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**FILED**

APR 27 2018

BUREAU OF REAL ESTATE

By B. Nicholas

8 BEFORE THE BUREAU OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of: )  
12 MICHELLE ANN LUNG and )  
13 FAR WEST PROPERTIES & )  
14 FINANCIAL, INC., )  
15 Respondents. )

No. H-3162 FR

FIRST AMENDED  
ACCUSATION

16 The Complainant, BRENDA SMITH, in her official capacity as a Supervising  
17 Special Investigator of the State of California, Bureau of Real Estate ("Bureau"), brings this First  
18 Amended Accusation against MICHELLE ANN LUNG ("LUNG") and FAR WEST PROPERTIES  
19 & FINANCIAL, INC. ("FAR WEST") (collectively "Respondents"), and is informed and alleges as  
20 follows:

21 GENERAL ALLEGATIONS

22 1

23 FAR WEST is presently licensed by the Bureau and/or has license rights under the  
24 Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code"), as  
25 a corporate real estate broker, CREB No. 01888981.

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LUNG is presently licensed by the Bureau and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate broker, REB No. 00920313.

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At all times herein mentioned, LUNG is and was licensed by the Bureau as a mortgage loan originator, MLO/NMLS Id. No. 309771, which is set to expire December 31, 2018.

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At all relevant times herein, LUNG is and was the designated broker officer of FAR WEST.

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At all relevant times herein, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate licensees within the State of California within the meaning of Section 10131(b) of the Code including the operation and conduct of a property management business with the public, wherein, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented or offered to lease or rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

6

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in the State of California, within the meaning of section 10131(a) of the Code by engaging with the public in residential property resales activities, on behalf of others, for compensation or in expectation of compensation, Respondents sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange or real property.

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Whenever reference is made in this First Amended Accusation to an act or omission of FAR WEST, such allegation shall be deemed to mean that the employees, agents and real estate licensees employed by or associated with FAR WEST committed such act or omission while engaged in furtherance of the business or operations of FAR WEST and while acting within the course and scope of their authority and employment.

Whenever reference is made in this First Amended Accusation to an act or omission of LUNG, such allegation shall be deemed to mean that LUNG committed such act or omission while engaged in furtherance of the business or operations of FAR WEST and while acting within the course and scope of her authority and employment.

On or about May 18, 2017, Cheryl M. submitted an Enforcement Online Complaint (#075952-167) against the real estate licenses of LUNG and FAR WEST alleging that LUNG, while acting in her capacity as Designated Officer of FAR WEST, failed to market a property located at 1551 N. Pacific Ave., Fresno, CA 93728 ("Fresno Property") for sale and, instead, rented the property without the permission of one or both of the owners.

At all relevant times herein, Alan L. and Cheryl M., brother and sister, each owned an undivided one-half interest in the Fresno Property. The Grant Deed for the Fresno Property was recorded with the Fresno County Recorder on or about April 14, 2010.

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At all relevant times herein, Alan L. and LUNG were husband and wife.

FIRST CAUSE OF ACTION

**(Audit Violations)**

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Each and every allegation in Paragraphs 1 through 11 inclusive, is incorporated by this reference as if fully set forth herein.

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Beginning on or about August 31, 2017, and continuing through September 1, 2017, an audit was conducted of the real estate business activities of FAR WEST, located at 5100 N. 6th St. #170, Fresno, CA 93710, and at the Bureau's office located at 2550 Mariposa Mall, Fresno CA 93721. The Bureau's auditor examined the business records of FAR WEST for the period of January, 2015, through July 31, 2017 ("audit period").

14

While engaging in the real estate activities as described in Paragraphs 5 and 6, above, and within the audit period, Respondents accepted or received funds in trust ("trust funds") and deposited or caused the trust funds to be deposited into bank/trust accounts maintained as follows:

Bank Name: Bank of the Sierra  
Bank Address: 636 E. Shaw Ave.  
Fresno, CA 93710

Bank Account #1:  
Account Name: Far West Properties & Financial, Inc.  
Account No.: Last 4 Digits: 8170  
Description: A Business Checking Account used for deposits and disbursements related to management of properties. Deposits consisted of rents and security deposits collected from tenants. Disbursements consisted of payments for expenses related to the properties managed, remittances to owners, and payment of management fees to FAR WEST.

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In the course of the real estate activities described in Paragraphs 5 and 6, above, and during the audit period, it was discovered:

(a) FAR WEST failed to maintain a separate record of the receipt and disposition of all trust funds deposited into Bank Account #1 such that Bank Account #1 contained unidentified and/or unaccounted funds of at least \$653.59, as required by Section 10145(g) of the Code and Section 2831.1, Title 10, California Code of the Regulations ("Regulations");

(b) FAR WEST failed to reconcile at least once a month the balance of all separate records or transaction records with the record of all trust funds received and disbursed from Bank Account #1, as required by Section 10145(g) and Section 2831.2 of the Regulations;

(c) Bank Account #1, which was used to hold trust funds, was not designated as a trust account in the name of FAR WEST, as trustee, as required by Section 10145(a) of the Code and Section 2832 of the Regulations; and

(d) The bank signature card for Bank Account #1 listed Alan L., an unlicensed individual, as a signatory on the bank account without fidelity bond coverage, as required by Section 2834 of the Regulations.

SECOND CAUSE OF ACTION

**(Negligence)**

Each and every allegation in Paragraphs 1 through 15, inclusive, is incorporated by this reference as if fully set forth herein.

On or about March 8, 2017, FAR WEST (as "Owner/Agent") and Christina T. and April T. (as "Resident") executed a Lease Agreement on the Fresno Property, wherein Christina T. and April T. were to rent the Fresno Property for the time period of April 20, 2017, to September 7, 2017.

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2 On or about March 17, 2017, FAR WEST (as "Broker") and Alan L. and Cheryl M.  
3 (as "Seller"), executed a Residential Listing Agreement ("RLA"), wherein it was agreed that  
4 starting on March 17, 2017, and ending on March 16, 2018, FAR WEST had the exclusive and  
5 irrevocable right to sell or exchange the Fresno Property.

6 19

7 On or about March 21, 2017, Cheryl M. notified LUNG in writing that she did not  
8 want to rent the Fresno Property while waiting for a buyer.

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10 On or about March 27, 2017, LUNG and Alan L. executed a Property Management  
11 Agreement ("PMA"), wherein FAR WEST was granted the exclusive right to rent, lease, and  
12 manage the Fresno Property for the period beginning March 27, 2017, and ending March 26, 2018.

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14 The PMA was executed by and between Alan L. and LUNG, acting on behalf of  
15 FAR WEST. Cheryl M. did not sign the PMA.

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17 On or about April 20, 2017, Christina T. and April T. moved into the Fresno  
18 Property.

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20 Complainant is informed, believes, and thereon alleges that LUNG intentionally  
21 and/or negligently, and without the knowledge, permission, consent, and/or approval of Cheryl M.  
22 executed the Lease Agreement described above in Paragraph 17.

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24 Complainant is informed, believes, and thereon alleges that LUNG intentionally  
25 and/or negligently, and without the knowledge, permission, consent, and/or approval of Cheryl M.  
26 executed the PMA described above in Paragraphs 20 and 21.

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Complainant is informed, believes, and thereon alleges that LUNG knew or should have known that Cheryl M. did not want to rent the Fresno Property at the time LUNG and Alan L. executed the PMA described above in Paragraphs 20 and 21.

GROUND FOR DISCIPLINE

The acts and/or omissions of Respondents, as alleged in the First Cause of Action, above, Paragraphs 12 through 15, constitute grounds for the suspension or revocation of the license and license rights of Respondents under Sections 10145(a) (trust fund handling), 10145(g) (maintaining separate records), 10177(d) (willful disregard of real estate laws), and 10177(g) (negligence of incompetence in performing an act for which a license is required) of the Code, in conjunction with Sections 2831.1 (separate records), 2831.2 (trust account reconciliation), 2832 (trust fund handling), and 2834 (trust account withdrawals) of the Regulations.

The acts and/or omissions of Respondents, as alleged in the Second Cause of Action, above, Paragraphs 16 through 25, constitute grounds for the suspension or revocation of the license and license rights of Respondents under Sections 10176(i) (conduct that constitutes fraud or dishonest dealings in the course of a real estate transaction), 10177(d) (willful disregard of real estate laws), 10177(g) (negligence of incompetence in performing an act for which a license is required), and 10177(j) (conduct that constitutes fraud or dishonest dealings) of the Code.

AUDIT COSTS

The acts and/or omissions of Respondents as alleged above, entitle the Bureau to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund violations) of the Code.

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1 COST OF INVESTIGATION AND ENFORCEMENT

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3 Section 10106 of the Code provides, in pertinent part, that in any order issued in  
4 resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the  
5 Administrative Law Judge to direct a licensee found to have committed a violation of this part to  
6 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

7 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of  
8 this First Amended Accusation and that upon proof thereof, a decision be rendered revoking all  
9 licenses and license rights of Respondents under the Real Estate Law, for the cost of investigation  
10 and enforcement as permitted by law, for the cost of the audit as permitted by law, and for such  
11 other and further relief as may be proper under other provisions of law.

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15 BRENDA SMITH  
16 Supervising Special Investigator

17 Dated at Fresno, California,  
18 this 25 day of April, 2018.

19 DISCOVERY DEMAND

20 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the  
21 Bureau of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the  
22 *Administrative Procedure Act*. Failure to provide Discovery to the Bureau of Real Estate may result  
23 in the exclusion of witnesses and documents at the hearing or other sanctions that the Office of  
24 Administrative Hearings deems appropriate.