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FILED

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DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

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10 In the Matter of the Accusation of )  
11 )  
12 MARK JEFFREY LANIER, )  
13 PREMIER REAL ESTATE, INC., )  
14 a Corporation, and )  
Respondents. )

NO. H-2764 FR

ACCUSATION

15 The Complainant, PHILLIP IHDE, a Deputy Real Estate Commissioner of the  
16 State of California, for cause of Accusation in his official capacity against MARK JEFFREY  
17 LANIER (herein "LANIER"), PREMIER REAL ESTATE, INC. (herein "PREMIER")  
18 dba "Premier Property Management" (herein "PPM"), and BLAIN ARDEN DIERKES  
19 (herein "DIERKES"), (herein collectively "Respondents"), is informed and alleges as follows:

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21 At all times herein mentioned, Respondents were and now are licensed and/or  
22 have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and  
23 Professions Code) (herein "the Code").

24 2

25 At all times herein mentioned, PREMIER was licensed by the State of California  
26 Department of Real Estate (herein the "Department") as a corporate real estate broker by and  
27 through DIERKES as designated officer-broker of PREMIER to qualify said corporation and to

1 act for said corporation as a real estate broker; PREMIER's corporate license expired on about  
2 September 16, 2011.

3 3

4 At all times herein mentioned, DIERKES was and now is licensed by the  
5 Department, as a real estate broker, individually and as designated officer-broker of PREMIER.  
6 As said designated officer-broker, DIERKES was at all times mentioned herein responsible  
7 pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers,  
8 agents, real estate licensees, and employees of PREMIER for which a license is required.

9 4

10 At all times herein mentioned, LANIER was and now is currently licensed by the  
11 Department as a real estate salesperson in the employ of DIERKES beginning about January 6,  
12 2010. LANIER was in the employ of PREMIER between about February 26, 2004 and about  
13 January 5, 2010.

14 5

15 At all times herein mentioned, Respondents engaged in the business of, acted in  
16 the capacity of, advertised, or assumed to act for another or others as real estate licensees within  
17 the State of California within the meaning of Section 10131(b) of the Code, including the  
18 operation and conduct of a property management business with the public, wherein Respondents  
19 leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for  
20 rent, or solicited for prospective tenants, or negotiated the sale, purchase or exchanges of leases  
21 on real property, or on a business opportunity or collected rents from real property, or  
22 improvements thereon, or from business opportunities.

23 6

24 In so acting as real estate licensees as described in Paragraph 5 above, Respondents  
25 accepted or received funds in trust (herein "trust funds") from or on behalf of owners, tenants,  
26 and others in connection with the leasing, renting, and collection of rents on real property or  
27 improvements thereon.

1  
2           The aforesaid trust funds accepted or received by Respondents were deposited or  
3 caused to be deposited by Respondents into one or more bank accounts (herein "trust fund  
4 accounts") maintained by DIERKES for the handling of trust funds at the Ontario, California  
5 branch of Bank of America, including but not necessarily limited to "Blain Dierkes, Sole Prop  
6 DBA Premier Real Estate Property Management Trust Account", account number xxxxx-x2694  
7 (herein "Trust #1").

8  
9           Between about January 1, 2009 and July 30, 2010, in connection with the trust  
10 fund handling activities described in Paragraph 6, above, DIERKES:

- 11           a) failed to keep a separate record for each beneficiary or transaction for  
12 Trust #1 containing all the information required by Section 10145 of  
13 the Code and Section 2831.1 of Title 10, Chapter 6, of the California  
14 Code of Regulations (herein "the Regulations"); and  
15           b) failed to reconcile at least once a month, the balance of all separate  
16 beneficiary or transaction records with the record of all trust funds  
received and disbursed for Trust #1, as required by Section 2831.2 of  
the Regulations.

17  
18           On about October 14, 2004, LANIER, as an agent of PREMIER dba PPM,  
19 entered into a Property Management Agreement (herein "Agreement") for a property located on  
20 Stuart Avenue, Fresno, CA (herein "the Property") with out-of-state property owner Beverly P.  
21 (herein "Beverly") after assuring Beverly that "not only would he personally look after the  
22 property, but he lived in the area and thus could easily keep an eye on it." Beverly paid  
23 PREMIER about \$83.65 per month to manage the Property. Pursuant to the Agreement,  
24 LANIER agreed to use due diligence in managing the Property: to collect rents and security  
25 deposits; cancel rental agreements and leases; commence and prosecute eviction actions; recover  
26 rents and other sums due; make and/or supervise maintenance and repairs; and contract, hire,  
27 and supervise persons required for the operation and maintenance of the Property.

1  
2 On about January 31, 2005, LANIER, as an agent of PREMIER dba PPM on  
3 Beverly's behalf, entered into a one (1) year lease of the Property with George and Frankie V.  
4 (herein "George and Frankie"), commencing on about January 31, 2005 and due to terminate on  
5 about January 31, 2006. LANIER, and George and Frankie completed and signed a Move  
6 In/Move Out Inspection of the Property to show the condition of the Property at the time  
7 George and Frankie first occupied the Property, which was in satisfactory condition, except for  
8 some spots on the carpet in bedroom #1. LANIER failed to have George and Frankie complete  
9 Paragraph 10 of the lease, "CONDITION OF THE PREMISES," in violation of Section 10177(g)  
10 of the Code.

11  
12 On about February 9, 2006, after George and Frankie vacated the Property,  
13 LANIER, as an agent of PREMIER dba PPM on Beverly's behalf, entered into a new lease of  
14 the Property with George and Frankie's "live-in" granddaughter, Lori H. (herein "Lori"), which  
15 lease was due to terminate on about July 31, 2006. LANIER failed to have George and Frankie  
16 complete and sign a second Move In/Move Out Inspection to show the condition of the Property  
17 upon their vacation, failed to have Lori complete and sign a new Move In/Move Out Inspection  
18 of the Property, and failed to have Lori complete Paragraph 10 of the Lease, "CONDITION OF  
19 THE PREMISES," to show the condition of the Property at the time Lori began occupying the  
20 Property, in violation of Section 10177(g) of the Code.

21  
22 On about September 10, 2006, Lori's husband, Tom H. (herein "Tom"), and their  
23 three (3) children moved onto the Property. LANIER, as an agent of PREMIER dba PPM on  
24 Beverly's behalf, entered into a third lease of the Property, this time with Lori and Tom, which  
25 lease was due to terminate on about July 31, 2007. LANIER failed to have Lori and Tom  
26 complete and sign a new Move In/Move Out Inspection, and failed to have them complete  
27 Paragraph 10 of the Lease, "CONDITION OF THE PREMISES," to show the condition of the

1 Property at the time Lori, Tom, and their three (3) children began occupying the Property, in  
2 violation of Section 10177(g) of the Code.

3 13

4 All three (3) of the leases described in Paragraphs 10 through 12, above, provided  
5 that:

- 6 a) rent would be \$1,195.00 per month, payable on the first of the month;  
7 b) the security deposit shall not be used for payment of last month's rent;  
8 c) tenant made an examination of the condition of the Premises;  
9 d) tenant shall properly use, operate and safeguard the Premises,  
10 including appliances, electrical and plumbing fixtures, landscaping,  
11 and keep them clean and sanitary;  
12 e) no pets shall be kept on or about the Premises;  
13 f) tenant shall not make any repairs, alterations or improvements in or  
14 about the Premises;  
15 g) tenant shall not deduct from rent the costs of any repairs; and  
16 h) tenant shall clean and deliver the Premises in the same condition as it  
17 was when tenant occupied the premises and remove all debris.

18 14

19 Between about February 2007 and about March 2010, pursuant to the Agreement  
20 described in Paragraph 8, above, LANIER as an agent of PREMIER dba PPM on Beverly's  
21 behalf, hired Rene Lopez (herein "Lopez") to mow both the front and back yards, paying him  
22 about \$80.00 per month from the proceeds of the rent.

23 15

24 In about April 2010, when Lori and Tom failed to pay the rent, LANIER,  
25 DIERKES' agent, failed to commence and prosecute an eviction action, in violation of Section  
26 10177(g) of the Code.

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1  
2 On about June 27, 2010, after Lori and Tom abandoned the Property, LANIER,  
3 DIERKES' agent, discovered:

- 4 a) Lori and Tom kept multiple dogs on the Property, causing substantial  
5 damages to the inside and outside of the Property;
- 6 b) Lori and Tom put in a large outdoor portable swimming pool in the  
7 backyard, significantly damaging the backyard landscaping;
- 8 c) Lopez failed to mow the backyard, in violation of his agreement with  
9 LANIER, contributing to the significant damage to the backyard  
10 landscaping;
- 11 d) the Property sustained extensive damage throughout, consisting of  
12 total ruin of the carpets and aggregate floors due to canine urine;  
13 damage to at least two (2) door locks; a large hole in the glass door of  
14 the pellet stove; torn or missing screens; disconnected smoke alarms;  
15 two (2) toilets broken from the floor bolts; two (2) doors and jambs  
16 irreparably chewed by the dogs; backyard and wooden play swing and  
17 climbing structures severely chewed by the dogs; walls requiring repair  
18 due to canine urine; and damage requiring replacement of hardware  
19 and lighting fixtures throughout the house;
- 20 e) the Property was "very filthy dirty," including kitchen appliances that  
21 were "filthy beyond cleaning"; and
- 22 f) a considerable amount of debris remained on the Property.

18 Between about January 1, 2005 and about June 27, 2010, in connection with the  
19 property management activities described in Paragraph 5, above, LANIER failed to "personally  
20 look after the property ... and ... keep an eye on it," contrary to his verbal assurances to Beverly,  
21 and failed to use due diligence in managing the Property, contrary the Agreement described in  
22 Paragraph 9, above, in that LANIER:

- 23 a) ceased making visits to the Property when Beverly was deployed to Iraq, in  
24 about February 2007, in violation of Sections 10176(b) and 10177(g) of the  
25 Code;
- 26 b) paid Lopez about \$80.00 per month for mowing both the front and back yards  
27 described in Paragraph 14, above, but failed to supervise Lopez, in that Lopez  
failed to mow the backyard, contributing to significant damage to the backyard  
landscaping in violation of Sections 10176(b) and 10177(g) of the Code;

- 1 c) failed to contract, hire, and supervise persons required for the operation and  
2 maintenance of the Property, which failure caused and/or contributed to  
3 extensive damage to the Property described in Paragraph 16, above, in  
4 violation of Sections 10176(b) and 10177(g) of the Code;
- 5 d) failed to "recover rents" due for April, May, and June in violation of Section  
6 10177(g) of the Code;
- 7 e) failed to recover "other sums due" in the amount of about \$23,367.00,  
8 representing the cost of repairs made to the Property in order to restore it back  
9 to the same condition as it was when LANIER first began managing the  
10 Property, in violation of Section 10177(g) of the Code; and
- 11 f) permitted, facilitated, and/or otherwise allowed Lori and Tom to violate their  
12 lease, in violation of Sections 10176(b) and 10177(g) of the Code, in that Lori  
13 and Tom:
- 14 1. failed to make an examination of the condition of the Property,  
15 pursuant to Paragraph 10 "CONDITION OF THE PREMISES";
  - 16 2. owned and kept dogs on and about the Property, both inside the  
17 house and outside in the backyard, contributing to significant  
18 damage to the interior of the house and the backyard landscaping  
19 and wooden play swing and climbing structures described in  
20 Paragraph 16(a) and (d), above;
  - 21 3. were advised by LANIER to deduct the cost of repairs to the  
22 property from the rent;
  - 23 4. made alterations or improvements to the Property, in that Lori and  
24 Tom put a large portable outdoor swimming pool in the backyard,  
25 which caused significant damage to the backyard landscaping;
  - 26 5. failed to pay rent in the amount of about \$1,195.00 per month,  
27 beginning in about April 2010, and continued through about June  
2010;
  6. used the security deposit for payment of the last month's rent;
  7. failed to properly use, operate and safeguard the Property including  
appliances, in that Lori and Tom left the kitchen appliances "filthy  
beyond cleaning";
  8. failed to properly use, operate and safeguard the Property including  
electrical and plumbing fixtures, in that replacement of hardware  
and lighting fixtures were required throughout the house described  
in Paragraph 16(f), above; and
  9. failed to deliver the Property in the same condition as it was when  
Lori and Tom first occupied the Property, failed to remove all  
debris, and failed to keep the Property clean and sanitary, in that  
Lori and Tom abandoned the Property leaving it "very filthy dirty"  
and left behind a considerable amount of debris.

At all times mentioned herein, DIERKES failed to exercise reasonable supervision over the acts of Respondents PREMIER and LANIER, described above, in violation of Sections 10177(g) and (h) and 10159.2 of the Code, and Section 2725 of the Regulations.

The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondents under the following provisions of the Code and/or the Regulations:

- (a) as to Paragraph 8(a) and Respondent DIERKES, under Section 10145 of the Code and Section 2831.1 of the Regulations, in conjunction with Section 10177(d) of the Code;
- (b) as to Paragraph 8(b) and Respondent DIERKES, under Section 2831.2 of the Regulations, in conjunction with Section 10177(d) of the Code;
- (c) as to Paragraphs 10, 11, 12 and 15, and Respondents PREMIER and LANIER, under Section 10177(g) of the Code;
- (d) as to Paragraph 17(a) through (c) and Respondents PREMIER and LANIER, under Sections 10176(b) and 10177(g) of the Code;
- (e) as to Paragraph 17(d) and (e) and Respondents PREMIER and LANIER, under Section 10177(g) of the Code;
- (f) as to Paragraph 17(f) and Respondents PREMIER and LANIER, under Sections 10176(b) and 10177(g) of the Code; and
- (g) as to Paragraph 18 and Respondent DIERKES, under Sections 10177(g) and (h) and 10159.2 of the Code and Section 2725 of the Regulations, in conjunction with Section 10177(d) of the Code.

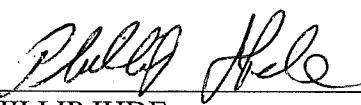
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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents under the Real Estate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

  
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PHILLIP IHDE  
Deputy Real Estate Commissioner

Dated at Los Angeles, California  
this 1<sup>st</sup> day of JUNE, 2012.