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 8 BEFORE THE DEPARTMENT OF REAL ESTATE  
 9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of 12 WINDFALL SPRINGS, INC., IRINA 13 KERZHANOVICH, and BRIAN L. THOMPSON, 14 Respondents.		No. H-42390-LA <u>ACCUSATION</u>
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 16 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the  
 17 Department of Real Estate (“Department” or “DRE”) of the State of California, for cause of  
 18 Accusation against WINDFALL SPRINGS, INC. (“WSI”), IRINA KERZHANOVICH  
 19 (“KERZHANOVICH”), and BRIAN L. THOMPSON (“THOMPSON”), collectively,  
 20 “Respondents,” is informed and alleges in her official capacity as follows:

- 21 1. The Complainant, Veronica Kilpatrick, acting in her official capacity as a
- 22 Supervising Special Investigator, makes this Accusation against Respondents.
- 23 2. All references to the "Code" are to the California Business and Professions Code and
- 24 all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

25 **LICENSE HISTORY**

26 3. Respondent WSI has been licensed by the Department as a real estate corporation  
 27 (“REC”), License ID, License ID 01847410, from on or about June 14, 2008, through the present,  
 28 with WSI’s license scheduled to expire on November 11, 2025, unless renewed. From on or about

1 June 14, 2008, through November 11, 2021, WSI was licensed through the real estate broker  
2 (“REB”) license of Barbara Baker<sup>1/</sup> (“Baker”), License ID 00524780, and Baker was the designated  
3 officer (“D.O.”). From on or about November 12, 2021, through the present, WSI has been licensed  
4 through the REB license of Linda Jean Scarberry (“Scarberry”), License ID 01231745, and  
5 Scarberry is the D.O. According to Department records to date, WSI has no branch offices, employs  
6 sixteen (16) broker associates and two hundred nineteen (219) salespersons, and the following  
7 fictitious business names are currently active and licensed to WSI:

- 8 a. “Realty One Group Southwest,” active as of October 4, 2012;
- 9 b. “Realty ONE Group SW,” active as of January, 28, 2015;
- 10 c. “ROGSW,” active as of January, 28, 2015; and
- 11 d. “Southwest Escrow,” “A Non-Independent Broker Escrow,” active as of  
12 October 4, 2012.

13 4. Respondent KERZHANOVICH has been licensed by the Department as a real estate  
14 salesperson (“RES”), License ID 01985304, from on or about September 9, 2015, through the  
15 present, with KERZHANOVICH’s license scheduled to expire on September 8, 2023, unless  
16 renewed. KERZHANOVICH has been employed by WSI from on or about September 9, 2015  
17 through on or about August 15, 2019, and from on or about October 17, 2019, through the present.

18 5. Respondent THOMPSON has been licensed by the Department as a RES, License  
19 ID 01852516, from on or about January 8, 2009, through the present, with THOMPSON’s license  
20 scheduled to expire on September 30, 2026, unless renewed. As relevant to the facts alleged herein,  
21 THOMPSON was employed by REC Vita Felice Holdings (“Vita Felice”), License ID 01911234,  
22 from on or about May 24, 2017, through on or about July 22, 2022, and has been employed by REC  
23 eXp Realty of California, Inc. (“eXp”) from on or about July 28, 2022, through the present.

24 **PRIOR DISCIPLINE OF WSI: DRE CASE NO. H-40186-LA**

25 6. On or about January 13, 2017, in DRE Case No. H-40186 LA, the DRE filed a  
26 Stipulation and Agreement for WSI and Baker. Under the Stipulation and Agreement, all licenses  
27 and licensing rights of WSI and Baker under the Real Estate Law were suspended for a period of 60

28 <sup>1/</sup> Complainant is informed and believes and on such information and belief alleges that Baker passed away on or  
about August 16, 2022.

1 days from the effective date of the Commissioner's Decision provided, however, that the  
2 suspensions would be stayed for two years on condition that:

3 a. WSI and Baker obey all laws and regulations governing the rights, duties,  
4 and responsibilities of a real estate licensee in the State of California; and,

5 b. No final subsequent determination be made, after hearing or upon stipulation,  
6 that cause for disciplinary action occurred within two years from the effective date of the  
7 decision;

8 c. WSI and Baker pay the sum of \$8,278 for the Commissioner's cost of the  
9 audit that led to the disciplinary action;

10 d. WSI and Baker pay the Commissioner's reasonable cost, not to exceed  
11 \$12,417 for an audit to determine if WSI and Baker corrected the violations found in the  
12 Determination of Issues; and

13 e. All licenses and licensing rights of WSI and Baker be indefinitely suspended  
14 until WSI and Baker pay the sum of \$1,872 for the Commissioner's reasonable cost of the  
15 investigation and enforcement that led to the disciplinary action.

16 7. The Stipulation and Agreement filed January 13, 2017 was adopted as the Decision  
17 of the Real Estate Commissioner, effective February 2, 2017.

18 **PRIOR DISCIPLINE OF WSI: DRE CASE NO. H-41675-LA**

19 8. On or about February 24, 2021, in DRE Case No. H-41675 LA, the DRE filed a  
20 Stipulation and Agreement for WSI and Baker. Under the Stipulation and Agreement, all licenses  
21 and licensing rights of WSI and Baker under the Real Estate Law were suspended for a period of 90  
22 days from the effective date of the Commissioner's Decision provided, however, that the initial 30  
23 days of the suspensions would be stayed for three years if WSI and Baker each paid a monetary  
24 penalty of \$75 per day for a total of \$2,250 each, with the remaining 60 days stayed on condition  
25 that:

26 a. WSI and Baker obey all laws, rules, and regulations governing the rights,  
27 duties, and responsibilities of a real estate licensee in the State of California; and,

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1           b.     No final subsequent determination be made, after hearing or upon stipulation,  
2     that cause for disciplinary action occurred within three years from the effective date of the  
3     decision;

4           c.     WSI and Baker pay the sum of \$1,355.30 for the Commissioner's reasonable  
5     cost of the investigation and enforcement that led to the disciplinary action;

6           d.     WSI and Baker pay the sum of \$16,205.68 for the Commissioner's cost of  
7     the audit that led to the disciplinary action;

8           e.     WSI and Baker pay the Commissioner's reasonable cost, not to exceed  
9     \$20,257.10 for an audit to determine if Respondents have corrected the violations found in  
10    the Determination of Issues; and

11          f.     Baker successfully complete a continuing education course on trust fund  
12    accounting and handling.

13          9.     The Stipulation and Agreement filed February 24, 2021 was adopted as the Decision  
14    of the Real Estate Commissioner, effective March 26, 2021.

15                   **PRIOR DISCIPLINE OF WSI: DRE CASE NO. H-05211-SD**

16          10.    On or about February 2, 2022, in DRE Case No. H-05211-SD, the DRE filed a  
17    Stipulation and Agreement for WSI and Baker. Under the Stipulation and Agreement, all licenses  
18    and licensing rights of WSI and Baker under the Real Estate Law were suspended for a period of 90  
19    days from the effective date of the Commissioner's Decision provided, however, that the initial 30  
20    days of the suspensions would be stayed for three years if WSI and Baker each paid a monetary  
21    penalty of \$100 per day for a total monetary penalty of \$3,000 each, with the remaining 60 days  
22    stayed for three (3) years on condition that:

23           a.     WSI and Baker obey all laws, rules, and regulations governing the rights,  
24    duties, and responsibilities of a real estate licensee in the State of California;

25           b.     No further cause for disciplinary action against the Real Estate license(s) of  
26    WSI and Baker occur within three (3) years from the effective date of the decision;

27           c.     No final subsequent determination be made, after hearing or upon stipulation,  
28    that cause of disciplinary action occurred within three (3) years from the effective date of

1 the decision. Should such a determination be made, the Commissioner may, in his  
2 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed  
3 suspension. Should no such determination be made, the stay imposed shall become  
4 permanent; and

5 d. WSI, Baker, and RES Mary Elizabeth Storm, License ID 01399544, severally  
6 and jointly pay the sum total of \$2,931.20, amounting to the Commissioner's reasonable cost  
7 of the investigation and enforcement that led to the disciplinary action;

8 11. The Stipulation and Agreement filed February 2, 2022 was adopted as the Decision  
9 of the Real Estate Commissioner, effective February 22, 2022.

10 **BROKERAGE: WSI**

11 12. At all times mentioned, in Riverside County, WSI acted as a real estate broker,  
12 conducting licensed activities within the meaning of Code section 10131(a): selling and buying real  
13 property for others. At all times mentioned, WSI conducted such licensed activities for  
14 compensation or in expectation of compensation. At all times mentioned, WSI acted by and through  
15 Baker as its D.O. pursuant to Code Section 10159.2 who was responsible for ensuring compliance  
16 with the Real Estate Law.

17 **FACTS DISCOVERED BY DRE**

18 13. On or about June 1, 2021, the DRE received a complaint from F.G.<sup>2/</sup> regarding  
19 KERZHANOVICH and Realty One Group Southwest (one of WSI's licensed fictitious business  
20 names), alleging that in July 2020, F.G. purchased real property located at 25810 Cherry Hills  
21 Boulevard in Menifee, California ("Cherry Hills property"), and that KERZHANOVICH, who  
22 owned the Cherry Hills property, was both the seller and the listing agent for the Cherry Hills  
23 property. The MLS listing for the Cherry Hills property showed only one homeowners association  
24 ("HOA"), Sun City Civic HOA, with annual dues of \$382.

25 14. F.G. alleges that on or about January 1, 2021, F.G. received a letter from the Dan  
26 Oaks HOA, a second HOA for the Cherry Hills property, demanding payment of a balance due of

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28 <sup>2/</sup> Initials are used in place of an individual's full name to protect their privacy. Documents containing the individuals' full names 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.

1 \$1,560, for the last six months of 2020, showing dues of \$260 per month. F.G. alleges that the Dan  
2 Oaks HOA and its monthly HOA dues requirement was not disclosed to the escrow company,  
3 THOMPSON (F.G.'s agent), or F.G., and was not disclosed in the MLS listing for the Cherry Hills  
4 property. F.G. and his wife moved into the Cherry Hills property, which was in a senior community,  
5 to settle in during their later years and cannot afford unexpected expenses. According to F.G., his  
6 agent THOMPSON informed him in 2021 that KERZHANOVICH never disclosed the Dan Oaks  
7 HOA and its monthly HOA dues requirement on any of the paperwork for the Cherry Hills property.

8 15. According to F.G., because of the increase in his monthly costs for the house, he tried  
9 to refinance the mortgage on the Cherry Hills property, but his lender informed him that had they  
10 known of the additional monthly HOA dues before the close of escrow, that F.G. would not have  
11 qualified for the loan that was approved.

12 16. Based on documents obtained by the DRE, on or about May 28, 2020,  
13 KERZHANOVICH prepared, or caused to be prepared, a MLS listing for the Cherry Hills property,  
14 listing the property for sale. In a section titled "Community," KERZHANOVICH listed the HOA  
15 as "Sun City Civic," with HOA fees of \$382 annually. KERZHANOVICH did not list Dan Oaks  
16 HOA in this section, despite the form containing fields for "HOA NAME" and "HOA NAME 2."  
17 KERZHANOVICH prepared, or caused to be prepared, three versions of the MLS listing for the  
18 Cherry Hills property, showing the listing as Active, Pending, and Closed. None of these three  
19 versions listed Dan Oaks HOA as a second HOA, with additional monthly HOA dues for the Cherry  
20 Hills property.

21 17. On or about June 1, 2020, KERZHANOVICH executed a document titled  
22 Supplemental Instructions & General Provisions which contains a provision on page 2 that provides  
23 in relevant part "HOMEOWNERS ASSOCATION: Seller warrants to Buyer that there is ONE  
24 Homeowners Association(s) affecting subject property."

25 18. On or about June 7, 2020, KERZHANOVICH executed a Real Estate Transfer  
26 Disclosure Statement ("TDS"). Under section "C" of the TDS, question 13 asks, "Are you (Seller)  
27 aware of any of the following:  . . .  Homeowner's Association which has any authority of the  
28 subject property." Next to question 13, the box for "Yes" is marked with an "X." At the end of

1 section "C" there is further text followed by blank lines, stating: "If the answer to any of these is  
2 yes, explain." On one of the blank lines, KERZHANOVICH handwrote: "C. 13. There is an HOA."  
3 However, she did not indicate there were two HOAs, or that the Dan Oaks HOA had authority over  
4 the Cherry Hills property.

5 19. Also on or about June 7, 2020, KERZHANOVICH executed a Seller Property  
6 Questionnaire ("SPQ"). Under section "M" of the SQP, question 3 asks, "Are you (Seller) aware  
7 of [¶] . . . [¶] Any past or present known material facts or other significant items affecting the value  
8 or desirability of the Property not otherwise disclosed to Buyer." Next to question 3, the box for  
9 "No" is marked with an "X."

10 20. According to THOMPSON, escrow closed on the Cherry Hills property in July 2020.  
11 In printouts of text messages between THOMPSON and KERZHANOVICH that were provided to  
12 the DRE by KERZHANOVICH, on or about June 4, 2020, prior to close of escrow,  
13 KERZHANOVICH sent a text message to THOMPSON providing the phone number of a woman  
14 named Donna with the Dan Oaks HOA. On or about June 7, 2020, THOMPSON sent a text message  
15 to KERZHANOVICH asking about whether the HOA covered termites and KERZHANOVICH  
16 replied that THOMPSON could ask Donna. On or about June 10, 2020, the following text messages  
17 were exchanged between THOMPSON and KERZHANOVICH:

18 THOMPSON:	Charmaine Summers HOA roof for F.G. Dan Oaks 714 350 XXXX
19 KERZHANOVICH:	I have a text message from Donna that the HOA takes 20 care of the roofs. 21 Thank you.
22 THOMPSON:	23 Ok she gave me Charmaine's number to clarify 24 everything thanks.

25 21. Based on the text messages between THOMPSON and KERZHANOVICH,  
26 THOMPSON knew or should have known that there was a second HOA, Dan Oaks HOA, and  
27 additional monthly HOA dues, prior to the close of escrow. Based on information provided by F.G.,  
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1 THOMPSON failed to inform F.G. that there was a second HOA, Dan Oaks HOA, and additional  
2 monthly HOA dues, prior to the close of escrow.

3 22. On or about August 23, 2021, KERZHANOVICH sent a letter to F.G. in which she  
4 stated, among other things, that the title report for the Cherry Hills property identified the existence  
5 of the Dan Oaks HOA. Based on documents provided to the DRE by WSI, the preliminary title  
6 report for the Cherry Hills property was issued by the Chicago Title Company with the effective  
7 date of May 20, 2020. The title report makes no reference to the Dan Oaks HOA.

8 **VIOLATIONS OF THE REAL ESTATE LAW – CAUSES FOR DISCIPLINE**

9 23. In the course of the activities described above in Paragraph 12, and based on the facts  
10 discovered by the DRE, as described in Paragraphs 13 through 22 above, Respondents acted in  
11 violation of the Code and Regulations as follows.

12 **FIRST CAUSE OF ACCUSATION**

13 24. The Complainant realleges and incorporates by reference all of the allegations  
14 contained in paragraphs 1 through 23 above with the same force and effect as though fully set forth  
15 herein.

16 25. KERZHANOVICH's acts and/or omissions in failing to disclose the Dan Oaks HOA  
17 and its monthly HOA dues, and in misrepresenting to F.G. that there was only one HOA, in the  
18 following documents related to the Cherry Hills property: the MLS listing, the Supplemental  
19 Instructions & General Provisions, the Real Estate Transfer Disclosure Statement, and the Seller  
20 Property Questionnaire, are in violation of **Code sections 10177(j), and 10177(d) and/or 10177(g)**  
21 and constitute cause to suspend or revoke the real estate licenses and license rights of Respondent  
22 KERZHANOVICH pursuant to **Code sections 10177(d) and/or 10177(g)**.

23 **SECOND CAUSE OF ACCUSATION**

24 26. The Complainant realleges and incorporates by reference all of the allegations  
25 contained in paragraphs 1 through 24 above with the same force and effect as though fully set forth  
26 herein.

27 27. WSI's acts and/or omissions, as alleged above in paragraphs 1 through 20, are in  
28 violation of **Code sections 10177(d) and/or 10177(g)** and constitute cause to suspend or revoke the



1 real estate licenses and license rights of Respondent WSI pursuant to **Code sections 10177(d)**  
2 **and/or 10177(g)**.

3 THIRD CAUSE OF ACCUSATION

4 28. The Complainant realleges and incorporates by reference all of the allegations  
5 contained in paragraphs 1 through 26 above with the same force and effect as though fully set forth  
6 herein.

7 29. At all relevant times herein, while acting as a real estate salesperson and agent of  
8 F.G., THOMPSON owed F.G. fiduciary duties, including, but not limited to the following: duty of  
9 reasonable care and skill; duty of good faith; duty of loyalty; duty of diligence; duty to avoid  
10 conflicts of interest; duty of fullest disclosure of all material facts affecting F.G.'s rights and  
11 interests, and all material facts affecting the value of the Cherry Hills property.

12 30. THOMPSON's acts and/or omissions in failing to inform F.G. that there was a  
13 second HOA, Dan Oaks HOA, and additional monthly HOA dues required for the Cherry Hill  
14 property, prior to the close of escrow, as alleged above, are in violation of **Code sections 10177(d)**  
15 **and/or 10177(g)**, constitute a breach of his fiduciary duties to F.G., and constitute cause to suspend  
16 or revoke the real estate licenses and license rights of Respondent THOMPSON pursuant to **Code**  
17 **sections 10177(d) and/or 10177(g)**.

18 COSTS

19 (INVESTIGATION AND ENFORCEMENT COSTS)

20 31. **Code section 10106** provides, in pertinent part that in any order issued in resolution  
21 of a disciplinary proceeding before the DRE, the Commissioner may request the administrative law  
22 judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed  
23 the reasonable costs of investigation and enforcement of the case.

24 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this  
25 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action  
26 against all the licenses and license rights of Respondents WINDFALL SPRINGS, INC., IRINA  
27 KERZHANOVICH, and BRIAN L. THOMPSON under the Real Estate Law, for the costs of

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1 investigation and enforcement as permitted by law, and for such other and further relief as may be  
2 proper under other applicable provisions of law.

3 Dated at San Diego, California this 7 day of November, 2022.

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*Veronica Kilpatrick*  
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Veronica Kilpatrick  
Supervising Special Investigator

cc: WINDFALL SPRINGS, INC.  
IRINA KERZHANOVICH  
BRIAN L. THOMPSON  
eXp Realty of California, Inc.  
Veronica Kilpatrick  
Sacto.