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**FILED**

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DEPARTMENT OF REAL ESTATE  
BY: [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 )  
13 MANALO REALTY INC.; ) No. H- 04473 SD  
14 and RICHARD RIZARRE MANALO, )  
15 individually and as designated officer ) ACCUSATION  
16 of Manalo Realty Inc., )  
17 Respondents. )

18 The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of  
19 the State of California, Department of Real Estate ("Department") for cause of Accusation  
20 against MANALO REALTY INC. ("MRI") and RICHARD RIZARRE MANALO  
21 ("MANALO"), individually and as designated officer of Manalo Realty Inc. (collectively  
22 "Respondents"), is informed and alleges as follows:

23 1.

24 The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of  
25 the State of California, makes this Accusation in her official capacity.



1 FIRST CAUSE OF ACCUSATION

2 (Property Management Audit)

3 5.

4 At all times mentioned, in the City of Chula Vista, County of San Diego,  
5 Respondents MRI and MANALO engaged in the business of, acted in the capacity of, advertised  
6 or assumed to act as a real estate brokers, within the meaning of Code Sections:  
7

8 A. Code Section 10131(a). Respondents engaged in the business of a residential  
9 resale brokerage, including the solicitation for listings of and the negotiation of the sale of real  
10 property as the agent of others.

11 Although the audit examination below pertains solely to the property management  
12 activity, MRI's primary activity is residential resales, representing both buyers and sellers.  
13 Between September 1, 2008 and August 31, 2011, MRI closed 20 listing transactions (totaling  
14 approximately \$5.91 million) and 22 sales transactions totaling approximately \$6.03 million. As  
15 of November 29, 2011, there was one (1) sales transaction in escrow.  
16

17 B. Code Section 10131(b). Respondents engaged in the business of a property  
18 management brokerage with the public wherein, for or in expectation of compensation, for  
19 another or others, Respondent leased or rented or offered to lease or rent, or placed for rent, or  
20 solicited listings of places for rent, or solicited for prospective tenants, or collected rents from real  
21 property, or improvements thereon.

22 Respondent MRI manages 22 single-family properties for twenty owners. MRI  
23 collects rents, pays expenses, and screens tenants for compensation. There is an approximate  
24 monthly total collection of \$39,070 in rental receipts; approximately \$435,200 was collected  
25 between November 1, 2010 and October 31, 2011. MRI typically charges a management fee of  
26 10% of collected rents. Additionally, MRI may charge a lease execution or a lease renewal fee.

1 C. Code Section 10131(d). Respondent's engaged in activities with the public  
2 wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on  
3 real property, wherein such loans were arranged, negotiated, processed and consummated on  
4 behalf of others for compensation or in expectation of compensation and for fees often collected  
5 in advance.

6 Respondent MRI solicited borrowers and lenders, and negotiated mortgage loans  
7 for institutional lenders for compensation until December 2008.

8 According to the brokered loan files provided for the audit period, MRI closed  
9 nine (9) loans under the licensed name "M R Mortgage" and/or the unlicensed fictitious business  
10 name of "Mr. Mortgage" between September 1, 2008 and November 30, 2008.

11 Audit Examination:

12  
13  
14 6.

15 On February 7, 2012, the Department completed an audit examination of the  
16 books and records of Respondent MRI pertaining to the property management activities  
17 described in Paragraph 5, which require a real estate license. The audit examination covered a  
18 period of time beginning on January 1, 2010 to October 31, 2011. The audit examination  
19 revealed violations of the Code and Title 10, Chapter 6, California Code of Regulations  
20 ("Regulations") as alleged in the following paragraphs, and more fully set forth in Audit Report  
21 SD 110035 and the exhibits and work papers attached thereto.

22 Bank Accounts

23 7.

24 At all times mentioned, in connection with the activities described in Paragraph  
25 6, above, MRI accepted or received funds including funds in trust ("trust funds") from or on  
26 behalf of property owners and tenants handled by MRI and thereafter made deposits and or  
disbursements of such funds. From time to time herein mentioned, during the audit period and

1 thereafter, said trust funds were deposited and/or maintained by MRI in the accounts described  
2 below.

3  
4 (“TA 1”)

5 “Manalo Real Estate

6 \*\*\*\*24953”

7 Chase Bank

8 Chula Vista, CA 91915

9 (Depository for rents and security deposits)

10  
11 (“TA 2”)

12 “Manalo Real Estate

13 \*\*\*\*24406”

14 Chase Bank

15 Chula Vista, CA 91915

16 (Interest bearing account for collected rents and security deposits)

17 Violations of the Real Estate Law

18 8.

19 In the course of activities described in Paragraphs 5B and 7, above, and during  
20 the examination period, described in Paragraph 6, Respondents MRI and MANALO acted in  
21 violation of the Code and the Regulations in which Respondents:

22 (a) Permitted, allowed or caused the disbursement of trust funds from MRI's  
23 property management trust accounts TA1 and TA 2 for rent and security deposits collection,  
24 where the disbursement of funds reduced the total of aggregate funds in said accounts, to an  
25 amount which, on October 31, 2010, was at a minimum accountability as set forth below, and  
26 less than the existing aggregate trust fund accountability of MRI to every principal who was an

1 owner of said funds, without first obtaining the prior written consent of the owners of said  
2 funds, in violation of Code Section 10145 and Regulation 2832.1. The shortage was caused by  
3 negative property balances, to wit, disbursements related to the properties made when no  
4 sufficient funds existed to do so:

<u>Trust Account</u>	<u>Amount of Deficit</u>
TA 1:	\$12,997.18
TA 2:	<u>\$ 6,626.72</u>
	<u>\$19,623.90</u>

11  
12 (b) Benefited from interest inured on the trust accounts that MRI failed to  
13 designate as interest bearing account, T/A 2, in violation of Code Section 10145(d)(5) and  
14 Regulation 2830.1(a);

15 (c) Failed to maintain an accurate and adequate control record in the form of a  
16 columnar record in chronological order of trust funds received but not deposited into T/A 1 and  
17 T/A 2, received in chronological order, in violation of Code Section 10145 and Regulation  
18 2831;

19 (d) Failed to maintain a separate record for each beneficiary or transaction, thereby  
20 failing to account for all trust funds received, deposited and disbursed by TA 1 and TA 2, in  
21 violation of Code Section 10145 and Regulation 2831.1. Additionally, no separate record exists  
22 for broker funds that Manalo and Patricia Balio used to cover disbursements that exceeded  
23 individual property owner's balances, giving rise to the shortage of \$19,623.90;

24 (e) Failed to perform a monthly reconciliation of the balance of all separate  
25 beneficiary or transaction records maintained pursuant to Regulation 2831.1 with the record of  
26

1 all trust funds received and disbursed by T/A 1 and T/A 2 in violation of Code Section 10145  
2 and Regulations 2831.2;

3 (f) Failed to place trust funds, including rents and security deposits, into a trust  
4 fund account in the name of the broker as trustee at a bank or other financial, in violation of Code  
5 Section 10145 and Regulation 2832(a);

6 (g) Failed to place trust funds, including prorated rent of \$326.67 received on  
7 August 25, 2011, into either T/A 1 and T/A 2, in violation of Code Section 10145(a) and  
8 Regulation 2832;

9 (h) Permitted Patricia Balio, an unlicensed and unbonded person, to be an  
10 authorized signatory on the trust accounts TA 1 and TA 2, in violation of Code Section 10145  
11 and Regulation 2834;

12 (i) MANALO failed to adequately supervise and control the real estate and  
13 property management activity conducted under MRI's real estate broker license. Respondents  
14 had no system in place for regularly monitoring MRI's compliance with the Real Estate Law  
15 especially in regard to establishing, systems, policies and procedures to review trust fund  
16 handling, and to keep MRI in compliance with the Real Estate Law, in violation of Code Sections  
17 10159.2, 10177(h) and Regulation 2725. Respondent MANALO failed to disclose that Patricia  
18 Balio, MRI's book keeper was president of All State Home Inspections Inc., an independent  
19 third party vendor which provided repair and maintenance services to the properties managed by  
20 MRI where Balio's compensation were a percentage of MRI's monthly management fees were  
21 payable to All State Home Inspections Inc.; and

22 (j) During November 2012, MRI's corporate status was suspended by the  
23 California Franchise Tax Board, yet MRI continued to conduct operations to date, in violations  
24 of Code Section 10177(f) and Regulation 2742(c).

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1 Disciplinary Law and Regulations

2 9.

3 The conduct of Respondents MRI and MANALO, described in Paragraph 8,  
4 above, violated the Code and the Regulations as set forth below:  
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6 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
7 8(a)	Code Section 10145 and Regulation 2832.1
8 8(b)	Code Sections 10145(d)(5) and Regulation 2830.1(a)
9 8(c)	Code Section 10145 and Regulation 2831
10 8(d)	Code Section 10145 and Regulation 2831.1
11 8(e)	Code Section 10145 and Regulation 2831.2
12 8(f)	Code Section 10145 and Regulation 2832(a)
13 8(g)	Code Section 10145(a) and Regulation 2832
14 8(h)	Code Section 10145 and Regulation 2834
15 8(i)	Code Sections 1059.2 and 10177(h) and Regulation 2725 (MANALO)
16 8(j)	Code Section 10177(f) and Regulation 2742(c)

17 The foregoing violations constitute cause for the discipline of the real estate licenses and license  
18 rights of Respondents MRI and MANALO under the provisions of Code Sections 10145,  
19 10177(d), 10177(f), 10177(g) and 10177(h) for MANALO.

20 SECOND CAUSE OF ACCUSATION

21 (Residential Resales and Mortgage Loan Brokerage Audit)

22 10.

23 On January 10, 2012, the Department completed an audit examination of the  
24 books and records of Respondent MRI pertaining to the residential resales and mortgage loan  
25 brokerage activities described in Paragraph 5A/5C, which require a real estate license. The  
26 audit examination covered a period of time beginning on September 1, 2008 to August 31, 2011.



1 The audit examination revealed violations of the Regulations as alleged in the following  
2 paragraphs. and more fully set forth in Audit Report SD 110021 and the exhibits and work  
3 papers attached thereto.

4 Violations of the Real Estate Law

5 11.

6 In the course of activities described in Paragraphs 5A/5C and 7, above, and  
7 during the examination period, described in Paragraph 10, Respondents MRI and MANALO  
8 acted in violation of the Code and the Regulations in which Respondents:  
9

10 (a)(1) Failed to retain all records for the property located at 1145 Calle Serena,  
11 San Diego, California, in particular a transaction file, in violation of Code Section 10148; and

12 (a)(2) Employed and compensated Dennise Gurfinkiel, as a loan agent who  
13 Respondents knew was not licensed by the Department as a real estate broker or as a real estate  
14 salesperson employed by a real estate broker, for performing acts for which a real estate license is  
15 required, including soliciting mortgage loans, in violation of Code Sections 10130 and 10137;  
16

17 (b)(1) Failed to disclose MRI's loan agents Lynn Howell and Priscilia Rodriguez'  
18 license identification numbers on the purchase agreements for Yim T. and Wendy R.,  
19 respectively, in violation of Code Section 10140.6(b) and Regulation 2773

20 (b)(2) MRI failed to disclose its license identification number on its Website,  
21 www.manalorealty.com, in violation of Code Section 10140.6(b)(1) and Regulation 2773;

22 (c) Failed to retain the broker or salesperson license certificates for Cardenas,  
23 Rosario F. (RES), Chico, Loren (REB), Jimenez, Angel, Aguiar (RES), Mercado, Priscila  
24 Veronica (RES), Nacario, Ricardo Arejola (RES), Nacario, Roberto (RES), Truong-Nguyen,  
25 Giang Le (RES), and Vitug-Guenthoer, and Vivian Luz (RES), in violation of Code Section  
26

1 10160 and Regulation 2753;

2 (d) Failed to maintain a signed broker salesperson agreement with the aforesaid  
3 brokers and salespersons in Paragraph 11(c), above, in violation of Regulation 2726;

4 (e) Conducted licensed activities at (1) 988 Hilbert Street #100, San Diego, CA  
5 92131 and (2) 32604 Hwy 79 South Suite 316, Temecula, CA 92592, yet failed to notify to the  
6 Department of the closure and cancellation of both branch offices in 2009, by the next business  
7 day, as required by and in violation of the Code Section 10163 and Regulation 2715; and

8 (f) During November 2012, MRI's corporate status was suspended by the  
9 California Franchise Tax Board, yet MRI continued to conduct operations to date, in violations  
10 of Code Section 10177(f) and Regulation 2742(c).

11 Disciplinary Law and Regulations

12 12.

13 The conduct of Respondents MRI and MANALO, described in Paragraph 11,  
14 above, violated the Code and the Regulations as set forth below:

15 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
16 11(a)	Code Section, 10148, 10130 and 10137
17 11(b)	Code Section 10140.6(b) and Regulation 2773
18 11(c)	Code Section 10160 and Regulation 2753
19 11(d)	Regulation 2726
20 11(e)	Code Section 10163 and Regulation 2715
21 11(f)	Code Section 10177(f) and Regulation 2742(c)

22 The foregoing violations constitute cause for the discipline of the real estate licenses and license  
23 rights of Respondents MRI and MANALO under the provisions of Code Sections 10148,  
24 10177(d), 10177(f) and 10177(g).

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1 THIRD CAUSE OF ACCUSATION

2 (Negligence)

3 13.

4 The overall conduct of Respondents MRI and MANALO constitutes negligence  
5 and is cause for discipline of the real estate license and license rights of said Respondents  
6 pursuant to the provisions of Code Section 10177(g).

7 FOURTH CAUSE OF ACCUSATION

8 (Fiduciary Duty)

9 14.

10 The conduct, acts and omissions of Respondents MRI and MANALO constitute a  
11 breach of fiduciary duty, owed to MRI's clientele of good faith, trust, confidence and candor,  
12 within the scope of their relationship, in violation of Code Section 10177(g) and constitutes  
13 cause for discipline of the real estate license and license rights of said Respondents pursuant to  
14 the provisions of Code Section 10177(g).

15 15.

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

20 16.

21 Code Section 10148(b) provides, in pertinent part the Commissioner shall charge a  
22 real estate broker for the cost of any audit, if the commissioner has found in a final decision  
23 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation  
24 or rule of the commissioner interpreting said section.

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1                   WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
3 action against all licenses and/or license rights of Respondents MANALO REALTY INC. and  
4 RICHARD RIZARRE MANALO, individually and as designated officer of , under the Real  
5 Estate Law (Part 1 of Division 4 of the California Business and Professions Code) and for such  
6 other and further relief as may be proper under other applicable provisions of law, including but  
7 not limited to, proof of cure of the shortage, and costs investigation, enforcement and audit.  
8

9 Dated at San Diego, California.

10  
11 this 6 day of March, 2013.  
12

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14   
15 VERONICA KILPATRICK  
16 Deputy Real Estate Commissioner  
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18  
19  
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21  
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23

24 cc: Richard Rizarre Manalo  
25 Veronica Kilpatrick  
26 Jennifer Borromeo  
Sacto