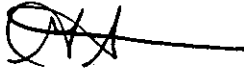


**December 12, 2011**

DEPARTMENT OF REAL ESTATE

By 

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of	)	
	)	NO. H-10940 SF
LEN GROSS AND LANNY CLARK	)	
MORTGAGE SERVICES, INC., a California	)	No.: 509-0729-001
Corporation, LANCE WESLEY CLARK and	)	
LEONARD ABURN GROSS,	)	
	)	
Respondents.	)	
	)	

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

LANCE WESLEY CLARK on behalf of Respondents LEN GROSS AND LANNY CLARK MORTGAGE SERVICES, INC., petitioned the Commissioner to voluntarily surrender its real estate license(s) and/or licensing rights issued by the Department of Real Estate pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondents LEN GROSS AND LANNY CLARK MORTGAGE SERVICES, INC., petition for voluntary surrender of its real estate license(s) is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in the Declaration executed by Respondents LEN GROSS AND LANNY CLARK MORTGAGE SERVICES, INC., on August 20, 2011, (attached as Exhibit "A" hereto).

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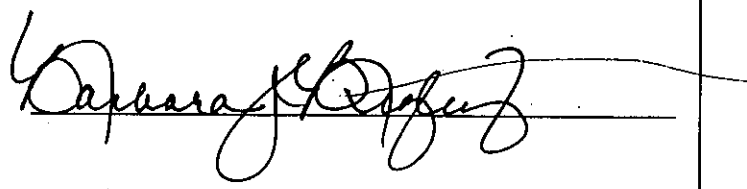
Respondents LEN GROSS AND LANNY CLARK MORTGAGE SERVICES,  
INC., license(s) certificate and pocket card shall be sent to the below-listed address so that they  
reach the Department on or before the effective date of this Order:

DEPARTMENT OF REAL ESTATE  
Attention: Licensing Flag Section  
P. O. Box 187000  
Sacramento, CA 95818-7000

This Order shall become effective at 12 o'clock noon on 1/2/12

DATED: 12/7/11

BARBARA J. BIGBY  
Acting Real Estate Commissioner





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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of	)	
	)	NO. H-10940 SF
LEN GROSS AND LANNY CLARK	)	
MORTGAGE SERVICES, INC., a California	)	<u>VOLUNTARY SURRENDER</u>
Corporation, LANCE WESLEY CLARK and	)	
LEONARD ABURN GROSS,	)	
	)	
Respondents.	)	

DECLARATION

My name is LANCE WESLEY CLARK, and I am currently an officer of LEN GROSS AND LANNY CLARK MORTGAGE SERVICES, INC., which was licensed as a real estate broker and/or has license rights with respect to said license. I am authorized and empowered to sign this declaration on behalf of LEN GROSS AND LANNY CLARK MORTGAGE SERVICES, INC., which is acting in pro per in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Government Code), LEN GROSS AND LANNY CLARK MORTGAGE SERVICES, INC., wishes to voluntarily surrender its real

1 estate license(s) and/or licensing rights issued by the Department of Real Estate ("Department"),  
2 pursuant to Business and Professions Code Section 10100.2.

3           LEN GROSS AND LANNY CLARK MORTGAGE SERVICES, INC.,  
4 understands that by so voluntarily surrendering its license(s) and/or licensing rights, it may be  
5 relicensed as a broker only by petitioning for reinstatement pursuant to Section 11522 of the  
6 Government Code. LEN GROSS AND LANNY CLARK MORTGAGE SERVICES, INC., also  
7 understands that by so voluntarily surrendering its license(s), it agrees to the following:

8           1.       LEN GROSS AND LANNY CLARK MORTGAGE SERVICES, INC.,  
9 admits that all allegations contained in the Accusation filed in this matter are true and correct.

10           2.       The filing of this Declaration shall be deemed as the petition of LEN  
11 GROSS AND LANNY CLARK MORTGAGE SERVICES, INC., for voluntary surrender.

12           3.       It shall also be deemed to be an understanding and agreement by LEN  
13 GROSS AND LANNY CLARK MORTGAGE SERVICES, INC., that it waives all rights it has  
14 to require the Commissioner to prove the allegations contained in the Accusation filed in this  
15 matter at a hearing held in accordance with the provisions of the Administrative Procedure Act  
16 (Government Code Sections 11400 et seq.), and that it also waives other rights afforded to it in  
17 connection with the hearing such as the right to discovery, the right to present evidence in  
18 defense of the allegations in the Accusation and the right to cross-examine witnesses.

19           4.       LEN GROSS AND LANNY CLARK MORTGAGE SERVICES, INC.,  
20 further agrees that upon acceptance by the Commissioner, as evidenced by an appropriate order,  
21 all affidavits and all relevant evidence obtained by the Department in this matter prior to the  
22 Commissioner's acceptance, and all allegations contained in the Accusation filed in the  
23 Department Case No. H-10940 SF, may be considered by the Department to be true and correct  
24 for the purpose of deciding whether to grant relicensure or reinstatement pursuant to  
25 Government Code Section 11522.

26           5.       LEN GROSS AND LANNY CLARK MORTGAGE SERVICES, INC., freely and  
27 voluntarily surrenders all of its licenses and license rights under the Real Estate Law.


H-10490 SF

LEN GROSS AND LANNY CLARK  
MORTGAGE SERVICES, INC.

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I declare under penalty of perjury under the laws of the State of California that  
the above is true and correct and that this declaration was executed August 20  
2011, at Pine, California.

LEN GROSS AND LANNY CLARK  
MORTGAGE SERVICES, INC.

By:   
LANCE WESLEY CLARK  
Pres.  
(Title)

**FILED**

**November 10, 2011**

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4 Telephone: (916) 227-0789

DEPARTMENT OF REAL ESTATE

By 

7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11	In the Matter of the Accusation of	)	
		)	NO. H-10940 SF
12	LEN GROSS AND LANNY CLARK	)	
13	MORTGAGE SERVICES, INC., a California	)	<u>STIPULATION AND AGREEMENT</u>
	Corporation, LANCE WESLEY CLARK and	)	
14	LEONARD ABURN GROSS,	)	
		)	
15	Respondents.	)	
16		)	

17  
18 It is hereby stipulated by and between Respondent LANCE WESLEY CLARK  
19 (hereinafter referred to as "Respondent"), acting in pro per, and the Complainant, acting by and  
20 through Michael B. Rich, Counsel for the Department of Real Estate, as follows for the  
21 purpose of settling and disposing of the Accusation filed on June 10, 2010, in this matter  
22 (hereinafter "the Accusation"):

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

1                   2.     Respondent has received, read and understands the Statement to  
2 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department  
3 of Real Estate in this proceeding.

4                   3.     On June 21, 2010, Respondent filed a Notice of Defense pursuant to  
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the  
6 allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice  
7 of Defense. Respondent acknowledges that Respondent understands that by withdrawing said  
8 Notice of Defense Respondent will thereby waive Respondent's right to require the  
9 Commissioner to prove the allegations in the Accusation at a contested hearing held in  
10 accordance with the provisions of the APA and that Respondent will waive other rights  
11 afforded to Respondent in connection with the hearing such as the right to present evidence in  
12 defense of the allegations in the Accusation and the right to cross-examine witnesses.

13                   4.     Respondent, pursuant to the limitations set forth below, hereby admits that  
14 the factual allegations in the Accusation pertaining to Respondent are true and correct and  
15 stipulates and agrees that the Real Estate Commissioner shall not be required to provide further  
16 evidence of such allegations.

17                   5.     It is understood by the parties that the Real Estate Commissioner may  
18 adopt the Stipulation and Agreement as his decision in this matter, thereby imposing the  
19 penalty and sanctions on Respondent's real estate license and license rights as set forth in the  
20 "Order" below. In the event that the Commissioner in his discretion does not adopt the  
21 Stipulation and Agreement, it shall be void and of no effect, and Respondent shall retain the  
22 right to a hearing and proceeding on the Accusation under all the provisions of the APA and  
23 shall not be bound by any admission or waiver made herein.

24                   6.     This Stipulation and Agreement shall not constitute an estoppel, merger or  
25 bar to any further administrative or civil proceedings by the Department of Real Estate with  
26 respect to any matters which were not specifically alleged to be causes for accusation in this  
27 proceeding.

1                   7. Respondent understands that by agreeing to this Stipulation and Agreement  
2 in settlement, Respondent agrees to pay, pursuant to Section 10148 of the Business and  
3 Professions Code (hereinafter "the Code"), the cost of the audit that led to this disciplinary  
4 action. The amount of said costs is \$6,439.50.

5                   8. Respondent has received, read, and understands the "Notice Concerning  
6 Costs of Audits". Respondent further understands that by agreeing to this Stipulation and  
7 Agreement in Settlement, the findings set forth below in the DETERMINATION OF ISSUES  
8 become final, and that the Commissioner may charge Respondent for the costs of any  
9 subsequent audit conducted pursuant to Section 10148 of the Code to determine if the violations  
10 have been corrected. The maximum costs of said audit will not exceed \$6,439.50.

11   DETERMINATION OF ISSUES

12                   By reason of the foregoing stipulations, admissions and waivers and solely for  
13 the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed  
14 that the following Determination of Issues shall be made:

15   I

16                   The acts and omissions of Respondent LANCE WESLEY CLARK described in  
17 the Accusation are grounds for the suspension or revocation of the licenses and license rights of  
18 Respondent under the provisions of Section 10159.2 of the Code and Section 2725 of Chapter 6,  
19 Title 10, California Code of Regulations (hereinafter "Regulations") all in conjunction with  
20 Section 10177(d) of the Code and under the provisions of Section 10177(h) of the Code.

21   ORDER

22   I

23                   A. All licenses and licensing rights of Respondent LANCE WESLEY CLARK  
24 under the Real Estate Law are suspended for a period of ninety (90) days from the effective date  
25 of this Decision; provided, however, that ninety (90) days of said suspension shall be stayed for  
26 two (2) years upon the following terms and conditions:  
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1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and,

2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

B. Respondent shall, within sixty (60) days of receiving an invoice therefor from the Commissioner, pay the Commissioner's costs in the amount of \$6,439.50 of the audit conducted pursuant to Section 10148 of the Business and Professions Code that resulted in the determination that Respondent committed the violations described in Paragraph I of the Determination of Issues, above. If Respondent fails to pay such cost within the sixty (60) days, the Commissioner may in his or her discretion indefinitely suspend all license and licensing rights of Respondent under the Real Estate Law until payment is made in full or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment. Upon payment in full, any indefinite suspension provided in this paragraph shall be stayed.

C. Respondent shall, within six (6) months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

D. Respondent shall, within nine (9) months from the effective date of this Decision, taken and successfully completed the trust fund accounting and handling course specified in paragraph (3), subdivision (a) of Section 10170.5 of the Business and Professions

1 Code. If Respondent fails to satisfy this condition, the Commissioner may order suspension of  
2 Respondent's license until Respondent passes the examination.

3 E. Respondent shall, within nine (9) months from the effective date of this  
4 Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has,  
5 since the most recent issuance of an original or renewal real estate license, taken and  
6 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the  
7 Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition,  
8 the Commissioner may order the suspension of Respondent's license until Respondent presents  
9 such evidence.

10 F. Respondent shall within ninety (90) days the effective date of the Decision  
11 provide evidence satisfactory to the Commissioner that Respondent has cured the trust fund  
12 shortages of \$18,745.95 as alleged in the Accusation against LEN GROSS AND LANNY  
13 CLARK MORTGAGE SERVICES, INC. If Respondent fails to satisfy this condition, the  
14 Commissioner may order the suspension of Respondent's license until Respondent presents  
15 such evidence.

16  
17  
18 10/31/11  
19 DATED

Michael B. Rich  
MICHAEL B. RICH, Counsel  
Department of Real Estate

20  
21 \* \* \*

22 I have read the Stipulation and Agreement and its terms are understood by  
23 me and are agreeable and acceptable to me. I understand that I am waiving rights given to me  
24 by the California Administrative Procedure Act (including but not limited to Sections 11506,  
25 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and  
26 voluntarily waive those rights, including the right of requiring the Commissioner to prove the  
27 allegations in the Accusation at a hearing at which I would have the right to cross-examine

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witnesses against me and to present evidence in defense and mitigation of the charges.

Aug. 20, 2011  
DATED

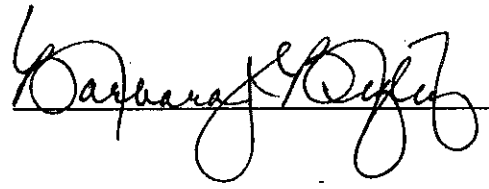
  
\_\_\_\_\_  
LANCE WESLEY CLARK

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The foregoing Stipulation and Agreement is hereby adopted by me as my  
Decision in this matter as to Respondent LANCE WESLEY CLARK and shall become effective  
at 12 o'clock noon on NOV 30 2011, 2011.

IT IS SO ORDERED 11/8, 2011.

BARBARA BIGBY  
Acting Real Estate Commissioner



FILED  
AUG 17 2011

DEPARTMENT OF REAL ESTATE  
By Allison

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Application of )  
LEONARD ABURN GROSS, ) NO. H-10940 SF  
Respondent. )

DISMISSAL

Respondent's REB license expired on June 28, 2009. Respondent's license renewal rights have expired.

The Accusation herein filed on June 10, 2010, against LEONARD ABURN GROSS is DISMISSED.

IT IS SO ORDERED 8/15/11

BARBARA J. BIGBY  
Acting Real Estate Commissioner

[Signature]

FLAG

1 MICHAEL B. RICH, Counsel  
2 State Bar No. 84257  
3 Department of Real Estate  
4 P. O. Box 187000  
5 Sacramento, CA 95818-7000  
6  
7 Telephone: (916) 227-1126

**FILED**  
JUN 10 2010  
DEPARTMENT OF REAL ESTATE  
By L. Frost

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11	In the Matter of the Accusation of	)	
12	LEN GROSS AND LANNY CLARK	)	NO. H-10940 SF
13	MORTGAGE SERVICES, INC., a California	)	ACCUSATION
14	Corporation, LANCE WESLEY CLARK and	)	
15	LEONARD ABURN GROSS,	)	
16	Respondents.	)	

17  
18 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner  
19 of the State of California, for Accusation against Respondent LEN GROSS AND LANNY  
20 CLARK MORTGAGE SERVICES, INC., a California Corporation, and Respondent LANCE  
21 WESLEY CLARK and Respondent LEONARD ABURN GROSS, is informed and alleges as  
22 follows:

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24 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner  
25 of the State of California, makes this Accusation against Respondents in her official capacity.

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Respondents LEN GROSS AND LANNY CLARK MORTGAGE SERVICES, INC., LANCE WESLEY CLARK and LEONARD ABURN GROSS are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereafter "the Code").

3

At all times herein mentioned, Respondent LEN GROSS AND LANNY CLARK MORTGAGE SERVICES, INC. (hereafter "Respondent MORTGAGE SERVICES") was and is licensed by the Department of Real Estate (hereinafter "the Department") as a corporate real estate broker.

4

At all times herein mentioned, Respondent LANCE WESLEY CLARK (hereinafter "Respondent CLARK") was and is licensed by the Department as an individual real estate broker.

5

At all times herein mentioned, Respondent CLARK was and is licensed by the Department as the designated broker/officer of Respondent MORTGAGE SERVICES. As said designated broker/officer, Respondent CLARK was at all times mentioned herein responsible pursuant to Section 10159.2 and Section 10177(h) of the Code and Section 2725 of Chapter 6, Title 10, California Code of Regulations (hereinafter "Regulations") for the supervision and control of the activities of the officers, agents, real estate licensees employed by and employees of Respondent MORTGAGE SERVICES and of the activities of the corporation for which a real estate license is required.

6

At all times herein mentioned, Respondent GROSS was, from June 28, 1993, through June 28, 2009, licensed by the Department as an individual real estate broker.

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At all times herein mentioned, Respondent GROSS as a licensed broker was employed in the capacity of a salesperson by Respondent MORTGAGE SERVICES under a broker-salesperson arrangement.

8

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

9

At all times herein mentioned, Respondent MORTGAGE SERVICES, Respondent CLARK, and Respondent GROSS, engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(d) of the Code, including on behalf of others, for compensation or in expectation of compensation, solicited borrowers or lenders for or negotiated loans or collected payments or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

FIRST CAUSE OF ACTION

10

There is hereby incorporated in this First, separate and distinct, Cause of Action, all of the allegations contained in Paragraphs 1 through 9, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

11

Within the three-year period prior to the filing of this Accusation, in acting as a

1 real estate broker as described in Paragraph 8, above, Respondent MORTGAGE SERVICES  
2 accepted or received funds in trust (hereinafter "trust funds") from or on behalf of lenders,  
3 investors, note owners, buyers, borrowers, and/or others in connection with the said mortgage  
4 activities and loan services.

5 12

6 Within the three-year period prior to the filing of this Accusation, in connection  
7 with the collection and disbursement of trust funds, the aforesaid trust funds accepted or  
8 received by Respondent MORTGAGE SERVICES, were deposited or caused to be deposited by  
9 said Respondent into bank accounts maintained by Respondent MORTGAGE SERVICES as  
10 follows:

- 11 a.) At The Mechanics Bank, 2690 Pinole Valley Road, in Pinole, California,  
12 Account No. 40976238, entitled "Len Gross and Lanny Clark Mortgage  
13 Services, Inc Servicing Account" (hereinafter "Bank Account #1) with  
14 Respondent CLARK, and Respondent GROSS as the authorized  
15 signatories on said account; and,
- 16 b.) At The Mechanics Bank, 2690 Pinole Valley Road, in Pinole, California,  
17 Account No. 40959147, entitled "Len Gross and Lanny Clark Mortgage  
18 Services, Inc Wiring Only Account" (hereinafter "Bank Account #2) with  
19 Respondent CLARK, and Respondent GROSS as the authorized  
20 signatories on said account.

21 13

22 In connection with the collection and disbursement of trust funds, as alleged in  
23 Paragraphs 11 and 12, above, Respondent MORTGAGE SERVICES failed to deposit and  
24 maintain the trust funds in a trust account or neutral escrow depository, or to deliver them into  
25 the hands of the owners of the funds, as required by Section 10145 of the Code, in such a  
26 manner that there was a trust fund shortage in Bank Account #1 in the approximate sum of  
27 \$18,745.95 as of December 31, 2009.



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2           Within the three-year period prior to the filing of this Accusation, in connection  
3 with the collection and disbursement of trust funds, as alleged in Paragraphs 11, 12 and 13,  
4 above, Respondent MORTGAGE SERVICES failed to obtain the prior written consents of the  
5 principals for the reduction of the aggregate balance of trust funds in Bank Account #1 to  
6 an amount less than the existing aggregate trust fund liability to the owners of said funds as  
7 required by Section 2832.1 of the Regulations (requiring written consent of every principal  
8 whose funds in the account shall be obtained by broker prior to each disbursement if such  
9 reduces the balance of funds in account to an amount less than existing trust fund aggregate  
10 liability of broker to all owners of funds).

11  
12           Within the three-year period prior to the filing of this Accusation, in connection  
13 with the collection and disbursement of trust funds, as alleged in Paragraphs 11, 12, and 13,  
14 above, Respondent MORTGAGE SERVICES deposited trust funds into Bank Account #1 and  
15 Bank Account #2, which were not designated as trust accounts in the name of the broker as  
16 trustee as required by Section 2832 of the Regulations (requiring deposit of trust funds into  
17 neutral escrow or into trust fund account in a bank in the name of broker as trustee . . .).

18  
19           Within the three-year period prior to the filing of this Accusation, in connection  
20 with the collection and disbursement of trust funds, as alleged above, Respondent MORTGAGE  
21 SERVICES:

- 22           (a) Failed to maintain a control record for trust funds received and disbursed  
23 and containing the information required by Section 2831 of the  
24 Regulations (requiring record of trust funds received and disbursed in  
25 columnar form, in chronological sequence, dates of receipt, from whom  
26 received, dates disbursed, date deposited, identity of depository, daily  
27 balance, etc.) for Bank Account #1;

- 1 (b) Failed to maintain for Bank Account #1 a separate record for each  
2 beneficiary of trust funds received and disbursed for Bank Account #1 as  
3 required by Section 10145 of the Code and Section 2831.1 of the  
4 Regulations (broker shall keep separate record for each beneficiary,  
5 accounting for all funds deposited to trust account, in columnar  
6 chronological form deposit date and amount, disbursement dates,  
7 disbursement check numbers, and balance after posting);
- 8 (c) Failed to perform, at least once a month, a reconciliation of all the  
9 separate beneficiary records with the control record, and/or failed  
10 to maintain a record of such reconciliations as required by Section 2831.2  
11 of the Regulations (maintain balance of all separate beneficiary and  
12 reconcile funds received with funds disbursed, etc.) for Bank Account #1;  
13 and,
- 14 (d) Permitted Leonard Aburn Gross, a person who, on and after June 29,  
15 2009, neither held an active California real estate license nor was bonded,  
16 to remain a signatory on Bank Account #1 and Bank Account #2 in  
17 violation of Section 2834 of the Regulations (requiring withdrawals from  
18 trust account to be performed only by authorized signatories who must be  
19 broker as trustee, real estate licensee employed by broker, or an  
20 unlicensed employee having fidelity bond coverage equal to maximum  
21 amount of trust funds in account).

22 17

23 The acts and/or omissions of Respondent MORTGAGE SERVICES as alleged  
24 above constitute cause for the suspension or revocation of the licenses and license rights of  
25 Respondent MORTGAGE SERVICES under the following provisions:

- 26 (a) As alleged in Paragraph 13, under Section 10145 of the Code (broker  
27 accepting funds belonging to others shall deposit such funds not

1 immediately into hands of principal or into neutral escrow depository  
2 shall deposit into a trust account maintained by broker in a bank until  
3 disbursed in accordance with principal's instructions) in conjunction with  
4 Section 10177(d) of the Code (suspension or revocation of license for  
5 willful disregard or violation of the Real Estate Law, §§ 10000 et seq. and  
6 §§ 11000 et seq., of the Code, or of the Regulations);

7 (b) As alleged in Paragraph 14, under Section 2832.1 of the Regulations  
8 (requiring written consent of every principal whose funds in the account  
9 shall be obtained by broker prior to each disbursement if such reduces the  
10 balance of funds in account to an amount less than existing trust fund  
11 aggregate liability of broker to all owners of funds) in conjunction with  
12 Section 10177(d) of the Code;

13 (c) As alleged in Paragraph 15, under Section 2832 of the Regulations  
14 (requiring deposit of trust funds into neutral escrow depository or into  
15 trust fund account in bank in the name of broker as trustee . . .) in  
16 conjunction with Section 10177(d) of the Code;

17 (d) As alleged in Paragraph 16(a), under Section 2831 of the Regulations  
18 (requiring record of trust funds received and disbursed in columnar form,  
19 in chronological sequence, dates of receipt, from whom received, dates  
20 disbursed, date deposited, identity of depository, daily balance, etc.) in  
21 conjunction with Section 10177(d) of the Code;

22 (e) As alleged in Paragraph 16(b), under Section 2831.1 of the Regulations  
23 (broker shall keep separate record for each beneficiary, accounting for all  
24 funds deposited to trust account, in columnar chronological form deposit  
25 date and amount, disbursement dates, disbursement check numbers, and  
26 balance after posting) in conjunction with Section 10177(d) of the Code;

27 ///

1 (f) As alleged in Paragraph 16(c), under Section 2831.2 of the Regulations  
2 (maintain balance of all separate beneficiary and reconcile funds received  
3 with funds disbursed, etc.) in conjunction with Section 10177(d) of the  
4 Code ; and,

5 (g) As alleged in Paragraph 16(d), under Section 2834 of the Regulations  
6 (requiring signatory on account holding trust funds to be broker, licensed  
7 employees of broker, or unlicensed employees who are bonded) in  
8 conjunction with Section 10177(d) of the Code

9 SECOND CAUSE OF ACTION

10 18

11 There is hereby incorporated in this Second, separate and distinct, Cause of  
12 Action, all of the allegations contained in Paragraphs 1 through 17, inclusive, of the Accusation  
13 with the same force and effect as if herein fully set forth.

14 19

15 Within the three-year period prior to the filing of this Accusation, in connection  
16 with the loan brokerage business described in Paragraph 9, at and all times herein mentioned,  
17 Respondent MORTGAGE SERVICES accepted or received trust funds from or on behalf of  
18 lenders or investors, borrowers, and others in connection with the solicitation, negotiation,  
19 processing, packaging, consummation, and servicing of mortgage loans, and, Respondent  
20 MORTGAGE SERVICES met the "multilender" criteria of Section 10237 of the Code (sale or  
21 offer to sell series of notes secured directly by interests in one or more parcels of real property or  
22 the sale of undivided interests in a note secured directly by one or more parcels of real property)  
23 with respect to notes or interests sold or serviced pursuant to Section 10238 of the Code  
24 (governing the brokering of promissory notes secured by real property to multiple lenders).

25 20

26 Within the three-year period prior to the filing of this Accusation, in connection  
27 with the activities set forth in Paragraphs 9 and 19, above, Respondents MORTGAGE

1 SERVICES failed to submit to the Department the written notice required in Section 10238(a)  
 2 of the Code (requiring broker to file with the commissioner within 30 days after the first  
 3 multilender transaction a notice in a form prescribed by and containing the information required  
 4 by this section) when Respondent MORTGAGE SERVICES made the following loan:

5 Lenders	Undivided Interest	Amount Loaned	Close Date	Borrowers	Property
6 Cornerstone 7 Educational Fund	28.57%	\$ 40,000	6/15/07	Veda Ambeau	1021 E. 21st Street Oakland, CA, and 1111 Allston Way Berkeley, CA
9 JAM Partnership	71.43%	\$ 100,000	6/15/07	Veda Ambeau	1021 E. 21st Street Oakland, CA, and 1111 Allston Way Berkeley, CA
11 <u>Total</u>	<u>100%</u>	<u>\$140,000</u>			

12 21

13 Within the three-year period prior to the filing of this Accusation, in connection  
 14 with the activities set forth in Paragraphs 9 and 19, above, Respondent MORTGAGE  
 15 SERVICES solicited and negotiated the sale to lenders of undivided interests in a note to be  
 16 secured directly by real property and disbursed the loan funds without having recorded a deed of  
 17 trust in violation of Section 10234(a) of the Code (every real estate licensee negotiating loan  
 18 secured by trust deed on real property shall cause trust deed to be recorded naming lender as  
 19 beneficiary prior to disbursement of loan funds) and Section 10238(g) of the Code (each interest  
 20 of purchaser in multilender loan shall be recorded pursuant to § 10234 of the Code) in regard to  
 21 the following loan:

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Lenders	Undivided Interest	Amount Loaned	Date Disbursed	Borrower	Property	Trust Deed Recorded
Rose L. Chan	13.79%	\$ 39,991	3/2/09	Jay Shah	0 Quimby Road San Jose, CA	None
Croop Enterprises	68.97%	\$ 200,013	3/2/09	Jay Shah	0 Quimby Road San Jose, CA	None
Barbara & Milton Brown	3.45%	\$ 10,005	3/2/09	Jay Shah	0 Quimby Road San Jose, CA	None
Louis Greer	<u>13.79%</u>	<u>\$ 39,991</u>	3/2/09	Jay Shah	0 Quimby Road San Jose, CA	None
<u>Total</u>	<u>100.00%</u>	<u>\$290,000</u>				

22

Within the three-year period prior to the filing of this Accusation, in connection with the loans set forth in Paragraphs 20 and 21, above, borrower Veda Ambeau ceased to make monthly payments due under the loan set forth in Paragraph 20, above, in or about February 2008, and borrower Jay Shah ceased to make monthly payments due under the loan set forth in Paragraph 21, above, in or about July 2009. Respondent MORTGAGE SERVICES continued to pay to the lenders of the Ambeau loan monthly payments on June 24, 2008 and July 25, 2008, and continued to pay to the lenders of the Shah loan monthly payments on August 20, 2009, August 21, 2009, September 17, 2009, October 22, 2009, November 20, 2009, and December 20, 2009, without notifying the lenders of the source of funds for these monthly payments in violation of Section 10238(k)(2) of the Code (if the source of the payment is not the maker of the note, agent shall inform purchasers or lenders of the source of payment - servicing agent or broker is not authorized to engage in any practice constituting any guarantee of payments or advancing payments on behalf of borrower other than as a result of a dishonored check.)

23

Within three years prior to the filing of this Accusation, and at all times herein mentioned, in the course and scope of soliciting lenders to purchase and of negotiating the sale of undivided interests in promissory notes to multiple lenders as set forth in Paragraphs 9, 19,

1 and 21, above, Respondent MORTGAGE SERVICES failed to provide a Lender Purchaser  
 2 Disclosure Statement (hereinafter "LPDS") to each lender containing the information required  
 3 by Section 10232.5 of the Code (broker must provide disclosure to lender containing property  
 4 address, estimated fair market value, type of construction, borrower income and credit, note  
 5 terms, property encumbrances, other anticipated loans, loan servicing provisions, broker's  
 6 commissions, joint beneficiary arrangements) and containing additional information as required  
 7 under Section 10238(l) of the Code (disclosure form shall include terms upon which note and  
 8 trust deed are sold, and the undivided interests: for existing note aggregate sale price, discount  
 9 of principal, accrued interest, effective return rate, escrowholder name and address, costs  
 10 payable by seller; for origination note, escrowholder name and address, closing date, costs  
 11 payable by borrower; or, for note secured by multiple parcels, address and description for each  
 12 parcel, available equity in each parcel, loan-to-value ratio for each parcel) and/or Respondent  
 13 MORTGAGE SERVICES failed to maintain the LPDS or make available the LPDS to the  
 14 Department's representative in violation of Section 10148 of the Code (broker shall retain for  
 15 three years copies of all documents and records executed or obtained by broker in connection  
 16 with any transaction requiring a real estate license and shall make such available to the  
 17 Commissioner's representative upon notice) in regard to the following loans:

18	<b>Lenders</b>	<b>Undivided Interest</b>	<b>Amount Loaned</b>	<b>Date Disbursed</b>	<b>Borrower</b>	<b>Property</b>	<b>LPDS Provided</b>
19	Rose L. Chan	13.79%	\$ 39,991.00	3/2/09	Jay Shah	0 Quimby Road San Jose, CA	None
20							
21	Croop Enterprises	68.97%	\$ 200,013.00	3/2/09	Jay Shah	0 Quimby Road San Jose, CA	None
22							
23	Barbara & Milton Brown	3.45%	\$ 10,005.00	3/2/09	Jay Shah	0 Quimby Road San Jose, CA	None
24							
25	Louis Greer	<u>13.79%</u>	<u>\$ 39,991.00</u>	3/2/09	Jay Shah	0 Quimby Road San Jose, CA	None
26	<u>Total</u>	<u>100.00%</u>	<u>\$290,000.00</u>				

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1	Rose L. Chan	13.82%	\$ 14,994.70	8/13/09	Jay Shah	530 Adams Ave. Los Banos, CA	None
2							
3	Croop Enterprises	68.94%	\$ 74,799.90	8/13/09	Jay Shah	530 Adams Ave. Los Banos, CA	None
4	Barbara & Milton Brown	3.41%	\$ 3,699.85	8/13/09	Jay Shah	530 Adams Ave. Los Banos, CA	None
5							
6	Louis Greer	<u>13.82%</u>	<u>\$ 14,994.70</u>	8/13/09	Jay Shah	530 Adams Ave. Los Banos, CA	None
7	<u>Total</u>	<u>100.00%</u>	<u>\$ 108,500.00</u>				
8							
9	Rose L. Chan	13.82%	\$ 14,994.70	8/13/09	Jay Shah	2103 - 11th St. Los Banos, CA	None
10	Croop Enterprises	68.94%	\$ 74,799.90	8/13/09	Jay Shah	2103 - 11th St. Los Banos, CA	None
11							
12	Barbara & Milton Brown	3.41%	\$ 3,699.85	8/13/09	Jay Shah	2103 - 11th St. Los Banos, CA	None
13							
14	Louis Greer	<u>13.82%</u>	<u>\$ 14,994.70</u>	8/13/09	Jay Shah	2103 - 11th St. Los Banos, CA	None
15	<u>Total</u>	<u>100.00%</u>	<u>\$ 108,500.00</u>				

17                   Within three years prior to the filing of this Accusation, and at all times herein  
18 mentioned, in the course and scope of soliciting borrowers and negotiating loans secured by real  
19 property as set forth in Paragraph 9, above, Respondent MORTGAGE SERVICES was required  
20 under Section 10240 of the Code to provide to borrowers a Mortgage Lender Disclosure  
21 Statement (hereinafter "MLDS") showing the name of the broker negotiating the loan, the  
22 broker license number, and/or showing the license number of the broker's representative, and/or  
23 as signed by the borrower, and containing a statement that the MLDS does not constitute a loan  
24 commitment, in conformance with and containing the information required by Section 10241 of  
25 the Code (requiring MLDS to disclose: all costs and expenses of loan; commissions, points and  
26 bonuses paid to broker; liens encumbering property; amounts to be paid by borrower to others;



1 loan balance; funds due to borrower; principal; interest rate; balloon payments; name, address  
2 and license number of broker; inclusion of broker controlled funds; prepayment terms; etc.)

3 25

4 Within three years prior to the filing of this Accusation, and at all times herein  
5 mentioned, in the course and scope of soliciting borrowers and negotiating promissory notes  
6 secured by real property as set forth in Paragraph 24, above, Respondent MORTGAGE  
7 SERVICES failed to provide the MLDS to the borrower or failed to provide to the borrower a  
8 MLDS containing all required information as set forth in Section 10240 of the Code (within 3  
9 business days after receipt of written loan application or before borrower becomes obligated on  
10 the note, whichever is earlier, broker negotiating a loan secured by real property shall deliver to  
11 borrower as signed by borrower copy of the disclosure containing information required by  
12 Section 10241 of the Code), and/or failed to maintain and make available to the Department's  
13 representative in violation of Section 10148 of the Code a copy of the MLDS as signed by the  
14 borrower, in the following transactions:

15	<b>Lenders</b>	<b>Undivided Interest</b>	<b>Amount Loaned</b>	<b>Date Disbursed</b>	<b>Borrower</b>	<b>Property</b>	<b>MLDS Provided</b>
16	Rose L. Chan	13.79%	\$ 39,991.00	3/2/09	Jay Shah	0 Quimby Road San Jose, CA	None
17							
18	Croop Enterprises	68.97%	\$ 200,013.00	3/2/09	Jay Shah	0 Quimby Road San Jose, CA	None
19							
20	Barbara & Milton Brown	3.45%	\$ 10,005.00	3/2/09	Jay Shah	0 Quimby Road San Jose, CA	None
21	Louis Greer	<u>13.79%</u>	<u>\$ 39,991.00</u>	3/2/09	Jay Shah	0 Quimby Road San Jose, CA	None
22							
23	<u>Total</u>	<u>100.00%</u>	<u>\$ 290,000.00</u>				

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1	Cornerstone	28.57%	\$ 40,000.00	6/15/07	Veda	1021 E. 21st St.	None
2	Educational				Ambeau	Oakland, CA, and	
3	Fund					1111 Allston Way	
						Berkeley, CA	
4	JAM	71.43%	\$100,000.00	6/15/07	Veda	1021 E. 21st St.	None
5	Partnership				Ambeau	Oakland, CA, and	
6	Educational					1111 Allston Way	
7	Fund					Berkeley, CA	
8	<u>Total</u>	<u>100%</u>	<u>\$140,000.00</u>				

26

9 The acts and/or omissions of Respondent MORTGAGE SERVICES as alleged  
10 above constitute cause for the suspension or revocation of the licenses and license rights of said  
11 Respondent under the following provisions:

- 12 (a) As alleged in Paragraph 20 under Section 10238(a) of the Code in  
13 conjunction with Section 10177(d) of the Code (suspension or revocation  
14 of license for willful disregard or violation of the Real Estate Law, §§  
15 10000 et seq. and §§ 1000 et seq. of the Code, or of the Regulations);
- 16 (b) As alleged in Paragraph 21 under Sections 10234(a) and 10238(g) of the  
17 Code and under Section 10177(g) of the Code (demonstrated negligence  
18 or incompetence in performing an act for which he or she is required to  
19 hold a license), all in conjunction with Section 10177(d) of the Code;
- 20 (c) As alleged in Paragraph 22, under Section 10238(k)(2) of the Code and  
21 under Section 10177(g) of the Code (demonstrated negligence or  
22 incompetence in performing an act for which he or she is required to hold  
23 a license) in conjunction with Section 10177(d) of the Code;
- 24 (d) As alleged in Paragraph 23, under Sections 10232.5 and 10238(l) of the  
25 Code, and under Section 10177(g) of the Code (demonstrated negligence  
26 or incompetence in performing an act for which he or she is required to  
27

1 hold a license), and/or Section 10148 of the Code, all in conjunction with  
2 Section 10177(d) of the Code; and  
3 (e) As alleged in Paragraph 25, under Sections 10240 and 10241 of the Code  
4 and under Section 10177(g) of the Code (demonstrated negligence or  
5 incompetence in performing an act for which he or she is required to hold  
6 a license), and/or Section 10148 of the Code, all in conjunction with  
7 Section 10177(d) of the Code.

8 THIRD CAUSE OF ACTION

9 27

10 There is hereby incorporated in this Third, separate and distinct, Cause of Action,  
11 all of the allegations contained in Paragraphs 1 through 26, inclusive, of the Accusation with the  
12 same force and effect as if herein fully set forth.

13 28

14 Within the three year period prior to the filing of this Accusation, Respondent  
15 MORTGAGE SERVICES maintained more than one place of business and failed to apply for  
16 and procure an additional license for the branch office Respondent maintained at 1999 Harrison  
17 Street, Suite 1650, in Oakland, California, in violation of Section 2715 of the Regulations (every  
18 broker not acting in the capacity of a salesperson to another broker shall maintain on file with  
19 commissioner the address of each branch office) and Section 10163 of the Code (broker  
20 maintaining more than one place of business shall apply for and procure additional license for  
21 each branch).

22 29

23 The acts and omissions of Respondent MORTGAGE SERVICES as alleged in  
24 Paragraph 28, above, constitute cause for the suspension or revocation of the licenses and  
25 license rights of said Respondent under Section 2715 of the Regulations in conjunction with  
26 Section 10177(d) of the Code (suspension or revocation of license for willful disregard or  
27 violation of the Real Estate Law, §§ 10000 et seq. and §§ 1000 et seq. of the Code, or of the

1 Regulations) and Section 10163 of the Code in conjunction with Section 10165 of the Code  
2 (violation of § 10163 in grounds for suspension or revocation of license) and/or in conjunction  
3 with section 10177(d) of the Code.

4 FOURTH CAUSE OF ACTION

5 30

6 There is hereby incorporated in this Fourth, separate and distinct, Cause of  
7 Action, all of the allegations contained in Paragraphs 1 through 29, inclusive, of the Accusation  
8 with the same force and effect as if herein fully set forth.

9 31

10 At all times herein mentioned, Respondent GROSS was a member of the  
11 California State Bar [Bar No. 31944], licensed to practice law in the State of California, and in  
12 the course and scope of law practice provided legal counsel and representation for Carlton  
13 Clardy Jones, the Family Trust of Carlton Clardy Jones and Shirley Mann Jones dated January  
14 25, 1990, and a partnership known as J. A. M. Partnership. As a result of said legal counsel and  
15 representation, and the fiduciary duties arising from such attorney-client relationship,  
16 Respondent GROSS fostered a relationship of trust and confidence with the aforesaid  
17 individuals and entities.

18 32

19 Within the three year period prior to the filing of this Accusation, on or about  
20 June 15, 2007, in the course of soliciting and negotiating the sale of interests in promissory  
21 notes secured by liens on real property as set forth in Paragraph 20, above, Respondent GROSS,  
22 on behalf of Respondent MORTGAGE SERVICES, induced J. A. M. Partnership to invest  
23 \$100,000.00 to fund a 71.43% share of the multilender loan to Veda Ambeau by representing to  
24 the investor that: 1.) "We take every reasonable step to assure that our borrowers are credit-  
25 worthy and have the ability to repay the loan, as well as to assure that the property value is  
26 accurately represented;" and, 2.) the trust deeds securing the loan would be in first position (i.e.  
27 senior to all other loan encumbrances).

1  
2 The representations described in Paragraph 32, above, were false and misleading  
3 and were known by Respondents GROSS and MORTGAGE SERVICES to be false and  
4 misleading when made or were made by such Respondents with no reasonable grounds for  
5 believing said representations to be true, and/or said Respondents should have known at the  
6 time through the exercise of reasonable diligence that such representations were false and  
7 misleading. In truth and in fact, as Respondents GROSS and MORTGAGE SERVICES knew:

- 8 1.) Veda Ambeau was not creditworthy and had a low credit score;
- 9 2.) Veda Ambeau had a history of mortgage defaults concerning three other  
10 Notices of Default recorded pursuant to loans secured by real property;
- 11 3.) Veda Ambeau had defaulted on a pre-existing loan made by Barry R.  
12 Gross and secured by a deed of trust encumbering the real property  
13 identified as 1021 E. 21st Street in Oakland, California;
- 14 4.) The pre-existing loan secured by 1021 E. 21st Street in Oakland,  
15 California, was subject to a trustee's sale scheduled for June 15, 2007,  
16 under the pre-existing trust deed;
- 17 5.) Barry R. Gross, the lender under the pre-existing loan and the beneficiary  
18 under the pre-existing trust deed encumbering 1021 E. 21st Street in  
19 Oakland, California, was the son of Respondent GROSS;
- 20 6.) The trustee under the pre-existing deed of trust encumbering 1021 E. 21st  
21 Street in Oakland, California, which received foreclosure and  
22 reconveyance fees totaling \$1,561.86, was Contractors Capital Corp  
23 [Secretary of State entity no. C0450540], a California corporation of  
24 which Respondent GROSS and his son, Barry R. Gross, were officers,  
25 shareholders, and directors, and for which Barry R. Gross was the agent  
26 for service of process;
- 27



1 with J. A. M. Partnership pursuant to Section 10238(k) of the Code (sale of multilender notes  
2 shall be sold subject to a written agreement with a licensed real estate broker to act as agent for  
3 lenders to service notes secured by real property) for the purpose of: 1.) collecting loan  
4 payments from the borrower Veda Ambeau on behalf of the lenders; 2.) to provide notice to the  
5 lenders in the event the borrower defaulted in making the monthly loan payments on any loan  
6 secured by the property identified as the 1021 E. 21st Street in Oakland, California, and secured  
7 by the property identified as 1111 Alston Way, in Berkeley, California; 3.) authorizing and  
8 requiring Respondent MORTGAGE SERVICES to direct the trustee to institute foreclosure  
9 proceedings to protect the lenders' security interest in the real properties securing their loan;  
10 and, 4.) of granting the majority investor the right to govern the decisions in regard to a default.

11 36

12 Within the three year period prior to the filing of this Accusation, in regard to the  
13 "Loan Servicing Agreement" set forth in Paragraph 35, above, Respondent GROSS and  
14 Respondent MORTGAGE SERVICES:

- 15 1.) Failed to notify the lenders that the trustee under the first deed of trust  
16 encumbering 1111 Alston Way, in Berkeley, California, had on or about  
17 March 5, 2008, recorded a Notice of Default in violation of Section  
18 10233(c)(1) of the Code (requiring loan servicing agent to notify lender  
19 within 15 days that notice of default has been recorded) and/or in  
20 violation of Section 10238(k)(4) of the Code (servicing agent shall  
21 promptly notify lenders of notice of default on prior encumbrances);
- 22 2.) Failed to record a Notice of Default to protect the lenders' interests in  
23 response to Veda Ambeau's default on the senior loan secured by the first  
24 deed of trust encumbering 1111 Alston Way, in Berkeley, California, and  
25 /or in response to the senior lienholder's Notice of Default;
- 26 3.) Failed to solicit direction from J. A. M. Partnership as majority interest  
27 holder in response to Veda Ambeau's default under the senior loan

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secured by the first deed of trust encumbering 1111 Alston Way, in Berkeley, California;

4.) Failed to notify the lenders that the trustee under the first deed of trust encumbering 1111 Alston Way, in Berkeley, California, had on or about June 10, 2008, recorded a Notice of Trustee's Sale in violation of Section 10233(c)(2) of the Code (requiring loan servicing agent to notify lender within 15 days that notice of trustee's sale has been recorded) and/or Section 10238(k)(5)(A) of the Code (loan servicing agent shall promptly forward copy of notice of trustee's sale to each lender);

5.) Failed to take any action to protect the lenders' interests in response to the senior lienholder's impending trustee's sale under the first deed of trust encumbering 1111 Alston Way, in Berkeley, California, and allowed the property to be sold pursuant to said trustee's sale on or about July 22, 2008, thus extinguishing the interests of J. A. M. Partnership;

(6) Failed to notify the lenders that the trustee under the first deed of trust encumbering 1021 E. 21st Street in Oakland, California, had recorded a Notice of Default in violation of Section 10233(c)(1) of the Code (requiring loan servicing agent to notify lender within 15 days that notice of default has been recorded) and/or in violation of Section 10238(k)(4) of the Code (servicing agent shall promptly notify lenders of notice of default on prior encumbrances);

7.) Failed to record a Notice of Default to protect the lenders' interests in response to Veda Ambeau's default on the senior loan secured by the first deed of trust encumbering 1021 E. 21st Street in Oakland, California;

8.) Failed to solicit direction from J. A. M. Partnership as majority interest holder in response to Veda Ambeau's default under the senior loan secured by the first deed of trust encumbering 1021 E. 21st Street in



1 Oakland, California; and,

- 2 9.) Failed to take any action to protect the lenders' interests in response to  
3 Veda Ambeau's default under the first deed of trust encumbering 1021 E.  
4 21st Street in Oakland, California.

5 37

6 Within the three year period prior to the filing of this Accusation, on or about  
7 June 15, 2007, in the course and scope of soliciting lenders to purchase and of negotiating the  
8 sale of undivided interests in promissory notes to multiple lenders as set forth in Paragraphs 9,  
9 19, and 20, above, Respondent GROSS and Respondent MORTGAGE SERVICES:

- 10 1.) Provided to J. A. M. Partnership a LPDS regarding the loan to Veda  
11 Ambeau that was not signed and dated by the broker in violation of  
12 Section 10232.4(a) of the Code (broker soliciting and negotiating with  
13 person to make a loan shall provide the LPDS required by § 10232.5 of  
14 the Code, which shall be signed by broker or on broker's behalf by  
15 broker's real estate licensed employee when LPDS is provided to the  
16 lender);
- 17 2.) Provided to J. A. M. Partnership a LPDS regarding the loan to Veda  
18 Ambeau that failed to include an estimated fair market value for 1111  
19 Alston Way, in Berkeley, California, determined by an independent  
20 appraisal and/or failed to obtain the lender's written waiver in violation of  
21 Section 10232.5(a)(2) of the Code (LPDS shall include fair market value  
22 based upon independent appraisal, or broker must obtain lender's written  
23 waiver provided broker provides written estimated value, which shall  
24 include objective data for broker's estimate);
- 25 3.) Failed to obtain an independent appraisal for 1021 E. 21st Street in  
26 Oakland, California, and 1111 Alston Way, in Berkeley, California, or  
27 failed to provide a copy of the independent appraisal to J. A. M.

1 Partnership, and/or failed to provide to J. A. M. Partnership the broker's  
2 written estimate of value for the said property in violation of Section  
3 10232.5(a)(2) of the Code;

4 4.) Failed to inform to J. A. M. Partnership and its individual partners of the  
5 lender's right to receive copies of the appraisals for the properties  
6 securing the loan to Veda Ambeau; and,

7 5.) Failed to provide to J. A. M. Partnership a conformed copy of the  
8 recorded deeds of trust securing the loan to Veda Ambeau in violation of  
9 Section 10234.5 of the Code (broker shall deliver to lender and borrower  
10 conformed copies of any deed of trust securing the loan).

11 38

12 The acts and omissions of Respondents described in Paragraphs 32 through 37,  
13 inclusive, above, constitute misrepresentation, fraud, deceit, and dishonest dealing.

14 39

15 The acts and/or omissions of Respondent GROSS and Respondent MORTGAGE  
16 SERVICES as alleged in Paragraphs 32 through 38, inclusive, above, constitute cause for the  
17 suspension or revocation of the licenses and license rights of Respondents GROSS and  
18 MORTGAGE SERVICES under the following provisions:

- 19 (a) As to Paragraphs 32 through 38, inclusive, above, under 10176(a) of the  
20 Code (making a substantial misrepresentation);
- 21 (b) As to Paragraphs 32 through 38, inclusive, above, under Section 10176(b)  
22 of the Code (making any false promises of a character likely to influence,  
23 persuade or induce);
- 24 (c) As to Paragraphs 32 through 38, inclusive, above, under Section 10176(i)  
25 of the Code (any other conduct, whether of the same or a different  
26 character than specified in this section, which constitutes fraud or  
27 dishonest dealing);

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- (d) As to Paragraphs 32 through 38, inclusive, above, under Section 10177(j) of the Code (any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing);
- (e) As to Paragraphs 32 through 37, inclusive, above, under Section 10177(g) of the Code (demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license);
- (f) As to Paragraph 34, above, under Section 10176(d) of the Code (acting for more than one party in a transaction without the knowledge and consent of all parties thereto);
- (g) As to Paragraph 36(1), above, under Section 10238(k)(4) of the Code in conjunction with Section 10177(d) of the Code (suspension or revocation of license for willful disregard or violation of the Real Estate Law, §§ 10000 et seq. and §§ 11000 et seq., of the Code, or of the Regulations);
- (h) As to Paragraph 36(4), above, under Section 10233(c)(2) of the Code and/or Section 10238(k)(5)(A), all in conjunction with Section 10177(d) of the Code;
- (i) As to Paragraph 36(6), above, under Section 10233(c)(2) of the Code and/or Section 10238(k)(5)(A), all in conjunction with Section 10177(d) of the Code;
- (j) As to Paragraph 37(1), above, under Section 10232.4(a) of the Code in conjunction with Section 10177(d) of the Code;
- (k) As to Paragraph 37(2), above, under Section 10232.5(a)(2) of the Code in conjunction with Section 10177(d) of the Code;
- (l) As to paragraph 37(3), above, under Section 10232.5(a)(2) of the Code in conjunction with Section 10177(d) of the Code; and,
- (k) As to Paragraph 37(5), above, under Section 10234.5 of the Code in

1 conjunction with Section 10177(d) of the Code.

2 FIFTH CAUSE OF ACTION

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4 There is hereby incorporated in this Fifth, separate and distinct, Cause of  
5 Action, all of the allegations contained in Paragraphs 1 through 39, inclusive, of the Accusation  
6 with the same force and effect as if herein fully set forth.

7 41

8 At all times herein mentioned, Respondent CLARK was responsible, as the  
9 designated broker officer of Respondent MORTGAGE SERVICES, for the supervision and  
10 control of the activities conducted on behalf of the corporation by its officers and employees and  
11 of the corporate activities requiring a real estate license. Respondent CLARK failed to exercise  
12 reasonable supervision and control over the loan services and mortgage brokering activities of  
13 Respondent MORTGAGE SERVICES and its employees. In particular, Respondent CLARK  
14 participated in, permitted, ratified, and/or caused the conduct described in the First, Second,  
15 Third, and Fourth Causes of Action, above, to occur, and failed to take reasonable steps to  
16 insure, including, but not limited to, the proper handling of trust funds, proper trust fund record  
17 keeping, review of trust fund records and accounts, the licensing of branch offices, review and  
18 approval and submission of Lender/Purchaser Disclosure Statements, review and approval and  
19 submission of Mortgage Lending Disclosure Statements, complete and honest representations,  
20 proper maintenance and retention of transactional records, proper disclosures, notifications to  
21 lenders regarding borrower's defaults and Notice of Trustee Sale, disclosure of dual agency  
22 relationships, proper supervision of employees, and to insure the implementation of policies,  
23 rules, procedures, and systems to ensure the compliance of the corporation and its employees  
24 with the Real Estate Law (Business and Professions Code Sections 10000 et seq. and Sections  
25 11000 et seq.) and the Commissioner's Regulations (Chapter 6, Title 10, California Code of  
26 Regulations).

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1  
2 The acts and/or omissions of Respondent CLARK as described in Paragraph 41,  
3 above, constitute grounds for the suspension or revocation of the licenses and license rights of  
4 Respondent CLARK under the provisions of Section 10159.2 of the Code (designated  
5 broker/officer responsible for supervision and control of activities conducted on behalf of  
6 corporation by officers, licensed salespersons and employees to secure compliance with the Real  
7 Estate Law) and Section 2725 of the Regulations (broker shall: exercise reasonable supervision  
8 over licensed employees; establish policies and procedures for compliance with Real Estate  
9 Law; supervise transactions requiring a real estate license; trust fund handling; etc.), all in  
10 conjunction with Section 10177(d) of the Code and/or of Section 10177(h) of the Code  
11 (suspension or revocation for broker or designated broker/officer who fails to exercise  
12 reasonable supervision of licensed employees or licensed activities of broker corporation).

#### MATTERS IN AGGRAVATION

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14  
15 Effective July 5, 2007, in Case No. H-9495 SF, the real estate broker license of  
16 Respondent GROSS was suspended, pursuant to Stipulation and Agreement, for sixty (60) days,  
17 with thirty (30) days actual suspension and thirty (30) days subject to stay for a period of two  
18 years upon payment of a monetary penalty of \$100.00 per day for a total penalty of \$3,000.00  
19 and upon terms and conditions, including a requirement that Respondent enroll in and  
20 successfully complete the trust fund accounting and handling course specified in paragraph (3),  
21 subdivision (a) of Section 10170.5 of the Business and Professions Code, and that said stay shall  
22 become permanent if no further cause for disciplinary action occurs within two (2) years of the  
23 effective date of the Decision. Respondent's broker license was suspended for violating trust  
24 fund handling and record keeping, and mortgage lending practices under the provisions of:  
25 Section 10145 of the Code and Section 2832 of the Regulations, Section 2831 of the  
26 Regulations, and Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the  
27 Code; under Section 10148 of the Code in conjunction with Section 10177(d) of the Code;

1 Section 10238(j)(1) of the Code in conjunction with Section 10177(d) of the Code; and, under  
2 Section 10177(h) of the Business and Professions Code for failure, as designated broker officer  
3 of corporate real estate broker licensee Gross Mortgage Corporation, to properly supervise the  
4 licensed activities of said corporation and thereby permitting or causing said corporate licensee  
5 to violate the aforesaid regulations and statutes.

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

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13   
14 TRICIA D. SOMMERS  
15 Deputy Real Estate Commissioner

16 Dated at Sacramento, California,  
17 this 9<sup>th</sup> day of June, 2010.