

FILED

MAR 05 2012

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

4 Telephone: (916) 227-0789

DEPARTMENT OF REAL ESTATE

By L. Jones

6 BEFORE THE DEPARTMENT OF REAL ESTATE

7 STATE OF CALIFORNIA

8 * * *

9 In the Matter of the Accusation of

) DRE Case No. H-4152 SD
) DRE Case No. H-4167 SD
) DRE Case No. H-4185 SD

10 SUB 500 MORTGAGE, INC., and
11 MICHAEL S. MONACO,

12 Respondents.)

13 STIPULATION FOR REVOCATION;
14 ISSUANCE OF ORDER OF DEBARMENT;
AND ORDER OF COMMISSIONER
ADOPTING STIPULATION

15 STIPULATION

16 It is hereby stipulated by and between SUB 500 MORTGAGE, INC. ("SUB
17 500"), MICHAEL S. MONACO ("MONACO"), individually, doing business as Monaco
18 Finance & Investments, Inc., Investor's Finance Inc. (A California Corporation), Investor's
19 Finance Inc. (A Hawaii Corporation), Monaco Finance & Investments, Inc., and as the
20 designated officer/broker of SUB 500 (collectively "Respondents"), acting by and through
21 Respondent's legal counsel Debra C. Scheufler, Esq., and the Complainant, acting by and
22 through Kenneth C. Espell, Real Estate Counsel II for the Department of Real Estate, for the
23 purpose of settling and disposing of Accusations H-4125 SD and H-4167 SD as follows:

24 1. All issues which were to be contested and all evidence which was to be
25 presented by Complainant at the formal hearings on the accusations, which were to be held in
26 accordance with the provisions of the Administrative Procedure Act ("APA"), shall instead and
27 in place thereof be submitted solely on the basis of the provisions of this *Stipulation for*

MICHAEL S. MONACO, et. al.

1 *Revocation; Issuance of Order of Debarment; and Order of Commissioner Adopting Stipulation.*

2 2. Respondents have received, read and understand the *Statement to*
3 *Respondent*, and the *Discovery Provisions* of the APA filed by the Department of Real Estate
4 (“the Department”) in these proceedings.

5 3. Respondents filed a *Notice of Defense* pursuant to Section 11505 of the
6 Government Code for the purpose of requesting a hearing on the allegations of Accusations H-
7 4152 SD and H-4167 SD. Respondents hereby freely and voluntarily withdraw said *Notice of*
8 *Defense*. Respondents acknowledge that they understand that by withdrawing said *Notice of*
9 *Defense*, Respondents waive all rights to require the Real Estate Commissioner (“the
10 Commissioner”) to prove the allegations in Accusations H-4152 SD and H-4167 SD at
11 contested hearings held in accordance with the provisions of the APA, and that Respondents
12 waive all other rights afforded to them in connection with a hearing, such as the right to present
13 evidence in defense of the allegations in the accusations and the right to confront and cross-
14 examine witnesses.

15 4. It is understood by the parties that the Commissioner may adopt this
16 *Stipulation for Revocation; Issuance of Order of Debarment; and Order of Commissioner*
17 *Adopting Stipulation* as the Commissioner’s decision in this matter thereby imposing the
18 penalty and sanctions on the real estate licenses and license rights of Respondents as set forth in
19 the “Orders,” below. In the event that the Commissioner, in the Commissioner’s sole
20 discretion, does not adopt this *Stipulation for Revocation; Issuance of Order of Debarment; and*
21 *Order of Commissioner Adopting Stipulation*, it shall be void and of no effect, and the
22 Department and Respondents shall retain the rights to hearings and proceedings on the
23 accusations under all the provisions of the APA and each party hereto shall not be bound by any
24 admission or waiver made herein.

25 5. This Order, or any subsequent Order of the Commissioner made pursuant
26 to this *Stipulation for Revocation; Issuance of Order of Debarment; and Order of Commissioner*
27 *Adopting Stipulation*, shall not constitute an estoppel, merger or bar to any further administrative

1 or civil proceedings by the Department with respect to any violation of real estate law which
2 were not alleged to be causes for accusation in Accusations H-4152 SD and H-4167 SD.

3 6. For the sole purpose of settling the above captioned matters and, at least in
4 part, due to MONACO's cancer treatments, Respondents choose not to contest the factual
5 allegations in the Accusations H-4152 SD and H-4167 SD filed in these proceedings and the
6 Real Estate Commissioner shall not be required to provide further evidence to prove such
7 allegations. Any admissions made by Respondents herein are made for the purpose of reaching
8 an agreed disposition of these proceedings and are expressly limited to these proceedings and
9 any subsequent administrative or civil action brought by or on behalf of the Department against
10 Respondents.

11 7. Pursuant to Section 10087 of the Code, Respondents are hereby notified of
12 the Commissioner's intention to issue an Order of Debarment against Respondents pursuant to
13 Section 10087(a)(1) of the Code. Respondents hereby stipulate that the Commissioner may issue
14 an Order of Debarment in accordance with Section 10087(b) of the Code; as an Order of
15 Debarment is justified, proper, in the best interest of the public; and that this *Stipulation for*
16 *Revocation; Issuance of Order of Debarment; and Order of Commissioner Adopting Stipulation*
17 *complies with the requirements for the issuance of an Order of Debarment as set forth in Section*
18 *10087(b) of the Code.*

19 8. The parties hereto stipulate to the following facts, findings and
20 conclusions of the Commissioner and pursuant to the authority granted to the Commissioner
21 under Section 10087 of the Code, and after review and consideration of the Determination of
22 Issues, below, the Commissioner finds:

- 23 a. A Bar Order is in the public interest; and
24 b. The violations of the Real Estate Law by SUB 500, and
25 MONACO, individually, doing business as Monaco Finance & Investments, Inc., Investor's
26 Finance Inc. (A California Corporation), Investor's Finance Inc., (A Hawaii Corporation);
27

1 Monaco Finance & Investments, Inc., and as the designated officer/broker of SUB 500, have
2 caused material damage to the public.

3 9. Respondents each acknowledge and understand that each waives any and
4 all rights to request a hearing to contest this Order of Debarment held in accordance with the
5 provisions of the APA.

6 10. MONACO, acting as the proposed Designated Officer Broker for
7 Investor's Finance Inc. (A California Corporation) and with the consent and ratification of the
8 remaining officers and directors of Investor's Finance Inc. (A California Corporation), hereby
9 withdraws Investor's Finance Inc's application for a corporate broker license. Further,
10 MONACO withdraws his application to act as Designated Officer/Broker for Investor's Finance
11 Inc.

12 DETERMINATION OF ISSUES

13 By reason of the foregoing stipulations, admissions and waivers, and solely for
14 the purpose of settlement of the now pending actions of the Department against Respondents
15 without the necessity of a hearing, it is stipulated and agreed by and between the parties hereto
16 that the acts and/or omissions of Respondents MONACO and SUB 500, and each of them, as
17 described in Accusations H-4152 SD and H-4167 SD, constitute grounds for the revocation of all
18 licenses and license rights of Respondents, and each of them, on the following grounds:

19 Case Number H-4152 SD:

20 Section 10130 (Brokers license required to conduct licensed activities);
21 Section 10131(d) (Brokers license necessary for services associated
22 with loans secured by real property); Section 10137 (Unlawful
23 Compensation); Section 10145 (Trust Fund Handling); Section 10159.5
24 (Fictitious Business Name Registration); Section 10176(a) (Making a
25 substantial misrepresentation); Section 10176(c) (Continual and
26 flagrant course of misrepresentation); Section 10176(i) (Dishonest
27 Dealing); Section 10177(j) (Dishonest Dealing); 10177(g) (Negligence

1 or incompetence); Section 10231.1 (Retention of funds; loan proceeds
2 to be paid within 25 days of receipt unless otherwise authorized in
3 writing); Section 10233(a) (Authorization required to service
4 Promissory Note); Section 10238(k) (1, 2, 4, and 5) (Promissory Note
5 servicing requirements); and Section 10177(d) (Willful disregard or
6 violation of Real Estate Law) of the California Business and
7 Professions Code and Section, 2834(b) (Trust fund account
8 withdrawals) and Section 2830.1 (Funds to be deposited in trust
9 account) of Title 10, California Code of Regulations.

10 Case Number H-4167 SD:

11 Section 10130, Section 10131(d); Section 10137; Section 10176(a);
12 Section 10176(c); Section 10176(i); Section 10177(j); and Section
13 10177(d) of the California Business and Professions Code.

14
15 **COMMISSIONER'S ORDER REVOKING REAL ESTATE LICENSES**

16 1. All licenses and license rights of Respondents are revoked. MICHAEL S.
17 MONACO's and SUB 500 MORTGAGE, INC.'s license certificates, pocket cards and all
18 branch office license certificates shall be sent to the below listed address so that they reach the
19 Department on or before the effective date of this Order:

20 DEPARTMENT OF REAL ESTATE
21 Attn: Licensing Flag Section
22 P. O. Box 187000
23 Sacramento, CA 95818-7000.

24 2. Presently, the full extent of losses suffered by the clients of Respondents
25 is unknown. However, as a condition precedent to the Department granting any future petition
26 for reinstatement of a real estate license of any category, MONACO shall submit proof
27 satisfactory to the Commissioner that restitution in the full amount of all losses sustained as a
result of malfeasance and/or misfeasance of Respondents has been made in full to all parties

1 submitting documented claims to the Department's Recovery Account upon which the
2 Department made a payout and/or the judgments or settlement of lawsuits filed against
3 MONACO and/or SUB 500, to recover losses proximately caused by MONACO and/or SUB
4 500, in connection with acts which required a real estate license.

5 **ORDER OF DEBARMENT**

6 1. The Department dismisses, without prejudice, the Bar Order issued against
7 Respondents in Department of Real Estate Case Number H-4185 SD and the Commissioner
8 hereby substitutes this Order of Debarment in its stead.

9 2. Respondents, pursuant to the authority of Section 10087 of the Code, are
10 each hereby barred and prohibited for a period of thirty-six (36) months from performing in any
11 position of employment, management, or control of the following activities in the State of

12 California:

13 a. Participating in any capacity to further the business activity of a
14 real estate salesperson or real estate broker or engaging in any business activity involving real
15 estate that is subject to regulation under the Real Estate Law;

16 b. Participating in any activity of a real estate salesperson or a real
17 estate broker;

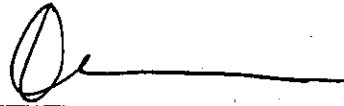
18 c. Engaging in any real estate related business activity on the
19 premises where a real estate salesperson or real estate broker is conducting business which
20 requires a real estate license;

21 d. Participating in any real estate related business activity of a
22 finance lender, residential mortgage lender, bank, credit union, escrow company, title company
23 or underwritten title company and;

24 //
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1 e. Holding any position of employment, management, control, or
2 ownership, as a real estate broker, a real estate salesperson, or an unlicensed person, in any
3 business involving the activities mentioned in paragraphs (a) through (d), above.

4
5 1/6/2012
6 DATED



KENNETH C. ESPELL,
Real Estate Counsel II
DEPARTMENT OF REAL ESTATE

8 I have read the *Stipulation for Revocation; and Issuance of Order of Debarment*,
9 discussed it with my counsel, and its terms are understood by me and are agreeable and
10 acceptable to me. I understand that I am waiving rights given to me by the California
11 Administrative Procedure Act, and I willingly, intelligently, and voluntarily waive those rights,
12 including the right of requiring the Commissioner to prove the allegations in the Accusation at a
13 hearing at which I would have the right to cross-examine witnesses against me and to present
14 evidence in defense and in mitigation of the charges.

15
16 11-22-2011
17 DATED



MICHAEL S. MONACO, individually,
doing business as Monaco Finance &
Investments, Inc., Investor's Finance Inc.
(A California Corporation), Investor's
Finance Inc. (A Hawaii Corporation);
Monaco Finance & Investments, Inc., and
as the designated officer/broker of SUB 500
MORTGAGE, INC., SUB 500
MORTGAGE, INC., Monaco Finance &
Investments, Inc.; Investor's Finance Inc.
(a California Corporation); Investor's
Finance Inc. (a Hawaii Corporation);
Monaco Finance & Investments, Inc.,
Respondents

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I have reviewed Stipulation for Revocation and Issuance of Order of Debarment as to form and content and have advised my client accordingly.

11/29/11
DATED

DC Scheufler
DEBRA C. SCHEUFLER, Esq.
Attorney for Respondents

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**ORDER OF REVOCATION AND ISSUANCE OF ORDER OF DEBARMENT
BY THE COMMISSIONER OF THE DEPARTMENT OF REAL ESTATE**

The foregoing Stipulation for Revocation and Issuance of Order of Debarment is hereby adopted by me as my Decision in this matter and this ORDER of REVOCATION and ISSUANCE of ORDER of DEBARMENT shall become effective at 12 o'clock noon on

MAR 26 2012

IT IS SO ORDERED 3/1/12

BARBARA J. BIGBY
Acting Real Estate Commissioner

Barbara J. Bigby

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DEPARTMENT OF REAL ESTATE

R. Henry

1 KENNETH C. ESPELL, Counsel (SBN 178757)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0868 (Direct)

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8
9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)

No. H-4152 SD

13 SUB 500 MORTGAGE, INC., and)
14 MICHAEL STEVEN MONACO,)

ACCUSATION

15 Respondents.)

16 The Complainant, JOSEPH AIU, in his official capacity as a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation against SUB 500
18 MORTGAGE, INC., (hereinafter "SMI") and MICHAEL STEVEN MONACO (hereinafter
19 "MONACO"), is informed and alleges as follows:

20 1

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

23 2

24 At all times mentioned, Respondent SUB 500 MORTGAGE, INC. was and is
25 licensed by the Department as corporate real estate broker. On or about August 12, 2009,
26 SMI's real estate license expired. SMI is within its two year license renewal grace period and
27 therefore has license rights under the Real Estate Law.

1
2 At all times relevant herein, MONACO was licensed by the State of California
3 Department of Real Estate as a real estate broker. MONACO holds the following fictitious
4 business names which are registered with the Department: San Diego Home Loans, San Diego
5 Mortgage, and San Diego Home Loan.

6
7 Whenever reference is made in an allegation in this Accusation to an act or
8 omission of Respondent SMI, such allegation shall be deemed to mean that MONACO, the
9 officers, directors, employees, agents, affiliated corporations, including but not limited to,
10 Investor's Finance Inc., and Monaco Finance & Investments, Inc., and real estate licensees
11 employed by or associated with Respondent SMI, committed such act or omission while engaged
12 in the furtherance of the business or operations of Respondent SMI and while acting within the
13 course and scope of their corporate authority and employment.

14
15 Respondent MONACO was the designated officer/broker of Respondent SMI.
16 Pursuant to Sections 10159.2 and 10177(h) of the Code, as the designated officer/broker of
17 Respondent SMI, Respondent MONACO was at all times mentioned herein responsible for the
18 supervision of the activities of the officers, directors, employees, agents, affiliated corporations,
19 including but not limited to, Investor's Finance Inc., and Monaco Finance & Investments, Inc.,
20 (hereinafter "MFI") and real estate licensees employed by or associated with Respondent SMI.

21
22 At all times mentioned, Respondents, and each of them, were engaged in the
23 business of, acted in the capacity of, advertised or assumed to act as real estate brokers in the
24 State of California within the meaning of Sections 10131(d) and 10131(e) of the Code, including,
25 but not limited to, the operation and the conduct of a mortgage loan brokerage business with the
26 public wherein Respondents solicited private money lenders and private borrowers for loans
27 secured directly or collaterally by liens on real property or a business opportunity, and wherein

1 such loans were arranged, negotiated, processed, consummated and serviced by Respondents on
2 behalf of others and wherein promissory notes or interests therein were sold or purchased on
3 behalf of another or others for compensation or in expectation of compensation.

4
5 **FIRST CAUSE OF ACTION**

6 Unlicensed Activities

7 Investor's Finance

8

9 Each and every allegation in Paragraphs 1 through 6, inclusive, above, is
10 incorporated by this reference as if fully set forth herein.

11

12 At all times relevant herein and continuing to the present, Investor's Finance Inc.
13 (hereinafter "IFI") was and is a California Corporation which for compensation or in the
14 expectation of compensation performs services for borrowers and/or lenders in connection with
15 loans secured by real property including loan servicing and loan modification services. At no
16 time has IFI been licensed as a corporate real estate broker by the Department. MONACO, at all
17 times relevant herein, was and is the Chief Operating Officer of IFI and IFI is the alter ego of
18 MONACO.

19

20 On or about August 19, 2010, the Commissioner of the Department of Real Estate
21 issued a Desist and Refrain Order in Case Number H-5446 SAC ordering Investor's Finance Inc.,
22 to cease providing loan modification services and other services for which a real estate license
23 was required. A true and correct copy of the *Order to Desist and Refrain* is attached hereto as
24 Exhibit "1", and is incorporated herein by reference. The time to challenge the Desist and
25 Refrain Order has expired without IFI challenging the validity of the Order. Until such a time
26 that IFI obtains a valid corporate broker license and otherwise complies with relevant real estate
27 laws, the Commissioner ordered IFI to immediately cease providing loan modification services
and other services for which a real estate license was required. MONACO's operation of IFI

1 without a valid corporate license or without registering IFI as a fictitious business name of
2 MONACO constitutes the violation of Sections 10130 (Brokers license required to conduct
3 licensed activities) and 10131(d) (Brokers license necessary for services associated with loans
4 secured by real property) and/or Section 10159.5 (Fictitious name registration required) of the
5 Code and is grounds for the revocation or suspension of MONACO's real estate license or
6 license rights under Sections 10177(d) of the Code (Willful disregard or violation of real estate
7 law).

8 10

9 At all times relevant herein IFI was acting in the capacity of a "Loan Servicer" on
10 behalf of individual investor/lenders in conjunction with MONACO and SMI. IFI provided loan
11 servicing duties for clients of MONACO and SMI, including, but not limited to, those private
12 money lenders associated with the loan transactions identified herein. IFI on behalf of
13 MONACO and SMI received loan payments and disbursed loan payment funds to investors
14 through a bank account maintained by or on behalf of MFI. MFI, although operated by
15 MONACO and SMI, is not a registered dba of MONACO or SMI, and is not licensed by the
16 Department as a corporate real estate broker. IFI's loan servicing activities violate Sections
17 10145 (Trust handling requirements), 10130, 10131(d), and 10137 of the Code and each of
18 which constitute separate grounds for the revocation or suspension of SMI's and MONACO's
19 real estate license and license rights under Section 10177(d) of the Code.

20 **SECOND CAUSE OF ACTION**

21 Unlicensed Activities

22 Monaco Finance & Investments

23 11

24 Each and every allegation in Paragraphs 1 through 10, inclusive, above, is
25 incorporated by this reference as if fully set forth herein.

26 12

27 At all times relevant herein Monaco Finance & Investments, Inc., was acting in
the capacity of a "Loan Servicer" for compensation or in the expectation of compensation and on

1 behalf of individual investor/lenders, including, but not limited to, the loan transactions identified
2 herein, distributed loan payments on loan secured by real property and disbursed funds to the
3 lenders through a MFI bank account not titled as a SMI trust account. MFI, operated by SMI and
4 MONACO is not a dba of SMI or MONACO and is not licensed by the Department as a
5 corporate real estate broker, in violation of Sections 10145, 10130, 10131(d) and 10137 of the
6 Code and Section, 2834 (b) Title 10, California Code of Regulations (hereinafter the
7 "Commissioner's Regulations") (Trust fund account withdrawals) and each of which constitute
8 separate grounds for the revocation or suspension of SMI's and MONACO's real estate license
9 and license rights under Section 10177(d) of the Code.

10
11 **THIRD CAUSE OF ACTION**
12 Loan Service Agreement Violations

13 13

14 Each and every allegation in Paragraphs 1 through 12, inclusive, above, is
15 incorporated by this reference as if fully set forth herein.

16 14

17 At all times relevant herein, SMI and MONACO used a loan servicing agreement
18 which failed to comply with the requirements of Section 10233(a) and Section 10238(k) (1, 2, 4,
19 and 5) of the Code, the violation of each constitutes separate grounds for imposing disciplinary
20 action against the licenses and license rights of MONACO and SMI under Section 10177(d) of
21 the Code.

22 **FOURTH CAUSE OF ACTION**
23 Hoomana Road Transaction

24 15

25 Each and every allegation in Paragraphs 1 through 14, inclusive, above, is
26 incorporated by this reference as if fully set forth herein.

27 ////

////

1
2 On or about November 7, 2006, Maxwell and Adele Manera executed a Mortgage
3 in favor of SMI in the amount of \$354,000.00 (hereinafter the "HOOMANA NOTE") which was
4 secured by real property located at 4644 Hoomana Road, Lihue, Hawaii. On or about
5 November 30, 2006, Santi and Maleene Lovatanapongsa, California residents, (hereinafter
6 "Lovatanapongsa") wire transferred \$352,230.00 to Fidelity National Title's trust account at the
7 Honolulu, Hawaii branch of Central Pacific Bank. The wired funds were to be used to purchase
8 the HOOMANA NOTE. On or about December 1, 2006, MONACO as CEO and President of
9 SMI, executed in California an *Assignment of Deed of Trust* (sic) in favor of Lovatanapongsa and
10 Lovatanapongsa signed a *Servicing Agreement* wherein SMI and IFI were appointed to service
11 the HOONAMA NOTE on behalf of Lovatanapongsa. The *Servicing Agreement* required SMI
12 and IFI to disburse the loan funds to Lovatanapongsa when received less costs and fees to SMF
13 and IFI as authorized under the *Servicing Agreement*.

14
15 On or about December 7, 2007, without the knowledge or consent of
16 Lovatanapongsa, SMI and IFI prepared a payoff demand and presented it to the title company for
17 pay off of the HOOMANA NOTE. SMI concealed from Lovatanapongsa that SMI and IFI were
18 making a payoff demand on the HOOMANA NOTE. Further, SMI and MONACO concealed
19 from Lovatanapongsa that SMI received full payment of the HOOMANA NOTE; SMI and
20 MONACO concealed from Lovatanapongsa that upon the payoff of the HOOMANA NOTE
21 Lovatanapongsa lost his security interest in the HOOMANA PROPERTY¹; SMI and
22 MONACO concealed from Lovatanapongsa that Lovatanapongsa's investment was no longer
23 protected by any form of a security interest. Further, SMI and MONACO made approximately
24 10 additional monthly payments to Lovatanapongsa after SMI received full repayment of the
25 HOOMANA NOTE as if the HOOMANA NOTE still was in existence and thus further

26
27 ¹ SMI transferred its interest in the HOOMANA PROPERTY *Mortgage* to Lovatanapongsa using an assignment
designed to transfer an interest in a Deed of Trust. Therefore, it is unclear if, under Hawaiian law, Lovatanapongsa
held a security interest in the HOOMANA PROPERTY at any time.

1 concealed and misrepresented to Lovatanapongsa that the HOOMANA NOTE had not been paid
2 in full. MONACO's and SMI's concealment and misrepresentations made it possible for SMI
3 and MONACO to embezzle, convert or otherwise misappropriate Lovatanapongsa's investment,
4 all in violation of Section 2830.1 of the Commissioner's Regulations (Funds to be deposited in
5 trust account); and Section 10231.1 (Retention of funds; loan proceeds to be paid within 25 days
6 of receipt unless otherwise authorized in writing); and Section 10145 (Handling of Trust Funds;
7 Deposit in trust account); Section 10176 (c) (A continual and flagrant course of
8 misrepresentation); Section 10176(a); (Making a substantial misrepresentation); Section 10176(i)
9 (Fraud or dishonest dealing); Section 10177 (j) (Fraud or Dishonest Dealing); Section 10177(d)
10 (Willful violation of real estate law); of the Code, or, in the alternative, Section 10177(g) of the
11 Code (Negligence or incompetence) the violation of each constitutes separate grounds for
12 imposing disciplinary action against the licenses and license rights of MONACO and SMI.

13 18

14 In addition, SMI and MONACO held the position of a fiduciary to
15 Lovatanapongsa and in that capacity owed a duty of utmost good faith to Lovatanapongsa and
16 were required to place the interests of Lovatanapongsa above their own. SMI and MONACO
17 jointly and severally, breached their fiduciary duty to Lovatanapongsa by failing to inform
18 Lovatanapongsa that SMI was making a payoff demand on the HOOMANA NOTE; by failing to
19 inform Lovatanapongsa that SMI had received the payoff of the HOOMANA NOTE; by failing
20 to return Lovatanapongsa's investment; and by embezzling, converting or otherwise
21 misappropriating Lovatanapongsa's investment. SMF's breaches of fiduciary duty owed to
22 Lovatanapongsa constitute separate violations of Section 2830.1 of the Commissioner's
23 Regulations; Section 10231.1; and Section 10145; Section 10176 (c); Section 10176(i); Section
24 10177(d) of the Code, or, in the alternative, Section 10177(g) of the Code, the violation of each
25 constitutes separate grounds for imposing disciplinary action against the licenses and license
26 rights of MONACO and SMI.

27 ////

1 **FIFTH CAUSE OF ACTION**

2 Meadow Vista Transaction

3 19

4 Each and every allegation in Paragraphs 1 through 18, inclusive, above, is
5 incorporated by this reference as if fully set forth herein.

6 20

7 On or about August 1, 2007, Sheri A. Speckman on behalf of Sheri, Inc., a
8 Nevada corporation, executed a Promissory Note and Deed of Trust in favor of SMI in the
9 amount of \$90,000.00 (hereinafter the "MEADOW VISTA NOTE") which was secured by a
10 property located at 1773 Winchester Club Drive, Meadow Vista, California (hereinafter the
11 "MEADOW VISTA PROPERTY"). On or about August 2, 2007, Santi and Maleenee
12 Lovatanapongsa (hereinafter "Lovatanapongsa") invested \$90,000.00 to purchase the MEADOW
13 VISTA NOTE. On or about August 2, 2007, MONACO as CEO and President of SMI executed
14 an *Assignment of Deed of Trust* in favor of Lovatanapongsa assigning SMI's interest in the
15 MEADOW VISTA NOTE and Deed of Trust. On the same day, Lovatanapongsa and MONACO
16 as CEO and President of SMI executed a *Servicing Agreement* wherein SMI and IFI were
17 appointed to service the MEADOW VISTA NOTE on behalf of Lovatanapongsa. The *Servicing*
18 *Agreement* required SMI and IFI to disburse the loan funds to Lovatanapongsa when received,
19 less costs and fees to SMF and IFI as authorized under the *Servicing Agreement*.

20 21

21 On or about March 14, 2008, without the knowledge of Lovatanapongsa, SMI and
22 MONACO prepared a payoff demand and presented it to California Land & Title of Nevada
23 County (located in Grass Valley, California) to obtain the payoff for the MEADOW VISTA
24 NOTE. SMI and MONACO concealed from Lovatanapongsa that a payoff demand was made by
25 SMI and MONACO; SMI and MONACO concealed from Lovatanapongsa that SMI and
26 MONACO received full payment of the MEADOW VISTA NOTE; SMI and MONACO
27 concealed from Lovatanapongsa that upon the payoff of the MEADOW VISTA NOTE

1 Lovatanapongsa lost his security interest in the MEADOW VISTA PROPRERTY; and SMI
2 concealed from Lovatanapongsa that Lovatanapongsa was required to execute a Deed of
3 Reconveyance (pursuant to Section 2941(a) of the California Civil Code), the execution of
4 which would place Lovatanapongsa on notice that the MEADOW VISTA NOTE had been repaid
5 in full. MONACO's and SMI's concealments made it possible for MONACO and SMI to
6 embezzle, convert or otherwise misappropriate Lovatanapongsa's investment in violation of
7 Section 2830.1 of the Commissioner's Regulations; Section 10231.1; Section 10145; Section
8 10176 (c); Section 10176(i); or, in the alternative, Section 10177(g) of the Code the violation of
9 each constitutes separate grounds for imposing disciplinary action against the licenses and license
10 rights of MONACO and SMI.

12 In addition, SMI and MONACO held the position of a fiduciary to
13 Lovatanapongsa and in that capacity owed a duty of utmost good faith to Lovatanapongsa and
14 were required to place the interests of Lovatanapongsa above their own. SMI and MONACO
15 jointly and severally, breached their fiduciary duty to Lovatanapongsa by failing to inform
16 Lovatanapongsa that SMI was making a payoff demand on the MEADOW VISTA NOTE; by
17 failing to inform Lovatanapongsa that SMI had received the payoff of the MEADOW VISTA
18 NOTE; by failing to return Lovatanapongsa's investment; and by embezzling, converting or
19 otherwise misappropriating Lovatanapongsas' investment. SMF's breaches of fiduciary duty
20 owed to Lovatanapongsa constitute separate violations of Section 2830.1 of the Commissioner's
21 Regulations; Section 10231.1; and Section 10145; Section 10176 (c); Section 10176(i); Section
22 10177(d) of the Code, or, in the alternative, Section 10177(g) of the Code, the violation of each
23 constitutes separate grounds for imposing disciplinary action against the licenses and license
24 rights of MONACO and SMI.

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SIXTH CAUSE OF ACTION
Misappropriation of Client Funds

23

Each and every allegation in Paragraphs 1 through 22, inclusive, above, is incorporated by this reference as if fully set forth herein.

24

On or about April 20, 2008, SMI and MONACO presented an investment opportunity to Agustin Garcia (hereinafter "GARCIA"). GARCIA would invest his personal funds in notes secured by Deeds of Trust. GARCIA entered into a *Loan Service Agreement* with MONACO and SMI wherein GARCIA was to make a \$115,000.00 investment in a Promissory Note and Deed of Trust on 732 Portside Place, San Diego, California. Upon instructions from MONACO, GARCIA wire transferred \$115,000.00 to MONACO's Trust Account held by Washington Mutual. At no time did Monaco or SMI secure GARCIA's investment by a Promissory Note and Deed of Trust on the Portside Place property or on any real property at all.

25

During early November 2008, GARCIA demanded return of his investment after discovering that SMI and MONACO had not secured GARCIA's investment with a Promissory Note and Deed of Trust on 732 Portside Place, San Diego, California. Also at that time, GARCIA discovered that MONACO and SMI had embezzled, converted or otherwise misappropriated GARCIA's \$115,000.00 investment. GARCIA learned from SMI and MONACO that SMI and MONACO could not repay GARCIA the funds he invested for the Promissory Note and Deed of Trust on the Portside Place property. Further, GARCIA learned that MONACO and SMI did not have financial wherewithal to repay GARCIA.

26

On or about November 17, 2008, MONACO executed a Promissory Note (the "NOVEMBER 2008 PROMISSORY NOTE") in favor of GARCIA for repayment of GARCIA's

1 initial \$115,000 investment. MONACO was to repay GARCIA by making monthly payments in
2 the amount of \$1,150.00 per month with the balance due on or before March 15, 2009.

3 27

4 During December 2008, MONACO, alleging that he was scheduled for surgery,
5 informed GARCIA that SMI and MONACO could not and would not continue to make
6 payments under the NOVEMBER 2008 PROMISSORY NOTE and, to date, has not
7 recommenced payments.

8 28

9 By execution of the NOVEMBER 2008 PROMISSORY NOTE, MONACO
10 admitted that he had embezzled, converted or otherwise misappropriated GARCIA's
11 \$115,000.00 initial investment. SMI and MONACO embezzled, converted or otherwise
12 misappropriated GARCIA's investment by failing, among other intentional and/or inadvertent
13 acts of malfeasance by failing to return GARCIA's \$115,000.00 initial investment when
14 GARCIA demanded its return; and by failing to segregate or otherwise deposit GARCIA's initial
15 investment in a trust account for the benefit of GARCIA as required by relevant real estate law,
16 all of which constitutes a violation of Section 10231.1, Section 10145 Section 10176(a); Section
17 10176(i); Section 10177 (j); and Section 10177(d) of the Code, or, in the alternative, Section
18 10177(g) of the Code and Section 2830.1 of the Commissioner's Regulations; the violation of
19 each section constitutes a separate violation of and provide separate grounds for imposing
20 disciplinary action against all licenses and license rights of SMF and MONACO.

21 29

22 SMI and MONACO were fiduciaries to GARCIA and in that capacity owed a duty
23 of utmost good faith to GARCIA. SMI and MONACO were required to place the interests of
24 GARCIA above their own. SMI and MONACO breached their fiduciary duty to GARCIA by,
25 among other intentional acts and/or inadvertent acts of malfeasance, to treat GARCIA's initial
26 investment as client trust funds; by failing to return GARCIA's \$115,000.00 initial investment
27 when GARCIA demanded its return; and, by failing to segregate or otherwise deposit GARCIA's

1 initial investment in a trust account for the benefit of GARCIA as required by relevant real estate
2 law and; a failure to deposit GARCIA's \$115,000.00 initial investment into a trust account, all of
3 which constitutes a violation of Section 10231.1 and Section 10145 of the Code and Section
4 2830.1 of the Commissioner's Regulations; violations of each of the aforementioned sections
5 constitutes a separate violation of Section 10176(a); Section 10176(i); Section 10177 (j); and
6 Section 10177(d) of the Code; or, in the alternative, Section 10177(g) of the Code and provides
7 separate grounds for imposing disciplinary action against all licenses and license rights of SMF
8 and MONACO.

9 **SEVENTH CAUSE OF ACTION**

10 **The Kobus Transaction**

11 30

12 Each and every allegation in Paragraphs 1 through 29, inclusive, above, is
13 incorporated by this reference as if fully set forth herein.

14 31

15 On or about April 9, 2008, April Dawn Kobus executed a Promissory Note in
16 favor of SMI in the amount of \$50,000.00 (hereinafter the "KOBUS NOTE") which was to be
17 secured by a second Deed of Trust recorded against Kobus' property located at 18664
18 Maplewood Circle, #43, Huntington Beach, California (hereinafter the MAPLEWOOD CIRCLE
19 PROPERTY"). The loan was intended to pay off another Deed of Trust on the MAPLEWOOD
20 CIRCLE PROPERTY; pay the fees and costs associated with the new loan transaction, including
21 a \$1,000.00 loan origination fee received by SMI for the benefit of Bayside Financial
22 Corporation; SMI also was to receive one month's loan payment in the amount of \$583.33 from
23 the \$50,000 loan proceeds at closing and in advance. The remaining funds totaling \$29,247.06
24 were received by SMI for payment to Kobus in order for her to pay certain medical expenses.

25 32

26 On or about April 24, 2008, MONACO as CEO and President of SMI assigned
27 SMI's interest in the KOBUS NOTE, Deed of Trust and KOBUS NOTE Loan *Servicing*

1 *Agreement to Daniel Beck, Shelley Neibert and Alan Vertun to Daniel Beck (hereinafter*
2 *"BECK"). BECK purchased the KOBUS NOTE, Deed of Trust and KOBUS NOTE Loan*
3 *Servicing Agreement based, in part, upon the representation that Kobus had received or would*
4 *receive shortly after close of escrow the \$29,247.06 in loan proceeds due her.*

5 34

6 On or about April 25, 2008, the KOBUS NOTE was funded by the proceeds of the
7 sale and assignment of the KOBUS NOTE, Deed of Trust from BECK. Escrow closed on April
8 28, 2008. SMI did not record the MAPLEWOOD CIRCLE PROPERTY Deed of Trust and the
9 Beck assignment until 8:00 a.m. on April 30, 2008 some six (6) days after SMI sold its interest in
10 the KOBUS NOTE and Deed of Trust to BECK. Further on April 28, 2008, SMI and MONACO
11 transferred their loan servicing rights to BECK thereby leaving to BECK the need to collect the
12 monthly KOBUS NOTE payments. At the time of the transfer and until at least June 2008, SMI
13 and MONACO failed to inform BECK that SMI and MONACO failed to forward the loan
14 origination fee to Bayside Financial Corporation and failed to forward to Kobus the \$29,247.06
15 in loan proceeds due her under the KOBUS NOTE.

16 35

17 As of June 20, 2008, Bayside Financial Corporation had not received its
18 \$1,000.00 loan origination fee from SMI and Kobus had not received her \$29,247.06 from SMI.
19 On that date, Peter Holzer, attorney for Kobus and Bayside Financial Corporation, forwarded a
20 letter to SMI and MONACO demanding payment of the loan proceeds that were due to Kobus
21 and Bayside Financial Corporation. Between June 20, 2008 and July 30, 2008, Attorney Holzer
22 received a May 5, 2008 SMI trust check drawn on SMI's Washington Mutual Bank trust account
23 made payable to Kobus in the amount of \$29,274.06. Or about July 30, 2008, Peter Holzer
24 forwarded the check to Kobus. Kobus attempted to negotiate the check at a Washington Mutual
25 Bank location. On or about August 11, 2008, Washington Mutual returned SMI's trust account
26 check to Kobus with the legend "non-sufficient funds" stamped upon the face of the check.
27 Kobus never received the loan proceeds which were due her. In addition, Bayside Financial

1 Corporation never received from SMI the \$1,000.00 loan origination fee that SMI received for its
2 benefit at close of the KOBUS NOTE escrow.

3 36

4 The actions by SMI and/or MONACO as enumerated in Paragraphs 31 through 36
5 constitute violations of Section 2830.1 of the Commissioner's Regulations; and Section 10231.1;
6 Section 10145; Section 10176(a); Section 10176(i); Section 10177 (j); and Section 10177(d) of
7 the Code, or, in the alternative, Section 10177(g) of the Code each of which provide separate
8 grounds for imposing disciplinary action against the licenses and license rights of SMI and
9 MONACO.

10 **EIGHTH CAUSE OF ACTION**

11 Franchise Tax Board Suspension

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13 Each and every allegation in Paragraphs 1 through 36, inclusive, above, is
14 incorporated by this reference as if fully set forth herein

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16
17 On or about May 1, 2009 and continuing to the present, the corporate powers,
18 rights and privileges of SMI were suspended by the California Franchise Tax Board pursuant to
19 the provisions of the California Revenue and Taxation Code, and SMI's legal standing with the
20 California Office of the Secretary of State was "SUSPENDED." As a result of the suspension
21 of its corporate privileges, SMI was and is no longer entitled to conduct business; defend itself
22 in any legal action brought against it and is unable renew its license as a corporate real estate
23 broker until it has been returned to good standing by the California Secretary of State. SMI and
24 MONACO, in continuing to operate SMI between May 1, 2009 and until SMI's license expired
25 on August 11, 2009, violated Section 2742(c) of the Commissioner's Regulations (Corporation
26 shall not engage in the business of real estate broker while not in good legal standing with the
27 Office of the Secretary of State) and Section 10130 of the Code (License required to conduct
real estate related transactions) which constitutes grounds for imposing disciplinary action

1 against all licenses and license rights of SMI and MONACO under Section 10177(d) of the
2 Code.

3 **NINTH CAUSE OF ACTION**

4 Failure to Supervise


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6 Each and every allegation in Paragraphs 1 through 38, inclusive, above, is
7 incorporated by this reference as if fully set forth herein.

8 40

9 MONACO, as the designated officer/broker of Respondent SMI was required to
10 exercise reasonable supervision and control over the activities of Respondent SMI. MONACO
11 failed to exercise reasonable supervision over the acts of SMI thereby allowing, permitting
12 and/or ratifying the acts and omissions as described Paragraphs 1-38, above, to occur, all in
13 violation of Section 10159.2 of the Code, which constitutes cause for suspension or revocation
14 of all licenses and license rights of Respondent MONACO under Sections 10177(d) and
15 10177(h) of the Code (Failure to exercise reasonable supervision over the activities of the
16 corporation, salespersons and employees).

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

22 
23 _____
24 JOSEPH AIU
25 Deputy Real Estate Commissioner

26 Dated at San Diego, California,
27 this 9 day of November, 2010.