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FILED

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BUREAU OF REAL ESTATE

By B. Nicholas

9 **BEFORE THE BUREAU OF REAL ESTATE**

10 **STATE OF CALIFORNIA**

11 * * *

12 In the Matter of the Accusation of:

13 BARBARA LUCILLE LINCOLN,

14 Respondent.

No. H-12047 SF

ACCUSATION

15 The Complainant, ROBIN S. TANNER, acting in her official capacity as a
16 Supervising Special Investigator of the State of California, for cause of Accusation against
17 BARBARA LUCILLE LINCOLN ("Respondent"), is informed and alleges as follows:

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19 Respondent is presently licensed and/or has license rights under the Real Estate
20 Law (Part 1 of Division 4 of the Business and Professions Code) ("Code") as a real estate broker.

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22 At all times mentioned herein, Respondent engaged in the business of, acted in the
23 capacity of, advertised, or assumed to act as a real estate licensee, in the State of California,
24 within the meaning of:

25 Section 10131(a) of the Code, including the operation and conduct of a real estate
26 resale brokerage with the public, wherein, on behalf of others, for compensation or in expectation
27 of compensation, Respondent sold and offered to sell, bought and offered to buy, solicited

prospective sellers and purchasers of, solicited and obtained listings of, and negotiated the purchase and resale of real property; and

Section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation, leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or negotiated for sale, purchase or exchanges of leases on real property, or on a business opportunity, or collected rent from real property, or improvements thereon, or from business opportunities.

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On or about January 1, 2011, Respondent, on behalf of "Lincoln Realty," entered into a property management agreement with Timothy M. ("Complainant"), on behalf of the Landis Morgan Trust. Pursuant to the property management agreement, Respondent agreed to act as Complainant's exclusive agent to manage, operate, maintain, and lease real property owned by the Landis Morgan Trust located at 618 South Main Street, Willits, California, 95490 ("Subject Property"). In exchange, Complainant agreed to compensate Respondent ten percent of the gross revenue collected by Respondent in her capacity as the property manager.

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Section 5.4 of the property management agreement, entitled "Action Authorized With Respect To Leases," stated as follows:

[Respondent] is to negotiate and execute on behalf of [Complainant] all leases, rental agreements, renewals, and cancellations on the terms herein stated. [Respondent] is hereby granted POWER OF ATTORNEY by [Complainant] for serving notice on any tenant to quit a property when the [Respondent] deems such notice necessary in [Respondent's] or [Complainant's] name in order to remove tenants, recover rent, charges, or other sums payable to [Complainant]. [Respondent] may discontinue any such action proceeding; provided, however that no such action or proceeding shall be compromised without [Complainant's] approval.

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2 In or about April 2015, Walter D. ("Buyer") became interested in purchasing the
3 Subject Property and asked Respondent to serve as his broker.

4 6

5 On or about April 4, 2015, Respondent, on behalf of Buyer, submitted an offer to
6 purchase the Subject Property for \$175,000, to Beverly S., the broker for Complainant. Buyer
7 and Complainant agreed that Buyer would rent the Subject Property while he made repairs to the
8 Subject Property prior to the close of escrow.

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10 On or about June 18, 2015, Respondent, acting on behalf of Complainant,
11 executed a Commercial Lease and Deposit Receipt ("Lease Agreement") with Buyer, whereby
12 Buyer agreed to lease the Subject Property for \$900 per month. Pursuant to the Lease
13 Agreement, the tenancy commenced on June 18, 2015, and was to continue on a month-to-month
14 basis, until such time as either party provided thirty days written notice to terminate the tenancy.

15 8

16 Buyer hired a handyman named Robert W. to perform repairs and restorations on
17 the Subject Property. On or about July 21, 2015, while performing repairs in the attic of the
18 Subject Property, Robert W. found insulation that he believed was stamped with the word
19 "Asbestos."

20 9

21 On or about July 28, 2015, Respondent released Buyer from the Lease Agreement
22 because she believed there was insulation in the attic of the Subject Property containing asbestos.
23 Respondent created a letter of release ("Release") which provided the following:

24 "Tenant [Buyer] is hereby released from lease obligations at 618
25 South Main Street due to the discovery of asbestos insulation in the
26 ceiling creating a hazardous condition.

27 Tenant will be released from obligations upon receipt of keys to the
unit."

1 At no time prior to releasing Buyer from the Lease Agreement did Respondent obtain
2 Complainant's approval to release Buyer, as required by Section 5.4 of the property management
3 agreement.

4 10

5 On or about July 28, 2015, Buyer and Respondent executed a Notice of
6 Termination of Purchase Agreement and Cancellation Instructions, indicating Buyer wished to
7 cancel escrow due to his belief that insulation in the attic of the Subject Property contained
8 asbestos.

9 11

10 Although Buyer signed the Release on June 28, 2015, Robert W. continued to
11 perform repairs and restorations on the Subject Property on behalf of Buyer for several days.
12 For instance, on August 4, 2015, Robert W. laid flooring in both bathrooms of the Subject
13 Property. On August 6, 2015, Robert W. installed a sink in the Subject Property. Finally, on
14 August 7, 2015, Robert W. removed materials remaining on the Subject Property and returned
15 the keys to the Subject Property to Respondent.

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17 Complainant hired two separate companies to analyze and test samples from the
18 insulation to determine whether they containing asbestos. Both companies determined the
19 insulation did not contain asbestos.

20 13

21 On or about September 10, 2015, Complainant and Buyer agreed to cancel the
22 purchase agreement cancellation and proceed with the transaction. On September 30, 2015,
23 escrow closed on the subject transaction.

24 14

25 On or about October 12, 2015, Complainant sent Respondent a letter indicating
26 he never agreed to make any changes to the Lease Agreement and requested payment of all rents
27 due under the terms of the Lease Agreement. On October 22, 2015, Respondent sent
Complainant a letter in response indicating she made a "judgment call" to terminate the Lease

1 Agreement due to the "asbestos scare." Respondent further stated Complainant was not entitled
2 to further rent because Buyer was not in possession of the Subject Property in August. In
3 actuality, Buyer had possession of the Subject Property until August 7, 2015, as Robert W.
4 completed repairs to the Subject Property and returned the key to Respondent on August 7,
5 2015. Thus, Complainant was entitled to a pro-rata share of rent from August 1, 2015, to
6 August 7, 2015.

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8 The acts and/or omissions of Respondent, as alleged above in Paragraphs 3
9 through 14, are grounds for the revocation or suspension of Respondent's real estate license and
10 license rights under Sections 10177(d) (willfully violated the real estate law) and 10177(g)
11 (negligence/incompetence) of the Code.

12 16

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

18 WHEREFORE, Complainant prays that a hearing be conducted on the
19 allegations of this Accusation and that upon proof thereof, a decision be rendered revoking all
20 license and license rights of Respondent under the Real Estate Law, for the cost of
21 investigation and enforcement as permitted by law, and for such other and further relief as may
22 be proper under other provisions of law.

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24 ROBIN S. TANNER
25 Supervising Special Investigator

26 Dated at Oakland, California,
27 this 24th day of January, 2018.

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