FILED

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of) No. H-40950 LA

EXCEL FUNDING REAL ESTATE)

SERVICES, INC, JEROLD ANTHONY) ACCUSATION

SAUNDERS, individually and as designated)
officer of Excel Funding Real Estate Services, Inc,)
and VICTOR MANUEL GUTIERREZ,)

Respondents.)

The Complainant, Maria Suarez, a Supervising Special Investigator of the State of California, for cause of Accusation against EXCEL FUNDING REAL ESTATE SERVICES, INC, JEROLD ANTHONY SAUNDERS, individually and as designated officer of Excel Funding Real Estate Services, Inc, and VICTOR MANUEL GUTIERREZ ("Respondents") alleges as follows:

1.

The Complainant, Maria Suarez, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity.

ACCUSATION

LICENSE HISTORY

2.

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

3.

(JEROLD ANTHONY SAUNDERS)

- a. Respondent JEROLD ANTHONY SAUNDERS ("SAUNDERS") is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code, as a real estate broker, Bureau of Real Estate ("Bureau") license ID 01363730.
- b. Respondent SAUNDERS' broker license was originally issued on November 2, 2004, and is scheduled to expire on November 1, 2020, unless renewed.
- c. Respondent SAUNDERS holds a Mortgage Loan Originator ("MLO") license endorsement, National Mortgage Licensing System and Registry ("NMLS") No. 243695, authorizing him to operate under Respondent EXCEL FUNDING REAL ESTATE SERVICES, INC.'s ("EFRESI") company MLO endorsement, NMLS No. 332480.
- d. Respondent SAUNDERS does not currently maintain any fictitious business names under his real estate broker license.
- e. Respondent SAUNDERS is the designated officer for Respondent EFRESI.

 As designated officer, Respondent SAUNDERS is responsible for the supervision of the activities conducted on behalf of Respondent EFRESI by its officers, agents, real estate licensees, and employees pursuant to Section 10159.2 of the Code.

4.

(EXCEL FUNDING REAL ESTATE SERVICES, INC)

a. Respondent EFRESI is presently licensed and/or has license rights under the Code, as a corporate real estate broker, Bureau license ID 01866188.

1	d. Respondent GUTIERREZ holds a MLO license endorsement, NMLS No.
2	341822, authorizing him to operate under Respondent EFRESI's company MLO endorsement,
3	NMLS No. 332480.
4	e. Respondent GUTIERREZ does not currently maintain any fictitious business
5	names under his real estate broker license.
6	REAL ESTATE ACTIVITY
7	6.
8	At all times relevant herein Respondent EFRESI was engaged in the business of
9	acted in the capacity of, advertised or assumed to act as a real estate broker, within the meaning
10	of:
11	a. Code section 10131(a). by selling or offering to sell, buying or offering to buy
12	soliciting prospective sellers or purchasers of, soliciting or obtaining listings of, or negotiating
13	the purchase, sale or exchange of real property or a business opportunity ("real estate sales");
14	and
15	b. Code section 10131(b). by leasing or renting or offering to lease or rent, or
16	placing for rent, or soliciting listings of places for rent, or soliciting for prospective tenants, or
17	negotiating the sale, purchase or exchanges of leases on real property, or on a business
18	opportunity, or collecting rents from real property, or improvements thereon, or from business
19	opportunities ("leasing activity").
20	COMPLAINT
21	7.
22	On or about May 19, 2016, the Bureau received a complaint from consumer
23	S.L.¹ concerning Respondent GUTIERREZ' conduct during a real estate purchase transaction
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26	¹ Initials are used in place of individual's full name to protect their privacy. Documents containing individual's full name will be provided during the discovery phase of this case to Respondents and/or their attorney(s), after service of a timely and proper request for discovery on Complainant's counsel.

involving 1350 Ronan Avenue, Wilmington, California ("Ronan Avenue property"). On or about April 27, 2015, S.L. and her spouse J.L. ("Buyers"), and Respondent GUTIERREZ, on behalf of Respondent EFRESI, executed a California Residential Purchase Agreement where Respondent GUTIERREZ represented the buyers and the seller M.F. in a dual agency. In an Additional Signature Addendum, a co-signer, F.R., was added. According to S.L., on April 27, 2015, Buyers gave Respondent GUTIERREZ a check for five-thousand dollars (\$5,000.00) for the earnest money deposit when escrow was opened on the Ronan Avenue property. Buyers also gave Respondent GUTIERREZ the following cash amounts totaling twenty-seven thousand dollars (\$27,000.00) towards the purchase of the Ronan Avenue property:

Date Received	<u>Amount</u>
May 28, 2015	\$9,000.00 cash
June 8, 2015	\$9,000.00 cash
June 17, 2015	\$9,000.00 cash
	R

Buyers.

Buyers received a written receipt for each of the nine-thousand dollars (\$9,000.00) they gave in cash to Respondent GUTIERREZ. According to Buyers, they did not purchase the house and, as of May 19, 2016, Respondent GUTIERREZ did not refund them the twenty-seven thousand dollars (\$27,000.00) that Respondent GURIERREZ received from

CAUSE FOR ACCUSATION (AUDIT OF REAL ESTATE SALES ACTIVITY)

9.

On or about October 12, 2017, the Bureau completed an audit examination of the books and records of Respondent EFRESI pertaining to the real estate activities described in Paragraph 6a above. The audit examination covered the period of time from January 1, 2015 through June 30, 2017 ("audit period"), and was performed between July 13, 2017 and October 5, 2017. The audit examination was limited to Respondent EFRESI's real estate sales activity

ACCUSATION

only. The audit examination revealed violations of the Code and the Regulations as set forth in 1 2 the following paragraphs, and more fully discussed in Audit Report No. LA 160207 and the 3 exhibits and work papers attached to said audit report. 10. 4 5 An entrance conference was held on July 13, 2017. The auditor met with Respondent SAUNDERS and Baldwin at EFRESI's main office address. According to 6 7 Respondent SAUNDERS and Baldwin, Respondent EFRESI closed approximately thirty-one 8 (31) real estate sales transactions totaling \$18,966,200.00 representing buyers and closed twenty-eight (28) real estate sales transactions totaling \$22,115,000.00 representing the sellers 10 during the audit period. In addition, Respondent EFRESI performed ten (10) leasing activities 11 totaling \$22,995.00 during the audit period. According to Respondent SAUNDERS and 12 Baldwin, Respondent EFRESI did not maintain any trust account for the leasing activity during 13 the audit period. 14 Violations of the Real Estate Law 15 11. 16 The audit examination revealed violations of the Code and the Regulations, as 17 set forth in the following paragraphs, and more fully discussed in Audit Report No. LA 160207 18 and the exhibits and work papers attached to the audit report: 19 (a) <u>Disclosure of Licensed Status in Advertising</u> (Code section 10140.6(b)). 20 Respondent EFRESI and its real estate licensees failed to disclose its NMLS license on the 21 Residential Purchase Agreement for the following real estate transactions in violation of Code 22 section 10140.6(b): 23 111 24 /// 25 /// 26 ///

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	<u>Property</u>	<u>Agent</u>	Bureau No.	NMLS No.
	(1) 331 W. 18 th Street	"Victor Guitierrez"	01096506	341822
	(2) 835 Hawaii Avenue	"Victor Guitierrez"	01096506	341822
	(3) 6704 Via Canada,	"Vince Iacono"	01031745	266501
١	(4) 840 W. 6th Street	"Victor Guitierrez"	01096506	341822
	(5) 2445 Rue Le Charlene	"Frances Baldwin"	01194971	330182
	(6) 2409 Steed Court	"Frances Baldwin"	01194971	330182

(b) <u>Use of False or Fictitious Name (Code section 10159.5 and Regulations section 2731)</u>. Respondent EFRESI conducted real estate activities using the unlicensed fictitious business name "Excel Funding R.E.S. Inc" in violation of Code section 10159.5 and Regulations section 2731. As of October 5, 2017, Respondent EFRESI did not have any fictitious names (DBAs) registered with the Bureau. The fictitious name "Excel Funding R.E.S. Inc" was listed on the following forms: Residential Purchase Agreement, Disclosure Regarding Real Estate Agency Relationship, Possible Representation of More Than One Buyer or Seller, Statewide Buyer and Seller Advisory, Agent Visual Inspection Disclosure and Seller Financing Addendum and Disclosure.

(c) Handling of Trust Funds (Code section 10145(c)). Respondent GUTIERREZ, while employed as a Broker Association for Respondent EFRESI, received a total of \$27,000.00 in cash from Buyers as alleged in Paragraphs 7 and 8 above. In a declaration dated May 24, 2016, executed by Respondent GUTIERREZ, Buyers asked Respondent GUTIERREZ to keep the cash until it was needed to close escrow on the Ronan Avenue property. Respondent GUTIERREZ told Buyers that he could not keep the \$27,000.00 in cash for Buyers, but that he would have a friend keep the money for them. According to Respondent GUTIERREZ, Buyers demanded their money back when Buyers could no longer purchase the Ronan Avenue property. Respondent GUTIERREZ informed Buyers that he needed time to get their money from his friend who was holding Buyers' money and was out of the country until June 1, 2016. Respondent GUTIERREZ, who accepted trust funds from Buyers on behalf of

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Respondent EFRESI, failed to immediately deliver the funds to Respondent EFRESI or deposit the funds into a broker's trust fund account in violation of Code section 10145(c).

Based on the documents produced regarding the Ronan Avenue property, a cancellation instruction from the escrow holder, Harbor Lights Escrow, dated May 27, 2016, was signed by both the Buyers and seller.

On June 2, 2016, Respondent GUTIERREZ brought a cashier's check in the amount of \$27,000.00, dated June 1, 2016, to the Bureau office in Los Angeles and gave the check to Special Investigator Amelia Nunez to deliver to Buyers. Later that same day, S.L. picked up the cashier's check from the Bureau's Los Angeles office.

According to the auditor's discussions with Respondent SAUNDERS and Baldwin, and Respondent SAUNDERS' written statement to the Bureau dated September 27, 2017, Respondent SAUNDERS and Baldwin were not aware of the \$27,000.00 given to Respondent GUTIERREZ. In addition, Respondent EFRESI did not maintain any trust account during the audit period.

(d) Responsibility of Corporate Officer in Charge/Broker Supervision (Code sections 10177(h) and 10159.2 and Regulations section 2725). Based on the violations set forth in Paragraphs 11(a)-(c) above, Respondent SAUNDERS did not exercise adequate supervision over the activities of Respondent EFRESI's employees to ensure compliance with the Real Estate Laws and Regulations in violation of Code sections 10177(h) and 10159.2. Respondent SAUNDERS failed to establish and/or implement policies, rules, procedures and system to review, oversee, inspect and manage transactions requiring a real estate license and the handling of trust funds in violation of Regulations section 2725.

12.

Each of the foregoing violations in Paragraph 11(a)-(d) above constitute cause for the suspension or revocation of the real estate license and/or license rights of Respondents EFRESI and SAUNDERS under the provisions of Sections 10177(d), 10177(g), and/or 10177(h).

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The conduct as set forth in Paragraph 11(c) above constitutes cause for the suspension or revocation of the real estate license and/or license rights of Respondent GUTIERREZ under the provisions of Sections 10177(d) and/or 10177(g).

COSTS

(AUDIT COSTS)

14.

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

(INVESTIGATION AND ENFORCEMENT COSTS)

15.

Section 10106 of the Code, 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 investigation and enforcement of the case.

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ACCUSATION

1	WHEREFORE, Complainant prays that a hearing be conducted on the allegations of		
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3	against all the licenses and/or license rights of Respondents EXCEL FUNDING REAL		
4	ESTATE SERVICES, INC, JEROLD ANTHONY SAUNDERS, individually and as designated		
5	officer of Excel Funding Real Estate Services, Inc, and VICTOR MANUEL GUTIERREZ		
6	under the Real Estate Law, for the costs of investigation and enforcement as permitted by law,		
7	for the cost of the audit, and for such other and further relief as may be proper under other		
8	applicable provisions of law.		
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10	Dated at Los Angeles, California this day of Delaura, 2018.		
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12	male of		
13	I Will William		
14	Maria Suarez Supervising Special Investigator		
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23			
24	cc: EXCEL FUNDING REAL ESTATE SERVICES, INC		
25	JEROLD ANTHONY SAUNDERS VICTOR MANUEL GUTIERREZ		
26	Maria Suarez		
27	Sacto.		

Audits – Benilda Emery