

FILED

FEB 29 2012

DEPARTMENT OF REAL ESTATE
BY: C.B.

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of	)	
	)	NO. H-2433 FR
<u>HERITAGE LENDING, INC.</u> , a	)	
California corporation,	)	
SHERRY L. COX, CANDY L. WELLS,	)	
and TY JEREMY CHRISTENSEN,	)	
	)	
Respondents.	)	
_____	)	

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on January 23, 2012, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent's express admissions; (2) affidavits; and (3) other evidence.

FINDINGS OF FACT

1.

On November 30, 2009, John W. Sweeney made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, to Respondent HERITAGE LENDING, INC.'s last known mailing address on file with the Department on December 2, 2009. An Amended Accusation was filed and served on March 11, 2010.

On January 23, 2012, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent HERITAGE LENDING, INC.'s default was entered herein.

2.

At all times herein mentioned, Respondent HERITAGE LENDING, INC. (hereafter "Respondent HERITAGE") was and is licensed by the Department of Real Estate (hereinafter "the Department") as a corporate real estate broker.

3.

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent HERITAGE, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with Respondent HERITAGE committed such act or omission while engaged in the furtherance of the business or operations of Respondent HERITAGE and while acting within the course and scope of their corporate authority and employment.

4.

At all times herein mentioned, Respondent HERITAGE engaged in the business of, acted in the capacity of, advertised, or assumed to act as a corporate real estate broker within the State of California within the meaning of Section 10131(d) of the Business and Professions Code ("Code"), including on behalf of others, for compensation or in expectation of compensation, solicited borrowers or lenders for or negotiated loans or collected payments or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

5.

In acting as a corporate real estate broker as described in Paragraph 4, above, Respondent HERITAGE, pursuant to Section 10132 of the Code, accepted or received funds in trust (hereinafter "trust funds") from or on behalf of lenders, note owners, buyers, borrowers, and/or others in connection with the said mortgage activities and loan services.

6.

Within the three year period prior to the filing of this Accusation, in connection with the collection and disbursement of trust funds, the aforesaid trust funds accepted or received by Respondent HERITAGE were deposited or caused to be deposited by said Respondent into a bank account maintained by Respondent HERITAGE at Santa Lucia Bank, 1240 Spring Street, Paso Robles, California, Account No. 2533413, entitled "Heritage Lending Inc. Trust Account" (hereinafter "Trust Account #1).

7.

Respondent HERITAGE maintained a general operating account at Santa Lucia Bank, 1240 Spring Street, Paso Robles, California, Account No. 2517698, entitled "Heritage Lending Inc" (hereinafter "general account").

8.

In connection with the collection and disbursement of trust funds, Respondent HERITAGE failed to deposit and maintain the trust funds in a trust account or neutral escrow depository, or to deliver them into the hands of the owners of the funds, as required by Section 10145 of the Code, in such a manner that there was a trust fund shortage in Trust Account #1 in the approximate sum of \$48,653.84 as of September 30, 2008, in the approximate sum of \$14,564.66 as of October 31, 2008, and in the approximate sum of \$14,814.66 as of November 30, 2008.

9.

Within the three-year period prior to the filing of this Accusation, in connection with the collection and disbursement of trust funds held on behalf of another or others, Respondent HERITAGE commingled trust funds with Respondent's own money or property by depositing trust funds into the general account of Respondent HERITAGE and converted said trust funds to their own use and benefit or to purposes not authorized by the rightful owners of said funds in violation of Section 10176(e) of the Code (commingling broker's funds with funds belonging to others held by broker on their behalf), Section 2835 of the Regulations (commingling trust funds with broker's funds prohibited), and Section 10176(i) of the Code (conduct which constitutes fraud or dishonest dealing). The exact amount of said converted trust funds is unknown to Complainant, but well known to Respondent and is not less than \$14,814.66.

10.

Within the three-year period prior to the filing of this Accusation, in connection with the collection and disbursement of trust funds, as alleged in Paragraphs 8 and 9, above, Respondent HERITAGE failed to obtain the prior written consents of the principals for the reduction of the aggregate balance of trust funds in Trust Account #1 and in the general account to an amount less than the existing aggregate trust fund liability to the owners of said funds as required by Section 2832.1 of the Title 10, Chapter 6, California Code of Regulations ("Regulations").

11.

Within the three-year period prior to the filing of this Accusation, in connection with the collection and disbursement of trust funds, as alleged above, Respondent HERITAGE:

(a) Failed to deposit trust funds into the hands of the owner of the funds, into a neutral depository, or into a trust fund in the name of the broker as trustee and/or failed to deposit trust funds into the hands of the owner of the funds, into a neutral depository, or into a trust fund in the name of the broker as trustee within three business days following receipt of the funds as required by Section 10145 of the Code and Section 2832 of the Regulations;

(b) Failed to maintain a control record for trust funds received and disbursed and containing the information required by Section 2831 of the Regulations (requiring record of trust funds received and disbursed in columnar form, in chronological sequence, dates of receipt, from

whom received, dates disbursed, date deposited, identity of depository, daily balance, etc.) for Trust Account #1 and for trust funds deposited to the general account;

(c) Failed to maintain for Trust Account #1 and for trust funds deposited to the general account a separate record for each beneficiary of trust funds received and disbursed for Trust Account #1 and for trust funds deposited into the general account as required by Section 10145 of the Code and Section 2831.1 of the Regulations (broker shall keep separate record for each beneficiary, accounting for all funds deposited to trust account, in columnar chronological form deposit date and amount, disbursement dates, disbursement check numbers, and balance after posting); and,

(d) Failed to perform, at least once a month, a reconciliation of all the separate beneficiary records with the control record, and/or failed to maintain a record of such reconciliations as required by Section 2831.2 of the Regulations (maintain balance of all separate beneficiary and reconcile funds received with funds disbursed, etc.) for Trust Account #1 and for trust funds deposited into the general account.

12.

Respondent HERITAGE did not hold a permit issued by the Department of Corporations to offer, sell, and issue securities prior to April 1, 2008.

13.

At all times herein mentioned Respondent HERITAGE acted as a corporate real estate broker within the meaning of Sections 10237 and 10238 of the Code (governing the brokering of promissory notes secured by real property to multiple lenders), in that at all times herein mentioned Respondent HERITAGE solicited and negotiated the sales to lenders of undivided interests in notes secured directly by real property and was subject to the criteria of Section 10238(h) of the Code with respect to notes or interests sold pursuant to Section 10238 of the Code.

14.

Within three years prior to the filing of this Accusation, in or about May, 2007, Respondent HERITAGE solicited multiple lenders to purchase, and negotiated the sale of, undivided interests in a promissory note for \$378,000.00 to be secured by unimproved real property identified as 75745 Hidden Creek Road, San Miguel, Monterey County, California (hereinafter "subject property"), in favor of a borrower identified as Matthew Richard Cary (hereinafter "borrower") for the purpose of constructing a residence on the subject property (hereinafter "construction loan").

15.

On or about June 6, 2007, Respondent HERITAGE obtained a written appraisal from a licensed appraiser in accordance with the Uniform Standards of Professional Appraisal Practice stating the appraised value of the subject property as improved upon completion of the construction would be \$525,000.00. The effective date of the written appraisal was May 22, 2007.

16.

Within three years prior to the filing of this Accusation, Respondent HERITAGE, pursuant to written Lender/Purchaser Disclosure Statements (hereinafter "LPDS"), represented to the lenders that the value of the subject property according to the appraiser was \$550,000.00, that the loan-to-value ratio was 68.72%, and that the protective equity was \$172,000.00, and induced the lenders to make loans as follows:

<u>Lender</u>	<u>Lender's Undivided Interest</u>	<u>Amount Loaned</u>	<u>Date Lender Signed LPDS</u>
Ted & Robbie Pickett	2.116%	\$8,000.00	5/11/07
Paddy McHale	4.762%	\$18,000.00	5/12/07
Shirley A. Nielsen	15.873%	\$60,000.00	5/15/07
William & Violet Letson	10.582%	\$40,000.00	5/15/07
Jerry & Kim Flagenhauer	26.984%	\$102,000.00	5/11/07
Jack & Lois Cragun	5.291%	\$20,000.00	5/10/07
P. John Kim	26.455%	\$100,000.00	5/17/07
Jack Sloan	7.937%	\$30,000.00	5/22/07
	MO%	\$378,000.00	

17.

The representations described in Paragraph 16, above, were false and misleading and were known by Respondent HERITAGE to be false and misleading when made or were made by such Respondent with no reasonable grounds for believing said representations to be true, and/or said Respondent should have known at the time through the exercise of reasonable diligence that such representations were false and misleading. In truth and in fact: 1.) the appraised value of the subject property as improved was \$525,000.00; 2.) Respondent had not

received the written appraisal until after the lenders had signed their respective LPDS; 3.) the loan-to-value ratio was 72%; and, 4.) the protective equity was \$147,000.00.

18.

The acts and omissions of Respondent HERITAGE and Respondent WELLS described in Paragraphs 14, 15, 16, and 17, above, constitute misrepresentation, fraud, deceit, and dishonest dealing.

19.

As set forth in Paragraph 16, above, Respondent HERITAGE, pursuant to the written LPDS to each lender, utilized the term fair market value of the subject property as based upon the value of the property after completion of the construction project. The loan-to-value ratio of the construction loan was more than 65% of the as improved value of the subject property and Respondent failed to provide a written statement setting forth material considerations and facts upon which Respondent reasonably relied to justify the loan-to-value ratio in violation of Section 10238(h)(1) of the Code.

20.

Within three years prior to the filing of this Accusation and at all times herein mentioned, Respondent HERITAGE deposited the lender funds set forth in Paragraph 16, above, into, and made periodic disbursements of said funds as construction draws for completion of construction on the subject property from, a trust account maintained by Respondent HERITAGE at Santa Lucia Bank, 1240 Spring Street, Paso Robles, California, Account No. 2534282, entitled "Heritage Lending Inc. Construction Trust Accounts" (hereinafter "Construction Trust Account).

21.

Within the three-year period prior to the filing of this Accusation, on or about July 15, 2007, Respondent HERITAGE, in the course and scope of conducting the activities set forth in Paragraph 4, above, pursuant to a written PLDS, represented to Bruce K. Defnet and Jane F. Defnet (hereinafter "lenders") that Michael E. Nielsen (hereinafter "borrower") received a gross income of \$45,000.00 per month and induced said lenders to loan \$850,000.00 secured by unimproved real property at 509 Price Street, Pismo Beach, California (hereinafter "Pismo property"), to finance the purchase of the Pismo property to borrower.

22.

The representation described in Paragraph 21, above, were false and misleading and were known by Respondent HERITAGE to be false and misleading when made or were made by such Respondent with no reasonable grounds for believing said representations to be true, and/or said Respondent should have known at the time through the exercise of reasonable diligence that such representations were false and misleading. In truth and in fact: 1) the borrower did not have a gross monthly income of \$45,000.00; 2) prior to submitting the LPDS TO THE LENDERS, Respondent had received from the borrower the borrower's income tax returns showing adjusted gross income of \$10,549.00 for 2003, negative adjusted gross income

of -\$1,624.00 for 2004, and negative adjusted gross income of -\$7,975.00 for 2005; and, 3) the borrower did not have sufficient income or financial resources to meet the monthly interest only mortgage payments of \$9,916.67.

23.

On or about February 28, 2008, the lenders' trustee recorded a notice of default against the Pismo property stating a default amount of \$20,825.03 and on or about June 12, 2008, a trustee's deed in favor of lenders was recorded after a trustee's sale.

24.

The acts and omissions of Respondent HERITAGE described in Paragraphs 21 through 24, above, constitute misrepresentation, fraud, deceit, and dishonest dealing.

DETERMINATION OF ISSUES

1.

The acts and/or omissions of Respondent HERITAGE in connection with the collection and disbursement of trust funds, as alleged in Paragraphs 6 through 11 above, constitute cause for the suspension or revocation of the licenses and license rights of Respondent HERITAGE under the following provisions: Regulations 2831, 2831.1, 2831.2, 2832, 2832.1, 2835, and Code Sections 10145, 10177(d), 10176(e), and 10176(i).

2.

The acts and/or omissions of Respondent HERITAGE constitute cause for the suspension or revocation of the licenses and license rights of said Respondent under the following provisions:

(a) As alleged against Respondent HERITAGE in Paragraphs 12 through 18, under Section 10176(a) of the Code (making a substantial misrepresentation), Section 10176(b) of the Code (making any false promises of a character likely to influence, persuade or induce), Section 10176(c) of the Code (continued and flagrant course of misrepresentation or false promises through real estate agents), Section 10176(e) (commingling), Section 10176(i) of the Code (any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing), Section 10177(g) of the Code (demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license), and, Section 10177(j) of the Code (any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing);

(b) As alleged against Respondent HERITAGE in Paragraph 19, under Section 10238(h)(1) of the Code (prohibiting a loan-to-value ratio in excess of 65% for unimproved single-family residential lot) and Section 10238(h)(2) of the Code (requiring broker to provide a written statement setting forth material considerations and facts upon which broker reasonably relied to justify the loan-to-value ratio) all in conjunction with Section 10177(d) of the Code and

Section 10177(g) of the Code (demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license); and,

(c) As alleged against Respondent HERITAGE in Paragraph 20, under Section 10238(h)(4)(A) of the Code (requiring an independent neutral third party escrow holder to be used for all deposits and disbursements of construction loan funds) and Section 10238(h)(4)(B) of the Code (entire amount of fully funded loan to be deposited in escrow prior to recording of trust deed) all in conjunction with Section 10177(d) of the Code, and Section 10177(g) of the Code (demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license).

3.

The acts and/or omissions of Respondent HERITAGE as alleged in Paragraphs 21 through 24, above, constitute cause for the suspension or revocation of the licenses and license rights of said Respondent under Section 10176(a) of the Code (making a substantial misrepresentation), Section 10176(b) of the Code (making any false promises of a character likely to influence, persuade or induce), Section 10176(c) of the Code (continued and flagrant course of misrepresentation or false promises through real estate agents), Section 10176(i) of the Code (any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing), Section 10177(g) of the Code (demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license), and, Section 10177(j) of the Code (any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing).

4.

The standard of proof applied was clear and convincing proof to a reasonable certainty.

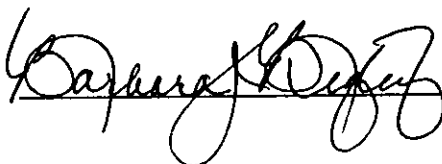
ORDER

The licenses and license rights of Respondent HERITAGE LENDING, INC. under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon March 20, 2012.

DATED: 2/17, 2012.

BARBARA J. BIGBY
Acting Real Estate Commissioner



FILED
JAN 23 2012
DEPARTMENT OF REAL ESTATE

By: DOLORES WEEKS
Regional Manager

FILED

APR 07 2010

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	)	
	)	NO. H-2433 FR
HERITAGE LENDING, INC., a California	)	
Corporation, SHERRY L. COX, CANDY L.	)	
WELLS, and TY JEREMY CHRISTENSEN,	)	
	)	
Respondents.	)	

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On December 2, 2009, an Accusation was filed in this matter against Respondent CANDY L. WELLS.

On February 15, 2010, Respondent petitioned the Commissioner to voluntarily surrender her real estate salesperson license(s) pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent CANDY L. WELLS's petition for voluntary surrender of her real estate salesperson license is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in Respondent's Declaration dated February 15, 2010 (attached as Exhibit "A" hereto).

///

1 Respondent's license certificate(s), pocket card(s) and any branch office license
2 certificate(s) shall be sent to the below listed address so that they reach the Department on or
3 before the effective date of this Order:

4
5 DEPARTMENT OF REAL ESTATE
6 Attn: Licensing Flag Section
7 P. O. Box 187000
8 Sacramento, CA 95818-7000

9 This Order shall become effective at 12 o'clock noon on **APR 27 2010**

10 DATED: 3/29/2006

11 JEFF DAVIS
12 Real Estate Commissioner
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27



BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	NO. H-2433 FR
HERITAGE LENDING, INC., a California	)	
Corporation, SHERRY L. COX, CANDY L.	)	
WELLS, and TY JEREMY CHRISTENSEN,	)	
	)	
Respondents.	)	
	)	

DECLARATION

My name is CANDY L. WELLS, and I am currently licensed as a real estate salesperson and/or have license rights with respect to said license. I am representing myself in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Government Code), I wish to voluntarily surrender my real estate license(s) issued by the Department of Real Estate (hereinafter "Department"), pursuant to Business and Professions Code Section 10100.2.

///

//

1 I understand that by so voluntarily surrendering my license(s), I may be re-
2 licensed as a broker or as a salesperson only by petitioning for reinstatement pursuant to
3 Section 11522 of the Government Code. I also understand that by so voluntarily surrendering
4 my license(s), I agree to the following:

5 1. The filing of this Declaration shall be deemed as my petition for
6 voluntary surrender.

7 2. It shall also be deemed to be an understanding and agreement by me that I
8 waive all rights I have to require the Commissioner to prove the allegations contained in the
9 Accusation filed in this matter at a hearing held in accordance with the provisions of the
10 Administrative Procedure Act (Government Code Sections 11400 et seq.), and that I also waive
11 other rights afforded to me in connection with the hearing such as the right to discovery, the
12 right to present evidence in defense of the allegations in the Accusation and the right to cross-
13 examine witnesses.

14 3. I further agree that upon acceptance by the Commissioner, as evidenced
15 by an appropriate order, all affidavits and all relevant evidence obtained by the Department in
16 this matter prior to the Commissioner's acceptance, and all allegations contained in the
17 Accusation filed in the Department Case No. H-2433 FR, may be considered by the Department
18 to be true and correct for the purpose of deciding whether to grant re-licensure or reinstatement
19 pursuant to Government Code Section 11522.

20 4. I freely and voluntarily surrender all my licenses and license rights under
21 the Real Estate Law.

22 I declare under penalty of perjury under the laws of the State of California that
23 the above is true and correct and that this declaration was executed February 15, 2010
24 2010, at Paso Robles, California.

25
26 Candy L. Wells
27 CANDY L. WELLS

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-1126

FILED

MAR 11 2010.

DEPARTMENT OF REAL ESTATE

By *L. Frost*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of	)	
	)	NO. H-2433 FR
12 HERITAGE LENDING, INC., a California	)	
13 Corporation, SHERRY L. COX, CANDY L.	)	AMENDED
14 WELLS, and TY JEREMY CHRISTENSEN,	)	ACCUSATION
	)	
15 Respondents.	)	

16
17 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate Commissioner of
18 the State of California, for Accusation against Respondent HERITAGE LENDING, INC., a
19 California Corporation, Respondent SHERRY L. COX, Respondent CANDY L. WELLS, and
20 Respondent TY JEREMY CHRISTENSEN, is informed and alleges as follows:

21 1

22 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate Commissioner of
23 the State of California, makes this Accusation against Respondents in his official capacity.

24 2

25 Respondents HERITAGE LENDING, INC., SHERRY L. COX, CANDY L.
26 WELLS, and TY JEREMY CHRISTENSEN are presently licensed and/or have license rights
27

1 under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code
2 (hereafter "the Code").

3 3

4 At all times herein mentioned, Respondent HERITAGE LENDING, INC.
5 (hereafter "Respondent HERITAGE") was and is licensed by the Department of Real Estate
6 (hereinafter "the Department") as a corporate real estate broker.

7 4

8 At all times herein mentioned, Respondent SHERRY L. COX (hereinafter
9 "Respondent COX") was and is licensed by the Department as an individual real estate broker.

10 5

11 At all times herein mentioned, Respondent COX was and is licensed by the
12 Department as the designated broker/officer of Respondent HERITAGE. As said designated
13 broker/officer, Respondent COX was at all times mentioned herein responsible pursuant to
14 Section 10159.2 and Section 10177(h) of the Code and Section 2725 of Chapter 6, Title 10,
15 California Code of Regulations (hereinafter "the Regulations") for the supervision and control
16 of the activities of the officers, agents, real estate licensees and employees of Respondent
17 HERITAGE and of the activities of the corporation for which a real estate license is required.

18 6

19 At all times herein mentioned, Respondents CANDY L. WELLS (hereinafter
20 "Respondent WELLS") was and is licensed by the Department as a real estate salesperson in the
21 employ of Respondent HERITAGE.

22 7

23 At all times herein mentioned, Respondent WELLS was the principal stockholder
24 and chief executive officer of Respondent HERITAGE.

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26 ///

27 ///

At all times herein mentioned, Respondents TY JEREMY CHRISTENSEN (hereinafter "Respondent CHRISTENSEN") was and is licensed by the Department as a real estate salesperson in the employ of Respondent HERITAGE.

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent HERITAGE, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with Respondent HERITAGE committed such act or omission while engaged in the furtherance of the business or operations of Respondent HERITAGE and while acting within the course and scope of their corporate authority and employment.

At all times herein mentioned, Respondent HERITAGE, COX, WELLS, and CHRISTIANSEN engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(d) of the Code, including on behalf of others, for compensation or in expectation of compensation, solicited borrowers or lenders for or negotiated loans or collected payments or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

FIRST CAUSE OF ACTION

There is hereby incorporated in this First, separate and distinct, Cause of Action, all of the allegations contained in Paragraphs 1 through 10, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

In acting as a real estate broker as described in Paragraph 10, above, Respondent HERITAGE and Respondent WELLS, pursuant to Section 10132 of the Code, accepted or

1 received funds in trust (hereinafter "trust funds") from or on behalf of lenders, note owners,
2 buyers, borrowers, and/or others in connection with the said mortgage activities and loan
3 services.

4 13

5 Within the three year period prior to the filing of this Accusation, in connection
6 with the collection and disbursement of trust funds, the aforesaid trust funds accepted or
7 received by Respondents HERITAGE and WELLS were deposited or caused to be deposited by
8 said Respondents into a bank account maintained by Respondent HERITAGE at Santa Lucia
9 Bank, 1240 Spring Street, in Paso Robles, California, Account No. 2533413, entitled "Heritage
10 Lending Inc. Trust Account" (hereinafter "Trust Account #1) with Respondent COX and
11 Respondent WELLS as the authorized signatories on said account.

12 14

13 Respondent HERITAGE maintained a general operating account at Santa Lucia
14 Bank, 1240 Spring Street, in Paso Robles, California, Account No. 2517698, entitled "Heritage
15 Lending Inc" (hereinafter "general account") with Respondent COX and Respondent WELLS
16 as the authorized signatories on said account.

17 15

18 In connection with the collection and disbursement of trust funds, Respondents
19 HERITAGE and WELLS failed to deposit and maintain the trust funds in a trust account or
20 neutral escrow depository, or to deliver them into the hands of the owners of the funds, as
21 required by Section 10145 of the Code, in such a manner that there was a trust fund shortage in
22 Trust Account #1 in the approximate sum of \$48,653.84 as of September 30, 2008, in the
23 approximate sum of \$14,564.66 as of October 31, 2008, and in the approximate sum of
24 \$14,814.66 as of November 30, 2008.

25 16

26 Within the three year period prior to the filing of this Accusation, in connection
27 with the collection and disbursement of trust funds held on behalf of another or others,

1 Respondents HERITAGE and WELLS commingled trust funds with Respondents' own money
2 or property by depositing trust funds into the general account of Respondent HERITAGE and
3 converted said trust funds to their own use and benefit or to purposes not authorized by the
4 rightful owners of said funds in violation of Section 10176(e) of the Code (commingling broker's
5 funds with funds belonging to others held by broker on their behalf), Section 2835 of the
6 Regulations (commingling trust funds with broker's funds prohibited), and Section 10176(i) of
7 the Code (conduct which constitutes fraud or dishonest dealing). The exact amount of said
8 converted trust funds is unknown to Complainant, but well known to Respondents and is not less
9 than \$14,814.66.

10 17

11 Within the three year period prior to the filing of this Accusation, in connection
12 with the collection and disbursement of trust funds, as alleged in Paragraphs 15 and 16, above,
13 Respondent HERITAGE failed to obtain the prior written consents of the principals for the
14 reduction of the aggregate balance of trust funds in Trust Account #1 and in the general account
15 to an amount less than the existing aggregate trust fund liability to the owners of said funds as
16 required by Section 2832.1 of the Regulations.

17 18

18 Within the three year period prior to the filing of this Accusation, in connection
19 with the collection and disbursement of trust funds, as alleged above, Respondent HERITAGE:

- 20 (a) Failed to deposit trust funds into the hands of the owner of the funds, into
21 a neutral depository, or into a trust fund in the name of the broker as
22 trustee and/or failed to deposit trust funds into the hands of the owner of
23 the funds, into a neutral depository, or into a trust fund in the name of the
24 broker as trustee within three business days following receipt of the funds
25 as required by Section 10145 of the Code and Section 2832 of the
26 Regulations;
27

- 1 (b) Failed to maintain a control record for trust funds received and disbursed
2 and containing the information required by Section 2831 of the
3 Regulations (requiring record of trust funds received and disbursed in
4 columnar form, in chronological sequence, dates of receipt, from whom
5 received, dates disbursed, date deposited, identity of depository, daily
6 balance, etc.) for Trust Account #1 and for trust funds deposited to the
7 general account;
- 8 (c) Failed to maintain for Trust Account #1 and for trust funds deposited to
9 the general account a separate record for each beneficiary of trust funds
10 received and disbursed for Trust Account #1 and for trust funds deposited
11 into the general account as required by Section 10145 of the Code and
12 Section 2831.1 of the Regulations (broker shall keep separate record for
13 each beneficiary, accounting for all funds deposited to trust account, in
14 columnar chronological form deposit date and amount, disbursement
15 dates, disbursement check numbers, and balance after posting); and,
- 16 (c) Failed to perform, at least once a month, a reconciliation of all the
17 separate beneficiary records with the control record, and/or failed
18 to maintain a record of such reconciliations as required by Section 2831.2
19 of the Regulations (maintain balance of all separate beneficiary and
20 reconcile funds received with funds disbursed, etc.) for Trust Account #1
21 and for trust funds deposited into the general account.

22 19

23 The acts and/or omissions of Respondents as alleged above constitute cause for
24 the suspension or revocation of the licenses and license rights of Respondents under the
25 following provisions:

- 26 (a) As alleged against Respondents HERITAGE and WELLS in Paragraph
27 15, under Section 10145 of the Code in conjunction with Section

1 10177(d) of the Code (suspension or revocation of license for willful
2 disregard or violation of the Real Estate Law, §§ 10000 et seq. of the
3 Code, or of the Regulations);

- 4 (b) As alleged against Respondents HERITAGE and WELLS in Paragraph
5 16, under Section 2835 of the Regulations in conjunction with Section
6 10177(d) of the Code, and under Sections 10176(e) and Section 10176(i)
7 of the Code;
- 8 (c) As alleged against Respondent HERITAGE in Paragraph 17, under
9 Section 2832.1 of the Regulations in conjunction with Section 10177(d)
10 of the Code;
- 11 (d) As alleged against Respondent HERITAGE in Paragraph 18(a), under
12 Section 2832 of the Regulations and under Section 10145 of the Code in
13 conjunction with Section 10177(d) of the Code;
- 14 (e) As alleged against Respondent HERITAGE in Paragraph 18(b), under
15 Section 2831 of the Regulations in conjunction with Section 10177(d) of
16 the Code; and,
- 17 (f) As alleged against Respondent HERITAGE in Paragraph 18(c), under
18 Section 2831.2 of the Regulations in conjunction with Section 10177(d)
19 of the Code.

20 SECOND CAUSE OF ACTION

21 20

22 There is hereby incorporated in this Second, separate and distinct, Cause of
23 Action, all of the allegations contained in Paragraphs 1 through 19, inclusive, of the Accusation
24 with the same force and effect as if herein fully set forth.

25 21

26 From April 4, 2008 through January 30, 2009, Diana Brewster, an auditor for the
27 Department (hereinafter "Auditor"), sought and obtained from Respondent HERITAGE,

1 Respondent COX, and Respondent WELLS pursuant to Section 10148 of the Code (requiring a
2 broker to maintain for three years trust fund records in connection with any transaction requiring
3 a real estate license and to make such records available to the Department's representative and
4 authorizing an audit of such records) the trust fund records and general account records of
5 Respondent HERITAGE, reviewed said records, and performed an audit of the trust fund
6 handling and record keeping of Respondent HERITAGE.

7 22

8 During the course of the audit described in Paragraph 21, above, and within the
9 three year period prior to the filing of this Accusation, the Auditor informed Respondent COX
10 that Trust Account #1 had a shortage as set forth in Paragraph 15, above, plus an unidentified
11 shortage, for a total shortage of \$14,886.23 and instructed Respondent COX that the trust funds
12 missing from Trust Account #1 had to be replaced.

13 23

14 Within the three year period prior to the filing of this Accusation, on or about
15 December 6, 2008, Respondent COX presented to the Auditor a copy of a deposit ticket and a
16 check remittance stub for \$14,886.23 and represented to the Auditor that Respondent COX had
17 deposited to Trust Account #1 a check for \$14,886.23 drawn on the general account of
18 Respondent HERITAGE..

19 24

20 Within the three year period prior to the filing of this Accusation, Respondent
21 COX and Respondent WELLS represented to the Auditor by letter dated February 4, 2009, that:
22 1.) said Respondents "... have undertaken an extensive manual examination of the account and
23 based upon your recommendation, have revised our policies and procedures to address the
24 circumstances which allowed the situation to occur in the first instance. . . . ;" 2.) "... though
25 trust monies may have been improperly accounted for, the funds themselves remained in our
26 accounts and were never liquidated or used for purposes other than that for which they were

27 ///

1 received. . . .;” and, 3.) “We also believe that we have demonstrated that all trust funds were
2 ultimately applied towards the obligations to which they were placed in trust”

3 25

4 The representations described in Paragraphs 23 and 24, above, were false and
5 misleading and were known by Respondents COX and WELLS to be false and misleading when
6 made or were made by such Respondents with no reasonable grounds for believing said
7 representations to be true, and/or said Respondents should have known at the time through the
8 exercise of reasonable diligence that such representations were false and misleading. In truth
9 and in fact: 1.) Respondent COX did not deposit \$14,886.23 or any amount toward curing the
10 shortage to Trust Account #1 on December 6, 2008, or at any time thereafter until April 20,
11 2009; 2.) on December 6, 2008, the general account of Respondent HERITAGE contained
12 insufficient funds to cover a check for \$14,886.23; 3.) at all times from December 2007 through
13 April 2009, the daily balance of the general account fell below the \$14,016.67 amount of the
14 trust funds deposited to the general account; 4.) from December 2008 through April 2009,
15 Respondents WELLS and COX did not properly maintain or review trust fund records in
16 accordance with the Regulations; 5.) Respondents WELLS and COX had not revised or
17 implemented proper policies and procedures to address trust fund handling and record keeping;
18 6.) trust funds in the general account had been liquidated and used for improper purposes; and,
19 7.) all trust funds were not applied towards the designated obligations as such funds had not
20 been placed in Trust Account #1 or in any trust account and the trust funds deposited into the
21 general account had in fact been used for the personal benefit of Respondent WELLS.

22 26

23 The acts and omissions of Respondent WELLS and Respondent COX described
24 in Paragraphs 23, 24 and 25, above, constitute misrepresentation, fraud, deceit, and dishonest
25 dealing.

26 ///

27 ///

The acts and/or omissions of Respondents WELLS and COX as alleged in Paragraphs 23, 24, 25, and 26, above, constitute cause for the suspension or revocation of the licenses and license rights of Respondents WELLS and COX under the following provisions:

- (a) Under Sections 10176(a) of the Code (making a substantial misrepresentation);
- (b) Under Section 10176(b) of the Code (making any false promises of a character likely to influence, persuade or induce);
- (c) Under Section 10176(e) of the Code (commingling with licensee's own money or property the money or property of others held by the licensee);
- (d) Under Section 10176(i) of the Code (any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing);
- (e) Under Section 10177(g) of the Code (demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license); and,
- (g) Under Section 10177(j) of the Code (any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing).

THIRD CAUSE OF ACTION

There is hereby incorporated in this Third, separate and distinct, Cause of Action, all of the allegations contained in Paragraphs 1 through 27, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

Respondent HERITAGE did not hold a permit issued by the Department of Corporations to offer, sell, and issue securities prior to April 1, 2008.

At all times herein mentioned Respondent HERITAGE acted as a real estate broker within the meaning of Sections 10237 and 10238 of the Code (governing the brokering of promissory notes secured by real property to multiple lenders), in that at all times herein mentioned Respondent HERITAGE solicited and negotiated the sales to lenders of undivided interests in notes secured directly by real property and was subject to the criteria of Section 10238(h) of the Code with respect to notes or interests sold pursuant to Section 10238 of the Code.

Within three years prior to the filing of this Accusation, in or about May, 2007, Respondent HERITAGE and Respondent WELLS solicited multiple lenders to purchase, and negotiated the sale of, undivided interests in a promissory note for \$378,000.00 to be secured by unimproved real property identified as 75745 Hidden Creek Road, San Miguel, Monterey County, California (hereinafter "subject property"), in favor of a borrower identified as Matthew Richard Cary (hereinafter "borrower") for the purpose of constructing a residence on the subject property (hereinafter "construction loan").

On or about June 6, 2007, Respondent HERITAGE obtained a written appraisal from a licensed appraiser in accordance with the Uniform Standards of Professional Appraisal Practice stating the appraised value of the subject property as improved upon completion of the construction would be \$525,000.00. The effective date of the written appraisal was May 22, 2007.

Within three years prior to the filing of this Accusation, Respondent HERITAGE and Respondent WELLS, pursuant to written Lender/Purchaser Disclosure Statements (hereinafter "LPDS"), represented to the lenders that the value of the subject property according
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to the appraiser was \$550,000.00, that the loan-to-value ratio was 68.72%, and that the protective equity was \$172,000.00, and induced the lenders to make loans as follows:

Lender	Lender's Undivided Interest	Amount Loaned	Date Lender Signed LPDS
Ted & Robbie Pickett	2.116%	\$ 8,000.00	5/11/07
Paddy McHale	4.762%	\$ 18,000.00	5/12/07
Shirley A. Nielsen	15.873%	\$ 60,000.00	5/15/07
William & Violet Letson	10.582%	\$ 40,000.00	5/15/07
Jerry & Kim Flagenhauer	26.984%	\$102,000.00	5/11/07
Jack & Lois Cragun	5.291%	\$ 20,000.00	5/10/07
P. John Kim	26.455%	\$100,000.00	5/17/07
Jack Sloan	<u>7.937%</u> <u>100%</u>	<u>\$ 30,000.00</u> <u>\$378,000.00</u>	5/22/07

34

The representations described in Paragraph 33, above, were false and misleading and were known by Respondents HERITAGE and WELLS to be false and misleading when made or were made by such Respondents with no reasonable grounds for believing said representations to be true, and/or said Respondents should have known at the time through the exercise of reasonable diligence that such representations were false and misleading. In truth and in fact: 1.) the appraised value of the subject property as improved was \$525,000.00; 2.) Respondents had not received the written appraisal until after the lenders had signed their respective LPDS; 3.) the loan-to-value ratio was 72%; and, 4.) the protective equity was \$147,000.00.

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The acts and omissions of Respondent HERITAGE and Respondent WELLS described in Paragraphs 31, 32, 33 and 34, above, constitute misrepresentation, fraud, deceit, and dishonest dealing.

As set forth in Paragraph 33, above, Respondent HERITAGE and Respondent WELLS, pursuant to the written LPDS to each lender, utilized the term fair market value of the subject property as based upon the value of the property after completion of the construction project. The loan-to-value ratio of the construction loan was more than 65% of the as improved value of the subject property and Respondents failed to provide a written statement setting forth material considerations and facts upon which Respondents reasonably relied to justify the loan-to-value ratio in violation of Section 10238(h)(1) of the Code.

Within three years prior to the filing of this Accusation and at all times herein mentioned, Respondent HERITAGE and Respondent WELLS deposited the lender funds set forth in Paragraph 33, above, into, and made periodic disbursements of said funds as construction draws for completion of construction on the subject property from, a trust account maintained by Respondent HERITAGE at Santa Lucia Bank, 1240 Spring Street, in Paso Robles, California, Account No. 2534282, entitled "Heritage Lending Inc. Construction Trust Accounts" (hereinafter "Construction Trust Account") with Respondent WELLS as an authorized signatory on said account in violation of Section 10238(h)(4) of the Code.

The acts and/or omissions of Respondents HERITAGE and WELLS as alleged above constitute cause for the suspension or revocation of the licenses and license rights of said Respondents under the following provisions:

- (a) As alleged against Respondents HERITAGE and WELLS in Paragraphs 31, 32, 33, 34 and 35, under Section 10176(a) of the Code (making a

1 substantial misrepresentation), Section 10176(b) of the Code (making any
2 false promises of a character likely to influence, persuade or induce),
3 Section 10176(c) of the Code (continued and flagrant course of
4 misrepresentation or false promises through real estate agents), Section
5 10176(i) of the Code (any other conduct, whether of the same or a
6 different character than specified in this section, which constitutes fraud
7 or dishonest dealing), Section 10177(g) of the Code (demonstrated
8 negligence or incompetence in performing an act for which he or she is
9 required to hold a license), and, Section 10177(j) of the Code (any other
10 conduct, whether of the same or a different character than specified in this
11 section, which constitutes fraud or dishonest dealing);

12 (b) As alleged against Respondents HERITAGE and WELLS in Paragraph
13 36, under Section 10238(h)(1) of the Code (prohibiting a loan-to-value
14 ratio in excess of 65% for unimproved single-family residential lot) and
15 Section 10238(h)(2) of the Code (requiring broker to provide a written
16 statement setting forth material considerations and facts upon which
17 broker reasonably relied to justify the loan-to-value ratio) all in
18 conjunction with Section 10177(d) of the Code and Section 10177(g) of
19 the Code (demonstrated negligence or incompetence in performing an act
20 for which he or she is required to hold a license); and,

21 (c) As alleged against Respondents HERITAGE and WELLS in Paragraph
22 37, under Section 10238(h)(4)(A) of the Code (requiring an independent
23 neutral third party escrowholder to be used for all deposits and
24 disbursements of construction loan funds) and Section 10238(h)(4)(B) of
25 the Code (entire amount of fully funded loan to be deposited in escrow
26 prior to recording of trust deed) all in conjunction with Section 10177(d)
27 of the Code, and Section 10177(g) of the Code (demonstrated negligence

1 or incompetence in performing an act for which he or she is required to
2 hold a license).

3 FOURTH CAUSE OF ACTION

4 39

5 There is hereby incorporated in this Fourth, separate and distinct, Cause of
6 Action, all of the allegations contained in Paragraphs 1 through 38, inclusive, of the Accusation
7 with the same force and effect as if herein fully set forth.

8 40

9 Within the three-year period prior to the filing of this Accusation, on or about
10 July 15, 2007, Respondent HERITAGE and Respondent CHRISTENSEN, in the course and
11 scope of conducting the activities set forth in Paragraph 10, above, pursuant to a written LPDS,
12 represented to Bruce K. Defnet and Jane F. Defnet (hereinafter "lenders") that Michael E.
13 Nielsen (hereinafter "borrower") received a gross income of \$45,000.00 per month and induced
14 said lenders to loan \$850,000.00 secured by unimproved real property at 509 Price Street, Pismo
15 Beach, California (hereinafter "Pismo property"), to finance the purchase of the Pismo property
16 by borrower.

17 41

18 The representations described in Paragraph 40, above, were false and misleading
19 and were known by Respondents HERITAGE and CHRISTENSEN to be false and misleading
20 when made or were made by such Respondents with no reasonable grounds for believing said
21 representations to be true, and/or said Respondents should have known at the time through the
22 exercise of reasonable diligence that such representations were false and misleading. In truth
23 and in fact: 1.) the borrower did not have a gross monthly income of \$45,000.00; 2.) prior to
24 submitting the LPDS to the lenders, Respondents had received from the borrower the borrower's
25 income tax returns showing adjusted gross income of \$10,549.00 for 2003, negative adjusted
26 gross income of -\$1,624.00 for 2004, and negative adjusted gross income of -\$7,975.00 for
27

1 2005; and, 3.) the borrower did not have sufficient income or financial resources to meet the
2 monthly interest only mortgage payments of \$9,916.67.

3 42

4 On or about February 28, 2008, the lenders' trustee recorded a notice of default
5 against the Pismo property stating a default amount of \$20,825.03 and on or about June 12,
6 2008, a trustee's deed in favor of lenders was recorded after a trustee's sale.

7 43

8 The acts and omissions of Respondent HERITAGE and Respondent
9 CHRISTENSEN described in Paragraphs 40 and 41, above, constitute misrepresentation, fraud,
10 deceit, and dishonest dealing.

11 44

12 The acts and/or omissions of Respondents HERITAGE and CHRISTENSEN as
13 alleged above constitute cause for the suspension or revocation of the licenses and license rights
14 of said Respondents under Section 10176(a) of the Code (making a substantial
15 misrepresentation), Section 10176(b) of the Code (making any false promises of a character
16 likely to influence, persuade or induce), Section 10176(c) of the Code (continued and flagrant
17 course of misrepresentation or false promises through real estate agents), Section 10176(i) of the
18 Code (any other conduct, whether of the same or a different character than specified in this
19 section, which constitutes fraud or dishonest dealing), Section 10177(g) of the Code
20 (demonstrated negligence or incompetence in performing an act for which he or she is required
21 to hold a license), and, Section 10177(j) of the Code (any other conduct, whether of the same or
22 a different character than specified in this section, which constitutes fraud or dishonest dealing).

23 FIFTH CAUSE OF ACTION

24 45

25 There is hereby incorporated in this Fifth, separate and distinct, Cause of Action,
26 all of the allegations contained in Paragraphs 1 through 44, inclusive, of the Accusation with the
27 same force and effect as if herein fully set forth.

At all times herein mentioned, Respondent COX was responsible, as the designated broker officer of Respondent HERITAGE, for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees and of the corporate activities requiring a real estate license. Respondent COX failed to exercise reasonable supervision and control over the loan services and mortgage brokering activities of Respondent HERITAGE and its employees. In particular, Respondent COX participated in, permitted, ratified, and/or caused the conduct described in the First, Second, Third, and Fourth Causes of Action, above, to occur, and failed to take reasonable steps to insure, including, but not limited to, the proper handling of trust funds, proper trust fund record keeping, review of trust fund records and accounts, review and approval of Lender/Purchaser Disclosure Statements, that no false representations were made to the Department's auditor, that no false representations were made to lenders, proper supervision of employees, and to insure the implementation of policies, rules, procedures, and systems to ensure the compliance of the corporation and its employees with the Real Estate Law (Business and Professions Code Sections 10000 et seq. and Sections 11000 et seq.) and the Commissioner's Regulations (Chapter 6, Title 10, California Code of Regulations).

The acts and/or omissions of Respondent COX as described in Paragraph 46, above, constitute grounds for the suspension or revocation of the licenses and license rights of Respondent COX under the provisions of Section 10159.2 of the Code (designated broker/officer responsible for supervision and control of activities conducted on behalf of corporation by officers, licensed salespersons and employees to secure compliance with the Real Estate Law) and Section 2725 of the Regulations (broker shall exercise reasonable supervision over: licensed employees; establish policies and procedures for compliance with Real Estate Law; supervise transactions requiring a real estate license; trust fund handling; etc.) in conjunction with Section 10177(d) of the Code and/or of Section 10177(h) of the Code

1 (suspension or revocation for broker or designated broker/officer who fails to exercise
2 reasonable supervision of licensed employees or licensed activities of broker corporation).

3 WHEREFORE, Complainant prays that a hearing be conducted on the
4 allegations of this Accusation and that upon proof thereof a decision be rendered imposing
5 disciplinary action against all licenses and license rights of Respondents under the Real Estate
6 Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further
7 relief as may be proper under other provisions of law.

8
9
10 

11 LUKE MARTIN
12 Deputy Real Estate Commissioner
13
14

15 Dated at Fresno, California,

16 this 3rd day of MARCH, 2009.
17
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24
25
26
27

FLA-6

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-1126

FILED

DEC 02 2009

DEPARTMENT OF REAL ESTATE

By *L. Frost*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of	)	
	)	NO. H-2433 FR
12 HERITAGE LENDING, INC., a California	)	
13 Corporation, SHERRY L. COX, CANDY L.	)	ACCUSATION
14 WELLS, and TY JEREMY CHRISTENSEN,	)	
	)	
15 Respondents.	)	

16
17 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate Commissioner of
18 the State of California, for Accusation against Respondent HERITAGE LENDING, INC., a
19 California Corporation, Respondent SHERRY L. COX, Respondent CANDY L. WELLS, and
20 Respondent TY JEREMY CHRISTENSEN, is informed and alleges as follows:

21 1

22 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate Commissioner of
23 the State of California, makes this Accusation against Respondents in his official capacity.

24 2

25 Respondents HERITAGE LENDING, INC., SHERRY L. COX, CANDY L.
26 WELLS, and TY JEREMY CHRISTENSEN are presently licensed and/or have license rights
27

1 under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code
2 (hereafter "the Code").

3 3

4 At all times herein mentioned, Respondent HERITAGE LENDING, INC.
5 (hereafter "Respondent HERITAGE") was and is licensed by the Department of Real Estate
6 (hereinafter "the Department") as a corporate real estate broker.

7 4

8 At all times herein mentioned, Respondent SHERRY L. COX (hereinafter
9 "Respondent COX") was and is licensed by the Department as an individual real estate broker.

10 5

11 At all times herein mentioned, Respondent COX was and is licensed by the
12 Department as the designated broker/officer of Respondent HERITAGE. As said designated
13 broker/officer, Respondent COX was at all times mentioned herein responsible pursuant to
14 Section 10159.2 and Section 10177(h) of the Code and Section 2725 of Chapter 6, Title 10,
15 California Code of Regulations (hereinafter "the Regulations") for the supervision and control
16 of the activities of the officers, agents, real estate licensees and employees of Respondent
17 HERITAGE and of the activities of the corporation for which a real estate license is required.

18 6

19 At all times herein mentioned, Respondents CANDY L. WELLS (hereinafter
20 "Respondent WELLS") was and is licensed by the Department as a real estate salesperson in the
21 employ of Respondent HERITAGE.

22 7

23 At all times herein mentioned, Respondent WELLS was the principal
24 stockholder and chief executive officer of Respondent HERITAGE.

25 ///

26 ///

27 ///

1 8

2 At all times herein mentioned, Respondents TY JEREMY CHRISTENSEN
3 (hereinafter "Respondent CHRISTENSEN") was and is licensed by the Department as a real
4 estate salesperson in the employ of Respondent HERITAGE.

5 9

6 Whenever reference is made in an allegation in this Accusation to an act or
7 omission of Respondent HERITAGE, such allegation shall be deemed to mean that the officers,
8 directors, employees, agents and real estate licensees employed by or associated with
9 Respondent HERITAGE committed such act or omission while engaged in the furtherance of
10 the business or operations of Respondent HERITAGE and while acting within the course and
11 scope of their corporate authority and employment.

12 10

13 At all times herein mentioned, Respondent HERITAGE, COX, WELLS, and
14 CHRISTIANSEN engaged in the business of, acted in the capacity of, advertised, or assumed to
15 act as a real estate broker within the State of California within the meaning of Section 10131(d)
16 of the Code, including on behalf of others, for compensation or in expectation of compensation,
17 solicited borrowers or lenders for or negotiated loans or collected payments or performed
18 services for borrowers or lenders or note owners in connection with loans secured directly or
19 collaterally by liens on real property or on a business opportunity.

20 FIRST CAUSE OF ACTION

21 11

22 There is hereby incorporated in this First, separate and distinct, Cause of Action,
23 all of the allegations contained in Paragraphs 1 through 10, inclusive, of the Accusation with the
24 same force and effect as if herein fully set forth.

25 12

26 In acting as a real estate broker as described in Paragraph 10, above, Respondent
27 HERITAGE and Respondent WELLS, pursuant to Section 10132 of the Code, accepted or

1 received funds in trust (hereinafter "trust funds") from or on behalf of lenders, note owners,
2 buyers, borrowers, and/or others in connection with the said mortgage activities and loan
3 services.

4 13

5 Within the three year period prior to the filing of this Accusation, in connection
6 with the collection and disbursement of trust funds, the aforesaid trust funds accepted or
7 received by Respondents HERITAGE and WELLS were deposited or caused to be deposited by
8 said Respondents into a bank account maintained by Respondent HERITAGE at Santa Lucia
9 Bank, 1240 Spring Street, in Paso Robles, California, Account No. 2533413, entitled "Heritage
10 Lending Inc. Trust Account" (hereinafter "Trust Account #1) with Respondent COX and
11 Respondent WELLS as the authorized signatories on said account.

12 14

13 Respondent HERITAGE maintained a general operating account at Santa Lucia
14 Bank, 1240 Spring Street, in Paso Robles, California, Account No. 2517698, entitled "Heritage
15 Lending Inc" (hereinafter "general account") with Respondent COX and Respondent WELLS
16 as the authorized signatories on said account.

17 15

18 In connection with the collection and disbursement of trust funds, Respondents
19 HERITAGE and WELLS failed to deposit and maintain the trust funds in a trust account or
20 neutral escrow depository, or to deliver them into the hands of the owners of the funds, as
21 required by Section 10145 of the Code, in such a manner that there was a trust fund shortage in
22 Trust Account #1 in the approximate sum of \$48,653.84 as of September 30, 2008, in the
23 approximate sum of \$14,564.66 as of October 31, 2008, and in the approximate sum of
24 \$14,814.66 as of November 30, 2008.

25 16

26 Within the three year period prior to the filing of this Accusation, in connection
27 with the collection and disbursement of trust funds held on behalf of another or others,

1 Respondents HERITAGE and WELLS commingled trust funds with Respondents' own money
2 or property by depositing trust funds into the general account of Respondent HERITAGE and
3 converted said trust funds to their own use and benefit or to purposes not authorized by the
4 rightful owners of said funds in violation of Section 10176(e) of the Code (commingling broker's
5 funds with funds belonging to others held by broker on their behalf), Section 2835 of the
6 Regulations (commingling trust funds with broker's funds prohibited), and Section 10176(i) of
7 the Code (conduct which constitutes fraud or dishonest dealing). The exact amount of said
8 converted trust funds is unknown to Complainant, but well known to Respondents and is not less
9 than \$14,814.66.

10 17

11 Within the three year period prior to the filing of this Accusation, in connection
12 with the collection and disbursement of trust funds, as alleged in Paragraphs 15 and 16, above,
13 Respondent HERITAGE failed to obtain the prior written consents of the principals for the
14 reduction of the aggregate balance of trust funds in Trust Account #1 and in the general account
15 to an amount less than the existing aggregate trust fund liability to the owners of said funds as
16 required by Section 2832.1 of the Regulations.

17 18

18 Within the three year period prior to the filing of this Accusation, in connection
19 with the collection and disbursement of trust funds, as alleged above, Respondent HERITAGE:

- 20 (a) Failed to deposit trust funds into the hands of the owner of the funds, into
21 a neutral depository, or into a trust fund in the name of the broker as
22 trustee and/or failed to deposit trust funds into the hands of the owner of
23 the funds, into a neutral depository, or into a trust fund in the name of the
24 broker as trustee within three business days following receipt of the funds
25 as required by Section 10145 of the Code and Section 2832 of the
26 Regulations;
27

- 1 (b) Failed to maintain a control record for trust funds received and disbursed
2 and containing the information required by Section 2831 of the
3 Regulations (requiring record of trust funds received and disbursed in
4 columnar form, in chronological sequence, dates of receipt, from whom
5 received, dates disbursed, date deposited, identity of depository, daily
6 balance, etc.) for Trust Account #1 and for trust funds deposited to the
7 general account;
- 8 (c) Failed to maintain for Trust Account #1 and for trust funds deposited to
9 the general account a separate record for each beneficiary of trust funds
10 received and disbursed for Trust Account #1 and for trust funds deposited
11 into the general account as required by Section 10145 of the Code and
12 Section 2831.1 of the Regulations (broker shall keep separate record for
13 each beneficiary, accounting for all funds deposited to trust account, in
14 columnar chronological form deposit date and amount, disbursement
15 dates, disbursement check numbers, and balance after posting); and,
- 16 (c) Failed to perform, at least once a month, a reconciliation of all the
17 separate beneficiary records with the control record, and/or failed
18 to maintain a record of such reconciliations as required by Section 2831.2
19 of the Regulations (maintain balance of all separate beneficiary and
20 reconcile funds received with funds disbursed, etc.) for Trust Account #1
21 and for trust funds deposited into the general account.

22 19

23 The acts and/or omissions of Respondents as alleged above constitute cause for
24 the suspension or revocation of the licenses and license rights of Respondents under the
25 following provisions:

- 26 (a) As alleged against Respondents HERITAGE and WELLS in Paragraph
27 15, under Section 10145 of the Code in conjunction with Section

1 10177(d) of the Code (suspension or revocation of license for willful
2 disregard or violation of the Real Estate Law, §§ 10000 et seq. of the
3 Code, or of the Regulations);

- 4 (b) As alleged against Respondents HERITAGE and WELLS in Paragraph
5 16, under Section 2835 of the Regulations in conjunction with Section
6 10177(d) of the Code, and under Sections 10176(e) and Section 10176(i)
7 of the Code;
- 8 (c) As alleged against Respondent HERITAGE in Paragraph 17, under
9 Section 2832.1 of the Regulations in conjunction with Section 10177(d)
10 of the Code;
- 11 (d) As alleged against Respondent HERITAGE in Paragraph 18(a), under
12 Section 2832 of the Regulations and under Section 10145 of the Code in
13 conjunction with Section 10177(d) of the Code;
- 14 (e) As alleged against Respondent HERITAGE in Paragraph 18(b), under
15 Section 2831 of the Regulations in conjunction with Section 10177(d) of
16 the Code; and,
- 17 (f) As alleged against Respondent HERITAGE in Paragraph 18(c), under
18 Section 2831.2 of the Regulations in conjunction with Section 10177(d)
19 of the Code.

20 SECOND CAUSE OF ACTION

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22 There is hereby incorporated in this Second, separate and distinct, Cause of
23 Action, all of the allegations contained in Paragraphs 1 through 19, inclusive, of the Accusation
24 with the same force and effect as if herein fully set forth.

25 21

26 From April 4, 2008 through January 30, 2009, Diana Brewster, an auditor for the
27 Department (hereinafter "Auditor"), sought and obtained from Respondent HERITAGE,

1 Respondent COX, and Respondent WELLS pursuant to Section 10148 of the Code (requiring a
2 broker to maintain for three years trust fund records in connection with any transaction requiring
3 a real estate license and to make such records available to the Department's representative and
4 authorizing an audit of such records) the trust fund records and general account records of
5 Respondent HERITAGE, reviewed said records, and performed an audit of the trust fund
6 handling and record keeping of Respondent HERITAGE.

7 22

8 During the course of the audit described in Paragraph 21, above, and within the
9 three year period prior to the filing of this Accusation, the Auditor informed Respondent COX
10 that Trust Account #1 had a shortage as set forth in Paragraph 15, above, plus an unidentified
11 shortage, for a total shortage of \$14,886.23 and instructed Respondent COX that the trust funds
12 missing from Trust Account #1 had to be replaced.

13 23

14 Within the three year period prior to the filing of this Accusation, on or about
15 December 6, 2008, Respondent COX presented to the Auditor a copy of a deposit ticket and a
16 check remittance stub for \$14,886.23 and represented to the Auditor that Respondent COX had
17 deposited to Trust Account #1 a check for \$14,886.23 drawn on the general account of
18 Respondent HERITAGE.

19 24

20 Within the three year period prior to the filing of this Accusation, Respondent
21 COX and Respondent WELLS represented to the Auditor by letter dated February 4, 2009, that:
22 1.) said Respondents "... have undertaken an extensive manual examination of the account and
23 based upon your recommendation, have revised our policies and procedures to address the
24 circumstances which allowed the situation to occur in the first instance. . . .;" 2.) "... though
25 trust monies may have been improperly accounted for, the funds themselves remained in our
26 accounts and were never liquidated or used for purposes other than that for which they were

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1 received. . . ,” and, 3.) “We also believe that we have demonstrated that all trust funds were
2 ultimately applied towards the obligations to which they were placed in trust”

3 25

4 The representations described in Paragraphs 23 and 24, above, were false and
5 misleading and were known by Respondents COX and WELLS to be false and misleading when
6 made or were made by such Respondents with no reasonable grounds for believing said
7 representations to be true, and/or said Respondents should have known at the time through the
8 exercise of reasonable diligence that such representations were false and misleading. In truth
9 and in fact: 1.) Respondent COX did not deposit \$14,886.23 or any amount toward curing the
10 shortage to Trust Account #1 on December 6, 2008, or at any time thereafter until April 20,
11 2009; 2.) on December 6, 2008, the general account of Respondent HERITAGE contained
12 insufficient funds to cover a check for \$14,886.23; 3.) at all times from December 2007 through
13 April 2009, the daily balance of the general account fell below the \$14,016.67 amount of the
14 trust funds deposited to the general account; 4.) from December 2008 through April 2009,
15 Respondents WELLS and COX did not properly maintain or review trust fund records in
16 accordance with the Regulations; 5.) Respondents WELLS and COX had not revised or
17 implemented proper policies and procedures to address trust fund handling and record keeping;
18 6.) trust funds in the general account had been liquidated and used for improper purposes; and,
19 7.) all trust funds were not applied towards the designated obligations as such funds had not
20 been placed in Trust Account #1 or in any trust account and the trust funds deposited into the
21 general account had in fact been used for the personal benefit of Respondent WELLS.

22 26

23 The acts and omissions of Respondent WELLS and Respondent COX described
24 in Paragraphs 23, 24 and 25, above, constitute misrepresentation, fraud, deceit, and dishonest
25 dealing.

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The acts and/or omissions of Respondents WELLS and COX as alleged in Paragraphs 23, 24, 25, and 26, above, constitute cause for the suspension or revocation of the licenses and license rights of Respondents WELLS and COX under the following provisions:

- (a) Under Sections 10176(a) of the Code (making a substantial misrepresentation);
- (b) Under Section 10176(b) of the Code (making any false promises of a character likely to influence, persuade or induce);
- (c) Under Section 10176(e) of the Code (commingling with licensee's own money or property the money or property of others held by the licensee);
- (d) Under Section 10176(i) of the Code (any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing);
- (e) Under Section 10177(g) of the Code (demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license); and,
- (g) Under Section 10177(j) of the Code (any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing).

THIRD CAUSE OF ACTION

There is hereby incorporated in this Third, separate and distinct, Cause of Action, all of the allegations contained in Paragraphs 1 through 27, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

Respondent HERITAGE did not hold a permit issued by the Department of Corporations to offer, sell, and issue securities prior to April 1, 2008.

At all times herein mentioned Respondent HERITAGE acted as a real estate broker within the meaning of Sections 10237 and 10238 of the Code (governing the brokering of promissory notes secured by real property to multiple lenders), in that at all times herein mentioned Respondent HERITAGE solicited and negotiated the sales to lenders of undivided interests in notes secured directly by real property and was subject to the criteria of Section 10238(h) of the Code with respect to notes or interests sold pursuant to Section 10238 of the Code.

Within three years prior to the filing of this Accusation, in or about May, 2007, Respondent HERITAGE and Respondent WELLS solicited multiple lenders to purchase, and negotiated the sale of, undivided interests in a promissory note for \$378,000.00 to be secured by unimproved real property identified as 75745 Hidden Creek Road, San Miguel, Monterey County, California (hereinafter "subject property"), in favor of a borrower identified as Matthew Richard Cary (hereinafter "borrower") for the purpose of constructing a residence on the subject property (hereinafter "construction loan").

On or about June 6, 2007, Respondent HERITAGE obtained a written appraisal from a licensed appraiser in accordance with the Uniform Standards of Professional Appraisal Practice stating the appraised value of the subject property as improved upon completion of the construction would be \$525,000.00. The effective date of the written appraisal was May 22, 2007.

Within three years prior to the filing of this Accusation, Respondent HERITAGE and Respondent WELLS, pursuant to written Lender/Purchaser Disclosure Statements (hereinafter "LPDS"), represented to the lenders that the value of the subject property according

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to the appraiser was \$550,000.00, that the loan-to-value ratio was 68.72%, and that the protective equity was \$172,000.00, and induced the lenders to make loans as follows:

Lender	Lender's Undivided Interest	Amount Loaned	Date Lender Signed LPDS
Ted & Robbie Pickett	2.116%	\$ 8,000.00	5/11/07
Paddy McHale	4.762%	\$ 18,000.00	5/12/07
Shirley A. Nielsen	15.873%	\$ 60,000.00	5/15/07
William & Violet Letson	10.582%	\$ 40,000.00	5/15/07
Jerry & Kim Flagenhauer	26.984%	\$102,000.00	5/11/07
Jack & Lois Cragun	5.291%	\$ 20,000.00	5/10/07
P. John Kim	26.455%	\$100,000.00	5/17/07
Jack Sloan	<u>7.937%</u> <u>100%</u>	<u>\$ 30,000.00</u> <u>\$378,000.00</u>	5/22/07

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The representations described in Paragraph 33, above, were false and misleading and were known by Respondents HERITAGE and WELLS to be false and misleading when made or were made by such Respondents with no reasonable grounds for believing said representations to be true, and/or said Respondents should have known at the time through the exercise of reasonable diligence that such representations were false and misleading. In truth and in fact: 1.) the appraised value of the subject property as improved was \$525,000.00; 2.) Respondents had not received the written appraisal until after the lenders had signed their respective LPDS; 3.) the loan-to-value ratio was 72%; and, 4.) the protective equity was \$147,000.00.

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The acts and omissions of Respondent HERITAGE and Respondent WELLS described in Paragraphs 31, 32, 33 and 34, above, constitute misrepresentation, fraud, deceit, and dishonest dealing.

As set forth in Paragraph 33, above, Respondent HERITAGE and Respondent WELLS, pursuant to the written LPDS to each lender, utilized the term fair market value of the subject property as based upon the value of the property after completion of the construction project. The loan-to-value ratio of the construction loan was more than 65% of the as improved value of the subject property and Respondents failed to provide a written statement setting forth material considerations and facts upon which Respondents reasonably relied to justify the loan-to-value ratio in violation of Section 10238(h)(1) of the Code.

Within three years prior to the filing of this Accusation and at all times herein mentioned, Respondent HERITAGE and Respondent WELLS deposited the lender funds set forth in Paragraph 33, above, into, and made periodic disbursements of said funds as construction draws for completion of construction on the subject property from, a trust account maintained by Respondent HERITAGE at Santa Lucia Bank, 1240 Spring Street, in Paso Robles, California, Account No. 2534282, entitled "Heritage Lending Inc. Construction Trust Accounts" (hereinafter "Construction Trust Account) with Respondent WELLS as an authorized signatory on said account in violation of Section 10238(h)(4) of the Code.

The acts and/or omissions of Respondents HERITAGE and WELLS as alleged above constitute cause for the suspension or revocation of the licenses and license rights of said Respondents under the following provisions:

- (a) As alleged against Respondents HERITAGE and WELLS in Paragraphs 31, 32, 33, 34 and 35, under Section 10176(a) of the Code (making a

1 substantial misrepresentation), Section 10176(b) of the Code (making any
2 false promises of a character likely to influence, persuade or induce),
3 Section 10176(c) of the Code (continued and flagrant course of
4 misrepresentation or false promises through real estate agents), Section
5 10176(i) of the Code (any other conduct, whether of the same or a
6 different character than specified in this section, which constitutes fraud
7 or dishonest dealing), Section 10177(g) of the Code (demonstrated
8 negligence or incompetence in performing an act for which he or she is
9 required to hold a license), and, Section 10177(j) of the Code (any other
10 conduct, whether of the same or a different character than specified in this
11 section, which constitutes fraud or dishonest dealing);

12 (b) As alleged against Respondents HERITAGE and WELLS in Paragraph
13 36, under Section 10238(h)(1) of the Code (prohibiting a loan-to-value
14 ratio in excess of 65% for unimproved single-family residential lot) and
15 Section 10238(h)(2) of the Code (requiring broker to provide a written
16 statement setting forth material considerations and facts upon which
17 broker reasonably relied to justify the loan-to-value ratio) all in
18 conjunction with Section 10177(d) of the Code and Section 10177(g) of
19 the Code (demonstrated negligence or incompetence in performing an act
20 for which he or she is required to hold a license); and,

21 (c) As alleged against Respondents HERITAGE and WELLS in Paragraph
22 37, under Section 10238(h)(4)(A) of the Code (requiring an independent
23 neutral third party escrowholder to be used for all deposits and
24 disbursements of construction loan funds) and Section 10238(h)(4)(B) of
25 the Code (entire amount of fully funded loan to be deposited in escrow
26 prior to recording of trust deed) all in conjunction with Section 10177(d)
27 of the Code, and Section 10177(g) of the Code (demonstrated negligence

1 or incompetence in performing an act for which he or she is required to
2 hold a license).

3 FOURTH CAUSE OF ACTION

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5 There is hereby incorporated in this Fourth, separate and distinct, Cause of
6 Action, all of the allegations contained in Paragraphs 1 through 38, inclusive, of the Accusation
7 with the same force and effect as if herein fully set forth.

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9 Within the three-year period prior to the filing of this Accusation, on or about
10 July 15, 2007, Respondent HERITAGE and Respondent CHRISTENSEN, in the course and
11 scope of conducting the activities set forth in Paragraph 10, above, pursuant to a written LPDS,
12 represented to Bruce K. Defnet and Jane F. Defnet (hereinafter "lenders") that Michael E.
13 Nielsen (hereinafter "borrower") received a gross income of \$45,000.00 per month and induced
14 said lenders to loan \$850,000.00 secured by unimproved real property at 509 Price Street, Pismo
15 Beach, California (hereinafter "Pismo property"), to finance the purchase of the Pismo property
16 by borrower.

17 41

18 The representations described in Paragraph 40, above, were false and misleading
19 and were known by Respondents HERITAGE and CHRISTENSEN to be false and misleading
20 when made or were made by such Respondents with no reasonable grounds for believing said
21 representations to be true, and/or said Respondents should have known at the time through the
22 exercise of reasonable diligence that such representations were false and misleading. In truth
23 and in fact: 1.) the borrower did not have a gross monthly income of \$45,000.00; 2.) prior to
24 submitting the LPDS to the lenders, Respondents had received from the borrower the borrower's
25 income tax returns showing adjusted gross income of \$10,549.00 for 2003, negative adjusted
26 gross income of -\$1,624.00 for 2004, and negative adjusted gross income of -\$7,975.00 for
27

1 2005; and, 3.) the borrower did not have sufficient income or financial resources to meet the
2 monthly interest only mortgage payments of \$9,916.67.

3 42

4 On or about February 28, 2008, the lenders' trustee recorded a notice of default
5 against the Pismo property stating a default amount of \$20,825.03 and on or about June 12,
6 2008, a trustee's deed in favor of lenders was recorded after a trustee's sale.

7 43

8 The acts and omissions of Respondent HERITAGE and Respondent
9 CHRISTENSEN described in Paragraphs 40 and 41, above, constitute misrepresentation, fraud,
10 deceit, and dishonest dealing.

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12 The acts and/or omissions of Respondents HERITAGE and WELLS as alleged
13 above constitute cause for the suspension or revocation of the licenses and license rights of said
14 Respondents under Section 10176(a) of the Code (making a substantial misrepresentation),
15 Section 10176(b) of the Code (making any false promises of a character likely to influence,
16 persuade or induce), Section 10176(c) of the Code (continued and flagrant course of
17 misrepresentation or false promises through real estate agents), Section 10176(i) of the Code
18 (any other conduct, whether of the same or a different character than specified in this section,
19 which constitutes fraud or dishonest dealing), Section 10177(g) of the Code (demonstrated
20 negligence or incompetence in performing an act for which he or she is required to hold a
21 license), and, Section 10177(j) of the Code (any other conduct, whether of the same or a
22 different character than specified in this section, which constitutes fraud or dishonest dealing).

23 FIFTH CAUSE OF ACTION

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25 There is hereby incorporated in this Fifth, separate and distinct, Cause of Action,
26 all of the allegations contained in Paragraphs 1 through 44, inclusive, of the Accusation with the
27 same force and effect as if herein fully set forth.

At all times herein mentioned, Respondent COX was responsible, as the designated broker officer of Respondent HERITAGE, for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees and of the corporate activities requiring a real estate license. Respondent COX failed to exercise reasonable supervision and control over the loan services and mortgage brokering activities of Respondent HERITAGE and its employees. In particular, Respondent COX participated in, permitted, ratified, and/or caused the conduct described in the First, Second, Third, and Fourth Causes of Action, above, to occur, and failed to take reasonable steps to insure, including, but not limited to, the proper handling of trust funds, proper trust fund record keeping, review of trust fund records and accounts, review and approval of Lender/Purchaser Disclosure Statements, that no false representations were made to the Department's auditor, that no false representations were made to lenders, proper supervision of employees, and to insure the implementation of policies, rules, procedures, and systems to ensure the compliance of the corporation and its employees with the Real Estate Law (Business and Professions Code Sections 10000 et seq. and Sections 11000 et seq.) and the Commissioner's Regulations (Chapter 6, Title 10, California Code of Regulations).

The acts and/or omissions of Respondent COX as described in Paragraph 46, above, constitute grounds for the suspension or revocation of the licenses and license rights of Respondent COX under the provisions of Section 10159.2 of the Code (designated broker/officer responsible for supervision and control of activities conducted on behalf of corporation by officers, licensed salespersons and employees to secure compliance with the Real Estate Law) and Section 2725 of the Regulations (broker shall exercise reasonable supervision over: licensed employees; establish policies and procedures for compliance with Real Estate Law; supervise transactions requiring a real estate license; trust fund handling; etc.) in conjunction with Section 10177(d) of the Code and/or of Section 10177(h) of the Code

1 (suspension or revocation for broker or designated broker/officer who fails to exercise
2 reasonable supervision of licensed employees or licensed activities of broker corporation).

3 WHEREFORE, Complainant prays that a hearing be conducted on the
4 allegations of this Accusation and that upon proof thereof a decision be rendered imposing
5 disciplinary action against all licenses and license rights of Respondents under the Real Estate
6 Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further
7 relief as may be proper under other provisions of law.

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JOHN W. SWEENEY
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 30th day of November, 2009.