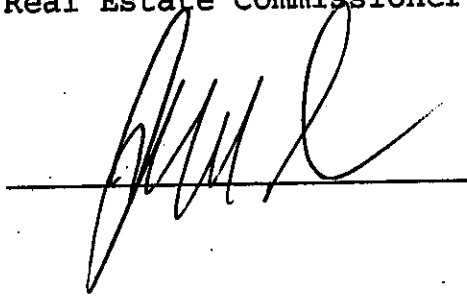
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The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondents ALL NATIONS LENDING INC.
and GARDENIA GUTIERREZ, individually and as designated officer of
All Nations Lending Inc. and shall become effective at 12 o'clock
noon on June 26, 2009.

IT IS SO ORDERED 5/15, 2009.

JEFF DAVI
Real Estate Commissioner



1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)
6 -or- (213) 576-6982 (office)

FILED

DEC 21 2007

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

<p>11 In the Matter of the Accusation of)</p> <p>12 ALL NATIONS LENDING INC.; and)</p> <p>13 GARDENIA GUTIERREZ,)</p> <p>14 individually and as)</p> <p>15 designated officer of)</p> <p>16 All Nations Lending Inc.,)</p> <p>17 Respondents.)</p>	<p>No. H-34619 LA</p> <p><u>A C C U S A T I O N</u></p>
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18 The Complainant, Robin Trujillo, a Deputy Real Estate
19 Commissioner of the State of California, for cause of Accusation
20 against ALL NATIONS LENDING INC. and GARDENIA GUTIERREZ,
21 individually and as designated officer of All Nations Lending
22 Inc., alleges as follows:

23 1.

24 The Complainant, Robin Trujillo, acting in her official
25 capacity as a Deputy Real Estate Commissioner of the State of
26

1 California, makes this Accusation against ALL NATIONS LENDING
2 INC. and GARDENIA GUTIERREZ.

3 2.

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

7 LICENSE HISTORY

8 3.

9 A. At all times mentioned, ALL NATIONS LENDING INC.
10 ("ALL NATIONS") and GARDENIA GUTIERREZ ("GUTIERREZ") were
11 licensed or had license rights issued by the Department of Real
12 Estate ("Department") as real estate brokers.

13 B. At all times material herein, ALL NATIONS was
14 licensed by the Department of Real Estate of the State of
15 California (hereinafter "Department") as a corporate real estate
16 broker by and through GUTIERREZ, as the designated officer and
17 broker responsible, pursuant to Code Section 10159.2 of the
18 Business and Professions Code for supervising the activities
19 requiring a real estate license conducted on behalf ALL NATIONS
20 of by ALL NATIONS' officers, agents and employees, including
21 GUTIERREZ. ALL NATIONS was originally licensed as a corporate
22 real estate broker on November 17, 2004. GUTIERREZ was initially
23 licensed as a real estate broker on March 5, 2005.

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BROKERAGE

4.

At all times mentioned, in the City of Burbank, County of Los Angeles, ALL NATIONS acted as a real estate broker conducting licensed activities within the meaning of Code Section 10131(d) by operating a mortgage and loan brokerage.

AUDIT EXAMINATION

5.

On June 21, 2007, the Department completed an audit examination of the books and records of ALL NATIONS pertaining to the mortgage and loan activities described in Paragraph 4, which require a real estate license. The audit examination covered a period of time beginning on April 1, 2006 to March 31, 2007. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 060287 and the exhibits and work papers attached to said audit report.

TRUST ACCOUNT

6.

During the audit period ALL NATIONS did not maintain a trust account for the trust funds it collected and received.

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VIOLATIONS OF THE REAL ESTATE LAW

7.

In the course of activities described in Paragraphs 4 and 6, above, and during the examination period described in Paragraph 5, Respondents ALL NATIONS and GUTIERREZ, acted in violation of the Code and the Regulations in that they:

(a) Mixed and commingled trust funds and personal funds by depositing credit report fees received from escrow into ALL NATIONS' general operating account and issuing checks from said account to credit companies after the escrow checks were deposited, in violation of Code Sections 10145 and 10176(e).

(b) Failed to provide, maintain or retain a true and correct copy of a Department of Real Estate approved Mortgage Loan Disclosure Statement signed by the broker for borrowers Fernando Ortega, Araceli Ortega and Eduardo Santillan, in violation of Code Section 10240 and 10241 and Regulation 2840.

(c) Failed to disclose yield spread premiums from lenders on the approved Mortgage Loan Disclosure Statement for the borrowers Fernando Ortega, Araceli Ortega, Eduardo Santillan, and Scott F. Thompson totaling \$7,131.50, in violation of Code Section 10241 and Regulation 2840.1.

(d) Failed to display the Department's license number on the Scott F. Thompson Mortgage Loan Disclosure Statement, as required by Code Section 10236.4.

1 (e) Permitted and/or caused the disbursement of trust
2 funds to credit report companies on the representation that these
3 amounts were needed to pay for credit report fees, which payments
4 exceeded the actual costs of these services. Respondents did not
5 disclose these "mark-ups" to borrower-beneficiaries Eduardo
6 Santillan and Areli M. Mederos of said trust funds, did not
7 obtain their consent to these "mark-ups". Respondents retained
8 the difference between the amounts paid and the actual costs of
9 the services, in violation of Code Sections 10176(a) and
10 10176(g).

11 8.

12 The conduct of Respondents ALL NATIONS and GUTIERREZ
13 described in Paragraph 7, above, violated the Code and the
14 Regulations as set forth below:

15 PARAGRAPH

16 PROVISIONS VIOLATED

17
18 7(a)

Code Sections 10145 and 10176(e)

19
20
21 7(b)

Code Sections 10240 and 10241 and
22 Regulation 2840

23
24
25 7(c)

Code Section 10241 and Regulation
26 2840.1

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7(d) Code Section 10236.4

7(e) Code Sections 10176(a) and 10176(g)

The foregoing violations constitutes cause for the suspension or revocation of the real estate license and license rights of ALL NATIONS and GUTIERREZ, under the provisions of Code Sections 10176(a), 10176(e) and 10176(g), 10177(d) and/or 10177(g).

NEGLIGENCE

9.

The overall conduct of Respondents ALL NATIONS and GUTIERREZ constitutes negligence or incompetence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

SUPERVISION AND COMPLIANCE

10.

The overall conduct of Respondent GUTIERREZ constitutes a failure on his part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of ALL NATIONS as required by Code Section 10159.2 and Regulation 2725, and to keep ALL NATIONS in compliance with the Real Estate Law, and is cause for

1 the suspension or revocation of the real estate license and
2 license rights of GUTIERREZ pursuant to the provisions of Code
3 Sections 10177(d), 10177(g) and 10177(h).

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

12 Dated at Los Angeles, California

13 this 7 day of December 2007


Deputy Real Estate Commissioner

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24 cc: All Nations Lending Inc. Inc.
25 c/o Gardenia Gutierrez D.O.
26 Robin Trujillo
27 Sacto
Audits - Surender Bhatia