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**SEP 17 2018**

**DEPARTMENT OF REAL ESTATE**

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	DRE Case No. H-6375 SAC
	)	OAH Case No. 2016091049
NORCAL GOLD, INC., ANDREW AVALOS,	)	
INNA INESSA CHERNIOGLO, and	)	
BEVERLY KENDALL,	)	
Respondents.	)	

**DECISION AFTER REJECTION**

This matter came on for hearing before Tiffany L. King, Administrative Law Judge (hereinafter "ALJ"), Office of Administrative Hearings, State of California, in Sacramento, California, on September 18 and 19, 2017, and February 27 and 28, 2018.

Richard K. Uno, Counsel, represented the Complainant Tricia D. Parkhurst, in her official capacity as a Deputy Real Estate Commissioner with the Department of Real Estate ("Department").<sup>1</sup>

Respondent Inessa Chernioglo ("CHERNIOGLO") was present and was represented by Lindsay M. Johnson.

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<sup>1</sup> Effective July 1, 2018, the Bureau of Real Estate became the Department of Real Estate. (Bus. & Prof. Code, § 10005.)

1 Respondent Andrew Avalos (“AVALOS”) was present and was represented by  
2 Frank M. Buda.<sup>2</sup>

3 Oral and documentary evidence was received. The record was held open to allow  
4 the parties to file closing briefs. Complainant filed its closing brief which was marked for  
5 identification and admitted. Both Respondents filed their closing briefs which were marked for  
6 identification and admitted. The record was closed and the matter was submitted for decision on  
7 March 23, 2018.

8 On April 23, 2018, the ALJ issued a Proposed Decision (hereinafter “the  
9 Proposed Decision”) which revoked real estate licenses and licensing rights of Respondent  
10 AVALOS and Respondent CHERNIOGLO; provided, however a restricted real estate broker  
11 license be issued to Respondent AVALOS and Respondent CHERNIOGLO pursuant to Section  
12 10156.5 of the Business and Professions Code. The Real Estate Commissioner declined to adopt  
13 the Proposed Decision.

14 Pursuant to Section 11517(c) of the Government Code of the State of California,  
15 Respondents were served with notice of the Real Estate Commissioner’s determination not to  
16 adopt the Proposed Decision of the ALJ along with a copy of said Proposed Decision.  
17 Respondents were notified that the case would be decided by the Real Estate Commissioner upon  
18 the record, the transcript of proceedings, and upon written argument offered by Respondents and  
19 Complainant.

20 Respondent CHERNIOGLO submitted written argument on August 8, 2018.  
21 Respondent AVALOS submitted written argument on August 9, 2018. Complainant submitted  
22 written argument on August 15, 2018.

23 I have given careful consideration to the record in this case, including the  
24 transcript of the proceedings of September 18 and 19, 2017, and February 27 and 28, 2018. I  
25 have also considered the written arguments offered by Complainant and Respondents. The  
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27 <sup>2</sup> Prior to hearing, Respondents NorCal Gold, Inc. and Beverly Kendall entered into a Stipulation and Agreement to resolve this matter as to those Respondents only.

1 following shall constitute the Decision of the Real Estate Commissioner (hereinafter  
2 “Commissioner”) in this proceeding:

3 **FACTUAL FINDINGS**

4 The Factual Findings of the Proposed Decision are adopted as part of this  
5 Decision, with the exception of the following:

6 Paragraph No. 64 of the Proposed Decision is amended as follows:

7 “64. Mr. Avalos introduced several character letters from colleagues, clients, and  
8 family. In general, the authors of these letters describe Mr. Avalos as possessing good character,  
9 honesty, and a desire to help others. However, none of the letters specifically addressed Mr.  
10 Avalos’ recognition of the seriousness of his actions or any steps he has taken toward  
11 rehabilitation.”

12 Paragraph No. 76 of the Proposed Decision is amended as follows:

13 “76. Ms. Chernioglo submitted several character letters from clients, colleagues,  
14 family, and friends. These letters extolled Ms. Chernioglo’s honesty and integrity, and  
15 willingness to put her clients’ needs first. However, the letters did not discuss any rehabilitation  
16 efforts or acknowledgment of wrongdoing.”

17 Paragraph No. 84 of the Proposed Decision is amended as follows:

18 “84. The Department has adopted criteria for evaluating the rehabilitation of a  
19 licensee facing potential discipline on the basis of a criminal conviction. (Cal. Code Regs., tit.  
20 10, §2912.) Although this case does not involve a criminal conviction, many of these criteria are  
21 nevertheless instructive in evaluating Mr. Avalos’ and Ms. Chernioglo’s rehabilitation and  
22 fitness for licensure. Such criteria include, in relevant part: the lapse of time since the  
23 misconduct occurred; correction of the business practice responsible in some degree for the  
24 misconduct; stability of family life and fulfillment of parental and familial responsibilities;  
25 significant and conscientious community involvement; and, change in attitude since the  
26 misconduct occurred. (Cal. Code Regs., tit. 10, §2912, subs. (a), (h), (j), (l), and (m).)”

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1 Paragraph No. 85 of the Proposed Decision is amended as follows:

2 "85. Both Respondents have taken some steps toward rehabilitation.

3 Almost five years have lapsed since the short sale and subsequent resale of the  
4 subject properties. Since that time, Mr. Avalos and Ms. Chernioglo have operated as independent  
5 brokers or for an affiliated brokerage without complaint or incident. However, the court for *In re*  
6 *Gossage* (2000) 23 Cal.4<sup>th</sup> 1080 determined that the more serious the conduct, the stronger an  
7 applicant's showing of rehabilitation must be. Given the seriousness of Respondents misconduct,  
8 as set forth in Findings 79 through 82, a more substantial showing of rehabilitation is needed in  
9 order to show that Respondents are not a threat to the public.

10 The character letters submitted by Respondents did not provide any insight into  
11 rehabilitation efforts as set forth in Findings 64 and 76. Accordingly, their letters are given little  
12 weight.

13 Respondents have no previous disciplinary history.

14 Neither Respondent is involved in short sales anymore.

15 Each is dedicated to his or her family life and parental responsibilities.

16 Each is very active in his or her church and community organizations, donating  
17 both their time and money to help others."

18 Paragraph No. 86 of the Proposed Decision is amended as follows:

19 "86. It has been judicially recognized that rehabilitation requires an  
20 acknowledgment of wrong doing. (See, *Seide v. Committee of Bar Examiners of the State*  
21 *Bar of California* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of his  
22 actions is an essential step towards rehabilitation."].) Respondents disagree with the  
23 characterization of their conduct. They both acknowledged making mistakes, however, they did  
24 not fully acknowledge the wrongfulness of their conduct.

25 Mr. Avalos expressed remorse and regret for his failure to disclose the IMC loan  
26 to the lienholder. However, Mr. Avalos argued that the resell prohibitions did not apply to his  
27 reselling of the properties after he rehabilitated them. Furthermore, Mr. Avalos minimized his

1 own participation and misconduct in the Marsh Hawk, Lockeridge, and Marlaw transactions by  
2 referring to himself as the principal. He rejected the notion that he was performing licensed real  
3 estate activity and therefore subject to administrative action by the Department. Thus, Mr.  
4 Avalos' testimony reflects a failure to acknowledge his own responsibility and effectively denies  
5 culpability for any misconduct.

6           Although Ms. Chernioglo displayed remorse, it was due to the discomfort over  
7 facing an administrative action. While expressing regret for submitting a false and forged  
8 document, Ms. Chernioglo also indicated, "...I shouldn't have signed on somebody else's behalf  
9 because now it's coming back to hurt me". Ms. Chernioglo's testimony substantially undermined  
10 any rehabilitation efforts. It is significant and deeply troubling that Ms. Chernioglo affirmatively  
11 denies making any misrepresentations, construes her misconduct as "mistakes", and  
12 characterizes a document with false information as merely lacking "complete truths". In sum,  
13 Ms. Chernioglo's admits to no wrongdoing and fails to demonstrate insight into the nature of her  
14 misconduct.

15           Admittedly, Respondents have taken steps to insure the misconduct will not recur,  
16 however, public protection requires them to remediate their deficiencies and also fully  
17 understand the wrongfulness of their actions.

18           The amount of evidence required to establish rehabilitation varies according to the  
19 seriousness of the conduct at issue. (*In re Menna* (1995) 11 Cal.4<sup>th</sup> 975, 991.) Here, Respondents  
20 have failed to meet their burden of proof in this regard. When all the evidence is considered,  
21 revocation of Respondents' broker licenses is warranted for the protection of the public. While  
22 Respondents acted intentionally, there was no evidence they acted with malice. It would not be  
23 against public interest, however, to issue Mr. Avalos and Ms. Chernioglo, individually, a  
24 restricted salesperson license under the terms and conditions set forth below."

#### 25           LEGAL CONCLUSIONS

26           The Legal Conclusions of the Proposed Decision are adopted as part of this  
27 Decision, with the exception of the following:

1 Paragraph No. 8 of the Proposed Decision is amended as follows:

2 "8. As stated in Findings 84 through 86, Respondents have not established that  
3 they are sufficiently rehabilitated to justify retaining a broker license. When all of the facts and  
4 circumstances are weighed and balanced, it would be contrary to the public interest and welfare  
5 to allow Respondents to remain licensed as a real estate broker even on a restricted basis. The  
6 public interest mandates revocation of Respondents' broker licenses. However, the public  
7 interest does not require the Department to prohibit Respondents from acting under supervision  
8 as a real estate licensee."

9 **ORDER**

10 WHEREFORE, THE FOLLOWING ORDER is hereby made:

11 All licenses and licensing rights of Respondents ANDREW AVALOS and  
12 INESSA CHERNIOGLO under the Real Estate Law are revoked; provided, however, restricted  
13 real estate salesperson licenses shall be issued to Respondent AVALOS and Respondent  
14 CHERNIOGLO pursuant to Section 10156.5 of the Business and Professions Code provided he  
15 or she makes application therefor and pays to the Department of Real Estate the appropriate fee  
16 for the restricted license within 90 days form the effective date of this Decision. The restricted  
17 licenses issued to Respondent AVALOS and Respondent CHERNIOGLO shall be subject to  
18 all of the provisions of Section 10156.7 of the Business and Profession Code and to the  
19 following limitations, conditions and restrictions imposed under authority of Section 10156.6  
20 of that Code:

- 21 1. The restricted license issued to each Respondent may be suspended  
22 prior to hearing by Order of the Commissioner in the event of that  
23 Respondent's conviction or plea of nolo contendere to a crime which  
24 is substantially related to that Respondent's fitness or capacity as a  
25 real estate licensee.
- 26 2. The restricted license issued to each Respondent may be suspended  
27 prior to hearing by Order of the Commissioner on evidence

1 satisfactory to the Commissioner that said Respondent has violated  
2 provisions of the California Real Estate Law, the Subdivided Lands  
3 Law, Regulations of the Real Estate Commissioner or conditions  
4 attaching to the restricted license.

5 3. Respondent AVALOS and Respondent CHERNIOGLO, respectively,

6 shall not be eligible to apply for the issuance of an unrestricted real  
7 estate license nor for removal of any of the conditions, limitations or  
8 restrictions of a restricted license until three (3) years have elapsed  
9 from the effective date of this Decision.

10 4. Respondent AVALOS and Respondent CHERNIOGLO, respectively,

11 shall submit with any application for license under an employing broker,  
12 or any application for transfer to a new employing broker, a statement  
13 signed by the prospective employing real estate broker on a form approved  
14 by the Department of Real Estate which shall certify:

15 (a) That the employing broker has read the Decision of the Commissioner  
16 which granted the right to a restricted license; and

17 (b) That the employing broker will exercise close supervision over the  
18 performance by the restricted licensee relating to activities for which a real  
19 estate license is required.

20 5. Within nine (9) months from the effective date of this Decision,

21 Respondent AVALOS and Respondent CHERNIOGLO, respectively,  
22 shall present evidence satisfactory to the Commissioner that he or she  
23 has, since the most recent issuance of an original or renewal real estate  
24 license, taken and successfully completed the continuing education  
25 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for  
26 renewal of a real estate license. If he or she fails to satisfy this  
27 condition, the Commissioner may order the suspension of the restricted

1 license until that Respondent presents such evidence. The  
2 Commissioner shall afford him or her the opportunity for a hearing  
3 pursuant to the Administrative Procedure Act to present such evidence.

4 6. Within six (6) months from the effective date of this Decision,  
5 Respondent AVALOS and Respondent CHERNIOGLO, respectively,  
6 shall take and pass the Professional Responsibility Examination  
7 administered by the Department including the payment of the  
8 appropriate examination fee. If he or she fails to satisfy this condition,  
9 the Commissioner may order suspension of the restricted license until  
10 that Respondent passes the examination.

11 7. Respondent AVALOS and Respondent CHERNIOGLO are jointly  
12 and severally liable to the Department for its reasonable investigative  
13 and enforcement costs in the total amount of \$5,000. The Department  
14 shall be paid this amount within thirty (30) days of the effective date  
15 of this Decision.

16 This Decision shall become effective at 12 o'clock noon on OCT 08 2018.

17 IT IS SO ORDERED September 14, 2018.

18  
19 DANIEL J. SANDRI  
20 ACTING REAL ESTATE COMMISSIONER

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**FILED**

**JUL 16 2018**  
DEPARTMENT OF REAL ESTATE

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BEFORE THE BUREAU OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	CalBRE No. H-6375 SAC
NORCAL GOLD, INC., ANDREW AVALOS,	}	
INNA INESSA CHERNIOGLO & BEVERLY	}	OAH No. 2016091049
KENDALL,	}	
Respondents.	}	

NOTICE

TO: NORCAL GOLD, INC., ANDREW AVALOS, INNA INESSA CHERNIOGLO, BEVERLY KENDALL, Respondents, FRANK M. BUDA, Counsel for ANDREW AVALOS, and LINDSEY M. JOHNSON, Counsel for INNA INESSA CHERNIOGLO.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated April 23, 2018, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated April 23, 2018, is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on Wednesday, February 28, 2018, and any written argument hereafter submitted on behalf of respondent and complainant.

1                   Written argument of respondent to be considered by me must be submitted within 15  
2 days after receipt of the transcript of the proceedings of Wednesday, February 28, 2018, at the  
3 Sacramento office of the Bureau of Real Estate unless an extension of the time is granted for good  
4 cause shown.

5                   Written argument of complainant to be considered by me must be submitted within  
6 15 days after receipt of the argument of respondent at the Sacramento Office of the Bureau of Real  
7 Estate unless an extension of the time is granted for good cause shown.

8                   DATED: May 31, 2018.

9   WAYNE S. BELL  
10   REAL ESTATE COMMISSIONER

11   By *Daniel J. Sandri*  
12   DANIEL J. SANDRI  
13   Chief Deputy Commissioner

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**BEFORE THE  
BUREAU OF REAL ESTATE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the First Amended  
Accusation Against:

NORCAL GOLD, INC., ANDREW  
AVALOS, INNA INESSA CHERNIOGLO,  
and BEVERLY KENDALL,

Respondents.

Case No. H-6375 SAC

OAH No. 2016091049

**PROPOSED DECISION**

Tiffany L. King, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on September 18 and 19, 2017, and February 27 and 28, 2018, in Sacramento, California.

Richard K. Uno, Senior Legal Counsel, represented Tricia D. Parkhurst (complainant), Deputy Real Estate Commissioner, Bureau of Real Estate (Bureau), Department of Consumer Affairs, State of California.

Attorney Lindsay M. Johnson represented respondent Inessa Chernioglo, who was present. Attorney Frank M. Buda represented respondent Andrew Avalos, who was present.<sup>1</sup>

Evidence was received and the record was held open to allow the parties to file closing briefs. The Bureau filed its closing brief which was marked for identification and admitted as Exhibit 34. Ms. Chernioglo and Mr. Avalos filed their reply briefs, which were marked for identification and admitted as Exhibits C-W and GG, respectively. The record was closed, and the matter was submitted for decision on March 23, 2018.

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<sup>1</sup> Prior to hearing, respondents NorCal Gold, Inc. (NCG) and Beverly Kendall entered into a Stipulation and Agreement to resolve this matter as to those respondents only. Therefore, this Decision addresses the allegations and charges against Ms. Chernioglo and Mr. Avalos only.

## FACTUAL FINDINGS

1. On September 16, 2008, the Bureau issued a restricted salesperson license to Mr. Avalos. On April 12, 2013, his petition for an unrestricted salesperson license was granted. On April 17, 2013, the Bureau issued broker license number 01803380 to Mr. Avalos, doing business as Avalos Real Estate Group. The broker license is in full force and effect and will expire on April 16, 2021, unless renewed or revoked. Since February 21, 2014, Mr. Avalos is also licensed as an officer for Avalos Real Estate Group, Inc.

2. On January 1, 2013, Mr. Avalos formed AAA Ventures, Inc. (AAA), a California corporation. Mr. Avalos is AAA's sole shareholder, director, and officer. The Statement of Information filed with the California Secretary of State on January 22, 2013, indicated that AAA was involved in the business of real estate; however, AAA was not licensed by the Bureau in any capacity. The Statement of Information for AAA filed on January 31, 2015, did not specify a "type of business" for the corporation.

3. On April 26, 2005, the Bureau issued a salesperson license to Ms. Chernioglo. On November 15, 2011, she was issued broker license number 01492124. The broker license is in full force and effect and will expire on November 14, 2019, unless renewed or revoked. Since April 11, 2014, Ms. Chernioglo is also licensed as an officer for Lions Gate Real Estate, Inc.

4. On April 4, 2012, Ms. Chernioglo formed Chernioglo Real Estate Inc., a California corporation. Ms. Chernioglo is the corporation's sole shareholder, director and officer. On January 29, 2013, the corporation's name changed to IMC Enterprise, Inc. (IMC). The Statement of Information filed with the California Secretary of State on November 1, 2013, indicated that IMC was involved in the business of "real estate services." The Statement of Information filed on November 13, 2014, indicated that IMC was involved in the business of "real estate investment." At no time was IMC licensed by the Bureau in any capacity.

5. Complainant, in her official capacity, signed and filed the Accusation on March 16, 2016, and the First Amended Accusation on May 18, 2016. Complainant seeks to revoke each of respondents' licenses on grounds that they engaged in misrepresentation, fraud, and dishonest dealing with respect to three short sale transactions in 2013. Complainant specifically alleges that Mr. Avalos and Ms. Chernioglo: (1) jointly purchased short sale properties listed by Ms. Chernioglo and failed to disclose their arrangement to the lienholders on said properties; (2) signed short sale affidavits and thereby misrepresented that there were no outside agreements related to the short sale or subsequent sale of the properties; (3) submitted an addendum which included false statements regarding financing and residency; and (4) violated the resell prohibitions of the affidavits with respect to time period and purchase price. Respondents timely filed a Notice of Defense. This hearing followed.

## *Background*

6. Mr. Avalos and Ms. Chernioglo first met in 2009, when they were both salespersons for Keller Williams. In 2010, Mr. Avalos moved to NCG. Ms. Chernioglo shortly followed. From 2010 until their termination in December 2013, they both worked out of NCG's Elk Grove office.

7. In late 2012, Mr. Avalos became interested in buying real properties through short sales, rehabilitating them, and reselling them for profit. He asked Ms. Chernioglo, who had experience with short sales, to help him. They entered into a verbal agreement by which Ms. Chernioglo would list short sale properties for Mr. Avalos to purchase, rehabilitate, and resell. Ms. Chernioglo further agreed to help fund the short sale purchases by loaning money to Mr. Avalos through her corporation, IMC. In addition, Ms. Chernioglo and Mr. Avalos agreed to share the cost of rehabilitating the properties. After the rehabilitated properties were resold, Ms. Chernioglo would be repaid the full amount of the loan (including any rehabilitation costs), as well as 50 percent of the profit from the resale. Neither Mr. Avalos and Ms. Chernioglo's verbal agreement, nor any of its terms, were reduced to writing.

8. In 2013, Mr. Avalos, by and through AAA, purchased five short sale properties with Ms. Chernioglo as the listing agent, on behalf of NCG. In all five transactions, Ms. Chernioglo, by and through IMC, loaned funds to AAA to help finance the purchases, and was repaid as described in Finding 7.

9. Beginning in 2013, Mr. Avalos requested that his NCG commission checks be made payable to AAA Ventures, Inc. Similarly, Ms. Chernioglo requested her NCG commission checks be made payable to IMC Enterprises, Inc. NCG honored both requests as it was a common practice for agents to set up their own corporations and receive commission checks in this fashion.

## *Marsh Hawk Property*

10. In late 2011 or early 2012, Christine Johnston saw a flier on her car about a seminar regarding short sales offered by Ms. Chernioglo and Mr. Avalos. Ms. Johnston did not attend the seminar, but she kept the flier. In March 2012, she contacted Mr. Avalos at the phone number listed. She later met with Ms. Chernioglo.

11. Ms. Johnston advised Ms. Chernioglo that she was interested in short selling her house, located at 6025 Marsh Hawk Court in Elk Grove (Marsh Hawk property). Ms. Johnston had been awarded the Marsh Hawk property in her divorce from her ex-husband, Quinn Johnston. Ms. Johnston also advised there were three liens remaining on the property due to Mr. Johnston's gambling debts which he incurred during the marriage. Ms. Johnston asked Ms. Chernioglo if either a loan modification or principal reduction was possible, both of which would enable her to stay in her home. Ms. Chernioglo advised her that a loan modification was not possible due to the multiple liens on the property and the fact that the home needed several repairs which the Johnstons could not afford.

12. Over the next several months, Ms. Chernioglo negotiated with the three lienholders to allow for a short sale. While she reached terms with the first and second lienholders, she was unable to do so with the third. The first and second lienholders were unwilling to help pay the third lien. Thus, the only option for a short sale was to find a buyer who would pay off the third lien at the close of escrow. By September 2012, Ms. Johnston had fallen behind on her mortgage payments and was concerned about a possible foreclosure. On January 2, 2013, the Johnstons entered into an exclusive listing agreement with Ms. Chernioglo for the short sale of the property.

13. Shortly after listing the property, Ms. Chernioglo received two offers. The first was for \$114,000 and backed by a traditional loan. The second offer was by Mr. Avalos, through AAA, for \$115,000 and backed by hard money lenders. The Johnstons accepted AAA's offer. Ms. Chernioglo, acting as a dual agent, represented both the Johnstons and AAA in the transaction. In the original purchase contract, the buyer (AAA) stated that it did not intend to use property as a primary residence.

14. The finalization of the sale took several weeks, during which time home prices in the area rose. JP Morgan Chase (Chase) was the first lienholder on the Marsh Hawk property, and believed the \$115,000 purchase price was too low. Ultimately, AAA increased its offer to \$177,400, which was accepted. AAA borrowed money from IMC to complete the purchase. AAA was to pay back the loan and half of the profits after the property was resold. Neither the IMC loan nor any terms and conditions were written down or disclosed to Chase.

15. On May 13, 2013, Ms. Chernioglo worked with Chase to finalize the sale. At the last minute, Chase demanded an addendum to the purchase contract which stated that Mr. Avalos would use Marsh Hawk as his primary residence. The request caught Ms. Chernioglo off-guard, as the purchase documents clearly stated the home would not be used as a primary residence. Chase insisted that the short sale would not be approved without the addendum. Worried that time was running out and the short sale would fall through, Ms. Chernioglo drafted the addendum which stated, "Buyer intends to occupy the property as primary residence." She signed Mr. Avalos's name to it, as owner of AAA. She then obtained the Johnstons' signatures and submitted it to Chase. At no time did Ms. Chernioglo advise Mr. Avalos about the addendum or otherwise obtain his authorization to sign the document on his behalf. After receiving the addendum, Chase issued an approval letter for the short sale of the Marsh Hawk property for \$177,400.

16. On June 5, 2013, the Johnstons, Mr. Avalos, and Ms. Chernioglo signed an Affidavit of Arm's Length Transaction required by Chase. The affidavit stated, in relevant part:

The Lender and/or Servicer, in consideration of the representations made below by the Seller, Buyer, and their respective agents, agree to accept less than the amount owed to resolve its loan . . . on the express condition that the Seller, Buyer, and their respective agents . . . each truthfully represents,

affirms, and states that, to the best of each signatory's knowledge and belief:

[¶] . . . [¶]

2. There are no agreements, understandings or contracts relating to the current sale or subsequent sale of the Property that have not been disclosed to the Lender and/or Servicer.

[¶] . . . [¶]

4. The buyer cannot resell the property within 30 days of the short sale settlement date. The buyer also cannot resell the property for greater than 120% of the short sale purchase price within 90 days of the short sale settlement date.
5. Neither the Seller(s) nor the Buyer(s) will receive any funds or commissions from the sale of the Property.

[¶] . . . [¶]

8. Each signatory understands, agrees, and intends that the Lender and/or Servicer are relying upon the statements made in the affidavit as consideration for the reduction of the payoff amount of the Property and agreement to the sale of the Property.

17. In reviewing the final papers, Ms. Johnston noticed that even though AAA was listed as the buyer, Mr. Avalos had signed all the documents. On June 10, 2013, by email, Ms. Johnston asked Ms. Chernioglo if she and Mr. Avalos were buying the Marsh Hawk property. Ms. Chernioglo responded that she was not allowed to buy the property because she was Ms. Johnston's agent. She further explained that Mr. Avalos was the signor for the investment company that was purchasing the home.

18. On June 14, 2013, Mr. Avalos, by and through AAA, deposited \$30,000 into escrow for the purchase of the property. That same date, Ms. Chernioglo, by and through IMC, deposited \$50,106.71 into the same escrow account.

19. On June 17, 2013, escrow closed on the Marsh Hawk property for the sales price of \$177,400. NCG was paid a commission of \$10,644, from which Ms. Chernioglo received her customary share. Mr. Avalos was not paid any portion of the commission.

20. After the purchase, Mr. Avalos had considerable renovations made to the property, including removal of the front deck, replacement of several windows, repairing dry rot, replacing the bathroom fixtures, installing a cement pad, redoing the landscaping and replacing the irrigation system. Mr. Avalos hired contractors to perform much of the work. He also performed a lot of the work himself, spending more than 130 hours on the property.

21. On July 27, 2013, Mr. Avalos, by and through AAA, sold the Marsh Hawk property for \$263,500. The disbursement summary evidenced that AAA received \$69,725.83 from the proceeds of the sale, and IMC received \$78,625.05. Mr. Avalos explained the amount paid to IMC reflected AAA's repayment of the loan (\$50,106.71) plus half of the profits from the sale.

#### *Lockeridge Property*

22. On February 12, 2013, Mary Percoski met with Ms. Chernioglo and Mr. Avalos in the NCG Elk Grove office after receiving a flyer for one of their short sale seminars. Ms. Percoski was recently widowed and her late husband was her sole source of income. She fell behind on her mortgage payments on her home and was interested in a short sale. She was embarrassed to have her adult children find out that she was losing the house, and asked if it were possible to do the short sale without putting the house on the market. Ms. Chernioglo told Ms. Percoski that she had a list of investors she could contact. Mr. Avalos then stated he owned AAA and would be interested in buying the property. Ms. Percoski was very receptive to Mr. Avalos's proposal.

23. At the February 12th meeting, Ms. Percoski entered into a listing agreement with Ms. Chernioglo to handle the short sale of her residential property located at 9441 Lockeridge Way, Sacramento, California (Lockeridge). On the same date, Ms. Percoski accepted an offer from AAA to purchase the property for \$171,000. Ms. Chernioglo, acting on behalf of NCG, was a dual agent representing both the buyer and seller.

24. Ms. Chernioglo handled all negotiations with the mortgage lender, Citimortgage, Inc. (Citi). Ultimately, AAA increased its offer to \$210,000, which Citi accepted. On May 24, 2013, Citi issued an approval letter for the short sale of the Lockeridge property in the amount of \$210,000. To help finance the purchase, AAA borrowed additional funds from IMC in exchange for its promise to repay the principal plus half of the profits following the subsequent resale of the property. Neither the loan agreement, nor any terms and conditions, were memorialized in writing, nor disclosed to Citi.

25. On July 29, 2013, Ms. Chernioglo and Mr. Avalos signed a Short Sale Affidavit required by Citi. Ms. Percoski had signed the Affidavit previously on July 19, 2013. The Affidavit stated, in pertinent part:

This Short Sale Affidavit . . . is given by the Seller(s), Agent(s), and Facilitator to the Servicer and the Investor of the mortgage



loan secured by the Property . . . in consideration of the mutual and respective benefits to be derived from the short sale of the property.

The buyer cannot resell the property within 30 days of the short sale settlement date.

The buyer cannot resell the property for greater than 120% of the short sale price within 90 days of the short sale settlement date.

[¶] . . . [¶]

NOW, THEREFORE, the Seller(s), Buyer(s), Agent(s), and Facilitator do hereby represent, warrant and agree under the pains and penalties of perjury, to the beset of each signatory's knowledge and belief as follows:

(a) The sale of the Property is an "arm's length" transaction, between Seller(s) and Buyer(s) who are unrelated and unaffiliated by family, marriage, or commercial enterprise.

[¶] . . . [¶]

(c) Neither the Seller(s) nor the Buyer(s) will receive any funds or commissions from the sale of the Property . . . .

(d) There are no agreements, understandings, or contracts relating to the current sale or subsequent sale of the Property that have not been disclosed to the Servicer.

[¶] . . . [¶]

(f) Each signatory understands, agrees, and intends that the Servicer and the Investor are relying upon the statements made in this Affidavit as consideration for the reduction of the payoff amount of the Mortgage and agreement to the sale of the Property.

26. On July 30, 2013, Mr. Avalos, by and through AAA, deposited \$44,254.80 into escrow for the purchase of the Lockeridge property. That same date, Ms. Chernioglo, by and through IMC, deposited \$44,254.81 into the same escrow account.

27. On July 30, 2013, escrow closed on the Lockeridge property for the sales price of \$210,000. NCG was paid a commission of \$12,600, from which Ms. Chernioglo received her customary share. Mr. Avalos was not paid any portion of the commission.

28. After the purchase, Mr. Avalos had considerable renovations made to the property, including: replacing all the countertops, toilets, water features, and light fixtures; repairing dry rot; replacing the HVAC condenser; painting the interior and exterior of the house; replacing the fence; and installing landscaping. Mr. Avalos hired contractors to perform much of the renovation work, and asked Ms. Chernioglo to help pay for some of the contractor expenses. AAA and IMC made payments to contractors as set forth below:

- \$1,250 to Immaculate Painting [Paid for by IMC]
- \$2,400 to Top Rank (HVAC) [IMC paid \$1,200; AAA paid \$1,200]
- \$900 to Valeriy Chernioglo [Paid for by IMC]
- \$1,200 to Jose Garcia (landscaping) [Paid for by IMC]

29. On October 7, 2013, Mr. Avalos, by and through AAA, sold the Lockeridge property for \$305,000. The disbursement summary evidenced that AAA received \$84,558.96 from the proceeds of the sale, and IMC received \$80,959.21. Mr. Avalos explained the amount paid to IMC reflected AAA's repayment of the loan (\$44,254.81), payments to contractors, and half of the profits from the sale.

#### *Marlaw Property*

30. In 2013, Brian and Adrienne Clemens wanted to short sale their residential home located at 10337 Marlaw Way, Elk Grove, California (Marlaw).<sup>2</sup> In March 2013, AAA offered to buy, and the Clemenses agreed to sell, the Marlaw property for the purchase price of \$200,000. At that time, NCG agent Anna Folster was handling the short sale transaction.

31. For reasons not in evidence, Ms. Folster was removed as the short sale agent for the Marlaw property. On May 21, 2013, the Clemenses entered into a listing agreement with Ms. Chernioglo, acting on behalf of NCG, to take over the short sale.

32. Ms. Chernioglo was not involved with the lienholder negotiations for this short sale. Rather, Ms. Foster and NCG's in-house short sale negotiators managed all dealings with the lienholder, Indymac Mortgage Services (Indy). Ultimately, AAA increased its offer to \$250,000, which Indy accepted. On June 15, 2013, Indy issued an approval letter for the short sale of the Marlaw property. That same date, Ms. Chernioglo prepared an addendum to the purchase documents to reflect the \$250,000 purchase price.

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<sup>2</sup> Paragraph 43 of the First Amended Accusation incorrectly lists the property's address as "6025 Marlaw Court."

33. Again during the closing process, AAA borrowed money from IMC to help finance the purchase in exchange for its promise to repay the principal plus half of the profits following the subsequent resale of the property. Neither the loan, nor any terms and conditions, were memorialized in writing or disclosed to Indy.

34. On July 3, 2013, Mr. Avalos and Ms. Chernioglo signed a Short Sale Affidavit required by Indy. The Affidavit provided, in pertinent part:

... Servicer, in consideration of the representations made below by Seller(s), Buyer(s), and their respective agents, has agreed to review the short sale offer on the express condition that Seller(s), Buyer(s), and their respective agents (including ... real estate agents, escrow agents, and title agents) each truthfully represent, affirm, and state, under penalty of perjury that:

[¶] ... [¶]

2. There are no agreements, understandings or contracts relating to the current sale or subsequent sale of the Mortgaged Premises that have not been disclosed to the Servicer.

[¶] ... [¶]

5. Neither the Seller(s) nor the Buyer(s) will receive any funds or commissions from the sale of the Mortgaged Premises  
....

[¶] ... [¶]

7. Neither the Buyer(s) and/or Seller(s) nor any party related to or affiliated with the Buyer(s) and/or Seller(s) may act as the buying or listing/selling agent in the transaction.

35. On August 9, 2013, Mr. Avalos, by and through AAA, deposited \$50,306.12 into escrow for the purchase of the Marlaw property. That same date, Ms. Chernioglo, by and through IMC, deposited \$50,306.12 into the same escrow account.

36. On August 9, 2013, escrow closed on the Marlaw property for the sales price of \$250,000. NCG was paid a commission of \$15,000, from which Ms. Chernioglo received her customary share. Mr. Avalos was not paid any portion of the commission.

37. After the purchase, Mr. Avalos had considerable renovations made to the property, including: installing new landscaping and fixing sprinkler system; replacing all flooring in the home; replacing damaged baseboards, and broken/missing light fixtures;

repairing HVAC system; replacing broken window coverings; replacing cabinet hardware replacing some cabinet doors; and rekeying the property; and repainting the entire interior of the home. Mr. Avalos hired contractors to perform much of the renovation work, and asked Ms. Chernioglo to help pay for some of the contractor expenses. AAA and IMC made payments to contractors as set forth below:

- \$1,350 to Immaculate Painting [Paid for by IMC]
- \$350 to Valentina Pamidac (housecleaning) [Paid for by IMC]
- \$1,450 to Jose Garcia (landscaping) [Paid for by IMC]
- \$1,200 to Innovations (staging company) [Paid for by AAA]
- \$736 to CDR (cabinetry) [Paid for by AAA]
- \$695 to Top Rank (HVAC) [Paid for by AAA]

38. On November 14, 2013, Mr. Avalos, by and through AAA, sold the Marlaw property for \$320,000. The disbursement summary evidenced that AAA received \$151,840.67. IMC did not receive any funds from the close of escrow. Rather, on November 15, 2013, AAA wrote a separate check payable to IMC for the amount of \$72,065.76. The memorandum section at the bottom of the check noted "\$50,306.12 loan repayment; \$21,759.64 proceeds of sale; 10337 Marlaw Way . . . ."

#### *August 2013 Meeting with NCG Management*

39. Pursuant to NCG policy and procedure, all NCG real estate transactions must be reviewed by an NCG transaction coordinator. The transaction coordinators are non-licensed and are responsible for organizing the transaction files, overseeing important deadlines and dates, and ensuring all the documents in the escrow checklist are present. Additionally, after a transaction has closed, the NCG office field manager reviews the transaction file for completeness before a commission check is issued to the NCG agent. At the time of the subject transactions, Michael Kooken and Tim Yee were the co-field managers for NCG's Elk Grove office.

40. At all relevant times, Beverly Kendall was the broker of record for NCG. In or around mid-2013, NCG's transactions manager notified Ms. Kendall to a pattern of listings involving Ms. Chernioglo and Mr. Avalos in which the property was listed, sold, re-listed and resold in a short period of time. Marsh Hawk, Lockeridge, and Marlaw were among the properties identified as part of the pattern.

41. On August 23, 2013, Ms. Chernioglo and Mr. Avalos met with Ms. Kendall and Mr. Kooken at Ruth's Chris Steakhouse to discuss the Marsh Hawk, Lockeridge, Marlaw, and other short sale transactions. Ms. Kendall stated she was concerned about whether Ms. Chernioglo and Mr. Avalos had complied with the short sale affidavits for these transactions. At the time of this meeting, AAA had not yet resold the Marlaw property.

42. In November 2013, Mr. Kooken called Mr. Avalos and requested he extend the close of escrow for the sale of the Marlaw property until after the 90-day resale

prohibition in short sale affidavit expired. Mr. Kooken also requested that Mr. Avalos wait to pay Ms. Chernioglo the loan amount and profit share until after the close of escrow. Mr. Avalos agreed.

43. Following the meeting at Ruth's Chris Steakhouse, Ms. Kendall filed a complaint with the Bureau regarding Ms. Chernioglo's and Mr. Avalos's short sale activities. A Bureau investigation followed. In December 2013, NCG terminated the employment of Ms. Chernioglo and Mr. Avalos.

#### *Freddie Mac Inquiry*

44. In or around January 2014, Freddie Mac met with Mr. Avalos to discuss his activities regarding the Marsh Hawk and Lockeridge properties. Freddie Mac investigators showed him the Marsh Hawk addendum which stated he intended to use the property as his primary residence. It was the first time Mr. Avalos had seen this document, and he denied ever having signed it.

45. Freddie Mac investigators also met with Ms. Chernioglo regarding these short sale transactions. Ms. Chernioglo admitted that she signed Mr. Avalos's name to the Marsh Hawk addendum regarding his primary residence.

46. By letter dated June 6, 2014, Freddie Mac informed Mr. Avalos that it had determined he had violated the Affidavit of Arm's Length Transactions for Marsh Hawk and Lockeridge when he resold the properties for more than 120 percent of the short sale price. Notwithstanding this violation, Freddie Mac opted to give Mr. Avalos a warning only and not place his name on the Freddie Mac Exclusionary List.

#### *BRE's Investigation*

47. Bureau Special Investigator Kyle Jones was assigned to investigate the NCG complaint against Ms. Chernioglo and Mr. Avalos.<sup>3</sup> As part of his investigation, Mr. Jones reviewed the broker, lender, and escrow filed for the Marsh Hawk, Lockeridge, and Marlaw short sales and subsequent resales. He also interviewed Ms. Chernioglo, Mr. Avalos, Mr. Kooken and Ms. Johnston.

48. During their interviews, Ms. Chernioglo and Mr. Avalos confirmed they had a verbal agreement that: (1) AAA would buy the short sale listings by Ms. Chernioglo; (2) IMC would loan money to AAA to finance the purchase; (3) IMC and AAA would share in the rehabilitation costs; and (4) IMC would receive 50 percent of the profits from the resale of the property, in addition to repayment of the monies lent. Ms. Chernioglo and Mr. Avalos also asserted that, prior to any of the subject transactions, they had consulted with their field

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<sup>3</sup> At all times relevant to the First Amended Accusation, Mr. Jones was a special investigator with the Bureau. At hearing, he testified his current position is staff attorney.

managers, Mr. Kooken and Mr. Yee, regarding this arrangement and were advised there was nothing wrong with it.

49. In her interview on June 8, 2015, Ms. Chernioglo stated that she consulted with Messrs. Kooken and Yee about lending money to fund the purchase of short sales she was listing. Messrs. Kooken and Yee advised she do so through the title company so that it was disclosed. Additionally, Ms. Chernioglo stated she asked that she asked the NCG transaction coordinators to "keep a close eye" on her short sale listings being sold to AAA to make sure they stayed in compliance with the law. Finally, she asked Mr. Kooken to audit her short sale transactions where AAA was the buyer. In each instance, Mr. Kooken gave the go-ahead to close escrow. Ms. Chernioglo admitted to drafting the addendum which stated Mr. Avalos intended to reside at the Marsh Hawk property, signing Mr. Avalos's name to the document, and submitting the document to Chase. She explained she did so to "get the deal done," because she believed a short sale was better for the owner than allowing the property to go into foreclosure.

50. In his interview on June 8, 2015, Mr. Avalos asserted he consulted with Mr. Yee regarding his plan to buy short sale properties, rehabilitate them, and resell them. He further advised Mr. Yee that Ms. Chernioglo would list the short sales and loan Mr. Avalos money to purchase the properties. Mr. Yee did not object. During the time of the short sales, Mr. Avalos also advised Mr. Kooken about his arrangement with Ms. Chernioglo. Mr. Kooken reviewed the transaction files for compliance. Regarding Marsh Hawk, Mr. Avalos denied signing the addendum stating he would reside in the property. The first time he saw the document was when the Freddie Mac investigators showed it to him.

51. Mr. Jones interviewed Mr. Kooken on June 10, 2015. Mr. Kooken asserted he was not aware that AAA was purchasing short sale properties listed by Ms. Chernioglo until August 2013. He denied reviewing their short sale transaction files for compliance.

#### *Mr. Avalos's Evidence*

52. Mr. Avalos has held a real estate license for almost 10 years, and a broker license for the past five years. His primary focus has been on commercial and traditional residential real estate transactions. He has closed approximately 280 real estate transactions over the course of his career. Prior to investing in short sale properties in 2013, Mr. Avalos had very limited experience with short sales. Other than the instant action, Mr. Avalos's license has never been subject to Bureau discipline.

53. Mr. Avalos became interested in investing in short sales in 2012 after seeing other real estate agents make similar investments. At that time, foreclosures and short sales comprised the vast majority of the market. There were few traditional listings. Mr. Avalos desired to turn rundown properties into the "pride of the neighborhood" and into homes that would serve the "end consumers" well. The potential cost of repairs was a major concern, as well as the risk of financial loss and timing of the market.

54. Mr. Avalos formed AAA in January 2013, initially for tax purposes. Real estate licensees are independent contractors, and not employees, of their affiliated real estate group. Mr. Avalos's accountant recommended he establish a corporation to receive his commissions as a corporation had better tax benefits than a sole proprietorship.

55. Messrs. Yee and Kooken were co-field managers for the NCG Elk Grove office. Mr. Avalos had a close working relationship with Mr. Yee. They got together on a weekly basis and went to lunch regularly. They also socialized outside of work, often attending baseball games. Mr. Avalos had met Mr. Yee's wife and children. As Mr. Avalos explained, "Everything I did was reported to Mr. Yee – sales numbers, production numbers, deals closing – we talked about it a lot. . . . Production and profitability to the office was a big deal."

56. When Mr. Avalos decided to invest in short sale properties, he consulted with Mr. Yee. They discussed the Marsh Hawk transaction "at length." Messrs. Yee and Kooken were both aware of Mr. Avalos's arrangement with Ms. Chernioglo. Messrs. Yee and Kooken encouraged their activities. Other agents in the Elk Grove office were doing the same thing, and the co-field managers were aware of it. Mr. Avalos asked whether it would be a problem if Ms. Chernioglo lent him money to purchase the properties. Mr. Kooken responded: "Who gives a shit where the money comes from? Banks see the final HUD. If they have problem with it, they can unwind the deal."

57. For each of the subject short sale transactions, Ms. Chernioglo wired money from her IMC account directly to the escrow account. There was no "back door" transfer of funds and everything was completely visible. The wire transfer ensured the title company knew the source of the money. Mr. Avalos had "nothing to hide, no intention to violate the law, or jeopardize [his] career, [or] harm anyone."

58. All of the short sale transaction files were reviewed by NCG's transaction coordinators. Either Mr. Yee or Mr. Kooken would also review the files for compliance before any commission check was issued. Mr. Kooken told Mr. Avalos that he had reviewed the transaction files for Marsh Hawk, Lockeridge, and Marlaw, and did not identify any concerns.

59. When Mr. Avalos learned that Ms. Chernioglo had signed his name to the Marsh Hawk addendum, he was "upset" and "sick about it." He denied that Ms. Chernioglo ever consulted him or asked for his permission to sign the document on his behalf. Nor would he have ever agreed to it because he had no intention of living at the property. At hearing, Mr. Avalos continued to deny having any knowledge of the document before the Freddie Mac investigators showed it to him.

60. For each of the three short sale properties, Mr. Avalos was presented with the short sale affidavit, along with the other closing documents, at close of escrow. At closing, Mr. Avalos signed the stack of closing documents in a very short amount of time. He did not carefully review each document before signing it. Rather, he flipped to the signature page

and signed it. At hearing, Mr. Avalos had no excuse for his failure to review the documents carefully. He described the close of escrow on these short sales as a “shotgun blast at the start of a race,” and admitted his “mind was in so many other places.”

61. Mr. Avalos admitted it was a mistake not to disclose the IMC loan to the lienholder, and expressed remorse for this failure. However, he insisted that the resell prohibitions in the affidavits did not apply to his reselling of the properties after he had rehabilitated them.

62. Mr. Avalos has been married for 15 years. He and his wife have two sons, ages 11 and 13. Mr. Avalos is the sole financial provider for his family, and is active in his sons’ school and sports activities.

Mr. Avalos regularly attends church and has been a member of the Good Shepherd Catholic Church in Elk Grove. He has helped raise funds for the church, and also volunteers for the church’s food and clothing drives.

63. Mr. Avalos is also active in his community. He has been a member of the Rotary Club of Laguna Sunrise (Rotary) since 2009, and has participated in coat drives, food drives, and fundraising activities. He has also helped with fundraising and made his own monetary donations toward several Rotary local and international projects regarding housing and clean water, and helping communities in other countries establish electricity and running water. Mr. Avalos served as membership director for the Rotary for one year in 2017.

Mr. Avalos is also a member of the Sacramento Association of Realtors and has been recognized as a major donor to the association’s Realtor Action Fund. Additionally, for the last six years, he has sponsored, fundraised and volunteered for the Battle of Badges, a boxing charity event organized by a peace officers’ group. Proceeds raised from this event benefit firefighter, peace officer, and military associations.

64. Mr. Avalos introduced several character letters from colleagues, clients, and family. In general, the authors of these letters describe Mr. Avalos as possessing good character, honesty, and a desire to help others. Mr. Avalos enjoys a stellar reputation in his community and is well-respected by peers and clients alike.

#### *Ms. Chernioglo’s Evidence*

65. Ms. Chernioglo has been a real estate licensee since 2005, and a broker for almost seven years. She has no history of discipline. She attended two years of college, taking general education courses with an emphasis in business management.

66. Ms. Chernioglo has been married for 18 years. Her husband is a general contractor. They have two children. After they bought their first home, the couple explored investing in real property and developed a passion for it. They have invested in numerous projects in California and other states. Currently, they have two corporations. Ms.



Chernioglo formed Lions Gate Real Estate, Inc. four years ago, after she was let go by NCG and became an independent broker. Two years ago, she and her husband formed TM Investments, Inc. for the sole purpose of investing in real property.

67. From 2014 to 2016, Ms. Chernioglo worked as an independent broker under Lions Gate Real Estate, Inc. For the last two years, Ms. Chernioglo has been employed as a broker associate in the Sacramento office for Realty One Group. Prior to joining the brokerage, she disclosed the Bureau's allegations against her. There have been no complaints against Ms. Chernioglo at either brokerage.

68. When the real estate market became flooded with bank-owned properties and short sale listings, Ms. Chernioglo educated herself on short sales. She took every class offered by Keller Williams and eventually became certified in short sales by Keller Williams. During her tenure at Keller Williams and NCG, Ms. Chernioglo was involved in over 200 real estate transactions. Over 90 percent of those were short sales.

69. When Mr. Avalos asked Ms. Chernioglo to lend him money to help purchase her short sale listings, Ms. Chernioglo readily agreed. She trusted Mr. Avalos "implicitly," based on their years of working together, and wanted to encourage his investment in short sale properties. Although the loan was never reduced to writing, Ms. Chernioglo and Mr. Avalos discussed the arrangement with NCG management. Ms. Chernioglo knew she was taking a risk by lending such large sums of money without any written document, but was confident in taking that risk based on her trust in Mr. Avalos as well as her knowledge of the industry, construction, and the properties' value after rehabilitation.

70. Ms. Chernioglo denied making any misrepresentations when she signed the short sale affidavits required by the lienholders. She contended that her loans to Mr. Avalos were private loans that were not required to be disclosed. She never acquired an ownership interest in any of the properties. Finally, Ms. Chernioglo understood the affidavits' requirement to notify the lienholder regarding agreements "related to . . . the subsequent sale" of the property referred to sales already determined at the time of the short sale signing. For instance, if the short sale buyer has another buyer lined up to purchase the property "as-is" within 24 to 48 hours of the short sale settlement date. Because Mr. Avalos did not have a subsequent buyer lined up at the time the short sale closed, there was no "subsequent sale" agreement to disclose.

71. Ms. Chernioglo admitted that she signed Mr. Avalos's name to the Marsh Hawk addendum which falsely stated he intended to use the property as his primary residence. Ms. Chernioglo explained that she spent several months negotiating terms with the various lienholders. On the date she was finalizing the closing documents for the short sale, Chase contacted her and demanded an addendum which stated the buyer intended to use the property as his primary residence. Ms. Chernioglo explained to Chase that Mr. Avalos did not intend to reside at the property. Chase informed her that it would not approve the short sale without the addendum. Ms. Chernioglo went to Mr. Avalos, who was in his office working on another matter. She told him about Chase's last minute requirement. Mr. Avalos

instructed Ms. Chernioglo to do whatever was necessary to finish the sale. Ms. Chernioglo subsequently drafted the addendum with the residency language and signed Mr. Avalos's name to it. That same afternoon, she drove to the Johnstons to obtain their signature on the document. She submitted the signed addendum to Chase the following day.

72. Ms. Chernioglo admitted she made two critical mistakes with respect to the Marsh Hawk addendum: (1) drafting a document which contained false information; and (2) signing Mr. Avalos's name to the document without a power of attorney. She averred she would never sign another person's name to a document without a power of attorney again, and would be hesitant to sign another's name even if she did have a power of attorney.

73. Ms. Chernioglo is no longer involved in short sales. She is affiliated with a brokerage, One Realty, Inc., which oversees all of her transactions. She has a transaction coordinator, who is also a licensed broker, to oversee all transaction documents. Ms. Chernioglo does not sign another person's signature to a transaction document, or hold any powers of attorney to do so. She and her husband remain active investors in real property.

74. Ms. Chernioglo and her family are very active in their church, the Bethany Slavic Missionary Church in Sacramento. She has volunteered with the church's women's ministry, organizing breakfast meetings, seminars, and annual retreats. Her children participate in the worship choir and band. Ms. Chernioglo was also very involved in the recent launch of a new church campus. Additionally, she has served in a leadership role in the church's young families department for several years. Ms. Chernioglo and her family have made significant donations (totaling more than \$100,000) to the church and its bible school.

75. Ms. Chernioglo and her husband also participate in Amistad Ministry, traveling to third world countries to build housing, schools, and shelters, and provide clothing and supplies. In 2015, the Chernioglos traveled to Mexico where Mr. Chernioglo helped with housing construction and Ms. Chernioglo ran the kitchen for over 350 volunteers.

76. Ms. Chernioglo submitted several character letters from clients, colleagues, family, and friends. These letters extolled Ms. Chernioglo's honesty and integrity, and willingness to put her clients' needs first. She is well-respected professionally and personally in her community.

77. Greg McClure testified on Ms. Chernioglo's behalf. They first met in June 2016 when Ms. Chernioglo became a broker associate at One Realty, Inc. Ms. Chernioglo was "honest and forthright" with Mr. McClure regarding the Bureau's allegations against her. He believes Ms. Chernioglo to be honest and professional; he has no reason to not believe her explanation of what happened.

78. Valeriy Chernioglo is Ms. Chernioglo's brother-in-law and testified on her behalf. He has known Ms. Chernioglo for 18 years, both personally and professionally. Ms.

Chernioglo helped him and his wife purchase their home, and also helped his parents buy their home. Mr. Chernioglo described his sister-in-law as a "very kind, very intelligent, organized, caring, really open-hearted person." Mr. Chernioglo works for his brother (Ms. Chernioglo's husband), and performed work for Mr. Avalos at the Lockeridge property.

### *Discussion*

#### SHORT SALE AFFIDAVITS

79. Clear and convincing evidence established the following: Mr. Avalos and Ms. Chernioglo had an ongoing arrangement whereby Ms. Chernioglo listed short sales for Mr. Avalos, through AAA, to purchase; Ms. Chernioglo, through IMC, loaned money to AAA to complete these purchases, and wired the loan funds directly to the escrow account; Ms. Chernioglo and Mr. Avalos shared the expenses to rehabilitate the properties; and, after AAA resold the properties, it repaid the loan amount plus half of the profit to IMC. Complainant failed to establish that Ms. Chernioglo or IMC had an ownership interest in any of the subject properties resulting from the short sales.

80. Clear and convincing evidence established that Mr. Avalos and Ms. Chernioglo, in signing the affidavits for the short sale of the Marsh Hawk, Lockeridge, and Marlaw properties, misrepresented that there were "no agreements, understandings or contracts related to the current sale or subsequent sale" of the properties that were not disclosed to the lienholder. Respondents failed to disclose IMC's loan to AAA to complete the purchase of the property, or AAA's agreement to split the proceeds from the resale of the property as partial consideration for the loan. Ms. Chernioglo's argument that "related to . . . subsequent sale" referred only to "sales already determined at the time of signing," is unpersuasive. Nothing in the affidavits' plain language infers a limited definition of "subsequent sale." Additionally, the affidavits also included specific time and price restrictions for subsequent sales of the properties. This evidences the lienholders' express interest in any "agreements, understandings, or contracts" for the quick resale of the properties.

81. It was established by clear and convincing evidence that Mr. Avalos violated the resale prohibitions listed in short sale affidavits for the Marsh Hawk and Lockeridge properties. Mr. Avalos, by and through AAA, resold the Marsh Hawk property less than 90 days after the short sale settlement date for an amount more than 120 percent of the short sale price. Likewise, he resold the Lockeridge property less than 90 days after the short sale settlement date for an amount more than 120 percent of the short sale price. Mr. Avalos's contention that the resale prohibitions did not prohibit him from reselling properties after he rehabilitated them is rejected. Other than his own self-serving testimony, he offered no evidence or legal authority to support this position. Moreover, his argument is contradicted by Freddie Mac's determination that his subsequent sales of the Marsh Hawk and Lockeridge properties did, in fact, violate the resale prohibitions of those affidavits.

## FORGING OF MR. AVALOS'S NAME

82. Clear and convincing evidence established that Ms. Chernioglo signed Mr. Avalos's name to the Marsh Hawk addendum regarding residency without his knowledge or authorization. Ms. Chernioglo's testimony that (1) she told Mr. Avalos about the lienholder's requirement for an addendum stating he would reside at the property, and (2) obtained Mr. Avalos's verbal approval to sign his name to the document, was not credible. Ms. Chernioglo's testimony was inconsistent with her prior statement to Mr. Jones. While Ms. Chernioglo has never denied signing Mr. Avalos's name to the addendum, she did not tell Mr. Jones that she discussed the matter with Mr. Avalos and got his tacit approval to sign his name. Given its exculpatory nature, it would not make sense for Ms. Chernioglo to withhold that information from Mr. Jones.

## DEFERENCE TO NCG MANAGEMENT

83. The evidence did not conclusively establish what communications transpired between Mr. Avalos and Ms. Chernioglo on one hand, and NCG management on the other. The testimonies of Ms. Kendall and Mr. Kooken were at times inconsistent and self-serving, given the discipline taken against Ms. Kendall and NCG. Conversely, other than their own self-serving testimonies, Mr. Avalos and Ms. Chernioglo offered no evidence to corroborate their alleged discussions with and approvals from NCG management. Notwithstanding this lack of clear evidence, Mr. Avalos and Ms. Chernioglo are charged with understanding their duties and responsibilities as licensees. Any assurance they received by NCG management concerning their short sale activities does not lessen their responsibility for their own actions.

## REHABILITATION AND FITNESS FOR LICENSURE

84. The Bureau has adopted criteria for evaluating the rehabilitation of a licensee facing potential discipline on the basis of a criminal conviction. (Cal. Code Regs., tit. 10, § 2912.) Although this case does not involve a criminal conviction, many of these criteria are nevertheless instructive in evaluating Mr. Avalos's and Ms. Chernioglo's rehabilitation and fitness for licensure. Such criteria include, in relevant part: the lapse of time since the misconduct occurred; correction of the business practice responsible in some degree for the misconduct; stability of family life and fulfillment of parental and familial responsibilities; and, significant and conscientious community involvement. (Cal. Code Regs., tit. 10, § 2912, subs. (a), (h), (j), and (l).)

85. Almost five years have lapsed since the short sale and subsequent resale of the subject properties. Since that time, Mr. Avalos and Ms. Chernioglo have operated as independent brokers or for an affiliated brokerage without complaint or incident. On the contrary, they are both well-respected and enjoy stellar reputations in their respective communities, both personal and professional. They have no previous disciplinary history. Neither respondent is involved in short sales anymore. Each is dedicated to his or her family life and parental responsibilities. Each is very active in his or her church and community organizations, donating both their time and money to help others.

86. It has been judicially recognized that rehabilitation requires an acknowledgment of wrongdoing. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation"].) Both respondents have taken the first steps toward rehabilitation. Although they disagree with the characterization of their conduct, they both acknowledged making mistakes and have taken steps to insure they will not recur. While respondents acted intentionally, there was no evidence they acted with malice or ill intent. The amount of evidence required to establish rehabilitation varies according to the seriousness of the conduct at issue. (*In re Menna* (1995) 11 Cal.4th 975, 991.) Here respondents have met their burden of proof in this regard. When all the evidence is considered, it would not be contrary to the public interest and safety to grant Mr. AValos and Ms. Chernioglo, individually, a restricted broker license under the terms and conditions set forth below.

#### *Costs*

87. The Bureau has requested that respondents be ordered to pay its investigation costs in the amount of \$9,192.05, and enforcement costs in the amount of \$5,455.70, for a total amount of \$14,647.75. The investigation costs are supported by a Certified Statement of Investigation Costs which provided detail regarding the time spent on the matter and hourly rate for each employee. Complainant also submitted a Certified Statement of Costs to support its prosecution costs which detailed the tasks performed, time spent, and calculation method used. The scope of work and amounts charged by complainant are reasonable in light of the allegations and legal issues in this matter. Complainant's request for costs and respondents' opposition are addressed in the Legal Conclusions below.

### LEGAL CONCLUSIONS

1. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and non-penal. They are not intended to punish the licensee, but rather to protect the public. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)
2. Complainant bears the burden of proving, by clear and convincing evidence, that the allegations in the First Amended Accusation are true. (Evid. Code, § 115; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)
3. Business and Professions Code section 10176 authorizes the Commissioner to suspend or revoke a real estate license where the licensee, in performing or attempting to

perform any act within the scope of real estate licensee is guilty of the following, in relevant part:

(a) Making any substantial misrepresentation.

[¶] . . . [¶]

(c) A continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.

[¶] . . . [¶]

(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

*Cause for Discipline*

4. As set forth in the Findings as a whole, Mr. Avalos and Ms. Chernioglo made substantial misrepresentations when they did not disclose their business arrangement regarding the short sales and subsequent resales of the Marsh Hawk, Lockeridge, and Marlaw properties. Therefore, cause exists to discipline the real estate licenses of respondents, and each of them, pursuant to Business and Professions Code section 10176, subdivision (a).

5. As set forth in Findings 1 through 15, and 82, Ms. Chernioglo made a substantial misrepresentation and was dishonest when she signed Mr. Avalos's name to the Marsh Hawk addendum regarding residency and submitted it to the lienholder in that (1) she knew the information listed in the addendum was false, and (2) she did not have Mr. Avalos's permission or authority to sign his name to the document. Therefore, separate cause exists to discipline Ms. Chernioglo's license pursuant to Business and Professions Code section 10176, subdivisions (a) and (i).

6. As set forth in Findings 1 through 29, and 81, Mr. Avalos engaged in dishonest dealing when he sold the Marsh Hawk and Lockeridge properties in violation of the resale prohibitions stated in the affidavits for the short sales of those properties. Accordingly, cause exists to discipline his license pursuant to Business and Professions Code section 10176, subdivision (i).

7. The evidence did not establish that Mr. Avalos or Ms. Chernioglo's actions with respect to the three short sales and subsequent sales constituted a "continued and flagrant course of misrepresentation or making of false promises." "Flagrant" is defined as "conspicuously offensive" or "so obviously inconsistent with what is right or proper as to

appear to be a flouting of law or morality.”<sup>4</sup> As set forth in Finding 86, although their actions were misguided, nothing in the record suggests that either Mr. Avalos’s or Ms. Chernioglo’s conduct rose to such a level as to be considered “flagrant.” Thus, cause was not established to discipline respondent’s licenses pursuant to Business and Professions Code section 10176, subdivision (c).

8. As stated in Findings 84 through 86, respondents have demonstrated sufficient rehabilitation and fitness for licensure such that it would not be against the public interest to allow them to retain their broker licenses on a restricted basis.

#### *Costs*

9. Business and Professions Code section 10106 provides that in any order issued in resolution of a disciplinary proceeding before it, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. As set forth in Finding 87, complainant’s costs in the amount of \$14,647.75 are reasonable when considering the scope of the investigation in light of the alleged misconduct, and the activities, hourly rates, and time for each activity.

10. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 provides guidance regarding additional factors to consider in determining the amount of costs to be assessed under cost recovery statutes such as Business and Professions Code section 10106. Those additional factors include whether the licensee was successful at hearing in getting charges dismissed or reduced, the licensee’s subjective good faith belief in the merits of his or her position, whether the licensee raised a colorable challenge to the proposed discipline, and the financial ability of the licensee to pay.

11. Here, Mr. Avalos and Ms. Chernioglo were successful in getting some charges reduced or dismissed, and demonstrated a good faith belief in the merits of their respective positions. Additionally, the \$14,647.75 amount requested encompasses the Bureau’s total costs for this matter, including its investigation and enforcement of the allegations against Ms. Kendall and NCG, prior to those respondents entering into a stipulated settlement with the Bureau. Therefore, it is inappropriate to require Mr. Avalos and Ms. Chernioglo to bear the burden of the Bureau’s entire costs in the matter. When all the *Zuckerman* factors are considered, the Bureau’s total costs should be reduced to \$5,000, and Mr. Avalos and Ms. Chernioglo ordered jointly and severally liable for this amount.

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<sup>4</sup> <https://www.merriam-webster.com/dictionary/flagrant>.

## ORDER

All licenses and licensing rights of respondents Andrew Avalos and Inessa Chernioglo under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), including their broker license, are revoked; provided, however, a restricted real estate broker license shall be issued to respondent Avalos and respondent Chernioglo pursuant to section 10156.5 of the Business and Professions Code provided he or she makes application therefor and pays to the Bureau of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted licenses issued to respondent Avalos and respondent Chernioglo shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

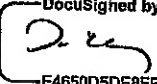
1. The restricted license issued to each respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of that respondent's conviction or plea of nolo contendere to a crime which is substantially related to that respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to each respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that said respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent Avalos and respondent Chernioglo, respectively, shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three (3) years have elapsed from the effective date of this Decision.
4. Within nine (9) months from the effective date of this Decision, respondent Avalos and respondent Chernioglo, respectively, shall present evidence satisfactory to the Real Estate Commissioner that he or she has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If he or she fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until that respondent presents such evidence. The Commissioner shall afford her or him the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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5. Respondent Avalos and respondent Chernioglo are jointly and severally liable to the Bureau for its reasonable investigative and enforcement costs in the total amount of \$5,000. The Bureau shall be paid this amount within thirty (30) days of the effective date of this Decision.

DATED: April 23, 2018

DocuSigned by:  
  
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**TIFFANY L. KING**  
**Administrative Law Judge**  
**Office of Administrative Hearings**