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2	Department of Real Estate P.O. Box 187007
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8	BEFORE THE
9	DEPARTMENT OF REAL ESTATE
10	STATE OF CALIFORNIA
11	* * *
12	
13	In the Matter of the Accusation of)
14	MFS/TA, INC.,) NO. H-4314 SD
15	ROBERT ALLEN KISLING and BARBARA LEE McMANUS,)SECOND AMENDED
16	Respondents.) <u>ACCUSATION</u>
17	
18	The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
19	of the State of California, for cause of Accusation against MFS/TA, INC., individually and doing
20	business as "Future Security Financial", "Golden Real Estate Group", "Golden Valley Lending
21	Group", "Millennium Financial Systems", "Millennium Real Estate Group", "Nationwide Loan
22	Modification Services" and "RK Funding" ("MFS"); ROBERT ALLEN KISLING, individually
23	and doing business as "Associated Financial Systems", "Millennium Financial Systems" and
24	"V.A. Mortgage Express" ("KISLING"); and, BARBARA LEE McMANUS, ("McMANUS")
25	(herein collectively "Respondents"); is informed and alleges as follows:
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27	The Complainant makes this Accusation in her official capacity.
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2	MFS is presently licensed by the Department of Real Estate (hereinafter "the
3	Department") and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the
4	Business and Professions Code ("the Code") as a corporate real estate broker.
5	3
6	KISLING is presently licensed and/or has license rights under the Code as a real
. 7	estate broker, and is licensed by the Department as the designated broker/officer of MFS. As
8	the designated broker/officer, KISLING was responsible, pursuant to Section 10159.2
9	(responsibility of corporate officer in charge) of the Code, for the supervision of the activities of
10	the officers, agents, real estate licensees and employees of MFS for which a real estate license is
11	required.
12	· · · · · · · · · · · · · · · ·
13	KISLING is presently licensed and/or has license rights under the Code as a
14	mortgage loan originator.
15	5
16	McMANUS is presently licensed by the Department and/or has license rights
17	under the Code as a real estate salesperson. At all times relevant, neither MFS nor KISLING
18	were the employing broker for McMANUS.
19	6
20	Joel Saul Hernandez is presently licensed by the Department and/or has license
21	rights under the Code as a real estate salesperson.
22	7
23	At all times relevant herein, Sandi Alonzo (also known as "Sandra Lee Alonzo")
24	was not licensed by the Department in any capacity in the State of California.
25	8
26	At all times relevant herein, MFS performed services for one or more borrowers
27	and negotiated to do one or more of the following acts for another or others, for or in expectation
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. 1	of compensation: negotiate one or more loans for, or perform services for, borrowers and/or	
2	lenders with respect to the collection of advance fees and loan modification, loan refinance,	
.3	principal reduction, foreclosure abatement or short sale services and/or those borrowers' lenders	
4	in connection with loans secured directly or collaterally by one or more liens on real property;	
5	operated and conducted a loan brokerage business with the public, wherein, on behalf of others,	
6	for compensation or in expectation of compensation, Respondents solicited lenders and	
7 -	borrowers for loans secured directly or collaterally by liens on real property, and wherein	
8	Respondents arranged, negotiated, processed and consummated such loans; and charged,	
9	demanded or collected an advance fee for any of the services offered.	
10	FIRST CAUSE OF ACTION	-
11	9	
12	In or about the period of June 22, 2011, and continuing intermittently through	
13	June 24, 2011, an audit was conducted of the records of MFS at its main office located at	
14	105 N. Rose Street, Suite 201, Escondido, California, and the Department's Oakland District	
15	Office. The auditor herein examined the records for the period of May 1, 2008, through April 30,	
16	2011 (the audit period).	
17	10	
18	While acting as a real estate broker as described in Paragraph 8, above, and within	
19	the audit period, MFS accepted or received funds in trust (trust funds) from or on behalf of	
20	lenders, investors, borrowers and others in connection with the sale/resale of real estate,	
21	mortgage and loan brokerage activities, and deposited or caused to be deposited those funds into	
22	a bank account maintained by MFS, including, but not limited to:	
23	Bank Account #1	
24	1 st Centennial Bank/First California Bank	
25	320 West Mission Avenue Escondido, CA 92025	-
26	Account No.: XXXXX9984	1
27	Account Name: Abell Escrow	

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 the collection and disbursement of trust funds: (a) MFS failed to maintain adequate trust records resulting in an inability by the Department's auditor to conduct a reconciliation of the adjusted bank balance to the accountability of Bank Account #1. Such acts and/or omissions by MFS violate Section 10145 of the Code. (b) MFS failed to designate Bank #1 as a trust account. Such acts and/or omissions by MFS violate Section 10145 of the Code and Section 2832 (trust fund handling) of Title 10 of the California Code of Regulations ("the Regulations"). (c) MFS failed to maintain adequate Control Records for Bank Account #1. Such acts and/or omissions by MFS violate Section 2831 (trust fund records maintenance) of the Regulations. (d) MFS allowed non-licensee Madeleine Kisling to withdraw funds from Banl Account #1. Such acts and/or omissions by MFS violate Section 10145 of the Code and Section 2834 (trust account withdrawals) of the Regulations. (e) MFS failed to deposit advance fees it collected into a trust account. Such 			
2 Thereafter, MFS from time-to-time made disbursement of said trust funds. 4 11 5 In the course of the activities described in Paragraph 8, above, in connection with 6 the collection and disbursement of trust funds: 7 (a) MFS failed to maintain adequate trust records resulting in an inability by 8 the Department's auditor to conduct a reconciliation of the adjusted bank balance to the 9 accountability of Bank Account #1. Such acts and/or omissions by MFS violate Section 10145 10 (b) MFS failed to designate Bank #1 as a trust account. Such acts and/or 11 (b) MFS failed to designate Bank #1 as a trust account. Such acts and/or 12 omissions by MFS violate Section 10145 of the Code and Section 2832 (trust fund handling) of 13 Title 10 of the California Code of Regulations ("the Regulations"). 14 (c) MFS failed to maintain adequate Control Records for Bank Account #1. 15 Such acts and/or omissions by MFS violate Section 10145 of the Code and Section 18 Account #1. Such acts and/or omissions by MFS violate Section 10145 of the Code and Section 19 2834 (trust account withdrawals) of the Regulations. 20 (e) MFS failed to deposit advance fees it collected into a trust account. Such acts and/or omissions by MFS violate Section 10145 of the Code and Sectio		1	
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 (f) MFS failed to maintain a separate record for each beneficiary of Bank Account #1. Such acts and/or omissions by MFS violate Section 10145 of the Code and Section 2831.1 (maintenance of separate records for each beneficiary or transaction) of the Regulations. 		21	acts and/or omissions by MFS violate Section 10146 (deposit of advance fees into trust account)
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 Section 2831.1 (maintenance of separate records for each beneficiary or transaction) of the Regulations. 		23	(f) MFS failed to maintain a separate record for each beneficiary of Bank
26 Regulations.		24	Account #1. Such acts and/or omissions by MFS violate Section 10145 of the Code and
		25	Section 2831.1 (maintenance of separate records for each beneficiary or transaction) of the
27 ///		26	Regulations.
		27	

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1 MFS failed to maintain accurate written monthly reconciliations for the (g) 2 balances of all of the separate records with the control records for Bank Account #1. Such acts 3 and/or omissions by MFS violate Section 10145 of the Code and Section 2831.2 (trust account 4 reconciliation) of the Regulations. 5 (h) MFS failed to furnish a verified copy of the accounting with respect to 6 advance fees it collected to the principals at the end of each calendar guarter and when each 7 contract was completely performed by MFS. Such acts and/or omissions by MFS violate 8 Section 10146 of the Code and Section 2972 (verified accounting content) of the Regulations. 9 (i) MFS failed to retain cancelled checks from Bank Account #1 and failed 10 to retain communications with lenders for loan modifications in its transaction files. Such 11 acts and/or omissions by MFS violate Section 10148 (record retention requirements) of the 12 Code. 13 12 14 The acts and/or omissions of MFS as alleged in Paragraph 11, above, violate 15 Sections 10145, 10146 and 10148 of the Code, and Sections 2831, 2831.1, 2831.2, 2832, 2834 16 and 2972 of the Regulations. 17 13 18 The facts alleged in Paragraph 11, above, are grounds for the suspension or 19 revocation of the license(s) and license rights of MFS under Sections 10177(d) (willful disregard 20 of Real Estate Law) and/or 10177(g) (negligence/incompetence) of the Code. In addition, the 21 Department is entitled to reimbursement for the costs of its audit pursuant to Section 10148(b) 22 (cost of audit in final decision following disciplinary hearing) of the Code. 23 SECOND CAUSE OF ACTION 24 14 25 On or about March 9, 2009, Sandra Alonzo, while in the employ of and 26 representing MFS, doing business as Nationwide Modification Services, entered into a loan 27 modification services contract with Juan F. and Ysabel C. Under the terms of the loan

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1 modification services contract, MFS agreed to negotiate a loan modification on behalf of Juan F. 2 and Ysabel C. for their real property located at 4063 Poppy Place, San Diego, California, in 3 exchange for an advance fee payment of \$3,500.00. On or about March 11, 2009, Juan F. and 4 Ysabel C., paid to MFS \$3,500.00 for loan modification services. 5 15 6 After receiving advance fee payments from Juan F. and Ysabel C., MFS failed to .7 obtain a loan modification for them and did not repay the advance fees received from them. 8 MFS's failure to provide the services promised or to refund the funds paid by Juan F. and 9 Ysabel C., constitutes dishonest dealing. 10 16 11 The facts alleged in Paragraphs 14 and 15, above, are grounds for the suspension 12 or revocation of the license(s) and license rights of MFS under Sections 10085 (advance fee 13 agreements and materials), 10085.6 (collection of unauthorized advance fees), 10131.2 14 (collection of advance fees), 10177(d) and/or 10177(g), and 10177(j) (fraud or dishonest dealing) 15 of the Code, and Section 2970 (submission of advance fee materials) of the Regulations. 16 THIRD CAUSE OF ACTION 17 17 18 On or about March 11, 2009, Joel Saul Hernandez, while in the employ of and 19 representing MFS, doing business as Nationwide Modification Services, entered into a loan 20 modification services contract with Juan G., Adriana M., and Zoilo S. Under the terms of the 21 loan modification services contract, MFS agreed to negotiate a loan modification on behalf of 22 Juan G., Ysabel C., and Zoilo S. for their real property located at 2274 Montemar Avenue, 23 Escondido, California, in exchange for an advance fee payment of \$3,000.00. On or about 24 March 12, 2009, Juan G., Adriana M., and Zoilo S. paid \$1,500.00 in advance fees to MFS as 25 partial payment for loan modification services. On or about June 8, 2009, Juan G., Adriana M., 26 and Zoilo S., paid the remaining advance fees of \$1,500.00 to MFS for loan modification services. 27 ///

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2	After receiving advance fee payments from Juan G., Adriana M., and Zoilo S.,
3	MFS failed to obtain a loan modification for them and did not repay the advance fees received
4	from them. MFS's failure to provide the services promised or to refund the funds paid by
5	Juan G., Adriana M., and Zoilo S., constitutes dishonest dealing.
6	19
7	The facts alleged in Paragraphs 17 and 18, above, are grounds for the suspension
8	or revocation of the license(s) and license rights of MFS under Sections 10085, 10085.6,
9	10131.2, 10177(d) and/or 10177(g), and 10177(j) of the Code, and Section 2970 of the
10	Regulations.
11	FOURTH CAUSE OF ACTION
12	20
13	In connection with the collection and handling of advance fees as alleged in
14	Paragraphs 13 through 18, above, MFS failed to submit the advance fee contract and all
15	materials used in obtaining those advance fees to the Department for approval, prior to their use
16	in obtaining the advance fees.
17	21
18	The acts and/or omissions of MFS as alleged in Paragraph 19, above, violate
19	Sections 10085.5, 10085.6 and 10177(d) in conjunction with Section 10085 of the Code, and
20	Section 2970 of the Regulations.
21	22
22	The facts alleged in Paragraph 20, above, are grounds for the suspension or
23	revocation of MFS's license(s) and license rights under Sections 10177(d) and/or 10177(g) of
24	the Code.
25	///
26	///·
27	///

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1	FIFTH CAUSE OF ACTION	
2	23	
3	MFS used the fictitious business names of "Nationwide Loan Modification	
4	Services" and "Nationwide Modification Services" in conducting the loan modification activity	
5	set forth in Paragraphs 13 through 18, above, without first obtaining licenses bearing those	
6	fictitious business names from the Department.	
7.	24	ļ
8	The acts and/or omissions of MFS as alleged in Paragraph 23, above, violate	
9	Section 10159.5 (fictitious business name) of the Code, and Section 2731 (use of false or	
10	fictitious business name) of the Regulations.	
11	25	
12	The facts alleged in Paragraph 23, above, are grounds for the suspension or	
13	revocation of MFS's license(s) and license rights under Sections 10177(d) and/or 10177(g) of	
14	the Code.	
15	SIXTH CAUSE OF ACTION	
16	26	
17	In or about the period of March 2009 through August 2009, McMANUS	
18	conducted loan modification activities on behalf of MFS in at least four (4) real estate	
19	transactions. In exchange for those activities, McMANUS was paid \$500.00 for each	
20	transaction by MFS.	
21	27	
22	While performing the activities alleged in Paragraph 26, above, McMANUS was	
23	not licensed under the real estate broker license of either MFS or KISLING.	
24	28	
25	The acts and/or omissions by McMANUS as alleged in Paragraphs 26 and 27,	
26	above, violate Section 10137 (employment by and/or acceptance of compensation from someone	
27	other than employing broker) of the Code.	

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1	29
2	The facts alleged in Paragraphs 26 and 27, above, are grounds for the suspension
3	or revocation of McMANUS's license(s) and license rights under Sections 10177(d) and/or
4	10177(g) of the Code.
5	30
6	The acts and/or omissions by MFS as alleged in Paragraphs 26 and 27, above,
7	violate Section 10137 (payment of compensation to salesperson not employed under broker's
8	license) of the Code.
9	31
10	The facts alleged in Paragraphs 26 and 27, above, are grounds for the suspension
11	or revocation of MFS's license(s) and license rights under Sections 10177(d) and/or 10177(g) of
12	the Code.
13	SEVENTH CAUSE OF ACTION
14	32
15	The Broker-Salesman Relationship Agreement between MFS and the following
16	real estate salespersons employed by MFS failed to address material aspects of their relationship
17	related to supervision of activities by KISLING:
18	-Philip Mitchell Anderson
19	-Christopher Filasky
20	-Sheryl Ann Alvarado
21	33
22	The acts and/or omissions of MFS as alleged in Paragraph 32, above, violate
23	Section 2726 (Required contents of broker-salesperson relationship agreements) of the
24	Regulations.
25	///
26	///
27	///

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1	34
2	The facts alleged in Paragraph 32, above, are grounds for the suspension or
.3	revocation of KISLING's license(s) and license rights under Sections 10177(d) and/or
4	10177(g) of the Code.
5	EIGHTH CAUSE OF ACTION
6	35
7	MFS failed to maintain possession of the original real estate salesperson license
8	
9	certificates for Jamie Ramona Ohlsen and Greg Weber. 36
10	
10	The acts and/or omissions of MFS as alleged in Paragraph 35, above, violate
	Section 10160 (possession/inspection of salesperson license) of the Code and Section 2753
12	(retention of real estate salesperson license by broker) of the Regulations.
13	37
14	The facts alleged in Paragraph 35, above, are grounds for the suspension or
15	revocation of MFS's license(s) and license rights under Sections 10177(d) and/or 10177(g) of
16	the Code.
17	NINTH CAUSE OF ACTION
18	38
19	In or about March 2010, MFS solicited Debra F. by mail offering to provide
20	Debra F. with mortgage loan services for her real property located at 14451 Broadway, Whittier,
21	California. At the time, Debra F.'s mortgage on her property was with First US Community
22	Credit Union. Although MFS was not affiliated in any way with First US Community Credit
23	Union, the mailing it sent to Debra F. referenced both First US Community Credit Union and
24	Debra F.'s loan with that company. Nowhere in the solicitation was any language indicating
25	otherwise. In addition, the solicitation listed MFS's dba of "Millennium Financial Systems" at
26	the bottom of the page. The form and content of the letter clearly gave the appearance that
27	///

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Millennium Financial Systems was connected with First US Community Credit Union in some
 fashion.
 39

In or about early 2012, MFS solicited Joseph P. by mail on two separate occasions 4 5 offering to provide Joseph P. with mortgage loan services for his real property located at 3021 6 Paulcrest Drive, Los Angeles, California. At the time, Joseph P.'s mortgage on his property was with First Entertainment Credit Union. Although MFS was not affiliated in any way with First 7 8 Entertainment Credit Union, the mailings it sent to Joseph P. referenced both First Entertainment 9 Credit Union and Joseph P.'s loan with that company. Nowhere in the solicitation was any language indicating otherwise. In addition, the solicitations listed MFS's dba of "Millennium 10 Financial Systems" at the bottom of the page. The form and content of the letters clearly gave 11 the appearance that Millennium Financial Systems was connected with First Entertainment 12 13 Credit Union in some fashion.

The acts and/or omissions of MFS as alleged in Paragraphs 38 and 39, above,
violate Section 10140 (false advertising) and 10235 (misleading advertising) of the Code, and
Section 2848 (advertising criteria) of the Regulations.

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TENTH CAUSE OF ACTION

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The facts alleged in Paragraphs 38 and 39, above, are grounds for the
suspension or revocation of MFS's license(s) and license rights under Sections 10176(i) (fraud
or dishonest dealing), 10177(d) and/or 10177(g) of the Code.

42
Con or about October 13, 2012, MFS solicited Joseph P. by mail on two separate
occasions offering to provide Jon L. with mortgage loan services for his real property located at 5
Hutton Circle Drive, Santa Ana, California. At the time, Jon L.'s mortgage on his property was
with Central Mortgage. Although MFS was not affiliated in any way with Central Mortgage, the

1 mailings it sent to Jon L. referenced both Central Mortgage and Jon L.'s loan with that company. 2 Nowhere in the solicitation was any language indicating otherwise. In addition, the solicitations 3 listed MFS's dba of "Millennium Financial Systems" at the bottom of the page. The form and 4 content of the letters clearly gave the appearance that Millennium Financial Systems was 5 connected with Central Mortgage in some fashion. 6 43 7 The acts and/or omissions of MFS as alleged in Paragraph 42, above, violate 8 Sections 10140, 10140.6 (disclosure of license status in advertising), 10235, 10235.5 (license 9 disclosure in advertising) and 10236.4 (disclosure of license number in advertising) of the 10 Code, and Section 2848 of the Regulations. 11 44 12 The facts alleged in Paragraph 42, above, are grounds for the suspension or 13 revocation of MFS's license(s) and license rights under Sections 10177(d) and/or 10177(g) of 14 the Code. 15 ELEVENTH CAUSE OF ACTION 16

45

17 At all times relevant herein, KISLING was responsible, as the designated 18 broker/officer for MFS, for the supervision and control of the activities conducted on behalf of 19 the corporation by its officers and employees. KISLING failed to exercise reasonable 20 supervision and control over the property mortgage loan brokering activities of MFS. In 21 particular, KISLING permitted, ratified and/or caused the conduct described in the First through 22 Tenth Causes of Action, above, to occur, and failed to take reasonable steps, including, but not 23 limited to, the supervision of employees and the implementation of policies, rules, procedures 24 and systems to ensure the compliance of the corporation with the Real Estate Law and the 25 Regulations. 26 ///

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1	46	
2	The acts and/or omissions of KISLING as set forth in Paragraph 45, above,	
3	violate Section 10159.2 (responsibilities of corporate officer in charge) of the Code and	
.4	Section 2725 (broker supervision of salespersons) of the Regulations.	
5	47	
6	The facts alleged in Paragraph 45, above, are grounds for the suspension or	
7	revocation of KISLING's license(s) and license rights under Sections 10177(d) and/or 10177(g),	
8	and 10177(h) (reasonable supervision requirements for broker) of the Code.	
9	MORTGAGE LOAN ORIGINATOR LICENSE ENDORSEMENT	
10	48	
11	The facts alleged in Paragraphs 11 through 47, above, constitute cause for	
12	revocation of KISLING's mortgage loan originator license endorsement under Section	
13	10166.05(c) (lack of general fitness) of the Code.	
14	COST RECOVERY	
15	49	
16	Section 10106 of the Code provides, in pertinent part, that in any order issued in	
17	resolution of a disciplinary proceeding before the Department, the Commissioner may request the	
18	Administrative Law Judge to direct a licensee found to have committed a violation of this part to	
19	pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.	
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WHEREFORE, Complainant prays that a hearing be conducted on the allegations
 of this Accusation, and that upon proof thereof, a decision be rendered imposing disciplinary
 action against all licenses and license rights of Respondents under the Code, for the reasonable
 cost of investigation and prosecution of this case, including agency attorney's fees, and for such
 other and further relief as may be proper under applicable provisions of law.

Deputy Real Estate Commissioner