Jan 1 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	Department of Real Estate 320 West 4th Street, Ste. 350 Los Angeles, California 90013-1105 Telephone: (213) 576-6982 JUL -7 2011 DEPARTMENT OF REAL ESTATE BY: 
16	Respondents.
17	It is hereby stipulated by and between Respondent
19	MARCI SUE LEWIS, individually and as designated officer of Marci Lewis Brokers Inc., (sometimes collectively referred to as
20	"Respondents"), and the Complainant, acting by and through
21	Elliott Mac Lennan, Counsel for the Department of Real Estate, as
22	follows for the purpose of settling and disposing of the
23	Accusation filed on October 20, 2009, in this matter:
24	1. All issues which were to be contested and all
25	evidence which was to be presented by Complainant and Respondent
26	at a formal hearing on the Accusation, which hearing was to be
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	- 1 -

held in accordance with the provisions of the Administrative Procedure Act ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement ("Stipulation").

2. Respondent has received, read and understands the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate in this proceeding.

Respondent timely filed a Notice of Defense 9 3. pursuant to Section 11506 of the Government Code for the purpose 10 of requesting a hearing on the allegations in the Accusation. 11 Respondent hereby freely and voluntarily withdraws said Notice of 12 Defense. Respondent acknowledges that she understands that by 13 withdrawing said Notice of Defense she thereby waives her right 14 to require the Commissioner to prove the allegations in the 15 Accusation at a contested hearing held in accordance with the 16 provisions of the APA and that she will waive other rights 17 afforded to her in connection with the hearing such as the right 18 to present evidence in her defense the right to cross-examine 19 20 witnesses.

4. This Stipulation is based on the factual
allegations contained in the Accusation. In the interest of
expedience and economy, Respondent chooses not to contest these
allegations, but to remain silent and understands that, as a
result thereof, these factual allegations, without being admitted
or denied, will serve as a prima facie basis for the disciplinary
action stipulated to herein. The Real Estate Commissioner shall

- 2 -

not be required to provide further evidence to prove said factual allegations.

5. This Stipulation is made for the purpose of reaching an agreed disposition of this proceeding and is expressly limited to this proceeding and any other proceeding or case in which the Department of Real Estate ("Department"), the state or federal government, or any agency of this state, another state or federal government is involved, and otherwise shall not be admissible in any other criminal or civil proceedings.

It is understood by the parties that the Real 6. 10 Estate Commissioner may adopt this Stipulation as his Decision in 11 this matter thereby imposing the penalty and sanctions on 12 Respondent's real estate licenses and license rights as set forth 13 in the "Order" herein below. In the event that the Commissioner 14 in his discretion does not adopt the Stipulation, it shall be 15 void and of no effect and Respondent shall retain the right to a 16 hearing and proceeding on the Accusation under the provisions of 17 the APA and shall not be bound by any stipulation or waiver made 18 herein. 19

The Order or any subsequent Order of the Real 20 7. Estate Commissioner made pursuant to this Stipulation shall not 21 constitute an estoppel, merger or bar to any further 22 administrative or civil proceedings by the Department of Real 23 Estate with respect to any matters which were not specifically 24 alleged to be causes for Accusation in this proceeding but do 25 constitute a bar, estoppel and merger as to any allegations 26 actually contained in the Accusation against Respondent herein. 27

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Respondent understands that by agreeing to this 1 8. Stipulation, Respondent agrees to pay, pursuant to Business and 2 Professions Code Section 10148, the cost of the original audit of 3 Marci Lewis Brokers Inc. The amount of said cost for the audit 4 5 is \$2,838.00. DETERMINATION OF ISSUES 6 By reason of the foregoing, it is stipulated and agreed 7 that the following determination of issues shall be made: 8 Τ. 9 The conduct, acts or omissions of MARCI SUE LEWIS, as 10 described in Paragraph 4, herein above, is in violation of 11 Business and Professions Code Sections 10145 and 10159.2, and 12 Sections 2831 and 2832(a) of Title 10, Chapter 6 of the 13 California Code of Regulations ("Regulations") and is a basis for 14 discipline of Respondent's license and license rights pursuant to 15 Code Section <u>10</u>177(g) and 10177(h). 16 ORDER 17 WHEREFORE, THE FOLLOWING ORDER is hereby made: 18 All licenses and licensing rights of Respondent 19 I. MARCI SUE LEWIS under the Real Estate Law are suspended for a 20 period of one hundred twenty (120) days from the effective date 21 of this Decision. 22 Provided, however, that if Respondent requests, the Α. 23 initial thirty (30) days of said suspension (or a portion 24 thereof) shall be stayed for two (2) years upon condition that: 25 Respondent pays a monetary penalty pursuant to 26 1. Section 10175.2 of the Business and Professions Code at the rate 27 4 -

1 of \$166.67 per day for each day of the suspension for a total
2 monetary penalty of \$5,000.

2. Said payment shall be in the form of a cashier's
4 check or certified check made payable to the Recovery Account of
5 the Real Estate Fund. Said check must be received by the
6 Department prior to the effective date of the Decision in this
7 matter.

8 3. No further cause for disciplinary action against
9 the real estate license of Respondent occurs within two (2) years
10 from the effective date of the Decision in this matter.

11 <u>4. If Respondent fails to pay the monetary penalty in</u> 12 accordance with the terms of the Decision, the Commissioner may, 13 without a hearing, order the immediate execution of all or any 14 part of the stayed suspension, in which event the Respondent 15 shall not be entitled to any repayment nor credit, prorated or 16 otherwise, for money paid to the Department under the terms of 17 this Decision.

5. If Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within two (2) years from the effective date of the Decision, the stay hereby granted shall become permanent.

B. The remaining ninety (90) days of the one hundred
 twenty (120) day suspension shall be stayed for two (2) years
 upon the following terms and conditions:

26 <u>1. Respondent shall obey all laws, rules and</u>
 27 regulations governing the rights, duties and responsibilities of

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1 a real estate licensee in the State of California; and

That no final subsequent determination be made 2 2. after hearing or upon stipulation, which cause for disciplinary 3 action occurred within two (2) years from the effective date of 4 this Decision. Should such a determination be made, the 5 Commissioner may, in his discretion, vacate and set aside the 6 stay order and reimpose all or a portion of the stayed 7 suspension. Should no such determination be made, the stay 8 imposed herein shall become permanent. 9

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# II.

# Pursuant to Section 10148 of the Business and

Professions Code, Respondent MARCI SUE LEWIS shall pay the 12 Commissioner's reasonable cost for the original audit of Marci 13 Lewis Brokers Inc. which led to this disciplinary action. The 14 cost of the original audit is \$2,838.00. In calculating the 15 amount of the Commissioner's reasonable cost, the Commissioner 16 may use the estimated average hourly salary for all persons 17 performing audits of real estate brokers, and shall include an 18 allocation for travel time to and from the auditor's place of 19 work. Respondent shall pay such cost within 60 days of 20 receiving an invoice from the Commissioner detailing the 21 activities performed during the audit and the amount of time 22 spent performing those activities. 23

The Commissioner may suspend the license of Respondent pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between

- 6 -

the Respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

#### III.

All licenses and licensing rights of Respondent MARCI 8 SUE LEWIS are indefinitely suspended unless or until Respondent 9 provides proof satisfactory to the Commissioner, of having taken 10 and successfully completed the continuing education course on 11 trust fund accounting and handling specified in paragraph (3) of 12 subdivision (a) of Section 10170.5 of the Business and 13 Professions Code. Proof of satisfaction of this requirement 14 includes evidence that respondent has successfully completed the 15 trust fund account and handling continuing education course 16 within 120 days prior to the effective date of the Decision in 17 18 this matter.

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IV.

Respondent MARCI SUE LEWIS shall within six (6) months from the effective date of the Decision herein, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

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3	DATED:
4	ELLIOTT MAC LENNAN, Counsel for the Department of Real Estate
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6	* * *
7	EXECUTION OF THE STIPULATION
8	I have read the Stipulation and discussed it with my
. 9	counsel. Its terms are understood by me and are agreeable and
10	acceptable to me. I understand that I am waiving rights given to
11	me by the California Administrative Procedure Act (including but
12	not limited to Sections 11506, 11508, 11509 and 11513 of the
13	Government Code), and I willingly, intelligently and voluntarily
14	waive those rights, including the right of requiring the
15	Commissioner to prove the allegations in the Accusation at a
16	hearing at which I would have the right to cross-examine
17	witnesses against me and to present evidence in defense and
18	mitigation of the charges.
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# MAILING AND FACSIMILE

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2	Respondent (1) shall mail the original signed signature
3	page of the stipulation herein to Elliott Mac Lennan: Attention:
4	Legal Section, Department of Real Estate, 320 W. Fourth St.,
5	Suite 350, Los Angeles, California 90013-1105. Additionally,
6	Respondent shall also (2) facsimile a copy of signed signature
7	page, to the Department at the following telephone/fax number:
8	(213) 576-6917, Attention: Elliott Mac Lennan. A facsimile
9	constitutes acceptance and approval of the terms and conditions
10	of this stipulation.
11	Respondent agrees, acknowledges and understands that by
12	electronically sending to the Department a facsimile copy of
13	Respondent's actual signature as it appears on the stipulation
14	that receipt of the facsimile copy by the Department shall be as
15	binding on Respondent as if the Department had received the
16	original signed stipulation.
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19	DATED: 5/05/11
20	MARCI SUE LEWIS, Respondent
21	
22	DATED: 5-5-11 Mullar Suller
23	BARBARA GILBERT, ESQ. Attorney for Marci Sue Lewis,
24	Approved as to form
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The foregoing Stipulation and Agreement is hereby adopted as my Decision as to Respondent MARCI SUE LEWIS and shall become effective at 12 o'clock noon on \_\_\_\_August 5, 2011 , 2011. 6/29 IT IS SO ORDERED , 2011. BARBARA J. BIGBY Acting Real Estate Commissioner - 10 -

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2	JUL =7 2011
3	DEPARTMENT OF REAL ESTATE
5	BY:
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8	BEFORE THE DEPARTMENT OF REAL ESTATE
9	STATE OF CALIFORNIA
10	* * *
11	In the Matter of the Accusation of ) No. H-36311 LA
12	) MARCI LEWIS BROKERS INC. doing )
13	business as Citihomes & Loans; and MARCI SUE LEWIS, individually
14	and as designated officer of Marci Lewis Brokers Inc.,
15	) Respondents.
16	
17	ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE
10	On October 20, 2009, an Accusation was filed in this
20	matter against Respondent MARCI LEWIS BROKERS INC.
21	On April 14, 2011, Respondent petitioned the
22	Commissioner to voluntarily surrender its real estate broker
23	license rights pursuant to Section 10100.2 of the Business and
24	Professions Code.
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	II. Contraction of the second s

• . 1	IT IS HEREBY ORDERED that Respondent MARCI LEWIS
2	BROKERS INC.'s petition for voluntary surrender of its real
3	estate broker license rights is accepted as of the effective date
4	of this Order as set forth below, based upon the understanding
5	and agreement expressed in Respondent's Declaration dated April
6	14, 2011, (attached as Exhibit "A" hereto). Respondent's license
7	certificate, pocket card and any branch office license
8	certificate shall be sent to the below listed address so that
9	they reach the Department on or before the effective date of this
10	Order:
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12	Department of Real Estate Atten: Licensing Flag Section
13	P.O. Box 187000 Sacramento, CA 95818-7000
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15	This Order shall become effective at 12 o'clock noon on July 27
16	DATED: 6/29 , 2011
18	DATED: $\frac{\sigma_{1}}{1}$ , 2011
19	BARBARA J. BIGBY Acting Real Estate Commissioner
20	In this
21	Darbara & Dofa
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2	"Exhibit A"
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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	MARCI LEWIS BROKERS INC. doing ) No. H-36311 LA
13	business as Citihomes & Loans; ) and MARCI SUE LEWIS, individually )
14	and as designated officer of Marci Lewis Brokers Inc.,
15	Respondents.
16	j
17	DECLARATION
18	My name is Marci Sue Lewis and I am the designated
19	officer of MARCI LEWIS BROKERS INC. which is licensed as a real
20	estate broker and/or have license rights with respect to said
21	license. I am authorized to sign this declaration on behalf of
22	MARCI LEWIS BROKERS INC.
23	In lieu of proceeding in this matter in accordance
24	with the provisions of the Administrative Procedures Act
25	(Sections 11400 et seq., of the Government Code) MARCI LEWIS
26	BROKERS INC. wishes to voluntarily surrender its real estate
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license issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

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I understand that MARCI LEWIS BROKERS INC., by so voluntarily surrendering said license, can only have it reinstated in accordance with the provisions of Section 11522 of the Government Code. I also understand that by so voluntarily surrendering said license rights, MARCI LEWIS BROKERS INC. agrees to the following:

The filing of this Declaration shall be deemed as 9 MARCI LEWIS BROKERS INC.'s petition for voluntary surrender. It 10 shall also be deemed to be an understanding and agreement by 11 MARCI LEWIS BROKERS INC. that, it waives all rights it has to 12 require the Commissioner to prove the allegations contained in 13 the Accusation filed in this matter at a hearing held in 14 accordance with the provisions of the Administrative Procedures 15 Act (Government Code Sections 11400 et seq.), and that MARCI 16 LEWIS BROKERS INC. also waives other rights afforded to it in 17 connection with the hearing such as the right to discovery, the 18 right to present evidence in defense of the allegations in the 19 Accusation and the right to cross examine witnesses. 20

I further agree on behalf of MARCI LEWIS BROKERS INC. that upon acceptance by the Commissioner, as evidenced by an appropriate order, all affidavits and all relevant evidence obtained by the Department in this matter prior to the Commissioner's acceptance, and all allegations contained in the Accusation filed in the Department Case No. H-36311 LA, may be considered by the Department to be true and correct for the

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purpose of deciding whether or not to grant reinstatement of MARCI LEWIS BROKERS INC.'s license pursuant to Government Code Section 11522 excluding Code Section 10176(i).

I further agree on behalf of MARCI LEWIS BROKERS INC. to pay the Commissioner's reasonable cost for the audit which led to this action. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. I will pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. 

I am aware that if MARCI LEWIS BROKERS INC. petitions for reinstatement in the future, that payment of the audit costs 1.5 will be a condition of reinstatement. 

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that I am acting freely and voluntarily on behalf of MARCI LEWIS BROKERS INC. to surrender its license and license rights attached thereto. Forest California, 2011 Dat BY: SUE LEWIS  $\mathbf{r} \cap \mathbf{r}$ Designated Officer of MARCI LEWIS BROKERS INC. 

1 2	ELLIOTT MAC LENNAN, SBN 66674 Department of Real Estate 320 West 4th Street, Ste. 350 Los Angeles, California 90013-1105 OCT 20 2009
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4	Telephone: (213) 576-6911 (direct) DEPARTMENT OF REAL ESTATE -or- (213) 576-6982 (office) BY:
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8	BEFORE THE DEPARTMENT OF REAL ESTATE
9	STATE OF CALIFORNIA
10	* * * )
. 11	In the Matter of the Accusation of ) No. H-36311 LA
12	MARCI LEWIS BROKERS INC. doing ) $\underline{A} \subseteq \underline{C} \sqcup \underline{S} \underline{A} \perp \underline{T} \perp \underline{O} \underline{N}$ business as Citihomes & Loans; )
13	and MARCI SUE LEWIS, individually ) and as designated officer of
14	Marci Lewis Brokers Inc.
15	Respondents.
16	)
17	The Complainant, Robin Trujillo, a Deputy Real Estate
18	Commissioner of the State of California, for cause of Accusation
. 19	against MARCI LEWIS BROKERS INC. dba Citihomes & Loans; and MARCI
20 21	SUE LEWIS , individually and as designated officer of Marci Lewis
	Brokers Inc. alleges as follows:
22	1.
. 24	The Complainant, Robin Trujillo, acting in her official
25	capacity as a Deputy Real Estate Commissioner of the State of
26	California, makes this Accusation against MARCI LEWIS BROKERS
· 27	INC. and MARCI SUE LEWIS.
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All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

## License History

3.

A. At all times mentioned, MARCI LEWIS BROKERS INC.
("MLBI") and MARCI SUE LEWIS ("LEWIS ") were licensed or had
license rights issued by the Department of Real Estate
("Department") as real estate brokers. LEWIS was originally
licensed as a real estate broker on July 17, 2004.

12 At all times material herein, MLBI was licensed by в. 13 the Department of Real Estate of the State of California 14 ("Department") as a corporate real estate broker by and through 15 LEWIS, as the designated officer and broker responsible, pursuant 16 to Code Sections 10159.2 and 10211 of the Business and 17 Professions Code for supervising the activities requiring a real 18 estate license conducted on behalf MLBI of by MLBI's officers, 19 agents and employees, including LEWIS. MLBI was originally 20 licensed as a corporate real estate broker on June 19, 2007 by 21 and through LEWIS. 22 23 111

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#### Brokerage

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4.

At all times mentioned, in the City of Santa Ana, 3 County of Orange, MLBI and LEWIS acted as real estate brokers within the meaning of: 5

Code Section 10131(a). Respondents MLBI and LEWIS Α. 6 dba Citihomes & Loans engaged in the business of, acted in the 7 capacity of, advertised or assumed to act as a real estate R 9 broker, including the solicitation for listings of and the 10 negotiation of the sale of real property as the agent of others; 11 and

12 Code Section 10131(d). Respondents MLBI and LEWIS В. 13 dba Citihomes & Loans engaged in activities with the public 14 wherein lenders and borrowers were solicited for loans secured 15 directly or collaterally by liens on real property, wherein such 16 loans were arranged, negotiated, processed and consummated on 17 behalf of others for compensation or in expectation of 18 compensation and for fees often collected in advance as well as 19 at the conclusion of transactions; and 20

Audit

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23 On June 19, 2009, the Department completed an audit 24 examination of the books and records of MLBI pertaining to the 25 mortgage loan activities only described in Paragraph 4, which 26 require a real estate license. The audit examination covered a period of time beginning on April 30, 2006 to March 31, 2009. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 080284, and the exhibits and work papers attached to said audit report.

Trust Account

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A trust account was not kept during the audit period. Violations of The Real Estate Law

7.

In the course of activities described in Paragraph 4 above, and during the examination period described in Paragraph 5, Respondents MLBI and LEWIS, acted in violation of the Code and the Regulations in that they:

(a) (1) Failed to maintain a control record in the form
of a columnar record in chronological order of all "Trust Funds
Received, Not Placed Broker's Trust Account", including but not
limited to (1) the earnest money deposit for Sofia Sendoya, (2)
credit and appraisal fees, (3) earnest money deposits for Phong
Nguyen, Alexandra Avendano and Horacio Palacios, in violation of
Code Section 10145 and Regulation 2831.

(b) Failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, including but not limited to credit and appraisal fees, deposited into, and disbursed in violation of

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Code Section 10145 and Regulation 2831.1.

(c)(1) Failed to place the earnest money deposit of Sofia Sendoya returned from LandAmerica Gateway Title Company on behalf of Sofia Sendoya in the amount of \$2,000 for the real 4 property located at 4240 Philadelphia St., Chino, California, 5 into a trust account in the name of the broker as trustee at a 6 bank or other financial institution, in violation of Code Section 7 10145 of the Code and Regulation 2832(a). 8

(c)(2) Failed to place appraisal and credit report fees 9 collected from borrower Phong Nguyen into a trust account in the 10 11 name of the broker as trustee at a bank or other financial 12 institution, in violation of Code Section 10145 of the Code and 13 Regulation 2832(a).

14 (d) On August 6, 2007, Sofia Sendoya signed a purchase 15 agreement for the real property located at 4240 Philadelphia St., 16 Chino, California. The purchase agreement recited that an 17 earnest money deposit of \$2,000 was made to payee MLBI. The 18 earnest money deposit was paid into LandAmerica Gateway Title, 19 the escrow company. The escrow was cancelled occasioned by the 20 foreclosure of the Philadelphia St. property. On May 30, 2008, 21 LandAmerica Gateway Title ceased doing business and returned the 22 unclaimed deposit to MLBI. However, Respondents MLBI and LEWIS 23 24 failed to return the \$2,000 deposit to Sofia Sendoya until May 25 15, 2009 and June 16, 2009, in violation of Code Section 10176(i) 26 and/or 10177(g).

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1 (f) Failed to provide or retain a true and correct (e) 2 copy of a Department of Real Estate approved California Mortgage Ŕ Loan Disclosure Statement signed by the broker for borrower Phong 4 Nguyen, in violation of Code Section 10240 and Regulation 2840. 5 Discipline Statutes And Regulations 6 8. 7 The conduct of Respondents MLBI and LEWIS described in 8 Paragraph 7, above, violated the Code and the Regulations as set 9 10 forth below: 11 12 PARAGRAPH PROVISIONS VIOLATED 13 Code Section 10145 and Regulation 2831 7(a) 14 15 Code Section 10145 and Regulation 2831.1 7(b) 16 17 Code Section 10145 and Regulation 2832(a) 7(c) 18 19 Code Section 10176(i) and/or 10177(g) 7(d) 20 21 Code Section 10240 and Regulation 2840 7(e) 22 23 24 The foregoing violations constitute cause for the suspension or 25 revocation of the real estate license and license rights of MLBI 26 and LEWIS, under the provisions of Code Sections 10176(i), 27

10177(d) and/or 10177(g).

### Negligence

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The overall conduct of Respondents MLBI and LEWIS constitutes negligence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of said Respondents pursuant to the provisions of Code Section 10177(g).

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#### Supervision

## 10.

11 The overall conduct of Respondent LEWIS constitutes a 12 failure on Respondent's part, as officer designated by a 13 corporate broker licensee, to exercise the reasonable supervision 14 and control over the licensed activities of MLBI as required by 15 Code Section 10159.2 and to keep MLBI in compliance with the Real 16 Estate Law, and is cause for the suspension or revocation of the 17 real estate license and license rights of MLBI pursuant to the 18 provisions of Code Sections 10177(h), 10177(d) and 10177(g). 19 111 20 /// 21 111 22 111 23 24 111 25 111 26 /// 27

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WHEREFORE, Complainant prays that a hearing be 1 conducted on the allegations of this Accusation and that upon 2 proof thereof, a decision be rendered imposing disciplinary 3 action against the license and license rights of Respondents 4 MARCI LEWIS BROKERS INC. and MARCI SUE LEWIS, under the Real 5 Estate Law (Part 1 of Division 4 of the Business and Professions 6 7 Code) and for such other and further relief as may be proper 8 under other applicable provisions of law. 9 Dated at Los Angeles, California 10 this 28 day of august 11 Deputy Real/Estate Commissioner 12 13 14 15 16 17 18 19 20 21 22 23 cc: Marci Lewis Brokers Inc. 24 c/o Marci Sue Lewis D.O. 25 Robin Trujillo Sacto 26 Audits - Daryl Thomas 27

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