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FILED

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BUREAU OF REAL ESTATE

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8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 LINDSEY PROPERTIES, INC.,)
14 a Corporation, and)
15 DONALD WALTER LINDSEY,)
Respondents.)

NO. H-11916 SF

ACCUSATION

16 The Complainant, ROBIN TANNER, a Supervising Special Investigator of
17 the State of California, makes this Accusation in her official capacity against LINDSEY
18 PROPERTIES, INC. (herein "LPI") dba Gallagher & Lindsey Property Management LLC
19 (herein "GLPML") and DONALD WALTER LINDSEY (herein "LINDSEY") (collectively
20 "Respondents"), is informed and alleges as follows:

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22 At all times herein mentioned, Respondents were and now are licensed and/or
23 have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and
24 Professions Code) (herein "the Code").

25 2

26 At all times herein mentioned, LPI was and now is licensed by the State of
27 California Bureau of Real Estate (herein "the Bureau") as a corporate real estate broker by and

1 through LINDSEY as designated officer-broker of LPI to qualify said corporation and to act for
2 said corporation as a real estate broker.

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4 At all times herein mentioned, LINDSEY was and now is licensed by the Bureau
5 as the designated officer-broker of LPI. As said designated officer-broker, LINDSEY was at all
6 times mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision
7 of the activities of the officers, agents, real estate licensees, and employees of LPI for which a
8 license is required.

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

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16 At all times herein mentioned, Respondents engaged in the business of, acted in
17 the capacity of, advertised, or assumed to act as real estate brokers wherein, on behalf of others,
18 for compensation or in expectation of compensation within the State of California within the
19 meaning of Section 10131(b) of the Code, including the operation and conduct of a property
20 management business with the public wherein, Respondents leased or rented or offered to lease
21 or rent, or placed for rent, or solicited listings or places for rent, or solicited for prospective
22 tenants, or negotiated the sale, purchase or exchanges of leases on real property or on a business
23 opportunity, or collected rents from real property, or improvements thereon, or from business
24 opportunities.

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26 In so acting as real estate brokers as described in Paragraph 5, above, Respondents
27 accepted or received funds in trust (herein "trust funds") from or on behalf of tenants, owners,

1 and others in connection with real estate leasing, renting, and collection of rents on real
2 property or improvements thereon, and thereafter from time to time made disbursements of
3 said funds.

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5 The aforesaid trust funds accepted or received by Respondents were deposited
6 or caused to be deposited by Respondents into one or more bank accounts (herein "trust fund
7 accounts") maintained by Respondents for the handling of trust funds at the Alameda, California
8 branch of the Bank of Marin, under account name "Gallagher & Lindsey Property Management,
9 LLC Trustee Account," account number xxxx-xx2280 (herein "Bank Account #1").

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11 Between about December 4, 2014 and about December 23, 2014, an audit was
12 conducted of the records of Respondents in connection with the activities described in
13 Paragraphs 5, 6 and 7, above. The auditor herein examined the records for the period between
14 about January 1, 2013 and about October 31, 2014, and found Respondents:

- 15 (a) caused, suffered or permitted the balance of funds in Bank Account
16 #1 to be reduced to amounts, which as of October 31, 2014, were
17 approximately \$72,465.52, less than the aggregate liability of LPI to
18 all owners of such funds, without the prior written consent of the
19 owners of such funds, in violation of Section 10145 of the Code and
20 Section 2832.1 of Chapter 6, Title 10, of the California Code of
21 Regulations (herein "the Regulations");
- 22 (b) failed to place the trust funds entrusted to Respondent into the hands
23 of a principal on whose behalf the funds were received, into a neutral
24 escrow depository, or into a trust fund account in the name of
25 Respondents as trustees at a bank or other financial institution for
26 Bank Account #1, in conformance with the requirements of Section
27 10145 of the Code and Section 2832 the Regulations;

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- (c) failed to reconcile, at least once a month, the balance of all separate beneficiary or transaction records with Bank Account #1 as required by Section 10145 of the Code and Section 2831.2 of the Regulations;
- (d) authorized Suzanne L. and Ayn G., unlicensed persons without fidelity bond coverage, to make withdrawals from Bank Account #1 in violation of Section 10145 of the Code and Section 2834 of the Regulations;
- (e) failed to maintain front and back copies of cancelled checks for Bank Account #1, in violation of Section 10148 of the Code;
- (f) failed to disclose license identification numbers on their website, <http://www.gallagherandlindsey.com>, in violation of Section 10140.6(b) of the Code and Section 2773 of the Regulations;
- (g) claimed, demanded, charged, received, or collected advance fees from the prospective tenants listed below prior to submission to the Real Estate Commissioner of any or all materials used in the advance fee agreements, including but not limited to the contract form, any letters or cards used to solicit prospective sellers, and radio and television advertising, at least 10 calendar days before it was used in obtaining the advance fees, in violation of Section of 10085 of the Code and Section 2970 of the Regulations:

<u>Tenants</u>	<u>Property</u>	<u>Advance Fee</u>	<u>Date Collected</u>
Erhan T. and Tevi S.	Bayo Vista Ave Alameda, CA	\$1,020.00	4/10/14
Michael and Kyndra L.	Clinton Ave, Alameda, CA	\$675.00	6/10/14
Peter E. and Chelsea R.	Central Ave Alameda, CA	\$420.00	8/8/14 8/9/14

- 1 (h) failed to deposit said advance fees into a trust account with a bank or
2 other recognized depository, in violation of Section 10146 of the
3 Code;
- 4 (i) failed to provide a quarterly accounting of said advance fees to
5 prospective tenants Erhan T., Tevi S., Michael and Kyndra L. and
6 Peter E. and Chelsea R., as required by Section 10146 of the Code
7 and Section 2972 of the Regulations; and
- 8 (j) allowed and compensated GLPML to perform licensed activities
9 during the time it did not have a license in violation of Sections
10 10130, 10131(d) and 10137 of the Code.

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12 The facts alleged above are grounds for the suspension or revocation of the
13 licenses and license rights of Respondents under the following provisions of the Code and
14 Regulations:

- 15 (a) as to Paragraph 8(a) under Section 10145 of the Code and Section
16 2832.1 of the Regulations, in conjunction with Section 10177(d) of
17 the Code;
- 18 (b) as to Paragraph 8(b) under Section 10145 of the Code and Section
19 2832 of the Regulations, in conjunction with Section 10177(d) of the
20 Code;
- 21 (c) as to Paragraph 8(c) under Section 10145 of the Code and Section
22 2831.2 of the Regulations, in conjunction with Section 10177(d) of
23 the Code
- 24 (d) as to Paragraph 8(d) under Section 10145 of the Code and Section 2834
25 of the Regulations, in conjunction with Section 10177(d) of the Code;
- 26 (e) as to Paragraph 8(e) under Section 10148 of the Code, in conjunction
27 with Section 10177(d) of the Code;

- 1 (f) as to Paragraph 8(f) under Section 10140.6(b) of the Code and
2 Section 2773 of the Regulations, in conjunction with Section
3 10177(d) of the Code;
- 4 (g) as to Paragraph 8(g) under Section 10085 of the Code and Section
5 2970 of the Regulations, in conjunction with Section 10177(d) of the
6 Code;
- 7 (h) as to Paragraph 8(h) under Section 10146 of the Code, in conjunction
8 with Section 10177(d) of the Code;
- 9 (i) as to Paragraph 8(i) under Section 10146 of the Code and Section
10 2972 of the Regulations, in conjunction with Section 10177(d) of the
11 Code; and
- 12 (j) as to Paragraph 8(j) under Sections 10130, 10131(d) and 10137 of
13 the Code, in conjunction with Section 10177(d) of the Code.

14 COST RECOVERY

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16 Audit Costs

17 The acts and/or omissions of Respondents as alleged above entitle the Bureau to
18 reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

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20 Investigation and Enforcement Costs

21 Section 10106 of the Code provides, in pertinent part, that in any order issued in
22 resolution of a disciplinary proceeding before the Bureau, the Real Estate Commissioner may
23 request the Administrative Law Judge to direct a licensee found to have committed a violation of
24 this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of
25 the case.

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