

5AC

LISSETE GARCIA, Counsel (SBN 211552)  
Department of Real Estate  
320 West 4th Street, Suite 350  
Los Angeles, California 90013-1105

Telephone: (213) 576-6982  
(Direct) (213) 576-6914  
(Fax) (213) 576-6917

**FILED**

JUL 30 2012

DEPARTMENT OF REAL ESTATE  
BY: C.S.

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	No. H-38085 LA
PLAYAS DEL PACIFICO 201-A INC. )	<u>FIRST AMENDED ACCUSATION</u>
and MICHAEL EDWARD HARRISON, )	
individually and as designated )	
officer of Playas Del Pacifico )	
201-A Inc., )	
Respondents. )	

This First Amended Accusation amends the Accusation filed on April 26, 2012. The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against PLAYAS DEL PACIFICO 201-A INC. and MICHAEL EDWARD HARRISON, individually and as designated officer of Playas Del Pacifico 201-A Inc. (collectively "Respondents"), is informed and alleges as follows:

1.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this First Amended Accusation in her official capacity.

1 2.

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

5 3.

6 From June 9, 2009, through the present, Respondent  
7 PLAYAS DEL PACIFICO 201-A INC. ("PLP") has been licensed by the  
8 Department of Real Estate ("Department") as a real estate  
9 corporation, Department ID 01864286. AlCon Real Estate Services  
10 is a fictitious business name of PLP.

11 4.

12 From June 8, 2002, through the present, Respondent  
13 MICHAEL EDWARD HARRISON ("HARRISON") has been licensed by the  
14 Department as a real estate broker, Department ID 01133305.  
15 Respondent Harrison also obtained a mortgage loan originator  
16 endorsement on December 10, 2010, Nationwide Mortgage Licensing  
17 System ("NMLS") ID 340789. At all times relevant herein,  
18 Respondent PLP was authorized to act by and through Respondent  
19 HARRISON as its broker designated pursuant to Code Section  
20 10159.2 to be responsible for ensuring compliance with the Real  
21 Estate Law.  
22

23 5.

24 From February 6, 2003, through January 31, 2012,  
25 Robert Guy Mc Lellan ("Mc Lellan") was licensed by the  
26 Department as a restricted real estate salesperson, license no.  
27 00520763. The Department issued a restricted real estate  
28 salesperson license to Mc Lellan in Department Case No. H-29550

1 LA. On January 3, 2012, Mc Lellan's restricted real estate  
2 salesperson license was revoked in Department Case No. H-37153

3 LA. From March 6, 2009, through August 16, 2009, Mc Lellan was  
4 licensed under the employment of broker Dove Capital  
5 Corporation, license no. 01316943.

6 6.

7 At no time mentioned herein, have Kenneth A. Steele  
8 ("Steele") or AlCon Real Estate ("AlCon") ever been licensed by  
9 the Department in any capacity. Steele owns and is a director  
10 of PLP.

11  
12 FIRST CAUSE OF ACCUSATION

13 (Advance Fee Violations)

14 7.

15 Code Section 10132 defines a real estate salesperson  
16 as a person who, for compensation or in expectation of  
17 compensation, is employed by a licensed real estate broker to do  
18 one or more of the acts set forth in Sections 10131, 10131.1,  
19 10131.2, 10131.3, 10131.4, and 10131.6. Code Section 10131  
20 defines a real estate broker as a person who: (d) solicit  
21 borrowers, negotiate loans, collect payments or perform services  
22 for borrowers in connection with loans secured directly or  
23 collaterally by liens on real property.

24 8.

25 Code Section 10026, in pertinent part, defines an  
26 advance fee as a fee that is claimed, demanded, charged,  
27 received, or collected by a licensee for services requiring a  
28 license. A person who proposes to collect an advance fee as

1 defined in Code Section 10026 must submit to the Commissioner  
2 not less than ten calendar days before publication or other use,  
3 all materials to be used in advertising, promoting, soliciting  
4 and negotiating an agreement calling for the payment of an  
5 advance fee including the form of advance fee agreement proposed  
6 for use, pursuant to Section 2970, Regulations of the Real  
7 Estate Commissioner, Title 10, Chapter 6, Code of Regulations  
8 ("Regulations"). Code Section 10085 also allows the  
9 Commissioner to require that any all materials used in obtaining  
10 advance fee agreements, including contract forms, be submitted  
11 at least 10 calendar days before they are used.  
12

13 9.

14 For an unknown period of time beginning no later than  
15 May 12, 2009, Respondent PLP engaged in the business of  
16 soliciting to modify or negotiate loans secured by real  
17 property, and claimed, demanded, charged, received, collected or  
18 contracted for the collection of advance fees, within the  
19 meaning of Code Section 10026, for including, but not limited  
20 to, the following borrowers:

21 10.

22 Roy and Peggy Barnard

23 On or about May 12, 2009, Mc Lellan solicited and  
24 offered to assist borrowers Roy and Peggy Barnard with loan  
25 modification and negotiation services on behalf of "AlCon Real  
26 Estate." The Barnards entered into a written advance fee  
27 agreement with AlCon Real Estate for loan modification and  
28 negotiation services in connection with a loan secured by a lien

1 on real property. The Barnards paid an initial advance fee of  
2 \$999.99 to AlCon Real Estate. The Barnards subsequently  
3 received a letter from AlCon Real Estate which contained  
4 numerous substantial misrepresentations regarding efforts made  
5 by AlCon's agents to negotiate a modification with the Barnards'  
6 lender. AlCon failed to perform the loan modification and  
7 negotiation services that had been promised to the Barnards.  
8 Respondent PLP and Mc Lellan refused the Barnards' request for a  
9 refund of the advance fee paid to AlCon Real Estate.

10  
11 11.

12 Respondent PLP collected the advance fees described in  
13 Paragraph 10, above, pursuant to the provisions of a written  
14 agreement which constitutes an advance fee agreement within the  
15 meaning of Code Section 10085.

16 12.

17 Respondent PLP failed to submit the written agreement  
18 referred to in Paragraphs 10 and 11, above, to the Commissioner  
19 ten days before using it in violation of Code Section 10085 and  
20 Regulation Section 2970.

21 13.

22 The conduct, acts and/or omissions of Respondent PLP,  
23 while doing business as AlCon Real Estate, as set forth above,  
24 are in violation of Code Section 10085 and Regulation Section  
25 2970 and constitute grounds for the suspension or revocation of  
26 the license and license rights of Respondent PLP pursuant to  
27 Code Sections 10177(d) and/or 10177(g).  
28

14.

Respondent PLP's conduct, acts and/or omissions, as set forth above, constitute grounds for the suspension or revocation of the license and license rights of Respondent PLP pursuant to Code Sections 10176(a) (making any substantial misrepresentation), 10176(b) (making any false promises of a character likely to influence, persuade or induce), 10176(i) (conduct... which constitutes fraud or dishonest dealing) 10177(d) (violation of the Real Estate Law) or 10177(g) (negligence).

15.

The conduct, acts and/or omissions of Respondent HARRISON, in allowing Respondent PLP to violate the Real Estate Law, as set forth above, constitutes a failure by Respondent HARRISON, as the officer designated by the corporate broker licensee, to exercise the supervision and control over the activities of Respondent PLP, as required by Code Section 10159.2 and Regulation 2725, and is cause to suspend or revoke the real estate licenses and license rights of Respondent HARRISON under Code Sections 10166.051(a), 10166.05(c), 10177(h), 10177(d) and/or 10177(g).

SECOND CAUSE OF ACCUSATION

(AUDIT LA 100172)

16.

There is hereby incorporated in this Second, separate Cause of Accusation, all of the allegations contained in Paragraphs 1 through 15, above, with the same force and effect as if herein fully set forth.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

17.

On June 30, 2011, the Department completed an audit examination of the books and records of Respondent PLP's real estate activities. The audit examination covered a period of time from June 9, 2009 to April 30, 2011. The audit examination revealed violations of the Code as set forth in the following paragraphs, and more fully discussed in Audit Report LA 100172 and the exhibits and work papers attached to said Audit Report.

18.

In connection with the activities described in Paragraphs 10 and 17, above, PLP, while doing business as "AlCon Real Estate", employed or compensated Kenneth A. Steele, an unlicensed person, and Mc Lellan, a restricted salesperson who was not licensed under the employ of PLP, for activities that require a real estate license in violation of Code Section 10137.

19.

In connection with the activities described in Paragraphs 10 and 17, above, PLP used an unlicensed fictitious business name "AlCon Real Estate" to conduct activities that require a real estate license in violation of Code Section 10159.5 and Regulation Section 2731.

20.

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of Respondent PLP, as aforesaid, under the provisions of Code Sections 10177(d) for violation of the Real Estate Law

1 and/or 10177(g) for negligence.

2 21.

3 The conduct, acts and/or omissions of Respondent  
4 HARRISON, in allowing Respondent PLP to violate the Real Estate  
5 Law, as set forth above, constitutes a failure by Respondent  
6 HARRISON, as the officer designated by the corporate broker  
7 licensee, to exercise the supervision and control over the  
8 activities of Respondent PLP, as required by Code Section  
9 10159.2 and Regulation 2725, and is cause to suspend or revoke  
10 the real estate licenses and license rights of Respondent  
11 HARRISON under Code Sections 10166.051(a), 10166.05(c),  
12 10177(h), 10177(d) and/or 10177(g).  
13

14 22.

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

22 ///

23 ///

24 ///

25 ///

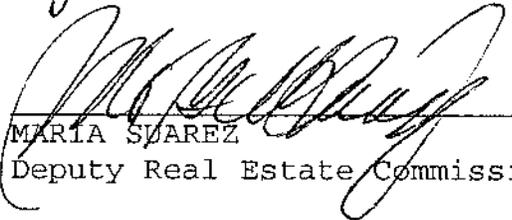
26 ///

27 ///

28 ///

1           WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against all licenses and/or license rights of Respondents  
5 PLAYAS DEL PACIFICO 201-A INC. and MICHAEL EDWARD HARRISON,  
6 individually and as designated officer of Playas Del Pacifico  
7 201-A Inc., under the Real Estate Law, that Complainant be  
8 awarded its costs of investigation and prosecution of this case,  
9 and for such other and further relief as may be proper under the  
10 provisions of law.

11 this 29<sup>th</sup> day of July, 2012.

12  
13  
14   
15 MARIA SUAREZ  
16 Deputy Real Estate Commissioner  
17  
18  
19  
20  
21  
22  
23

24 cc: Playas Del Pacifico 201-A Inc.  
25 Michael Edward Harrison  
26 Maria Suarez  
27 Sacto.  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2.

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

3.

From June 9, 2009, through the present, Respondent PLAYAS DEL PACIFICO 201-A INC. ("PLP") has been licensed by the Department of Real Estate ("Department") as a real estate corporation, license no. 01864286. AlCon Real Estate Services is a fictitious business name of PLP.

4.

From June 8, 2002, through the present, Respondent MICHAEL EDWARD HARRISON ("HARRISON") has been licensed by the Department as a real estate broker, license no. 01133305. At all times relevant herein, Respondent PLP was authorized to act by and through Respondent HARRISON as its broker designated pursuant to Code Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

5.

From February 6, 2003, through January 31, 2012, Robert Guy Mc Lellan ("Mc Lellan") was licensed by the Department as a restricted real estate salesperson, license no. 00520763. The Department issued a restricted real estate salesperson license to Mc Lellan in Department Case No. H-29550 LA. On January 3, 2012, Mc Lellan's restricted real estate salesperson license was revoked in Department Case No. H-37153 LA. From March 6, 2009, through August 16, 2009, Mc Lellan was

1 licensed under the employment of broker Dove Capital  
2 Corporation, license no. 01316943.

3 6.

4 At no time mentioned herein, have Kenneth A. Steele  
5 ("Steele") or AlCon Real Estate ("AlCon") ever been licensed by  
6 the Department in any capacity. Steele owns and is a director  
7 of PLP.

8 FIRST CAUSE OF ACCUSATION

9 (Advance Fee Violations)

10 7.

11 Code Section 10132 defines a real estate salesperson  
12 as a person who, for compensation or in expectation of  
13 compensation, is employed by a licensed real estate broker to do  
14 one or more of the acts set forth in Sections 10131, 10131.1,  
15 10131.2, 10131.3, 10131.4, and 10131.6. Code Section 10131  
16 defines a real estate broker as a person who: (d) solicit  
17 borrowers, negotiate loans, collect payments or perform services  
18 for borrowers in connection with loans secured directly or  
19 collaterally by liens on real property.

20 8.

21 Code Section 10026, in pertinent part, defines an  
22 advance fee as a fee that is claimed, demanded, charged,  
23 received, or collected by a licensee for services requiring a  
24 license. A person who proposes to collect an advance fee as  
25 defined in Code Section 10026 must submit to the Commissioner  
26 not less than ten calendar days before publication or other use,  
27 all materials to be used in advertising, promoting, soliciting  
28

1 and negotiating an agreement calling for the payment of an  
2 advance fee including the form of advance fee agreement proposed  
3 for use, pursuant to Section 2970, Regulations of the Real  
4 Estate Commissioner, Title 10, Chapter 6, Code of Regulations  
5 ("Regulations"). Code Section 10085 also allows the  
6 Commissioner to require that any all materials used in obtaining  
7 advance fee agreements, including contract forms, be submitted  
8 at least 10 calendar days before they are used.

9  
10 9.

11 For an unknown period of time beginning no later than  
12 May 12, 2009, Respondent PLP engaged in the business of  
13 soliciting to modify or negotiate loans secured by real  
14 property, and claimed, demanded, charged, received, collected or  
15 contracted for the collection of advance fees, within the  
16 meaning of Code Section 10026, for including, but not limited  
17 to, the following borrowers:

18 10.

19 Roy and Peggy Barnard

20 On or about May 12, 2009, Mc Lellan solicited and  
21 offered to assist borrowers Roy and Peggy Barnard with loan  
22 modification and negotiation services on behalf of "AlCon Real  
23 Estate." The Barnards entered into a written advance fee  
24 agreement with AlCon Real Estate for loan modification and  
25 negotiation services in connection with a loan secured by a lien  
26 on real property. The Barnards paid an initial advance fee of  
27 \$999.99 to AlCon Real Estate. The Barnards subsequently  
28 received a letter from AlCon Real Estate which contained

1 numerous substantial misrepresentations regarding efforts made  
2 by AlCon's agents to negotiate a modification with the Barnards'  
3 lender. AlCon failed to perform the loan modification and  
4 negotiation services that had been promised to the Barnards.  
5 Respondent PLP and Mc Lellan refused the Barnards' request for a  
6 refund of the advance fee paid to AlCon Real Estate.

7  
8 11.

9 Respondent PLP collected the advance fees described in  
10 Paragraph 10, above, pursuant to the provisions of a written  
11 agreement which constitutes an advance fee agreement within the  
12 meaning of Code Section 10085.

13  
14 12.

15 Respondent PLP failed to submit the written agreement  
16 referred to in Paragraphs 10 and 11, above, to the Commissioner  
17 ten days before using it in violation of Code Section 10085 and  
18 Regulation Section 2970.

19  
20 13.

21 The conduct, acts and/or omissions of Respondent PLP,  
22 while doing business as AlCon Real Estate, as set forth above,  
23 are in violation of Code Section 10085 and Regulation Section  
24 2970 and constitute grounds for the suspension or revocation of  
25 the license and license rights of Respondent PLP pursuant to  
26 Code Sections 10177(d) and/or 10177(g).

27  
28 14.

Respondent PLP's conduct, acts and/or omissions, as  
set forth above, constitute grounds for the suspension or  
revocation of the license and license rights of Respondent PLP

1 pursuant to Code Sections 10176(a) (making any substantial  
2 misrepresentation), 10176(b) (making any false promises of a  
3 character likely to influence, persuade or induce), 10176(i)  
4 (conduct... which constitutes fraud or dishonest dealing) 10177(d)  
5 (violation of the Real Estate Law) or 10177(g) (negligence).

6  
7 15.

8 The conduct, acts and/or omissions of Respondent  
9 HARRISON, in allowing Respondent PLP to violate the Real Estate  
10 Law, as set forth above, constitutes a failure by Respondent  
11 HARRISON, as the officer designated by the corporate broker  
12 licensee, to exercise the supervision and control over the  
13 activities of Respondent PLP, as required by Code Section  
14 10159.2 and Regulation 2725, and is cause to suspend or revoke  
15 the real estate licenses and license rights of Respondent  
16 HARRISON under Code Sections 10177(h), 10177(d) and/or 10177(g).

17 SECOND CAUSE OF ACCUSATION

18 (AUDIT LA 100172)

19 16.

20 There is hereby incorporated in this Second, separate  
21 Cause of Accusation, all of the allegations contained in  
22 Paragraphs 1 through 15, above, with the same force and effect  
23 as if herein fully set forth.

24 17.

25 On June 30, 2011, the Department completed an audit  
26 examination of the books and records of Respondent PLP's real  
27 estate activities. The audit examination covered a period of  
28 time from June 9, 2009 to April 30, 2011. The audit examination

1 revealed violations of the Code as set forth in the following  
2 paragraphs, and more fully discussed in Audit Report LA 100172  
3 and the exhibits and work papers attached to said Audit Report.

4 18.

5 In connection with the activities described in  
6 Paragraphs 10 and 17, above, PLP, while doing business as "AlCon  
7 Real Estate", employed or compensated Kenneth A. Steele, an  
8 unlicensed person, and Mc Lellan, a restricted salesperson who  
9 was not licensed under the employ of PLP, for activities that  
10 require a real estate license in violation of Code Section  
11 10137.

12 19.

13 In connection with the activities described in  
14 Paragraphs 10 and 17, above, PLP used an unlicensed fictitious  
15 business name "AlCon Real Estate" to conduct activities that  
16 require a real estate license in violation of Code Section  
17 10159.5 and Regulation Section 2731.

18 20.

19 The foregoing violations constitute cause for the  
20 suspension or revocation of the real estate license and license  
21 rights of Respondent PLP, as aforesaid, under the provisions of  
22 Code Sections 10177(d) for violation of the Real Estate Law  
23 and/or 10177(g) for negligence.

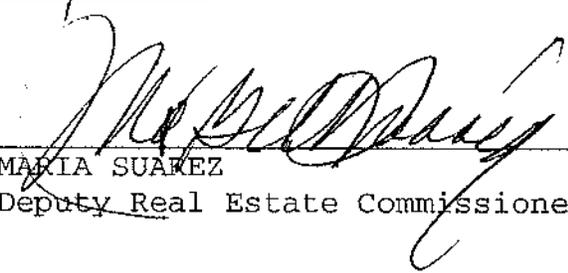
24 21.

25 The conduct, acts and/or omissions of Respondent  
26 HARRISON, in allowing Respondent PLP to violate the Real Estate  
27 Law, as set forth above, constitutes a failure by Respondent  
28

1 HARRISON, as the officer designated by the corporate broker  
2 licensee, to exercise the supervision and control over the  
3 activities of Respondent PLP, as required by Code Section  
4 10159.2 and Regulation 2725, and is cause to suspend or revoke  
5 the real estate licenses and license rights of Respondent  
6 HARRISON under Code Sections 10177(h), 10177(d) and/or 10177(g).

7 WHEREFORE, Complainant prays that a hearing be  
8 conducted on the allegations of this Accusation and that upon  
9 proof thereof, a decision be rendered imposing disciplinary  
10 action against all licenses and/or license rights of Respondents  
11 PLAYAS DEL PACIFICO 201-A INC. and MICHAEL EDWARD HARRISON,  
12 individually and as designated officer of Playas Del Pacifico  
13 201-A Inc., under the Real Estate Law, that Complainant be  
14 awarded its costs of investigation and prosecution of this case,  
15 and for such other and further relief as may be proper under the  
16 provisions of law.

17 this 24<sup>TH</sup> day of April, 2012.

18  
19  
20  
21   
22 MARIA SUAREZ  
23 Deputy Real Estate Commissioner

24 cc: Playas Del Pacifico 201-A Inc.  
25 Michael Edward Harrison  
26 Maria Suarez  
27 Sacto.  
28