1 2 3 4 5 6 7 8 9 10 11 12	LISSETE GARCIA, Counsel (SBN 211552) Department of Real Estate 320 West 4th Street, Suite 350 Los Angeles, California 90013-1105 Telephone: (213) 576-6982 Direct: (213) 576-6914 Fax: (213) 576-6917 Attorney for Complainant BEFORE THE DEPARTMENT STATE OF CALIFO *** In the Matter of the Accusation against	DRNIA DRE No. H-41728 LA	
12	EL BASHA INC. and ADEL B. RAFAEL, individually, and as designated officer for El Basha Inc.,	FIRST AMENDED ACCUSATION	
14	Respondents.		
15			
16 17	This First Amended Accusation amends the Acc		
17	Complainant, Maria Suarez, a Supervising Special Investigator for the Department of Real Estate		
18	("Department") of the State of California, for cause of Accusation against EL BASHA INC. and		
20	ADEL B. RAFAEL, individually, and as designated officer for El Basha Inc. (collectively		
20	"Respondents"), alleges as follows:		
21	1. The Complainant, Maria Suarez, acting in her official capacity as a Supervising		
22	Special Investigator, makes this Accusation against Respondents.		
23	2. All references to the "Code" are to the California Business and Professions Code,		
27	all references to the "Real Estate Law" are to Part 1 of I Page 1 DRE First Amended Ac	Division 4 of the Code, and all references cusation against El Basha Inc. and Adel B. Rafael	

to "Regulations" are to the Regulations of the Real Estate Commissioner, Title 10, Chapter 6,
 California Code of Regulations.

3 3. Respondents are presently licensed and/or have license rights under the Real
4 Estate Law (Part 1 of Division 4 of the Code).

4. On September 22, 2009, the Department issued a real estate corporation license to
 Respondent EL BASHA INC. ("EBI"), License ID 01869228. Respondent EBI's license is
 scheduled to expire on September 21, 2021. Respondent has renewal rights pursuant to Code
 section 10201. The Department retains jurisdiction pursuant to Code section 10103.

9 5. On June 2, 2009, the Department issued a real estate broker license to Respondent
10 ADEL B. RAFAEL ("RAFAEL"), License ID 00910636. Respondent RAFAEL's broker
11 license is scheduled to expire on June 1, 2021. Respondent has renewal rights pursuant to Code

12 section 10201. The Department retains jurisdiction pursuant to Code section 10103.

6. Respondent RAFAEL was formerly licensed as a real estate salesperson from
approximately February 7, 1986 through June 1, 2009.

7. At all times relevant herein, EBI was licensed as a real estate corporation, by and
through Respondent RAFAEL as designated officer-broker of Respondent EBI to qualify said
corporation and to act for said corporation as a real estate broker.

At all times relevant herein, Respondent RAFAEL has been licensed as the
 designated officer-broker for Respondent EBI, pursuant to section 10211 of the Code. As said
 designated officer-broker, Respondent RAFAEL was at all times mentioned herein responsible
 pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers,
 agents, real estate licensees, and employees of Respondent EBI for which a license is required.
 Whenever reference is made in an allegation in this Accusation to an act or

24 || omission of Respondent EBI, such allegation shall be deemed to mean that the officers,

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directors, employees, agents and/or real estate licensees employed by or associated with 1 Respondent EBI committed such act or omission while engaged in the furtherance of the 2 business or operations of such corporate respondent and while acting within the course and 3 4 scope of their authority and employment.

5 At all times relevant herein, in the State of California, Respondents engaged in 10. activities that require a real estate broker license within the meaning of Code section 10131, 6 subdivision (b). Respondents' activities included soliciting or offering to negotiate the sale, 7 purchase or exchange of leases for real property and the collection of rents or security deposits 8 on real property or on a business opportunity for others, for compensation or in expectation of 9 10 compensation.

11

Prior Discipline 12 11. On August 21, 2014, the Department filed an Accusation in Department Case No. H-39582LA against Respondents. The Accusation was based on allegations of trust fund 13 violations found during an audit of Respondents' property management activities in Audit No. 14 15 LA120221.

16 On or about March 30, 2016, Respondents and the Department entered into a 12. 17 Stipulation and Agreement to settle the Accusation in Case No. H-39582 LA. Under the Determination of Issues of the Stipulation and Agreement, Respondents were determined to be in 18 19 violation of Code section 10145 and Regulations 2831, 2831.1., 2831.2, 2832, and 2834 and Respondent RAFAEL was in violation of Code section 10177, subdivisions (d) and (h). 20 21 Under the Stipulation and Agreement in Case No. H-39582 LA, Respondents' 13. licenses were suspended for sixty (60) days, which was stayed under certain terms and 22 conditions including paying the costs (not to exceed \$11,641.89) of an audit to determine if 23 24 Respondents have corrected the violations found in Audit No. LA120221. Page 3

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## Causes of Accusation

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## Audit LA180054

Audit LA180054	
14. On or about April 22, 2019, the Department completed an audit examination of	
the books and records of Respondent EBI's property management activities, which require a real	
estate license pursuant to Code section 10131, subdivision (b), to determine if Respondents have	
corrected the violations determined in the Stipulation and Agreement in Department No. H-	
39582 LA.	
15. The audit examination covered the period from April 20, 2016 through November	
30, 2018 ("audit period").	
16. The audit examination revealed violations of the Code and the Regulations as set	
forth in the following paragraphs, and more fully discussed in Audit Report LA180054 and the	
exhibits and work papers attached to said audit report.	
17. According to Respondents, RAFAEL is the sole owner and shareowner of EBI.	
During the audit period, Respondents managed approximately 280 properties with approximately	
300 units for 250 property owners. Respondents charged a management fee of five to seven and	
a half percent (5% - 7.5%) of monthly collected rents.	
18. According to Respondents, they maintained two multi-beneficiary bank accounts	
for Respondents' property management activities during the audit period:	
A. <u>Trust Account #1 (T/A 1)</u>	
Bank: Wells Fargo Bank	
Account #: xxxxx3045	
B. <u>Trust Account #2 (T/A 2)</u>	
Bank: JP Morgan Chase Bank	
Account #: xxxxx1338	
Page 4 DRE First Amended Accusation against El Basha Inc. and Adel B. Rafael	
	<ul> <li>14. On or about April 22, 2019, the Department completed an audit examination of the books and records of Respondent EBI's property management activities, which require a real estate license pursuant to Code section 10131, subdivision (b), to determine if Respondents have corrected the violations determined in the Stipulation and Agreement in Department No. H-39582 LA.</li> <li>15. The audit examination covered the period from April 20, 2016 through November 30, 2018 ("audit period").</li> <li>16. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA180054 and the exhibits and work papers attached to said audit report.</li> <li>17. According to Respondents, RAFAEL is the sole owner and shareowner of EBI.</li> <li>During the audit period, Respondents managed approximately 280 properties with approximately 300 units for 250 property owners. Respondents charged a management fee of five to seven and a half percent (5% - 7.5%) of monthly collected rents.</li> <li>18. According to Respondents, they maintained two multi-beneficiary bank accounts for Respondents' property management activities during the audit period:</li> <li>A. Trust Account #1 (T/A 1)</li> <li>Bank: Wells Fargo Bank</li> <li>Account #: xxxxx1338</li> </ul>

-1	19. According to Respondents, Darryl Michael Thomas ("Thomas"), real estate broker		
2	license ID 0194467, was EBI's compliance consultant for the audit.		
3	Violations		
4	20. In the course of its property management activities during the audit period,		
5	Respondents acted in violation of the Code and the Regulations as follows:		
6	Code section 10145(a) and Regulation 2832.1. Trust fund handling for multiple beneficiaries.		
7	21. Respondents combined records of all trust fund receipts and disbursements		
8	(control records/general ledger) in T/A 1 and T/A 2 for rents collected and security deposits.		
9			
10	as of November 30, 2018.		
11	22. As of November 30, 2018, T/A 1 and T/A 2 had a combined shortage of		
12	<\$1,976.97>. The combined shortage was caused by negative property balances of <\$1,918.99>,		
13	unreimbursed bank charges of <\$32.00>, and unauthorized disbursements of <\$25.98>, as of		
14	November 30, 2018.		
15	23. The properties with negative balances were caused by disbursements when there		
16	were insufficient funds. The properties with negative balances were: 41105 Chaco Canyon		
17	<\$1,874.00> and 5228 Lindley Ave. #1 <\$44.99>.		
18	24. T/A 1 incurred bank service charges that were not reimbursed by EBI, which		
19	consisted of a document copy fee of <\$5.00> on September 28, 2018, and a bank transaction fee		
20	for <\$27.00> on October 31, 2018.		
21	25. The <\$25.98> unauthorized disbursements related to RAFAEL's Chase credit		
22	card payments.		
23	26. Respondents failed to provide any evidence that the owners of the trust funds in		
24	T/A 1 and T/A 2 had given their written consent to allow EBI to reduce the balance of the funds		
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in T/A 1 and T/A 2 to an amount less than the existing aggregate trust fund liabilities, in
 violation of Code section 10145 and Regulation 2832.1.

3 Code section 10145(a). Handling of trust funds.

A report for the trust account balance as of November 30, 2018 was provided to
the Department's auditor for examination. The report listed ten properties for nine property
owners' trust funds maintained in T/A 2. The report failed to list the date when trust funds were
received and deposited, and from whom said trust funds were received.

28. According to the examination of the bank statements for T/A 1, check no. 11047
was cleared from T/A 1 on August 22, 2018. According to EBI's compliance consultant
Thomas, account T/A 2 was opened on August 21, 2018. Trust funds consisting of prepaid rents
and security deposits totaling \$100,000.00 were transferred from T/A 1 to T/A 2. EBI withdrew
trust funds from T/A 1 and deposited into T/A 2 without instructions from the beneficiaries
(property owners) entitled to the funds, in violation of Code section 10145(a). No additional
activity was noted in T/A 2 after August 22, 2018.

15 Code section 10145 and Regulation 2831. Trust fund records to be maintained.

16 29. During the audit period, Respondent EBI failed to maintain accurate or complete
17 records of trust funds received and disbursed (control record) for T/A 1, in violation of Code
18 section 10145 and Regulation 2381.

30. The control record (general ledger) for T/A 1 provided for the audit examination
did not have an accurate running daily balance as of November 30, 2018. According to bank
statements examined, the combined accountabilities for T/A 1 and T/A 2, and adjusted bank
balance as of November 30, 2018 was \$928,399.04. Trust funds totaling \$100,000 were
transferred from T/A 1 to T/A 2 on August 21, 2018 and were maintained in T/A 2 without any
activity; thereby, leaving an adjusted bank balance of \$828,399.04 in T/A 1. There was a

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Ŧ	1	difference of \$35,315.27 between the control record and the auditor's reconstructed general			
	2				
	3	31. C	ontrol record balance as of 11/30/201	8	= \$863,714.31
	4	A	uditor's reconstructed general ledger	balance as c	of $11/30/2018 = \$828.399.04$
	5				\$35,315.27
	6	32. S	ome of the disbursements made from	T/A 1 were	not recorded on the bank
	7				xamination. Examples include
	8	the following, wi	ithout limitation:		
	9	Date	Description	<u>Amount</u>	Control Record
	10	10/19/2018	Chase CC Payment/RAFAEL	<\$13.99>	Not recorded
	11	10/15/2018	Chase CC Payment/RAFAEL	<\$11.99>	Not recorded
	12	10/31/2018	Transaction fee	<\$27.00>	Not recorded
	13	09/28/2018	Document copy fee	<\$5.00>	Not recorded
	14		Total	<\$57.98>	
	15	Code section 101	45, subdivision (g) and Regulation 2	831.1. Sepa	rate records for each
	16	beneficiary or tra	insaction		
	17	records for each beneficiary or transaction (separate records) for T/A 1, in violation of Code section 10145(g) and Regulation 2831.1.			
	18				A 1, in violation of Code
	19				
	20				~
	21		sits and prepaid rent amounts; therefo		
	22	after posting transactions on any date. Examples include the following, without limitation:			
	23				
	24				
		Page 7 DRE First Amended Accusation against El Basha Inc. and Adel B. Rafael			
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1 2	Property	Balance per separate records provided	Security deposit per balance sheet	Prepaid rent balance sheet	Reconstructed balance for separate
3	18307 Burbank Blvd. #75	<\$655.00>	\$1,500.00	\$1,509.50	records \$ 2,354.50
4	632 Meyer Ln. #D	<\$245.84>	\$4,200.00	\$4,209.50	\$ 8,163.66
5	4612 Vista Del Mar#3	\$776.00	\$3,200.00	\$ 877.00	\$ 4,853.00
6	12524 Lithuanian	\$535.00	\$5,000.00	\$5,009.50	\$10,544.50
7	22100 Burbank #214B	\$355.00	\$1,600.00	\$1,499.50	\$ 3,434.50
8		L		<u> </u>	<u> </u>
9	Code section 10145 and Reg	ulation 2831.2.	Trust account re	conciliation	
10	35. During the au	dit period, EBI f	ailed to maintair	complete and ac	curate monthly
11	reconciliations comparing the	e balance of all s	eparate benefici	ary or transaction	records (separate
12	records) to the balance of all trust funds received and disbursed (control record) for T/A 1 and				
13	T/A 2, in violation of Code section 10145 and Regulation 2831.2.				
14	Code sections 10145 and 10176(i). Handling of trust funds/Unauthorized disbursements				
15	36. In October of 2018, Respondents disbursed trust funds from T/A 1 to make				
16	payments credit card payments totaling \$25.98 for RAFAEL's Chase Bank credit card without				
17	written consent of the owners of the trust funds, in violation of Code sections 10145 and 10176,				
18	subdivision (i).				
19	Code section 10176(g) and Regulation 2830. Undisclosed compensation/Broker placement of				
20	trust funds with financial inst	itutions.			
21	37. Based on an examination of EBI's bank statements for T/A 1 and T/A 2, during				
22	the audit period, EBI maintained earnings credit relationship with Wells Fargo and Chase banks			and Chase banks	
23	without disclosure to the trust	fund owners, in	violation of Co	le section 10176(	(g) and Regulation
24	2830. At least \$175.00 of sta	ndard monthly so	ervice fees were	waived by Wells	Fargo and Chase
			Page 8 mended Accusation	1 against El Basha In	ic. and Adel B. Rafael
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from June 2018 through November 2018. Examples of the service fees include the following,
 without limitation:

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3	Fee Period	Standard Monthly Service Fee	Amount paid	Bank account
4	11/1/18 to 11/30/18	\$14.00	\$0	T/A 1
5	11/1/18 to 11/30/18	\$95.00	\$0	T/A 2
6	10/1/18 to 10/31/18	\$10.00	\$0	T/A 1
7	9/1/18 to 9/30/18	\$14.00	\$0	T/A 1
8	8/1/18 to 8/31/18	\$14.00	\$0	T/A 1
9	7/1/18 to 7/31/18	\$14.00	\$0	T/A 1
10	6/1/18 to 6/30/18	<u>\$14.00</u>	\$0	T/A 1
11	Total	\$175.00		
12	38. The condu	ect of Respondent EBI as describe	d above in Paragra	phs 21 through 37,
13	violated the Code and the	Regulations as set forth below:		
14	Paragraph(s)	Violations		
15	21 - 26	Code section 10145 and Regul	ation 2832.1	-
16	27 & 28	Code section 10145(a)		
17	29 - 32	Code section 10145 and Regul	ation 2831	
18	33 & 34	Code section 10145 and Regul	ation 2831.1	
19	35	Code section 10145 and Regulation	ation 2831.2	3
20	36	Code section 10145 and 10176	(i)	
21	37	Code section 10176(g), and Re	gulation 2830	
22				
23	39. The forego	oing violations, as described above	e in Paragraphs 21	through 37,
24	constitute cause for the su	spension or revocation of the real	estate licenses and	license rights of
		Page 9 DRE First Amended Accusa	tion against El Basha I	nc. and Adel B. Rafael

- <sup>1</sup> -	1	
	1	Respondent EBI under the provisions of Code section 10176, subdivisions (g) and (i) and Code
	2	section 10177, subdivision (d) and/or (g).
	3	Respondent RAFAEL-Officer - Broker Supervision
	4	Code sections 10159.2, 10177(h), and Regulation 2725. Broker supervision.
	5	40. The conduct, acts and/or omissions of Respondent RAFAEL constitutes a failure
	6	to exercise the supervision and control over the activities of EBI to ensure compliance with the
	7	Real Estate Law and Regulations, as is required by Code section 10159.2 and Regulation 2725.
	8	Said conduct, acts, or omissions constitute cause to suspend or revoke the real estate licenses and
	9	license rights of Respondent RAFAEL pursuant to Code section 10177, subdivisions (h), (d)
	10	and/or (g).
	11	Audit Costs
	12	41. Code section 10148(b) provides, in pertinent part, that the Commissioner shall
	13	charge a real estate broker for the cost of any audit, if the Commissioner has found in a final
	14	decision following a disciplinary hearing that the broker has violated Code section 10145 or a
	15	regulation or rule of the Commissioner interpreting said section.
	16	Investigation/Enforcement Costs
	17	42. Code section 10106 provides, in pertinent part, that in any order issued in
	18	resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner
	19	may request the administrative law judge to direct a licensee found to have committed a violation
	20	of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement
	21	of the case.
	22	///
	23	///
	24	///
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: 1	WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this
2	Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
3	against all licenses and/or license rights of Respondents under the Real Estate Law (Part 1 of
4	Division 4 of the Business and Professions Code), for the costs of the audit, investigation, and
5	enforcement as permitted by law, and for such other and further relief as may be proper under
6	other provisions of law.
7	Dated at Los Angeles, California this $30^{4}$ day of $\mu_{0}$ , 2020.
8	man
9	MARIA SULADIT
10	Supervising Special Investigator
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16	cc: El Basha Inc. Adel B. Rafael
17	Maria Suarez Sacto
18	Audits/Anna Hartoonian
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