

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4
5 Telephone: (916) 227-0789
6
7

FILED
NOV 18 2004

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 FIRST LA JOLLA LENDERS, INC.,)
13 AND SYDNEY ERIC KAHN,)
14 Respondents.)
15

NO. H-2979 SD
STIPULATION AND AGREEMENT

16 It is hereby stipulated by and between FIRST LA JOLLA
17 LENDERS, INC. and SYDNEY ERIC KAHN (hereafter Respondents),
18 represented by David S. Bright, Attorney at Law, White & Bright,
19 LLP, and the Complainant, acting by and through Deidre L.
20 Johnson, Counsel for the Department of Real Estate, as follows
21 for the purpose of settling and disposing the Accusation filed
22 on March 30, 2004 in this matter:

23 1. All issues which were to be contested and all
24 evidence which was to be presented by Complainant and Respondents
25 at a formal hearing on the Accusation, which hearing was to be
26 held in accordance with the provisions of the Administrative
27 Procedure Act (APA), shall instead and in place thereof be

1 submitted solely on the basis of the provisions of this
2 Stipulation and Agreement.

3 2. Respondents have each received, read and understand
4 the Statement to Respondent, and the Discovery Provisions of the
5 APA filed by the Department of Real Estate in this proceeding.

6 3. On April 12, 2004, Respondents filed their Notices
7 of Defense pursuant to Section 11505 of the Government Code for
8 the purpose of requesting a hearing on the allegations in the
9 Accusation. Respondents hereby freely and voluntarily withdraw
10 said Notices of Defense. Respondents acknowledge that they each
11 understand that by withdrawing said Notices of Defense they will
12 each thereby waive their rights to require the Commissioner to
13 prove the allegations in the Accusation at a contested hearing
14 held in accordance with the provisions of the APA, and that they
15 will waive other rights afforded to them in connection with the
16 hearing such as the right to present evidence in defense of the
17 allegations in the Accusation and the right to cross-examine
18 witnesses.

19 4. Respondents, pursuant to the limitations set forth
20 below, hereby admit that the factual allegations pertaining to
21 them in Paragraphs I through VI of the Accusation filed in this
22 proceeding are true and correct and the Real Estate Commissioner
23 shall not be required to provide further evidence of such
24 allegations.

25 5. Without admitting the truth of the allegations
26 contained in the remaining allegations in the rest of the
27 Accusation as to each Respondent, Respondents stipulate that they

1 will not interpose a defense thereto. This Stipulation is based
2 on the factual allegations contained in the Accusation. In the
3 interests of expedience and economy, Respondents each choose not
4 to contest the allegations that pertain to them, but to remain
5 silent, and understand that, as a result thereof, the factual
6 allegations, without being admitted or denied, will serve as a
7 basis for the disciplinary action stipulated to herein. The Real
8 Estate Commissioner shall not be required to provide further
9 evidence to prove said factual allegations. This agreement
10 applies to this Accusation only and the resolution hereof, and
11 shall not constitute an admission of liability in this or any
12 other proceeding or action.

13 6. Respondents have received, read and understand the
14 "Notice Concerning Costs of Audits." Respondents FIRST LA JOLLA
15 LENDERS, INC. and SYDNEY ERIC KAHN understand, by agreeing to
16 this Stipulation and Agreement, and after the findings set forth
17 below in the "Determination of Issues" become final, that the
18 Commissioner may charge Respondents FIRST LA JOLLA LENDERS, INC.
19 and SYDNEY ERIC KAHN, jointly and severally, for the costs of the
20 following audits that have been and may be conducted pursuant to
21 Section 10148 of the Business and Professions Code:

- 22 (a) Audit #SD 020009 dated December 12, 2002:
23 Not more than \$5,783.14;
24 (b) Future follow-up audit: Not more than
 \$6,000.00.

25 7. It is understood by the parties that the Real
26 Estate Commissioner may adopt the Stipulation and Agreement as
27 his decision in this matter thereby imposing the penalty and

1 sanctions on the real estate licenses and license rights of
2 Respondents as set forth in the below "Order". In the event that
3 the Commissioner in his discretion does not adopt the Stipulation
4 and Agreement, it shall be void and of no effect, and Respondents
5 shall each retain the right to a hearing and proceeding on the
6 Accusation under all the provisions of the APA and shall not be
7 bound by any admission or waiver made herein.

8 8. The Order or any subsequent Order of the Real
9 Estate Commissioner made pursuant to this Stipulation and
10 Agreement shall not constitute an estoppel, merger or bar to any
11 further administrative or civil proceedings by the Department of
12 Real Estate with respect to any matters which were not
13 specifically alleged to be causes for accusation in this
14 proceeding.

15 * * *

16 DETERMINATION OF ISSUES

17 By reason of the foregoing stipulations and waivers,
18 and solely for the purpose of settlement of the pending
19 Accusation without a hearing, it is stipulated and agreed that
20 the following determination of issues shall be made:

21 I

22 The acts and/or omissions of Respondent FIRST LA JOLLA
23 LENDERS, INC., as stipulated above violate Sections 10145,
24 10159.5, 10229(a), 10229(e), 10229(g)(3), 10229(k), 10232.2,
25 10232.5, 10232.25, and 10240 of the California Business and
26 Professions Code (hereafter the Code), and Sections 2731, 2831,
27 2831.1, 2831.2, 2832, and 2834 of Title 10, California Code of

1 Regulations (hereafter the Regulations), and constitute grounds
2 for disciplinary action under the provisions of Section 10177(d)
3 of the Code.

4 II

5 The acts and/or omissions of Respondent SYDNEY ERIC
6 KAHN, as stipulated above, constitute grounds for disciplinary
7 action under the provisions of Section 10177(h) of the Code and
8 Section 2725 of the Regulations.

9 * * *

10 ORDER

11
12 A. All real estate license(s) and license rights of Respondents
13 FIRST LA JOLLA LENDERS, INC. and SYDNEY ERIC KAHN are hereby
14 suspended for a period of one hundred twenty (120) days from
15 the effective date of the Decision.

16 B. The first sixty (60) days of said suspensions are stayed for
17 a period of two (2) years as to each Respondent upon the
18 following terms and conditions:

19 (1) Respondents shall obey all laws, rules and regulations
20 governing the rights, duties and responsibilities of a
21 real estate licensee in the State of California.

22 (2) The Commissioner may, if a final subsequent determination
23 is made, after hearing or upon stipulation, that cause
24 for disciplinary action against the licenses of
25 Respondents, or either of them, has occurred within
26 two (2) years from the effective date of the Decision,
27 vacate and set aside the stay order and reimpose all or

1 a portion of the stayed suspension as to that
2 Respondent. Should no order vacating the stay be made
3 pursuant to this condition, the stay imposed herein as
4 to each Respondent shall become permanent.

5 (3) Respondent SYDNEY ERIC KAHN shall, prior to the effective
6 date of this Decision, submit proof satisfactory to the
7 Commissioner of having taken and completed the continuing
8 education course on trust fund accounting and handling
9 specified in paragraph (3) of subdivision (a) of Section
10 10170.5 of the Business and Professions Code from an
11 approved continuing education course provider. Said
12 course may have been completed within one hundred and
13 twenty (120) days prior to the effective date of the
14 Order herein. If Respondent KAHN fails to satisfy this
15 condition, the Commissioner may order the suspension of
16 Respondent's license until Respondent KAHN presents such
17 evidence. The Commissioner shall afford Respondent KAHN
18 the opportunity for hearing pursuant to the Administrative
19 Procedure Act to present such evidence.

20 (4) Pursuant to Section 10148 of the Business and Professions
21 Code, Respondents FIRST LA JOLLA LENDERS, INC. and
22 SYDNEY ERIC KAHN, jointly and severally, shall pay the
23 Commissioner's reasonable costs for audits as a result
24 of the trust fund violations found herein, as follows:

25 (a) Audit #SD 020009 dated December 12, 2002:
26 Not more than \$5,783.14;

27 (b) Future follow-up audit: Not more than
\$6,000.00.

1 In calculating the amount of the Commissioner's reasonable
2 costs, the Commissioner may use the estimated average
3 hourly salary for all Department Audit Section personnel
4 performing audits of real estate brokers, and shall
5 include an allocation for travel costs, including
6 mileage, time to and from the auditor's place of work and
7 per diem. Respondents FIRST LA JOLLA LENDERS, INC. and
8 SYDNEY ERIC KAHN, jointly and severally, shall pay such
9 costs within sixty (60) days of receiving an invoice
10 from the Commissioner detailing the activities performed
11 during the audit and the amount of time spent performing
12 those activities. The Commissioner may suspend the
13 license of Respondents pending a hearing held in
14 accordance with Section 11500, et seq., of the
15 Government Code, if payment is not timely made as
16 provided for herein, or as provided for in a subsequent
17 agreement between Respondents and the Commissioner. The
18 suspensions shall remain in effect until payment is made
19 in full for each audit or until Respondents enter into
20 an agreement satisfactory to the Commissioner to provide
21 for payment, or until a decision providing otherwise is
22 adopted following a hearing held pursuant to this
23 condition.

- 24 (5) Respondent KAHN shall, within nine (9) months from the
25 effective date of this Order, present evidence
26 satisfactory to the Real Estate Commissioner that
27 Respondent KAHN has, since the most recent issuance of

1 an original or renewal real estate license, taken and
2 successfully completed the continuing education
3 requirements of Article 2.5 of Chapter 3 of the Real
4 Estate Law for renewal of a real estate license. If
5 Respondent KAHN fails to satisfy this condition, the
6 Commissioner may order the suspension of his license
7 until Respondent KAHN presents such evidence. The
8 Commissioner shall afford Respondent the opportunity for
9 hearing pursuant to the Administrative Procedure Act to
10 present such evidence.

11 (6) Respondent KAHN shall, within six (6) months from the
12 effective date of this Decision, take and pass the
13 Professional Responsibility Examination administered by
14 the Department including the payment of the appropriate
15 examination fee. If Respondent KAHN fails to satisfy
16 this condition, the Commissioner may order suspension of
17 his license until Respondent KAHN passes the examination.

18 C. If Respondents FIRST LA JOLLA LENDERS, INC. and SYDNEY ERIC
19 KAHN petition the Department in writing pursuant to Section
20 10175.2 of the Code prior to the effective date of the
21 Decision, the remaining sixty (60) days of said suspension
22 shall be stayed upon the following conditions:

23 (1) Respondents shall each pay a monetary penalty pursuant
24 to Section 10175.2 of the Code at the rate of \$100.00
25 for each day of the remaining 60 days of suspension, for
26 a total maximum monetary penalty of \$6,000.00 each, or
27 \$12,000.00 for both.

- 1 (2) Said payment(s) shall be in the form of a cashier's
2 check or certified check made payable to the Recovery
3 Account of the Real Estate Fund. Said check(s) must be
4 received by the Department prior to the effective date
5 of the Decision in this matter.
- 6 (3) No further cause for disciplinary action against the
7 real estate licenses of Respondents or either of them
8 occurs within two (2) years from the effective date of
9 the Decision in this matter.
- 10 (4) If Respondents fail to pay the monetary penalty in
11 accordance with the terms and conditions of the Decision,
12 the Commissioner may, without a hearing, order the
13 immediate execution of all or any part of the stayed
14 suspension as to each Respondent, in which event,
15 Respondents shall not be entitled to any repayment nor
16 credit, prorated or otherwise, for money paid to the
17 Department under the terms of this Decision.
- 18 (5) If Respondents pay the monetary penalty and if no
19 further cause for disciplinary action against the real
20 estate license of Respondents or either of them occurs
21 within two (2) years from the effective date of the
22 Decision, the stay hereby granted in this subparagraph C
23 to each Respondent shall become permanent.

24 Sept. 27, 2004
25 DATED

26 Deidre L. Johnson
27 DEIDRE L. JOHNSON
Counsel for Complainant

* * *

1 I have read the Stipulation and Agreement, have discussed
2 it with my counsel, and its terms are understood by me and are
3 agreeable and acceptable to me. I understand that I am waiving
4 rights given to me by the California Administrative Procedure
5 Act, and I willingly, intelligently and voluntarily waive those
6 rights, including the right of requiring the Commissioner to
7 prove the allegations in the Accusation at a hearing at which I
8 would have the right to cross-examine witnesses against me and to
9 present evidence in defense and mitigation of the charges.

10 FIRST LA JOLLA LENDERS, INC.
11 Respondent

12 9-22-04

DATED

By:

13 
14 SYDNEY ERIC KAHN

15 9-22-04

DATED

16 
17 SYDNEY ERIC KAHN, Respondent

18 APPROVED AS TO FORM:

19 9-22-04

DATED

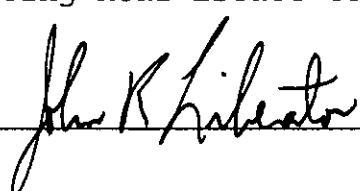
20 
21 DAVID S. BRIGHT
22 Attorney for Respondents

23 * * *

24 The foregoing Stipulation and Agreement is hereby
25 adopted as my Decision and shall become effective at 12 o'clock
26 noon on December 8, 2004.

27 IT IS SO ORDERED Oct. 19, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner



**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
AUG 10 2004

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

FIRST LA JOLLA LENDERS, INC., and
SYDNEY ERIC KAHN,

}

Case No. H-2979 SD

OAH No. L-2004060333

Respondents

**FIRST CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at

**THE OFFICE OF ADMINISTRATIVE HEARINGS
1350 FRONT STREET, ROOM 6022
SAN DIEGO, CA 92101**

on **SEPTEMBER 28, 2004, and SEPTEMBER 29, 2004**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: AUGUST 10, 2004

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
JUN 30 2004

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

FIRST LA JOLLA LENDERS, INC., and
SYDNEY ERIC KAHN,

Case No. H-2979 SD

OAH No. L-2004060333

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at

**THE OFFICE OF ADMINISTRATIVE HEARINGS
1350 FRONT STREET, ROOM 6022
SAN DIEGO, CA 92101**

on **AUGUST 5, 2004, and AUGUST 6, 2004**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: JUNE 29, 2004

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

1 DEIDRE L. JOHNSON, Counsel
2 SBN 66322
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007
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7 Telephone: (916) 227-0789

FILED
MAR 30 2004

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 FIRST LA JOLLA LENDERS INC.,) NO. H-2979 SD
14 AND SYDNEY ERIC KAHN,)
15 Respondents.) ACCUSATION

16
17 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
18 Commissioner of the State of California, for causes of Accusation
19 against FIRST LA JOLLA LENDERS INC., and SYDNEY ERIC KAHN, is
20 informed and alleges as follows:

21
22 PRELIMINARY ALLEGATIONS

23 I

24 Respondents FIRST LA JOLLA LENDERS INC., and SYDNEY
25 ERIC KAHN are presently licensed and/or have license rights under
26 the Real Estate Law, Part 1 of Division 4 of the California
27 Business and Professions Code (hereafter the Code).

1 II

2 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
3 Commissioner of the State of California, makes this Accusation
4 against Respondents in his official capacity and not otherwise.

5 III

6 At all times herein mentioned, Respondent FIRST LA
7 JOLLA LENDERS INC., (hereafter FIRST LA JOLLA) was licensed by
8 the State of California Department of Real Estate (hereafter
9 Department) as a real estate broker corporation. Said license
10 expired on or about June 7, 2003, subject to the right of late
11 renewal thereof for two years.

12 IV

13 At all times herein mentioned, Respondent SYDNEY ERIC
14 KAHN (hereafter KAHN) was licensed by the Department as the
15 designated broker officer of FIRST LA JOLLA. Said license
16 expired on or about June 7, 2003, subject to the right of late
17 renewal thereof for two years. At all times herein mentioned,
18 KAHN was the President and one hundred percent shareholder of
19 FIRST LA JOLLA, and directed and controlled its activities for
20 which a real estate license is required.

21 V

22 On or about June 8, 2003, Respondent was and is
23 licensed as a real estate broker, individually and doing business
24 as LA JOLLA FUNDING. At no time prior to said date was either
25 FIRST LA JOLLA or KAHN licensed to do business under any
26 fictitious business name.

27 ///

1 VI

2 Within the last three years, FIRST LA JOLLA engaged in
3 the business of, acted in the capacity of, advertised, or assumed
4 to act as a real estate broker within the State of California,
5 including the operation and conduct of a mortgage loan brokerage
6 business with the public wherein borrowers and lenders were
7 solicited for loans secured directly or collaterally by liens on
8 real property, and wherein FIRST LA JOLLA brokered such loans
9 primarily to non-institutional lenders.

10 FIRST CAUSE OF ACTION

11 VII

12 Beginning in or about October of 2002, the Department
13 conducted an audit of the books and records of Respondent FIRST
14 LA JOLLA for the time period of April 1, 2001 to October 21, 2002
15 (hereafter the audit period), as set forth in more detail in
16 Department Audit Report No. SD 020009, dated December 12, 2002,
17 and all accompanying working papers and exhibits. During the
18 audit period, Respondent FIRST LA JOLLA was also a high-volume
19 threshold broker, and a multi-lender broker that sold undivided
20 interests in secured loans to multiple third party lenders per
21 loan. In acting as a mortgage loan broker as alleged above,
22 Respondent FIRST LA JOLLA accepted or received funds in trust
23 from or on behalf of lenders and/or borrowers.

24 VIII

25 The trust funds accepted or received by Respondent
26 FIRST LA JOLLA during the audit period were deposited or caused
27 to be deposited from time to time into the following two accounts:

- 1 (a) Trust Account #1: Wells Fargo Bank Account No.
2 2018668699, in the name of "Sydney E. Kahn dba
3 La Jolla Funding Escrow Trust Account," used for
4 new funds from private lenders, loan funding,
5 disbursements to borrowers and others; and
6 (b) Bank Account #2: US Bank Account No. 165600462528,
7 in the name of "First La Jolla Lenders Inc.," used
8 for the same purposes as described above until about
9 May of 2001.

10 IX

11 In connection with the collection and disbursement of
12 trust funds, Respondent FIRST LA JOLLA failed to deposit and
13 maintain trust funds in a trust account or neutral escrow
14 depository, or to deliver them into the hands of the owners of
15 the funds as required by Section 10145 of the Code in such a
16 manner that as of September 30, 2002, there was a trust fund
17 shortage in the approximate sum of \$1,641.68. Some or all of
18 said trust shortage was due to negative balances attributed to
19 disbursements made by Respondent when there were insufficient
20 funds deposited on behalf of certain clients to make
21 disbursements on their behalf.

22 X

23 In connection with the receipt and disbursement of
24 trust funds as above alleged, Respondent FIRST LA JOLLA:

- 25 (a) As to Trust Account #1 and Bank Account #2, failed to
26 deposit trust funds into one or more trust accounts
27 in the name of Respondent FIRST LA JOLLA LENDING

1 INC., as trustee at a bank or other financial
2 institution pursuant to Section 10145 of the Code
3 and Section 2832 of Title 10, California Code of
4 Regulations (hereafter the Regulations);

5 (b) Failed to maintain a written control record of all
6 trust funds received and disbursed for Bank Account #2;
7 and failed to maintain a written control record for
8 Trust Account #1 containing all information required
9 by Section 2831 of the Regulations, including but not
10 limited to the date trust funds were received;

11 (c) As to Trust Account #1 and Bank Account #2, failed to
12 maintain separate beneficiary or transaction records
13 for each account containing all information required
14 by Section 2831.1;

15 (d) As to Trust Account #1 and Bank Account #2, failed
16 to reconcile the balance of separate beneficiary or
17 transaction records with the control record of trust
18 funds received and disbursed for each account at
19 least once a month, and/or failed to maintain a
20 record of such reconciliations as required by
21 Section 2831.2 of the Regulations; and

22 (e) Authorized or permitted withdrawals to be made from
23 Bank Account #2 upon the signature of MARDA W. KAHN,
24 an unlicensed relative, without being duly bonded
25 with the requisite fidelity bond insurance coverage
26 to have such authorization, pursuant to Section 2834
27 of the Regulations.

1 XI

2 During the audit period, Respondent FIRST LA JOLLA
3 failed to prepare and deliver to borrowers, or cause to be
4 delivered, a written borrower disclosure statement containing all
5 information required by Sections 10240 and 10241 of the Code
6 prior to each borrower becoming obligated to complete the loan,
7 including but not limited to disclosure of all liens against the
8 property securing the loan.

9 XII

10 During the audit period, FIRST LA JOLLA failed to
11 timely prepare and deliver to lenders, or cause to be delivered,
12 a written lender/purchaser disclosure statement as required by
13 Section 10232.4 of the Code, prior to each investor becoming
14 obligated to make the loan or purchase the note, prior to FIRST
15 LA JOLLA's receipt of funds from each investor, and/or prior to
16 disbursement of the investor's funds for the loan or purchase.

17 XIII

18 Within the last three years, Respondent FIRST LA JOLLA
19 negotiated transactions that involved the sales to lenders or
20 lenders of undivided interests in notes secured directly by real
21 property under Section 10229 of the Code. Respondent failed to
22 timely notify the Department of the company's multi-lender status
23 within 30 days after the first multi-lender transaction or at any
24 time thereafter to the time of the Department audit herein.

25 XIV

26 During the audit period, as to multi-lender loans,
27 Respondent FIRST LA JOLLA failed to obtain, and/or to retain in

1 its records, signed statements or completed statements from each
2 investor as to each investor's qualifications of income or net
3 worth for the loan, indicating that the investment in each
4 transaction did not exceed either 10% of his or her net worth,
5 or 10% of his or her adjusted gross income, as required by
6 Section 10229(e) of the Code.

7 XV

8 For multi-lender loans during the audit period,
9 Respondent FIRST LA JOLLA failed to prepare and deliver to some
10 or all lenders a written appraisal or broker's evaluation of the
11 market value of the real property securing the note, and/or
12 failed to advise lenders of their rights to receive a copy, as
13 required by Section 10229(g)(3) of the Code.

14 XVI

15 For single lender loans during the audit period,
16 Respondent FIRST LA JOLLA failed to prepare and deliver to some
17 or all lenders a written appraisal or broker's evaluation of the
18 market value of the real property securing the note; and/or
19 failed to obtain or retain the lenders' written waiver as
20 required by Section 10232.5 of the Code.

21 XVII

22 For multi-lender loans during the audit period,
23 Respondent FIRST LA JOLLA failed to prepare and deliver to some
24 or all lenders a lender/purchaser disclosure statement containing
25 all information required by Section 10229(k), including but not
26 limited to the name and address of the escrow holder, the
27 anticipated closing date, a description and estimated amount of

1 each cost payable to the borrower and lenders; the lender's share
2 of the principal loan amount, payment amount, and/or balloon
3 payment.

4 XVIII

5 At all times herein mentioned, Respondent FIRST LA
6 JOLLA was and is a threshold broker subject to the requirements
7 of Section 10232 of the Code. Within the last three years,
8 Respondent has failed to timely file certain reports with the
9 Department, including but not limited to the following:

10 (a) Annual Business Activity Report required by
11 Section 10232.2 of the Code for the year ended December 31, 2001,
12 was due within 90 days after the end of the year, and was not
13 filed until on or about August 23, 2002;

14 (b) Quarterly Trust Fund Status Report required by
15 Section 10232.25 of the Code for the quarter ended March 31,
16 2002, was due within 30 days after the end of the quarter, and
17 was not filed until on or about September 30, 2002; and

18 (c) Quarterly Trust Fund Status Report required by
19 Section 10232.25 of the Code for the quarter ended June 30, 2002,
20 was due within 30 days after the end of the quarter, and was not
21 filed until on or about September 30, 2002.

22 XIX

23 Respondent FIRST LA JOLLA engaged in business as
24 alleged herein under the fictitious business name of "LA JOLLA
25 FUNDING" without a fictitious business name license from the
26 Department.

27 ///

1 XX

2 The acts and/or omissions of Respondent FIRST LA JOLLA
3 as alleged above constitute grounds for disciplinary action under
4 the following provisions:

5 (a) As to Paragraphs VIII and X(a), under Section
6 10145 of the Code and Section 2832 of the
7 Regulations in conjunction with Section
8 10177(d) of the Code;

9 (b) As to Paragraph IX, under Section 10145 of
10 the Code in conjunction with Section 10177(d)
11 of the Code;

12 (c) As to Paragraph X(b), under Section 2831 of
13 the Regulations in conjunction with Section
14 10177(d) of the Code;

15 (d) As to Paragraph X(c), under Section 2831.1
16 of the Regulations in conjunction with
17 Section 10177(d) of the Code;

18 (e) As to Paragraph X(d), under Section 2831.2
19 of the Code in conjunction with Section
20 10177(d) of the Code;

21 (f) As to Paragraph X(d), under Section 2834
22 of the Regulations in conjunction with
23 Section 10177(d) of the Code;

24 (g) As to Paragraph XI, under Section 10240
25 of the Code in conjunction with Section
26 10177(d) of the Code;

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- 1 (h) As to Paragraph XII, under Section 10232.2
2 of the Code in conjunction with 10177(d) of
3 the Code, and Section 10176(e) of the Code;
- 4 (i) As to Paragraph XIII, under Section 10229(a)
5 of the Code in conjunction with Section
6 10177(d) of the Code;
- 7 (j) As to Paragraph XIV, under Section 10229(e)
8 of the Code in conjunction with Section
9 10177(d) of the Code;
- 10 (k) As to Paragraph XV, under Section 10229(g) (3)
11 of the Code in conjunction with Section
12 10177(d) of the Code;
- 13 (l) As to Paragraph XVI, under Section 10232.5 of
14 the Code in conjunction with Section 10177(d)
15 of the Code;
- 16 (m) As to Paragraph XVII, under Section 10229(k)
17 of the Code in conjunction with Section
18 10177(d) of the Code;
- 19 (n) As to Paragraph XVIII(a), under Section
20 10232.2 of the Code in conjunction with
21 Section 10177(d) of the Code;
- 22 (o) As to Paragraphs XVIII(b) and (c), under
23 Section 10232.25 of the Code in conjunction
24 with Section 10177(d) of the Code;
- 25 (p) As to Paragraph XIX, under Section 10159.5 of
26 the Code and Section 2731 of the Regulations
27 in conjunction with Section 10177(d) of the Code.

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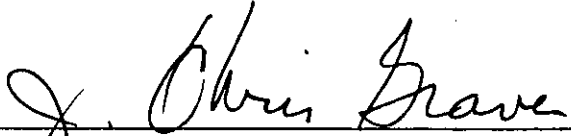
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof a decision be rendered imposing disciplinary action
4 against all licenses and license rights of Respondents under the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

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11 
12 J. CHRIS GRAVES
13 Deputy Real Estate Commissioner
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15 Dated at San Diego, California,
16 this 2nd day of February, 2004.
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