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FILED

NOV - 8 2012

DEPARTMENT OF REAL ESTATE
BY: Jamie B. Nish

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2 Department of Real Estate
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9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13)
14 K2 CAPITAL MANAGEMENT INC, and)
15 LAUREN KERR LAYTON, individually,)
16 and as former designated officer of)
17 K2 Capital Management Inc,)
18 Respondents.)

No. H-38374 LA

FIRST AMENDED
ACCUSATION

19 This Accusation amends the Accusation filed on August
20 24, 2012. The Complainant, Veronica Kilpatrick, a Deputy Real
21 Estate Commissioner of the State of California, for cause of
22 Accusation against K2 CAPITAL MANAGEMENT INC and LAUREN KERR
23 LAYTON, individually, and as former designated officer of K2
24 Capital Management Inc, is informed and alleges as follows:

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1.

The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

2.

K2 CAPITAL MANAGEMENT INC, (hereinafter "K2") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter "Code"), as a corporate real estate broker. K2 was initially licensed by the California Department of Real Estate ("Department") on May 1, 2009.

3.

LAUREN KERR LAYTON (hereinafter "LAYTON") is presently licensed and/or has license rights under the Real Estate Law, as a real estate broker. She was a designated officer of K2 from May 1, 2009 to September 9, 2010.

4.

Pursuant to Code Section 10159.2, Respondent LAYTON was responsible for the supervision and control of the activities conducted on behalf of Respondent K2 and by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

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1 FIRST CAUSE OF ACCUASTION

2 (Advance Fee Agreements)

3 5.

4 George T. Transaction

5 On or about September 2, 2009, George T. entered into
6 an agreement with K2 in which K2 agreed to negotiate a
7 modification of a loan secured by George T's real property, in
8 exchange for George T's payment of advance fees to K2. \$2,500
9 in advance fees was received by K2 on September 2, 2009.

10 6.

11 Edward M. Transaction

12 On or about October 5, 2009, Edward M. entered into an
13 agreement with K2 in which K2 agreed to negotiate a modification
14 of a loan secured by Edward M's real property, in exchange for
15 Edward M's payment of advance fees to K2. \$3,000 in advance
16 fees was received by K2 on October 10, 2009.

17 7.

18 The agreements described in Paragraphs 5 and 6 above,
19 constitute advance fee agreements within the meaning of Code
20 Section 10026. On June 22, 2009 the Department received an
21 advance fee agreement from LAYTON, on behalf of K2. The
22 Department advised LAYTON and K2 that the agreement could not
23 be used, in a letter dated June 26, 2009. On September 8,
24 2009, LAYTON submitted another advance fee agreement to the
25 Department, on behalf of K2. The Department advised LAYTON and
26 K2 that the agreement could not be used, in a letter dated
27 October 20, 2009.

1 8.

2 Therefore, neither the agreements described in
3 paragraphs 5 and 6 above, nor any other advance fee agreements
4 used by LAYTON and K2, were approved by the Department. The
5 use of the advance fee agreements, referred to in Paragraphs 5
6 and 6 above, was in violation of Code Sections 10085 and
7 10085.5 and Regulation 2970. This provides cause for the
8 suspension or revocation of the licenses and license rights of
9 K2 and LAYTON, pursuant to Code Sections 10085, 10177(d) and/or
10 10177(g).

11 9.

12 In aggravation, between March 17, 2009 and August 19,
13 2009, K2 entered into the following advance fee agreements,
14 which were not approved by the Department:

16 Consumer(s)	Agreement Date	Advance Fee
17 Michael M.	3/17/09	\$3,490
18 Virginia G.	4/24/09	\$3,495
19 Clarence & Amy C.	8/3/09	\$2,995
20 Barbara R.	8/5/09	\$2,995
21 David E.	8/17/09	\$2,995
22 Frances B. & Veda M.	8/19/09	\$3,000

23 10.

24 The overall conduct of Respondent LAYTON constitutes a
25 failure on her part, as an officer designated by a corporate
26 broker licensee, to exercise the reasonable supervision and
27 control over the licensed activities of K2 as required by Code

1 Section 10159.2, and to keep K2 in compliance with the Real
2 Estate Law, and is cause for the suspension or revocation of the
3 real estate licenses and license rights of LAYTON pursuant to
4 the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

5 SECOND CAUSE OF ACCUSATION

6 (Lack of Corporate Standing)

7 11.

8 On or about February 1, 2012, the Franchise Tax Board
9 of the State of California forfeited K2's powers, rights and
10 privileges pursuant to the provisions of the California Revenue
11 and Taxation Code, and the entity's powers, rights and
12 privileges remain forfeited to date.

13 12.

14 The conduct of Respondent K2, as alleged above, is in
15 violation of Section 2742 of Title 10, Chapter 6, California
16 Code of Regulations, and subjects its real estate licenses and
17 license rights to suspension or revocation pursuant to Code
18 Section 10177(d), 10177(g) and/or 10177(f).

19 13.

20 Cease and Desist Order

21 In aggravation, on or about May 18, 2012, the State
22 of Washington, Department of Financial Services, Division of
23 Consumer Affairs, in Case No: C-11-0589-12-F001, issued a Final
24 Order in which K2 and LAYTON were ordered to cease and desist
25 from engaging in the business of mortgage brokers or loan
26 originators in the State of Washington. K2 and LAYTON were
27 also prohibited from participating in the conduct of the

1 affairs of any mortgage broker in the State of Washington for
2 five (5) years. As more fully set forth in the Statement of
3 Charges, the basis for the Order was that K2 and LAYTON
4 conducted business as mortgage loan brokers in the State of
5 Washington without being licensed to do so, and failed to
6 maintain records, in violation of RCW 19.146.0202(1), (2), and
7 (3), RCW 19.146.200(1) and WAC 208-660-155, RCW 19.146.060 and
8 WAC 208-660-450.

9 WHEREFORE, Complainant prays that a hearing be
10 conducted on the allegations of this Accusation and that upon
11 proof thereof, a decision be rendered imposing disciplinary
12 action against all the licenses and license rights of
13 Respondents K2 CAPITAL MANAGEMENT INC and LAUREN KERR LAYTON,
14 under the Real Estate Law, that Complainant be awarded its
15 costs of investigation and prosecution of this case, as set
16 forth in Code Section 10106, and for such other and further
17 relief as may be proper under other applicable provisions of
18 law.

19 Dated at San Diego, California

20 this 6 day of November, 2012

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23 
24 Veronica Kilpatrick
Deputy Real Estate Commissioner

25 cc: K2 CAPITAL MANAGEMENT INC
26 LAUREN KERR LAYTON
27 Veronica Kilpatrick
Sacto.