

FILED

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DEPARTMENT OF REAL ESTATE

By 

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10 **BEFORE THE DEPARTMENT OF REAL ESTATE**
11 **STATE OF CALIFORNIA**

12 * * *

13 In the Matter of the Accusation of)

14 PACIFICPOINT FINANCIAL INC.,)

15 Respondent.)

No. H-11267 SF

ACCUSATION

16
17 The Complainant, E. J. HABERER II, a Deputy Real Estate Commissioner of the
18 State of California, for cause of Accusation against PACIFICPOINT FINANCIAL INC.
19 (hereinafter "Respondent"), is informed and alleges as follows:

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21 The Complainant makes this Accusation in his official capacity.

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23 Respondent is presently licensed and/or have license rights under the Real Estate
24 Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code").

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26 At all times mentioned, Respondent was and is licensed by the State of California
27 Department of Real Estate (hereinafter "Department") as a real estate broker corporation. From

1 or about April 21, 2008, through July 29, 2010, Eduardo Antonio Vergara was licensed as the
2 designated officer of Respondent. From or about July 30, 2006, through July 29, 2010, Alan
3 David Morris was licensed as the designated officer of Respondent. From or about October 6,
4 2010, through October 25, 2010, Corina Pilar Holley was licensed as the designated officer of
5 Respondent. At no time after October 26, 2010, has Respondent had a designated officer
6 affiliated under its license.

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8 At all times mentioned, Respondent engaged in the business of, acted in the
9 capacity of, advertised, or assumed to act as a real estate broker in the State of California, within
10 the meaning of Section 10131(b) of the Code in the operation and conduct of a property
11 management business with the public wherein, on behalf of others, for compensation or in
12 expectation of compensation, Respondent leased or rented and offered to lease or rent, and
13 placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of
14 real property or improvements thereon, and collected rents from real property or improvements
15 thereon.

16 5

17 While acting as a corporate real estate broker as described in Paragraph 4,
18 Respondent accepted or received funds in trust (hereinafter "trust funds") from or on behalf of
19 owners and tenants in connection with the leasing, renting, and collection of rents on real
20 property or improvements thereon, as alleged herein, and thereafter from time to time made
21 disbursements of said trust funds.

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23 The trust funds accepted or received by Respondent, as described in Paragraph 5,
24 were deposited or caused to be deposited by Respondent into trust accounts which were
25 maintained by Respondent for the handling of trust funds, and thereafter from time-to-time
26 Respondent made disbursements of said trust funds, identified as follows:

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| BANK ACCOUNT # 1 | |
|-------------------------|---|
| Bank Name and Location: | Wells Fargo Bank, 333B S. McDowell Blvd. Petaluma, CA 94954 |
| Account No.: | xxxxxx2801 |
| Entitled: | Clinton E Fitzgerald Fast Forward Property Management FBO Placer Terrace Apartment |

| BANK ACCOUNT # 2 | |
|-------------------------|---|
| Bank Name and Location: | Union Bank, Petaluma 596, P.O. Box 512380 Los Angeles, CA 90051-0380 |
| Account No.: | xxxxxx8694 |
| Entitled: | PacificPoint Financial Inc. Fast Forward Property Management |

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In the course of the activities described in Paragraph 4, above, Respondent:

(a) failed to deposit trust funds into one or more trust funds accounts in the name of Respondent as trustee at a bank or other financial institution, in conformance with Section 10145 of the Code and Section 2832 of Title 10 of the California Code of Regulations (hereinafter "Regulations");

(b) commingled with its own money or property, the money or property of others which was received or held by Respondent in trust in violation of Section 10176(e) of the Code;

(c) failed to maintain a written control record of all trust funds received and disbursed for Bank Account #1, containing all information required by Section 2831 of the Regulations;

(d) caused, permitted, and/or allowed, the possible withdrawal of trust funds from Bank Account #1 by a person who was not licensed by the Department and not covered by a fidelity bond in violation of Section 2834 of the Regulations; and

(e) operated his real estate business, under the fictitious business names of

1 "Fast Forward Property Management" without obtaining a license bearing said fictitious business
2 name in violation of Section 2731 of the Regulations.

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4 Between on or about July 30, 2010, and October 5, 2010, and from October 26,
5 2010, to present, Respondent, while Respondent did not have an affiliated designated officer, in
6 course of the real property management activities described in Paragraph 4, solicited prospective
7 tenants for, negotiated rental agreements for, and/or collected rents from real properties owned
8 by another or others, including but not limited to the property known as Placer Terrace
9 Apartments.

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11 The facts alleged above are grounds for the suspension or revocation of
12 Respondent's licenses and license rights under the following sections of the Code and
13 Regulations:

14 (1) As to Paragraph 7(a), under Section 10177(d) of the Code in conjunction
15 with Section 10145 of the Code and Section 2832 of the Regulations;

16 (2) As to Paragraph 7(b), under Section 10176(e) of the Code;

17 (3) As to Paragraph 7(c), under Section 10177(d) of the Code in conjunction
18 with Section 2831 of the Regulations;

19 (4) As to Paragraph 7(d), under Section 10177(d) of the Code in conjunction
20 with Section 2834 of the Regulations;

21 (5) As to Paragraph 7(e), under Section 10177(d) of the Code in conjunction
22 with Section 2731 of the Regulations; and

23 (6) As to Paragraph 8, under Section 10177(d) of the Code in conjunction
24 with Section 10130 of the Code.

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The acts and/or omissions of Respondent as alleged above, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148 (Reimbursement for Cost of Audit for Trust Fund Handling Violation) of the Code.

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 Respondent 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 provisions of law.


E. J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 5TH ^{day} of ~~November~~, 2011

DISCOVERY DEMAND

Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the Department of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the *Administrative Procedure Act*. Failure to provide Discovery to the Department of Real Estate may result in the exclusion of witnesses and documents at the hearing or other sanctions that the Office of Administrative Hearings deems appropriate.