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FILED
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BUREAU OF REAL ESTATE
By *L. Uno*

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-6375 SAC
13 NORCAL GOLD, INC., ANDREW AVALOS)
14 INNA INESSA CHERNIOGLO,)
15 and BEVERLY KENDALL,) FIRST AMENDED
16 Respondents.) ACCUSATION

17 The Complainant, TRICIA D. PARKHURST, a Supervising Special Investigator
18 of the State of California for cause of Accusation against NORCAL GOLD, INC. (NG),
19 ANDREW AVALOS (AVALOS), INNA INESSA CHERNIOGLO (CHERNIOGLO), and
20 BEVERLY KENDALL (KENDALL), sometimes collectively referred to as "RESPONDENTS",
21 are informed and alleges as follows:

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23 The Complainant makes this Accusation in her official capacity.

24 2

25 At all times herein mentioned, NG was and is presently licensed and/or has
26 license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and

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1 Professions Code (the Code) by the Bureau of Real Estate (the Bureau) as a corporate real estate
2 broker.

3 3

4 At all times herein mentioned, BEVERLY KENDALL (KENDALL), was
5 licensed as the Designated Officer of NG, but was not licensed as a real estate salesperson or
6 real estate broker.

7 4

8 AVALOS is presently licensed and/or has license rights under the Code, as a real
9 estate broker doing business as Avalos Real Estate Group.

10 5

11 CHERNIOGLO is presently licensed and/or has license rights under the Code, as
12 a real estate broker.

13 6

14 On or about January 1, 2013, AVALOS formed AAA Ventures, Inc. (AAA), a
15 California Corporation wherein AVALOS is the sole shareholder, director and officer.

16 7

17 On or about April 4, 2012, CHERNIOGLO formed Chernioglo Real Estate, Inc.
18 and thereafter changed the name to IMC Enterprise, Inc. (IMC), a California Corporation,
19 wherein CHERNIOGLO is the sole shareholder, director and officer.

20 8

21 As the designated officer, Kendall was responsible, pursuant to Section 10159.2
22 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and
23 employees of NG for which a real estate license is required.

24 9

25 Whenever reference is made in an allegation in this Accusation to an act or
26 omission of NG, such allegation shall be deemed to mean that the officers, directors, employees,
27 agents and real estate licensees employed by or associated with NG committed such act or

1 omission while engaged in furtherance of the business or operations of NG and while acting
2 within the course and scope of their corporate authority and employment.

3 10

4 At all times mentioned, RESPONDENTS engaged in the business of, acted in the
5 capacity of, advertised or assumed to act as a real estate broker in the State of California, within
6 the meaning of Section 10131(a) of the Code, including the operation and conduct of a
7 residential resale brokerage wherein RESPONDENTS bought, sold; or offered to buy or sell,
8 solicited or obtained listings of, and negotiated the purchase, sale or exchange of real property or
9 business opportunities, all for or in expectation of compensation.

10 FIRST CAUSE OF ACTION

11 11

12 Complainant refers to Paragraphs 1 through 10, above, and incorporates the same,
13 herein, by reference.

14 12

15 On or about January 2, 2013, Christine and Quinn J. entered into an Exclusive
16 Residential Listing Agreement with CHERNIOGLO, acting on behalf of CG, to handle a short
17 sale of certain real property commonly known as 6025 Marsh Hawk Court, Elk Grove, California
18 95758 (Marsh Hawk Property).

19 13

20 On or about January 4, 2013, Christine and Quinn J. accepted an offer from AAA
21 to purchase the Marsh Hawk Property for \$115,000.00. CHERNIOGLO, acting on behalf of CG,
22 was as a dual agent, representing both sellers and buyer.

23 14

24 On or about May 13, 2013, JP Morgan Chase (Chase), which held the First Deed
25 of Trust on the Marsh Hawk Property, issued an approval letter for the short sale of said property
26 in the amount of \$177,400.00

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CHERNIOGLO, acting on behalf of NG, prepared an addendum to the purchase documents of the Marsh Hawk Property, to reflect the \$177,400.00 sales price, which also stated that "Buyer intends to occupy the property as primary residence". AVALOS signature appears on the addendum as the owner of AAA.

16

AVALOS' contends and CHERNIOGLO has conceded that she, CHERNIOGLO signed AVALOS' name on the addendum described in Paragraph 15, above.

17

On or about June 5, 2013, AVALOS and CHERNIOGLO signed an Affidavit of Arms Length Transaction with Chase.

18

The Affidavit, referred to in Paragraph 17, above, states in part:
"The Lender and/or Servicer, in consideration of the representations made below by the Seller, Buyer, and their respective agents, agrees to accept less than the amount owed to resolve its loan ...on the express condition that the Seller, the Buyer, and their respective agents...each truthfully represents, affirms, and states that, to the best of each signatory's knowledge and belief:

2) There are no agreements, understanding or contracts relating to the current sale or subsequent sale of the Property that have not been disclosed to the Lender and/or Servicer.

5) Neither the Seller(s) nor the Buyer(s) will receive any funds or commissions from the sale of the Property."

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On June 14, 2013, AVALOS, by and through AAA, deposited \$30,000.00 into escrow for the purchase of the Marsh Hawk Property.

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On or about June 10, 2013, Christine J., by email, asked CHERNIOGLO, if she and AVALOS were buying the Marsh Hawk Property. CHERNIOGLO responded to this email by stating that she, CHERNIOGLO, cannot buy the property, since she represented Christine J.

21

Also on June 14, 2013, CHERNIOGLO, by and through IMC, deposited \$50,106.71 into the same escrow account for the purchase of the Marsh Hawk Property.

22

On or about June 17, 2013, escrow closed on the Marsh Hawk Property with a sales price of \$177,400.00. NCG was paid \$10,344.00 in commissions. CHERNIOGLO received her customary share of the commission.

23

CHERNIOGLO and AVALOS, pursuant to an ongoing agreement, rehabilitated the Marsh Hawk Property and resold it.

24

On or about July 27, 2013, approximately 40 days from that date of purchase of the Marsh Hawk Property, AVALOS, by and through AAA, sold it for \$263,500.00.

25

From the proceeds of the July 27, 2013, sale of the Marsh Hawk Property, AAA received \$69,725.83 and IMC received \$78,625.05.

26

The facts alleged above violate Sections 10176(a) (substantial misrepresentation), 10176(c) (continued and flagrant course of misrepresentation) and 10176(i) (other conduct/fraud dishonest dealing) of the Code and are grounds for the suspension or revocation of the licenses and license rights of RESPONDENTS under Sections 10176(a), 10176(c) and 10176(i) of the Code.

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1 SECOND CAUSE OF ACTION

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3 Complainant refers to Paragraphs 1 through 26, above, and incorporates the same
4 herein by reference.

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6 On or about February 12, 2013, Mary P. entered into an Exclusive Residential
7 Listing Agreement with CHERNIOGLO acting on behalf of NG, to handle a short sale of certain
8 real property commonly known as 9441 Lockeridge Way, Sacramento, California 95825
9 (Lockeridge Property).

10 29

11 On or about February 12, 2013, Mary P. accepted an offer from AAA to purchase
12 the Lockeridge Property for \$171,000.00. CHERNIOGLO acting on behalf of NG, was a dual
13 agent, representing both sellers and buyer.

14 30

15 On or about April 30, 2013, AVALOS, by and through AAA, and seller, executed
16 a counter offer to purchase the Lockeridge property for \$200,000.00.

17 31

18 On or about May 7, 2013, AVALOS, by and through AAA, and seller, executed
19 an addendum to their offer to increase the purchase price to \$210,000.00.

20 32

21 On or about May 24, 2013, Citimortgage Inc. (Citi), which held the First Deed of
22 Trust on the Lockeridge Property, issued an approval letter for the short sale of said property in
23 the amount of \$210,000.00.

24 33

25 On or about July 29, 2013, AVALOS and CHERNIOGLO signed an Affidavit of
26 Arms Length Transaction with Citi.

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The Affidavit, referred to in Paragraph 33, above, states in part:

“NOW THEREFORE, the Seller(s), Buyer(s), Agents, and Facilitator do hereby represent, warrant and agree under the pains and penalties of perjury, to the best of each signatory’s knowledge and belief, as follows:

(c) Neither the Seller(s) nor the Buyers(s) will receive any funds or commissions from the sale of the property.

(d) There are no agreements, understanding or contracts relating to the current sale or subsequent sale of the property that have not been disclosed to the servicer.”

35

On July 30, 2013, AVALOS, by and through AAA, deposited \$44,254.80 into escrow for the purchase of the Lockeridge Property.

36

Also on July 30, 2013, CHERNIOGLO, by and through IMC, deposited \$44,254.81 into the same escrow account for the purchase of the Lockeridge Property.

37

On or about July 30, 2013, escrow closed on the Lockeridge Property with a sale price of \$210,000.00. NG was paid \$12,600.00 in commissions. CHERNIOGLO took her customary share of the commission.

38

CHERNIOGLO and AVALO, pursuant to an ongoing agreement, rehabilitated the Lockeridge Property and resold it.

39

On or about October 7, 2013, approximately 65 days from that date of purchase of the Lockeridge Property, AVALOS, by and through AAA, sold it for \$305,000.00.

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From the proceeds of the October 7, 2013, sale of the Lockeridge Property, AAA received \$84,558.96 and IMC received \$80,959.21.

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The facts alleged above violate Sections 10176(a), 10176(c) and 10176(i) of the Code and are grounds for the suspension or revocation of the licenses and license rights of RESPONDENTS under Section 10176(a), 10176(c) and 10176(i) of the Code.

THIRD CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 41, above, and incorporates the same, herein by reference.

43

On or about May 21, 2013, Brian and Adrienne C. entered into an Exclusive Residential Listing Agreement with CHERNIOGLO, acting on behalf of NG, to handle a short sale of certain real property commonly known as 6025 Marlaw Court, Elk Grove, California 95757 (Marlaw Property).

44

Previously, on or about March 12, 2013, Brian and Adrienne C. accepted an offer from AAA to purchase the Marlaw property for \$200,000.00. CHERNIOGLO, acting on behalf of NG, was a dual agent, representing both sellers and buyer.

45

On or about June 15, 2013, Indimac Mortgage Services (Indi), which held the First Deed of Trust on the Marlaw Property, issued an approval letter for the short sale of said property in the amount of \$250,000.00

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On or about June 15, 2013, CHERNIOGLO, acting on behalf of NG, prepared an addendum to the purchase documents of the Marlaw Property, to reflect the \$250,000.00 sales price.

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On or about July 3, 2013, AVALOS and CHERNIOGLO signed an Affidavit of Arms Length Transaction with Citi.

48

The Affidavit, referred to in Paragraph 47, above, states in part:
“Seller(s) and Buyer(s) have jointly asked Servicer to discount the total amount owed on the loan. Servicer, in consideration of the representations made below by Seller(s), Buyer(s), and their respective agents, has agreed to review the short sale on the express condition that Seller(s), Buyer(s) and their respective agents...each truthfully represent, affirm, and state, under penalty of perjury that:

- 2. There are no agreements, understandings or contracts relating to the current sale or subsequent sale of the Mortgaged Premises that have not been disclosed to Servicer.
- 5. Neither the Seller(s) nor the Buyer(s) will receive any funds or commissions from the sale of the Mortgaged Premises...
- 7. Neither the Buyer(s) and/or Seller(s) nor any parties related to or affiliated with the Buyer(s) and/or Seller(s) may act as the buying or listing/selling agent in the transaction.

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On August 9, 2013, AVALOS, by and through AAA, deposited \$50,306.12 into escrow for the purchase of the Marlaw Property.

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Also on August 9, 2013, CHERIOGLO, acting by and through IMC, deposited \$50,306.12 into the same escrow account for the purchase of the Marlaw Property.

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On or about August 9, 2013, escrow closed on the Marlaw Property with a sales price of \$250,000.00. NG was paid \$15,000.00 in commissions. CHERNIOGLO took her customary share of the commissions.

52

CHERNIOGLO and AVALO, pursuant to an ongoing agreement, rehabilitated the Marlaw Property and resold it.

53

On or about November 14, 2013, approximately 90 days from that date of purchase of the Marlaw Property, AVALOS, by and through AAA, sold it for \$320,000.00.

54

From the proceeds of the November 14, 2013, sale of the Marlaw Property, AAA received \$151,840.67 and then paid IMC \$72,065.76 as its share of the proceeds.

55

The facts alleged above violate Sections 10176(a), 10176(c) and 10176(i) of the Code and are grounds for the suspension or revocation of the licenses and license rights of RESPONDENTS under Section 10176(a), 10176(c) and 10176(i) of the Code.

FIFTH CAUSE OF ACTION

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Complainant refers to Paragraphs 1 through 55, above, and corporate the same herein by reference.

57

At all times herein above mentioned, KENDALL, was responsible as the supervising broker for NG, for the supervision and control of the activities conducted on behalf of NG'S business by its employees. KENDALL failed to exercise reasonable supervision and control over the property management activities of NG. In particular, KENDALL permitted, ratified and/or caused the conduct described above, to occur, and failed to take reasonable steps, including but not limited to handling of trust funds, supervision of employees, and the

1 implementation of policies, rules, and systems to ensure the compliance of the business with the
2 Real Estate Law and the Regulations.

3 58

4 The above acts and/or omission of KENDALL violate Section 10159.2
5 (responsibility/directing officer) of the Code and Section 2725 (broker supervision) of the
6 Regulations and constituted grounds for disciplinary action under the provisions of Sections
7 10177(d) (willful disregard/violation of Real Estate Law) and 10177 (h) (broker supervision) of
8 the Code.

9 59

10 Section 10106 of the Code provides, in pertinent part, that in any order issued in
11 resolution of a disciplinary proceeding before the Bureau, the commissioner may request the
12 administrative law judge to direct a licensee found to have committed a violation of this part to
13 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.
14

15 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
16 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
17 action against all licenses and license rights of Respondent under the Code, for the reasonable
18 cost of investigation and agency attorney's fees in this matter, and for such other and further
19 relief as may be proper under other provisions of law.
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21 
22 TRICIA D. PARKHURST
23 Deputy Real Estate Commissioner

24 Dated at Sacramento, California,
25 this 18th day of May, 2016.
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