1 ANNETTE E. FERRANTE, Counsel (SBN 258842) FILED Bureau of Real Estate 2 P. O. Box 137007 Sacramento, CA 95813-7007 3 APR 8 2014 Fax: (916) 263-3767 BUREAU OF REAL ESTATE Telephone: (916) 263-8670 (916) 263-8675 (Direct) 5 -or-6 7 BEFORE THE BUREAU OF REAL ESTATE 8 STATE OF CALIFORNIA 9 10 In the Matter of the Accusation of NO. H-11670 SF 11 REAL ESTATE MANAGEMENT SERVICES. INC. and MICHAEL LEE CARLSON, **ACCUSATION** 12 13 Respondents. 14 15 The Complainant, ROBIN S. TANNER, in her official capacity as a Supervising 16 Special Investigator of the State of California, for cause of Accusation against REAL ESTATE 17 MANAGEMENT SERVICES, INC. and MICHAEL LEE CARLSON, is informed and alleges as 18 follows: 19 1 20 Respondent REAL ESTATE MANAGEMENT SERVICES, INC. (hereinafter "REMSI") is presently licensed by the California Bureau of Real Estate (hereinafter "the Bureau") 21 22 and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business 23 and Professions Code (hereafter "the Code"), as a real estate broker corporation, and at all relevant 24 times herein was acting by and through MICHAEL LEE CARLSON as its designated broker 25 officer. 26 /// 27 <sup>1</sup> Effective July 1, 2013, the Department of Real Estate has become the Bureau of Real Estate pursuant to the

Governor's Reorganization Plan of 2012.

At all times relevant herein, REMSI conducted real estate activity under its individual license name, and the fictitious business name "Aapex Property Management" registered with the Bureau.

Respondent MICHAEL LEE CARLSON (hereinafter "CARLSON") is presently licensed by the Bureau and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate broker.

At all times relevant herein, CARLSON was licensed by the Bureau as the designated broker officer of REMSI. As the designated broker officer, CARLSON was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of REMSI for which a real estate license is required.

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondents, such allegation shall be deemed to mean that the employees, agents, real estate licensees, and others employed by or associated with Respondents committed such act or omission while engaged in furtherance of the business or operations of Respondents and while acting within the course and scope of their authority and employment.

At all times relevant herein, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(b) of the Code (Broker Defined – Property Management/Collection of Rent), including the operation and conduct of a property management business with the public, wherein, on behalf of others, for compensation or in expectation of compensation, Respondents

1 leased or rented or offered to lease or rent, and solicited for prospective tenants of real property or 2 improvements thereon, and collected rents from real property or improvements thereon. 3. FIRST CAUSE OF ACTION 4 As Against All Respondents 5 6 Each and every allegation in Paragraphs 1 through 6, inclusive, above, is 7 incorporated by this reference as if fully set forth herein. 8 9 On or about August 1, 2012, and continuing intermittently through September 11, 10 2012, an audit was conducted of Respondents' business activities at Respondents' main office 11 location at 22693 Hesperian Blvd., Ste. 100, Hayward, California, wherein the auditor examined 12 Respondents' records for the period of July 1, 2011 through August 31, 2012 (hereinafter "the audit 13 period"). 14 15 While acting as a real estate broker as described in Paragraph 6, above, and within 16 the audit period, Respondents accepted or received funds in trust (hereinafter "trust funds") and 17 deposited or caused the trust funds to be deposited into bank accounts maintained by Respondents. 18 and thereafter, from time-to-time, Respondents made disbursements of said trust funds, identified as 19 follows: 20 Trust Account #1 21 Bank Name: Fremont Bank Account No.: Last 4 Digits: xxx1985 22 Account Name: "Real Estate Management Services Inc dba Aapex Property 23 Management Trust Account" Signatories: Michael Lee Carlson (DO/REB); Jodie Chambers (RES); 24 Deanna Lynn Hansen (RES); Susan Carol Carlson (unlicensed); Tiffany Renee Goodfellow (unlicensed) 25

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Purpose:

managed by REMSI.

Used for deposits and disbursements related to properties

1 Bank Name: Fremont Bank 2 Account No.: Last 4 Digits: XXX8475 Account Name: 3 "Real Estate Management Services Inc Broker Trust Account" Signatories: Michael Lee Carlson (DO/REB); 4 Susan Carol Carlson (unlicensed) Used to hold \$680,000.00. There was no activity in this Purpose: 5 account. On August 1, 2012, the balance of \$680,000.00 was transferred to Trust Account #1, identified above. Trust 6 Account #2 was closed in August 2012. 7 Bank Account #1 8 Bank Name: Fremont Bank 9 Account No.: Last 4 Digits: xxxx2367 "Real Estate Mgmt Service Inc dba Aapex Property Mgmt Account Name: 10 TTEE Vincenta Yee 11 Signatories: Michael Lee Carlson (DO/REB); Jodie Chambers (RES): Susan Carol Carlson (unlicensed) 12 Purpose: An interest-bearing account used to hold security deposits for a single beneficiary. 13 14 10 In the course of the real estate broker activities described in Paragraph 6, above, and 15 during the audit period, Respondents: 16 17 (a) caused, suffered, or permitted the balance of funds in Trust Account #1 and Trust Account #2 to be reduced to an amount which, as of May 31, 2012, was approximately 18 \$343.60 less than the aggregate liability of Trust Account #1 and Trust Account #2 to all owners of 19 such funds, without the prior written consent of each and every owner of such funds, in violation of 20 Section 10145 (handling of trust funds) of the Code and Section 2832.1 (written authorization of all 21 22 beneficiaries required to reduce funds to below liability) of Title 10 of the California Code of Regulations ("the Regulations"). The cause of said trust fund shortage was attributed to a negative 23 account balance for the property located at 1707 Las Trampas, Alamo, CA; 24 /// 25 /// 26 /// 27

Trust Account #2

(b) collected and retained unearned fees, compensation, and/or profit in the amount of \$52,915.79 for the period July 1, 2011 to June 30, 2012, from homeowners in connection with payment for property management maintenance and repair services performed by vendors, and failed to disclose the collection of the unearned fees, compensation, and/or profit to the homeowners, in violation of Sections 10145(a)(1) and 10176(g) of the Code. Specifically, Respondents contracted with vendors to perform various services on the properties they managed for homeowners. Vendors would bill Respondents at a discounted rate, but Respondents would collect payment from homeowners at the full rate. Respondents retained the profit from the vendor discount for themselves without disclosing the profit to homeowners; and,

(c) failed to perform and maintain reconciliations of the total of separate beneficiary records with a control record on at least a monthly basis for Trust Account #1 and Trust Account #2, in violation of Section 10145 of the Code and Section 2831.2 of the Regulations.

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The acts and/or omissions of Respondents as alleged in paragraph 10, above, constitute grounds for the suspension or revocation of all licenses and license rights of Respondents pursuant to the following provisions of the Code and Regulations:

As to Paragraph 10(a), under Section 10177(d) (willful disregard or violation of Real Estate Law) and/or 10177(g) (negligence or incompetence in performing licensed act) of the Code, in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

As to Paragraph 10(b), under Section 10176(g) (retaining secret profit) of the Code; and,

As to Paragraph 10(c), under Section 10177(d) and/or 10177(g) of the Code, in conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations.

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## SECOND CAUSE OF ACTION As Against Respondent CARLSON

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Each and every allegation in Paragraphs 1 through 11, inclusive, above, is incorporated by this reference as if fully set forth herein.

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At all times relevant herein, Respondent CARLSON, as the designated officer broker of REMSI, was required to exercise reasonable supervision and control over the activities of REMSI and its employees pursuant to Section 10159.2 (reasonable supervision by designated officer) of the Code and Section 2725 (reasonable supervision by broker) of the Regulations.

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Respondent CARLSON failed to exercise reasonable supervision over the acts and/or omissions of REMSI and its employees in such a manner as to allow the acts and/or omissions as described in Paragraph 10, above, to occur, which constitutes cause for the suspension or revocation of the licenses and license rights of Respondent CARLSON under Sections 10177(d) (willful disregard or violation of Real Estate Law) and/or 10177(g) (negligence or incompetence in performing licensed act) of the Code, and Section 10177(h) (failure to exercise reasonable supervision) of the Code, in conjunction with Section 10159.2 (reasonable supervision by designated officer) of the Code and Section 2725 (reasonable supervision by broker) of the Regulations.

## COST RECOVERY **Audit Costs**

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The acts and/or omissions of Respondents as alleged in the First Cause of Action. above, entitle the Bureau to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund handling violations) of the Code.

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## **Investigation and Enforcement Costs**

Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the Administrative Law Judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered revoking all licenses and license rights of all Respondents named herein under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of investigation and enforcement as permitted by law, for the cost of the audit as permitted by law, and for such other and further relief as may be proper under other provisions of law.

ROBIN S. TANNER

Supervising Special Investigator

Dated at Oakland, California,

this 2 day of April , 2014.