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2 At all relevant times herein, Respondent engaged in the business of, acted in the  
3 capacity of, advertised or assumed to act as a real estate licensee within the State of California  
4 within the meaning of Section 10131(b) of the Code including the operation and conduct of a  
5 property management business with the public, wherein, on behalf of others, for compensation or  
6 in expectation of compensation, Respondent leased or rented or offered to lease or rent, and  
7 solicited for prospective tenants of real property or improvements thereon, and collected rents from  
8 real property or improvements thereon.

9  
10 At all relevant times herein, Respondent engaged in the business of, acted in the  
11 capacity of, advertised, or assumed to act as a real estate broker in the State of California, within  
12 the meaning of section 10131(a) of the Code by engaging with the public in residential property  
13 resale activities, on behalf of others, for compensation or in expectation of compensation,  
14 Respondent sold or offered to sell, bought or offered to buy, solicited prospective sellers or  
15 purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real  
16 property.

17 FIRST CAUSE OF ACTION

18 (Audit Violations)

19  
20 Each and every allegation made in Paragraphs 1 through 4, inclusive, is incorporated  
21 by this reference as if fully set forth herein.

22  
23 Beginning on or about May 7, 2019, and continuing through May 30, 2019, an audit  
24 was conducted of the real estate business activities of Respondent's main business office, located at  
25 798 Morro Bay Boulevard, Morro Bay, CA 93442. The Department's auditor examined the  
26 business records of Respondent for the period of February 1, 2018, through March 31, 2019 ("audit  
27 period").

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3 While engaging in the real estate activities as described in Paragraphs 3 and 4,  
4 above, and within the audit period, Respondent accepted or received funds in trust ("trust funds")  
5 and deposited or caused the trust funds to be deposited into a bank/trust account maintained as  
6 follows:

7 Bank Name: Heritage Oak Bank (Bank Account #1)  
8 Bank Address: 898 Morro Bay Blvd.,  
Morro Bay, CA 93442  
9 Account Name: Liberty Trust Rental Office  
10 Account No.: Last 4 Digits: 1814  
11 Signatories: Jack Franklin (REB)  
Matthew Franklin (RES)  
Tania Waldron (RES)  
Joan Poe (Unlicensed)  
12 Description: Hold property owner funds for management of their  
13 properties.

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15 In the course of the real estate activities described above in Paragraphs 3 and 4, and  
16 during the audit period, Respondent:

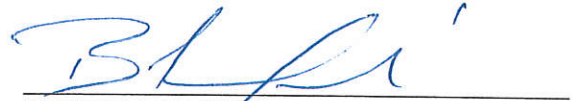
17 (a) Caused or permitted the balance of funds in Bank Account #1 to  
18 be reduced to an amount which, as of February 28, 2019, was approximately \$61,096.29 less than  
19 the aggregate liability of Bank Account #1 to all owners of such funds, without the prior written  
20 consent of each and every owner of such funds, in violation of Section 10145 of the Code, and  
21 Section 2832.1, Title 10, California Code of Regulations ("the Regulations");

22 (b) Bank Account #1, which was used to hold trust funds, was not designated as  
23 a trust account in the name of Respondent, as trustee, in violation of Section 10145(a) of the Code  
24 and Section 2832 of the Regulations; and

25 (c) The bank signature card for Bank Account #1 listed Joan Poe, an unlicensed  
26 individual, as a signatory on the bank account without fidelity bond coverage, in violation of  
27 Section 10145 of the Code and Section 2834 of the Regulations.



1 and enforcement as permitted by law, for the cost of the audit as permitted by law, and for such  
2 other and further relief as may be proper under other provisions of law.

3 

4 BREND A SMITH  
5 Supervising Special Investigator

6 Dated at Fresno, California,  
7 this 20 day of December, 2019.

8  
9 DISCOVERY DEMAND

10 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the  
11 Department of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth  
12 in the *Administrative Procedure Act*. Failure to provide Discovery to the Department of Real Estate  
13 may result in the exclusion of witnesses and documents at the hearing or other sanctions that the  
14 Office of Administrative Hearings deems appropriate.