

Sachs

Department of Real Estate  
320 West 4th Street, Ste. 350  
Los Angeles, California 90013-1105  
Telephone: (213) 576-6982

**FILED**

MAR 11 2010

DEPARTMENT OF REAL ESTATE  
BY: *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	No. H-36163 LA
	)	L-2009090145
J & J LENDING CORPORATION;	)	
and ROBERT S. GARNER, individually	)	
and as designated officer of	)	<u>STIPULATION</u>
J & J Lending Corporation,	)	<u>AND</u>
	)	<u>AGREEMENT</u>
Respondents,	)	
	)	
	)	
	)	

It is hereby stipulated by and between Respondents J & J LENDING CORPORATION and ROBERT S. GARNER, individually and as designated officer of J & J Lending Corporation, (sometimes collectively referred to as "Respondents"), represented by David B. Dimitruk, Esq. and the Complainant, acting by and through Elliott Mac Lennan, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation ("Accusation") filed on August 6, 2009, in this matter:

1 1. All issues which were to be contested and all  
2 evidence which was to be presented by Complainant and Respondents  
3 at a formal hearing on the Accusation, which hearing was to be  
4 held in accordance with the provisions of the Administrative  
5 Procedure Act ("APA"), shall instead and in place thereof be  
6 submitted solely on the basis of the provisions of this  
7 Stipulation and Agreement ("Stipulation").

8 2. Respondents have received, read and understand the  
9 Statement to Respondent, the Discovery Provisions of the APA and  
10 the Accusation filed by the Department of Real Estate in this  
11 proceeding.

12 3. Respondents timely filed a Notice of Defense  
13 pursuant to Section 11506 of the Government Code for the purpose  
14 of requesting a hearing on the allegations in the Accusation.  
15 Respondents hereby freely and voluntarily withdraw said Notice of  
16 Defense. Respondents acknowledge that they understand that by  
17 withdrawing said Notice of Defense they thereby waive their right  
18 to require the Commissioner to prove the allegations in the  
19 Accusation at a contested hearing held in accordance with the  
20 provisions of the APA and that they will waive other rights  
21 afforded to them in connection with the hearing such as the right  
22 to present evidence in their defense and the right to cross-  
23 examine witnesses.  
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1 4. This Stipulation is based on the factual  
2 allegations contained in the Accusation. In the interest of  
3 expedience and economy, Respondents choose not to contest these  
4 allegations, but to remain silent and understand that, as a  
5 result thereof, these factual allegations, without being admitted  
6 or denied, will serve as a prima facie basis for the disciplinary  
7 action stipulated to herein. The Real Estate Commissioner shall  
8 not be required to provide further evidence to prove said factual  
9 allegations.

10 5. This Stipulation is made for the purpose of  
11 reaching an agreed disposition of this proceeding and is  
12 expressly limited to this proceeding and any other proceeding or  
13 case in which the Department of Real Estate ("Department"), the  
14 state or federal government, or any agency of this state, another  
15 state or federal government is involved.

16 6. It is understood by the parties that the Real  
17 Estate Commissioner may adopt this Stipulation as his Decision in  
18 this matter thereby imposing the penalty and sanctions on  
19 Respondents' real estate licenses and license rights as set forth  
20 in the "Order" herein below. In the event that the Commissioner  
21 in his discretion does not adopt the Stipulation, it shall be  
22 void and of no effect and Respondents shall retain the right to a  
23 hearing and proceeding on the Accusation under the provisions of  
24 the APA and shall not be bound by any stipulation or waiver made  
25 herein.  
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1           7. The Order or any subsequent Order of the Real  
2 Estate Commissioner made pursuant to this Stipulation shall not  
3 constitute an estoppel, merger or bar to any further  
4 administrative or civil proceedings by the Department of Real  
5 Estate with respect to any matters which were not specifically  
6 alleged to be causes for Accusation in this proceeding but do  
7 constitute a bar, estoppel and merger as to any allegations  
8 actually contained in the Accusations against Respondent herein.

9           8. Respondents understand that by agreeing to this  
10 Stipulation, Respondents agree to pay, pursuant to Business and  
11 Professions Code Section 10148, the cost of the audit. The  
12 amount of said cost for the original audit (LA 080234) is  
13 \$2,401.30.

14           9. Respondents have received, read, and understand the  
15 "Notice Concerning Costs of Subsequent Audit". Respondents  
16 further understand that by agreeing to this Stipulation, the  
17 findings set forth below in the Determination of Issues become  
18 final, and the Commissioner may charge Respondents for the cost  
19 of any subsequent audit conducted pursuant to Business and  
20 Professions Code Section 10148 to determine if the violations  
21 have been corrected. The maximum cost of the follow-up audit  
22 will not exceed \$2,401.30.

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DETERMINATION OF ISSUES

1                   By reason of the foregoing, it is stipulated and agreed  
2 that the following determination of issues shall be made:  
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I.

4                   The conduct, acts or omissions of J & J LENDING  
5 CORPORATION and ROBERT S. GARNER, as described in Paragraph 4,  
6 above, are in violation of Sections 10145, 10240 of the Business  
7 and Professions Code ("Code") and Sections 2832.1, 2834 and 2840  
8 of Title 10, Chapter 6 of the California Code of Regulations  
9 ("Regulations") and is a basis for discipline of Respondents'  
10 license and license rights as violation of the Real Estate Law  
11 pursuant to Code Sections 10177(d) and 10177(g).  
12

II.

13                   The conduct, acts or omissions of ROBERT S. GARNER, as  
14 described in Paragraph 4, above, are in violation of Code Section  
15 10159.2 and is a basis for discipline of Respondent's license and  
16 license rights as violation of the Real Estate Law pursuant to  
17 Code Sections 10777(d) and 10177(h).  
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ORDER

1 WHEREFORE, THE FOLLOWING ORDER is hereby made:

2 I.

3 The license and licensing rights of Respondents J & J  
4 LENDING CORPORATION and ROBERT S. GARNER, under the Real Estate  
5 Law, are suspended for a period of sixty (60) days from the  
6 effective date of this Decision.

7  
8 A. Provided, however, that if Respondents request, the  
9 initial thirty (30) days of said suspension (or a portion  
10 thereof) shall be stayed for two (2) years upon condition that:

11 1. Each Respondent pays a monetary penalty pursuant to  
12 Section 10175.2 of the Business and Professions Code at the rate  
13 of \$50.00 per day for each day of the suspension for a monetary  
14 penalty of \$1,500, or \$3,000 total.

15 2. Said payment shall be in the form of a cashier's  
16 check or certified check made payable to the Recovery Account of  
17 the Real Estate Fund. Said check must be received by the  
18 Department prior to the effective date of the Decision in this  
19 matter.  
20

21 3. No further cause for disciplinary action against  
22 the real estate license of Respondents occur within two (2) years  
23 from the effective date of the Decision in this matter.

24 4. If Respondents fail to pay the monetary penalty in  
25 accordance with the terms of the Decision, the Commissioner may,  
26 without a hearing, order the immediate execution of all or any  
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1 part of the stayed suspension, in which event the Respondent  
2 shall not be entitled to any repayment nor credit, prorated or  
3 otherwise, for money paid to the Department under the terms of  
4 this Decision.

5 5. If Respondents pay the monetary penalty and if no  
6 further cause for disciplinary action against the real estate  
7 license of Respondent occurs within two (2) years from the  
8 effective date of the Decision, the stay hereby granted shall  
9 become permanent.

10 B. The remaining thirty (30) days of the sixty (60)  
11 day suspension shall be stayed for two (2) years upon the  
12 following terms and conditions:

13 1. Respondents shall obey all laws, rules and  
14 regulations governing the rights, duties and responsibilities of  
15 a real estate licensee in the State of California; and

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

Pursuant to Section 10148 of the Business and

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2 Professions Code, Respondents J & J LENDING CORPORATION and  
3 ROBERT S. GARNER, shall pay the Commissioner's reasonable cost  
4 for (a) the audit which led to this disciplinary action (b) a  
5 subsequent audit to determine if Respondents are now in  
6 compliance with the Real Estate Law. The cost of the original  
7 and subsequent audits which led to this disciplinary action is  
8 \$2,401.30. In calculating the amount of the Commissioner's  
9 reasonable cost, the Commissioner may use the estimated average  
10 hourly salary for all persons performing audits of real estate  
11 brokers, and shall include an allocation for travel time to and  
12 from the auditor's place of work. Said amount for the prior and  
13 subsequent audits shall not exceed \$4,802.60.

14  
15 Respondents shall pay such cost within 60 days of  
16 receiving an invoice from the Commissioner detailing the  
17 activities performed during the audit and the amount of time  
18 spent performing those activities.

19  
20 The Commissioner may suspend the license of Respondents  
21 pending a hearing held in accordance with Section 11500, et seq.,  
22 of the Government Code, if payment is not timely made as provided  
23 for herein, or as provided for in a subsequent agreement between  
24 the Respondent and the Commissioner. The suspension shall remain  
25 in effect until payment is made in full or until Respondents  
26 enter into an agreement satisfactory to the Commissioner to  
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1 provide for payment, or until a decision providing otherwise is  
2 adopted following a hearing held pursuant to this condition.

3 III.

4 All licenses and licensing rights of Respondent J & J  
5 ROBERT S. GARNER, are indefinitely suspended unless or until  
6 Respondent provides proof satisfactory to the Commissioner, of  
7 having taken and successfully completed the continuing education  
8 course on trust fund accounting and handling specified in  
9 paragraph (3) of subdivision (a) of Section 10170.5 of the  
10 Business and Professions Code. Proof of satisfaction of this  
11 requirement includes evidence that Respondent has successfully  
12 completed the trust fund account and handling continuing  
13 education course within 120 days prior to the effective date of  
14 the Decision.

15 IV.

16 Respondent ROBERT S. GARNER shall, within nine (9)  
17 months from the effective date of this Decision, present evidence  
18 satisfactory to the Real Estate Commissioner that Respondent has,  
19 since the most recent issuance of an original or renewal real  
20 estate license, taken and successfully completed the continuing  
21 education requirements of Article 2.5 of Chapter 3 of the Real  
22 Estate Law for renewal of a real estate license. If Respondent  
23 fails to satisfy this condition, the Commissioner may order the  
24 suspension of Respondent's license until Respondent presents such  
25 evidence. The Commissioner shall afford Respondent the  
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1 opportunity for a hearing pursuant to the Administrative  
2 Procedure Act to present such evidence.

3 V.

4 Respondent ROBERT S. GARNER shall, prior to the  
5 effective date of this Decision, present evidence satisfactory to  
6 the Real Estate Commissioner that Respondent has, cured the trust  
7 fund shortage in the amount of \$2,484.22. If Respondent fails to  
8 satisfy this condition, the Commissioner may order the suspension  
9 of Respondent's license until Respondent presents such evidence.  
10 The Commissioner shall afford Respondent the opportunity for a  
11 hearing pursuant to the Administrative Procedure Act to present  
12 such evidence.  
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15 DATED: 1-14-10

15 EJL  
16 ELLIOTT MAC LENNAN, Counsel for  
17 the Department of Real Estate

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EXECUTION OF THE STIPULATION

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3 We have read the Stipulation and discussed it with our  
4 counsel. Its terms are understood by us and are agreeable and  
5 acceptable to us. We understand that we are waiving rights given  
6 to us by the California Administrative Procedure Act (including  
7 but not limited to Sections 11506, 11508, 11509 and 11513 of the  
8 Government Code), and we willingly, intelligently and voluntarily  
9 waive those rights, including the right of requiring the  
10 Commissioner to prove the allegations in the Accusation at a  
11 hearing at which we would have the right to cross-examine  
12 witnesses against us and to present evidence in defense and  
13 mitigation of the charges.


MAILING AND FACSIMILE

14  
15 Respondents (1) shall mail the original signed  
16 signature page of the stipulation herein to Elliott Mac Lennan:  
17 Attention: Legal Section, Department of Real Estate, 320 W.  
18 Fourth St., Suite 350, Los Angeles, California 90013-1105.  
19 Respondents shall also (2) facsimile a copy of signed signature  
20 page, to the Department at the following telephone/fax number:  
21 (213) 576-6917, Attention: Elliott Mac Lennan.  
22


23 A facsimile constitutes acceptance and approval of the  
24 terms and conditions of this stipulation. Respondents agree,  
25 acknowledge and understand that by electronically sending to the  
26 Department a facsimile copy of Respondents' actual signature as  
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1 it appears on the stipulation that receipt of the facsimile copy  
2 by the Department shall be as binding on Respondents as if the  
3 Department had received the original signed stipulation.  
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5  
6 DATED: FEBRUARY 1, 2010

  
\_\_\_\_\_  
J & J LENDING CORPORATION a  
corporate real estate broker,  
Respondent  
By: ROBERT S. GARNER, designated  
officer of J & J Lending  
Corporation

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12 DATED: FEBRUARY 1, 2010

  
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ROBERT S. GARNER, individually and  
as designated officer of J & J  
Lending Corporation, Respondent

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17 DATED: 2-1-2010

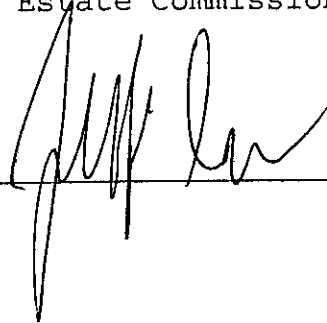
  
\_\_\_\_\_  
DAVID B. DIMITRUK, ESQ.  
Attorney for Respondents  
Approved as to form

\* \* \*

1                   The foregoing Stipulation and Agreement is hereby  
2  
3 adopted as my Decision as to Respondents J & J LENDING  
4 CORPORATION and ROBERT S. GARNER individually and as designated  
5 officer of J & J Lending Corporation and shall become effective  
6 at 12 o'clock noon on April 9, 2010.

7                   IT IS SO ORDERED 3/3, 2010.

8                   JEFF DAVI  
9                   Real Estate Commissioner

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1 ELLIOTT MAC LENNAN, SBN 66674  
2 Department of Real Estate  
3 320 West 4th Street, Ste. 350  
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)  
6 -or- (213) 576-6982 (office)

**FILED**

AUG - 6 2009

DEPARTMENT OF REAL ESTATE  
BY: *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \* \* \*

11 In the Matter of the Accusation of )  
12 J & J LENDING CORPORATION; )  
13 and ROBERT S. GARNER, )  
14 individually and as designated )  
15 officer of J & J Lending Corporation, )  
16 Respondents. )

No. H-36163 LA

A C C U S A T I O N

17  
18 The Complainant, Robin Trujillo, a Deputy Real Estate  
19 Commissioner of the State of California, for cause of Accusation  
20 against J & J LENDING CORPORATION and ROBERT S. GARNER,  
21 individually and as designated officer of J & J Lending  
22 Corporation, alleges as follows:

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1 or collaterally by liens on real property, wherein such loans  
2 were arranged, negotiated, processed and consummated on behalf of  
3 others for compensation or in expectation of compensation and for  
4 fees often collected in advance as well as at the conclusion of  
5 transactions; and

6 B. In addition, J & J conducted broker-controlled  
7 escrows through its escrow division under the exemption set forth  
8 in California Financial Code Section 17006(a)(4) for real estate  
9 brokers performing escrows incidental to a real estate  
10 transaction where the broker is a party and where the broker is  
11 performing acts for which a real estate license is required.

12 FIRST CAUSE OF ACTION  
13 (Mortgage and Loan Audit)  
14 (LA 080180)

15 5.

16 On March 17, 2009, the Department completed an audit  
17 examination of the books and records of J & J pertaining to the  
18 mortgage loan activities described in Paragraph 4 that require a  
19 real estate license. The audit examination covered a period of  
20 time beginning on July 1, 2007 to January 31, 2009. The audit  
21 examination revealed violations of the Code and the Regulations  
22 as set forth in the following paragraphs, and more fully  
23 discussed in Audit Report LA 080180 and the exhibits and work  
24 papers attached to said audit report.

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TRUST ACCOUNT

6.

No trust account was kept during the audit period.

VIOLATIONS OF THE REAL ESTATE LAW  
(Mortgage and Loan Brokerage)

7.

In the course of activities described in Paragraph 4, above, and during the examination period described in Paragraph 5, Respondents J & J and GARNER, acted in violation of the Code and the Regulations in that Respondents:

(a) Failed to provide or retain a true and correct copy of a Good Faith Estimate that satisfies the requirements of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.A 2601 et seq.), and a Mortgage Loan Disclosure Statement that (1) sets forth the broker's real estate license number; (2) whether or not J & J controlled funds would be used as the source of funds as payor for loans; (3) compensation "paid to broker" and, further sets forth all applicable disclosures including but not limited to (3) yield spread premiums rebates by the lenders outside of closing for borrowers below, in violation of Code Section 10240 and Regulation 2840:

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<b>Borrowers - No MLDS or License Number</b>
McAndrew
Cole
Carpenter
Coggins
Roberts

<b>Borrowers - Undisclosed Identity of Loan Payor and Compensation Paid to Broker</b>
Jackson
Weinstein
Kennedy
Hybloom
Gomez/Campos
Simian
Courtney

<b>Borrowers - Undisclosed Yield Spread Premiums</b>
Kennedy
Hybloom
Gomez/Campos
Simonian
Courtney

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1 (b) Failed to display the Department's telephone number  
 2 and licensee information including the broker license number and  
 3 the license number of J & J's representative who negotiated  
 4 loans, in violation of Code Section 10236.4, for borrowers:

Borrowers - License Number/Licensee Information
Jackson
Weinstein
Kennedy
Hybloom
Gomez/Campos
Simian
Courtney

13  
 14 DISCIPLINARY STATUES AND REGULATIONS  
 15 (Mortgage and Loan Brokerage)

16 8.

17 The conduct of Respondents J & J and GARNER described  
 18 in Paragraph 7, above, violated the Code and the Regulations as  
 19 set forth below:

PARAGRAPH	PROVISIONS VIOLATED
7(a)	Code Section 10240 and Regulation 2840
7(b)	Code Section 10236.4

1 The foregoing violations constitute cause for the suspension or  
2 revocation of the real estate license and license rights of J & J  
3 and GARNER, under the provisions of Code Sections 10177(d) and/or  
4 10177(g).

5 SECOND CAUSE OF ACTION  
6 (Broker Escrow Audit)  
7 (LA 080234)

8 9.

9 On April 9, 2009, the Department completed an audit  
10 examination of the books and records of J & J pertaining to the  
11 broker-escrow activities described in Paragraph 4 that require a  
12 real estate license. The audit examination covered a period of  
13 time beginning on July 1, 2007 to January 30, 2009. The audit  
14 examination revealed violations of the Code and the Regulations  
15 as set forth in the following paragraphs, and more fully  
16 discussed in Audit Report LA 080234 and the exhibits and work  
17 papers attached to said audit report.

18 TRUST ACCOUNT

19 10.

20 At all times mentioned, in connection with the  
21 activities described in Paragraph 4, above, J & J accepted or  
22 received funds including funds in trust (hereinafter "trust  
23 funds") from or on behalf of actual or prospective parties,  
24 including lenders, borrowers and homeowners, to real estate  
25 transactions handled by J & J and thereafter made deposits and or  
26 disbursements of such funds. From time to time herein mentioned  
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1 during the audit period, said trust funds were deposited and/or  
2 maintained by J & J in the bank account as follows:

3 "J & J Lending Corporation Escrow Trust Account.  
4 Account No. 9120229181"  
5 Union Bank of California  
6 Los Angeles, California (trust account)

7 VIOLATIONS OF THE REAL ESTATE LAW  
8 (Broker Escrow Audit)

9 11.

10 In the course of activities described in Paragraphs 4  
11 and 10, above, and during the examination period described in  
12 Paragraph 9, Respondents J & J and GARNER, acted in violation of  
13 the Code and the Regulations in that Respondents:

14 (a) Permitted, allowed or caused the disbursement of  
15 trust funds from the escrow trust account where the disbursement  
16 of funds reduced the total of aggregate funds in escrow trust  
17 account, to an amount which, on January 30, 2009, was \$2,484.22,  
18 less than the existing aggregate trust fund liability of J & J to  
19 every principal who was an owner of said funds, without first  
20 obtaining the prior written consent of the owners of said funds,  
21 in violation of Code Section 10145 and Regulations 2832.1,  
22 2950(d), 2950(g) and 2951. On March 5, 2009, the shortage was  
23 cured.

24 (b) Failed to maintain an accurate and complete control  
25 record for each beneficiary or transaction, thereby failing to  
26 account for all trust funds received, deposited and disbursed for  
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1 the escrow trust account, in violation of Code Section 10145 and  
2 Regulations 2831, 2950(d) and 2951.

3 (c) Failed to maintain an accurate and complete  
4 separate record for each beneficiary or transaction, thereby  
5 failing to account for all trust funds received, deposited and  
6 disbursed for the escrow trust account, in violation of Code  
7 Section 10145 and Regulations 2831.1, 2950(d) and 2951.

8 (d) Permitted Gina Pellizon and Christine Moore,  
9 unlicensed and unbonded persons, to be authorized signatories on  
10 the escrow trust account, in violation of Code Section 10145 and  
11 Regulations 2834, 2950(d) and 2951.

12 (e) Failed to disclose in writing to all parties  
13 J & J's financial and ownership interest of J & J's escrow  
14 division, in violation of Code Section 10145 and Regulation  
15 2950(h); and

16 (f) Used the fictitious name of "J & J Mortgage", to  
17 conduct licensed activities without first obtaining from the  
18 Department a license bearing said fictitious business name, in  
19 violation of Code Section 10159.5 and Regulation 2731.  
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21 DISCIPLINARY STATUES AND REGULATIONS  
22 (Broker Escrow Audit)

23 12.

24 The conduct of Respondents J & J and GARNER described  
25 in Paragraph 11, above, violated the Code and the Regulations as  
26 set forth below:  
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PARAGRAPH	PROVISIONS VIOLATED
11(a)	Code Section 10145 and Regulations 2832.1, 2950(d), 2950(g) 2951
11(b)	Code Section 10145 and Regulations 2831, 2950(d) and 2951
11(c)	Code Section 10145 and Regulations 2831.1, 2950(d) and 2951
11(d)	Code Section 10145 and Regulations 2834, 2950(d) and 2951
11(e)	Code Section 10145 and Regulation 2950(h)
11(f)	Code Section 10159.5 and Regulation 2731

The foregoing violations constitute cause for the discipline of the real estate license and license rights of J & J and GARNER, under the provisions of Code Sections 10177(d) and/or 10177(g).

13.

The overall conduct of Respondents J & J and GARNER constitutes negligence and is cause for the suspension or revocation of the real estate license and license rights of Respondents J & J and GARNER pursuant to Code Section 10177(g).


14.

The overall conduct of Respondent GARNER constitutes a failure on Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision

1 and control over the licensed activities of J & J as required by  
2 Code Section 10159.2, and to keep J & J in compliance with the  
3 Real Estate Law, and is cause for the suspension or revocation of  
4 the real estate license and license rights of GARNER pursuant to  
5 the provisions of Code Sections 10177(d), 10177(h) and/or  
6 10177(g).

7 WHEREFORE, Complainant prays that a hearing be  
8 conducted on the allegations of this Accusation and that upon  
9 proof thereof, a decision be rendered imposing disciplinary  
10 action against the license and license rights of Respondents J &  
11 J LENDING CORPORATION and ROBERT S. GARNER, individually and as  
12 designated officer of J & J Lending Corporation, under the Real  
13 Estate Law (Part 1 of Division 4 of the Business and Professions  
14 Code) and for such other and further relief as may be proper  
15 under other applicable provisions of law.

16 Dated at Los Angeles, California

17 this 4 day of August 2009   
18 Deputy Real Estate Commissioner

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24 cc: J & J Lending Corporation  
25 c/o Robert s. Garner D.O.  
26 Robin Trujillo  
Sacto  
Audits - Gina King