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FILED
MAY 30 2012

DEPARTMENT OF REAL ESTATE
By R. Mar

9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)

13 CHARLES NELSON MACKLEY,)

14 Respondent.)

No. H-2754 FR

ACCUSATION

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17 The Complainant, PHILLIP IHDE, in his official capacity as a Deputy Real
18 Estate Commissioner of the State of California, for cause of Accusation against CHARLES
19 NELSON MACKLEY, is informed and alleges as follows:

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21 Respondent CHARLES NELSON MACKLEY (hereinafter "Respondent"),
22 (License No. 00316367) is presently licensed by the Department of Real Estate (hereinafter "the
23 Department") and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the
24 Business and Professions Code (hereafter "the Code"), as a real estate broker.

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26 At all times relevant herein, Respondent had the following fictitious business
27 names registered with the Department: "Real Estate Outlet", "Mackley & Associates",

1 “Executive Financial Services”, “Real Property Management TriCounties & Real Estate” and
2 “The Real Estate Network.”

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

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10 At all times mentioned herein, Respondent engaged in the business of, acted in
11 the capacity of, advertised, or assumed to act as a real estate broker in the State of California,
12 within the meaning of:

13 Section 10131(a) of the Code, including the operation and conduct of a real
14 estate brokerage that included the sale or offer of sale, purchase or offer of purchase, solicitation
15 of prospective sellers and purchasers of, solicitation or obtaining listings of, or negotiations of
16 the purchase, sale or exchange of real property or a business opportunity, for or in expectation
17 of compensation;

18 Section 10131(b) of the Code, including the leasing or renting or offer to lease or
19 rent, or placing for rent, or solicitation of listings of places for rent, or solicitation of
20 prospective tenants, or negotiation of the sale, purchase or exchanges of leases on real property,
21 or on a business opportunity, or collection of rents from real property, or improvements thereon,
22 or from business opportunities, for or in expectation of compensation;

23 Section 10131(d) of the Code, including the operation and conduct of a mortgage
24 loan brokerage and/or loan modification business with the public wherein each of them solicited
25 lenders and borrowers for or negotiated loans or collected payments and/or performed services
26 for borrowers or lenders or note owners in connection with loans secured directly or collaterally
27 by liens on real property for or in expectation of compensation; and,

1 Section 10131.2 of the Code, including the claiming, demanding, charging,
2 receiving, collecting or contracting for the collection of an advance fee in connection with any
3 employment undertaken to promote the sale or lease of real property or of a business
4 opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or
5 rent property or a business opportunity, or to obtain a loan or loans thereon.

6 FIRST CAUSE OF ACTION

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8 Each and every allegation in Paragraphs 1 through 4, inclusive, above, is
9 incorporated by this reference as if fully set forth herein.

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11 Beginning on January 28, 2010 and continuing intermittently until February 17,
12 2010, an audit was conducted of Respondent's real estate activities at his office locations on
13 West Laurel Drive in Salinas, California and at the Department's Oakland District Office,
14 wherein the auditor examined Respondent's records for the period of January 1, 2008 through
15 December 31, 2009 (hereinafter "the audit period").

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17 While acting as a real estate broker as described in Paragraph 4, above, and
18 within the audit period, Respondent accepted or received funds in trust (hereinafter "trust
19 funds") from or on behalf of sellers, buyers, borrowers, lenders, owners, tenants, and others in
20 connection with the sale, rental or lease of residential property, for or in expectation of
21 compensation, as alleged herein, and thereafter from time-to-time made disbursements of said
22 trust funds.

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24 In connection with the operation and conduct of the activities described in
25 Paragraph 4, above, and within the audit period, Respondent engaged in the business of
26 claiming, demanding, charging, receiving, collecting or contracting for the collection of

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1 advanced fees, which constitute trust funds, within the meaning of Sections 10026 and 10131.2
2 of the Code.

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4 The trust funds accepted or received by Respondent as described in Paragraphs 7
5 and 8, above, were deposited or caused to be deposited by Respondent into one (1) trust account
6 and five (5) bank accounts which were maintained by Respondent for the handling of trust
7 funds, and thereafter from time-to-time Respondent made disbursements of said trust funds,
8 identified as follows:

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TRUST ACCOUNT # 1	
10 Bank Name and Location:	Bank of America, 405 Main Street, Salinas, CA
11	93901
12 Account No. (Last 4 Digits):	4822
13 Entitled:	"Charles N. Mackley Sole Proprietor, dba
14	Executive Financial Services Trust Account"
15 Signatories:	Charles N. Mackley (REB)
16 Purpose and Disposition of Account:	Used for deposits and disbursements of advance
17	fees in connection with loan modifications.

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BANK ACCOUNT # 1	
19 Bank Name and Location:	Bank of America, 800 Northridge Shopping Center,
20	Salinas, CA 93906
21 Account No. (Last 4 Digits):	1212
22 Entitled:	"Real Property Management TriCounties LLC"
23 Signatories:	Adoracion Lopez (RES)
24	Sigifredo G. Ponce (RES)
25 Purpose and Disposition of Account:	Used for deposits and disbursements related to
26	property management activities for owners with
27	last names starting with "A" through "F".

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BANK ACCOUNT # 2	
Bank Name and Location:	Bank of America, 800 Northridge Shopping Center, Salinas, CA 93906
Account No. (Last 4 Digits):	1410
Entitled:	"Real Property Management TriCounties LLC"
Signatories:	Adoracion Lopez (RES) Sigifredo G. Ponce (RES)
Purpose:	Used for deposits and disbursements related to property management activities for owners with last names starting with "G" through "L".

BANK ACCOUNT # 3	
Bank Name and Location:	Bank of America, 800 Northridge Shopping Center, Salinas, CA 93906
Account No. (Last 4 Digits):	1434
Entitled:	"Real Property Management TriCounties LLC"
Signatories:	Adoracion Lopez (RES) Sigifredo G. Ponce (RES)
Purpose	Used for deposits and disbursements related to property management activities for owners with last names starting with "M" through "Q".

BANK ACCOUNT # 4	
Bank Name and Location:	Bank of America, 800 Northridge Shopping Center, Salinas, CA 93906
Account No. (Last 4 Digits):	1514
Entitled:	"Real Property Management TriCounties LLC"
Signatories:	Adoracion Lopez (RES) Sigifredo G. Ponce (RES)
Purpose	Used for deposits and disbursements related to property management activities for owners with last names starting with "R" through "Z".

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BANK ACCOUNT # 5	
Bank Name and Location:	Bank of America, 800 Northridge Shopping Center, Salinas, CA 93906
Account No. (Last 4 Digits):	8055
Entitled:	"Real Property Management TriCounties LLC"
Signatories:	Adoracion Lopez (RES) Sigifredo G. Ponce (RES)
Purpose	Used for deposits of rents received from the Housing Authority under the Section 8 program and disbursements to relevant bank accounts of the owners of the properties.

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In the course of the activities described in Paragraph 4, above, and within the audit period, Respondent:

(a) failed to properly designate Bank Accounts #1, #2, #3, #4 and #5 as a trust account in the name of Respondent or his fictitious business name, as trustee, in violation of Section 10145 of the Code and Section 2832 of Title 10 of the California Code of Regulations (hereafter "the Regulations");

(b) caused, suffered, or permitted the balance of funds in Bank Account #1 to be reduced to an amount which, as of August 31, 2009, was approximately \$6,269.57 less than the aggregate liability of Bank Account #1 to all owners of such funds, without the prior written consent of each and every owner of such funds, in violation of Section 10145 of the Code and Section 2832.1 of the Regulations;

(c) caused, suffered, or permitted the balance of funds in Bank Account #2 to be reduced to an amount which, as of August 31, 2009, was approximately \$987.00 less than the aggregate liability of Bank Account #2 to all owners of such funds, without the prior written consent of each and every owner of such funds, in violation of Section 10145 of the Code and Section 2832.1 of the Regulations;

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1 (d) caused, suffered, or permitted the balance of funds in Bank Account #3
2 to be reduced to an amount which, as of August 31, 2009, was approximately \$72.59 less than
3 the aggregate liability of Bank Account #3 to all owners of such funds, without the prior written
4 consent of each and every owner of such funds, in violation of Section 10145 of the Code and
5 Section 2832.1 of the Regulations;

6 (e) failed to obtain signatory authority for Bank Accounts #1, #2, #3, #4 and
7 #5, in violation of Section 10145 of the Code, and Section 2834 of the Regulations;

8 (f) failed to maintain records of all trust funds received and disbursed
9 (control record) for Bank Account #5, in violation of Section 10145 of the Code and Section
10 2831 of the Regulations;

11 (g) failed to maintain complete and accurate records of all trust funds
12 received and disbursed (control record) for Bank Accounts #1, #2, #3 and #4, in violation of
13 Section 10145 of the Code and Section 2831 of the Regulations;

14 (h) failed to maintain separate records for each beneficiary of trust funds
15 accepted or received for Bank Account #5, in violation of Section 10145(g) of the Code and
16 Section 2831.1 of the Regulations;

17 (i) failed to maintain complete and accurate separate records for each
18 beneficiary of trust funds accepted or received for Bank Accounts #1, #2, #3, and #4, in
19 violation of Section 10145(g) of the Code and Section 2831.1 of the Regulations;

20 (j) failed to maintain a separate beneficiary record for unidentified deposits
21 totaling \$4,170.32 in Bank Account #4 as of August 31, 2009, in violation of Section 10145 of
22 the Code and Section 2831.1 of the Regulations;

23 (k) failed to perform and maintain reconciliations of the total of separate
24 beneficiary records with a control record on at least a monthly basis for Trust Account #1 for
25 the period of August 1, 2009 through December 31, 2009, and for Bank Accounts #1, #2, #3,
26 and #4 for the period of January 1, 2009 through August 31, 2009, in violation of Section
27 10145 of the Code and Section 2831.2 of the Regulations;

1 (l) failed to deposit trust funds in the amount of \$3,630.00 received from
2 tenant M. Hale within three (3) business days following receipt of the funds, in violation of
3 Section 10145 of the Code and Section 2832 of the Regulations;

4 (m) failed to retain for three years both front and back copies of all cancelled
5 checks issued on Bank Accounts #1, #2, #3, #4 and #5, in violation of Section 10148 of the
6 Code;

7 (n) collected and retained unearned fees and/or compensation in the amount
8 of \$30.00 in August 2009 from homeowner Badke in connection with payment for carpet
9 cleaning services, and failed to disclose the collection of this compensation to the homeowner,
10 in violation of Sections 10145(a)(1) and 10176(g) of the Code;

11 (o) collected and retained unearned fees and/or compensation in the amount
12 of \$150.00 in June 2009 from homeowner Patobannon in connection with payment for repair of
13 stairs, and failed to disclose the collection of this compensation to the homeowner, in violation
14 of Sections 10145(a)(1) and 10176(g) of the Code;

15 (p) failed to retain and to make available for inspection by the Department's
16 designated representative original salesperson license certificates of Buenaventura M. Batobato
17 and Rosalie M. Laroco in violation of Section 10160 of the Code and Section 2753 of the
18 Regulations;

19 (q) failed to record trust funds in the form of an earnest money deposit in the
20 amount of \$3,715.50 received from prospective buyers Jim and Donna L. and its disposition on
21 a record of trust funds received and not placed in broker's trust account, in violation of Section
22 10145 of the Code and Section 2831(a)(6) of the Regulations; and,

23 (r) misrepresented to the owners of the following properties ("Properties")
24 that an earnest money deposit was obtained from the following buyers ("Buyers") and was
25 being held by Respondent when the buyers made the offer on the properties, while the true facts
26 were that Respondent had received no funds from the buyers when the buyers made their offers

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1 on the properties. Such representations are in violation of Sections 10176(a), (b), and (i) and
2 Sections 10177(g) and (j) of the Code:

3 Buyer Name	4 Property Address	5 Earnest Money Deposit Amount
6 Rogelio H.	713 Jersey Drive	\$3,000
8 Jose T.	1914 Bradbury	\$1,000

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10 The acts and/or omissions of Respondent as alleged in Paragraph 10, above,
11 constitute grounds for the suspension or revocation of all licenses and license rights of
12 Respondent pursuant to the following provisions of the Code and Regulations:

13 As to Paragraph 10(a), under Section 10177(d) and/or 10177(g) of the Code in
14 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

15 As to Paragraph 10(b), under Section 10177(d) and/or 10177(g) of the Code in
16 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

17 As to Paragraph 10(c), under Section 10177(d) and/or 10177(g) of the Code in
18 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

19 As to Paragraph 10(d), under Section 10177(d) and/or 10177(g) of the Code in
20 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

21 As to Paragraph 10(e), under Section 10177(d) and/or 10177(g) of the Code in
22 conjunction with Section 10145 of the Code and Section 2834 of the Regulations;

23 As to Paragraph 10(f), under Section 10177(d) and/or 10177(g) of the Code in
24 conjunction with Sections 10145 of the Code and Section 2831 of the Regulations;

25 As to Paragraph 10(g), under Section 10177(d) and/or 10177(g) of the Code in
26 conjunction with Section 10145 of the Code and Section 2831 of the Regulations;

27 As to Paragraph 10(h), under Section 10177(d) and/or 10177(g) of the Code in
conjunction with Section 10145(g) of the Code and Section 2831.1 of the Regulations;

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1 As to Paragraph 10(i), under Section 10177(d) and/or 10177(g) of the Code in
2 conjunction with Section 10145(g) of the Code and Section 2831.1 of the Regulations;

3 As to Paragraph 10(j), under Section 10177(d) and/or 10177(g) of the Code in
4 conjunction with Section 10145 of the Code and Section 2831.1 of the Regulations;

5 As to Paragraph 10(k), under Section 10177(d) and/or 10177(g) of the Code in
6 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations;

7 As to Paragraph 10(l), under Section 10177(d) and/or 10177(g) of the Code in
8 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

9 As to Paragraph 10(m), under Section 10177(d) and/or 10177(g) of the Code in
10 conjunction with Section 10148 of the Code;

11 As to Paragraph 10(n), under Section 10177(d) and/or 10177(g) of the Code in
12 conjunction with Sections 10145(a)(1) and 10176(g) of the Code;

13 As to Paragraph 10(o), under Section 10177(d) and/or 10177(g) of the Code in
14 conjunction with Sections 10145(a)(1) and 10176(g) of the Code;

15 As to Paragraph 10(p), under Section 10177(d) and/or 10177(g) of the Code in
16 conjunction with Section 10160 of the Code and Section 2753 of the Regulations;

17 As to Paragraph 10(q), under Section 10177(d) and/or 10177(g) of the Code in
18 conjunction with Section 10145 of the Code and Section 2831(a)(6) of the Regulations; and,

19 As to Paragraph 10(r), under Section 10177(d) and/or 10177(g) of the Code in
20 conjunction with Sections 10176(a), (b), and (i) and Section 10177(j) of the Code.

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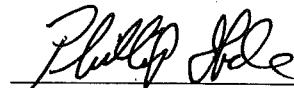
22 The acts and/or omissions of Respondent as alleged in Paragraph 10, above,
23 entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148 of
24 the Code, in conjunction with Section 10145 of the Code.

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1 WHEREFORE, Complainant prays that a hearing be conducted on the
2 allegations of this Accusation and that upon proof thereof, a decision be rendered revoking all
3 licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the
4 Business and Professions Code), for the cost of investigation and enforcement as permitted by
5 law, and for such other and further relief as may be proper under the provisions of law.

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8 PHILLIP IHDE
9 Deputy Real Estate Commissioner

10 Dated at Fresno, California,

11 this 23RD day of MAY, 2012.

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