IMOTHY L. NEWLOVE, Counsel Department of Real Estate 107 South Broadway, Room 8107 Los Angeles, CA 90012

KISMET REAL ESTATE INVESTMENTS,

INC., a California corporation;

individually and as designated officer of Kismet Real Estate

and WILLARD MICHLIN,

Investments, Inc.,

NPR 13 1987

(213) 620-4790

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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

NO. H-22880 LA In the Matter of the Accusation of

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Respondents.

The Complainant, Randolph Brendia, a Deputy Real Estate Commissioner of the State of California, for cause of accusation [against KISMET REAL ESTATE INVESTMENTS, INC. a California corporation, and WILLARD MICHLIN, individually and as the designated officer of Kismet Real Estate Investments, Inc.

alleges as follows:

The Complainant, Randolph Brendia, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

- 2. Each respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter referred to as the "Code").
- 3. At all times mentioned herein, respondent KISMET REAL ESTATE INVESTMENTS, INC. (hereinafter respondent "KISMET") was and now is licensed by the California Department of Real Estate (hereinafter "Department") as a corporate real estate broker.
- 4. At all times material herein, respondent WILLARD MICHLIN (hereinafter "MICHLIN") was and now is licensed by the Department as a real estate broker in his individual capacity. At all times mentioned herein from January 27, 1986 to the present, respondent MICHLIN was the designated officer of respondent KISMET. As the designated officer of respondent KISMET, respondent MICHLIN was responsible under Section 10159.2 of the Code for the supervision of the activities of the officers and employees of said respondents for which license is required.
- 5. All further references to respondents KISMET and MICHLIN, and each of them, shall be deemed to refer to, in addition to said respondents, the officers, directors, employees, agents and real estate licensees employed by or associated with said respondents who at all times mentioned herein were engaged in the furtherance of the business or operations of said respondents, and each of them, and who were acting in the course and scope of their authority and employment.

- 1 In or about September, 1986, the Department performed an audit of the accounting and other records of respondent KISMET. The audit covered the time period from January 1, 1986 to and including August 15, 1986. Unless otherwise indicated the relevant time period in this Accusation shall be the 6 same.
- At all times material herein, respondent KISMET acted in the capacity of a mortgage loan broker by soliciting borrowers and lenders, negotiating and servicing loans secured directly by liens on real property within the meaning of Section 10 10131(d) of the Code, all for or in expectation of compensation. 11 At all times material in the course of or incidental to said mortgage loan brokerage business, respondent also acted or assumed 13 to act as escrow holder or agent for the purpose of effecting mortgage loan transactions, and thereby acted or assumed to act under the exemption from the provisions of the Escrow Law as provided by Section 17006(d) of the California Financial Code.
 - At all times herein, in connection with the 8. above-described mortgage loan and escrow activities, respondent KISMET received funds in trust (hereinafter "trust funds") from or on behalf of lenders of lenders and borrowers and thereafter made disbursements of said trust funds. At all times material herein, respondent maintained the following described trust accounts as part of its mortgage loan brokerage and escrow business:

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1 TITLE OF ACCOUNT

BANK

Kismet Real Estate Escrow Account Account No. (hereinafter "Trust Account No. 1")

Westside Savings and Loan Association Westwood, Calif.

Willard Michlin Escrow Account for Kismet Real Estate Investments, Inc. Account No.

First Los Angeles Bank Los Angeles, Calif.

(hereinafter "Trust Account No. 2")

7 At all times material herein, respondent KISMET disbursed, caused to be disbursed, or permitted the disbursement of funds from Trust Account No. 1 for purposes not authorized by and without the consent of, each person for whom the funds were held in trust in said account. The said unauthorized 11 disbursements of funds had reduced, as of August 15, 1986, the balance of funds in Trust Account No. 1 to an amount which was \$1,520.41 less than the then-existing aggregate trust fund liability of respondent KISMET to all owners of said funds. the said \$1,520.41 shortage, \$1,085.49 represents interest earned 0ffrom said Trust Account No. 1 and not disbursed by respondent KISMET to the owners of trust funds in said account.

19 At all times material herein, respondent KISMET disbursed, caused to be disbursed, or permitted the disbursement of funds from Trust Account No. 2 for purposes not authorized by, and without the consent of, each person for whom the funds were held in trust in said account. The said unauthorized disbursements of funds by respondent KISMET had reduced, as of August 15, 1986, the balance of funds in Trust Account No. 2 to an amount which was approximately \$1,635.72 less than the then existing aggregate trust fund liability of respondent KISMET to

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1 all owners of said funds.

11. At all times material herein, respondent KISMET failed to designate Trust Account No. 1 and Trust Account No. 2 as "trust accounts" on the signature cards of said accounts and also failed to maintain said accounts in the name of KISMET REAL ESTATE INVESTMENTS, INC., as trustee thereof.

- 12. At all times material herein, respondent KISMET failed to maintain a complete record of trust funds received into and disbursed from Trust Accounts Nos. 1 and 2 by not maintaining daily balance of the columnar records for said accounts.
- 13. At all times material herein, respondent KISMET failed to maintain an adequate separate record for each beneficiary or transaction by not keeping said separate records in a columnar format and not running a daily balance in said records.
- maintained Trust Account Nos. 1 and 2 as interest-bearing accounts without the authorization or approval of each person for whom funds were held in trust in said accounts. On or about August 4, 1986, respondent KISMET caused Trust Account No. 1 to be closed. From January 1, 1986 to and including August 4, 1986, Trust Account No. 1 generated \$1,085.49 in interest. Respondent KISMET has retained said \$1,085.49 in interest for its own benefit and failed to disburse said interest to the owners of trust funds in Trust Account No. 1.

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FIRST CAUSE OF ACCUSATION

(Violation by respondent KISMET of Sections 10145 and 10177(d) of the Code and Regulation 2832.1)

- 15. As a First Cause of Accusation, complainant incorporates herein by this reference the Preamble and each of them allegations in Paragraph 1 through 10 hereinabove.
- Paragraphs 9 and 10 hereinabove, constitutes the disbursement of trust funds from Trust Account No. 1 and Trust Account No. 2 resulting in a reduction of the balance of funds in said accounts to an amount less than the then-existing aggregate trust fund liability of respondent to all owners of the trust funds, without the prior written consent of each person who was an owner of funds in the account, in violation of Section 10145 of the Code and Section 2832.1 of Chapter 6, Title 10, of the California Administrative Code (hereinafter the "Regulations"). Said conduct and violations are cause to suspend or revoke the real estate license and license rights of respondent KISMET under the provisions of Section 10177(d) of the Code.,

SECOND CAUSE OF ACCUSATION

(Violation by respondent KISMET of Regulation 2830 and Section 10177(d) of the Code)

- 17. As a Second Cause of Accusation, complainant incorporates herein by this reference the Preamble and each of the allegations in Paragraphs 1 through 8 and 11 hereinabove.
- 18. The failure of respondent KISMET to designate Trust Accounts Nos. 1 and 2 as "trust accounts" and maintain said

accounts in the name of the broker as trustee thereof, as alleged in Paragraph 11 hereinabove, is a violation of Regulation 2830 and constitutes grounds for the suspension or revocation of the real estate license and real estate license rights of respondent KISMET under the provisions of Section 10177(d) of the Code. 5 THIRD CAUSE OF ACCUSATION 6 (Violation by respondent KISMET or Regulation 2831 7 and Section 10177(d) of the Code) 8 As a Third Cause of Accusation, complainant 19. incorporates herein by this reference the Preamble and each of the allegations in Paragraphs 1 through 8 and 12 hereinabove. 11 The failure of respondent KISMET to keep a complete 20. 12 record of all trust funds received and disbursed, as described in Paragraph 12 hereinabove, is a violation of Regulation 2831 and constitutes grounds for the suspension or revocation of the real estate license and real estate license rights of respondent KISMET under the provisions of Section 10177(d) of the Code. 17 FOURTH CAUSE OF ACCUSATION 18 (Violation by respondent KISMET of Regulation 2831.1 19 and Section 10177(d) of the Code) 20 As a Fourth Cause of Accusation, complainant 21. 21 incorporate herein by this reference the Preamble and each of the allegations in Paragraphs 1 through 8 and 13 hereinabove. 23 The failure of respondent KISMET to keep a complete 22. 24 and proper separate record for each beneficiary or transaction, as 25 described in Paragraph 13 hereinabove, is a violation of

Regulation 2831.1 and constitutes grounds for the suspension or

revocation of the real estate licenses and real estate license rights of respondent KISMET under the provisions of Section 10177(d) of the Code.

FIFTH CAUSE OF ACCUSATION

(Violation by respondent KISMET of Sections 10145 and 10177(d) of the Code and Regulation 2830)

As a Fifth Cause of Accusation, complainant incorporates herein by this reference the Preamble and each of the allegations in Paragraphs 1 through 8 and 14 hereinabove.

The conduct of respondent KISMET in maintaining Trust Account No. 1 and Trust Account No. 2 as interest-bearing accounts without the permission of and without being requested to do so by the owners of trust funds in said accounts and in retaining the interest earned from Trust Account No. 1 without disbursing said 15 linterest to the owners of trust funds in said account, as described in Paragraph 14 hereinabove, constitutes a violation of Section 10145 of the Code and Regulation 2830. Said conduct and violations constitute grounds for the suspension or revocation of the real estate license and license rights of respondent KISMET under the provisions of Section 10177(d) of the Code.

SIXTH CAUSE OF ACCUSATION

(Violation by respondent MICHLIN of Section 10177(h) of the Code)

As a Sixth Cause of Accusation, complainant 25. incorporates herein by this reference the Preamble and each of the allegations in Paragraphs 1 through 14 and 16, 18, 20, 22, and 24 hereinabove.

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1 The acts and omissions of respondent MICHLIN, in allowing respondent KISMET to violate Sections 10145 and 10177(d) of the Code and Regulation 2830, 2831, 2831.1 and 2832.1, as alleged hereinabove in Paragraphs 16, 18, 20, 22 and 24, 4 5 constitute a failure on the part of respondent MICHLIN as the 6 designated officer of respondent KISMET to exercise reasonable 7 supervision of the activities of said corporate respondent for which a real estate license is required under Section 10159.2 of the Code and is cause to suspend or revoke respondent MICHLIN'S real estate license and real estate license rights under 10177(h) 11 of the Code. 12 WHEREFORE, complainant prays that a hearing be conducted 13 on the allegations on this Accusation and, that upon proof 14 thereof, a decision be rendered imposing disciplinary action 15 against all licenses and license rights of respondents KISMET REAL 16 ESTATE INVESTMENTS, INC., a California corporation and WILLARD 17 MICHLIN, individually and as the designated officer of Kismet Real 18 Estate Investments, Inc., under the Estate Law (Part 1 of Division 19 20

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1 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law. Dated at Los Angeles, California this 13th day of April, 1987. 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 Kismet Real Estate Investments, Inc. cc: Willard Michlin 26 Sacto.

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