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DEPARTMENT OF REAL ESTATE

By R dew

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8 **BEFORE THE DEPARTMENT OF REAL ESTATE**

9 **STATE OF CALIFORNIA**

10 * * *

11 In the Matter of the Accusation of:

12 EMJ CAPITAL REALTY CORPORATION
13 and GUADALUPE SCHMITT,

14 Respondents.

) No. H-12519 SF

) ACCUSATION

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17 The Complainant, STEPHANIE YEE, in her official capacity as a Supervising
18 Special Investigator of the State of California, Department of Real Estate ("Department") for
19 cause of Accusation against EMJ CAPITAL REALTY CORPORATION ("EMJ") and
20 GUADALUPE "LUPE" SCHMITT ("SCHMITT"), (collectively "Respondents"), is informed
21 and alleges as follows:

22 **GENERAL ALLEGATIONS**

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24 EMJ is presently licensed by the Department and/or has license rights under the
25 Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code"),
26 as a corporate real estate broker, CREB License No. 01966245.

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SCHMITT is presently licensed by the Department and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a corporate real estate broker, REB License No. 00907196.

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At all relevant times, SCHMITT was the designated broker officer for EMJ. SCHMITT was also the Chief Financial Officer, and part owner, of EMJ.

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At all relevant times, EMJ was doing business under the fictitious business names of Casa Blanca Real Estate and/or Casa Blanca Realty, both DBAs not registered with the Department under EMJ's corporate license.

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On or about July 2, 2020, Special Investigator Lily Liu conducted a Broker Office Survey ("BOS") of EMJ. The BOS was conducted by telephone.

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At all relevant times herein, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the meaning of Section 10131(a) of the Code, in that Respondents performed licensed activities in the State of California for or in expectation of compensation, including sale or offer of sale, purchase or offer of purchase, solicitation of prospective sellers and purchasers of, solicitation or obtaining listings of, or negotiations of the purchase, sale or exchange of real property or a business opportunity.

FIRST CAUSE OF ACTION
(Fraud and/or Dishonest Dealings and/or Negligence)

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Each and every allegation made in Paragraphs 1 through 6, inclusive, is incorporated by this reference as if fully set forth herein.

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On or about April 1, 2016, the California Franchise Tax Board ("FTB") suspended EMJ.

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On or about October 4, 2018, SCHMITT, while acting on behalf of EMJ, submitted to the Department an Officer Renewal Application. Question 8 of said Application reads: "Is the corporation (EMJ) currently in good standing with the Office of the Secretary of State?" In response to Question 8, SCHMITT indicated "Yes."

10

Complainant is informed, believes, and thereon alleges that, on or about October 8, 2018, Respondents knew or should have known that EMJ was suspended by the FTB as of April 1, 2016, and Respondents fraudulently and/or negligently answered "Yes" to Question 8 of the Officer Renewal Application.

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The acts and/or omissions of Respondents, as alleged in the FIRST CAUSE OF ACTION, constitute grounds for the suspension or revocation of the license and license rights of Respondents under Sections 10177(a) (misrepresentation), 10177(d) (willful disregard or violation of real estate laws), 10177(g) (negligence), and 10177(j) (engaging in conduct that constitutes fraud or dishonest dealings) of the Code.

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The acts and/or omissions of SCHMITT, as alleged in the FIRST CAUSE OF ACTION, constitute further grounds for the suspension or revocation of the license and license rights of SCHMITT under Sections 10159.2 (responsibilities of corporate officer) and 10177(h) (reasonable supervision) of the Code, in conjunction with Title 10, California Code of Regulations ("Regulations"), Section 2725 (broker supervision).

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SECOND CAUSE OF ACTION

(Unlicensed Activity as to Respondents' use of DBAs Casa Blanca Real Estate and/or Casa Blanca Realty)

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

A. Orinda Property Transaction

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On or about March 15, 2020, Joel C. entered into a California Residential Purchase Agreement for the purchase of a property located at 5 Heather Ln., Orinda, CA ("Orinda Transaction")

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On or about March 15, 2020, SCHMITT signed the Purchase Agreement on behalf of Casa Blanca Real Estate, which represented Joel C. in the Orinda Transaction. DRE License No. 01966245 appears next to Casa Blanca Real Estate.

B. Oakland Property Transaction

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On or about May 28, 2018, Evan L. and Heesun L. entered into a California Residential Purchase Agreement for the purchase of a property located at 2526 67th Ave., Oakland, CA ("Oakland Transaction")

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On or about May 28, 2018, SCHMITT, signed the Purchase Agreement on behalf of Casa Blanca Real Estate, as the Listing Agent in the Oakland Transaction.

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On or about May 22, 2018, EMJ signed a Confirmation of Real Estate Agency Relationship, indicating EMJ was the Seller's Listing Agent in the Oakland Transaction.

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C. Daly City Property Transaction

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On or about January 23, 2018, Casa Blanca Realty entered into a Residential Listing Agreement with Augustin A. for the exclusive and irrevocable right to sell or exchange the real property located at 454 Oriente St., Daly City, CA ("Daly City Transaction").

20

The Residential Listing Agreement for the Daly City Transaction was signed by SCHMITT.

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The acts and/or omissions of Respondents, as alleged in the SECOND CAUSE OF ACTION, constitute grounds for the suspension or revocation of the license and license rights of Respondents under Sections 10177(d) (willful disregard or violation of real estate laws) and 10177(g) (negligence) of the Code, in conjunction with Section 2731 (use of false or fictitious business name) of the Regulations.

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The acts and/or omissions of SCHMITT, as alleged in the SECOND CAUSE OF ACTION, constitute further grounds for the suspension or revocation of the license and license rights of SCHMITT under Sections 10159.2 (responsibilities of corporate officer) and 10177(h) (reasonable supervision) of the Code, in conjunction with Section 2725 (broker supervision) of the Regulations.

THIRD CAUSE OF ACTION
(Unlicensed Activity During FTB Suspension)

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Each and every allegation made in Paragraphs 1 through 22, inclusive, is incorporated by this reference as if fully set forth herein.

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From on or about April 1, 2016, through on or about July 2, 2020, Respondents engaged in acts requiring a real estate license within the meaning of Section 10131(a) of the Code.

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During the time period described above in Paragraph 24, EMJ was suspended by the FTB and was not in good standing with the California Secretary of State.

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Respondents knew or should have known that EMJ's license was suspended as of April 1, 2016.

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The acts and/or omissions of Respondents, as alleged in the THIRD CAUSE OF ACTION, constitute grounds for the suspension or revocation of the license and license rights of Respondents under Sections 10177(d) (willful disregard or violation of real estate laws) and 10177(g) (negligence) of the Code.

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The acts and/or omissions of SCHMITT, as alleged in the THIRD CAUSE OF ACTION, constitute further grounds for the suspension or revocation of the license and license rights of SCHMITT under Sections 10159.2 (responsibilities of corporate officer) and 10177(h) (reasonable supervision) of the Code, in conjunction with Section 2725 (broker supervision) of the Regulations.

COST RECOVERY

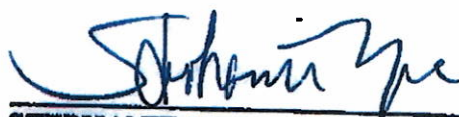
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Section 10106 of the Code provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, the Commissioner may request the Administrative Law Judge to direct a licensee found to have committed a violation of this

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1 part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
2 case.

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

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10 **STEPHANIE YEE**
11 **Supervising Special Investigator**

11 Dated at Oakland, California,
12 this 19th day of January, 2021

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14 **DISCOVERY DEMAND**

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

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