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DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	No. H-7824 SF
	)	
PRIMECORE FUNDING GROUP, INC.,	)	OAH NO. N-2000050352
a California Corporation,	)	
MICHAEL ALFRED HEREN, and	)	
SUSAN MARY FOX,	)	
	)	
Respondents.	)	

ORDER SETTING REPORTING REQUIREMENTS

I. On December 6, 2000, the Proposed Decision dated November 3, 2000 of the Administrative Law Judge (hereinafter "the Proposed Decision") of the Office of Administrative Hearings was adopted as the Decision (hereinafter "the Decision") of the Real Estate Commissioner (hereinafter "the Commissioner") in the above-entitled matter.

II. Pursuant to the provisions of Paragraph 8 of the Order set forth on pages 20 through 22, inclusive, of the Proposed Decision, until such time as the Commissioner shall in her discretion modify or rescind this Order Setting Reporting

1 Requirements, any restricted license issued either to Respondent  
2 PRIMECORE FUNDING GROUP, INC. (hereinafter "PFG") or to Respondent  
3 MICHAEL ALFRED HEREN (hereinafter "HEREN") pursuant to the  
4 Decision shall be subject to the following limitations, conditions  
5 and restrictions in addition to any other limitations, conditions  
6 or restrictions to which the restricted license is subject:

7 (A) Such Respondent shall, within 30 days after the end  
8 of each of the four fiscal quarters of the PFG's fiscal year, file  
9 with the Commissioner:

10 (1) a list, as of the last calendar day of the period  
11 for which the quarterly report is made, of the current owners  
12 (including Primecore Mortgage Trust), if any, of interests in  
13 mortgage loans heretofore or hereafter originated, negotiated or  
14 arranged by PFG. The list shall state, with respect to each such  
15 owner and each such interest:

16 (a) The name of the owner and any identifying number  
17 assigned by PFG to the owner, together with a  
18 schedule appended to the list providing the full  
19 name and the latest address of the owner on file  
20 with PFG;

21 (b) The identifying number assigned by PFG to the loan;

22 (c) The identity of the real property securing the  
23 loan;

24 (d) The amount of the owner's current investment in the  
25 loan; and

26 (e) The date payment of the loan principal is due.

27 (2) A true and correct copy of each and every

1 Lender/Purchaser Disclosure Statement described in Sections  
2 10232.5 and/or 10229(k) of the Business and Professions Code,  
3 complete except for the signature of the prospective lender or  
4 purchaser, which was issued by such Respondent during the period  
5 for which the quarterly report is made.

6 (3) A true and correct copy of each and every deed of  
7 trust, assignment of a deed of trust, or assignment of an interest  
8 in a deed of trust executed, originated, negotiated or arranged by  
9 such Respondent during the period for which the quarterly report  
10 is made.

11 (B) Such Respondent shall file the first such quarterly  
12 report for the fiscal quarter ending March 31, 2001.

13 (C) The quarterly reports required by this Order shall  
14 be in addition to, and not in lieu of, any reports that may  
15 otherwise be required by law.

16 III. Upon presentation of proof satisfactory to the  
17 Commissioner that there are no longer any owners, other than  
18 Primecore Mortgage Trust, of interests in mortgage loans  
19 heretofore or hereafter originated, negotiated or arranged by PFG,  
20 the Department may excuse PFG and HEREN from filing the list  
21 described in subsection II(A)(1), above.

22 IV. Upon presentation of proof satisfactory to the  
23 Commissioner that HEREN has been completely disassociated from any  
24 affiliation or ownership in PFG and Primecore Properties, Inc. the  
25 Department may excuse HEREN from filing the list described in  
26 subsection II(A)(1), above.

27 V. Pursuant to the provisions of Paragraph 6 of the

1 Order set forth on pages 20 through 22, inclusive, of the Proposed  
2 Decision, Respondents PFG, HEREN and SUSAN MARY FOX shall not  
3 accept, handle, manage or otherwise accept responsibility for  
4 trust funds during the term of the restricted license.

5 Consequently, until such time as the Commissioner shall in her  
6 discretion modify this Order Setting Reporting Requirements, this  
7 Order shall not require PFG or HEREN to provide any accounting for  
8 trust funds in the custody and control of such Respondents.

9 This Order shall become effective at 12 o'clock noon on  
10 February 26, 2001.

11 IT IS SO ORDERED

January 29, 2001

12  
13 PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

14 Paula Reddish  
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FILED  
DEC - 7 2000

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

*Lucia J. Zinnemann*

\* \* \*

In the Matter of the Accusation of	)	
	)	NO. H-7824 SF
PRIMECORE FUNDING GROUP, INC.,	)	
MICHAEL ALFRED HEREN, and	)	OAH NO. N-2000050352
SUSAN MARY FOX,	)	
	)	
Respondents.	)	

DECISION

The Proposed Decision dated November 3, 2000, 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 December 28, 2000

IT IS SO ORDERED December 6, 2000

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

*Paula Reddish Zinnemann*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of

PRIMECORE FUNDING GROUP, INC.  
MICHAEL ALFRED HEREN, and  
SUSAN MARY FOX,

Respondents.

No. H-7824 SF

OAH No. N 2000050352

**PROPOSED DECISION**

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter on August 7-10, 2000, in Oakland, California.

James Beaver, Counsel, represented the complainant Steven J. Ellis.

Daniel Furniss, Attorney at Law, 379 Lytton Avenue, Palo Alto, California 94301, and Ben I. Hamburg, Attorney at Law, 150 Spear Street, Suite 1800, San Francisco, California 94111, represented respondents Primecore Funding Group, Inc., Michael Alfred Heren and Susan Mary Fox.

The record was held open to permit the parties to file legal argument. On August 21, 2000, respondents' legal brief was received and marked as Exhibit EE for identification. Respondents' hearing brief, which had been previously submitted, was marked as Exhibit FF for identification. On August 23, 2000, complainant's response to respondents' legal brief was received and marked as Exhibit 34 for identification. On August 23, 2000, respondents filed an objection to the form of complainant's response, which was marked as Exhibit GG for identification.<sup>1</sup>

The matter was submitted on August 23, 2000.

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<sup>1</sup> Respondents' objection and request that complainant's letter response be stricken and ignored is noted and overruled. No specific restrictions were requested or placed on the form of complainant's response; its response is therefore deemed appropriate.

## FACTUAL FINDINGS

1. Complainant Steven J. Ellis made the Second Amended 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) 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 corporate real estate broker by and through Heren as designated officer-broker. Since August 30, 1999, Primecore's corporate real estate broker license has been and is now restricted. Primecore's restricted license is scheduled to expire on August 29, 2003.

3. 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. Since August 30, 1999, Heren's individual real estate broker license and designated broker-officer license have been and are now restricted.<sup>2</sup> Heren's restricted individual license is scheduled to expire on August 29, 2003. Heren's restricted designated broker-officer license for Primecore, which was issued August 30, 1999, was canceled effective March 17, 2000.<sup>3</sup>

4. 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.

5. At all times since February 2, 2000, Susan Mary Fox (Fox) was and now is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a real estate salesperson. Fox's license is scheduled to expire February 1, 2004.

### Background

6. Primecore primarily solicits and negotiates short term (12-18 month) construction loans between borrowers and Primecore Mortgage Trust, Inc. on residential and commercial properties. Primecore Mortgage Trust, Inc., a real estate investment trust

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<sup>2</sup> Primecore's corporate real estate broker license, as well as Heren's individual license and designated broker-officer license are all restricted pursuant to Business and Professions Code section 10156.7 and enumerated additional terms, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6.

<sup>3</sup> Primecore's loan servicing and loan negotiation duties are currently assigned to Primecore Properties, Inc., in which Fox has a 100% ownership interest.

(the REIT) has been Primecore's sole investor/lender<sup>4</sup> since approximately April 30, 1999. The founders of the REIT are Heren, Fox and Michael Rider. Fox also owns, and together with Heren and Rider manages, Primecore.

7. Between April 30, 1999 and March 17, 2000, Primecore served as manager of the REIT pursuant to a management agreement. In that capacity it originated and serviced loans made by the REIT and was responsible for the day-to-day operations of the REIT. During 1999 Primecore negotiated approximately 75 short term construction loans totaling \$179 million. Primecore also serviced approximately 118 loans totaling \$201 million and involving approximately 313 lenders (one of which was the REIT) and 110 borrowers.

Prior to April 30, 1999, (the REIT began operation May 1, 1999) the residential and commercial loans negotiated by Primecore were multi-lender transactions with as many as 118 private investors/lenders per loan. After the REIT began operation it purchased (i.e., bought out) numerous private investor interests in loans and/or gave private investors the opportunity to exchange interests in deeds of trusts for shares in the REIT. However, some investors elected not to participate in the REIT and not to be paid off. These investors continue to hold assignments in deeds of trusts sufficient to secure their investments. Primecore is in the process of paying off these loans with private individual lenders and it is no longer accepting new individual funds to invest in private deeds of trust. However, Primecore's loan portfolio currently contains both private individual investors and the REIT. On December 31, 1999, the current outstanding loan balance for private individual investors was \$14.6 million. As of August 10, 2000, only \$3.4 million in deed of trust investors remained (down from approximately \$32 million in June 1999).

8. During 1999, as manager of the REIT, Primecore negotiated construction loans between borrowers and the REIT. Typically, Primecore would solicit and obtain borrowers or the borrower would contact Primecore directly to obtain financing. Primecore would then negotiate the details of the loan with the borrower. On or about the close of escrow the borrower would sign a Promissory Note and a Construction Loan Agreement with Primecore. A deed of trust would be prepared the same day with Primecore as the beneficiary and trustee, even though Primecore did not use any of its own capital. The deed of trust with Primecore as beneficiary would be recorded shortly thereafter. Generally that same day a deed of trust and an assignment of rents would be recorded in the name of the REIT. Funds were never disbursed before both the deed of trust and assignment was recorded. Following discussions with its attorney, Primecore began recording documents in the name of the REIT in the first instance, rather than Primecore, after January 6, 2000.

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<sup>4</sup> The terms investor and lender are used interchangeably in this opinion.



The Promissory Note signed by the borrower typically described the terms of the loan, including interest. 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 payments were added to the outstanding loan balance. The original loan balance plus accrued interest were paid off when the loan was paid off. Although borrowers were not required to make monthly interest payments, lenders were paid interest every month. Prior to April 30, 1999, Primecore pooled funds from loan payoffs and used the funds to make payments, including interest payments, on unrelated loans (i.e., the funds were not being immediately disbursed to the lenders on the loans on payoff). After April 30, 1999, if there were insufficient funds in Primecore's trust account to make the interest payments, funds were advanced from a REIT account.

The Construction Loan Agreement also provided details regarding the loan, the loan amount, interest on the loan, disbursement instructions and the lenders right to cease advances. After April 30, 1999, the Promissory Note, Construction Loan Agreement, and Buyer and Seller Escrow Instructions were all submitted to a local title company, along with funds from the REIT to fund the loan. The amount funded was usually just enough to cover the initial purchase of the land and to start the construction project.

9. During the same period that Primecore was negotiating loans with borrowers, it was also negotiating terms with individual investors (pre-April 30, 1999) or the REIT (post April 30, 1999). All loans are now funded through the REIT and Primecore does not solicit any other lenders. Primecore provides the REIT a one page Loan Summary and Disclosure instead of the Lender/Purchaser Disclosure Statement required pursuant to Business and Professions Code section 10232.4. The Loan Summary and Disclosure has not been approved by the Department.

#### Trust Fund Violations

10. Commencing December 15, 1999, and continuing through February 11, 2000, the Department conducted an investigative audit of Primecore's books and records for the period of September 1, 1999, through December 31, 1999. The audit covered Primecore's trust fund activities. The audit revealed that during the period covered by the audit Primecore maintained the following bank accounts for the handling of trust funds:

- (a) Primecore Mortgage Trust, Inc. General Account, Account No. 1562628, at Heritage Bank of Commerce, San Jose, California (hereinafter Trust #1).
- (b) Primecore Mortgage Trust, Inc. Disbursement Account, Account No. 1563634, at Heritage Bank of Commerce, San Jose, California (hereinafter REIT #1).

- (c) Primecore Mortgage Trust, Inc. General Account, Account No. 1563642, at Heritage Bank of Commerce, San Jose, California (hereinafter REIT #2).
- (d) Primecore Mortgage Trust, Inc. Dividend Account, Account No. 1563626, at Heritage Bank of Commerce, San Jose, California (hereinafter REIT #3).
- (e) Primecore Funding Group, Inc., Interest Trust Account, Account No. 04136-11942, at Bank of America, Menlo Park, California (hereinafter Trust #2).
- (f) Primecore Mortgage Trust, Inc. Dividend Account, Account No. 04130-00451, at Bank of America, Menlo Park, California (hereinafter REIT #4).

11. Between September 1, 1999 and December 15, 1999, funds from loan payoffs in which there were individual private lenders, loan payoffs in which the REIT was the lender, new REIT investments and advances from the REIT line of credit were all deposited into REIT #1. Funds from REIT #1 were then transferred to Primecore's other bank accounts to cover Primecore's financial obligations.

Approximately \$2,690,000.00 in funds due and payable to individual private investors upon loan payoff (i.e., trust funds) were deposited into REIT #1 between September 1, 1999 and December 15, 1999. REIT #1 was not in the name of Primecore as trustee and it was not designated as a trust account. Fox and Rider were signatories on REIT #1, with one signature required for withdrawal. Neither Fox nor Rider was a real estate licensee at the time. However, Primecore maintained a Directors and Officers liability policy for \$5,000,000.00, with a \$25,000.00 deductible.

12. Between September 1, 1999, and December 15, 1999, funds were transferred from REIT #1 to Trust #1 to pay back individual private lenders on loans that had been paid off by the borrower. The borrowers first deposited their payoffs (which often involved both REIT and private lender funds) with a third party title company. The title company would then wire the funds to REIT #1 in accordance with Primecore's instructions. Once the funds were deposited into REIT #1, Primecore would wire the funds to Trust #1 and then immediately (usually the same day) disburse them to the appropriate individual lenders. During the audit period there is no evidence any investor did not get paid.

After discussing its operating procedures with the Department's auditor on December 15, 1999, Primecore changed its procedures for payoffs of loans with individual private lenders. Effective December 16, 1999, Primecore instructed title companies to wire any payoffs on loans with individual private lenders directly to Trust #1. Between December 16, 1999 and December 31, 1999, deposits to Trust #1 consisted of wire transfers directly from title companies of payoffs by borrowers on loans with individual private lenders. Disbursements consisted of payments (return of funds) to individual private lenders.

13. Heren, Fox and Rider were all signatories on Trust #1, with one signature required for withdrawal. During the audit period neither Fox nor Rider was a real estate licensee. Although Primecore maintained a fidelity bond of \$500,000.00 with a \$2,500.00 deductible, the daily bank balance for Trust #1 sometimes exceeded \$500,000.00. For example, on December 16, 1999 and December 31, 1999, the bank balances for Trust #1 were \$1,090,000.00 and \$785,000.00, respectively.

14. All deposits into Trust #1 prior to December 16, 1999, were from REIT #1. However Primecore's records did not reflect this fact. Often the control record simply indicated the deposit date, the loan payoff number, the payoff amount and the remaining loan balance. There was no mention or description of the source of the payoff funds and/or the deposit entry simply indicated the title company as the source of the funds. Nor did the records detail or describe the individual ownership of the trust funds. Sometimes the control record entry failed to include the loan payoff number, and simply contained the notation "deposit," without any mention or description of the source of the deposit or ownership of the funds. Some control record entries indicated Primecore Mortgage Trust as the source of the deposit, but there was no mention or description of the reason for the deposit or regarding the individual ownership of trust funds. In order to locate the source and ownership of funds, review of additional documents such as the deposit detail, bank statements and the loan servicing schedule was required, or assistance had to be sought from Michael Rider, Primecore's controller. It therefore took several different sources to identify from whom trust funds were received and/or ownership of trust funds.

15. Primecore's separate records for Trust #1 also failed to adequately identify the transactions and/or parties to the transaction. Although separate records were titled by their eight digit lender number,<sup>5</sup> there was no corresponding list to match lender numbers to lender names. In order to match a lender name with a lender number you had to refer to a loan servicing schedule. However, once a loan was paid off, the loan information was deleted from the loan servicing schedule. In order to find a lender's name after a loan was paid off/deleted you had to search the loan servicing schedule(s) for the preceding month(s).

16. In addition, Primecore failed to maintain separate records for individual private lenders for deposits into or disbursements from REIT #1. The sources of the deposits of loan payoff funds into REIT #1 were not identified on the general ledger or bank statements. The control records often simply indicated "deposit" and did not show the source of the funds or indicate ownership. Therefore loans could not be identified solely from the REIT ledger or control records or separate records.

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<sup>5</sup> The first four digits of the eight digit number represents the lender's number and the last four digits represents the loan number.

Since loan information was deleted from the loan servicing schedule on payoff, and there were no separate records for Trust #1 or REIT #1, it was very difficult to catch errors, which on at least two occasions caused or contributed to private lenders not receiving timely repayment. (See Finding 28.)

17. Trust #2 was used to pay individual private lenders monthly interest payments. Deposits consisted of transfers from REIT #1. Since borrowers did not make monthly interest payments, these transfers represented unsecured advances by Primecore of funds (including trust funds) remaining in REIT #1. Heren and Fox were signatories on Trust #2, with one signature required for withdrawal. As previously mentioned, during the audit period Fox was not a real estate licensee. However, Primecore maintained a fidelity bond of \$500,000.00, with a \$2,500.00 deductible. All checks in this account were signed with Heren's hand stamp signature plate.

18. Transfers were also made from REIT #1 to REIT #2 to cover vendor or borrower progress payments on REIT loans and/or loans with individual private lenders, and to REIT #3 or REIT #4 to cover monthly dividend payments for REIT investors. Heren, Fox and Rider were all signatories on REITs #2, #3 and #4, with one signature required for withdrawal. During the audit period neither Fox nor Rider was a real estate licensee. However, during that time Primecore maintained a Directors and Officers liability policy for \$5,000,000.00, with a \$25,000.00 deductible.

19. Primecore violated section 2831 of Title 10 of the California Code of Regulations by failing to maintain records which accurately identified from whom trust funds deposited into Trust #1 were received.

20. Primecore violated section 2831.1 of Title 10 of the California Code of Regulations by failing to maintain separate records for Trust #1 and Trust #2 that identified the transactions and the parties to the transactions.

21. 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 therein for all trust funds received, deposited into and disbursed from REIT #1.

22. 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.

23. 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, between September 1, 1999, and December 15, 1999,

Primecore caused trust funds to be deposited into REIT #1, which was not maintained in the name of Primecore as trustee, then transferred those funds to Trust #1 for disbursement to private lenders.)

24. Since REIT #1 was used for loan payoffs, including those involving trust funds through December 15, 1999, the signatories on the account should have been licensed by the Department or there should have been a fidelity bond sufficient to cover the maximum amount the unlicensed individual would have access to. A bond with a deductible does not cover the maximum amount the non-licensed person would have access to since the deductible is not covered. Primecore violated section 2834, subdivision (b) of Title 10 of the California Code of Regulations by authorizing Fox, an unlicensed person who did not have sufficient fidelity bond coverage, to make withdrawals from Trusts #1 and #2, and REIT #1. Primecore also violated section 2834, subdivision (b) of Title 10 of the California Code of Regulations by authorizing Rider, an unlicensed person who did not have sufficient fidelity bond coverage, to make withdrawals from Trust #1 and REIT #1.

25. The Department audit revealed that during the months from September 1999 through November 1999 several shortages occurred in Trusts #1 and #2 as follows:

	Date	Account	Shortage
(a)	9/24/99	Trust #1	\$ 35,000.00
(b)	10/18/99	Trust #1	\$180,000.00
(c)	11/17/99	Trust #1	\$275,000.00
(d)	9/2/99	Trust #2	\$204,445.27
(e)	10/9/99	Trust #2	\$179,800.54
(f)	11/7/99	Trust #2	\$168,300.95
(g)	12/31/99	Trust #2	\$ 423.19

The shortages were caused by the following:

On September 24, 1999, Primecore disbursed a check for \$35,000.00 from Trust #1 at a time when the bank account balance per the books was zero. The disbursement caused Trust #1 to be overdrawn \$35,000.00 as of September 24. The deficit was cured on September 30, 1999.

On October 18, 1999, Primecore transferred \$180,000.00 from Trust #1 to REIT #1, creating a shortage of \$180,000.00 in Trust #1. On October 21, 1999, the shortage was \$140,000.00. The shortage was cured on October 22, 1999.

On November 17, 1999, Primecore transferred \$275,000.00 from Trust #1 to REIT #1, creating a \$275,000.00 shortage in Trust #1. On November 19, 1999, the shortage was \$220,000.00. The shortage was cured on November 24, 1999.

On September 2, 1999, Primecore disbursed several hundred interest checks totaling \$210,250.44 from Trust #2 at a time when the bank account balance per the books was only \$5,805.17, which created a \$204,445.27 deficit in Trust #2. The deficit was eliminated on September 9, 1999, by an unsecured advance of funds from REIT #1. However, several checks cleared before the deposit of REIT funds.

On October 9, 1999, Primecore disbursed several hundred interest checks totaling \$179,800.54 from Trust #2 at a time when the bank account balance per the books was zero, which created a \$179,800.54 deficit in Trust #2. The deficit was eliminated on October 12, 1999, by an unsecured advance of funds from REIT #1. However, several checks cleared before the deposit of REIT funds.

On November 7, 1999, Primecore disbursed several hundred interest checks totaling \$168,300.95 from Trust #2 at a time when the bank account balance per the books was zero, which created a \$168,300.95 deficit in Trust #2. The deficit was eliminated on November 10, 1999, by an unsecured advance of funds from REIT #1. However, several checks cleared before the deposit of REIT funds. A deficit of \$423.19 also existed on December 31, 1999.

26. There were no written consent from the owners of the funds in Trusts #1 or #2 authorizing Primecore to disburse the funds when it would reduce the balance of the account below the existing aggregate trust fund liability.

27. Primecore 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 Trusts #1 and #2 to reduce the trust account balances below the existing aggregate trust fund liability.

28. On or about the dates indicated below, in the course of the conduct described in Finding 25, Primecore converted<sup>6</sup> to its own 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 Trust #1.

	<b>Date</b>	<b>Account</b>	<b>Amount</b>
(a)	11/17/99	Trust #1	\$275,000.00
(b)	10/18/99	Trust #1	\$180,000.00

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<sup>6</sup> As previously indicated in Finding 25, Primecore transferred funds from Trust #1 to REIT #1 without first obtaining the written consent of the owners of the funds. The use and/or disbursement of funds without the knowledge or consent of the owners of the funds constituted conversion.

Michael Rider, Primecore's controller, admits that he probably initiated transfer of the above funds from Trust Account #1 to REIT #1. He maintains, however, that the transfers were made in error. Rider explained that he uses a spreadsheet to transfer funds between accounts on a daily basis in order to cover REIT financial obligations. On the two occasions indicated above he failed to correlate the bank number for Trust Account #1 with the funds he was transferring, at least in part due to Primecore's method of record keeping. Rider caught and corrected both errors before the Department audit. The improperly transferred funds were returned to Trust #1 on November 24, 1999, and October 22, 1999, respectively.

29. Between September 1, 1999 and December 31, 1999, on the dates and in the amounts indicated below, Primecore accepted funds from the REIT, a prospective lender, to cover interest payments owed by the borrowers on unrelated mortgage loans being serviced by Primecore.

	<b>Date</b>	<b>Amount</b>
(a)	9/9/99	\$210,250.44
(b)	10/12/99	\$179,800.54
(c)	11/10/99	\$168,300.95
(d)	12/8/99	\$156,128.21

Primecore violated Business and Professions Code sections 10231 and 10229, subdivision (i) in that the funds accepted from the REIT were not for a specific loan or note secured by a deed of trust that Primecore owned, or was authorized to negotiate or buy, but rather were to cover interest payments owed by borrowers on unrelated loans secured by real property.

30. In addition, in the transactions listed below Primecore retained funds repaid by borrowers which were due and payable to lenders according to the terms of the promissory note for in excess of 25 days without a written agreement with the lender, in violation of Business and Professions Code section 10231.1.

	<b>Date Received</b>	<b>Date Paid</b>	<b>Amount</b>	<b>Owner</b>
(a)	8/20/99	11/9/99	\$25,000.00	William Kronenfeld
(b)	8/20/99	11/9/99	\$25,000.00	Herman Niethamer

31. As previously mentioned, it was Primecore's policy prior to December 16, 1999, to record the Deed of Trust with Primecore as beneficiary instead of the lender. Primecore violated Business and Professions Code section 10234, subdivision (a) by causing the assignment of the trust deed to be recorded in the name of Primecore as beneficiary rather than in the name of the lender.

32. Primecore is jointly owned by Heren and Susan Fox. Each holds a fifty-percent interest. The owners of Primecore Mortgage Trust, Inc., (the REIT) are also affiliated with Primecore. Fox is the president of the REIT and owns 45.4%. Heren is the vice president, chairman of the board and owns 54.5%. Michael Rider is the secretary, treasurer and chief financial officer and owns <.1%. Heren and Fox each also own 50% of Upside Unlimited, LLC (Upside).

On or about November 1, 1999, Upside obtained a loan from Primecore for \$9,600,000.00, to be secured by real property at Gordon and Valley Street in Los Altos, California. Primecore and salespersons acting on Primecore's behalf solicited and accepted funds and/or caused the solicitation or acceptance of funds for the Upside loan. 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 Department prior to making any representation, solicitation or presentation of a disclosure statement to a lender. Primecore failed to comply with this requirement.

33. As previously indicated, whenever Primecore solicited a loan from the REIT it only provided a one page Loan Summary and Disclosure, which had not been approved by the Department. Primecore violated Business and Professions Code section 10232.4, subdivision (a) by failing to provide the disclosure statement specified in Business and Professions Code section 10232.5 to the REIT before the REIT became obligated to make the loan and before receipt by or on behalf of the broker of any funds from the REIT.

34. Between September 1, 1999 and December 31, 1999, Fox and Phil Giurlani (Giurlani) were salaried employees of Primecore. Fox and Giurlani handled routine daily contacts with borrowers. The borrower would typically contact Fox or Giurlani, who would collect the borrower's information, including the proposed duration of the loan or extension, the desired loan amount, a map of the property to be encumbered, credit history and references. Giurlani would then "run the numbers." Afterwards, Fox and Heren would discuss the loan application to decide whether to make the loan and on what terms. The decision on the loan, including the terms of any approved loans, would be communicated to the borrower by Fox or Giurlani. Giurlani would do the paperwork on approved loans, modifying standard forms to fit the particular loan, and submit it to escrow. Either Fox or Giurlani would sign loan documents and commitment letters on behalf of Primecore. Fox or Giurlani would answer questions regarding a loan only after consultation with Heren. Either Fox or Giurlani would also inspect the property to be encumbered. Neither Fox nor Giurlani had individual discretionary authority to decide the terms of a loan, or make, solicit or negotiate a loan.

In the course of Primecore's mortgage loan brokerage and mortgage loan servicing activities and using the procedure described above, Fox and Giurlani negotiated and



arranged the loans listed below, which were secured by deeds of trust encumbering real property within the State of California:

(a) On September 1, 1999, Fox negotiated and arranged an extension of the term of loan number 2262, a loan secured by real property at 26 Vista Del Sol, Mill Valley, California, to WB Investments, LLC. The agreement was signed by Fox as president of Primecore.

(b) On September 1, 1999, Fox and Giurlani negotiated and arranged loan number 2403, a loan secured by real property at 2315 Crest Lane, Menlo Park, California, from Primecore Mortgage Trust, Inc. to Area Luxury Homes, Crest 1, LLC. The Construction Loan Agreement for this loan was signed by Giurlani.

(c) On September 8, 1999, Giurlani negotiated and arranged an extension of the term of loan number 2303, a loan secured by real property at 3491 Park Avenue, Palo Alto, California, to Vista Goebel, LLC. The agreement was signed by Giurlani on behalf of Primecore.

(d) On September 10, 1999, Fox and Giurlani negotiated and arranged loan number 2401, a loan secured by real property at 1736 Waverly Street, Palo Alto, California, from Primecore Mortgage Trust, Inc. to Gary Meek and James Sagorac.

(e) On September 16, 1999, Giurlani negotiated and arranged an extension of the term of loan number 2294, a loan secured by real property at 17586 Vineland Avenue, Sunnyvale, California, to Price Development Group, Inc. The agreement was signed by Giurlani on behalf of Primecore.

(f) On September 23, 1999, Fox and Giurlani negotiated and arranged loan number 2405, a loan secured by real property at 3159 Oak Knoll Drive, Redwood City, California, from Primecore Mortgage Trust, Inc. to Emerald Canyon, LLC. The Construction Loan Agreement for this loan was signed by Giurlani.

(g) On September 28, 1999, Fox and Giurlani negotiated and arranged loan number 2406, a loan secured by real property at 990 Lincoln Avenue, Palo Alto, California, from Primecore Mortgage Trust, Inc. to Gary Meek and James Sagorac. The Construction Loan Agreement for this loan was signed by Giurlani.

(h) On September 29, 1999, Fox negotiated and arranged an extension of the term of loan number 2287, a loan secured by real property at 42 Vista Del Sol, Mill Valley, California, to WB Investments, LLC. The agreement was signed by Fox as president of Primecore.

(i) On November 1, 1999, Fox and Giurlani negotiated and arranged loan number 2404, a loan secured by real property at Gordon Avenue and Valley Street, Los

Altos, California, from Primecore Mortgage Trust, Inc. to Upside Unlimited, LLC. The Construction Loan Agreement for this loan was signed by Giurlani.

(j) On November 1, 1999, Fox and Giurlani negotiated and arranged loan number 2409, a loan secured by real property at 2 Wood Lane, Menlo Park, California, from Primecore Mortgage Trust, Inc. to Joseph Montalbo and Joann Ferguson. The Construction Loan Agreement for this loan was signed by Giurlani.

(k) On November 15, 1999, Fox and Giurlani negotiated and arranged loan number 2412, a loan secured by real property at 1<sup>st</sup> West Street, Sonoma, California, from Primecore Mortgage Trust, Inc. to Franklin Street LLC. The Construction Loan Agreement for this loan was signed by Giurlani.

(l) On November 17, 1999, Fox negotiated and arranged an extension of the term of loan number 2167, a loan secured by real property at Lot 3, Sky Road, Tiburon, California, to Masma Construction, Inc. The agreement was signed by Fox as president of Primecore.

(m) On November 17, 1999, Fox and Giurlani negotiated and arranged loan number 2407, a loan secured by real property at Academy Heights Subdivision, San Rafael, California, from Primecore Mortgage Trust, Inc., to J. G. Stich. The Construction Loan Agreement for this loan was signed by Giurlani.

(n) On November 29, 1999, Fox and Giurlani negotiated and arranged loan number 2408, a loan secured by real property at 321 Summit Avenue, Mill Valley, California, from Primecore Mortgage Trust, Inc. to Elizabeth Suzuki and Ron Sutton. The Construction Loan Agreement for this loan was signed by Giurlani.

(o) On December 17, 1999, Fox and Giurlani negotiated and arranged loan number 2410, a loan secured by real property at Lot 19, Blue Oaks Subdivision, Portola Valley, California, from Primecore Mortgage Trust, Inc. to Pacific Peninsula Group, Inc. The Construction Loan Agreement for this loan was signed by Giurlani.

35. Between September 1, 1999 and December 31, 1999, neither Fox nor Giurlani was licensed by the Department as either a real estate broker or salesperson. Fox did not receive her real estate salesperson license until February 2, 2000. Giurlani passed the real estate licensing examination in approximately June 2000 and now has a conditional real estate salesperson license.

36. The Department alleges that the acts performed by Fox and Giurlani in arranging and negotiating loans, as described in Finding 34, constituted acts for which a real estate license was required. Fox and Giurlani maintain no individual licenses were required because Primecore had a corporate license and they were acting on behalf of Primecore. The legal authority does not support their position.

Business and Professions Code section 10130 requires any person engaging in the business or acting in the capacity of a real estate broker or salesperson to have a license. Pursuant to Business and Professions Code section 10131, subdivision (d), a person who, for or in expectation of compensation, solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders in connection with loans secured directly or collaterally by liens on real property is acting in the capacity of a real estate licensee. In *Montoya v. McLeod* (1985) 176 Cal.App.3d 57, 62-63, a real estate salesperson who was employed as an investment counselor by a real estate broker argued she was acting as an employee and not a licensee in soliciting private lenders for the broker. The court rejected this argument noting that the mere act of soliciting lenders to make loans required a license, and that the salesperson had done much more including communicating terms and conditions to lenders, accepting and rejecting offers, transmitting counteroffers, and executing promissory notes on the underlying transactions. It must also be noted that Business and Professions Code section 10157 provides no real estate license gives authority to do any act specified to any person other than the person to whom the license is issued. (See also 68 Ops.Cal.Atty.Gen. 286, 290-292 (1985) [exemption for bank employees from licensing requirements did not extend to activities of wholly owned subsidiaries solely by reason of their status as subsidiaries].)

Negotiation and solicitation were inherent in Fox and Giurlani's efforts to establish an agreement to enter, extend or renew a loan. Their efforts were directed toward obtaining agreement to the terms of such loans. Fox and Giurlani's communications with borrowers covered virtually every aspect of making the loans, including terms and conditions on which the loan would be made, funding, set asides, title reports, and commitment letters. Moreover, Fox and Giurlani were authorized to and did sign forms obligating Primecore to make loans. It is therefore found that Fox violated Business and Professions Code section 10130 by engaging in activities for which a license is required while unlicensed. It is also found that Primecore violated Business and Professions Code section 10137 by employing and compensating an unlicensed person to perform acts for which a real estate license is required.

37. 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.

#### Prior Disciplinary Action

38. In early 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. On February 26, 1999, following the audit, the Real Estate Commissioner issued an order to Primecore to cease from violating specified provisions of the Real Estate Law. The Commissioner also filed an

accusation against Primecore and Heren alleging numerous violations of the Real Estate Law and regulations. After an administrative hearing held June 7 through 10, 1999, the Administrative Law Judge issued a decision in which she found the following violations:

- (a) Violation of section 2831.1 of Title 10 of the California Code of Regulations – failure to maintain separate records for each beneficiary or transaction, accounting for all trust funds received, deposited and disbursed from bank and trust accounts.
- (b) Violation of section 2831.2 of Title 10 of the California Code of Regulations – failure 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.
- (c) Violation of section 2832, subdivision (a) of Title 10 of the California Code of Regulations – failure to deposit trust funds entrusted to Primecore into a trust fund account in the name of Primcore as trustee at a bank or other financial institution.
- (d) Violation of section 2834 of Title 10 of the California Code of Regulations – authorizing unlicensed persons who did not have fidelity bond coverage to make withdrawals from bank and trust accounts.
- (e) Using and/or disbursing funds without the knowledge or consent of the owners of such funds (conversion).
- (f) Violation of section 2832.1 of Title 10 of the California Code of Regulations – failure to obtain the prior written consent of each owner of funds in bank and trust accounts to reduce the trust account balance below existing aggregate trust fund liability.
- (g) Violation of section 10229, subdivision (j)(3) of the Business and Professions Code – failure to file or cause to be filed accountant reports of inspection of Primecore's trust accounts with the Commissioner.
- (h) Violation of section 10234, subdivision (c) of the Business and Professions Code – failure 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.
- (i) Violation of section 10231.1 of the Business and Professions Code – retention of funds due and payable to lenders/investors upon repayment of loans by borrowers for more than sixty days without a written agreement with the lender/investor.

(j) Violation of section 10231.2 of the Business and Professions Code – failure to submit required documentation to the Department prior to making any representation, solicitation or presentation of a disclosure statement to a lender where 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.

The ALJ also found that Heren, as designated broker-officer of Primecore, had failed to provide reasonable supervision of Primecore's operations to ensure compliance with applicable law.

39. However, the ALJ also found significant factors in mitigation, including the fact Primecore had been operating successfully in essentially the same form under various names for over 20 years and had been subject to several prior Department audits without prior disciplinary action. Also considered were the prompt efforts by Heren and Fox after receiving notice of the violations (and prior to a hearing on the previous accusation) to bring their operations into compliance as quickly as possible, without interrupting business or harming their clients. Among other things, Heren and Fox obtained a fidelity bond to cover bank account signatories, they designated their bank accounts as trust accounts, they stopped accepting money from new individual investors, they tried to ensure that deeds of trust were properly assigned to lenders within ten days of receipt of funds, they began performing monthly reconciliations, and they contracted with an independent accountant to ensure Primecore's future accountant inspection reports would be timely filed. Primecore also took measures to reduce its out of trust balance, including matching investors with deeds of trust and offering some investors, who were identified as being out of trust, the opportunity to either shift to another loan or receive their money back. It was undisputed that during the audit period covered by the prior accusation no investor had 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>7</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 the prior disciplinary action was also disclosed. Investors were given an opportunity to exchange interests in deeds of trusts for shares in the REIT or they could buy shares for cash. Investors who elected not to participate in the REIT and not to be paid off were permitted to continue to hold assignments in deeds of trust sufficient to secure their investments; the \$30-32 million still invested in deeds of trust was held in a properly designated trust account.

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<sup>7</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.

40. Effective August 30, 1999, the Real Estate Commissioner revoked Primecore's corporate real estate license with the right to a restricted license. The Commissioner also revoked Heren's real estate broker license with the right to issuance of a restricted license upon terms and conditions.

#### Mitigation

41. Fox and Heren maintain they have always tried to comply with applicable law, and that when notified of any violation by the Department they promptly tried to correct it. For example, when the Department auditor advised Fox that the deed of trust and promissory note should be recorded in the name of the REIT in the first instance (rather than in the name of Primecore), the recommended practice was adopted the next day.

Heren and Fox also point out that several of the practices at issue in this proceeding were in effect at the time of the prior administrative hearing. For example, the REIT was advancing interest payments to deed of trust investors on unrelated loans in June 1999. The REIT would recoup interest payments when the loans were paid off. Neither Heren nor Fox were aware the Department considered this a potential violation until approximately February 2000. When the Department auditor notified Fox that this practice was a potential violation, Fox asked the Department auditor if Primecore should cease making monthly interest payments since the payments were not contractually required but were done as a gesture of goodwill. He said no. After the accusation in this matter was filed Primecore suspended monthly interest payments to investors.

Similarly, Fox and Giurlani were performing essentially the same functions of negotiating and arranging loans at the time of the prior accusation, and were never advised their conduct was violative of the real estate law. Fox and Giurlani believed they were in compliance with applicable law because they were acting on behalf of Primecore, which had a corporate real estate license.

Heren and Fox also deny any attempt to deceive with respect to the loan to Upside. They explain that they were advised by securities counsel that no disclosure to the Department was required because the right to self deal had been disclosed in the securities circular for the REIT, a copy of which was provided to the Department. They also contend there were never any actual shortages in the REIT or Trust Accounts because at least a \$3 million line of credit was available to Primecore to cover its financial obligations. Primecore also had an arrangement with its bank pursuant to which the bank would notify it daily of all drafts presented for payment prior to paying the drafts. This permitted Primecore to shift funds between accounts as necessary.

With respect to Primecore's deficient records, respondents explain that Primecore is using an adapted version of "Quick Books" with Access, which they believed complied with Department requirements. However, respondents are willing to make such additional changes to Primecore's computer accounting system as the Department requires.

Heren and Fox also represent that Primecore is willing to agree not to handle any trust funds if it is permitted to retain its license.

### LEGAL CONCLUSIONS

1. Cause for disciplinary action against Primecore exists pursuant to Business and Professions Code section 10177, subdivision (d), in conjunction with Title 10, California Code of Regulations section 2831 and Business and Professions Code section 10145 by reason of the matters set forth in Finding 19.
2. Cause for disciplinary action against Primecore 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 Finding 20.
3. Cause for disciplinary action against Primecore 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 Finding 21.
4. Cause for disciplinary action against Primecore 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 Finding 23.
5. Cause for disciplinary action against Primecore 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 25.
6. Cause for disciplinary action against Primecore exists pursuant to Business and Professions Code section 10176, subdivision (i) by reason of the matters set forth in Finding 28.
7. Cause for disciplinary action against Primecore exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Title 10, California Code of Regulations section 2834, subdivision (b) and Business and Professions Code section 10145 by reason of the matters set forth in Findings 5 and 10.
8. Cause for disciplinary action against Primecore exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Business and Professions Code section 10231 by reason of the matters set forth in Finding 29.

9. Cause for disciplinary action against Primecore 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 30.

10. Cause for disciplinary action against Primecore 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 32.

11. Cause for disciplinary action against Primecore exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Business and Professions Code section 10232.4, subdivision (a) by reason of the matters set forth in Finding 33.

12. Cause for disciplinary action against Primecore exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Business and Professions Code section 10234, subdivision (a) by reason of the matters set forth in Finding 31.

13. Cause for disciplinary action against Primecore exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Business and Professions Code section 10137 by reason of the matters set forth in Findings 34-36.

14. Cause for disciplinary action against Fox exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Business and Professions Code section 10130 by reason of the matters set forth in Findings 34-36.

15. Cause for disciplinary action against Heren 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 37.

16. The evidence established that during the December 15, 1999, through February 11, 2000 audit period Primecore failed to handle its trust fund or maintain its trust fund records in compliance with applicable law. In mitigation, these violations appear to be the result of Primecore's transition to a REIT. There was no evidence Primecore's principals were using trust funds for their private expenses; rather it appears the money was primarily used to cover obligations to investors. In addition, once violations were brought to the attention of Primecore's principals, steps were promptly taken to correct the deficiencies, with special attention being given to protecting investors from loss. It is undisputed that no investor suffered any loss of funds. Nor was it established that Primecore's principals intentionally engaged in dishonest practices in dealing with borrowers and lenders. Most of their violations were technical and apparently unintentional. It must also be noted that the REIT has been Primecore's sole lender since April 30, 1999, primarily to avoid the types of trust fund violations



which were present in the instant case. Respondents are in the process of paying off all remaining individual investors and do not plan to accept individual investors on loans or handle trust funds in the future. Clearly Primecore and its principals were negligent in their handling of trust funds and discipline is warranted. However, given the absence of intentional dishonesty, the change to the REIT as the sole lender and Primecore's willingness not to handle trust funds in the future, it is determined that it would not be against the public interest to permit respondents Primecore, Heren and Fox to continue to hold real estate licenses upon specific terms and conditions. Among those conditions must be a prohibition against their handling trust funds, and a period of actual suspension to impress upon respondents the importance of obtaining knowledge of and complying with applicable Real Estate Law and regulations.

#### ORDER

All licenses and licensing rights of respondents Primecore Funding Group, Inc., Michael Alfred Heren and Susan Mary Fox under the Real Estate Law are revoked; provided, however, restricted real estate broker licenses shall be issued to respondents Primecore Funding Group, Inc. and Michael Alfred Heren, and a restricted real estate salesperson license shall be issued to respondent Susan Mary Fox 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. Any restricted licenses issued to respondents Primecore Funding Group, Inc., Michael Alfred Heren and Susan Mary Fox pursuant to this Decision shall each be suspended for forty-five (45) days from the date of issuance of said restricted licenses.
2. Respondents Primecore Funding Group, Inc., Michael Alfred Heren and Susan Mary Fox shall not accept, handle, manage or otherwise accept responsibility for trust funds during the term of the restricted licenses.
3. The restricted licenses issued to respondents may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondents Heren or Fox's conviction or plea of nolo contendere to a crime which is substantially related to respondents' fitness or capacity as a real estate licensee.
4. 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.

5. Respondent Fox shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
  - (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
  - (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
6. Respondents Heren and Fox shall each, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that each 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 either respondent fails to satisfy this condition, the Commissioner may order the suspension of that respondent's restricted license until the respondent presents such evidence. The Commissioner shall afford each respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
7. Respondents Heren and Fox shall each, 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 either respondent fails to satisfy this condition, the Commissioner may order suspension of that respondent's license until that respondent passes the examination.
8. Respondents Primecore Funding Group, Inc. and Michael Alfred Heren 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.

9. In the event the Commissioner determines that an audit is necessary to verify that respondents have corrected the trust fund violations found herein and/or are no longer handling trust funds, 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.
10. Respondents Primecore Funding Group, Inc., Michael Alfred Heren and Susan Mary Fox 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 four (4) years have elapsed from the effective date of this Decision.

DATED: November 3, 2000

  
CHERYL R. TOMPKIN  
Administrative Law Judge  
Office of Administrative Hearings

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FILED  
JUN 30 2000

DEPARTMENT OF REAL ESTATE

*By 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-7824 SF
12 PRIMECORE FUNDING GROUP, INC.,	)	SECOND AMENDED
13 MICHAEL ALFRED HEREN, AND	)	<u>ACCUSATION</u>
14 SUSAN MARY FOX,	)	
15 Respondents.	)	

16 The Complainant, Steven J. Ellis, a Deputy Real Estate  
17 Commissioner of the State of California, for cause of Accusation  
18 against PRIMECORE FUNDING GROUP, INC. (herein "PRIMECORE"), a  
19 California corporation, MICHAEL ALFRED HEREN (herein "HEREN"),  
20 individually and as designated officer-broker of PRIMECORE, and  
21 SUSAN MARY FOX (herein "FOX") (herein "Respondents"), is informed  
22 and alleges as follows:

23 I

24 The Complainant, Steven J. Ellis, a Deputy Real Estate  
25 Commissioner of the State of California, makes this Accusation in  
26 his official capacity.

27 ///

1 II

2 At all times herein mentioned, PRIMECORE was and now is  
3 licensed by the Department of Real Estate of the State of  
4 California (hereinafter "the Department") as a corporate real  
5 estate broker by and through HEREN as designated officer-broker  
6 of PRIMECORE to qualify said corporation and to act for said  
7 corporation as a real estate broker. At all times mentioned  
8 herein since August 30, 1999, PRIMECORE's corporate real estate  
9 broker license has been and now is restricted pursuant to the  
10 provisions of Section 10156.7 of the Code and to enumerated  
11 additional terms, conditions and restrictions imposed under  
12 authority of Section 10156.6 of the Code.

13 III

14 At all times herein mentioned, HEREN was and now is  
15 licensed by the Department as a real estate broker, individually  
16 and as designated officer-broker of PRIMECORE. As said  
17 designated officer-broker, HEREN was at all times mentioned  
18 herein responsible pursuant to Section 10159.2 of the Code for  
19 the supervision of the activities of the officers, agents, real  
20 estate licensees and employees of PRIMECORE for which a license  
21 is required. At all times mentioned herein since August 30,  
22 1999, HEREN's real estate broker license has been and now is  
23 restricted pursuant to the provisions of Section 10156.7 of the  
24 Code and to enumerated additional terms, conditions and  
25 restrictions imposed under authority of Section 10156.6 of the  
26 Code.

27 ///

1 IV

2 At all times mentioned herein from and after  
3 February 2, 2000, FOX was and now is presently licensed and/or  
4 has license rights under the Real Estate Law as a real estate  
5 salesperson.

6 V

7 Whenever reference is made in an allegation in this  
8 Accusation to an act or omission of PRIMECORE, such allegation  
9 shall be deemed to mean that the officers, directors, employees,  
10 agents and real estate licensees employed by or associated with  
11 PRIMECORE committed such act or omission while engaged in the  
12 furtherance of the business or operations of PRIMECORE and while  
13 acting within the course and scope of their corporate authority  
14 and employment.

15 VI

16 At all times herein mentioned, Respondents engaged in  
17 the business of, acted in the capacity of, advertised, or assumed  
18 to act as real estate brokers within the State of California  
19 within the meaning of Sections 10131(d) and 10131(e) of the Code,  
20 including the operation and conduct of a mortgage loan brokerage  
21 business with the public wherein, on behalf of others, for  
22 compensation or in expectation of compensation, Respondents  
23 solicited lenders and borrowers for loans secured directly or  
24 collaterally by liens on real property, wherein Respondents  
25 arranged, negotiated, processed, and consummated such loans,  
26 wherein Respondents serviced and collected payments on such  
27 loans, and wherein Respondents sold or offered to sell, bought or

1 offered to buy, or exchanged or offered to exchange promissory  
2 notes secured directly or collaterally by a lien on real property  
3 and performed services for the holders thereof.

4 VII

5 In so acting as mortgage loan brokers, as described in  
6 Paragraph VI above, Respondents accepted or received funds in  
7 trust (hereinafter "trust funds") from or on behalf of lenders or  
8 investors, borrowers, and others in connection with the  
9 solicitation, negotiation, processing, packaging, and  
10 consummation of mortgage loans by Respondents, in connection with  
11 the servicing and collection of payments on such loans by  
12 Respondents, and in connection with the sale, purchase, and  
13 exchange of secured promissory notes by Respondents, as alleged  
14 herein.

15 VIII

16 The aforesaid trust funds accepted or received by  
17 Respondents were deposited or caused to be deposited by  
18 Respondents into one or more bank accounts (hereinafter "trust  
19 fund accounts") maintained by Respondents for the handling of  
20 trust funds, including but not necessarily limited to the  
21 following accounts maintained by Respondents:

22 (a) The "Primecore Funding Group, Inc. Clearing Trust  
23 Account", Account No. 1562628, maintained by Respondents at the  
24 San Jose, California, branch of Heritage Bank of Commerce  
25 (hereinafter "Trust #1");

26 (b) The "Primecore Mortgage Trust, Inc. General  
27 Account", Account No. 1563634, maintained by Respondents at the

1 San Jose, California, branch of Heritage Bank of Commerce  
2 (hereinafter "REIT #1");

3 (c) The "Primecore Mortgage Trust, Inc. Disbursement  
4 Account", Account No. 1563642, maintained by Respondents at the  
5 San Jose, California, branch of Heritage Bank of Commerce  
6 (hereinafter "REIT #2");

7 (c) The "Primecore Mortgage Trust, Inc. Dividend  
8 Account", Account No. 1563626, maintained by Respondents at the  
9 San Jose, California, branch of Heritage Bank of Commerce  
10 (hereinafter "REIT #3");

11 (d) The "Primecore Funding Group, Inc. Interest Trust  
12 Account", Account No. 04136-11942, maintained by Respondents at  
13 the Menlo Park, California, branch of Bank of America  
14 (hereinafter "Trust #2"); and

15 (e) The "Primecore Mortgage Trust, Inc. Dividend  
16 Account", Account No. 04130-00451, maintained by Respondents at  
17 the Menlo Park, California, branch of Bank of America  
18 (hereinafter "REIT #4").

19 IX

20 Between on or about September 1, 1999 and on or about  
21 December 31, 1999, in connection with the collection and  
22 disbursement of said trust funds, PRIMECORE:

23 (a) Failed to maintain a record of all trust funds  
24 received into and disbursed from Trust #1 in the manner required  
25 by Section 2831 of Chapter 6, Title 10, California Code of  
26 Regulations (hereinafter "the Regulations"), in that PRIMECORE's

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1 record of trust funds received into and disbursed from Trust #1  
2 failed to identify from whom trust funds were received;

3 (b) Failed to maintain a separate record for each  
4 beneficiary or transaction, accounting therein for all said trust  
5 funds received, deposited into, and disbursed from Trust #1 and  
6 Trust #2, in the manner required by Section 2831.1 of the  
7 Regulations, in that PRIMECORE's separate beneficiary or  
8 transaction records for Trust #1 and Trust #2 failed to identify  
9 the transactions and the parties to the transactions;

10 (c) Failed to maintain a separate record for each  
11 beneficiary or transaction, accounting therein for all said trust  
12 funds received, deposited into, and disbursed from REIT #1;

13 (d) Failed to deposit trust funds entrusted to  
14 PRIMECORE into a trust fund account in the name of PRIMECORE as  
15 trustee at a bank or other financial institution, in conformance  
16 with Section 2832(a) of the Regulations, in that PRIMECORE  
17 deposited such funds into REIT #1, which account was not  
18 maintained in the name of PRIMECORE as trustee;

19 (e) Caused, suffered or permitted the aggregate  
20 balance of funds in Trust #1 and Trust #2, as tabulated below, to  
21 be reduced to amounts which, as of the dates tabulated below, was  
22 approximately the amounts tabulated below less than the aggregate  
23 liability of PRIMECORE to all owners of such funds, without first  
24 obtaining the written consent of each and every owner of such  
25 funds:

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	<u>DATE</u>	<u>ACCOUNT</u>	<u>AMOUNT</u>
(1)	11/17/99	Trust #1	\$275,000.00
(2)	10/18/99	Trust #1	\$180,000.00
(3)	09/24/99	Trust #1	\$35,000.00
(4)	12/31/99	Trust #2	\$423.19
(5)	11/07/99	Trust #2	\$168,300.95
(6)	10/12/99	Trust #2	\$179,800.54
(7)	09/09/99	Trust #3	\$204,445.27

(f) On or about the dates tabulated below, 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 Trust #1:

	<u>DATE</u>	<u>ACCOUNT</u>	<u>AMOUNT</u>
(1)	11/17/99	Trust #1	\$275,000.00
(2)	10/18/99	Trust #1	\$180,000.00

and;

(g) Authorized FOX, then an unlicensed person without fidelity bond coverage equal to the maximum amount of trust funds to which FOX had access at any one time, to make disbursements from Trust #1, Trust #2, and REIT #1, in violation of Section 2834(b) of the Regulations, and authorized Michael Rider, then an unlicensed person without fidelity bond coverage equal to the maximum amount of trust funds to which Michael Rider had access at any one time, to make disbursements from Trust #1 and REIT #1, in violation of Section 2834(b) of the Regulations.

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1 X

2 PRIMECORE's acts and omissions described in Paragraph  
3 IX(f), above, constituted fraud and/or dishonest dealing.

4 XI

5 Between on or about September 1, 1999 and on or about  
6 December 31, 1999, in course of the mortgage loan servicing and  
7 trust fund handling activities described in paragraph VI, above,  
8 PRIMECORE:

9 (a) Accepted the amounts tabulated below on, or about  
10 the dates tabulated below, from Primecore Mortgage Trust, Inc.,  
11 a prospective purchaser or lender, as and for advances on behalf  
12 of borrowers for interest payments owed by the borrowers on  
13 mortgage loans being serviced by PRIMECORE, and not as to a  
14 specific loan or note secured by a deed of trust that PRIMECORE  
15 owned, was authorized to negotiate, or was authorized to buy:

	<u>DATE</u>	<u>AMOUNT</u>
17	(1) 09/09/99	\$210,250.44
18	(2) 10/12/99	\$179,800.54
19	(3) 11/10/99	\$168,300.95
20	(4) 12/08/99	\$156,128.21

21 (b) Retained funds payable according to the terms of  
22 promissory notes secured by real property, in each of the  
23 transactions tabulated below, for a period longer than 25 days,  
24 in violation of Section 10231.1 of the Code, without first  
25 obtaining the written consent of each and every owner of such  
26 funds:

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	<u>DATE RECEIVED</u>	<u>DATE PAID</u>	<u>AMOUNT</u>	<u>OWNER</u>
(1)	08/20/99	11/9/99	\$25,000.00	William Kronenfeld
(2)	08/20/99	11/9/99	\$25,000.00	Herman Niethamer

(c) Failed to provide the Department the statement required by Section 10231.2 of the Code prior to soliciting and accepting funds for loan number 2404, a \$9,600,000.00 loan to Upside Limited LLC to be secured by real property at Gordon Avenue and Valley Street in Los Altos, California, in which FOX and HEREN, each a person with 10 percent or greater ownership interest in PRIMECORE, obtained the use or benefit of the funds;

(d) Failed to provide lenders the statement required by Section 10232.4(a) of the Code; and

(e) Caused trust deeds securing mortgage loans negotiated by PRIMECORE to be recorded in the name of PRIMECORE as beneficiary; and not in the name of the lender as beneficiary, in violation of Section 10234(a) of the Code.

XII

Between on or about September 1, 1999 and on or about December 31, 1999, in course of the mortgage loan brokerage and servicing activities described in paragraph VI, above, PRIMECORE employed FOX and Phil Giurlani (hereinafter "Giurlani") to perform the acts and conduct the activities described in Paragraph VI, above, and compensated FOX and Giurlani for such activities and employment.

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XIII

At no time mentioned herein prior to February 2, 2000 was FOX licensed by the Department either as a real estate broker or as a real estate salesperson. At no time mentioned herein was Giurlani licensed by the Department either as a real estate broker or as a real estate salesperson.

XIV

Between on or about September 1, 1999 and on or about December 31, 1999, on or about the dates specified below, in each transaction tabulated below, and in numerous other transactions, in course of PRIMECORE's mortgage loan brokerage and mortgage loan servicing activities described in paragraph VI, above, and in course of Giurlani's and FOX's employment by PRIMECORE described in Paragraph XII, above, FOX and Giurlani negotiated and arranged the loans tabulated below secured by deeds of trust encumbering real property within the State of California:

(a) On or about September 29, 1999, Fox negotiated and arranged an extension of the term of loan number 2287, a loan secured by real property at 42 Vista Del Sol, Mill Valley, California, to WB Investments, LLC;

(b) On or about September 16, 1999, Giurlani negotiated and arranged an extension of the term of loan number 2294, a loan secured by real property at 17586 Vineland Avenue, Sunnyvale, California, to Price Development Group, Inc.;

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1 (c) On or about September 8, 1999, Giurlani negotiated  
2 and arranged an extension of the term of loan number 2303, a loan  
3 secured by real property at 3491 Park Avenue, Palo Alto,  
4 California, to Vista Goebel LLC;

5 (d) On or about November 17, 1999, Fox negotiated and  
6 arranged an extension of the term of loan number 2167, a loan  
7 secured by real property at Lot 3, Sky Road, Tiburon, California,  
8 to Masma Construction, Inc.;

9 (e) On or about September 1, 1999, FOX negotiated and  
10 arranged an extension of the term of loan number 2262, a loan  
11 secured by real property at 26 Vista Del Sol, Mill Valley,  
12 California, to WB Investments, LLC;

13 (f) On or about September 10, 1999, FOX and Giurlani  
14 negotiated and arranged loan number 2401, a loan secured by real  
15 property at 1736 Waverly Street, Palo Alto, California, from  
16 Primecore Mortgage Trust, Inc. to Gary Meek and James Sagorac;

17 (g) On or about September 1, 1999, FOX and Giurlani  
18 negotiated and arranged loan number 2403, a loan secured by real  
19 property at 2315 Crest Lane, Menlo Park, California, from  
20 Primecore Mortgage Trust, Inc. to Area Luxury Homes, Crest 1,  
21 LLC;

22 (h) On or about November 1, 1999, FOX and Giurlani  
23 negotiated and arranged loan number 2404, a loan secured by real  
24 property at Gordon Avenue and Valley Street, Los Altos,  
25 California, from Primecore Mortgage Trust, Inc. to Upside  
26 Unlimited LLC;

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1 (i) On or about September 23, 1999, FOX and Giurlani  
2 negotiated and arranged loan number 2405, a loan secured by real  
3 property at 3159 Oak Knoll Drive, Redwood City, California, from  
4 Primecore Mortgage Trust, Inc. to Emerald Canyon LLC;

5 (j) On or about September 28, 1999, FOX and Giurlani  
6 negotiated and arranged loan number 2406, a loan secured by real  
7 property at 990 Lincoln Avenue, Palo Alto, California, from  
8 Primecore Mortgage Trust, Inc. to Gary Meek and James Sagorac;

9 (k) On or about November 17, 1999, FOX and Giurlani  
10 negotiated and arranged loan number 2407, a loan secured by real  
11 property at Academy Heights Subdivision, San Rafael, California,  
12 from Primecore Mortgage Trust, Inc. to J. G. Stich;

13 (l) On or about November 29, 1999, FOX and Giurlani  
14 negotiated and arranged loan number 2408, a loan secured by real  
15 property at 321 Summit Avenue, Mill Valley, California, from  
16 Primecore Mortgage Trust, Inc. to Elizabeth Suzuki and Ron  
17 Sutton;

18 (m) On or about November 1, 1999, FOX and Giurlani  
19 negotiated and arranged loan number 2409, a loan secured by real  
20 property at 2 Wood Lane, Menlo Park, California, from Primecore  
21 Mortgage Trust, Inc. to Joseph Montalbo and Joann Ferguson;

22 (n) On or about December 17, 1999, FOX and Giurlani  
23 negotiated and arranged loan number 2410, a loan secured by real  
24 property at Lot 19, Blue Oaks Subdivision, Portola Valley,  
25 California, from Primecore Mortgage Trust, Inc. to Pacific  
26 Peninsula Group, Inc.; and

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1 (o) On or about November 15, 1999, FOX and Giurlani  
2 negotiated and arranged loan number 2412, a loan secured by real  
3 property at 1st Street West, Sonoma, California, from Primecore  
4 Mortgage Trust, Inc. to Franklin Street LLC.

5 XV

6 In acting as described in Paragraphs XII through XIII,  
7 FOX violated Section 10130 of the Code, and PRIMECORE violated  
8 Section 10137 of the Code.

9 XVI

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

14 PRIOR ADMINISTRATIVE PROCEEDINGS

15 XVII

16 On February 26, 1999, in Case No. H-7677 SF, the Real  
17 Estate Commissioner issued an order to PRIMECORE and to HEREN:

18 (a) Requiring PRIMECORE to desist and refrain from  
19 violating Sections 10229, 10231.1, 10231.2, 10234 and 10240 of  
20 the Code, to desist and refrain from violating Section 10145 of  
21 the Code and Sections 2831.1, 2831.2, 2832, 2832.1 and 2834 of  
22 the Regulations, and to desist and refrain from disbursing trust  
23 funds received for any purpose for which a real estate license is  
24 required if such disbursement will cause the aggregate balance of  
25 funds entrusted to PRIMECORE to be reduced to an amount less than  
26 the aggregate liability of PRIMECORE to all owners of such funds

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1 without first obtaining the written consent of each and every  
2 owner of such funds; and

3 (b) Requiring HEREN to desist and refrain from  
4 violating Sections 10177(g) and 10177(h) of the Code.

5 PRIOR DISCIPLINARY PROCEEDINGS

6 XVIII

7 Effective August 30, 1999, in Case No. H-7676 SF:

8 (a) The Real Estate Commissioner revoked PRIMECORE's  
9 corporate real estate broker license with the right to the  
10 issuance of a restricted corporate real estate broker license  
11 upon terms and conditions, based in part upon a determination  
12 that PRIMECORE had violated Sections 10145, 10176(i), 10177(d),  
13 10229, 10231.1, 10231.2, 10234(c) and 10240 of the Code, and  
14 Sections 2831.1, 2831.2, 2832, 2832.1 and 2834 of the  
15 Regulations; and

16 (b) The Real Estate Commissioner revoked HEREN's real  
17 estate broker license with the right to the issuance of a  
18 restricted real estate broker license upon terms and conditions,  
19 based in part upon a determination that HEREN had violated  
20 Section 10177(g) and Section 10177(h) of the Code and Section  
21 10159.2 of the Code in conjunction with Section 10177(d) of the  
22 Code.

23 XIV

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

1           (a) As to Paragraph IX(a) and to PRIMECORE under  
2 Section 10145 of the Code and Section 2831 of the Regulations in  
3 conjunction with Section 10177(d) of the Code;  
4           (b) As to Paragraph IX(b) and to PRIMECORE under  
5 Section 10145 of the Code and Section 2831.1 of the Regulations  
6 in conjunction with Section 10177(d) of the Code;  
7           (c) As to Paragraph IX(c) and to PRIMECORE under  
8 Section 10145 of the Code and Section 2831.1 of the Regulations  
9 in conjunction with Section 10177(d) of the Code;  
10           (d) As to Paragraph IX(d) and to PRIMECORE under  
11 Section 10145 of the Code and Section 2832(a) of the Regulations  
12 in conjunction with Section 10177(d) of the Code; and  
13           (e) As to Paragraph IX(e) and to PRIMECORE under  
14 Section 10145 of the Code and Section 2832.1 of the Regulations  
15 in conjunction with Section 10177(d) of the Code;  
16           (f) As to Paragraph IX(f) and to PRIMECORE under  
17 Section 10176(i) of the Code;  
18           (g) As to Paragraph IX(g) and to PRIMECORE under  
19 Section 10145 of the Code and Section 2834(b) of the Regulations  
20 in conjunction with Section 10177(d) of the Code;  
21           (h) As to Paragraph XI(a) and to PRIMECORE under  
22 Section 10231 of the Code in conjunction with Section 10177(d) of  
23 the Code;  
24           (i) As to Paragraph XI(b) and to PRIMECORE under  
25 Section 10231.1 of the Code in conjunction with Section 10177(d)  
26 of the Code;  
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1           (j) As to Paragraph XI(c) and to PRIMECORE under  
2 Section 10231.2 of the Code in conjunction with Section 10177(d)  
3 of the Code;

4           (k) As to Paragraph XI(d) and to PRIMECORE under  
5 Section 10232.4(a) of the Code in conjunction with Section  
6 10177(d) of the Code;

7           (l) As to Paragraph XI(e) and to PRIMECORE under  
8 Section 10234(a) of the Code in conjunction with Section 10177(d)  
9 of the Code;

10           (m) As to Paragraphs XII through XV, inclusive, and to  
11 PRIMECORE under Section 10137 of the Code in conjunction with  
12 Section 10177(d) of the Code;

13           (n) As to Paragraphs XII through XV, inclusive, and to  
14 FOX under Section 10130 of the Code in conjunction with Section  
15 10177(d) of the Code; and

16           (o) As to Paragraph XVI and to HEREN under Section  
17 10177(g) and/or Section 10177(h) of the Code and Section 10159.2  
18 of the Code in conjunction with Section 10177(d) of the Code.

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1 WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof a decision be rendered imposing disciplinary action  
4 against all licenses and license rights of Respondents under the  
5 Real Estate Law (Part 1 of Division 4 of the Business and  
6 Professions Code) and for such other and further relief as may be  
7 proper under other applicable provisions of law.

8  
9   
10 STEVEN J. ELLIS  
Deputy Real Estate Commissioner

11 Dated at Oakland, California,  
12 this 30<sup>th</sup> day of June, 2000.

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  
MAY 24 2000

DEPARTMENT OF REAL ESTATE

By *Laurie A. Zim*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of	)	No. H-7824 SF
	)	
12 PRIMECORE FUNDING GROUP, INC.,	)	FIRST AMENDED
13 MICHAEL ALFRED HEREN, AND	)	<u>ACCUSATION</u>
14 SUSAN MARY FOX,	)	
	)	
15 Respondents.	)	

16 The Complainant, Peter J. Saverien, a Deputy Real  
17 Estate Commissioner of the State of California, for cause of  
18 Accusation against PRIMECORE FUNDING GROUP, INC. (herein  
19 "PRIMECORE"), a California corporation, MICHAEL ALFRED HEREN  
20 (herein "HEREN"), individually and as designated officer-broker  
21 of PRIMECORE, and SUSAN MARY FOX (herein "FOX") (herein  
22 "Respondents"), is informed and alleges as follows:

23 I

24 The Complainant, Peter J. Saverien, a Deputy Real  
25 Estate Commissioner of the State of California, makes this  
26 Accusation in his official capacity.

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1 II

2 At all times herein mentioned, PRIMECORE was and now is  
3 licensed by the Department of Real Estate of the State of  
4 California (hereinafter "the Department") as a corporate real  
5 estate broker by and through HEREN as designated officer-broker  
6 of PRIMECORE to qualify said corporation and to act for said  
7 corporation as a real estate broker. At all times mentioned  
8 herein since August 30, 1999, PRIMECORE's corporate real estate  
9 broker license has been and now is restricted pursuant to the  
10 provisions of Section 10156.7 of the Code and to enumerated  
11 additional terms, conditions and restrictions imposed under  
12 authority of Section 10156.6 of the Code.

13 III

14 At all times herein mentioned, HEREN was and now is  
15 licensed by the Department as a real estate broker, individually  
16 and as designated officer-broker of PRIMECORE. As said  
17 designated officer-broker, HEREN was at all times mentioned  
18 herein responsible pursuant to Section 10159.2 of the Code for  
19 the supervision of the activities of the officers, agents, real  
20 estate licensees and employees of PRIMECORE for which a license  
21 is required. At all times mentioned herein since August 30,  
22 1999, HEREN's real estate broker license has been and now is  
23 restricted pursuant to the provisions of Section 10156.7 of the  
24 Code and to enumerated additional terms, conditions and  
25 restrictions imposed under authority of Section 10156.6 of the  
26 Code.

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1 IV

2 At all times mentioned herein from and after  
3 February 2, 2000, FOX was and now is presently licensed and/or  
4 has license rights under the Real Estate Law as a real estate  
5 salesperson.

6 V

7 Whenever reference is made in an allegation in this  
8 Accusation to an act or omission of PRIMECORE, such allegation  
9 shall be deemed to mean that the officers, directors, employees,  
10 agents and real estate licensees employed by or associated with  
11 PRIMECORE committed such act or omission while engaged in the  
12 furtherance of the business or operations of PRIMECORE and while  
13 acting within the course and scope of their corporate authority  
14 and employment.

15 VI

16 At all times herein mentioned, Respondents engaged in  
17 the business of, acted in the capacity of, advertised, or assumed  
18 to act as real estate brokers within the State of California  
19 within the meaning of Sections 10131(d) and 10131(e) of the Code,  
20 including the operation and conduct of a mortgage loan brokerage  
21 business with the public wherein, on behalf of others, for  
22 compensation or in expectation of compensation, Respondents  
23 solicited lenders and borrowers for loans secured directly or  
24 collaterally by liens on real property, wherein Respondents  
25 arranged, negotiated, processed, and consummated such loans,  
26 wherein Respondents serviced and collected payments on such  
27 loans, and wherein Respondents sold or offered to sell, bought or

1 offered to buy, or exchanged or offered to exchange promissory  
2 notes secured directly or collaterally by a lien on real property  
3 and performed services for the holders thereof.

4 VII

5 In so acting as mortgage loan brokers, as described in  
6 Paragraph VI above, Respondents accepted or received funds in  
7 trust (hereinafter "trust funds") from or on behalf of lenders or  
8 investors, borrowers, and others in connection with the  
9 solicitation, negotiation, processing, packaging, and  
10 consummation of mortgage loans by Respondents, in connection with  
11 the servicing and collection of payments on such loans by  
12 Respondents, and in connection with the sale, purchase, and  
13 exchange of secured promissory notes by Respondents, as alleged  
14 herein.

15 VIII

16 The aforesaid trust funds accepted or received by  
17 Respondents were deposited or caused to be deposited by  
18 Respondents into one or more bank accounts (hereinafter "trust  
19 fund accounts") maintained by Respondents for the handling of  
20 trust funds, including but not necessarily limited to the  
21 following accounts maintained by Respondents:

22 (a) The "Primecore Funding Group, Inc. Clearing Trust  
23 Account", Account No. 1562628, maintained by Respondents at the  
24 San Jose, California, branch of Heritage Bank of Commerce  
25 (hereinafter "Trust #1");

26 (b) The "Primecore Mortgage Trust, Inc. General  
27 Account", Account No. 1563634, maintained by Respondents at the



1 San Jose, California, branch of Heritage Bank of Commerce  
2 (hereinafter "REIT #1");

3 (c) The "Primecore Mortgage Trust, Inc. Disbursement  
4 Account", Account No. 1563642, maintained by Respondents at the  
5 San Jose, California, branch of Heritage Bank of Commerce  
6 (hereinafter "REIT #2");

7 (c) The "Primecore Mortgage Trust, Inc. Dividend  
8 Account", Account No. 1563626, maintained by Respondents at the  
9 San Jose, California, branch of Heritage Bank of Commerce  
10 (hereinafter "REIT #3");

11 (d) The "Primecore Funding Group, Inc. Interest Trust  
12 Account", Account No. 04136-11942, maintained by Respondents at  
13 the Menlo Park, California, branch of Bank of America  
14 (hereinafter "Trust #2"); and

15 (e) The "Primecore Mortgage Trust, Inc. Dividend  
16 Account", Account No. 04130-00451, maintained by Respondents at  
17 the Menlo Park, California, branch of Bank of America  
18 (hereinafter "REIT #4").

19 IX

20 Between on or about September 1, 1999 and on or about  
21 December 31, 1999, in connection with the collection and  
22 disbursement of said trust funds, PRIMECORE:

23 (a) Failed to maintain a record of all trust funds  
24 received into and disbursed from Trust #1 in the manner required  
25 by Section 2831 of Chapter 6, Title 10, California Code of  
26 Regulations (hereinafter "the Regulations"), in that PRIMECORE's

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1 record of trust funds received into and disbursed from Trust #1  
2 failed to identify from whom trust funds were received;

3 (b) Failed to maintain a separate record for each  
4 beneficiary or transaction, accounting therein for all said trust  
5 funds received, deposited into, and disbursed from Trust #1 and  
6 Trust #2, in the manner required by Section 2831.1 of the  
7 Regulations, in that PRIMECORE's separate beneficiary or  
8 transaction records for Trust #1 and Trust #2 failed to identify  
9 the transactions and the parties to the transactions;

10 (c) Failed to maintain a separate record for each  
11 beneficiary or transaction, accounting therein for all said trust  
12 funds received, deposited into, and disbursed from REIT #1;

13 (d) Failed to deposit trust funds entrusted to  
14 PRIMECORE into a trust fund account in the name of PRIMECORE as  
15 trustee at a bank or other financial institution, in conformance  
16 with Section 2832(a) of the Regulations, in that PRIMECORE  
17 deposited such funds into REIT #1, which account was not  
18 maintained in the name of PRIMECORE as trustee;

19 (e) Caused, suffered or permitted the aggregate  
20 balance of funds in Trust #1 and Trust #2, as tabulated below, to  
21 be reduced to amounts which, as of the dates tabulated below, was  
22 approximately the amounts tabulated below less than the aggregate  
23 liability of PRIMECORE to all owners of such funds, without first  
24 obtaining the written consent of each and every owner of such  
25 funds:

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	<u>DATE</u>	<u>ACCOUNT</u>	<u>AMOUNT</u>
(1)	11/17/99	Trust #1	\$275,000.00
(2)	10/18/99	Trust #1	\$180,000.00
(3)	09/24/99	Trust #1	\$35,000.00
(4)	12/31/99	Trust #2	\$423.19
(5)	11/07/99	Trust #2	\$168,300.95
(6)	10/12/99	Trust #2	\$179,800.54
(7)	09/09/99	Trust #3	\$204,445.27

(f) Authorized FOX, then an unlicensed person without fidelity bond coverage equal to the maximum amount of trust funds to which FOX had access at any one time, to make disbursements from Trust #1, Trust #2, and REIT #1, in violation of Section 2834(b) of the Regulations, and authorized Michael Rider, then an unlicensed person without fidelity bond coverage equal to the maximum amount of trust funds to which Michael Rider had access at any one time, to make disbursements from Trust #1 and REIT #1, in violation of Section 2834(b) of the Regulations;

X

Between on or about September 1, 1999 and on or about December 31, 1999, in course of the mortgage loan servicing and trust fund handling activities described in paragraph VI, above, PRIMECORE:

(a) Accepted the amounts tabulated below on, or about the dates tabulated below, from Primecore Mortgage Trust, Inc., a prospective purchaser or lender, as and for advances on behalf of borrowers for interest payments owed by the borrowers on mortgage loans being serviced by PRIMECORE, and not as to a

specific loan or note secured by a deed of trust that PRIMECORE owned, was authorized to negotiate, or was authorized to buy:

	<u>DATE</u>	<u>AMOUNT</u>
(1)	09/09/99	\$210,250.44
(2)	10/12/99	\$179,800.54
(3)	11/10/99	\$168,300.95
(4)	12/08/99	\$156,128.21

(b) Retained funds payable according to the terms of promissory notes secured by real property, in each of the transactions tabulated below, for a period longer than 25 days, in violation of Section 10231.1 of the Code, without first obtaining the written consent of each and every owner of such funds:

	<u>DATE RECEIVED</u>	<u>DATE PAID</u>	<u>AMOUNT</u>	<u>OWNER</u>
(1)	08/20/99	11/9/99	\$25,000.00	William Kronenfeld
(2)	08/20/99	11/9/99	\$25,000.00	Herman Niethamer

(c) Failed to provide the Department the statement required by Section 10231.2 of the Code prior to soliciting and accepting funds for loan number 2404, a \$9,600,000.00 loan to Upside Limited LLC to be secured by real property at Gordon Avenue and Valley Street in Los Altos, California, in which FOX and HEREN, each a person with 10 percent or greater ownership interest in PRIMECORE, obtained the use or benefit of the funds;

(d) Failed to provide lenders the statement required by Section 10232.4(a) of the Code; and

///

1 (e) Caused trust deeds securing mortgage loans  
2 negotiated by PRIMECORE to be recorded in the name of PRIMECORE  
3 as beneficiary, and not in the name of the lender as beneficiary,  
4 in violation of Section 10234(a) of the Code.

5 XI

6 Between on or about September 1, 1999 and on or about  
7 December 31, 1999, in course of the mortgage loan brokerage and  
8 servicing activities described in paragraph VI, above, PRIMECORE  
9 employed FOX and Phil Giurlani (hereinafter "Giurlani") to  
10 perform the acts and conduct the activities described in  
11 Paragraph VI, above, and compensated FOX and Giurlani for such  
12 activities and employment.

13 XII

14 At no time mentioned herein prior to February 2, 2000  
15 was FOX licensed by the Department either as a real estate broker  
16 or as a real estate salesperson. At no time mentioned herein was  
17 Giurlani licensed by the Department either as a real estate  
18 broker or as a real estate salesperson.

19 XIII

20 Between on or about September 1, 1999 and on or about  
21 December 31, 1999, on or about the dates specified below, in each  
22 transaction tabulated below, and in numerous other transactions,  
23 in course of PRIMECORE's mortgage loan brokerage and mortgage  
24 loan servicing activities described in paragraph VI, above, and  
25 in course of Giurlani's and FOX's employment by PRIMECORE  
26 described in Paragraph XI, above, FOX and Giurlani negotiated

27 ///

1 and arranged the loans tabulated below secured by deeds of trust  
2 encumbering real property within the State of California:

3 (a) On or about September 29, 1999, Fox negotiated and  
4 arranged an extension of the term of loan number 2287, a loan  
5 secured by real property at 42 Vista Del Sol, Mill Valley,  
6 California, to WB Investments, LLC;

7 (b) On or about September 16, 1999, Giurlani  
8 negotiated and arranged an extension of the term of loan number  
9 2294, a loan secured by real property at 17586 Vineland Avenue,  
10 Sunnyvale, California, to Price Development Group, Inc.;

11 (c) On or about September 8, 1999, Giurlani negotiated  
12 and arranged an extension of the term of loan number 2303, a loan  
13 secured by real property at 3491 Park Avenue, Palo Alto,  
14 California, to Vista Goebel LLC;

15 (d) On or about November 17, 1999, Fox negotiated and  
16 arranged an extension of the term of loan number 2167, a loan  
17 secured by real property at Lot 3, Sky Road, Tiburon, California,  
18 to Masma Construction, Inc.;

19 (e) On or about September 1, 1999, FOX negotiated and  
20 arranged an extension of the term of loan number 2262, a loan  
21 secured by real property at 26 Vista Del Sol, Mill Valley,  
22 California, to WB Investments, LLC;

23 (f) On or about September 10, 1999, FOX and Giurlani  
24 negotiated and arranged loan number 2401, a loan secured by real  
25 property at 1736 Waverly Street, Palo Alto, California, from  
26 Primecore Mortgage Trust, Inc. to Gary Meek and James Sagorac;

27 ///

1 (g) On or about September 1, 1999, FOX and Giurlani  
2 negotiated and arranged loan number 2403, a loan secured by real  
3 property at 2315 Crest Lane, Menlo Park, California, from  
4 Primecore Mortgage Trust, Inc. to Area Luxury Homes, Crest 1,  
5 LLC;

6 (h) On or about November 1, 1999, FOX and Giurlani  
7 negotiated and arranged loan number 2404, a loan secured by real  
8 property at Gordon Avenue and Valley Street, Los Altos,  
9 California, from Primecore Mortgage Trust, Inc. to Upside  
10 Unlimited LLC;

11 (i) On or about September 23, 1999, FOX and Giurlani  
12 negotiated and arranged loan number 2405, a loan secured by real  
13 property at 3159 Oak Knoll Drive, Redwood City, California, from  
14 Primecore Mortgage Trust, Inc. to Emerald Canyon LLC;

15 (j) On or about September 28, 1999, FOX and Giurlani  
16 negotiated and arranged loan number 2406, a loan secured by real  
17 property at 990 Lincoln Avenue, Palo Alto, California, from  
18 Primecore Mortgage Trust, Inc. to Gary Meek and James Sagorac;

19 (k) On or about November 17, 1999, FOX and Giurlani  
20 negotiated and arranged loan number 2407, a loan secured by real  
21 property at Academy Heights Subdivision, San Rafael, California,  
22 from Primecore Mortgage Trust, Inc. to J. G. Stich;

23 (l) On or about November 29, 1999, FOX and Giurlani  
24 negotiated and arranged loan number 2408, a loan secured by real  
25 property at 321 Summit Avenue, Mill Valley, California, from  
26 Primecore Mortgage Trust, Inc. to Elizabeth Suzuki and Ron  
27 Sutton;

1 (m) On or about November 1, 1999, FOX and Giurlani  
2 negotiated and arranged loan number 2409, a loan secured by real  
3 property at 2 Wood Lane, Menlo Park, California, from Primecore  
4 Mortgage Trust, Inc. to Joseph Montalbo and Joann Ferguson;

5 (n) On or about December 17, 1999, FOX and Giurlani  
6 negotiated and arranged loan number 2410, a loan secured by real  
7 property at Lot 19, Blue Oaks Subdivision, Portola Valley,  
8 California, from Primecore Mortgage Trust, Inc. to Pacific  
9 Peninsula Group, Inc.; and

10 (o) On or about November 15, 1999, FOX and Giurlani  
11 negotiated and arranged loan number 2412, a loan secured by real  
12 property at 1st Street West, Sonoma, California, from Primecore  
13 Mortgage Trust, Inc. to Franklin Street LLC.

14 XIV

15 In acting as described in Paragraphs XI through XIII,  
16 FOX violated Section 10130 of the Code, and PRIMECORE violated  
17 Section 10137 of the Code.

18 XV

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

23 PRIOR ADMINISTRATIVE PROCEEDINGS

24 XVI

25 On February 26, 1999, in Case No. H-7677 SF, the Real  
26 Estate Commissioner issued an order to PRIMECORE and to HEREN:

27 ///



1 (a) Requiring PRIMECORE to desist and refrain from  
2 violating Sections 10229, 10231.1, 10231.2, 10234 and 10240 of  
3 the Code, to desist and refrain from violating Section 10145 of  
4 the Code and Sections 2831.1, 2831.2, 2832, 2832.1 and 2834 of  
5 the Regulations, and to desist and refrain from disbursing trust  
6 funds received for any purpose for which a real estate license is  
7 required if such disbursement will cause the aggregate balance of  
8 funds entrusted to PRIMECORE to be reduced to an amount less than  
9 the aggregate liability of PRIMECORE to all owners of such funds  
10 without first obtaining the written consent of each and every  
11 owner of such funds; and

12 (b) Requiring HEREN to desist and refrain from  
13 violating Sections 10177(g) and 10177(h) of the Code.

14 PRIOR DISCIPLINARY PROCEEDINGS

15 XVII

16 Effective August 30, 1999, in Case No. H-7676 SF:

17 (a) The Real Estate Commissioner revoked PRIMECORE's  
18 corporate real estate broker license with the right to the  
19 issuance of a restricted corporate real estate broker license  
20 upon terms and conditions, based in part upon a determination  
21 that PRIMECORE had violated Sections 10145, 10176(i), 10177(d),  
22 10229, 10231.1, 10231.2, 10234(c) and 10240 of the Code, and  
23 Sections 2831.1, 2831.2, 2832, 2832.1 and 2834 of the  
24 Regulations; and

25 (b) The Real Estate Commissioner revoked HEREN's real  
26 estate broker license with the right to the issuance of a  
27 restricted real estate broker license upon terms and conditions,

1 based in part upon a determination that HEREN had violated  
2 Section 10177(g) and Section 10177(h) of the Code and Section  
3 10159.2 of the Code in conjunction with Section 10177(d) of the  
4 Code.

5 XVII

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

10 (a) As to Paragraph IX(a) and to PRIMECORE under  
11 Section 10145 of the Code and Section 2831 of the Regulations in  
12 conjunction with Section 10177(d) of the Code;

13 (b) As to Paragraph IX(b) and to PRIMECORE under  
14 Section 10145 of the Code and Section 2831.1 of the Regulations  
15 in conjunction with Section 10177(d) of the Code;

16 (c) As to Paragraph IX(c) and to PRIMECORE under  
17 Section 10145 of the Code and Section 2831.1 of the Regulations  
18 in conjunction with Section 10177(d) of the Code;

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

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

25 (f) As to Paragraph IX(f) and to PRIMECORE under  
26 Section 10145 of the Code and Section 2834(b) of the Regulations  
27 in conjunction with Section 10177(d) of the Code;

1 (g) As to Paragraph X(a) and to PRIMECORE under  
2 Section 10231 of the Code in conjunction with Section 10177(d) of  
3 the Code;

4 (h) As to Paragraph X(b) and to PRIMECORE under  
5 Section 10231.1 of the Code in conjunction with Section 10177(d)  
6 of the Code;

7 (i) As to Paragraph X(c) and to PRIMECORE under  
8 Section 10231.2 of the Code in conjunction with Section 10177(d)  
9 of the Code;

10 (j) As to Paragraph X(d) and to PRIMECORE under  
11 Section 10232.4(a) of the Code in conjunction with Section  
12 10177(d) of the Code;

13 (k) As to Paragraph X(e) and to PRIMECORE under  
14 Section 10234(a) of the Code in conjunction with Section 10177(d)  
15 of the Code;

16 (l) As to Paragraphs XI through XIV, inclusive, and to  
17 PRIMECORE under Section 10137 of the Code in conjunction with  
18 Section 10177(d) of the Code;

19 (m) As to Paragraphs XI through XIV, inclusive, and to  
20 FOX under Section 10130 of the Code in conjunction with Section  
21 10177(d) of the Code; and

22 (n) As to Paragraph XV and to HEREN under Section  
23 10177(g) and/or Section 10177(h) of the Code and Section 10159.2  
24 of the Code in conjunction with Section 10177(d) of the Code.

25 ///

26 ///

27 ///

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

PETER J. SAVERIEN  
Deputy Real Estate Commissioner

Dated at Oakland, California,  
this 15<sup>TH</sup> day of May, 2000.

1 JAMES W. 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  
APR 27 2000

DEPARTMENT OF REAL ESTATE

*Laurie A. Zair*

7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )

No. H-7824 SF

12 PRIMECORE FUNDING GROUP, INC., )

ACCUSATION

13 MICHAEL ALFRED HEREN, AND )

14 SUSAN MARY FOX, )

15 Respondents. )

16 The Complainant, Peter J. Saverien, a Deputy Real  
17 Estate Commissioner of the State of California, for cause of  
18 Accusation against PRIMECORE FUNDING GROUP, INC. (herein  
19 "PRIMECORE"), a California corporation, MICHAEL ALFRED HEREN  
20 (herein "HEREN"), individually and as designated officer-broker  
21 of PRIMECORE, and SUSAN MARY FOX (herein "FOX") (herein  
22 "Respondents"), is informed and alleges as follows:

23 I

24 The Complainant, Peter J. Saverien, a Deputy Real  
25 Estate Commissioner of the State of California, makes this  
26 Accusation in his official capacity.

27 ///

1 II

2 At all times herein mentioned, PRIMECORE was and now is  
3 licensed by the Department of Real Estate of the State of  
4 California (hereinafter "the Department") as a corporate real  
5 estate broker by and through HEREN as designated officer-broker  
6 of PRIMECORE to qualify said corporation and to act for said  
7 corporation as a real estate broker. At all times mentioned  
8 herein since August 30, 1999, PRIMECORE's corporate real estate  
9 broker license has been and now is restricted pursuant to the  
10 provisions of Section 10156.7 of the Code and to enumerated  
11 additional terms, conditions and restrictions imposed under  
12 authority of Section 10156.6 of the Code.

13 III

14 At all times herein mentioned, HEREN was and now is  
15 licensed by the Department as a real estate broker, individually  
16 and as designated officer-broker of PRIMECORE. As said  
17 designated officer-broker, HEREN was at all times mentioned  
18 herein responsible pursuant to Section 10159.2 of the Code for  
19 the supervision of the activities of the officers, agents, real  
20 estate licensees and employees of PRIMECORE for which a license  
21 is required. At all times mentioned herein since August 30,  
22 1999, HEREN's real estate broker license has been and now is  
23 restricted pursuant to the provisions of Section 10156.7 of the  
24 Code and to enumerated additional terms, conditions and  
25 restrictions imposed under authority of Section 10156.6 of the  
26 Code.

27 ///

1 IV

2 At all times mentioned herein from and after  
3 February 2, 2000, FOX was and now is presently licensed and/or  
4 has license rights under the Real Estate Law as a real estate  
5 salesperson.

6 V

7 Whenever reference is made in an allegation in this  
8 Accusation to an act or omission of PRIMECORE, such allegation  
9 shall be deemed to mean that the officers, directors, employees,  
10 agents and real estate licensees employed by or associated with  
11 PRIMECORE committed such act or omission while engaged in the  
12 furtherance of the business or operations of PRIMECORE and while  
13 acting within the course and scope of their corporate authority  
14 and employment.

15 VI

16 At all times herein mentioned, Respondents engaged in  
17 the business of, acted in the capacity of, advertised, or assumed  
18 to act as real estate brokers within the State of California  
19 within the meaning of Sections 10131(d) and 10131(e) of the Code,  
20 including the operation and conduct of a mortgage loan brokerage  
21 business with the public wherein, on behalf of others, for  
22 compensation or in expectation of compensation, Respondents  
23 solicited lenders and borrowers for loans secured directly or  
24 collaterally by liens on real property, wherein Respondents  
25 arranged, negotiated, processed, and consummated such loans,  
26 wherein Respondents serviced and collected payments on such  
27 loans, and wherein Respondents sold or offered to sell, bought or

1 offered to buy, or exchanged or offered to exchange promissory  
2 notes secured directly or collaterally by a lien on real property  
3 and performed services for the holders thereof.

4 VII

5 In so acting as mortgage loan brokers, as described in  
6 Paragraph VI above, Respondents accepted or received funds in  
7 trust (hereinafter "trust funds") from or on behalf of lenders or  
8 investors, borrowers, and others in connection with the  
9 solicitation, negotiation, processing, packaging, and  
10 consummation of mortgage loans by Respondents, in connection with  
11 the servicing and collection of payments on such loans by  
12 Respondents, and in connection with the sale, purchase, and  
13 exchange of secured promissory notes by Respondents, as alleged  
14 herein.

15 VIII

16 The aforesaid trust funds accepted or received by  
17 Respondents were deposited or caused to be deposited by  
18 Respondents into one or more bank accounts (hereinafter "trust  
19 fund accounts") maintained by Respondents for the handling of  
20 trust funds, including but not necessarily limited to the  
21 following accounts maintained by Respondents:

22 (a) The "Primecore Funding Group, Inc. Clearing Trust  
23 Account", Account No. 1562628, maintained by Respondents at the  
24 San Jose, California, branch of Heritage Bank of Commerce  
25 (hereinafter "Trust #1");

26 (b) The "Primecore Mortgage Trust, Inc. General  
27 Account", Account No. 1563634, maintained by Respondents at the



1 San Jose, California, branch of Heritage Bank of Commerce  
2 (hereinafter "REIT #1");

3 (c) The "Primecore Mortgage Trust, Inc. Disbursement  
4 Account", Account No. 1563642, maintained by Respondents at the  
5 San Jose, California, branch of Heritage Bank of Commerce  
6 (hereinafter "REIT #2");

7 (c) The "Primecore Mortgage Trust, Inc. Dividend  
8 Account", Account No. 1563626, maintained by Respondents at the  
9 San Jose, California, branch of Heritage Bank of Commerce  
10 (hereinafter "REIT #3");

11 (d) The "Primecore Funding Group, Inc. Interest Trust  
12 Account", Account No. 04136-11942, maintained by Respondents at  
13 the Menlo Park, California, branch of Bank of America  
14 (hereinafter "Trust #2"); and

15 (e) The "Primecore Mortgage Trust, Inc. Dividend  
16 Account", Account No. 04130-00451, maintained by Respondents at  
17 the Menlo Park, California, branch of Bank of America  
18 (hereinafter "REIT #4").

19 IX

20 Between on or about September 1, 1999 and on or about  
21 December 31, 1999, in connection with the collection and  
22 disbursement of said trust funds, PRIMECORE:

23 (a) Failed to maintain a record of all trust funds  
24 received into and disbursed from Trust #1 in the manner required  
25 by Section 2831 of Chapter 6, Title 10, California Code of  
26 Regulations (hereinafter "the Regulations"), in that PRIMECORE's

27 ///

1 record of trust funds received into and disbursed from Trust #1  
2 failed to identify from whom trust funds were received;

3 (b) Failed to maintain a separate record for each  
4 beneficiary or transaction, accounting therein for all said trust  
5 funds received, deposited into, and disbursed from Trust #1 and  
6 Trust #2, in the manner required by Section 2831.1 of the  
7 Regulations, in that PRIMECORE's separate beneficiary or  
8 transaction records for Trust #1 and Trust #2 failed to identify  
9 the transactions and the parties to the transactions;

10 (c) Failed to maintain a separate record for each  
11 beneficiary or transaction, accounting therein for all said trust  
12 funds received, deposited into, and disbursed from REIT #1;

13 (d) Failed to deposit trust funds entrusted to  
14 PRIMECORE into a trust fund account in the name of PRIMECORE as  
15 trustee at a bank or other financial institution, in conformance  
16 with Section 2832(a) of the Regulations, in that PRIMECORE  
17 deposited such funds into REIT #1, which account was not  
18 maintained in the name of PRIMECORE as trustee;

19 (e) Caused, suffered or permitted the aggregate  
20 balance of funds in Trust #1 and Trust #2, as tabulated below, to  
21 be reduced to amounts which, as of the dates tabulated below, was  
22 approximately the amounts tabulated below less than the aggregate  
23 liability of PRIMECORE to all owners of such funds, without first  
24 obtaining the written consent of each and every owner of such  
25 funds:

26 ///

27 ///

	<u>DATE</u>	<u>ACCOUNT</u>	<u>AMOUNT</u>
1			
2	(1) 11/17/99	Trust #1	\$275,000.00
3	(2) 10/18/99	Trust #1	\$180,000.00
4	(3) 09/24/99	Trust #1	\$35,000.00
5	(4) 12/31/99	Trust #2	\$423.19
6	(5) 11/07/99	Trust #2	\$168,300.95
7	(6) 10/12/99	Trust #2	\$179,800.54
8	(7) 09/09/99	Trust #3	\$204,445.27

9 (f) Authorized FOX, then an unlicensed person without  
10 fidelity bond coverage equal to the maximum amount of trust funds  
11 to which FOX had access at any one time, to make disbursements  
12 from Trust #1, Trust #2, and REIT #1, in violation of Section  
13 2834(b) of the Regulations, and authorized Michael Rider, then an  
14 unlicensed person without fidelity bond coverage equal to the  
15 maximum amount of trust funds to which Michael Rider had access  
16 at any one time, to make disbursements from Trust #1 and REIT #1,  
17 in violation of Section 2834(b) of the Regulations;

18 X

19 Between on or about September 1, 1999 and on or about  
20 December 31, 1999, in course of the mortgage loan servicing and  
21 trust fund handling activities described in paragraph VI, above,  
22 PRIMECORE:

23 (a) Accepted the amounts tabulated below on, or about  
24 the dates tabulated below, from Primecore Mortgage Trust, Inc.,  
25 a prospective purchaser or lender, as and for advances on behalf  
26 of borrowers for interest payments owed by the borrowers on  
27 mortgage loans being serviced by PRIMECORE, and not as to a

specific loan or note secured by a deed of trust that PRIMECORE owned, was authorized to negotiate, or was authorized to buy:

	<u>DATE</u>	<u>AMOUNT</u>
(1)	09/09/99	\$210,250.44
(2)	10/12/99	\$179,800.54
(3)	11/10/99	\$168,300.95
(4)	12/08/99	\$156,128.21

(b) Retained funds payable according to the terms of promissory notes secured by real property, in each of the transactions tabulated below, for a period longer than 25 days, in violation of Section 10231.1 of the Code, without first obtaining the written consent of each and every owner of such funds:

	<u>DATE RECEIVED</u>	<u>DATE PAID</u>	<u>AMOUNT</u>	<u>OWNER</u>
(1)	08/20/99	11/9/99	\$25,000.00	William Kronenfeld
(2)	08/20/99	11/9/99	\$25,000.00	Herman Niethamer

(c) Failed to provide the Department the statement required by Section 10231.2 of the Code prior to soliciting and accepting funds for loan number 2404, a \$90,600,000.00 loan to Upside Limited LLC to be secured by real property at Gordon Avenue and Valley Street in Los Altos, California, in which FOX and HEREN, each a person with 10 percent or greater ownership interest in PRIMECORE, obtained the use or benefit of the funds;

(d) Failed to provide lenders the statement required by Section 10232.4(a) of the Code; and

///

1 (e) Caused trust deeds securing mortgage loans  
2 negotiated by PRIMECORE to be recorded in the name of PRIMECORE  
3 as beneficiary, and not in the name of the lender as beneficiary,  
4 in violation of Section 10234(a) of the Code.

5 XI

6 Between on or about September 1, 1999 and on or about  
7 December 31, 1999, in course of the mortgage loan brokerage and  
8 servicing activities described in paragraph VI, above, PRIMECORE  
9 employed FOX and Phil Giurlani (hereinafter "Giurlani") to  
10 perform the acts and conduct the activities described in  
11 Paragraph VI, above, and compensated FOX and Giurlani for such  
12 activities and employment.

13 XII

14 At no time mentioned herein prior to February 2, 2000  
15 was FOX licensed by the Department either as a real estate broker  
16 or as a real estate salesperson. At no time mentioned herein was  
17 Giurlani licensed by the Department either as a real estate  
18 broker or as a real estate salesperson.

19 XIII

20 Between on or about September 1, 1999 and on or about  
21 December 31, 1999, on or about the dates specified below, in each  
22 transaction tabulated below, and in numerous other transactions,  
23 in course of PRIMECORE's mortgage loan brokerage and mortgage  
24 loan servicing activities described in paragraph VI, above, and  
25 in course of Giurlani's and FOX's employment by PRIMECORE  
26 described in Paragraph XI, above, FOX and Giurlani negotiated

27 ///

1 and arranged the loans tabulated below secured by deeds of trust  
2 encumbering real property within the State of California:

3 (a) On or about September 29, 1999, Fox negotiated and  
4 arranged an extension of the term of loan number 2287, a loan  
5 secured by real property at 42 Vista Del Sol, Mill Valley,  
6 California, to WB Investments, LLC;

7 (b) On or about September 16, 1999, Giurlani  
8 negotiated and arranged an extension of the term of loan number  
9 2294, a loan secured by real property at 17586 Vineland Avenue,  
10 Sunnyvale, California, to Price Development Group, Inc.;

11 (c) On or about September 8, 1999, Giurlani negotiated  
12 and arranged an extension of the term of loan number 2303, a loan  
13 secured by real property at 3491 Park Avenue, Palo Alto,  
14 California, to Vista Goebel LLC;

15 (d) On or about November 17, 1999, Fox negotiated and  
16 arranged an extension of the term of loan number 2167, a loan  
17 secured by real property at Lot 3, Sky Road, Tiburon, California,  
18 to Masma Construction, Inc.;

19 (e) On or about September 1, 1999, FOX negotiated and  
20 arranged an extension of the term of loan number 2262, a loan  
21 secured by real property at 26 Vista Del Sol, Mill Valley,  
22 California, to WB Investments, LLC;

23 (f) On or about September 10, 1999, FOX and Giurlani  
24 negotiated and arranged loan number 2401, a loan secured by real  
25 property at 1736 Waverly Street, Palo Alto, California, from  
26 Primecore Mortgage Trust, Inc. to Gary Meek and James Sagorac;

27 ///

1 (g) On or about September 1, 1999, FOX and Giurlani  
2 negotiated and arranged loan number 2403, a loan secured by real  
3 property at 2315 Crest Lane, Menlo Park, California, from  
4 Primecore Mortgage Trust, Inc. to Area Luxury Homes, Crest 1,  
5 LLC;

6 (h) On or about November 1, 1999, FOX and Giurlani  
7 negotiated and arranged loan number 2404, a loan secured by real  
8 property at Gordon Avenue and Valley Street, Los Altos,  
9 California, from Primecore Mortgage Trust, Inc. to Upside  
10 Unlimited LLC;

11 (i) On or about September 23, 1999, FOX and Giurlani  
12 negotiated and arranged loan number 2405, a loan secured by real  
13 property at 3159 Oak Knoll Drive, Redwood City, California, from  
14 Primecore Mortgage Trust, Inc. to Emerald Canyon LLC;

15 (j) On or about September 28, 1999, FOX and Giurlani  
16 negotiated and arranged loan number 2406, a loan secured by real  
17 property at 990 Lincoln Avenue, Palo Alto, California, from  
18 Primecore Mortgage Trust, Inc. to Gary Meek and James Sagorac;

19 (k) On or about November 17, 1999, FOX and Giurlani  
20 negotiated and arranged loan number 2407, a loan secured by real  
21 property at Academy Heights Subdivision, San Rafael, California,  
22 from Primecore Mortgage Trust, Inc. to J. G. Stich;

23 (l) On or about November 29, 1999, FOX and Giurlani  
24 negotiated and arranged loan number 2408, a loan secured by real  
25 property at 321 Summit Avenue, Mill Valley, California, from  
26 Primecore Mortgage Trust, Inc. to Elizabeth Suzuki and Ron  
27 Sutton;

1 (m) On or about November 1, 1999, FOX and Giurlani  
2 negotiated and arranged loan number 2409, a loan secured by real  
3 property at 2 Wood Lane, Menlo Park, California, from Primecore  
4 Mortgage Trust, Inc. to Joseph Montalbo and Joann Ferguson;

5 (n) On or about December 17, 1999, FOX and Giurlani  
6 negotiated and arranged loan number 2410, a loan secured by real  
7 property at Lot 19, Blue Oaks Subdivision, Portola Valley,  
8 California, from Primecore Mortgage Trust, Inc. to Pacific  
9 Peninsula Group, Inc.; and

10 (o) On or about November 15, 1999, FOX and Giurlani  
11 negotiated and arranged loan number 2412, a loan secured by real  
12 property at 1st Street West, Sonoma, California, from Primecore  
13 Mortgage Trust, Inc. to Franklin Street LLC.

14 XIV

15 In acting as described in Paragraphs XI through XIII,  
16 FOX violated Section 10130 of the Code, and PRIMECORE violated  
17 Section 10137 of the Code.

18 XV

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

23 PRIOR ADMINISTRATIVE PROCEEDINGS

24 XVI

25 On February 26, 1999, in Case No. H-7677 SF, the Real  
26 Estate Commissioner issued an order to PRIMECORE and to HEREN:

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1 (a) Requiring PRIMECORE to desist and refrain from  
2 violating Sections 10229, 10231.1, 10231.2, 10234 and 10240 of  
3 the Code, to desist and refrain from violating Section 10145 of  
4 the Code and Sections 2831.1, 2831.2, 2832, 2832.1 and 2834 of  
5 the Regulations, and to desist and refrain from disbursing trust  
6 funds received for any purpose for which a real estate license is  
7 required if such disbursement will cause the aggregate balance of  
8 funds entrusted to PRIMECORE to be reduced to an amount less than  
9 the aggregate liability of PRIMECORE to all owners of such funds  
10 without first obtaining the written consent of each and every  
11 owner of such funds; and

12 (b) Requiring HEREN to desist and refrain from  
13 violating Sections 10177(g) and 10177(h) of the Code.

14 PRIOR DISCIPLINARY PROCEEDINGS

15 XVII

16 Effective August 30, 1999, in Case No. H-7676 SF:

17 (a) The Real Estate Commissioner revoked PRIMECORE's  
18 corporate real estate broker license with the right to the  
19 issuance of a restricted corporate real estate broker license  
20 upon terms and conditions, based in part upon a determination  
21 that PRIMECORE had violated Sections 10145, 10176(i), 10177(d),  
22 10229, 10231.1, 10231.2, 10234(c) and 10240 of the Code, and  
23 Sections 2831.1, 2831.2, 2832, 2832.1 and 2834 of the  
24 Regulations; and

25 (b) The Real Estate Commissioner revoked HEREN's real  
26 estate broker license with the right to the issuance of a  
27 restricted real estate broker license upon terms and conditions,

1 based in part upon a determination that HEREN had violated  
2 Section 10177(g) and Section 10177(h) of the Code and Section  
3 10159.2 of the Code in conjunction with Section 10177(d) of the  
4 Code.

5 XVII

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

10 (a) As to Paragraph IX(a) and to PRIMECORE under  
11 Section 10145 of the Code and Section 2831 of the Regulations in  
12 conjunction with Section 10177(d) of the Code;

13 (b) As to Paragraph IX(b) and to PRIMECORE under  
14 Section 10145 of the Code and Section 2831.1 of the Regulations  
15 in conjunction with Section 10177(d) of the Code;

16 (c) As to Paragraph IX(c) and to PRIMECORE under  
17 Section 10145 of the Code and Section 2831.1 of the Regulations  
18 in conjunction with Section 10177(d) of the Code;

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

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

25 (f) As to Paragraph IX(f) and to PRIMECORE under  
26 Section 10145 of the Code and Section 2834(b) of the Regulations  
27 in conjunction with Section 10177(d) of the Code;

1 (g) As to Paragraph X(a) and to PRIMECORE under  
2 Section 10231 of the Code in conjunction with Section 10177(d) of  
3 the Code;

4 (h) As to Paragraph X(b) and to PRIMECORE under  
5 Section 10231.1 of the Code in conjunction with Section 10177(d)  
6 of the Code;

7 (i) As to Paragraph X(c) and to PRIMECORE under  
8 Section 10231.2 of the Code in conjunction with Section 10177(d)  
9 of the Code;

10 (j) As to Paragraph X(d) and to PRIMECORE under  
11 Section 10232.4(a) of the Code in conjunction with Section  
12 10177(d) of the Code;

13 (k) As to Paragraph X(e) and to PRIMECORE under  
14 Section 10234(a) of the Code in conjunction with Section 10177(d)  
15 of the Code;

16 (l) As to Paragraphs XI through XIV, inclusive, and to  
17 PRIMECORE under Section 10137 of the Code in conjunction with  
18 Section 10177(d) of the Code;

19 (m) As to Paragraphs XI through XIV, inclusive, and to  
20 FOX under Section 10130 of the Code in conjunction with Section  
21 10177(d) of the Code; and

22 (n) As to Paragraph XV and to HEREN under Section  
23 10177(g) and/or Section 10177(h) of the Code and Section 10159.2  
24 of the Code in conjunction with Section 10177(d) of the Code.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

PETER J. SAVERIEN  
Deputy Real Estate Commissioner

Dated at Oakland, California,  
this 27<sup>th</sup> day of April, 2000.