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**FILED**

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**BUREAU OF REAL ESTATE**  
By L. Frost

8 BEFORE THE BUREAU OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of	)	
	)	NO. H-11679 SF
	)	
12 WR PROPERTIES and	)	
13 CRAIG HARMON MCCLEAREN,	)	<u>ACCUSATION</u>
	)	
14 Respondents.	)	
	)	

16 The Complainant, ROBIN S. TANNER, acting in her official capacity as a  
17 Deputy Real Estate Commissioner of the State of California, for cause of Accusation against  
18 Respondents WR PROPERTIES ("WRP") and CRAIG HARMON MCCLEAREN  
19 ("MCCLEAREN") are informed and allege as follows:

20 PRELIMINARY ALLEGATIONS

21 1.

22 WRP is presently licensed by the Bureau of Real Estate ("the Bureau") and/or  
23 has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and  
24 Professions Code ("the Code") as a corporate real estate broker, and at all times relevant herein  
25 was acting by and through MCCLEAREN as its designated broker officer.

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2.

At all times herein mentioned, MCCLEAREN was licensed and/or had license rights under the Real Estate Law, Part 1 of Division 4 of the Code ("the Real Estate Law") as an individual real estate broker and as the designated broker officer of WRP.

3.

At all times relevant herein, MCCLEAREN, acting in the capacity as the designated broker officer of WRP, was responsible, pursuant to section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of WRP for which a real estate license is required.

4.

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

5.

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California on behalf of others, for compensation or in expectation of compensation within the meaning of:

- (a) section 10131(a) of the Code, including the operation and conduct of a real estate brokerage that included the sale or offer of sale, purchase or offer of purchase, solicitation of prospective sellers and purchasers of, solicitation or obtaining listings of, or negotiations of the purchase, sale or exchange of real property or a business opportunity; and
- (b) section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation, leased or rented or offered to lease or rent, or placed for rent, or

1 solicited listings of places for rent, or solicited for prospective tenant, or  
2 negotiated for sale, purchase or exchanges of leases on real property, or on a  
3 business opportunity, or collected rent from real property, or improvements  
4 thereon, or from business opportunities.

5 FIRST CAUSE OF ACTION

6 Audit Violations  
7 (As to Respondent WRP)

8 6.

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

11 7.

12 Beginning on February 11, 2013 and continuing through February 12, 2013, the  
13 Bureau conducted an audit at WRP's main office located at 651 First St. Brentwood, CA 94513,  
14 where the auditor examined records for the period of July 1, 2010 to December 31, 2012 ("the  
15 audit period").

16 8.

17 While doing business within the audit period, WRP accepted or received funds in  
18 trust ("trust funds") from or on behalf of owners and tenants in connection with leasing, renting  
19 and collection of rents on real property or improvements thereon and deposited or caused to be  
20 deposited those funds into bank accounts maintained by WRP, including:

<b>BANK ACCOUNT # 1</b>	
21 Bank Name and Location:	Wells Fargo Bank, N.A. P.O. Box 6995 Portland, OR 97228-6995
22 Account No.:	XXXXXX7812
23 Entitled:	WR Properties
24 Signatories:	Wesley Olson, RES and Craig McClearn, REB
25 No. of Signatures Required:	One

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<b>BANK ACCOUNT # 2</b>	
Bank Name and Location:	Wells Fargo Bank, N.A. P.O. Box 6995 Portland, OR 97228-6995
Account No.:	XXXXXX7796
Entitled:	WR Properties
Signatories:	Wesley Olson, RES and Craig McClearen, REB
No. of Signatures Required:	One

From time to time, WRP made collections to and disbursement from said accounts.

9.

In the course of the activities described above in Paragraph 5, in connection with the collection and disbursement of trust funds, WRP

- (a) caused, suffered or permitted the balance of funds on a combined basis in Bank Account #1 and Bank Account #2 to contain a shortage of \$25,477.31 without the prior written consent of each and every owner of such funds, in violation of section 10145 of the Code and section 2832.1 of title 10 of the California Code of Regulations ("the Regulations")
- (b) failed to designate Bank Account #1 as a trust account, in violation of section 10145 of the Code and section 2832 of the Regulations.
- (c) failed to designate Bank Account #2 as a trust account, in violation of section 10145 of the Code and section 2832 of the Regulations.
- (d) failed to disclose to each and every owner of funds in Bank Account #1 how interest would be calculated and paid under various circumstances and whether bank service charges would be paid to the depository and by whom, in violation of section 10145(d) of the Code.
- (e) failed to record an entry of all trust funds received in violation of section 10145 of the Code and section 2831(a)(6) of the Regulations.

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1 (f) failed to maintain accurate trust fund records in that WRP's separate  
2 beneficiary records contained information for more than one bank account  
3 used to handle trust funds and contained unidentified funds of \$22,650.95, in  
4 violation of section 10145(g) of the Code and sections 2831.1 and 2831.2 of  
5 the Regulations.

6 (g) failed to reconcile at least once a month, the balance of all separate  
7 beneficiary or transaction records with the record of all trust funds received  
8 and disbursed for Bank Account #1 and Bank Account #2, in violation of  
9 section 10145 of the Code and section 2831.2 of the Regulations;

10 10.

11 The acts and/or omissions of WRP as alleged above in Paragraph 9 are grounds  
12 for discipline under sections 10177(d) and 10177(g) of the Code.

13 11.

14 The acts and/or omissions of WRP as alleged above in Paragraph 9 entitle the  
15 Bureau to reimbursement of the costs of its audit pursuant to section 10148 of the Code.

16 SECOND CAUSE OF ACTION  
17 Failure to Supervise  
(As to Respondent MCCLEAREN)

18 12.

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

21 13.

22 MCCLEAREN, as the designated broker officer of WRP, was required to  
23 exercise reasonable supervision and control over the activities of WRP. MCCLEAREN failed to  
24 exercise reasonable supervision over the acts and/or omissions of WRP in such a manner as to  
25 allow the acts and/or omissions as described in Paragraphs 1 through 9, above, to occur, in  
26 violation of section 10159.2 of the Code and section 2725 of the Regulations.

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14.

The facts described above as to the Second Cause of Action constitute cause for the discipline of all licenses and license rights of MCCLEAREN under section 10177(g) of the Code and/or section 10177(h) of the Code in conjunction with section 10177(d) of the Code.

COST RECOVERY

15.

The Bureau will seek to recover costs of this suit pursuant to section 10106 of the Code which provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, 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.

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

  
ROBIN S. TANNER  
Deputy Real Estate Commissioner

Dated at Oakland, California,  
this Fourth day of April, 2014.

DISCOVERY DEMAND

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