1	ADRIANA Z. BADILAS, Counsel (SBN 283331) Department of Real Estate P. O. Box 137007
3	Sacramento, CA 95813-7007 Fax: (916) 263-3767 DEPARTMENT OF REAL ESTATE
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8	BEFORE THE DEPARTMENT OF REAL ESTATE
9	STATE OF CALIFORNIA
10	* * *
11	In the Matter of the Accusation of:
12	JACK ALAN FRANKLIN,) No. H-3283 FR ACCUSATION
13	Respondent.
14	The Complainant PRENDA SMITH in hor official consists and Smith
15	The Complainant, BRENDA SMITH, in her official capacity as a Supervising
16	Special Investigator of the State of California, Department of Real Estate ("Department"), brings
17	this Accusation against JACK ALAN FRANKLIN ("Respondent") and is informed and alleges as
18	follows:
19	GENERAL ALLEGATIONS
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21	Respondent is presently licensed by the Department and/or has license rights unde
22	the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code
23	("Code"), as a real estate broker, REB No. 00426210.
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25	At all relevant times herein, Respondent was doing business under the fictitious
26	business name of Franklin Real Estate & Rentals.
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capacity of, advertised or assumed to act as a real estate licensee within the State of California

within the meaning of Section 10131(b) of the Code including the operation and conduct of a

in expectation of compensation, Respondent leased or rented or offered to lease or rent, and

property management business with the public, wherein, on behalf of others, for compensation or

At all relevant times herein, Respondent engaged in the business of, acted in the

real property or improvements thereon.

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solicited for prospective tenants of real property or improvements thereon, and collected rents from

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

FIRST CAUSE OF ACTION (Audit Violations)

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

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

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

Bank Name:

Heritage Oak Bank (Bank Account #1)

Bank Address:

898 Morro Bay Blvd.. Morro Bay, CA 93442

Account Name:

Liberty Trust Rental Office

Account No.: Signatories:

Last 4 Digits: 1814 Jack Franklin (REB)

Matthew Franklin (RES) Tania Waldron (RES) Joan Poe (Unlicensed)

Description:

Hold property owner funds for management of their

properties.

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

- (a) Caused or permitted the balance of funds in Bank Account #1 to be reduced to an amount which, as of February 28, 2019, was approximately \$61,096.29 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, Title 10, California Code of Regulations ("the Regulations");
- Bank Account #1, which was used to hold trust funds, was not designated as a trust account in the name of Respondent, as trustee, in violation of Section 10145(a) of the Code and Section 2832 of the Regulations; and
- (c) The bank signature card for Bank Account #1 listed Joan Poe, an unlicensed individual, as a signatory on the bank account without fidelity bond coverage, in violation of Section 10145 of the Code and Section 2834 of the Regulations.

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GROUNDS FOR DISCIPLINE

The acts and/or omissions of Respondent, as alleged above in Paragraphs 5 through 8, constitute grounds for the suspension or revocation of the license and license rights of Respondent pursuant to Sections 10145(a) (trust fund handling), 10177(d) (willful disregard of real estate laws), and 10177(g) (negligence of incompetence in performing an act for which a license is required) of the Code, in conjunction with Sections 2832 (trust fund handling), 2832.1 (trust fund handling for multiple beneficiaries), and 2834 (trust account withdrawals) of the Regulations.

AUDIT COSTS

The acts and/or omissions of Respondent as alleged above, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund violations) of the Code.

COST OF INVESTIGATION AND ENFORCEMENT

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, the Commissioner may request the Administrative Law Judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered revoking all licenses and license rights of Respondent under the Real Estate Law, for the cost of investigation

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and enforcement as permitted by law, for the cost of the audit as permitted by law, and for such other and further relief as may be proper under other provisions of law. BRENDA SMITH Supervising Special Investigator Dated at Fresno, California, this 20 day of December, 2019. **DISCOVERY DEMAND** Pursuant to Sections 11507.6, et seq. of the Administrative Procedure Act, the Department of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the Administrative Procedure Act. Failure to provide Discovery to the Department of Real Estate may result in the exclusion of witnesses and documents at the hearing or other sanctions that the Office of Administrative Hearings deems appropriate.