FILED 1 Department of Real Estate 320 West 4th Street, Ste. 350 2 Los Angeles, California 90013-1105 FEB 2 / 2014 3 Telephone: (213) 576-6911 (direct) (213) 576-6982 (office) OF REAL ESTATE 4 5 6 BEFORE THE BUREAU OF REAL ESTATE 8 STATE OF CALIFORNIA 9 10 In the Matter of the Accusation of No. H- 39336 LA 11 FRANK H. WHITEHEAD III, <u>ACCUSATION</u> doing business as South Bay 12 Management Services, 13 14 Respondent, 15 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State 16 of California acting in her official capacity, for cause of Accusation against FRANK H. 17 WHITEHEAD III, doing business as South Bay Management Services, is informed and alleges as 18 19 follows: 20 1. 21 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State 22 of California, makes this Accusation in her official capacity. 23 24 2. 25 All references to the "Code" are to the California Business and Professions Code 26

ELLIOTT MAC LENNAN, SBN 66674

and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

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3.

At all times mentioned, FRANK H. WHITEHEAD III ("WHITEHEAD"), was licensed or had license rights issued by the Department of Real Estate (Department) as a real estate broker. WHITEHEAD was originally licensed as a real estate broker on August 19, 2004.

On May 31, 2012, in Case No. H-37605 LA, a First Amended Accusation was filed against Respondent FRANK H. WHITEHEAD III, inter alia, which resulted in discipline as more fully set forth in Paragraph 14, below for an advanced fee and loan modification brokerage.

On November 22, 2011, in Case No. H-37693 LA, a Desist and Refrain Order was filed against Respondent FRANK H. WHITEHEAD III, inter alia, as more fully set forth in Paragraph 15, below, for an advanced fee and loan modification brokerage.

Brokerage

4.

At all times mentioned, in the City of Brighton, State of Colorado and the City of Redondo Beach, County of Los Angeles, WHITEHEAD engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker, including the operation and conduct of a property management business within the meaning of Code Section 10131(b). Respondent engaged in the business of a property management brokerage with the public wherein, for or in expectation of compensation, for another or others, Respondent leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or collected rents from real property, or improvements thereon.

WHITEHEAD's brokerage is engaged in property management activity under the licensed fictitious name "South Bay Management Services." (South Bay). South Bay manages 72 residential properties for 57 owners and collects rents and security deposits, pays expenses and screens tenants. South Bay collects approximately \$80,000 a month in rent from tenants, which is deposited into South Bay's 57 bank accounts. The total annual funds collected approximate \$960,000.00. South Bay charged a management fee of 7% of the rents collected.

FIRST CAUSE OF ACCUSATION (Audit Examination)

5.

On January 22, 2013 the Department completed an audit examination of the books and records of WHITEHEAD pertaining to the residential resale and property management activities of his brokerage described in Paragraph 3, which require a real estate license. The audit examination covered a period of time beginning on August 1, 2009 and ending on July 31, 2012. The audit examination revealed violations of the Code and the Regulations as set forth below, and more fully discussed in Audit Report LA 120059 and the exhibits and work papers attached.

Bank Account

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, WHITEHEAD accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions handled by WHITEHEAD including property owners and tenants. WHITEHEAD maintained fifty-seven bank accounts of which the following five bank accounts were scheduled for WHITEHEAD's property management brokerage:

1	1. <u>BA 1</u>	
2	Account Name:	Owen Enterprises LLC
3	-	c/o S Bay Management Services
4	Account No.:	******66454
5	Bank Name:	Bank of America
6	Bank Address:	P.O. Box 25118
7		Tampa,, FL 33622-5118
8		
9	2. <u>BA 2</u>	***
10	Account Name:	Hendrix Apartments
11	·	c/o S Bay Management
12	Account No.:	******46476
13	Bank Name:	Bank of America
14	Bank Address:	P.O. Box 25118
15		Tampa,, FL 33622-5118
16	2 DA 2	
17	3. <u>BA 3</u>	
18	Account Name:	Donald M. c/o S Bay Management
19	Account No.:	*******04157
20		
21	Bank Name:	Citizens Business Bank
22	Bank Address:	P.O. Box 3938 Ontario,, CA 91761
23	,,,	
24	///	
25	///	
26	///	

1 4. BA 4 2 Account Name: Theodore K.W. 3 Dba San Remo Apartments 4 *******03817 Account No.: 5 Bank Name: Wells Fargo Bank 6 Bank Address: P.O. Box 6995 7 Portland, OR 97228-6995 8 5. <u>BA 5</u> 9 10 Account Name: John M. Paul M. 11 c/o S Bay Management 12 Account No.: *******04521 13 Bank Name: Citizens Business Bank 14 Bank Address: P.O. Box 3938 15 Ontario,, CA 91761 16 Violations of the Real Estate Law 17 18 7. In the course of activities described in Paragraphs 4 and 6, above, and during the 19 audit examination period described in Paragraph 5, Respondent WHITEHEAD acted in violation 20 of the Code and the Regulations in that WHITEHEAD: 21 22 (a)(1) Permitted, allowed or caused a discrepancy of \$2,000 to exist as of July 31, 23 2012, in violation of Code Section 10145 and Regulation 2832.1. The discrepancy was caused 24 by a deposit made but unreconciled for a period of two to four years; 25 (a)(2) Permitted, allowed or caused a discrepancy of \$1,892.37 to exist as of July 26 31, 2012, in violation of Code Section 10145 and Regulation 2832.1. The discrepancy was 27

caused by an overdrawn balance in Theodore K. W's property account, in violation of Code Section 10145 and Regulation 2832.1;

- (b) BA 1 BA 5 were not in the name of the broker as trustee at a bank or other financial institution, nor designated as a trust accounts, in violation of Code Section 10145 and Regulation 2832(a);
- (c) Permitted unlicensed and unbonded employee Vickie Lowery McIntosh to be an authorized signatory on BA 2; and unlicensed and unbonded property owners Michael O., Marjorie/David O., Toni/Bill H., Donald/Carole M., and Theodore/KimW., to be authorized signatories on BA1 BA 5, in violation of Code Section 10145 and Regulation 2834;
- (d) Failed to maintain a control record through the instrumentality of a daily journal kept in chronological order for each beneficiary or transaction, thereby failing to account for trust funds collected in the form of rents and security deposits, in violation of Code Section 10145 and Regulation 2831;
- (e) Used the fictitious names "S Bay Management Service," "South Bay Mgmt Services" and "S Bay Management" to conduct licensed activities, without holding a license bearing said fictitious names, in violation of Code Section 10159.5 and Regulation 2731; and
- (f) Failed to adequately supervise and control the property management brokerage activities conducted under WHITEHEAD's real estate broker license by his licensee, salesperson Mary E. Colin and other employees including Vicky Lowery McIntosh and Lisa Marie Jimenez. Additionally, WHITEHEAD had no system in place for regularly monitoring his compliance with the Real Estate Law especially in regard to establishing, systems, policies and procedures to review trust fund handling, and to keep WHITEHEAD, an out-of-state broker, in compliance with the Real Estate Law, in violation of Code Sections 10159.2, 10177(h) and Regulation 2725.

Disciplinary Statures and Regulations

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PARAGRAPH

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8.

The conduct of Respondent WHITEHEAD, as alleged and described in Paragraph

7, above, violated the Code and the Regulations as set forth below:

PROVISIONS VIOLATED

7(a) Code Section 10145

7(b) Code Section 10145 and Regulation 2832(a)

7(c) Code Section 10145 and Regulation 2834

7(d) Code Section 10145 and Regulation 2831

7(e) Code Section 10159.5 and Regulation 2731

7(f) Code Section 10177(h) and Regulation 2725

The foregoing violations constitute cause for discipline of the real estate license and license rights of Respondent WHITEHEAD, under the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

SECOND CAUSE OF ACCUSATION (Negligence)

9.

The overall conduct of Respondent WHITEHEAD constitutes negligence or incompetence. This conduct and violation are cause for discipline of the real estate license and license rights of Respondent pursuant to Code Section 10177(g).

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THIRD CAUSE OF ACCUSATION (Breach of Fiduciary Duty)

10.

The conduct, acts and omissions of Respondent WHITEHEAD constitutes a breach of fiduciary duty of good faith, trust, confidence and candor, within the scope of their contractual relationship, owed to Respondent WHITEHEAD's real estate consumers and property management clientele. This conduct and violation are cause for discipline of the real estate license and license rights of WHITEHEAD pursuant to Code Section 10177(g).

FOURTH CAUSE OF ACCUSATION (Supervision)

11.

The overall conduct of Respondent WHITEHEAD constitutes a failure on his part to exercise reasonable supervision and control over the licensed activities his brokerage, in violation of Code Section 10177(h) and Regulation 2725. Respondent WHITEHEAD failed to keep his brokerage in compliance with the Real Estate Law, and is cause for discipline of the real estate license and license rights of Respondent WHITEHEAD, pursuant to the provisions of Code Sections 10177(d), 10177(g) and/or 10177(h).

12.

Code Section 10106 provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department of Real Estate, 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.

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Code Section 10148(b) provides, in pertinent part the Commissioner shall charge a real estate broker for the cost of any audit, if the Commissioner has found in a final decision following a disciplinary hearing that the broker has violated Code section 10145 or a regulation or rule of the commissioner interpreting said section.

PRIOR DEPARTMENT ACTION

14.

On November 22, 2011, in Case No. H-37693 LA, a <u>First Amended Accusation</u> was filed against Respondent FRANK H. WHITEHEAD III, inter alia, dba Blue Light Investments which resulted in discipline effective August 15, 2012, including a stayed suspension for two years on terms and conditions including successful completion of the Professional Responsibility Examination, and restitution to certain individuals for violations of Section10137, 10148, and 10177(g) of the California Business and Professions Code.

PRIOR DEPARTMENT ACTION

15.

On November 22, 2011, in Case No. H-37693 LA, an ORDER TO DESIST AND REFRAIN was filed against Respondent FRANK H. WHITEHEAD III dba Blue Light Investments under Section 10086 of the California Business and Professions Code ("Code") (Engaging in Prohibited Activity, Order to Desist and Refrain) for violations of Code Sections 10085.6, 10137, and 10146 and Sections 2970 and 2972 of Title 10, Chapter 6; California Code of Regulations.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of Respondent FRANK H. WHITEHEAD III, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law including, but not limited to restitution, proper accounting and reconciliation of all bank accounts, costs of audit, investigation and as pursuant to applicable provisions of the California Administrative Procedure Act.

Dated at Los Angeles, California

Musey 2014.

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MARIA SUAREZ

Deputy Real Estate Commissione

cc: Frank H. Whitehead III
Maria Suarez
Audits – Darryl M. Thomas
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