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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

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In the Matter of the Accusation of

ICON REALTY LINK INC.;

JOEL FRANCO doing business as
Alliance Marketing Group Inc.; and

NICHOLAS J. CUDA, doing business as
Alliance Marketing Group Inc.

Respondents.

The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the State of California, Bureau of Real Estate ("Bureau") for cause of Accusation against ICON REALTY LINK INC. ("ICON"), JOEL FRANCO aka Joel Salvador Franco ("FRANCO"), and NICHOLAS J. CUDA ("CUDA") (collectively "Respondents"), is informed and alleges as

1.

The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

## **Individuals and Entities**

From December 21, 2010, until February 22, 2012, Respondent ICON has been licensed as a real estate corporation. At all times relevant herein, ICON was acting by and through Michael D. Davies Jr. ("Davis") as its designated broker-officer pursuant to Business and Professions Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law. On February 22, 2012, ICON became Non Broker Affiliated by the cancellation of Davis' tenure as designated officer of ICON.

3.

Davis was originally licensed as a real estate real estate broker since December 12, 2008. Davis has been the designated officer of ICON since it original licensure December 21, 2010. On February 22, 2012, Davis cancelled his tenure as designated officer. Davis is not a Respondent in this matter.

4.

Respondent FRANCO was originally licensed as a real estate real estate salesperson since June 30, 2005. FRANCO was employed by ICON since it original licensure December 21, 2010 until December 8, 2011. FRANCO is ICON's sole owner its CEO.

5.

Respondent CUDA was originally licensed as a real estate real estate broker since March 21, 2007.

6.

Whenever reference is made in an allegation in this Accusation to an act or omission of "Respondents," such allegation shall be deemed to mean that the officers, directors,

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employees, agents and real estate licensees employed by or associated with Respondents committed such act or omission while engaged in the furtherance of the business or operations of Respondents and while acting within the course and scope of their corporate authority and employment including FRANCO and CUDA, and unlicensed salesperson Kirk Dennis (Paragraph 17, below).

# FIRST CAUSE OF ACCUSATION (Audit)

7.

At all times mentioned, in the City of Temecula, County of Riverside, State of California, Respondents ICON, FRANCO and CUDA acted as real estate brokers and conducted licensed activities within the meaning of:

- (a) Code Section 10131(a). Respondents ICON, FRANCO (salesperson), and CUDA engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers, including the solicitation for listings of and the negotiation for the sale and resale of real property as the agent of others;
- (b) Code Section 10131.2. <u>LOP/LOB Program</u> (Lease with Option to Purchase aka Lease with Option to Buy). Respondents ICON, FRANCO and CUDA advertised, solicited, and offered to promote the sale of real property through the instrumentality of Respondent ICON's LOP/LOB program. Prospective home buyers were solicited and were to be shown or offered a residence to purchase within ninety (90) days of payment of an advance fee, in the form of an "Finders Fee" or generic "fee" for consultation or a "fee" for obtaining an option on real property of for an extension, and including a fee for services to be rendered;
- (c) Code Section 10131.2. <u>RTO Program</u> (Rent To Own). Respondents ICON, FRANCO and CUDA advertised, solicited and offered to promote the rental of real property

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through the instrumentality of Respondent ICON's RTO program. Prospective renters were solicited and would be offered a residence to purchase within ninety (90) days of payment of an advance fee, in the form of an "Finders Fee" or generic "fee" for consultation or a "fee" for obtaining an option on real property of for an extension of and for services to be rendered; and

(d) BCR Program. Bad Credit Repair/Bad Credit Restoration). Respondents ICON, FRANCO and CUDA advertised, solicited and offered to promote the credit repair and restoration through the instrumentality of Respondent ICON's BCR program. Prospective renters were solicited and were to be offered a residence to purchase within ninety (90) days of payment of an advance fee, in the form of a "Finders Fee," or generic "fee" for consultation or a "fee" for obtaining an option on real property of for an extension of and for services to be rendered.

#### **Audit Examination**

8.

On September 28, 2012, the Bureau completed an audit examination of the books and records of Respondent ICON pertaining to the residential real estate and LOP/LOB, RTO/BCR Programs described in Paragraph 7, which require a real estate license. The audit examination covered a period of time beginning on December 21, 2010 to June 30, 2012. The audit examination revealed violations of the Code and the Title 10, Chapter 6, California Code of Regulations ("Regulations") as alleged in the following paragraphs, and more fully set forth in Audit Report SD 110067 and the exhibits and work papers attached thereto.

#### **Bank Account**

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9.

At all times mentioned, in connection with the activities described in Paragraph 7, above, ICON accepted or received funds in trust ("trust funds"), which said advance fees, from or on behalf of actual or prospective parties to transactions including prospective renters and home buyers handled by ICON and thereafter made deposits and disbursements of such trust funds. From time to time herein mentioned, during the audit period and thereafter, said trust funds which include advance fees were deposited and/or maintained by ICON in the bank account described below. ICON did not maintain a trust fund during the audit period.

#### BA 1 (SD 10067:

Bank:

US Bank

Bank Address:

Unknown

Account Name:

Icon Realty

Account No.:

\*\*\*\*\*8242

Signatories:

Unknown

Status:

Unknown

Description:

BA was used as ICON's depository for LOP/LOB, RTO and

BCR Program trust funds

#### Violations of the Real Estate Law

10.

In the course of activities described in Paragraphs 7 and 9, above, and during the examination period, described in Paragraph 8, Respondent ICON acted in violation of the Code and the Regulations in which Respondent:

(a) Collected \$17,590.00 in trust funds in the form of advance fees the following beneficiaries set forth below which were deposited into ICON's bank account, BA 1, for

services to be rendered for BCR, LOP or RTO programs, respectively. Said services were not performed. Nor were the advance fees returned or refunded to the beneficiaries, in violation of Code Section 10145:

Received From	<b>Amount Collected</b>	Date Deposited Into US Bank	<b>Program</b>
Praparsri S.	\$ 1,995.00	09/14/2010	BCR
Praparsri S.	\$ 5,000.00 (Wire)	09/23/2010	BCR
Ibironke/O.	\$ 6,845.00	09/07/2010	LOP
Leonard H.	\$ 3,500.00	07/07/2011	RTO
	\$17.340.00		

- (b) Failed to establish and maintain a trust account at a bank or other recognized financial institution in the name of the broker for deposit of advance fees collected by ICON, in violation of Code Sections 10145 and 10146. ICON collected \$3,500.00 in advance fees through its RTO program in the Leonard H. transaction, failed to perform services or refund said \$3,500.00;
- (c) Failed to establish and maintain a trust account at a bank or other recognized financial institution in the name of the broker for deposit of advance fees collected by ICON, in violation of Code Sections 10145 and 10146. ICON collected \$6,995.00 in advance fees through its BCR program in the Praparsi S. transactions, failed to perform services or refund said \$3,500.00;
- (d) Deposited \$17,590.00 advance fees into a bank account not designated as a trust account. BA 1 was not in the name of the broker as trustee at a bank or other financial institution, nor designated as a trust account, in violation of Code Section 10145;
- (e) Failed to maintain a control record in the form of a columnar record in chronological order of all "Trust Funds Received, Not Placed Broker's Trust Account," in

violation of Code Section 10145 and Regulation 2831;

- (f) Failed to perform a monthly reconciliation of the balance of all separate beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of all trust funds received and disbursed by BA 1, in violation of Code Section 10145 and Regulation 2831.2;
- (g) Failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all trust fees in the form of advance fees collected for the aforementioned BCR/RTOLOP/LOB programs, in violation of Code Section 10145 and Regulation 2831.1;
- (h) ICON, initially licensed on December 10, 2010, collected advanced fees prior to licensure in the Leonard H. and Praparsi S. transaction, in violation of Code Section 10130.

11.

The conduct of Respondents ICON described in Paragraph 8 above, violated the Code and the Regulations as set forth below:

# PARAGRAPH PROVISIONS VIOLATED

10(a)	Code Section 10145
10(b)	Code Sections 10145 and 10146 (Leonard H. Transaction)
10(c)	Code Sections 10145 and 10146 (Praparsi S. Transaction)
10(d)	Code Section 10145
10(e)	Code Section 10145 and Regulation 2831
10(f)	Code Section 10145 and Regulation 2831.2
10(g)	Code Section 10145 and Regulation 2831.1
10(h)	Code Section 10130

The foregoing violations constitute cause for the discipline of the real estate licenses and license rights of Respondent ICON under the provisions of Code Sections 10130, 10177(d) and 10177(g).

#### SECOND CAUSE OF ACCUSATION

(LOP/LOB Program: Lease Option Purchase/Lease Option Buy)
(RTO Program: Rent to Own)
(BCR Program: Bad Credit Repair/Credit Restore)

12.

At all times mentioned herein, Respondents ICON, FRANCO and CUDA engaged in the business of a soliciting consumers for Respondents' LOP/LOB/RTO/BCR programs and for which Respondents' collection of advance fees required a real estate license by which to operate, within the definition of Code Sections 10131(d) and 10131.2.

#### General Allegations

13.

During the audit period and continuing thereafter to until September 7, 2010, three and one-half months before the audit period commenced, until June 30, 2012. Respondents ICON, FRANCO and CUDA solicited consumers by brochure and other means of media advertising wherein Respondents received were to receive a "Finder's Fee" or generic "fee" for consultation or a "fee" for obtaining an option on real property or for an extension, and for services to be rendered. Said fees ranged between \$3,000 and \$6,845, ostensibly to analyze and repair credit as preliminary to foreclosure prevention or purchase of a residence within three (3) months from contracting with the consumers again ostensibly to qualify said consumers for one of Respondents' offered programs including but not limited to:

- (1) Bad Credit Repair or Credit Restorral;
- (2) Lease Option Program to purchase property aka Lease Option to Buy; and
- (3) Rent To Own.

# Specific Allegations

14.

After collecting advance fees through a variety of names, Respondents failed to perform their end of the bargain by performing the sought after-services contracted for with said consumers, failed to obtain the real property to rent, lease or purchase, and failed to refund the advance fees collected, as set forth in Paragaphs 15 through 20, and the two tables following Paragraph 20 below:

15.

#### Praparsi S.

On or about September 3, 2010, ICON and FRANCO solicited from and received a total of \$6,995 in advance fees for credit repair services from Praparsi S. pursuant to a Credit Repair Services Agreement through "ICON CREDIT SERVICES." FRANCO promised to work on your file until satisfactory results are achieved..." FRANCO moreover promised to buy back Praparsi S.'s foreclosed residence from the bank or, alternatively, to buy a better residence in the area at current market value. FRANCO deposited \$6,995 into ICON's bank account. To date no credit analysis or repair, property showing, or refund of advance fees paid have been made.

16.

#### Ibironke A.

Between September 1 and September 7, 2010, Ibironke A. paid \$7,000 to FRANCO, \$155 in cash and \$6,845 by check, as an advance fees for the Lease Option Program offered by "Joel Franco Option Consultant." For this payment, FRANCO contracted to provide credit repair, to show "client" Ibironke A. residential properties that permit lease option purchases. After credit analysis and/or repair, FRANCO would show Ibironke A. these lease option properties for six months from the date of the contract, to wit, September 3, 2010, with an option for Ibironke A. to purchase up to three or six additional months of property showing. To

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date no credit repair, property showing, or refund of advance fees paid have been made.

17.

#### Lennard H.

On or about July 4, 2011 and ICON, FRANCO, representing himself as a "Broker Associate" of Icon Realty, and CUDA and unlicensed solicited from and received a total of \$3,500 in advance fees for credit repair services from Leonard H. pursuant to ICON's Realty Link's "Rent To Own Program." ICON, FRANCO and CUDA promised to show properties eligible for the Rent to Own Program from a period of six months from the date of the Agreement, to wit, July 4, 2011. To date no credit repair, property showing, or refund of advance fees paid have been made.

18.

#### Raudel/Rosa L.

On or about January 21, 2011, ICON FRANCO and unlicensed "consultant" Kirk Dennis at ICON's office solicited from and received a total of \$3,500, \$2,500 in cash and \$1,000 by check in advance fees for credit analysis and repair services from Raudel/Rosa L. pursuant to ICON's "Rent To Own Program." ICON FRANCO and Kirk Dennis promised to show Raudel/Rosa L. properties eligible for the Rent to Own Program from a period of six months from the date of the Agreement, to wit, January 21, 2011. To date no credit repair, property showing, or refund of advance fees paid have been made.

19.

# Augustin/Rosio C.

Between March 2 and March 5, 2011, ICON and FRANCO at ICON's office, solicited from and received a total of \$4,100, \$3,000 in cash and \$1,000 by check in advance fees for credit analysis and repair services from Augustin/Rosio C. pursuant to ICON's "Rent To Own Program — Bad Credit Is OK" ICON and promised to show properties eligible for the Rent to Own Program from a period of six months from the date of the Agreement, to wit,

March 5, 2011. To date no credit repair, property showing, or refund of advance fees paid have been made.

20.

## Bernard/Christine DLC.

On or about August 9, 2011, Bernard DLC. ICON, FRANCO, and CUDA solicited from and received a total of paid \$7,000 to \$1,200 in cash and \$5,800 by check as an advance fees for credit analysis and repair services from Bernard/Christine DLC. pursuant to ICON's "Rent To Own Program – Bad Credit Is OK" ICON and promised to show properties eligible for the Rent to Own Program from a period of six months from the date of the Agreement, to wit, August 9, 2011. To date no credit repair, property showing, or refund of advance fees paid have been made.

Table: LOP/LOB/BCR/RTO Program Services - Audit Related

Complainant	Payment Date	Advance Fee	Program	Agent
Praparsi S.	September 23, 2010	\$ 6,995	BCR	FRANCO
Ibirnoke A.	September 7, 2010	\$ 6,845	LOP	FRANCO
Lennard H	July 7, 2011	\$ 3,500	RTO	FRANCO/CUDA
Total		\$17,340		

# Table: LOP/LOB/BCR/RTO Program Services - Non-Audit Related

Complainant	Payment Date	Advance Fee	Program	Agent
Augustin C.	March 2, 2011	\$ 4,100	LOP	FRANCO
Raudel L.	January 27, 2011	\$ 3,500	BCR/RTO	FRANCO
C.de la Cruz	September 23, 2010	\$ 6,000	BCR/LOP	FRANCO/CUDA
Total		\$13,600		
Both Tables		\$30,940		

# LOP/LOB/BCR/RTO Violations and Disciplinary Statutes and Regulations

21.

The conduct of Respondents ICON, FRANCO and CUDA violated the Code and the Regulations as set forth below.

- 15(a) Code Section 10176(a) for substantial misrepresentation of LOP/LOB/RTO/BCR services contracted and paid, but not provided or refunded.
  - 15(b) Code Section 10176(i) for conversion, fraud and dishonest dealing.
  - 15(c) Code Section 10177(g) for negligence.
  - 15(d) Code Section 10085 and Regulation 2970.
  - 15(e) Code Sections 10145 and 10146.
  - 15(f) Code Sections 10145 and 10146.
  - 15(g) Code Sections 10130 and 10176(i) (FRANCO) for performing acts requiring a license before he was employed by ICON.

# THIRD CAUSE OF ACCUSATION (Negligence)

22.

The overall conduct of Respondents ICON, FRANCO and CUDA constitutes negligence and is cause for discipline of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

# FOURTH CAUSE OF ACCUSATION (Fiduciary Duty - Fraud and Dishonest Dealing)

23.

The conduct, acts and omissions of Respondents ICON, FRANCO and CUDA constitute a breach of fiduciary duty, owed to ICON's clients and to those of Alliance Marketing Group Inc., of good faith, trust, confidence and candor, within the scope of their contractual relationship with prospective credit repair seekers and property purchasers. Respondents promised services that they were paid in advance to perform, failed to deposit and account for the trust funds paid to them as advance fees, failed to perform or respond to communications from the aggrieved consumers, and failed to refund said fees fraudulently taken, in violation of Code Sections 10176(i) and 10177(g) and constitutes cause for discipline of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

# FIFTH CAUSE OF ACCUSATION (Fiduciary Duty - Negligence)

24.

The conduct, acts and omissions of Respondents ICON and FRANCO constitute a breach of fiduciary duty, owed to ICON's clients and to those of Alliance Marketing Group Inc., by recklessly exposing advance fees trust funds of said beneficiaries (1) to the general creditors of Respondents, and (2) to the general creditors of all other said beneficiaries, individually and severally, and to federal and state taxing authorities including the Internal Revenue Service, Franchise Tax Board and the California State Board of Equalization,

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in violation of Code Section 10177(g) which constitutes cause for discipline of the real estate license and license rights of said Respondents ICON and FRANCO pursuant to the provisions of Code Section 10177(g).

25.

Code Section 10106 provides, in pertinent part, which 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.

26.

Code Section 10148(b) provides, in pertinent part the Commissioner of the Bureau of Real Estate 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.

cc:

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 all licenses and/or license rights of Respondents ICON REALTY LINK INC., JOEL FRANCO, and NICHOLAS J. CUDA, under the Real Estate Law (Part 1 of Division 4 of the California 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 in minimum amount of \$30,940.00, and costs of audit, investigation and enforcement.

Dated at Los Angeles, California.

this 10th day of March, 2014.

VERONICA KILPĄTRICK

Deputy Real Estate Commissioner

Icon Realty Link Inc.
Joel Franco
Nicholas J. Cuda
Veronica Kilpatrick
Audits – Godswill Keraoru
Sacto