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FILED

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DEPARTMENT OF REAL ESTATE
By R. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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12 In the Matter of the Accusation of)
13 CONWAY & CONWAY, INC.) No. H-2608 FR
14 and IRENE J. CONWAY,)
15 Respondents.) ACCUSATION
16)

17 The Complainant, LUKE MARTIN, a Deputy Real Estate Commissioner of the
18 State of California, for cause of Accusation against CONWAY & CONWAY, INC., individually
19 and doing business as "Classic Real Estate & Property Management" (hereafter "C&C"), and
20 IRENE J. CONWAY (hereafter "CONWAY"), (hereafter collectively "Respondents"), is
21 informed and alleges as follows:

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23 The Complainant makes this Accusation in his official capacity.

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25 At all times relevant herein, C&C was and is licensed by the Department of Real
26 Estate (hereafter "the Department") as a corporate real estate broker.

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At all times relevant herein, CONWAY was and is licensed by the Department as a real estate broker.

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At all times relevant herein, CONWAY was and is licensed by the Department as the designated broker/officer of C&C. As the designated broker/officer, CONWAY is responsible, pursuant to Section 10159.2 (supervision responsibility of corporate officer in charge) of the Business and Professions Code (hereafter "the Code"), for the supervision of the activities of the officers, agents, real estate licensees and employees of C&C for which a real estate license is required.

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At all times relevant herein, Respondents 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(b) of the Code (broker defined – property management/collection of rent), including the operation and conduct of a property management business with the public, wherein, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented and offered to lease or rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from tenants.

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

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1 FIRST CAUSE OF ACTION

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3 From approximately June 1, 2010, and continuing intermittently through
4 June 10, 2010, an Audit was conducted of the records of C&C at its main office located at 144
5 Woodrow Avenue, #5, Modesto, California. The Auditor examined the records for the period
6 of April 1, 2009 through April 30, 2010 (the audit period).

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8 While acting as a real estate broker as described in Paragraph 5, above, and
9 within the audit period, Respondents accepted or received funds in trust (trust funds) from or on
10 behalf of tenants, property owners and others in connection with property management activities,
11 and deposited or caused to be deposited those funds into a bank account maintained by
12 Respondents, including:

13 Trust Account #1

14 Farmers & Merchants
15 Bank of Central California
16 P. O. Box 3000
17 Lodi, CA 95241

18 Account No. 02-05XXXX-XX

19 Account Name: "Conway & Conway Inc., DBA Classic
20 Real Estate & Property Management Trust"

21 Signatories: Irene Conway
22 Clifton Conway

23 Thereafter, from time to time, Respondents made disbursements of said trust funds.

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25 In the course of the activities described in Paragraph 5, above, in connection with
26 the collection and disbursement of trust funds:

27 (a) On or about April 30, 2010, there was a \$39,523.37 shortage for Trust
Account #1. C&C did not provide evidence that the owners of the trust funds had given their

1 written consent allowing Respondents to reduce the balance of the funds in Trust Account #1 to
2 an amount less than the existing aggregate trust fund liabilities. Such acts and/or omissions by
3 C&C violate Section 10145 (handling of trust funds) of the Code and Section 2832.1 (trust fund
4 handling for multiple beneficiaries) of Title 10 of the California Code of Regulations (hereafter
5 "the Regulations").

6 (b) C&C failed to maintain accurate and complete records of trust funds it
7 received and disbursed. Such acts and/or omissions by C&C violate Section 10145 of the Code
8 and Section 2831 (maintenance of trust fund records) of the Regulations.

9 (c) C&C failed to reconcile the total of separate beneficiary/property records
10 with a control record on a monthly basis. Such acts and/or omissions by C&C violate Section
11 10145 of the Code and Section 2831.2 (trust fund reconciliation requirement) of the Regulations.

12 (d) As of April 30, 2010, Clifton Conway, who was not licensed by the
13 Department and did not have any fidelity bond coverage, was a signatory on Trust Account #1.
14 On or about September 27, 2010, Clifton Conway's name was removed as a signatory on Trust
15 Account #1. C&C failed to provide evidence that Clifton Conway was properly authorized to
16 make withdrawals from its trust account prior to his name being removed as a signatory on Trust
17 Account #1. Such acts and/or omissions by C&C violate Section 10145 of the Code and Section
18 2834 (trust fund withdrawal requirements) of the Regulations.

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20 The acts and/or omissions of C&C, as alleged in Paragraphs 8 and 9, above, are
21 grounds for discipline under Sections 10177(d) (willful disregard or violation of real estate law)
22 and 10177(g) (demonstrated negligence or incompetence involving acts for which license is
23 required) of the Code.

24 SECOND CAUSE OF ACTION

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26 On or about February 10, 2009, Respondents entered into a property management
27 agreement to manage the property of Phillip Haga located at 1431 West Roseburg, Modesto,

1 California. Phillip Haga authorized Respondents to have certain repairs made to the West
2 Roseburg property. However, that agreement was never memorialized in writing. Respondents
3 had repairs made to the property in an amount beyond that authorized by Phillip Haga. When
4 Phillip Haga disputed the additional charges, Respondents withheld rent payments they received
5 for the West Roseburg property for the months of July and September 2009. There was no
6 agreement between Respondents and Phillip Haga allowing Respondents to withhold rent money
7 they collected for unpaid repairs done to the West Roseburg property.

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9 Respondents held the position of a fiduciary to Phillip Haga. In that capacity,
10 Respondents owed a duty to act with the utmost good faith toward Phillip Haga and were
11 required to place the interests of Phillip Haga ahead of their own. Respondents breached that
12 duty by spending more money for repairs to Phillip Haga's property at 1431 West Roseburg than
13 they were authorized and by withholding rental payments Respondents collected as part of their
14 property management activities without an agreement with Phillip Haga to do so.

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16 Respondents' acts and/or omissions set out in Paragraphs 11 and 12, above, are
17 grounds for discipline under Sections 10176(i) (other conduct which constitutes fraud or
18 dishonest dealing) or 10177(g) (negligence) of the Code.

19 THIRD CAUSE OF ACTION

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21 On or about April 14, 2006, Respondents entered into a property management
22 agreement to manage the property of Venita Jamison located at 212 Hubert Drive, Modesto,
23 California. After a renter vacated the Hubert Drive property, CONWAY removed items from
24 the property without Venita Jamison's permission.

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26 Respondents held the position of a fiduciary to Venita Jamison. In that capacity,
27 Respondents owed a duty to act with the utmost good faith toward Venita Jamison and were

1 required to place the interests of Venita Jamison above their own. Respondents breached that
2 duty by removing items that did not belong to them from Venita Jamison's real property at 212
3 Hubert Drive without Venita Jamison's permission to do so.

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5 Respondents' breach of fiduciary duty owed to Venita Jamison is grounds for
6 discipline under Section 10176(i) or 10177(g) of the Code.

7 FOURTH CAUSE OF ACTION

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9 Each and every allegation in Paragraphs 1 through 16, above, is incorporated as if
10 fully set forth herein.

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12 At all times relevant herein, CONWAY was responsible, as the designated
13 broker/officer for C&C, for the supervision and control of the activities conducted on behalf of
14 the corporation by its officers and employees. CONWAY failed to exercise reasonable
15 supervision and control over the property management brokering activities of C&C. In
16 particular, CONWAY permitted, ratified and/or caused the conduct described in the First,
17 Second and Third Causes of Action, above, to occur, and failed to take reasonable steps,
18 including, but not limited to, the handling of trust funds, supervision of employees and the
19 implementation of policies, rules, procedures and systems to ensure the compliance of the
20 corporation with the Real Estate Law and the Regulations. Such acts and/or omissions of
21 CONWAY violate Section 10159.2 of the Code and Section 2725 of the Regulations (broker
22 supervision requirement).

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24 The acts and/or omissions of CONWAY, as set forth in Paragraphs 17 and 18,
25 above, constitute grounds for disciplinary action under Sections 10177(d), 10177(g) and
26 10177(h) (reasonable supervision responsibility of broker) of the Code.

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation, and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all licenses and license rights of Respondents under the Code, and for such other
4 and further relief as may be proper under applicable provisions of law.
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8 LUKE MARTIN
 Deputy Real Estate Commissioner

9 Dated at Fresno, California,
10 this 24th day of FEBRUARY, 2011.
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