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**FILED**

DEC 17 2020

DEPARTMENT OF REAL ESTATE  
By L. L. [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 JALERA, INC., KATHIE LYNN TIPTON, ) No. H-3350 FR  
13 and LARRY JOHN MCKEE, ) ACCUSATION  
14 Respondents. )

15 The Complainant, BRENDA SMITH, a Supervising Special Investigator of the  
16 State of California, for Accusation against Respondents JALERA, INC. (JALERA), KATHIE  
17 LYNN TIPTON (TIPTON), and LARRY JOHN MCKEE (MCKEE) sometimes collectively  
18 referred to as Respondents, is informed and alleges as follows:

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20 The Complainant makes this Accusation against Respondents in her official  
21 capacity.

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23 JALERA is presently licensed and/or has license rights under the Real Estate  
24 Law, Part 1 of Division 4 of the California Business and Professions Code (Code), by the  
25 Department of Real Estate (Department) as a corporate real estate broker doing business as  
26 Century 21 Mammoth Lakes.

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TIPTON is presently licensed and/or has license rights under the Code as a real estate broker.

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MCKEE is presently licensed and/or has license rights under the Code as a real estate salesperson.

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At all times mentioned herein, TIPTON was the designated broker-officer of JALERA. As the designated broker-officer, TIPTON was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of officers, agents, real estate licensees and employees of JALERA for which a real estate license is required to ensure the compliance of the corporation with the Real Estate law and the Regulations.

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

FIRST CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 6, above, and incorporates the same, herein.

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Beginning on June 5, 2019, and continuing intermittently through December 9, 2019, an audit was conducted at JALERA's office located at 101 Old Mammoth Road, Mammoth Lakes, California, and at the Department's district office located at 2550 Mariposa Mall, Fresno, California, where the auditor examined records for the period of April 1, 2017, through March 31, 2019 (the audit period).

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While acting as a real estate broker as described in Paragraph 5, above, and within the audit period, Respondents accepted or received funds in trust (trust funds) from or on behalf of property owners, lessees and others in connection with property management activities, and deposited or caused to be deposited those funds into bank accounts maintained by Respondents at Oak Valley Community Bank, Mammoth Lakes, 307 Old Mammoth Road, Mammoth Lake, California, as described below:

TRUST ACCOUNT #1	
Account No.:	XXXXXXXXXX9825
Entitled:	Jalera Inc. dba Century 21 Mammoth Lakes Realty Trust Account

and at Bank of America, 481 Old Mammoth Road, Mammoth Lake, California, as described below:

BANK ACCOUNT #1	
Account No.:	XXX7776
Entitled:	Jalera Inc. dba Century 21 Mammoth Lakes

and thereafter from time-to-time made disbursement of said trust funds.

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In the course of the activities described in Paragraph 6, in connection with the collection and disbursement of trust funds, it was determined that:

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- 1 (a) Respondents failed to properly designate Account #1 as a trust account as  
2 required by Section 2832 of the Regulations and Section 10145 of the  
3 Code;
- 4 (b) Respondents allowed an unlicensed and un-bonded person, Alicia Vennos,  
5 as a signer on the bank account, in violation of Section 2834 of the  
6 Regulations;
- 7 (c) An accountability was performed on Trust Account #1, and as of May 31,  
8 2018, a shortage of \$57,830.53 was revealed in violation of 10145 of the  
9 Code;
- 10 (d) An accountability was performed on Trust Account #1, and as of  
11 March 31, 2019, a shortage of \$54,282.02 was revealed in violation  
12 of Section 10145 of the Code;
- 13 (e) Respondents failed to obtain written permission from owners of trust  
14 funds in Trust Account #1, to allow the balances to drop below  
15 accountability, in violation of Section 2832.1 of the Regulations;
- 16 (f) Respondents failed to maintain separate beneficiary records for Bank  
17 Account #1, as required by Section 2831.1 of the Regulations, and
- 18 (g) Respondents failed to perform monthly reconciliations of the separate  
19 beneficiary records and control records for Bank Account #1 and Trust  
20 Account #1, as required by Section 2831.2 of the Regulations.

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22 The acts and/or omissions described above constitute violations of Sections  
23 2831.1 (separate beneficiary records), 2831.2 (monthly reconciliations), 2832 (trust fund  
24 designations), 2832.1 (written permission balance below accountability), and 2834 (signatories  
25 on trust account) of the Regulations and of Section 10145 (trust fund handling) of the Code, and  
26 are grounds for discipline under Sections 10177(d) (willful disregard of real estate laws) and  
27 10177(g) (negligence/incompetence licensee) of the Code.

1 SECOND CAUSE OF ACTION

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3 Complainant refers to Paragraphs 1 through 11, above, and incorporates the same  
4 herein.

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6 Real Estate Salesperson, LARRY MCKEE, owner of JALERA, INC., withdrew  
7 trust funds for his personal use.

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9 MCKEE's withdrawals constituted the bulk of the shortages that were revealed  
10 in the audit, set forth in Paragraph 10(c) and 10(d) above.

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12 The acts and/or omissions of MCKEE violate Sections 10176 (a)  
13 (misrepresentation), 10176(e) (commingling), and 10176(i) (other conduct: fraud/dishonest  
14 dealing) of the Code and constitute grounds for disciplinary action under the provisions of  
15 Sections 10176(a), 10176(e) and 10176(i) of the Code.

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17 THIRD CAUSE OF ACTION

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19 Complainant refers to Paragraphs 1 through 15, above, and incorporates the same  
20 herein, by reference.

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22 At all times herein above mentioned, TIPTON was responsible, as the supervising  
23 designated broker/officer for JALERA, for the supervision and control of the activities  
24 conducted on behalf of JALERA's business by its employees to ensure its compliance with the  
25 Real Estate Law and Regulations. TIPTON failed to exercise reasonable supervision and  
26 control over the property management activities of JALERA. In particular, TIPTON permitted,  
27 ratified and/or caused the conduct described above to occur, and failed to take reasonable steps,

1 including but not limited to, the handling of trust funds, supervision of employees, and the  
2 implementation of policies, rules, and systems to ensure the compliance of the business with the  
3 Real Estate Law and the Regulations.

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5 The above acts and/or omissions of TIPTON violate Section 2725 (broker  
6 supervision) of the Regulations and Section 10159.2 (responsibility/designated officer) of the  
7 Code and constitute grounds for disciplinary action under the provisions of Sections 10177(d),  
8 10177(g) and 10177(h) (broker supervision) of the Code.

9 Audit Costs

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

14 Costs of Investigation and Enforcement

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

21 WHEREFORE, Complainant prays that a hearing be conducted on the  
22 allegations of this Accusation and that upon proof thereof a decision be rendered imposing

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1 disciplinary action against all licenses and license rights of Respondents under the Real Estate  
2 Law, and for such other and further relief as may be proper under other provisions of law.

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6 BRENDA SMITH  
Supervising Special Investigator

7 Dated at Fresno, California,  
8 this 23 day of October, 2020.

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10 DISCOVERY DEMAND

11 The Department of Real Estate hereby requests discovery pursuant to Section  
12 11507.6 of the California Government Code. Failure to provide discovery to the Department  
13 may result in the exclusion of witnesses and/or documents at the hearing, and other sanctions as  
14 the Administrative Law Judge deems appropriate.

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