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FILED

JAN 13 2020

DEPT. OF REAL ESTATE

By John O'Grady

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of) No. H-05118 SD
12 LAND TREK PROPERTY)
13 MANAGEMENT CO INC, THOMAS) ACCUSATION
14 EDWARD REILLY III, individually)
15 and as designated officer of Land Trek)
16 Property Management Co Inc, and)
LORI ELLEN GRIFFITH,)
Respondents.)

17 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the
18 Department of Real Estate ("Department" or "DRE") of the State of California, for cause of
19 Accusation against LAND TREK PROPERTY MANAGEMENT CO INC ("LTPMC"),
20 THOMAS EDWARD REILLY III ("REILLY"), and LORI ELLEN GRIFFITH ("GRIFFITH")
21 (collectively "Respondents"), alleges as follows:

22 1. The Complainant, Veronica Kilpatrick, acting in her official capacity as a
23 Supervising Special Investigator, makes this Accusation against Respondents.

24 2. All references to the "Code" are to the California Business and Professions Code
25 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

26 **LICENSE HISTORY**

27 3. Respondent LTPMC has been licensed by the Department as a real estate
28 corporation, License ID 00812129, from on or about April 8, 1985, through the present, with

1 LTPMC's license scheduled to expire on April 20, 2021 unless renewed. LTPMC is licensed
2 through REILLY's real estate broker ("REB") license, ID 00521852, and REILLY is the
3 designated officer ("D.O."). According to Department records as of September 5, 2019, LTPMC
4 had no branch offices and employed one broker associate and two salespeople. Also according to
5 Department records as of September 5, 2019 and currently, the fictitious business name "Apartment
6 Sales" is licensed to LTPMC.

7 4. Respondent REILLY has been licensed by the Department as a real estate broker
8 ("REB"), from on or about April 2, 1985, through the present, with REILLY's license scheduled to
9 expire on April 14, 2021, unless renewed. According to Department records to date, REILLY has
10 no fictitious business names licensed with the Department and no branch offices.

11 5. Respondent GRIFFITH has been licensed by the Department as a real estate
12 salesperson ("RES") from on or about January 18, 2018, through the present, with GRIFFITH's
13 license scheduled to expire on January 17, 2022, unless renewed. According to Department records
14 to date, LTPMC is and has been the responsible broker for GRIFFITH since she was first licensed.

15 BROKERAGE: LTPMC

16 6. At all times mentioned, in the County of San Diego, LTPMC acted as a real estate
17 broker, conducting licensed activities within the meaning of Code section 10131(b): leasing or
18 renting, offering to lease or rent, or collecting rents from real property for others. At all times
19 mentioned, LTPMC was acting by and through REILLY as its D.O. pursuant to Code section
20 10159.2 who was responsible for ensuring compliance with the Real Estate Law.

21 COMPLAINT

22 7. On or about October 5, 2018, the DRE received a complaint from Lisa H.^{3/} against
23 LTPMC, REILLY, and former LTPMC employee Leecia J. Roemer, licensed by the Department as
24 a real estate salesperson ("RES"), ID 01122658. Lisa H. hired LTPMC to manage her property
25 located at 1206 Cinchona St, Vista, CA. Lisa H. alleged that LTPMC failed to raise the tenant's
26 rent as agreed, and intentionally failed to collect the tenant's rent after repairs were made to the

27 ^{3/} First names and the first initial of the last names are used in place of an individual's full name to protect their privacy.
28 Documents containing the individual's full name will be provided during the discovery phase of this case to
Respondents and/or their attorney(s), after service of a timely and proper request for discovery on Complainant's
counsel.

1 property to address a sewage backup and the tenant stayed at a hotel, paid for under their renter's
2 insurance policy.

3 **AUDIT OF LTPMC: AUDIT NO. SD180027**

4 8. On May 31, 2019, the Department completed an audit examinations of the books
5 and records of LTPMC's real estate activities that require a corporate real estate broker license
6 under Code section 10131. The audit examination, SD180027, covered the time March 1, 2016 to
7 February 28, 2019 ("audit period") and was limited to LTPMC's broker escrow activities.

8 9. The purpose of the audit examinations was to determine whether LTPMC conducted
9 its real estate activities in accordance with the Real Estate Law and the Regulations.

10 10. An entrance conference was held by the DRE's auditor on March 11, 2019 with
11 REILLY at LTPMC's main office located at 901 Hacienda Drive in Vista, CA. Information and
12 records were also provided by LTPMC employees: Thomas Edward Reilly IV ("T.Reilly"; REB
13 license ID #01221772); GRIFFITH, who was LTPMC's bookkeeper; and Nancy Jean Reilly
14 ("N.Reilly"; non-licensee).

15 11. Based on discussions between the Department's auditor and REILLY, LTPMC's
16 corporate structure as of March 11, 2019 was as follows:

<u>Name</u>	<u>Title</u>	<u>License</u>	<u>Shareholder %</u>
REILLY	President	00521852 (D.O./REB)	50%
Nancy Jean Reilly	Secretary	n/a (RES expired 9/24/00)	50%
Thomas Edward Reilly IV	CFO	01221772 (REB)	0%

20 12. "N.Reilly" is REILLY's spouse and T.Reilly is REILLY's son.

21 13. According to REILLY, T.Reilly, and records examined, LTPMC's primary activity
22 is residential and commercial property management. As of March 11, 2019, LTPMC managed 91
23 one-to-four-unit family residences totaling 115 units, three (3) multi-unit residences totaling 30
24 units (one 7-plex, one 8-plex, and one 15-plex), and one (1) apartment complex with 50 units,
25 involving management for a total of 73 owners. In addition, LTPMC managed 40
26 commercial/business complexes with 261 units for 52 owners. There was an approximate trust
27 fund collection of \$3,198,602 for residential property management and \$7,889,704 for commercial
28 property management, for a total of \$11,088,306 between March 1, 2018 and February 28, 2019.

1 14. For residential properties, LTPMC charged a management fee of 4 to 10% of
2 collected rent.

3 15. For commercial properties, LTPMC charged a flat amount of \$200 to \$750, or 3 to
4 4% of collected rents. Lease execution fees were 25% of the first month's rent for residential
5 properties. LTPMC charged a lease renewal fee of 1% for commercial properties. Late fees and
6 non-sufficient fund fees were considered income, so LTPMC received their management fee as a
7 percentage of those fees.

8 16. LTPMC uses AppFolio software for residential property management and Yardi
9 software for commercial property management. Most owners received their monthly proceeds
10 electronically. About one-third of the tenants pay their rent electronically online. Checks received
11 by LTPMC are deposited by remote scanner in LTPMC's office, however any cash received is
12 deposited at a bank.

13 17. LTPMC does not perform residential resale, mortgage loan, or broker escrow
14 activities.

15 18. During the audit period, LTPMC maintained three (3) bank accounts in which trust
16 funds were deposited. LTPMC's bank accounts are as follows:

17 a. Bank Account 1 ("BA1")

18 Bank: Pacific Premier Bank

19 Account Land Trek Property Management Co Inc
20 Name: (Residential Account)

21 Account #: XXXXXXXXX5437

22 Signatories: REILLY (D.O./REB), President
 T.Reilly (REB), CFO
 N.Reilly (Non-licensee), Secretary

23 Signatures One (1) signature
24 required:

25 Description: BA1 was used as a depository for trust funds, primarily rents and security
26 deposits collected from tenants for multiple beneficiaries (one-to-four-unit
27 family residential property owners). Disbursements from BA1 included
28 payments for property-related expenses, owner remittances, and
 management fees to LTPMC.

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b. **Bank Account 2 ("BA2")**

Bank: Pacific Premier Bank
Account Name: Land Trek Property Management Co Inc (Commercial Account)
Account #: XXXXXXXX5403
Signatories: REILLY (D.O./REB), President
T.Reilly (REB), CFO
N.Reilly (Non-licensee), Secretary
Signatures required: One (1) signature
Description: BA2 was used as a depository for trust funds, primarily rents and security deposits collected from tenants for multiple beneficiaries (commercial property owners). Disbursements from BA2 included payments for property-related expenses, owner remittances, and management fees to LTPMC.

c. **Trust Account 1 ("TA1")**

Bank: Pacific Premier Bank
Account Name: Land Trek Property Management Co Inc (Client Trust Account Large)
Account #: XXXXXXXX0634
Signatories: REILLY (D.O./REB), President
T.Reilly (REB), CFO
N.Reilly (Non-licensee), Secretary
Signatures required: One (1) signature
Description: TA1 was used as a depository for trust funds, primarily rents and security deposits collected from tenants of a 50-unit apartment complex owned by a single beneficiary. Disbursements from TA1 included payments for property-related expenses, owner remittances, and management fees to LTPMC.

Audit Violations in Audit No. SD180027

19. The Complainant realleges and incorporates by reference all of the allegations contained in paragraphs 1 through 18 above, with the same force and effect as though fully set forth herein.

20. The audit examination revealed violations of the Code and the Regulations, as set forth in the following paragraphs, and more fully discussed in Audit No. SD180027 and the exhibits and work papers attached to the audit report:

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1 **Issue One (1). Code section 10145 and Regulation 2832.1: Trust Fund Handling for Multiple**
 2 **Beneficiaries**

3 21. A bank reconciliation was prepared as of February 28, 2019 for BA1, BA2, and
 4 TA1. The adjusted bank balance was then compared to the total balance of the separate
 5 beneficiaries/property records (accountability).

6 22. As of February 28, 2019, BA1 had a minimum trust fund shortage of \$35,729.72,
 7 which was caused by a deposit recorded but not made for \$500.00, and unauthorized
 8 disbursements/employee embezzlement of funds received and not deposited totaling \$35,229.72,
 9 detailed below:

10 BA1

Adjusted Bank Balance, 2/28/19	\$69,524.20
Total Minimum Accountability, 2/28/19	105,253.92
Minimum Shortage, 2/28/19	<u><\$35,729.72></u>

11 The minimum shortage of <\$35,729.72> as of February 28, 2019 in BA1 was caused by the following:

- 12 1. Deposit Posted in LTPMC Books but Not Credited to BA1 <\$500.00>
 - 13 2. Unauthorized Disbursements/ Employee Embezzlement/
 14 Cash Received Not Deposited <35,229.72>
- 15 Minimum Trust Fund Shortage, 2/28/19 <\$35,729.72>

- 16 a. \$500.00 / Deposit Posted in Books but Not Credited to BA1—According to GRIFFITH
 17 (who maintained LTPMC's books and records, and handled and received trust funds,
 18 including cash) and records examined, on 2/6/19 there was a total deposit of
 19 \$27,550.00 posted in BA1 records, however, only \$27,050.00 was remotely scanned
 20 into BA1. The \$500 check, related to the 702 E. Mission Avenue property, was
 21 deposited on or about 3/5/19.
- 22 b. \$35,229.72 / Unauthorized Disbursements; Embezzlement of Funds; Cash Received
Not Deposited—GRIFFITH explained that \$35,179.72 of the shortage was caused by
 23 disbursements for owner proceeds which were posted on 5 properties on 2/28/19, and
 24 voided in March 2019. GRIFFITH explained that disbursements were automatically
 25 made at month end by the software, to bring down the owners' balance to the reserve
 26 amount. GRIFFITH stated that at month-end, REILLY reviewed disbursement checks
 27 and would tell her which specific properties (usually the same five properties listed
 28 below) would not be sent to the owners because of expected expenses, which was
 why she voided the disbursements. The disbursements and owner balances were as
 follows:

<u>Property</u>	<u>2/28/19 Disbursements</u> <u>Voided in March 2019</u>	<u>Balance per GRIFFITH's</u> <u>Reconciliation</u>	<u>Actual</u> <u>Balance</u>
4181 Alana Cir	\$10,575.23	300.00	10,875.23
130 Eaton Way	11,453.45	300.00	11,753.45
6007 Paseo Airoso	6,244.82	300.00	6,544.82
1896 S. Escondido Blvd.	1,811.22	679.95	2,491.17
158-160 Walker Way	5,095.00	800.00	5,895.00
	<u>\$35,179.72</u>		

1 The records provided did not indicate these disbursements were made from the property,
2 therefore, the disbursements were not reflected in accountability. The DRE's auditor
3 informed GRIFFITH that if these checks were considered outstanding as of 2/28/19 before
4 the voiding of the checks, then the separate record could be adjusted to reflect the lower
5 balance, however, checks would have to also be included in the Outstanding Checks list,
6 which would not change the shortage amount of \$35,229.72. GRIFFITH's monthly
7 reconciliations usually reflected the owners' balances after the disbursements were made
8 but before it was voided or reversed; and the disbursements were not included in the
9 outstanding disbursements.

10 Based on the DRE's auditor's examination of prior months' reconciliation, GRIFFITH would
11 record disbursements for owner proceeds that were posted on the same 5 properties at
12 the end of the month, and would void these checks after reconciling BA1 at the beginning
13 of the following month.

14 *It was also noted that there was a deposit of \$35,275.31 on 3/13/19 from TA1.

15 GRIFFITH repeatedly stated that she believed the shortage was caused by owner
16 proceeds related to the 5 properties that were issued by check each month, then voided
17 shortly thereafter. She stated that the 3/31/19 bank reconciliation indicated no
18 discrepancies, however, the DRE's auditor reviewed the 3/31/19 bank reconciliation and
19 accountability, and identified a shortage of \$35,275.31.

20 23. LTPMC provided no evidence that the owners of the trust funds gave their written
21 consent to allow LTPMC to reduce the balance of the funds in BA1 to an amount less than the
22 existing aggregate trust fund liabilities.

23 24. On or about April 30, 2019, REILLY deposited \$35,729.72 into BA1, from check
24 No. 6021 dated April 29, 2019, titled "Thomas E Reilly IV," from an account ending in 6738, to
25 cover the shortage in BA1 as of February 28, 2019.

26 25. As of February 28, 2019, there was a shortage of \$0.50 in BA2 caused by a
27 discrepancy between a deposit in the amount of \$3658.18, and the recording of this amount as
28 \$3,658.68 on or about February 4, 2019. The DRE's auditor summarized the discrepancy in BA2 in
the table below:

BA2

Adjusted Bank Balance, 2/28/19		\$696,704.95
Total Minimum Accountability	695,892.06	
LTPMC's Funds	<u>813.39</u>	
Total Minimum Accountability, 2/28/19	696,705.45	<u>696,705.45</u>
Minimum Trust Fund Shortage, 2/28/19		<u><\$0.50></u>

The shortage of <\$0.50> as of 2/28/2019 in BA2 was caused by a \$3,658.19 deposit posted as \$3,658.68 in LTPMC's records on or about 2/4/2019.

26 26. As of February 28, 2019, the adjusted bank balance and LTPMC's accountability
27 were balanced in TA1, as detailed below:

1 TAI

2 Adjusted Bank Balance, 2/28/19	\$8,015.00
3 Total Minimum Accountability, 2/28/19	<u>8,015.00</u>
4 Difference, 2/28/19	<u>\$0.00</u>

5 27. LTPMC's failure to obtain the written authorization of the owners of the trust funds
6 to reduce the balance of funds in BA1 and BA2 to amounts less than the existing aggregate trust
7 fund liability, and its failure to maintain complete and accurate records of all trust funds received
8 and disbursed, was in violation of Code section 10145 and Regulation 2832.1.

9 **Issue Three (3).^{4/} Code section 10145 and Regulation 2831: Handling of Trust Funds; Trust
Fund Records to be Maintained**

10 28. LTPMC used AppFolio software but failed to maintain an accurate record of trust
11 funds received and disbursed ("control record") for BA1. According to the DRE's auditor, there
12 were inconsistencies with the reports provided in that the balance changed depending on when the
13 report was printed. REILLY, T.Reilly, N.Reilly, and GRIFFITH believed the inconsistencies may
14 have been caused by voided transactions and were not sure if they posted voided transactions
15 correctly.

16 29. LTPMC provided the General Ledger for the Operating Cash for BA1, used as a
17 control record, for different periods during the examination. The DRE's auditor compiled the table
18 below based on a sample of the month end balances that did not match the balance forward
19 balances:

Date	Ending Balance	Beginning Balance	Date of Printout
09/30/17	\$96,169.18		04/12/19
10/01/17		100,268.97	04/11/19
10/31/17	112,898.56		04/11/19
11/01/17		109,811.25	04/12/19
01/31/19	95,952.27		04/24/19
02/01/19		91,679.34	04/08/19

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24 30. GRIFFITH stated that the software is set up so that after paying the month's
25 expenses and leaving the property's reserve amount, the remaining balance of each property is
26 disbursed to the owners. According to REILLY and GRIFFITH, during the examination, there were

27 ^{4/} Issue Two (2) is being skipped intentionally. In the audit report for SD180027, the Department's auditor addresses
28 Issue Two without citing any violations of the Code or Regulations. Complainant reserves the right to conduct further
investigation and to amend the accusation should further evidence be acquired in support of Issue Two, as well as
potential causes of accusation not alleged in this Accusation at the time of filing.

1 about five properties managed in BA1 in which proceeds were not disbursed to the property owner.
 2 Instead, the funds remained in BA1 to cover upcoming expenses. However, according to
 3 GRIFFITH, the software still automatically posted disbursements to the owner of these five
 4 properties, and that she would then need to post a reversal or void the disbursements. GRIFFITH
 5 stated she would try to post the reversal the same day, however, some reversals may not have been
 6 posted until the following month.

7 31. LTPMC failed to maintain an accurate control record for BA1 in violation of **Code**
 8 **section 10145 and Regulation 2831.**

9 **Issue Four (4). Code section 10145 and Regulation 2831.1: Handling of Trust Funds;**
 10 **Separate Record for Each Beneficiary or Transaction**

11 32. LTPMC failed to maintain accurate information related to disbursements paid to
 12 owners that were later voided or reversed. As noted above, there were at least five properties in
 13 which owner proceeds were not always disbursed monthly, but were instead maintained in BA1 to
 14 cover expenses. Some of the trust reconciliations reflected the balance after owner proceeds were
 15 posted but before reversals of disbursements were made, which resulted in a lower, incorrect
 16 property balance.

17 33. As of February 28, 2019, the separate records, reconciliation reports (LTPMC
 18 provided one report printed on 3/11/2019, and one printed 3/12/2019), and statements sent by
 19 LTPMC to the owners (dated 2/25/2019) indicated the following property balances:

Property	LTPMC's Trust Reconciliation		<u>Separate Record</u>	Statements to Owners <u>Dated 2/25/19</u>
	<u>Provided 3/12/19</u>	<u>Provided 3/11/19</u>		
4181 Alana Circle	\$300.00	\$10,875.23	\$10,875.23	\$10,875.23
130 Eaton Way	300.00	11,753.45	11,753.45	300.00
6007 Paseo Airosa	300.00	6,544.82	6,544.82	6,544.82
1896 S Escondido Bl	679.95	2,491.17	2,491.17	4,416.17
158-160 Walker Way	800.00	5,895.00	5,895.00	5,895.00

24 34. According to GRIFFITH, the discrepancies shown above are related to
 25 disbursements to owners on February 28, 2019, which were later voided. The higher balances
 26 shown above in the second column (trust reconciliation provided on 3/11/19) indicate the property
 27 balance without the disbursements to the owners, whereas the balances in the first column (trust

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1 reconciliation provided on 3/12/19) reflect property balances after disbursements to the owners,
2 before disbursements were voided or reversed.

3 35. LTPMC failed to maintain complete and accurate separate records for BA1 during
4 the audit period in violation of Code section 10145 and Regulation 2831.1.

5 **Issue Five (5). Code section 10145 and Regulation 2831.2: Handling of Trust Funds; Trust**
6 **Account Reconciliation**

7 36. During the audit period, LTPMC failed to properly perform a monthly reconciliation
8 comparing the balance of all separate records to the balance of the control record ("trust
9 reconciliation") for BA1.

10 37. LTPMC provided monthly bank and trust reconciliation, however some of the
11 property balances on the trust reconciliation did not match the balance on the separate records.

12 38. LTPMC's trust reconciliation report as of February 28, 2019 indicated an incorrect
13 total of \$70,074.20. The total of the property balances listed was actually \$105,253.92, reflecting a
14 difference of \$35,179.72. An examination of the separate records as of February 28, 2019
15 indicated balances totaling \$105,253.92. According to GRIFFITH, the difference was caused by
16 the following:

Property	Trust Reconciliation & Separate Record <i>Provided 3/11/19</i>	Disbursements for Owner Proceeds <i>(Later Reversed)</i>	Balance after Disbursement <i>(Matches Trust Reconciliation Provided 3/12/19)</i>
4181 Alana Circle	\$10,875.23	\$10,575.23	\$300.00
130 Eaton Way	11,753.45	11,453.45	300.00
6007 Paseo Airosa	6,544.82	6,244.82	300.00
1896 S Escondido Bl	2,491.17	1,811.22	679.95
158-160 Walker Way	5,895.00	5,095.00	800.00
		<u>\$35,179.72</u>	

21
22 39. The five disbursements for owner proceeds listed above were not included in the
23 outstanding checks/payments and, because the disbursements were reversed, the DRE's auditor
24 determined the accountability based on the balances provided in the trust reconciliation and
25 separate records provided by LTPMC on March 11, 2019.

26 40. The General Ledger for Operating Cash (printout date 4/8/19), provided by LTPMC
27 as a control record for BA1, indicated a balance of \$104,966.92 as of February 28, 2019, which
28 was \$287.00 less than the total of the separate records.

1 41. LTPMC failed to properly perform a monthly reconciliation comparing the balance
2 of all separate records to the balance of the control record for BA1 in violation of **Code section**
3 **10145 and Regulation 2831.2.**

4 **Issue Six (6). Code section 10145 and Regulation 2832: Handling of Trust Funds; Trust**
5 **Account Designation**

6 42. LTPMC failed to properly designate BA1 and BA2, used to hold trust funds, as trust
7 accounts in the name of LTPMC as trustee. According to the bank signature cards dated January
8 26, 2015, the account titles for BA1 and BA2 were as follows:

9 BA1: Land Trek Property Management Co Inc
(Residential Account)
10 BA2: Land Trek Property Management Co Inc
11 (Commercial Account)

12 43. According to the bank signature cards dated March 7, 2019, "Broker's Client Trust"
13 was added to the names of BA1 and BA2. However, LTPMC again was not designated as trustee
14 on BA1 or BA2.

15 44. LTPMC failed to designate BA1 and BA2 as trust accounts in the name of LTPMC
16 as trustee in violation of **Code section 10145, and Regulation 2832.**

17 **Issue Seven (7). Code section 10145 and Regulation 2832: Trust Fund Handling**

18 45. LTPMC collected trusts funds in the form of rent receipts and failed to deposit these
19 funds in BA1 within three (3) business days of receipt. Examination of LTPMC's trust fund
20 records and bank statements showed the following:

<u>Payer</u>	<u>Property</u>	<u>Reference</u>	<u>Amount</u>	<u>Date Received</u>	<u>Date Deposited</u>
Pam O.	1860 S. Escondido Bl	#1245	\$1,575.00	01/07/19	01/15/19
Michael R.	4827 Glenhaven Dr	#1269	2,000.00	01/03/19	02/28/19
Mary M.	702 E. Mission Ave	#1261	500.00	02/06/19	03/05/19

23 46. LTPMC deposited most trust fund checks electronically using a scanner in its office.
24 These deposits were identified as Remote Capture Deposits on bank statements. According to
25 GRIFFITH, tenant Pam O. called LTPMC to request that her rent check for \$1,575 dated January 6,
26 2019 not be deposited until following week in order to avoid the bank returning her check for non-
27 sufficient funds. LTPMC remotely deposited Pam O's check on or about January 15, 2019.

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1 47. According to GRIFFITH, while tenant Michael R's \$2,000, paid in cash, was posted
2 on January 3, 2019, GRIFFITH placed the cash into the office safe and forgot about the funds.
3 Thereafter, LTPMC deposited Michael R's January rent on or about February 28, 2019, and the
4 bank statement listed this amount as a remote deposit. However, an Activity-Deposit Accounts
5 report was provided indicating an online transfer credit to BA1.

6 48. According to GRIFFITH, the \$500 money order from tenant Mary M. was received
7 with the other checks posted and processed remotely on February 6, 2019. The total deposit
8 according to LTPMC's records was \$27,550, but the bank statement indicated a remote capture
9 deposit of \$27,050, \$500 less than the records. GRIFFITH stated that Mary M.'s \$500 money order
10 was not scanned properly on February 6, 2019, but it was remotely deposited on March 5, 2019.

11 49. LTPMC's failure to deposit trust funds collected into a trust fund bank account
12 within three business days following the receipt of funds was in violation of **Code section 10145**
13 **and Regulation 2832.**

14 **Issue Eight (8). Code sections 10145 and 10176(e): Handling of Trust Funds; Commingling of**
15 **Funds**

16 50. LTPMC maintained more than \$200 of its own funds with trust funds maintained in
17 BA2. As of December 31, 2018, January 31, 2019, and February 28, 2019, there was \$813.39 of
18 LTPMC's funds commingled with trust funds maintained in BA2. As of September 30, 2018,
19 October, 31, 2018, and November 2018, there was \$1,186.58 of LTPMC's funds commingled with
20 trust funds maintained in BA2.

21 51. LTPMC's commingling of its own funds with trust funds maintained in BA2 was in
22 violation of **Code sections 10145 and 10176(e).**

23 **Issue Nine (9). Code section 10145 and Regulation 2834: Handling of Trust Funds; Trust**
24 **Account Withdrawals**

25 52. N.Reilly, who was an unlicensed employee of LTPMC and not covered by an
26 adequate fidelity bond, was allowed to make withdrawals from BA1, BA2, and TA1, in which trust
27 funds were deposited and maintained. An examination of the bank signature cards dated January
28 26, 2015 for BA1 and BA2, and the bank signature card dated April 20, 2005 for TA1, showed that

1 N.Reilly was listed as a signatory. Also, examination of canceled check images showed that
2 N.Reilly signed checks during the audit period. N.Reilly signed nine (9) of 126 checks from BA1;
3 21 of 159 checks from BA2; and two (2) of 27 checks from TA1 that were paid from the respective
4 accounts in February 2019.

5 53. According to the bank signature cards dated March 7, 2019, N.Reilly was not a
6 signatory on BA1, BA2, and TA1.

7 54. LTPMC's authorization of an unlicensed individual without an adequate fidelity
8 bond to make withdrawals and sign checks drawn from BA1, BA2, and TA1 during the audit
9 period was in violation of **Code Section 10145 and Regulation 2834.**

10 **Issue Eleven (11).^{5/} Code sections 10159.2, 10177(h), and Regulation 2725: Responsibility of**
11 **Corporate Officer in Charge; Broker Supervision**

12 55. The Complainant realleges and incorporates by reference all of the allegations
13 contained in paragraphs 20 through 54 above, with the same force and effect as though fully set
14 forth herein.

15 56. Based on the above audit findings of Audit No. SD180027 in Issues 1 through 10
16 above, as alleged in paragraphs 21 through 54 above, as the broker and designated officer of
17 LTPMC, REILLY failed to exercise reasonable supervision and control over the activities
18 conducted by LTPMC's licensees and employees as necessary to secure full compliance with the
19 Real Estate Law and Regulations. REILLY failed to establish policies, rules, procedures, and
20 systems to review, oversee, inspect, and manage the transactions requiring a real estate license and
21 the handling and recordkeeping of trust funds.

22 57. REILLY's acts and/or omissions, as alleged above in paragraphs 21 through 54
23 above were in violation of **Code sections 10159.2 and 10177(h), and Regulation 2725.**

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27 ^{5/} Issue Ten (10) is being skipped intentionally. Complainant has decided not to pursue the violation alleged in Issue
28 Ten in the audit report for SD180027 at this time. Complainant reserves the right to conduct further investigation and to
amend the Accusation should further evidence be acquired in support of Issue Eight, as well as potential causes of
accusation not alleged in this Accusation at the time of filing.

1 **FIRST CAUSE OF ACCUSATION**

2 **AUDIT VIOLATIONS IN AUDIT NO. SD180027**

3 58. The Complainant realleges and incorporates by reference all of the allegations
4 contained in paragraphs 1 through 57 above, with the same force and effect as though fully set forth
5 herein.

6 59. LTPMC's and REILLY's conduct as described above in paragraphs 21 through 57
7 above violated the Code and the Regulations as set forth below:

8

<u>Issue</u>	<u>Paragraphs</u>	<u>Violations</u>
9 1	21-27	Code section 10145 & Reg. 2832.1: Trust Fund Handling for Multiple Beneficiaries
10 3	28-31	Code section 10145 & Reg. 2831: Trust Fund Records to be Maintained
11 4	32-35	Code section 10145 & Reg. 2831.1: Separate Record for Each Beneficiary or Transaction
12 5	36-41	Code section 10145 & Reg. 2831.2: Trust Account Reconciliation
13 6	42-44	Code section 10145 & Reg. 2832: Trust Account Designation
14 7	45-49	Code section 10145 & Reg. 2832: Trust Fund Handling
15 8	50-51	Code sections 10145 and 10176(e): Commingling of Funds
16 9	52-54	Code section 10145 & Reg. 2834: Trust Account Withdrawals
17 11	55-57	Code sections 10159.2, 10177(h), and Reg. 2725: Responsibility of Corporate Officer in Charge; Broker Supervision

18 60. The foregoing violations constitute cause for the suspension or revocation of
19 LTPMC's and REILLY's real estate licenses and license rights under the provisions of Code
20 sections 10176(e) and 10177(h).

21 **ADDITIONAL VIOLATIONS OF THE REAL ESTATE LAW**

22 **SECOND CAUSE OF ACCUSATION**

23 **NEGLIGENCE UNDER THE REAL ESTATE LAW**

24 61. The Complainant realleges and incorporates by reference all of the allegations
25 contained in paragraphs 1 through 60 above, with the same force and effect as though fully set forth
26 herein.

27 62. The DRE's auditor held an exit conference with LTPMC on April 29, 2019.

28 63. On or about May 7, 2019, the DRE received a letter from a law firm representing
LTPMC, in response to the DRE's auditor's non-compliance summary, which letter included a
signed statement from GRIFFITH, dated April 29, 2019. In her statement, Griffith stated there was

1 a total shortage of \$35,275.31, which was caused by four different incidents occurring occurred
2 between September 2015 and June 2018. (This amount is also the amount transferred from TA1 on
3 3/13/19.) GRIFFITH claimed that the four incidents were as follows:

4 a. In September 2015, a shortage of \$13,431.00 was caused when LTPMC
5 transitioned from Yardi software to AppFolio software, and GRIFFITH was unable to
6 reconcile the accounts and was off by this amount. GRIFFITH thought she could correct it
7 in the future, but could not, and did not come forward to address the errors with REILLY at
8 the time they happened because she was afraid.

9 b. In December 2016, a shortage of approximately \$1,391.31 was caused by an
10 electronic payment that came out of BA1 into a property owner's account. GRIFFITH
11 missed the error until six weeks had passed, did not know how to fix it, was terrified of
12 confronting the owner about this error, ultimately entered a reversal into the credit account,
13 and was able to put \$1,632.16 to offset the shortage.

14 c. At the end of December 2016, GRIFFITH had several cash deposits in
15 LTPMC's safe totaling \$10,953.00. LTPMC had a courier that would pick up check
16 deposits, but would only take cash in an amount less than \$2,000.00. This meant LTPMC
17 would have to transport the cash over \$2,000.00 to the bank. GRIFFITH had the safe
18 locked, added another cash deposit to hold in the safe through the holidays and states she
19 "forgot to lock the safe." Sometime after the holidays, GRIFFITH discovered that the cash
20 was missing from the safe. GRIFFITH confirmed it had not been taken to the bank.

21 GRIFFITH stated:

22 I was terrified that everyone would think I took it. I kept thinking I could figure out
23 who took it, or once too much time had passed, I thought I would have to find a way
24 to replace it with my own money. It was my fault, that I didn't lock the safe, didn't
25 take it to the bank that day before they closed. At that point, I had no money to
26 replace it with, I was taking money out of my 401k to pay for my daughter's college
27 expenses. If I had only logically thought it through, it could have been turned over to
28 the police and Land Trek's bond would have covered it.

26 d. In June 2018, a fourth shortage of \$9,500.00 was caused, according to
27 GRIFFITH, in the same manner as the previous shortage: she put several cash deposits
28 totaling \$9,500.00 in the safe but failed to lock it. The cash disappeared from the safe, and

1 GRIFFITH again did not report it to REILLY. GRIFFITH indicated that she tried to hide
 2 the shortage until she could try to fix it, and wound up making a journal entry into the
 3 account showing that the \$35,275.31—the sum of the four shortages listed in paragraphs
 4 63(a) through (d) above—was in the account, as detailed below:

<u>Date</u>	<u>Shortage Amount</u>	<u>GRIFFITH's Explanation</u>
September 2015	\$13,431.00	"[A]t the transition from Yardi to Appfolio, I was unable to reconcile the accounts even though I had verified all account balances at the transition. I was off by an amount of \$13431.00. . . ."
December 2016	No amount specified \$1,391.31*	"An ACH came out of our bank account into an owners account, I missed the error until it was 6 weeks past. . . . I was able to put in the bank \$1632.16 to offset this number." *According to the DRE's auditor, based on other amounts assumed to be the amounts missing, the DRE's auditor believed that the remaining amount may be \$1,393.31 after the audit cutoff date.
End of December 2016	10,953.00	"I had several deposits in the safe totaling \$10953.00. The courier would only take cash under \$2000.00. Therefore, we would have to transport it to the bank. I had the safe locked and added an additional deposit to hold there through the holidays and forgot to lock the safe. After returning, I didn't immediately check the safe, but when I did the money was missing."
June 2018	9,500.00	"I put several deposits totaling \$9500.00 in the safe but failed to lock it."
Total:	<u>\$35,275.31</u>	

18 64. It has been indicated that GRIFFITH did not inform REILLY of the shortages
 19 described in paragraphs 63(a) through (d) above until April 29, 2019.

20 65. The DRE's auditor noted that \$35,275.31 was transferred from TA1 on March 13,
 21 2019. It was not known if this caused a shortage in TA1.

22 66. REILLY made a deposit of \$35,279.72 on or about April 30, 2019 to cover the
 23 minimum shortage in BA1 as of February 28, 2019.

24 67. The overall conduct of REILLY and GRIFFITH is violative of the Real Estate Law
 25 and constitutes cause for the suspension or revocation of the real estate licenses and license rights
 26 of REILLY and GRIFFITH under the provisions of **Code section 10177(g) for negligence and**
 27 **incompetence** under the Real Estate Law.

28 ///

1 **ADDITIONAL VIOLATIONS OF THE REAL ESTATE LAW**

2 **CAUSES FOR DISCIPLINE AGAINST GRIFFITH**

3 78. The Complainant realleges and incorporates by reference all of the allegations
4 contained in paragraphs 1 through 67 above, with the same force and effect as though fully set forth
5 herein.

6 79. GRIFFITH, while engaging in the business of or acting in the capacity of a real
7 estate salesperson, made substantial misrepresentations, a violation of **Code Section 10176(a)**.

8 70. GRIFFITH, while engaging in the business of or acting in the capacity of a real
9 estate salesperson, engaged in a continued course of misrepresentation, a violation of **Code Section**
10 **10176(c)**.

11 71. GRIFFITH, while engaging in the business of or acting in the capacity of a real
12 estate salesperson, engaged in conduct which constitutes fraud or dishonest dealing, a violation of
13 **Code Section 10176(i)**.

14 72. GRIFFITH, while engaging in the business of or acting in the capacity of a real
15 estate salesperson, willfully disregarded or violated the Real Estate Law, a violation of **Code**
16 **Section 10177(d)**.

17 73. GRIFFITH has engaged in conduct that constitutes fraud or dishonest dealing, a
18 violation of **Code Section 10177(j)**.

19 74. The conduct, acts and/or omissions of GRIFFITH, as set forth above, are cause for
20 the suspension or revocation of her license and license rights, pursuant to **Code Sections 10130,**
21 **10176(a), 10176(c), 10176(i), 10177(d), and 10177(j)**.

22 **INVESTIGATION AND ENFORCEMENT COSTS**

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

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1 **AUDIT COSTS**

2 76. Code section 10148(b) provides, in pertinent part, the Commissioner shall charge a
3 real estate broker for the cost of any audit, if the Commissioner has found in a final decision
4 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation or
5 rule of the Commissioner interpreting said section.

6 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of
7 this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
8 against all the licenses and license rights of LAND TREK PROPERTY MANAGEMENT CO INC,
9 THOMAS EDWARD REILLY III, and LORI ELLEN GRIFFITH under the Real Estate Law, for
10 the costs of investigation and enforcement, and audit as permitted by law, and for such other and
11 further relief as may be proper under other applicable provisions of law, and for costs of audit.

12
13 Dated at San Diego, California this 26 day of December, 2019.

14
15 
16 _____
17 Veronica Kilpatrick
18 Supervising Special Investigator

19 cc: LAND TREK PROPERTY MANAGEMENT CO INC
20 THOMAS EDWARD REILLY III
21 LORI ELLEN GRIFFITH
22 Veronica Kilpatrick
23 Sacto.
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27
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