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FILED

JUN 26 2018

BUREAU OF REAL ESTATE

By B. Nicholas

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of:)	NO. H- 12095 SF
)	
CHARLES JOSEPH FLYNN,)	<u>SECOND AMENDED</u>
)	<u>ACCUSATION</u>
Respondent.)	

The Complainant, TRICIA D. PARKHURST, acting in her official capacity as a Supervising Special Investigator of the State of California, for cause of Second Amended Accusation against CHARLES JOSEPH FLYNN ("Respondent") is informed and alleges as follows:

1.

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

2.

At all times herein mentioned, Respondent was and is licensed by the Bureau individually as a real estate broker.

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1 3.

2 From February 1997 to September 2014, Marin Mortgage Bankers Corporation
3 was licensed by the Bureau as a corporate real estate broker. In April 2003, in Bureau Case No.
4 H-8120 SF, the Bureau revoked Marin Mortgage Bankers Corporation's license and granted the
5 corporation the right to a restricted license. On or about September 10, 2014, in Bureau Case
6 No. H-11563 SF, the Bureau revoked Marin Mortgage Bankers Corporation's license outright.

7 4.

8 From October 1986 to September 2014, Glenn Harvey Larson was licensed by the
9 Bureau as an individual real estate broker. In April 2003, in Bureau Case No. H-8120 SF, the
10 Bureau revoked Larson's license and granted him the right to a restricted license. On or about
11 September 10, 2014, in Bureau Case No. H-11563 SF, the Bureau revoked Larson's license
12 outright. From April 2011 to September 10, 2014, Larson was the designated officer of Marin
13 Mortgage Bankers Corporation.

14 5.

15 At all times herein mentioned, Respondent engaged in the business of, acted in the
16 capacity of, advertised, or assumed to act as a real estate licensee, in the State of California, on
17 behalf of others, for compensation or in expectation of compensation, within the meaning of:

18 Section 10131(d) of the Code, including the operation and conduct of real estate
19 business with the public wherein Respondent collects payments or performs services for
20 borrowers or lenders or note owners in connection with loans secured directly or collaterally by
21 liens on real property or on business opportunities;

22 Section 10131(e) of the Code, including the operation and conduct of a real estate
23 business with the public wherein Respondent sold or offered to sell, bought or offered to buy, or
24 exchanged or offered to exchange a real property sales contract, or a promissory note secured
25 directly or collaterally by a lien on real property or a business opportunity, and performed
26 services for the holders thereof; and/or

Section 10131.1 of the Code, including the operation and conduct of a real estate business with the public wherein Respondent engaged as a principal in the business of making loans or buying from, selling to, or exchanging with the public, real property sales contracts or promissory notes secured directly or collaterally by liens on real property, or who makes agreements with the public for the collection of payments or for the performance of services in connection with real property sales contracts or promissory notes secured directly or collaterally by liens on real property.

COUNT ONE
VIOLATIONS RE 2015/2016 AUDIT

6.

Each and every allegation contained above in Paragraphs 1 through 5, inclusive, is incorporated by this reference as if fully set forth herein.

7.

On October 13, 2015, and continuing intermittently until May 31, 2016, the Bureau conducted an audit of the books and records related to the real estate activities of Respondent at Respondent's main office located at 3100 Kerner Boulevard, Suite H in San Rafael, California, and at the Bureau's Oakland District Office located at 1515 Clay Street, Suite 702, Oakland, California. The auditor examined Respondent's records for the period of October 1, 2014 to September 30, 2015, ("first audit period").

8.

While doing business within the first audit period, Respondent accepted or received funds in trust ("trust funds") from or on behalf of holders of notes secured by real property in connection with the servicing of loans, and thereafter from time-to-time Respondent made disbursements of said trust funds.

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9.

The trust funds accepted or received by Respondent, as described above in Paragraph 8, were deposited or caused to be deposited by Respondent into a bank account which was maintained by Respondent for the handling of trust funds, identified as follows:

BANK ACCOUNT #1	
Bank Name and Location:	Umpqua Bank 1400 Grant Avenue Novato, CA 94945
Account No.:	XXXX6038
Entitled:	Marin Mortgage Bankers Common Client Servicing Trust Account A Fiduciary Trust Account
Signatories:	Charles Flynn (REB) Glenn Larson (Revoked REB) Holly Larsen (REB)
No. of Signatures Required:	One

10.

In the course of the activities described above in Paragraph 5, in connection with the collection and disbursement of trust funds, Respondent:

(a) caused, suffered or permitted the balance of funds in Bank Account #1 to be reduced to an amount which, as of June 30, 2015, was \$15,982.88 less than the aggregate liability of Bank Account #1 to all owners of such funds, without the prior written consent of each and every owner of such funds, in violation of Section 10145 of the Code and Section 2832.1 of Title 10 of the California Code of Regulations ("the Regulations");

(b) failed to properly designate Bank Account #1 as a trust account in the name of Respondent or his fictitious business name, as trustee, in violation of Section 10145 of the Code and Section 2832 of the Regulations;

(c) allowed Glenn Larsen to serve as authorized signor on Bank Account #1 without providing for fidelity bond coverage, in violation of Section 10145 of the Code and Section 2834 of the Regulations;

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1 (d) failed to notify the Bureau within thirty (30) days of determining he will
2 make collections of payments in an aggregate amount of \$250,000 or more, on behalf of owners
3 of promissory notes secured by liens on real property, in violation of Section 10232(e) of the
4 Code;

5 (e) failed to file quarterly trust fund status reports for the first and second
6 quarters of 2015, in violation of Section 10232.25 of the Code;

7 (f) failed to file an annual trust account review for 2014, in violation of Section
8 10232.2(a) of the Code;

9 (g) failed to file a multi-lender transaction notice with the Bureau within thirty
10 (30) days of becoming the servicing agent for notes upon which the payments due during any
11 period of three (3) consecutive months exceeded \$125,000.00, in violation of Section 10238(b)
12 of the Code; and

13 (h) failed to notify the Bureau within thirty (30) business days of the change of
14 Respondent's new main office location to 3100 Kerner Boulevard, Suite H, San Rafael, in
15 violation of Section 10162 of the Code and Section 2715 of the Regulations.

16 11.

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

20 As to Paragraph 10(a), under Section 10177(d) and/or 10177(g) of the Code, in
21 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

22 As to Paragraph 10(b), under Section 10177(d) and/or 10177(g) of the Code, in
23 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

24 As to Paragraph 10(c), under Section 10177(d) and/or 10177(g) of the Code, in
25 conjunction with Section 10145 of the Code and Section 2834 of the Regulations;

26 As to Paragraph 10(d), under Section 10177(d) and/or 10177(g) of the Code, in
27 conjunction with Section 10232(e) of the Regulations;

1 As to Paragraph 10(e), under Section 10177(d) and/or 10177(g) of the Code, in
2 conjunction with Section 10232.25 of the Code;

3 As to Paragraph 10(f), under Section 10177(d) and/or 10177(g) of the Code, in
4 conjunction with Section 10232.2(a) of the Code;

5 As to Paragraph 10(g), under Section 10177(d) and/or 10177(g) of the Code, in
6 conjunction with Section 10238(b) of the Code; and

7 As to Paragraph 10(h), under Section 10177(d) and/or 10177(g) of the Code, in
8 conjunction with Section 10162 of the Code and 2715 of the Regulations.

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10 COUNT TWO
VIOLATIONS RE 2017 AUDIT

11 12.

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

14 13.

15 On May 3, 2018, and continuing intermittently until June 13, 2018, the Bureau
16 conducted an audit of the books and records related to the real estate activities of Respondent at
17 the office of Basil Plastiras, Respondent's attorney, located at 24 Professional Center Parkway,
18 Suite 150, San Rafael, California, and at the Bureau's Oakland District Office located at 1515
19 Clay Street, Suite 702, Oakland, California. The auditor examined Respondent's records for the
20 period of October 1, 2015 to March 31, 2018, ("second audit period").

21 14.

22 While doing business within the audit period, Respondent accepted or received
23 trust funds from or on behalf of holders of notes secured by real property in connection with the
24 servicing of loans, and thereafter from time-to-time Respondent made disbursements of said
25 trust funds.

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15.

The trust funds accepted or received by Respondent, as described above in Paragraph 14, were deposited or caused to be deposited by Respondent into a bank account which was maintained by Respondent for the handling of trust funds, identified as follows:

BANK ACCOUNT #1	
Bank Name and Location:	Umpqua Bank 1400 Grant Avenue Novato, CA 94945
Account No.:	XXXXX6038
Entitled:	Marin Mortgage Bankers Common Client Servicing Trust Account A Fiduciary Trust Account
Signatories:	Charles Flynn (REB)
No. of Signatures Required:	One

16.

In the course of the activities described above in Paragraph 5, in connection with the collection and disbursement of trust funds, Respondent:

(a) caused, suffered or permitted the balance of funds in Bank Account #1 to be reduced to an amount which, as of March 31, 2018, was \$2,547.11 less than the aggregate liability of Bank Account #1 to all owners of such funds, without the prior written consent of each and every owner of such funds, in violation of Section 10145 of the Code and Section 2832.1 of the Regulations;

(b) failed to properly designate Bank Account #1 as a trust account in the name of Respondent or his fictitious business name, as trustee, in violation of Section 10145 of the Code and Section 2832 of the Regulations;

(c) failed to notify the Bureau within thirty (30) days of determining Respondent will make collections of payments in an aggregate amount of \$250,000 or more, on behalf of owners of promissory notes secured by liens on real property, in violation of Section 10232(e) of the Code;

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1 (d) failed to file quarterly trust fund status reports within thirty (30) days after the
2 end of the first three quarters of 2016 and 2017, in violation of Section 10232.25 of the Code and
3 Section 2846.8 of the Regulations;

4 (e) failed to file a multi-lender transaction notice with the Bureau within thirty
5 (30) days of becoming the servicing agent for notes upon which the payments due during any
6 period of three (3) consecutive months exceeded \$125,000.00, in violation of Section 10238(b)
7 of the Code;

8 (f) failed to file quarterly multi-lender trust account reports with the Bureau
9 within thirty (30) days after the end of each of the first three fiscal quarters of 2016 and 2017, in
10 violation of Section 10238(k)(3) of the Code;

11 (g) failed to file the annual trust account review reports with the Bureau within
12 ninety (90) days after the end of the fiscal year for 2015, 2016 and 2017, in violation of Sections
13 10232.2(a) and 10238(o) of the Code and Sections 2846.5 and 2846.7 of the Regulations;

14 (h) failed to file the annual business activity reports with the Bureau within ninety
15 (90) days after the end of the fiscal year for 2015, 2016 and 2017, in violation of Sections
16 10232.2(c) and 10238(p) of the Code;

17 (i) caused or permitted funds of others which were received and held in Bank
18 Account #1 to be commingled with Respondent's own money, in violation of Section 10176(e)
19 of the Code and Section 2835(b) of the Regulations; and

20 (j) failed to disburse to lenders funds collected from borrowers within twenty-
21 five (25) days after their receipt, in violation of Section 10231.1 of the Code and Section
22 10238(k)(2) of the Regulations.

23 17.

24 The acts and/or omissions of Respondent, as alleged above in Paragraph 16,
25 constitute grounds for the suspension or revocation of all licenses and license rights of
26 Respondent pursuant to the following provisions of the Code and Regulations:
27

1 As to Paragraph 16(a), under Section 10177(d) and/or 10177(g) of the Code, in
2 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

3 As to Paragraph 16(b), under Section 10177(d) and/or 10177(g) of the Code, in
4 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

5 As to Paragraph 16(c), under Section 10177(d) and/or 10177(g) of the Code, in
6 conjunction with Section 10232(e) of the Code;

7 As to Paragraph 16(d), under Section 10177(d) and/or 10177(g) of the Code, in
8 conjunction with 10232.25 of the Code and Section 2846.8 of the Regulations;

9 As to Paragraph 16(e), under Section 10177(d) and/or 10177(g) of the Code, in
10 conjunction with Section 10238(b) of the Code;

11 As to Paragraph 16(f), under Section 10177(d) and/or 10177(g) of the Code, in
12 conjunction with Section 10238(k)(3) of the Code;

13 As to Paragraph 16(g), under Section 10177(d) and/or 10177(g) of the Code, in
14 conjunction with Sections 10232.2(a) and 10238(o) of the Code and Sections 2846.5 and 2846.7
15 of the Regulations;

16 As to Paragraph 16(h), under Section 10177(d) and/or 10177(g) of the Code, in
17 conjunction with Sections 10232.2(c) and 10238(p) of the Code;

18 As to Paragraph 16(i), under Section 10177(d) and/or 10177(g) of the Code, in
19 conjunction with Section 10176(e) of the Code and Section 2835(b) of the Regulations; and

20 As to Paragraph 16(j), under Section 10177(d) and/or 10177(g) of the Code, in
21 conjunction with Section 10231.1 of the Code and Section 10238(k)(2) of the Regulations.

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1 MLO APPLICATION FRAUD

2 18.

3 Each and every allegation contained above in Paragraphs 1 through 17, inclusive,
4 is incorporated by this reference as if fully set forth herein.

5 19.

6 On or about December 22, 2014, Respondent made application to the Bureau for
7 the renewal of his mortgage loan originator license endorsement ("MLO Renewal Application").

8 20.

9 The Customer Arbitration/Civil Litigation Disclosure section of Respondent's
10 MLO Renewal Application described above in Paragraph 12, states: "(P) Have you ever been
11 named as a respondent/defendant in a financial services related consumer-initiated arbitration or
12 civil litigation which: (2) resulted in an arbitration award or civil judgment against you,
13 regardless of amount, or that required corrective action?" Respondent concealed and failed to
14 disclose that on June 5, 2013, the Marin County Superior Court, in Case No. 1101598, entered
15 judgment against Respondent in the amount of \$196,058.33, which judgment was affirmed on
16 April 30, 2014, by the California Court of Appeal for the First Appellate District in Case No.
17 A138364.

18 21.

19 The facts alleged above in Paragraphs 19 and 20 show that Respondent procured
20 or attempted to procure a real estate License Endorsement by fraud, misrepresentation or deceit,
21 or by making a material misstatement of fact in said MLO Renewal Application, which constitute
22 grounds for the suspension or revocation of all licenses and license rights of Respondent pursuant
23 the provisions of Section 10177(a) and/or 10177(j) of the Code.

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1 BROKER APPLICATION FRAUD

2 22.

3 Each and every allegation contained above in Paragraphs 1 through 21, inclusive,
4 is incorporated by this reference as if fully set forth herein.

5 23.

6 On or about May 23, 2017, Respondent made application to the Bureau for the
7 renewal of his real estate broker license.

8 24.

9 In response to Question 19 of said application, to wit: "ARE THERE ANY
10 LICENSE DISCIPLINARY ACTIONS PENDING AGAINST A BUSINESS OR
11 PROFESSIONAL LICENSE YOU HOLD AT THIS TIME?", Respondent concealed and failed
12 to disclose the Bureau's disciplinary action pending against him in Case No. H-12095 SF.

13 25.

14 The facts alleged above in Paragraphs 22 through 25 show that Respondent
15 procured or attempted to procure a real estate license by fraud, misrepresentation or deceit, or by
16 making a material misstatement of fact in said renewal application, which constitute grounds for
17 the suspension or revocation of all licenses and license rights of Respondent pursuant the
18 provisions of Section 10177(a) and/or 10177(j) of the Code.

19 COST RECOVERY


20 26.

21 The acts and/or omissions of Respondent, as alleged above, entitle the Bureau to
22 reimbursement of the costs of its audits pursuant to Section 10148(b) of the Code.

23 27.

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

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

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9 TRICIA D. PARKHURST
10 Supervising Special Investigator

11 Dated at Sacramento, California,
12 this 26th day of June, 2018.

13
14 DISCOVERY DEMAND

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