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MAY - 3 2000

DEPARTMENT OF REAL ESTATE

*Laurie A. Zisi*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-7676 SF
PRIMECORE FUNDING GROUP, INC.	)	
a California Corporation, and	)	
MICHAEL ALFRED HEREN,	)	
	)	
Respondent.	)	

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSES

TO: Respondents PRIMECORE FUNDING GROUP, INC. AND  
MICHAEL ALFRED HEREN

At all times mentioned herein since August 30, 1999, you, PRIMECORE FUNDING GROUP, INC. and MICHAEL ALFRED HEREN, have each been and now are licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code") as real estate brokers whose broker licenses have each been and now are restricted subject to the provisions of Section 10156.7 of the Code and to enumerated additional terms, conditions and restrictions imposed under authority of Section 10156.6 of the Code.

1           On April 27, 2000, in Case No. H-7824 SF, an Accusation  
2 by a Deputy Real Estate Commissioner of the State of California  
3 was filed charging you, PRIMECORE FUNDING GROUP, INC., with  
4 violations of Sections 10137, 10145, 10177(d), 10231, 10231.1,  
5 10231.2, 10232.4(a), and 10234(a) of the Code and Sections 2831,  
6 2831.1, 2832, 2832.1 and 2834(b) of Chapter 6, Title 10,  
7 California Code of Regulations, and charging you, MICHAEL ALFRED  
8 HEREN, with violations of Sections 10159.2, 10177(d), 10177(g)  
9 and 10177(h) of the Code.

10           NOW, THEREFORE, IT IS ORDERED under authority of  
11 Section 10156.7 of the Code that:

12           (a) Any restricted real estate broker license  
13 heretofore issued to you, PRIMECORE FUNDING GROUP, INC., and the  
14 exercise of any privileges thereunder, is hereby suspended  
15 pending final determination made after the hearing on the  
16 aforesaid Accusation, and

17           (b) Any restricted real estate broker license  
18 heretofore issued to you, MICHAEL ALFRED HEREN, and the exercise  
19 of any privileges thereunder, is hereby suspended pending final  
20 determination made after the hearing on the aforesaid Accusation.

21           IT IS FURTHER ORDERED that all license certificates and  
22 identification cards issued by the Department of Real Estate  
23 which are in the possession of you, PRIMECORE FUNDING GROUP, INC.  
24 and MICHAEL ALFRED HEREN, be immediately surrendered by personal  
25 delivery or by mailing in the enclosed self-addressed envelope  
26 to:

27       ///

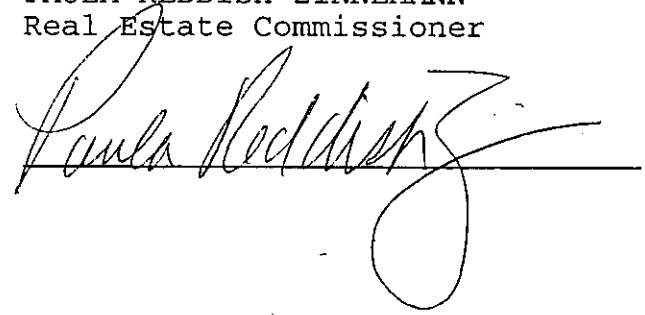
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DEPARTMENT OF REAL ESTATE  
Attention: Flag Section  
P. O. Box 187000  
Sacramento, CA 95818-7000

This Order shall be effective immediately.

DATED: May 3, 2000

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner



A handwritten signature in cursive script, reading "Paula Reddish Zinnemann", is written over a horizontal line.

1 Department of Real Estate  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4  
5 Telephone: (916) 227-0789  
6  
7

FILED  
AUG 23 1999

DEPARTMENT OF REAL ESTATE

*Laurie A. Zia*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) No. H-7676 SF  
12 )  
12 PRIMECORE FUNDING GROUP, INC., ) OAH No. N-1999030498  
13 a California Corporation, and, )  
13 MICHAEL ALFRED HEREN, )  
14 )  
14 Respondents. )  
15 )

16 ORDER SETTING REPORTING REQUIREMENTS

17 On July 22, 1999, the Proposed Decision dated July 12,  
18 1999 of the Administrative Law Judge of the Office of  
19 Administrative Hearings was adopted as the Decision of the Real  
20 Estate Commissioner in the above-entitled matter.

21 Pursuant to the provisions of Paragraph 6 of the Order  
22 appearing on pages 11 through 13, inclusive, of the Proposed  
23 Decision, until such time as the Commissioner shall in his  
24 discretion rescind this Order Setting Reporting Requirements,  
25 any restricted license issued to a Respondent pursuant to this  
26 Decision shall be subject to the following limitations,  
27 conditions and restrictions in addition to any other

1 limitations, conditions or restrictions to which the restricted  
2 license is subject:

3           (a) Respondent shall, within 30 days after the end of  
4 each of the four fiscal quarters of the Respondent's fiscal  
5 year, file with the Commissioner, on forms adopted or approved  
6 by the Commissioner, a report; in addition to any annual report  
7 required by the provisions of Sections 10232.2 or 10229(n) of  
8 the California Business and Professions Code [hereinafter "the  
9 Code"], containing the information described in Section 10232.25  
10 of the Code for the preceding fiscal quarter (hereinafter  
11 "quarterly report"). On or before October 31, 1999, Respondent  
12 shall file the first such quarterly report for the fiscal  
13 quarter ending September 30, 1999.

14           (b) As part of each such quarterly report, in  
15 addition to the information described in Section 10232.25 of the  
16 Code, Respondent shall submit to the Commissioner:

17           1. A report of an independent certified public  
18 accountant containing the information described in Section  
19 10229(i)(4) of the Code for the period for which the quarterly  
20 report was made.

21           2. A Loan Servicing Schedule, consisting of a list  
22 of owners of interests in loans being serviced by Respondents as  
23 of the last calendar day of the period for which the quarterly  
24 report was made which tabulates, with respect to each such owner  
25 and each such interest:

26 ///

27 ///

- 1           A.    The identity of the owner;
- 2           B.    The identifying number assigned by Respondent to
- 3                 the loan;
- 4           C.    The identity of the real property securing the
- 5                 loan;
- 6           D.    The amount of the owner's investment in the loan;
- 7                 and
- 8           E.    The date payment of the loan principal is due.

9           3.    A true and correct copy of each and every

10 Lender/Purchaser Disclosure Statement described in Sections

11 10232.5 or 10229(k) of the Code, complete except for the

12 signature of the prospective lender or purchaser, which was

13 issued by such Respondent during the period for which the

14 quarterly report was made.

15           4.    A true and correct copy of the records maintained

16 by Respondent in compliance with the provisions of Sections 2831

17 and 2831.1 of Chapter 6, Title 10, California Code of

18 Regulations (hereinafter "the Regulations") during the period

19 for which the quarterly report was made.

20           5.    Trust Account Reconciliation statements and

21 schedules, verified by Respondents and an independent certified

22 public accountant, showing that, as of the last calendar day of

23 the period for which the quarterly report was made, there was on

24 deposit in one or more trust bank accounts, an amount or amounts

25 equal to the individual and aggregate trust fund liability of

26 Respondents to the owners of such funds.

27 ///

1 (c) The Trust Account Reconciliation statements  
2 referred to in Paragraph (b) (5), above, must include:

3 A. A schedule of trust bank accounts as of the  
4 selected date:

5 (1) Listing all bank accounts in which there are  
6 trust funds on deposit, including the name  
7 of the account, the bank account number, and  
8 the name and location of the depository;

9 (2) Tabulating, for each bank account, the  
10 adjusted bank balance and the total trust  
11 fund accountability to owners of funds in  
12 the account; and

13 (3) Totaling the adjusted bank balance and  
14 accountability tables. The total of account  
15 balances should equal (or exceed by less  
16 than \$200.00) aggregate accountability.

17 B. With respect to each bank account listed in the  
18 schedule of trust bank accounts:

19 (1) A statement identifying the bank account;

20 (2) A copy of each bank statement for the period  
21 for which the quarterly report was made;

22 (3) A schedule of trust fund accountability as  
23 of the selected date, : (i) tabulating the  
24 identity of each owner and the amount owed  
25 that owner; and (ii) totaling the table of  
26 amounts owed owners of funds in the account;

27

1 (4) A schedule: (i) calculating the adjusted  
2 bank balance as of the selected date from  
3 the bank statement balance, the schedule of  
4 deposits and other credits, and the schedule  
5 of outstanding checks and other charges; and  
6 (ii) showing that the adjusted bank balance  
7 equals (or exceed by less than \$200.00) the  
8 aggregate amount owed owners of funds in the  
9 account;

10 (5) A schedule of deposits and other credits in  
11 transit as of the selected date, including  
12 the date, identity and amount of each item;

13 (6) A schedule of outstanding checks and other  
14 charges in transit as of the selected date,  
15 including the date, identity and amount of  
16 each item; and

17 (7) A statement complying with the requirements  
18 of Section 2831.2 of the Regulations  
19 reconciling the total of amounts owed owners  
20 of funds in the account with the balance as  
21 of the selected date of the record  
22 maintained by Respondents for the account in  
23 compliance with Section 2831 of the  
24 Regulations.

25 C. A statement by both Respondent and an independent  
26 certified public accountant verifying that each  
27 schedule is accurate and complete.



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This Order shall become effective at 12 o'clock noon  
on August 31, 1999.

IT IS SO ORDERED August 19 1999

JOHN R. LIBERATOR  
Acting Real Estate Commissioner

*John R. Liberator*

FILED  
AUG - 9 1999

DEPARTMENT OF REAL ESTATE

By Laurie A. Zan

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	
	)	NO. H-7676 SF
PRIMECORE FUNDING GROUP, INC.,	)	
A California Corporation, and,	)	OAH NO. N-1999030498
MICHAEL ALFRED HEREN,	)	
	)	
Respondents.	)	
<hr/>		

DECISION

The Proposed Decision dated July 12, 1999, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon  
on August 30, 1999.

IT IS SO ORDERED July 22, 1999.

JOHN R. LIBERATOR  
Acting Real Estate Commissioner

John R. Liberator

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of  
  
PRIMECORE FUNDING GROUP, INC.  
A California Corporation, and  
MICHAEL ALFRED HEREN,  
  
Respondents.

No. H-7676 SF

OAH No. N 1999030498

**PROPOSED DECISION**

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter on June 7, 8, 9, and 10, 1999, in Oakland, California.

James Beaver, Counsel, represented the complainant Charles W. Koenig.

Daniel Furniss, Attorney at Law, 379 Lytton Avenue, Palo Alto, California 94301, represented respondents Primecore Funding Group, Inc. and Michael Alfred Heren.

The matter was submitted on June 10, 1999.

**FACTUAL FINDINGS**

1. Complainant Charles W. Koenig made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. At all times pertinent hereto, Primecore Funding Group, Inc. (Primecore) and Michael Alfred Heren (Heren) (collectively respondents) were and now are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).

At all times pertinent hereto, Primecore was licensed by the Department of Real Estate (Department) as a real estate corporation. Primecore's license is scheduled to expire on June 20, 2000.

At all times pertinent hereto, Heren was licensed by the Department as an individual real estate broker and as the designated broker-officer of Primecore. Heren's individual license was scheduled to expire on May 22, 1999. The record does not reflect whether it has been renewed. Heren's designation as the broker-officer for Primecore will expire on June 20, 2000.

3. At all times pertinent hereto, Heren was directly responsible for supervision and control of the activities of Primecore. Further, all of Heren's licensed activities at issue in this proceeding were conducted under Primecore's license. Accordingly, all acts undertaken by Primecore are deemed attributable to Heren.

### Background

4. During all time periods relevant to this proceeding, Primecore was engaged in mortgage loan activities. It primarily negotiated and solicited loans between borrowers and private investor/lenders on both residential and commercial properties, although it also serviced loans.<sup>1</sup> All of the loans negotiated were short-term construction loans that usually matured within 12 to 18 months. The loans were multi-lender transactions with as many as 118 lenders per loan. Primecore would initially negotiate the terms of the loan with the borrower. On or about the close of escrow the borrower would sign a Promissory Note and usually a Construction Loan Agreement with Primecore. In order to secure the loan obligation, a Deed of Trust on the property under construction, with Primecore as the beneficiary and trustee, would also be prepared the same day, and would be recorded shortly thereafter.

Primecore was usually designated as the beneficiary on the Promissory Note. This was allegedly done to facilitate obtaining title insurance. The Promissory Note typically described the terms of the loan, including interest. However, borrowers were not given the loan disclosure statement required by Business and Professions Code section 10240. The Note provided interest was generally charged at 11% and monthly interest only payments were due on the outstanding principal balance. However, Primecore did not actually require the borrower to make monthly interest payments. Instead the borrower's monthly interest payment was added to the outstanding loan balance.

The Construction Loan Agreement also provided details regarding the loan. It typically provided that the entire loan amount would be held in a draw account and would be disbursed during the construction period for construction related purposes. The Agreement further required Primecore to withhold from the draw account a reserve for interest that was estimated to become

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<sup>1</sup> During 1997 Primecore negotiated approximately 100 loans totaling \$140 million. In 1998 it negotiated approximately 150 loans totaling \$165 million. Primecore generally charged borrowers a loan fee of 4% of the loan amount or an agreed upon flat amount. This was Primecore's only source of income. Typically the loan fee was not immediately disbursed to Primecore but rather was recorded and tracked in a ledger for later disbursement. In addition, Primecore serviced approximately 170 loans totaling \$199 million and involving approximately 1,650 investors. The servicing agreement authorized Primecore to collect payment from the borrowers and remit it to the investor. There was no fee to Primecore for servicing the loan.

due during the term of the Note. Under the Construction Loan Agreement Primecore was authorized to make disbursements from the draw account to pay the monthly interest payment due from the builder. However, Primecore did not maintain a separate draw account or an interest reserve account on any of the loans it funded.

During the same period that Primecore was negotiating loans with borrowers, it was also soliciting lenders<sup>2</sup> to fund the potential loans. Lenders were provided information on a list of properties and could chose the property in which they wished to purchase an interest.<sup>3</sup> The lenders could be new investors or prior investors solicited to rollover payoffs from other loans they had with Primecore. Each lender was given a Lender/Purchaser Disclosure Statement. However, many of the terms of the Statement were ambiguous. For example, the Statement typically advised that an interest reserve on the particular property for which funds were solicited had been established, but the source of the funds for this reserve was not specified.<sup>4</sup>

Lenders were paid interest every month even though Primecore did not require the borrower to make monthly interest payments. (As previously noted the borrower's interest payments were added to the borrower's outstanding loan balance.) This created a cash flow problem for Primecore. Primecore's solution to this problem was the pooling of lender funds. As funds were received from borrower loan payoffs, the flow of investor funds and disbursements, the funds were posted to the appropriate loan account, then immediately redirected from the account for use in other unrelated pending transactions. Such disbursements were ordinarily made without the knowledge of or notice to the owners of the funds. Lenders were not advised that their funds were being pooled rather than being applied to a separate discrete offering.<sup>5</sup> Primecore was able to

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<sup>2</sup> The terms investor and lender are used interchangeably in this opinion.

<sup>3</sup> The investor did not own the whole Promissory Note/Deed of Trust on the project, but rather simply acquired a fractional interest in the note and Deed of Trust. However, the documentation given to the lender to memorialize his interest typically described the lender's interest in dollar amounts (e.g., \$65,000.00) and failed to indicate a percentage (fractional representation) of the interest owned. This could create difficulties in establishing a chain of title, priority, etc. if difficulties with the loan occurred.

<sup>4</sup> Other examples of ambiguities include reference to a "contingency line" without defining that term and providing a broker estimate of value without indicating whether the estimate of value was for the project in its current status or upon completion. Such information is material because it affects the value of the security and potential risk to the investor. Failure to disclose such information is below the standard of care in the industry.

<sup>5</sup> The pooling of funds increased the risk to both borrowers and lenders. It altered the risk to borrowers to the extent the funds for a particular borrower's transaction were not set aside to ensure availability of such funds to the borrower upon request. The borrower could not obtain additional money unless Primecore had money in the pool or until Primecore raised the funds. A borrower might be forced to abort a project if he could not obtain additional funds.

maintain monthly payments to lenders as long as it received new investments from investors or payoffs from borrowers in an amount at least equal to what was owed lenders in monthly interest payments. During the audit period Primecore always received sufficient monthly income to meet its monthly investor obligations. However, on any given day, there were insufficient funds to pay all of the current obligations in Primecore's bank accounts.

### Trust Fund Violations

5. Commencing January 4, 1999, and continuing through February 5, 1999, the Department conducted an investigative audit of Primecore's books and records for the period of January 1, 1997, through February 5, 1999. The audit covered Primecore's mortgage loan activities. The audit revealed that during the period covered by the audit Primecore maintained the following trust account and three bank accounts, all at Bank of America, 633 Santa Cruz Avenue, Menlo Park, California:

- (a) Primecore Funding Group, Inc., Account No. 04132-11845 (Bank Account #1)
- (b) Primecore Funding Group, Inc., Account No. 04133-11953 (Bank Account #2)
- (c) Primecore Funding Group, Inc., Account No. 04130-11940 (Bank Account #3)
- (d) Primecore Funding Group, Inc. Trust Account, Account No. 04136-11942 (Trust #4)

The bank accounts, as well as the trust account, were used to handle trust funds.<sup>6</sup> Each of the four accounts listed Heren, Susan Fox and Michael Rider as signatories on the account, with one signature required. Neither Fox nor Rider is a real estate licensee. Primecore did not maintain a fidelity bond.

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Pooling altered the risk to investors because the pool was not fully funded, Primecore had loan commitments in excess of available funds, and there was no assurance Primecore would receive sufficient funds to meet its commitments. The risk to lenders was also increased because pooling made it difficult to tell which lenders would have priority if Primecore had insufficient funds to meet its commitments, a project was not viable, encumbrances were filed against a project, or other problems with a project arose.

<sup>6</sup> Funds were constantly transferred between these four accounts each month. Bank Account #1 was used for loan funding and payments to investors. Deposits consisted of new funds received from investors and principal payoffs transferred from Bank Account #2. Disbursements consisted of new funds transferred to Bank Account #2, including payments to investors. Bank Account #2 was used for payoffs and the receipt of funds from Bank Account #1. Disbursements consisted of principal payoffs transferred to Bank Account #1 and funds transferred from Bank Account #3 and Trust #4. Bank Account #3 was used to handle payments to borrowers and vendors. Deposits consisted of funds transferred from Bank Account #2. Disbursements consisted of expenses paid and funds remitted to borrowers. Trust #4 was used to handle monthly interest payments. Deposits consisted of funds transferred from Bank Account #2. Disbursements consisted of monthly interest payments to investors.

6. Primecore maintained one consolidated control record and ledger records for all four bank accounts. The accounts payable ledger showed the trust funds received and disbursed to each lender, while the accounts receivable ledger showed the trust funds received and disbursed to borrowers. However, these two ledgers were maintained separately and therefore did not reflect the beneficiary balance after posting on any given day. Since Primecore did not maintain a daily balance for each beneficiary, it could not determine the daily trust fund liability of all owners in the accounts.

7. Primecore violated section 2831.1 of Title 10 of the California Code of Regulations by failing to maintain separate records for each beneficiary or transaction, accounting for all trust funds received, deposited and disbursed from Bank Accounts #1, #2 and #3 and Trust #4.

8. Primecore violated section 2831.2 of Title 10 of the California Code of Regulations by failing to reconcile the balances of all separate beneficiary or transaction records to the ending balance of the control record of all trust funds received and disbursed at least once a month.

9. Primecore violated the requirements of section 2832, subdivision (a) of Title 10 of the California Code of Regulations by failing to deposit trust funds entrusted to it into a trust fund account in the name of Primecore as trustee at a bank or other financial institution. (As previously noted, Primecore deposited trust funds into Bank Accounts #1, #2 and #3, which were not maintained in the name of Primecore as trustee.)

10. Primecore violated section 2834 of Title 10 of the California Code of Regulations by authorizing unlicensed persons who did not have fidelity bond coverage to make withdrawals from Bank Accounts #1, #2 and #3 and Trust #4.

11. The Department audit revealed that as of November 30, 1998, the combined adjusted bank balances for Bank Accounts #1, #2 and #3 and Trust #4 was a negative \$673,622.66. The audit also revealed that there was a trust fund shortage of \$53,116,141.71, representing funds due lenders and borrowers that should have been on deposit in trust accounts as of November 30, 1998, but were not.

The Department auditor determined the shortage was caused by the following:

Negative Balances	(\$54,158,892.020)
Broker Funds	\$369,243.33
<u>Unidentified Shortage</u>	<u>(\$115.68)</u>
Shortage	(\$53,789,764.37)

The auditor found the negative balances resulted from over disbursement of funds for individual loans for which Primecore had not received sufficient funds from lenders to cover disbursements. Since sufficient funds had not been collected from lenders for these loans, funds in

the accounts belonging to other lenders were used for these disbursements.<sup>7</sup> There was no written authorization or direction from the borrowers or lenders authorizing Primecore to use these funds for other loans or purposes. The use and/or disbursement of the funds without the knowledge or consent of the owners of the funds constituted conversion. It is therefore found that between January 1, 1997 and November 30, 1998, Primecore converted to its own use or benefit and/or for purposes not authorized by the rightful owner, funds from Bank Accounts #1, #2 and #3 and Trust #4 totaling \$53,789,764.37.

12. On or about the dates indicated below, in the course of the conduct described in Finding 11, Primecore converted to its use or benefit and/or for purposes not authorized by the rightful owner, funds in the amounts set forth below, which were entrusted to Primecore and deposited into Bank Accounts #1, #2, and #3 and/or Trust #4.

<u>Item</u>	<u>Amount</u>	<u>Date</u>
(a)	\$100,000.00	09/17/98
(b)	\$50,000.00	09/18/98
(c)	\$20,000.00	09/24/98
(d)	\$65,000.00	09/30/98
(e)	\$10,000.00	11/18/98
(f)	\$100,000.00	11/19/98
(g)	\$50,000.00	11/23/98
(h)	\$5,000.00	11/24/98
(i)	\$50,000.00	11/25/98

13. Primecore also violated the requirements of section 2832.1 of Title 10 of the California Code of Regulations by failing to get the prior written consent of each owner of funds in Bank Accounts #1, #2 and #3 and Trust #4 to reduce the trust account balance below the existing aggregate trust fund liability.

14. During 1998 Primecore negotiated approximately 150 loans totaling \$165 million. Primecore was the servicing agent for all of these loans. Payoffs collected by Primecore totaled at least \$1,145,000.00 from August 1998 through October 1998. Although Primecore was the servicing agent for notes or interests sold pursuant to Business and Professions Code section 10229 upon which the payments due during three consecutive months exceeded \$125,000.00 in the aggregate, Primecore failed to file or cause to be filed accountant reports of inspection of Primecore's trust accounts with the Commissioner as required by Business and Professions Code section 10229, subdivision (j)(3).

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<sup>7</sup> In essence there was a \$53 million plus misallocation of funds that put both borrowers and lenders at risk. Each had to rely on future misallocation of funds for draws or interest payments, plus the money was not being used to improve the designated property.



15. As previously mentioned, Primecore was in the business of negotiating loans rather than funding them as a principal. However, it was Primecore's policy to record the Deed of Trust with Primecore as beneficiary instead of the lender. After receiving funds from lenders for the loans Primecore failed to assign the deeds of trust to lenders within ten days, sometimes leaving the lender unsecured for up to 147 days. This increased the potential risk of loss to investors.

Primecore violated Business and Professions Code section 10234, subdivision (c) by failing to cause the assignment of the trust deed to be recorded in the name of the assignee within ten days after receipt of funds for the purchase of an interest in a promissory note secured by a deed of trust.

16. Primecore also failed to timely repay lenders on loans after loans had been repaid by borrowers. For example, as of November 30, 1998 Primecore still owed lenders on loans that had been paid off as far back as May 1998. Primecore did not have any written authorization to retain lender payoff funds beyond applicable statutory periods. Primecore retained funds payable according to the terms of the promissory note for in excess of 60 days without a written agreement with the lender, in violation of Business and Professions Code section 10231.1.<sup>8</sup>

17. Primecore was originally incorporated as the Principal Funding Group Inc. (Principal) on April 26, 1996. On April 17, 1998, it changed to its name to Primecore Funding Group, Inc. James Ward was the designated officer for Principal through January 26, 1997. On January 27, 1997, Heren became the designated officer for Principal. When Principal changed its name to Primecore, Heren became the designated officer for Primecore. Primecore is jointly owned by Heren and Susan Fox, with each holding a fifty-percent interest.

Heren and Fox, and the prior designated officer James Ward, were affiliated with three other entities which have received loans through Primecore. Those entities are James Ward & Associates, Inc. (JWA), Windy Hill Associates (Windy) and 99 El Camino Partners (El Camino). Ward was the 100% owner of JWA. Windy was a new corporation that merged from JWA. Ward also owned 100% of Windy. Fox was the president of Windy. Heren and Fox are each fifty-percent owners of El Camino.

As of November 30, 1998, Windy had 15 loans on the books with Primecore for 12 properties with an aggregate negative balance for those loans of \$31,744,733.42. El Camino Partners had one loan with Primecore. El Camino had a negative balance on its loan of \$402,425.98. Primecore and salespersons acting on Primecore's behalf solicited and accepted funds and/or caused the solicitation or acceptance of funds for the Windy and El Camino loans. Since the funds solicited were to be applied to loan transactions in which Primecore or its principals directly or indirectly obtained the use or benefit of the funds Primecore was required to submit the documentation required by Business and Professions Code section 10231.2 to the

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<sup>8</sup> Business and Professions Code section 10231.1 was amended subsequent to November 30, 1998 to provide funds cannot be held more than 25 days.

Department prior to making any representation, solicitation or presentation of a disclosure statement to a lender. Primecore failed to comply with this requirement.

18. The Department conducted a second audit from March 31, 1999 to April 27, 1999 to determine whether Primecore had corrected the violations noted in the previous audit. The auditor determined that while Primecore had taken steps to bring its operations into compliance, it was still not fully in compliance. Although Primecore was not holding loan payoffs more than 25 days, it was still pooling the funds from these payoffs and using them to make payments on unrelated loans (i.e., the funds were not being immediately disbursed to the lenders on the loans). Primecore's separate records for each beneficiary or transaction and monthly reconciliation of records, though improved, still were not in compliance. And there was still at least a \$30 million trust fund shortage. However, Primecore was recording assignments in a timely manner and disclosure forms were being provided to borrowers. The Department withdrew its auditor before the audit was completed.

19. As the designated broker-officer of Primecore, Heren had an obligation to provide reasonable supervision of Primecore's operations to ensure compliance with applicable law. He failed to provide such supervision as evidenced by the numerous ongoing violations of rules and regulations that existed during both audit periods.

#### Mitigation

20. Respondents admit they failed to strictly comply with trust fund accounting requirements, but deny any intentional violation of the rules or regulations applicable to real estate licensees or any actual conversion of funds, fraud or dishonest dealing. Heren explains that in 1997, when he became the designated broker-officer for Principal Funding Group Inc., the predecessor corporation to Primecore, he had no knowledge the company had regulatory problems. The business had been successfully operating under various names for over 20 years under the direction of James Ward. Heren, who was the owner-manager of a financial consulting group prior to assuming control of Primecore, had placed numerous clients with James Ward's company James Ward & Associates. Heren had never received a single complaint from any of his clients and Heren's own investigation of James Ward & Associates, which he conducted prior to placing clients, was favorable. Heren determined the company was a construction lender and that many of the projects it financed ultimately sold for more than the original valuation. Since Heren was familiar with James Ward and the success of Ward's business operation, Heren simply accepted and continued existing operations when he took over Principal, which was a successor corporation to James Ward & Associates. Heren acknowledges that he should have been aware there were regulatory violations, but maintains he was not. He also notes that in conducting Primecore's operations they utilized loan documents that were drawn up by experienced real estate attorneys and that these attorneys never drew their attention to any regulatory problems.

When Primecore was notified of the Department audit, it cooperated fully with Department auditors. Heren states he was shocked upon conclusion of the audit to learn of the number and types of violations that existed. Heren and Fox immediately consulted with several attorneys to determine how they could bring their operations into compliance as quickly as possible, without

interrupting business or harming their clients. Among other things, respondents obtained a fidelity bond to cover bank account signatories, they designated their bank accounts as trust accounts, they stopped accepting money from new investors, they tried to ensure that deeds of trust were properly assigned to lenders within ten days of receipt of funds, they now perform monthly reconciliations, and they have contracted with an independent accountant to ensure Primecore timely files accountant inspection reports in the future. Primecore also tried to reduce its out of trust balance by matching investors with deeds of trust. Shortly after the audit, instead of rolling over \$7-8 million in loan payoffs, it repaid those funds to lenders. It also offered some investors, who were identified as being out of trust, the opportunity to either shift to another loan or receive their money back. Although Heren acknowledges Primecore did not immediately cease pooling funds, he explains that a gradual transition from this practice was necessary in order to avoid losses by investors. Heren points out, and it is undisputed, that to date no investor has lost money by investing in Primecore.

Respondents also determined, in consultation with their attorneys, that in order to continue their existing method of operation they would have to convert Primecore to a real estate investment trust (REIT).<sup>9</sup> A Private Placement [Disclosure] Document dated March 31, 1999 was sent to investors in which the risks associated with investment in the REIT were discussed. The pendency of the accusation in this matter was also disclosed.<sup>10</sup> Investors were given an opportunity to exchange interests in deeds of trusts for shares in the REIT or they could buy shares for cash. Heren represents that by April 30, 1999, (the closing date of the first offering) approximately \$140 million in investor funds and interests had been exchanged for shares in the REIT. It was anticipated the amount committed to the REIT would increase to \$170 million by the close of the second offering on June 30, 1999. As of the date of hearing approximately \$20 million had been repaid to investors who elected to be paid off.<sup>11</sup> Some investors elected not to participate in the REIT and not to be paid off. These investors continue to hold assignments in deeds of trust sufficient to secure their investments which total \$30-32 million; the \$30-32 million still invested in deeds of trust is now held in a trust account. Heren represents Primecore now has a zero out of trust balance and that when the investors who still hold interests in deeds of trust are paid off Primecore will operate solely as a REIT. Heren is confident Primecore will be able to comply with Department regulations while operating the REIT and Primecore has retained a law firm for that purpose.

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<sup>9</sup> Primecore's principals, Heren and Fox, made personal commitments, and sought commitments from family and friends, to invest capital in Primecore if a cash flow problem occurred upon conversion of Primecore to a REIT. They obtained \$10 million in commitments, which they have not been required to use.

<sup>10</sup> Prior to release of the Private Placement Document Primecore sent a letter to investors advising that an accusation had been filed as a result of a Department audit, and that a copy of the accusation would be provided to any investor who wished to have one. Although the accusation was filed in February 1999, the letter apparently was not mailed until late April or early May 1999.

<sup>11</sup> It appears these payoffs may have been a violation of Title 10, California Code of Regulations section 2832.1, which prohibits making disbursements that create or contribute to a trust fund shortage.

## LEGAL CONCLUSIONS

1. Cause for disciplinary action against respondents exists pursuant to Business and Professions Code section 10177, subdivision (d), in conjunction with Title 10, California Code of Regulations section 2831.1 and Business and Professions Code section 10145 by reason of the matters set forth in Findings 6 and 7.
2. Cause for disciplinary action against respondents exists pursuant to Business and Professions Code sections 10177, subdivision (d), in conjunction with Title 10, California Code of Regulations section 2831.2 by reason of the matters set forth in Findings 6 and 8.
3. Cause for disciplinary action against respondents exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Title 10, California Code of Regulations section 2832, subdivision (a) and Business and Professions Code section 10145 by reason of the matters set forth in Findings 5 and 9.
4. Cause for disciplinary action against respondents exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Title 10, California Code of Regulations section 2832.1 and Business and Professions Code section 10145 by reason of the matters set forth in Finding 13.
5. Cause for disciplinary action against respondents exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Title 10, California Code of Regulations section 2834, subdivision (b) by reason of the matters set forth in Findings 5 and 10.
6. Cause for disciplinary action against respondents exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Business and Professions Code section 10229 by reason of the matters set forth in Finding 14.
7. Cause for disciplinary action against respondents exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Business and Professions Code section 10231.1 by reason of the matters set forth in Finding 16.
8. Cause for disciplinary action against respondents exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Business and Professions Code section 10231.2 by reason of the matters set forth in Finding 17.
9. Cause for disciplinary action against respondents exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Business and Professions Code section 10240 by reason of the matters set forth in Finding 4.
10. Cause for disciplinary action against respondents exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Business and Professions Code section 10234, subdivision (c) by reason of the matters set forth in Finding 15.

11. Cause for disciplinary action against respondents exists pursuant to Business and Professions Code section 10176, subdivision (i) by reason of the matters set forth in Findings 11 and 12.

12. Cause for disciplinary action against respondents exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Business and Professions Code sections 10177, subdivision (g) and/or 10177, subdivision (h) and 10159.2 by reason of the matters set forth in Finding 19.

13. The evidence demonstrated that during the January 1, 1997 through February 5, 1999 audit period Primecore had a large trust fund shortage and that its trust fund records were not maintained in compliance with applicable law. In mitigation, the shortage appeared to be the result of Primecore's method of operation and/or poor record keeping rather than theft of funds. There was no evidence Primecore's principals were siphoning funds; rather it appears the money stayed in the business for the benefit of investors. Nor was it established that Primecore's principals intentionally engaged in dishonest practices in dealing with borrowers and lenders. However, they were clearly negligent in handling these transactions. In addition, once the issues of a shortage and inadequate records were brought to the attention of Heren, Primecore's designated broker-officer, steps were promptly taken to correct these deficiencies, with special attention being given to protecting investors from loss. Nor is there any evidence of loss to Primecore's borrowers and lenders. Respondents have also converted their corporate form to a REIT and have hired a law firm to monitor their business activities in an effort to ensure future compliance with applicable rules and regulations. After considering all of the evidence, it is determined that it would not be against the public interest to permit respondents to continue to hold broker licenses upon specific terms and conditions.

## ORDER

All real estate licenses and licensing rights issued to respondents Primecore Real Estate Funding, Inc. and Michael Alfred Heren under the Real Estate Law are revoked pursuant to Conclusions of Law 1 through 12, jointly and individually, provided, however, restricted real estate broker licenses shall be issued to respondents pursuant to section 10156.5 of the Business and Professions Code if respondents make application therefor and pay to the Department of Real Estate the appropriate fees for the restricted licenses within 90 days from the effective date of this Decision. The restricted licenses issued to respondents shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

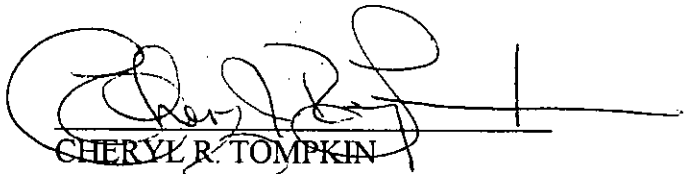
1. The restricted licenses issued to respondents may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent Heren's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted licenses issued to respondents may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondents have violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent Heren shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
4. Respondent Heren shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondents fail to satisfy this condition, the Commissioner may order suspension of respondents' licenses until respondent Heren passes the examination.
5. Within sixty (60) days of the effective date of this decision, respondent Heren shall submit to the Department for its prior approval, an appropriate program of remedial education, which program must be approved by the Department. The remedial education program shall include coursework in trust fund accounting and record keeping and mortgage lending, including construction lending. The exact number of hours and specific content of the program shall be determined by the Department or its designee. Respondent shall successfully complete the remedial education program and may be required to pass an examination(s) administered by the Department or its designee related to the program's content. Respondents shall pay all costs of the remedial education program. The period of probation will be extended, if necessary, until such remedial education is completed. Continuing education courses used for the renewal of licensure will not be used for remedial education.
6. Respondents shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted licenses are in effect such information concerning respondents' activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accounting of trust funds in the custody and control of respondents and periodic summaries of salient information concerning each real estate transaction in which respondents engaged during the period covered by the report.

7. In the event the Commissioner determines that an audit is necessary to verify that respondents have corrected the trust fund violations found herein, respondents shall pay the Commissioner's reasonable cost for said audit, pursuant to section 10148 of the Business and Professions Code. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondents shall pay such cost within 45 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted licenses issued to respondents pending a hearing held in accordance with section 11500, et seq. of the Government Code, if payment is not timely made as provided herein, or as provided in a subsequent agreement between respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondents enter into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.
8. Respondents shall not be eligible to apply for the issuance of unrestricted real estate licenses nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three (3) years have elapsed from the effective date of this Decision.

DATED: 7/12/99

  
CHERYL R. TOMPKIN  
Administrative Law Judge  
Office of Administrative Hearings

FILED

MAR 30 1999

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY Laurel A. Zinn

In the Matter of the Accusation of

PRIMECORE FUNDING GROUP, INC.,  
a California Corporation, and  
MICHAEL ALFRED HEREN,

}

Case No. H-7676 SF

OAH No. N-1999030498

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the  
Office of Administrative Hearings, 1515 Clay Street, Suite 206,  
Oakland, CA 94612

on June 7 - 10, 1999, at the hour of 9:00 AM,  
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

James L. Beaver  
JAMES L. BEAVER  
Counsel

Dated: March 30, 1999



1 JAMES L. BEAVER, Counsel (SBN 60543)  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0788 (Direct)

FILED  
FEB 26 1999

DEPARTMENT OF REAL ESTATE

By *Laurie A. Zin*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) No. H- 7676 SF  
12 )  
13 PRIMECORE FUNDING GROUP, INC., ) ACCUSATION  
14 a California Corporation, and )  
15 MICHAEL ALFRED HEREN, )  
16 Respondents. )

17 The Complainant, Charles W. Koenig, a Deputy Real Estate  
18 Commissioner of the State of California, for cause of Accusation  
19 against Respondent PRIMECORE FUNDING GROUP, INC. (herein  
20 "PRIMECORE"), a California corporation, and Respondent MICHAEL  
21 ALFRED HEREN (herein "HEREN"), individually and as designated  
22 officer-broker of PRIMECORE, is informed and alleges as follows:

23 I

24 The Complainant, Charles W. Koenig, a Deputy Real Estate  
25 Commissioner of the State of California, makes this Accusation in  
26 his official capacity.

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1 II

2 At all times herein mentioned, PRIMECORE and HEREN  
3 (hereinafter "Respondents") were and now are presently licensed  
4 and/or have license rights under the Real Estate Law (Part 1 of  
5 Division 4 of the Business and Professions Code) (hereinafter "the  
6 Code").

7 III

8 At all times herein mentioned, PRIMECORE was and now is  
9 licensed by the Department of Real Estate of the State of  
10 California (hereinafter "the Department") as a corporate real  
11 estate broker by and through HEREN as designated officer-broker of  
12 PRIMECORE to qualify said corporation and to act for said  
13 corporation as a real estate broker.

14 IV

15 At all times herein mentioned, HEREN was licensed by the  
16 Department as a real estate broker, individually and as designated  
17 officer-broker of PRIMECORE. As said designated officer-broker,  
18 HEREN was at all times mentioned herein responsible pursuant to  
19 Section 10159.2 of the Code for the supervision of the activities  
20 of the officers, agents, real estate licensees and employees of  
21 PRIMECORE for which a license is required.

22 V

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

1 furtherance of the business or operations of PRIMECORE and while  
2 acting within the course and scope of their corporate authority  
3 and employment.

4 VI

5 At all times herein mentioned, Respondents engaged in  
6 the business of, acted in the capacity of, advertised, or assumed  
7 to act as real estate brokers within the State of California  
8 within the meaning of Sections 10131(d) and 10131(e) of the Code,  
9 including the operation and conduct of a mortgage loan brokerage  
10 business with the public wherein, on behalf of others, for  
11 compensation or in expectation of compensation, Respondents  
12 solicited lenders and borrowers for loans secured directly or  
13 collaterally by liens on real property, wherein Respondents  
14 arranged, negotiated, processed, and consummated such loans,  
15 wherein Respondents serviced and collected payments on such loans,  
16 and wherein Respondents sold or offered to sell, bought or offered  
17 to buy, or exchanged or offered to exchange promissory notes  
18 secured directly or collaterally by a lien on real property and  
19 performed services for the holders thereof.

20 VII

21 In so acting as mortgage loan brokers, as described in  
22 Paragraph VI above, Respondents accepted or received funds in  
23 trust (hereinafter "trust funds") from or on behalf of lenders or  
24 investors, borrowers, and others in connection with the  
25 solicitation, negotiation, processing, packaging, and consummation  
26 of mortgage loans by Respondents, in connection with the servicing  
27 and collection of payments on such loans by Respondents, and in

1 connection with the sale, purchase, and exchange of secured  
2 promissory notes by Respondents, as alleged herein.

3 VIII

4 The aforesaid trust funds accepted or received by  
5 Respondents were deposited or caused to be deposited by  
6 Respondents into one or more bank accounts (hereinafter "trust  
7 fund accounts") maintained by Respondents for the handling of  
8 trust funds, including but not necessarily limited to the  
9 following accounts maintained by Respondents at the Menlo Park,  
10 California, branch of Bank of America:

11 (a) The "Primecore Funding Group, Inc.", Account Number  
12 04132-11845, (hereinafter "Bank Account #1");

13 (b) The "Primecore Funding Group, Inc.", Account Number  
14 04133-11953, (hereinafter "Bank Account #2");

15 (c) The "Primecore Funding Group, Inc.", Account Number  
16 04130-11940, (hereinafter "Bank Account #3"); and

17 (d) The "Primecore Funding Group, Inc., Trust Account",  
18 Account Number 04136-11942, (hereinafter "Trust #4").

19 IX

20 Between on or about January 17, 1997 and on or about  
21 November 30, 1998, in connection with the collection and  
22 disbursement of said trust funds, PRIMECORE:

23 (a) Failed to maintain a separate record for each  
24 beneficiary or transaction, accounting therein for all said trust  
25 funds received, deposited into, and disbursed from Bank Account  
26 #1, Bank Account #2, Bank Account #3, and Trust #4, in the manner

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1 required by Section 2831.1 of Chapter 6, Title 10, California Code  
2 of Regulations (herein "the Regulations");

3 (b) Failed to reconcile, at least once a month, the  
4 balance of all separate beneficiary or transaction records with  
5 the record of all trust funds received into and disbursed from  
6 Bank Account #1, Bank Account #2, Bank Account #3, and Trust #4,  
7 in compliance with Section 2831.2 of the Regulations;

8 (c) Failed to deposit trust funds entrusted to  
9 PRIMECORE into a trust fund account in the name of PRIMECORE as  
10 trustee at a bank or other financial institution, in conformance  
11 with Section 2832(a) of the Regulations, in that PRIMECORE  
12 deposited such funds into Bank Account #1, Bank Account #2, and  
13 Bank Account #3, which accounts were not maintained in the name of  
14 PRIMECORE as trustee;

15 (d) Caused, suffered or permitted the aggregate balance  
16 of funds in Bank Account #1, Bank Account #2, Bank Account #3, and  
17 Trust #4 to be reduced to an amount which, as of November 30,  
18 1998, was more than \$53,789,764.37 less than the aggregate  
19 liability of PRIMECORE to all owners of such funds without first  
20 obtaining the written consent of each and every owner of such  
21 funds; and

22 (e) Authorized Susan Fox, an unlicensed person without  
23 fidelity bond coverage, and Michael Rider, an unlicensed person  
24 without fidelity bond coverage, to make disbursements from Bank  
25 Account #1, Bank Account #2, Bank Account #3, and Trust #4, in  
26 violation of Section 2834(b) of the Regulations.

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1  
2 Between on or about January 17, 1997 and on or about  
3 November 30, 1998, in connection with the mortgage loan servicing  
4 and trust fund handling activities described above, PRIMECORE:

5 (a) Was the servicing agent during periods of three or  
6 more consecutive months for notes or interests, sold pursuant to  
7 Section 10229 of the Code, exceeding \$125,000 in the aggregate,  
8 but failed to file or cause to be filed reports of inspection of  
9 PRIMECORE's trust accounts with the Commissioner pursuant to  
10 paragraph (3) of subdivision (j) of Section 10229 of the Code;

11 (b) Retained funds payable according to the terms of  
12 promissory notes secured by real property for a period longer than  
13 60 days, in violation of Section 10231.1 of the Code, without  
14 first obtaining the written consent of each and every owner of  
15 such funds;

16 (c) Failed to provide the Department the statement  
17 required by Section 10231.2 of the Code prior to soliciting and  
18 accepting funds for loan transactions in which a person with 10  
19 percent or greater ownership interest in PRIMECORE obtained the  
20 use or benefit of the funds;

21 (d) Failed, within ten (10) days after the receipt of  
22 funds for the purchase of an interest in a promissory note secured  
23 by a deed of trust, to cause a proper assignment of the trust deed  
24 to be recorded in the name of the purchaser as assignee, in  
25 compliance with Section 10234(c) of the Code; and

26 (e) Failed to provide borrowers the statement required  
27 by Section 10240 of the Code.

XI

Between on or about January 17, 1997 and on or about November 30, 1998, in connection with the mortgage loan brokerage and trust fund handling activities described above, PRIMECORE converted to PRIMECORE's use or benefit or to purposes not authorized by the rightful owner of said funds the sum of \$53,789,764.37 entrusted to PRIMECORE and deposited into Bank Account #1, Bank Account #2, Bank Account #3, and/or Trust #4.

XII

On or about the dates tabulated below, in course of the acts and omissions described in Paragraph XI, above, PRIMECORE converted to PRIMECORE's use or benefit or to purposes not authorized by the rightful owner of said funds the amounts tabulated below entrusted to PRIMECORE and deposited into Bank Account #1, Bank Account #2, Bank Account #3, and/or Trust #4:

<u>ITEM</u>	<u>AMOUNT</u>	<u>DATE</u>
(a)	\$100,000.00	09/17/98
(b)	\$50,000.00	09/18/98
(c)	\$20,000.00	09/24/98
(d)	\$65,000.00	09/30/98
(e)	\$10,000.00	11/18/98
(f)	\$100,000.00	11/19/98
(g)	\$50,000.00	11/23/98
(h)	\$5,000.00	11/24/98
(i)	\$50,000.00	11/25/98

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XIII

PRIMECORE's acts and omissions described in Paragraph XI, above, and PRIMECORE's acts and omissions described in Paragraph XII, above, constituted fraud or dishonest dealing.

XIV

HEREN failed to exercise reasonable supervision over the acts of PRIMECORE in such a manner as to allow the acts and events described in Paragraphs IX through XIII, inclusive, above, to occur.

XV

The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondents under the following provisions of the Code and/or the Regulations:

(a) As to Paragraph IX(a) and to PRIMECORE, under Section 10145 of the Code and Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code;

(b) As to Paragraph IX(b) and to PRIMECORE, under Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code;

(c) As to Paragraph IX(c) and to PRIMECORE, under Section 10145 of the Code and Section 2832(a) of the Regulations in conjunction with Section 10177(d) of the Code;

(d) As to Paragraph IX(d) and to PRIMECORE, under Section 10145 of the Code and Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code; and

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1 (e) As to Paragraph IX(e) and to PRIMECORE, under  
2 Section 2834(b) of the Regulations in conjunction with Section  
3 10177(d) of the Code;

4 (f) As to Paragraph X(a) and to PRIMECORE, under  
5 Section 10229 of the Code in conjunction with Section 10177(d) of  
6 the Code;

7 (g) As to Paragraph X(b) and to PRIMECORE, under  
8 Section 10231.1 of the Code in conjunction with Section 10177(d)  
9 of the Code;

10 (h) As to Paragraph X(c) and to PRIMECORE, under  
11 Section 10231.2 of the Code in conjunction with Section 10177(d)  
12 of the Code;

13 (i) As to Paragraph X(d) and to PRIMECORE, under  
14 Section 10240 of the Code in conjunction with Section 10177(d) of  
15 the Code;

16 (j) As to Paragraph X(e) and to PRIMECORE, under  
17 Section 10234(c) of the Code in conjunction with Section 10177(d)  
18 of the Code;

19 (k) As to Paragraphs XI through XIII, inclusive, and to  
20 PRIMECORE, under Section 10176(i) of the Code;

21 (l) As to Paragraph XIV and to HEREN, under Section  
22 10177(g) and/or Section 10177(h) of the Code and Section 10159.2  
23 of the Code in conjunction with Section 10177(d) of the Code.

24 WHEREFORE, Complainant prays that a hearing be conducted  
25 on the allegations of this Accusation and that upon proof thereof  
26 a decision be rendered imposing disciplinary action against all  
27 licenses and license rights of Respondents under the Real Estate

1 Law (Part 1 of Division 4 of the Business and Professions Code)  
2 and for such other and further relief as may be proper under other  
3 applicable provisions of law.

4  
5   
6 CHARLES W. KOENIG  
Deputy Real Estate Commissioner.

7 Dated at Sacramento, California,  
8 this 25th day of February, 1999.

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