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FILED

SEP - 4 2015

BUREAU OF REAL ESTATE

By 

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8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of) CalBRE No. H-39155 LA
12) OAH No. 2013120378
POINT CENTER FINANCIAL, INC., a)
13 corporate real estate broker;) THIRD AMENDED ACCUSATION
NATIONAL FINANCIAL LENDING, INC.,)
14 a corporate real estate broker;)
CAL COMM CAPITAL, INC., a corporate)
15 real estate broker; and DAN JOE HARKEY,)
designated broker-officer of)
16 Point Center Financial, Inc.,)
National Financial Lending, Inc. and)
17 Cal Comm Capital, Inc.,)
Respondents.)

18
19 This Third Amended Accusation amends the Second Amended Accusation filed on
20 January 26, 2015. The Complainant, Maria Suarez, a Deputy Real Estate Commissioner
21 (“Complainant”), for cause of Accusation against POINT CENTER FINANCIAL, INC., a
22 corporate real estate broker; NATIONAL FINANCIAL LENDING, INC., a corporate real estate
23 broker; CAL COMM CAPITAL, INC., a corporate real estate broker; and DAN JOE HARKEY,
24 owner and designated broker-officer of subject real estate corporations, is informed and alleges

1 in her official capacity as follows:

2 1.

3 The Complainant makes this Third Amended Accusation in her official capacity.

4 2.

5 All references to the "Code" are to the California Business and Professions Code and all
6 references to "Regulations" are to the Regulations of the Real Estate Commissioner, Title 10,
7 Chapter 6, California Code of Regulations, unless otherwise specified.

8 3.

9 Code Section 10159.2 provides that: "(a) [T]he officer designated by a corporate broker
10 licensee pursuant to Section 10211 shall be responsible for the supervision and control of the
11 activities conducted on behalf of the corporation by its officers and employees as necessary to
12 secure full compliance with the provisions of this division, including the supervision of
13 salespersons licensed to the corporation in the performance of acts for which a real estate license
14 is required."

15 4.

16 Code Section 10211 provides, in pertinent part, that "[I]f the licensee is a corporation,
17 the license issued to it entitles one officer thereof, on behalf of the corporation, to engage in the
18 business of real estate broker without the payment of any further fee, such officer to be
19 designated in the application of the corporation for a license."

20 Individuals and Entities

21 5.

22 Respondent DAN JOE HARKEY, aka Daniel Joseph Harkey ("HARKEY") is, and at all
23
24

1 times relevant herein was, licensed by the Bureau of Real Estate¹ as the broker officer designated
2 pursuant to Code Section 10159.2 to be responsible for supervising the activities of POINT
3 CENTER FINANCIAL, INC. (“POINT CENTER”) to ensure compliance with the Real Estate
4 Law. Respondent HARKEY was licensed to act as the designated broker officer of POINT
5 CENTER since its inception.

6 (a) Respondent HARKEY was licensed as an individual real estate broker between 1975
7 and 1995, License ID 00454657. His individual license expired on May 16, 1995. Since that
8 time, HARKEY has only been licensed to conduct real estate business as the designated broker
9 officer of corporate brokers.

10 (b) Respondent HARKEY is the owner of POINT CENTER.

11 (c) As set forth in more detail below, Respondent HARKEY also owns and is licensed as
12 the designated broker officer of NATIONAL FINANCIAL LENDING, INC. and CAL COMM
13 CAPITAL, INC.

14 6.

15 Respondent POINT CENTER FINANCIAL, INC. is, and at all times relevant herein was,
16 licensed under the Real Estate Law (Div. 4 of the Business and Professions Code and related
17 provisions of Title 10, Chapter 6 of the California Code of Regulations) as a corporate real estate
18 broker, License ID 00745721. POINT CENTER was originally licensed by the Bureau as a
19 corporate broker in 1979. At all times relevant herein, POINT CENTER has been authorized to
20 conduct real estate activities through its owner, DAN JOE HARKEY as its designated broker
21 officer. DAN JOE HARKEY’s position as designated officer for POINT CENTER was
22 cancelled effective on or about April 24, 2014.

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24 ¹ Effective July 1, 2013, the Department of Real Estate became the Bureau of Real Estate (“Bureau”). All
references to the agency are to the successor Bureau.

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7.

NATIONAL FINANCIAL LENDING, INC. (“NATIONAL FINANCIAL”) is a California corporation licensed by the Bureau as a corporate real estate broker, License ID 01212281. NATIONAL FINANCIAL was first licensed as a corporate real estate broker on or about September 28, 1996. Respondent HARKEY is, and at all times relevant herein was, the President and designated broker officer of NATIONAL FINANCIAL.

8.

CAL COMM CAPITAL, INC. (“CAL COMM”) is a California corporation licensed by the Bureau as a corporate real estate broker, License ID 01884416. CAL COMM was first licensed as a corporate real estate broker on or about July 7, 2010. Respondent HARKEY is, and at all times relevant was, the President and designated broker officer of CAL COMM.

Unlicensed LLCs

9.

National Financial Lending, LLC (“NFL, LLC”) is a limited liability company established in 2001. Respondent HARKEY is the principal and managing member of NFL, LLC. NFL, LLC is not licensed by the Bureau in any capacity.

10.

Point Center Mortgage Fund I, LLC (“Point Center Mortgage, LLC”) is a limited liability company established in 2005. Respondent HARKEY is the principal, managing partner and agent for service of process of Point Center Mortgage, LLC. Point Center Mortgage, LLC is not licensed by the Bureau in any capacity.

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11.

POINT CENTER, CAL COMM and NATIONAL FINANCIAL share the same main office and mailing address on record with the Bureau: 9828 Research Drive, Irvine, CA 92618. From May 08, 2008 to February 23, 2014, POINT CENTER listed its main office address as 7 Argonaut, Aliso Viejo, California 92656 ("7 Argonaut"). From July 7, 2010, to approximately December 15, 2013, CAL COMM listed its main office address as 7 Argonaut. From October 24, 2012, to December 15, 2013, NATIONAL FINANCIAL listed its main office address as 7 Argonaut.

(a) NFL, LLC's main office address is listed with the California Office of the Secretary of State as: 7 Argonaut, Aliso Viejo, California 92656.

(b) Point Center Mortgage, LLC's main office address is listed with the California Office of the Secretary of State as: 7 Argonaut, Aliso Viejo, California 92656.

12.

At all times relevant herein, Respondent HARKEY was a controlling owner and/or managing member of the business entities described in Paragraphs 6 through 10 above. HARKEY was also a controlling owner and/or managing member of multiple other companies in this State and in other States, approximately forty-six (46) of which also shared a main office address at 7 Argonaut.

13.

All further references to POINT CENTER, NATIONAL FINANCIAL, CAL COMM and HARKEY include those individuals and entities as well as their employees, agents and officers acting on their behalf.

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1 FIRST CAUSE OF ACCUSATION
2 (HARKEY, POINT CENTER, NATIONAL FINANCIAL and CAL COMM)

3 15.

4 Pursuant to Code Section 10232(e), a real estate broker who meets the threshold criteria
5 of Code Section 10232(a) or Code Section 10232(b) must notify the Bureau of this status in
6 writing. The broker must submit to the Bureau annual reports pursuant to Code Section 10232.2
7 and quarterly reports pursuant to Code Section 10232.25. Pursuant to Code Section 10236.5, a
8 real estate broker must notify the Bureau when the broker no longer meets the threshold
9 reporting requirements of Code Section 10232.

10 16.

11 Pursuant to Code section 10238, a real estate broker who meets the multi-lender loan
12 servicing criteria of Code Section 10238(b) must notify the Bureau of this status in writing. The
13 broker must submit annual reports to the Bureau pursuant to Code Sections 10238(o) and
14 10238(p), and must submit quarterly reports to the Bureau pursuant to Code Section 10238(k).
15 Pursuant to Code Section 10238(a), a real estate broker must notify the Bureau when the broker
16 no longer meets the multi-lender servicing reporting requirements of Code Section 10238.

17 POINT CENTER

18 17.

19 On or about July 10, 1990, Respondent POINT CENTER, through Respondent HARKEY
20 as its broker-officer, notified the Bureau that it met the criteria for threshold broker reporting
21 status as set forth in Code Section 10232. Since that time, the Bureau has not received any
22 written notice from Respondents that POINT CENTER no longer meets the criteria for threshold
23 broker reporting, as required by Code Section 10236.5.

1 18.

2 On or about April 16, 1998, Respondent POINT CENTER, through Respondent
3 HARKEY as its broker-officer, notified the Bureau that it met the criteria for multi-lender broker
4 reporting status as set forth in Code Section 10238. Since that time, the Bureau has not received
5 any written notice from Respondents that POINT CENTER no longer meets the criteria for
6 multi-lender broker reporting.

7 19.

8 Respondents failed to submit the following required reports in a timely manner:

9 (a) Annual Business Activity Report due March 31, 2013 for the fiscal year ending
10 December 31, 2012;

11 (b) Quarterly Trust Fund Status Report due April 30, 2013, for the period ending March
12 31, 2013;

13 (c) Quarterly Trust Account Report for multi-lender transactions due April 30, 2013, for
14 the period ending March 31, 2013;

15 (d) Annual Trust Account Review Report due May 31, 2013 for the fiscal year ending
16 December 31, 2012;

17 (e) Quarterly Trust Fund Status Report due July 31, 2013, for the period ending June 30,
18 2013;

19 (f) Quarterly Trust Account Report for multi-lender transactions due July 31, 2013, for
20 the period ending June 30, 2013;

21 (g) Quarterly Trust Fund Status Report due October 31, 2013, for the period ending
22 September 30, 2013;

23 (h) Quarterly Trust Account Report for multi-lender transactions due October 31, 2013,
24 for the period ending September 30, 2013;

1 (i) Annual Business Activity Report due March 31, 2014 for the fiscal year ending
2 December 31, 2013;

3 CAL COMM

4 20.

5 On or about February 7, 2014, CAL COMM notified the Bureau that it met the criteria
6 for threshold broker reporting status as set forth in Business and Professions Code Section
7 10232. The Bureau does not have record of receiving notification from CAL COMM indicating
8 that it met the criteria for threshold broker reporting status prior to February 7, 2014.

9 NATIONAL FINANCIAL

10 21.

11 On or about February 7, 2014, NATIONAL FINANCIAL notified the Bureau that it met
12 the criteria for threshold broker reporting status as set forth in Business and Professions Code
13 Section 10232. The Bureau does not have record of receiving notification from NATIONAL
14 FINANCIAL indicating that it met the criteria for threshold broker reporting status prior to
15 February 7, 2014.

16 22.

17 The failure of Respondents POINT CENTER, CAL COMM, and NATIONAL
18 FINANCIAL, acting by and through Respondent HARKEY as their designated broker officer, to
19 file the above referenced reports in a timely manner, or to notify the Bureau within 30 days of
20 any material change in reporting status constitutes grounds to revoke or suspend Respondents'
21 licenses and license rights pursuant to Code Sections 10232, 10236.5, 10238, 10177(p), 10177(d)
22 and/or 10177(g).

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1 23.

2 Respondent HARKEY's acts and omissions, as set forth in Paragraphs 15 through 22
3 above, as the broker officer designated pursuant to Code Section 10159.2 to ensure POINT
4 CENTER's, NATIONAL FINANCIAL's, and CAL COMM's compliance with the Real Estate
5 Law, constitutes grounds to discipline Respondent HARKEY's real estate license and license
6 rights pursuant to Code Sections 10177(h), 10177(d), 10176(i), 10177(j), and/or 10177(g).

7 SECOND CAUSE OF ACCUSATION
8 (POINT CENTER and HARKEY)
9 (Audit No. LA 130143)

10 24.

11 Complainant herein incorporates by this reference the facts set forth in the preamble and
12 First Cause of Accusation above in this separate and second cause of Accusation.

13 25.

14 Code section 10145 provides:

15 "(a) (1) A real estate broker who accepts funds belonging to others in
16 connection with a transaction subject to this part shall deposit all those funds
17 that are not immediately placed into a neutral escrow depository or into the
18 hands of the broker's principal, into a trust fund account maintained by the
19 broker in a bank or recognized depository in this state. All funds deposited by
20 the broker in a trust fund account shall be maintained there until disbursed by
21 the broker in accordance with instructions from the person entitled to the
22 funds.

23 (2) Notwithstanding the provisions of paragraph (1), a real estate
24 broker collecting payments or performing services for investors or note
owners in connection with loans secured by a first lien on real property may
deposit funds received in trust in an out-of-state depository institution insured
by the Federal Deposit Insurance Corporation, if the investor or note owner is
any one of the following: ...

(D) A corporation with outstanding securities registered under
Section 12 of the Securities Exchange Act of 1934 or a wholly owned
subsidiary of that corporation.

(E) A syndication or other combination of any of the entities
specified in subparagraph (A), (B), (C), or (D) that is organized to purchase
the promissory note.

1 (G) A licensed residential mortgage lender or servicer acting under
the authority of that license.

2 (H) A licensed real estate broker selling all or part of the loan, note,
3 or contract to a lender or purchaser specified in subparagraphs (A) to (G),
inclusive.

4 (3) A real estate broker who deposits funds held in trust in an out-of-
state depository institution in accordance with paragraph (2) shall make
5 available, in this state, the books, records, and files pertaining to the trust
accounts to the commissioner or the commissioner's representatives or pay the
6 reasonable expenses for travel and lodging incurred by the commissioner or
the commissioner's representatives in order to conduct an examination at an
out-of-state location.

7 (b) A real estate broker acting as a principal pursuant to Section
10131.1 shall place all funds received from others for the purchase of real
8 property sales contracts or promissory notes secured directly or collaterally by
liens on real property in a neutral escrow depository unless delivery of the
9 contract or note is made simultaneously with the receipt of the purchase funds.

10 (c) A real estate sales person who accepts trust funds from others on
behalf of the broker under whom he or she is licensed shall immediately
11 deliver the funds to the broker or, if so directed by the broker, shall deliver the
funds into the custody of the broker's principal or a neutral escrow depository
or shall deposit the funds into the broker's trust fund account.

12 (d) If not otherwise expressly prohibited by this part, a real estate
broker may, at the request of the owner of trust funds or of the principals to a
13 transaction or series of transactions from whom the broker has received trust
funds, deposit the funds into an interest-bearing account in a bank, savings
14 and loan association, credit union, or industrial loan company, the accounts of
which are insured by the Federal Deposit Insurance Corporation, if all of the
15 following requirements are met:

16 (1) The account is in the name of the broker as trustee for the
designated beneficiary or principal of a transaction or series of transactions.

17 (2) All of the funds in the account are covered by insurance provided
by an agency of the United States.

18 (3) The funds in the account are kept separate, distinct, and apart from
funds belonging to the broker or to any other person for whom the broker
holds funds in trust.

19 (4) The broker discloses to the person from whom the trust funds are
received, and to a beneficiary whose identity is known to the broker at the
20 time of establishing the account, the nature of the account, how interest will
be calculated and paid under various circumstances, whether service charges
21 will be paid to the depository and by whom, and possible notice requirements
or penalties for withdrawal of funds from the account.

22 (5) Interest earned on funds in the account may not inure directly or
indirectly to the benefit of the broker or a person licensed to the broker.

23 (6) In an executory sale, lease, or loan transaction in which the broker
accepts funds in trust to be applied to the purchase, lease, or loan, the parties
24 to the contract shall have specified in the contract or by collateral written

1 agreement the person to whom interest earned on the funds is to be paid or
2 credited.

3 (e) The broker shall have no obligation to place trust funds into an
4 interest-bearing account unless requested to do so and unless all of the
5 conditions in subdivision (d) are met, nor, in any event, if he or she advises
6 the party making the request that the funds will not be placed in an interest-
7 bearing account.

8 (f) Nothing in subdivision (d) shall preclude the commissioner from
9 prescribing, by regulation, circumstances in which, and conditions under
10 which, a real estate broker is authorized to deposit funds received in trust into
11 an interest-bearing trust fund account.

12 (g) The broker shall maintain a separate record of the receipt and
13 disposition of all funds described in subdivisions (a) and (b), including any
14 interest earned on the funds.

15 (h) Upon request of the commissioner, a broker shall furnish to the
16 commissioner an authorization for examination of financial records of those
17 trust fund accounts maintained in a financial institution, in accordance with
18 the procedures set forth in *Section 7473 of the Government Code*.

19 (i) As used in this section, "neutral escrow" means an escrow business
20 conducted by a person licensed under Division 6 (commencing with *Section*
21 *17000 of the Financial Code* or by a person described in paragraph (1) or (3)
22 of subdivision (a) of Section 17006 of that code."

23 26.

24 Regulation 2832 provides:

"(a) Compliance with Section 10145 of the Code requires that the broker
place funds accepted on behalf of another into the hands of the owner of the funds,
into a neutral escrow depository or into a trust fund account in the name of the
broker, or in a fictitious name if the broker is the holder of a license bearing such
fictitious name, as trustee at a bank or other financial institution not later than
three business days following receipt of the funds by the broker or by the broker's
salesperson.

(b) Except as expressly provided by subdivision (d) of Section 10145 of the Code
or by a regulation in this article, the account into which the trust funds are
deposited shall not be an interest-bearing account for which prior written notice
can by law or regulation be required by the financial institution as a condition to
the withdrawal of funds.

(c) A check received from the offeror may be held uncashed by the broker until
acceptance of the offer if

(1) the check by its terms is not negotiable by the broker or if the offeror has
given written instructions that the check shall not be deposited nor cashed until
acceptance of the offer and

(2) the offeree is informed that the check is being so held before or at the time
the offer is presented for acceptance.

1 (d) In these circumstances if the offeror's check was held by the broker in
2 accordance with subdivision (c) until acceptance of the offer, the check shall be
3 placed into a neutral escrow depository or the trust fund account, or into the hands
4 of the offeree if offeror and offeree expressly so provide in writing, not later than
5 three business days following acceptance of the offer unless the broker receives
6 written authorization from the offeree to continue to hold the check.

7 (e) Notwithstanding the provisions of subdivisions (a) and (d), a real estate broker
8 who is not licensed under the Escrow Law (*Section 17000, et seq., of the*
9 *Financial Code*) when acting in the capacity of an escrow holder in a real estate
10 purchase and sale, exchange or loan transaction in which the broker is performing
11 acts for which a real estate license is required shall place all funds accepted on
12 behalf of another into the hands of the owner of the funds, into a neutral escrow
13 depository or into a trust fund account in the name of the broker, or in a fictitious
14 name if the broker is the holder of a license bearing such fictitious name, as
15 trustee at a bank or other financial institution not later than the next business day
16 following receipt of the funds by the broker or by the broker's salesperson.”

17 27.

18 Regulation 2834 provides:

19 “(a) Withdrawals may be made from a trust fund account of an individual
20 broker only upon the signature of the broker or one or more of the following
21 persons if specifically authorized in writing by the broker:

22 (1) a salesperson licensed to the broker.

23 (2) a person licensed as a broker who has entered into a written agreement
24 pursuant to Section 2726 with the broker.

(3) an unlicensed employee of the broker with fidelity bond coverage at
least equal to the maximum amount of the trust funds to which the employee has
access at any time.

(b) Withdrawals may be made from the trust fund account of a corporate
broker only upon the signature of:

(1) an officer through whom the corporation is licensed pursuant to
Section 10158 or 10211 of the Code; or

(2) one of the persons enumerated in paragraph (1), (2) or (3) of
subdivision (a) above, provided that specific authorization in writing is given by
the officer through whom the corporation is licensed and that the officer is an
authorized signatory of the trust fund account.

(c) An arrangement under which a person enumerated in paragraph (1), (2)
or (3) of subdivision (a) above is authorized to make withdrawals from a trust
fund account of a broker shall not relieve an individual broker, nor the broker-
officer of a corporate broker licensee, from responsibility or liability as provided
by law in handling trust funds in the broker’s custody.”

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Code section 10131.1 provides:

“(a) A real estate broker within the meaning of this part is also a person who engages 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.

(b) As used in this section:

(1) "In the business" means any of the following:

(A) The acquisition for resale to the public, and not as an investment, of eight or more real property sales contracts or promissory notes secured directly or collaterally by liens on real property during a calendar year.

(B) The sale to or exchange with the public of eight or more real property sales contracts or promissory notes secured directly or collaterally by liens on real property during a calendar year. However, no transaction negotiated through a real estate licensee shall be considered in determining whether a person is a real estate broker within the meaning of this section.

(C) The making of eight or more loans in a calendar year from the person's own funds to the public when those loans are held or resold and are secured directly or collaterally by a lien on residential real property consisting of a single dwelling unit in a condominium or cooperative or on any parcel containing only residential buildings if the total number of units on the parcel is four or less. However, no transaction negotiated through a real estate broker who meets the criteria of subdivision (a) or (b) of Section 10232 shall be considered in determining whether a person is a real estate broker within the meaning of this section.

(2) "Sale," "resale," and "exchange" include every disposition of any interest in a real property sales contract or promissory note secured directly or collaterally by a lien on real property, except the original issuance of a promissory note by a borrower or a real property sales contract by a vendor, either of which is to be secured directly by a lien on real property owned by the borrower or vendor.

(3) "Own funds" means either of the following: (A) Cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on the person's financial statements, whether secured or unsecured. (B) Cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on the financial statement of an affiliate of the person, whether secured or unsecured.

(4) "Own funds" does not include funds provided by a third party to fund a loan on condition that the third party will subsequently purchase or accept an assignment of the loan.”

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Code Section 10232.25 provides:

“(a) A real estate broker who meets the criteria of subdivision (a) of Section 10232 shall, within 30 days after the end of each of the first three fiscal quarters of the broker's fiscal year, or within any additional time as the Real Estate Commissioner may allow for good cause, file with the commissioner a trust funds status report as of the last day of the fiscal quarter which shall include the following:

(1) A representation that the form and content of the trust account records of the broker are in compliance with the regulations of the commissioner.

(2) A representation that the broker's trust fund bank account is maintained in compliance with the regulations of the commissioner.

(3) A statement of the broker's aggregate accountability for trust funds.

(4) A report of trust funds in the broker's custody consisting of the trust account bank statements as of the bank's accounting date immediately preceding the end of the fiscal quarter and a schedule of withdrawals and deposits adjusting the account to its true balance as of the end of the fiscal quarter.

(5) A statement explaining any difference in amount between the broker's total accountability under paragraph (3) above and the adjusted trust account bank balance under paragraph (4) above.

(b) Each report made pursuant to subdivision (a) shall include the following:

(1) The name, address, and position or capacity of the person who prepared the report.

(2) A declaration under penalty of perjury by the broker that the information and representations in the report are true, complete, and correct to the best of the broker's knowledge and belief. The declaration in a report submitted on behalf of a corporate broker shall be signed by a broker-officer through whom the corporation is licensed as a real estate broker and by the chief executive officer of the corporation if he or she is not the signing broker-officer.

(c) If a broker fails to file a report required under subdivision (a) within the time permitted, the commissioner may cause an examination and report to be made and may charge the broker one and one-half times the cost of making the examination and report. In determining the hourly cost incurred by the commissioner for conducting an examination and preparing the report, the commissioner may use the estimated average hourly cost for all department audit staff performing audits of real estate brokers. If a broker fails to pay the above amount within 60 days of the mailing of a notice of billing, the commissioner may suspend the broker's license or deny renewal of the broker's license. The suspension or denial shall remain in effect until the above amount is paid or the broker's right to renew a license has expired. The commissioner may maintain an action for the recovery of the above amount in any court of competent jurisdiction.

(d) A broker who meets the criteria of Section 10232, but who, in carrying on the activities described in subdivisions (d) and (e) of Section 10131, did not

1 during a fiscal quarter, accept for the benefit of a person to whom the broker is
2 trustee, any payment or remittance in a form convertible to cash by the broker,
3 need not comply with the provisions of subdivision (a). In lieu thereof, the broker
4 shall submit to the commissioner within 30 days after the end of the fiscal quarter
5 or within any additional time as the commissioner may allow for good cause, a
6 statement under penalty of perjury on a form provided by the department attesting
7 to the fact that the broker did not receive any trust funds in cash or convertible to
8 cash during the fiscal quarter.

9 (e) Any real estate broker who engages in any of the activities specified in
10 subdivision (d) or (e) of Section 10131, but who is not required by this section to
11 file trust funds status reports with the commissioner and who is not exempt
12 therefrom under subdivision (d), shall complete trust funds status reports in
13 accordance with either (1) the requirements of subdivisions (a) and (b) applicable
14 to trust funds status reports filed with the commissioner, or (2) the requirements
15 established by the lender or note owner, if the lender or note owner does all of the
16 following: (i) requires monthly reconciliations of trust account balances; (ii)
17 requires annual, CPA-audited financial statements; and (iii) maintains a
18 contractual right to audit the trust accounts held by the broker on behalf of the
19 lender or note owner.

20 The broker shall retain all trust funds status reports prepared under this
21 subdivision on file at the broker's offices, where they shall be subject to
22 inspection by representatives of the commissioner upon 24 hours' notice.”

23 30.

24 Code Section 10232.2 provides:

“A real estate broker who meets the criteria of subdivision (a) of Section
10232 shall annually file the reports referred to in subdivisions (a) and (c) with
the Bureau of Real Estate within 90 days after the end of the broker's fiscal year
or within any additional time as the Real Estate Commissioner may allow for
filing for good cause:

(a) The report of a review by a licensed California independent public
accountant of trust fund financial statements, conducted in accordance with
generally accepted accounting practices, which shall include within its scope the
following information for the fiscal year relative to the business activities of the
broker described in subdivisions (d) and (e) of Section 10131:

(1) The receipt and disposition of all funds of others to be applied to the
making of loans and the purchasing of promissory notes or real property sales
contracts.

(2) The receipt and disposition of all funds of others in connection with
the servicing by the broker of the accounts of owners of promissory notes and real
property sales contracts including installment payments and loan or contract
payoffs by obligors.

(3) A statement as of the end of the fiscal year which shall include an
itemized trust fund accounting of the broker and confirmation that the trust funds

1 are on deposit in an account or accounts maintained by the broker in a financial
2 institution.

3 (b) A broker who meets the criteria of Section 10232, but who, in carrying
4 on the activities described in subdivisions (d) and (e) of Section 10131, has not
5 during a fiscal year, accepted for the benefit of a person to whom the broker is a
6 trustee, any payment or remittance in a form convertible to cash by the broker,
7 need not comply with the provisions of subdivision (a). In lieu thereof, the broker
8 shall submit to the commissioner within 30 days after the end of the broker's
9 fiscal year or, within any additional time as the commissioner may allow for a
10 filing for good cause, a notarized statement under penalty of perjury on a form
11 provided by the bureau attesting to the fact that the broker did not receive any
12 trust funds in cash or convertible to cash during the fiscal year.

13 (c) A report of all of the following aspects of the business conducted by
14 the broker while engaging in activities described in subdivisions (d) and (e) of
15 Section 10131 and in Section 10131.1:

16 (1) Number and aggregate dollar amount of loan, trust deed sales, and real
17 property sales contract transactions negotiated.

18 (2) Number and aggregate dollar amount of promissory notes and
19 contracts serviced by the broker or an affiliate of the broker.

20 (3) Number and aggregate dollar amount of late payment charges,
21 prepayment penalties, and other fees or charges collected and retained by the
22 broker under servicing agreements with beneficiaries and obligees.

23 (4) Default and foreclosure experience in connection with promissory
24 notes and contracts subject to servicing agreements between the broker and
beneficiaries or obligees.

(5) Commissions received by the broker for services performed as agent in
negotiating loans and sales of promissory notes and real property sales contracts.

(6) Aggregate costs and expenses as referred to in Section 10241 paid by
borrowers to the broker.

(d) The commissioner shall adopt regulations prescribing the form and
content of the report referred to in subdivision (c) with appropriate categories to
afford a better understanding of the business conducted by the broker.

(e) If the broker fails to file either of the reports required under
subdivisions (a) and (c) within the time permitted herein, the commissioner may
cause an examination and report to be made and may charge the broker one and
one-half times the cost of making the examination and report. In determining the
hourly cost incurred by the commissioner for conducting an examination and
preparing the report, the commissioner may use the estimated average hourly cost
for all department audit staff performing audits of real estate brokers. If a broker
fails to pay the above amount within 60 days of the mailing of a notice of billing,
the commissioner may suspend the broker's license or deny renewal of the
broker's license. The suspension or denial shall remain in effect until the above
amount is paid or the broker's right to renew a license has expired. The

1 commissioner may maintain an action for the recovery of the above amount in
2 any court of competent jurisdiction.

3 (f) The reports referred to in subdivisions (a) and (c) are exempted from
4 any requirement of public disclosure by paragraph (2) of subdivision (d) of
5 Section 6254 of the Government Code. The commissioner shall annually make
6 and file as a public record, a composite of the annual reports and any comments
7 thereon which are deemed to be in the public interest.”

8 31.

9 Code Section 10236.5 provides:

10 “A real estate broker shall notify the department when he or she is no
11 longer servicing or arranging loans subject to the reporting requirements of
12 Section 10232. If a broker has already made reports required by this article within
13 the year, he or she shall continue reports for that year, but shall notify the
14 department prior to the expiration of that year that he or she will no longer be
15 servicing or arranging loans for which reports are required. The department’s
16 records, including those which may be disclosed by calling the license information
17 telephone number of the department, may then be appropriately updated.”

18 32.

19 Code section 10148 provides:

20 “(a) A licensed real estate broker shall retain for three years copies of all
21 listings, deposit receipts, canceled checks, trust records, and other documents
22 executed by him or her or obtained by him or her in connection with any
23 transactions for which a real estate broker license is required. The retention period
24 shall run from the date of the closing of the transaction or from the date of the
listing if the transaction is not consummated. After notice, the books, accounts,
and records shall be made available for examination, inspection, and copying by
the commissioner or his or her designated representative during regular business
hours; and shall, upon the appearance of sufficient cause, be subject to audit
without further notice, except that the audit shall not be harassing in nature.

(b) The commissioner shall charge a real estate broker for the cost of any
audit, if the commissioner has found, in a final desist and refrain order issued
under Section 10086 or in a final decision following a disciplinary hearing held in
accordance with Chapter 5 (commencing with Section 11500) of Part 1 of
Division 3 of Title 2 of the Government Code that the broker has violated Section
10145 or a regulation or rule of the commissioner interpreting Section 10145.

(c) If a broker fails to pay for the cost of an audit as described in
subdivision (b) within 60 days of mailing a notice of billing, the commissioner
may suspend or revoke the broker’s license or deny renewal of the broker’s
license. The suspension or denial shall remain in effect until the cost is paid or
until the broker’s right to renew a license has expired.

1 (d) The commissioner may maintain an action for the recovery of the cost
2 of an audit in any court of competent jurisdiction. In determining the cost incurred
3 by the commissioner for an audit, the commissioner may use the estimated
4 average hourly cost for all persons performing audits of real estate brokers.

5 (e) The bureau may suspend or revoke the license of any real estate
6 broker, real estate salesperson, or corporation licensed as a real estate broker, if
7 the real estate broker, real estate salesperson, or any director, officer, employee,
8 or agent of the corporation licensed as a real estate broker knowingly destroys,
9 alters, conceals, mutilates, or falsifies any of the books, papers, writings,
10 documents, or tangible objects that are required to be maintained by this section
11 or that have been sought in connection with an investigation, audit, or
12 examination of a real estate licensee by the commissioner.”

13 33.

14 On September 26, 2014, the Bureau completed an audit examination of the books and
15 records of POINT CENTER pertaining to its mortgage loan activities that require a real estate
16 license. The audit examination covered a period of time beginning from February 1, 2011
17 through January 31, 2014. The audit examination revealed violations of the Code and the
18 Regulations as set forth in the following paragraphs, and more fully set forth in Audit Report LA
19 130143 and the exhibits and workpapers attached thereto.

20 34.

21 *Corporate Structure*

22 According to HARKEY, the corporate structure of POINT CENTER was as follows:
23 HARKEY was Chief Executive Officer, President, Secretary, Chief Financial Officer, and sole
24 shareholder of POINT CENTER. From August 9, 2011, through April 18, 2012, Gwen
Melanson (“Melanson”) was Executive Vice-President, Secretary, Treasurer Non-licensee, Chief
Financial Officer, and Chief Operations Officer of POINT CENTER. On or about July 31, 2013,
HARKEY sent a letter to the Bureau informing the Bureau that HARKEY had resigned as the
designated officer and President of POINT CENTER.

1 35.

2 *Business Activities*

3 According to HARKEY, Melanson, and the records examined, POINT CENTER
4 solicited borrowers and lenders, negotiated, and serviced private investor commercial loans for
5 compensation. During the audit period, POINT CENTER negotiated two (2) commercial private
6 money loans in a total of \$3,237,500.00. POINT CENTER serviced twenty-three (23) loans with a
7 total principal balance of \$56,656,320.00 during the audit period. Fifteen (15) of the twenty-three
8 (23) loans were funded by single lenders and eight (8) of them were funded by multi-lenders. The total
9 loan amount for the single lender loan transactions that were serviced by POINT CENTER was
10 \$12,870,200.00 and total loan amount for the multi-lender loan transactions that were served by
11 POINT CENTER was \$43,786,120.00. The total monthly loan payments collection for the single
12 lender loan transactions was approximately \$117,934.23 and total monthly loan payments collected for
13 the multi-lender loan transactions was approximately \$438,641.23. According to Harkey,
14 POINT CENTER stopped its mortgage loan business operation on August 1, 2013.

15 *Trust Accounts*

16 36.

17 According to Harkey, POINT CENTER maintained eight (8) trust accounts pertaining to its
18 loan negotiation and loan servicing activities during the audit period. Said accounts were maintained as
19 follows:

20 37.

21 Trust Account 1 (T/A 1)

22 Bank Name: Pacific Enterprise Bank

23 Bank Address: 17905 MacArthur Blvd., Irvine, CA 92614

24 Account No.: XXXXXX5236

Account Name: National Financial Lending Inc. Broker Servicing Trust Account

Signatories: Dan Harkey (D.O.) One signature per check was required.

1 38.

2 T/A 1 was opened on October 30, 2012, and was used for depository of funds received
3 from borrowers in loan servicing activities. Disbursements were also made from this account to
4 investors. The information above was based on a bank signature card that was updated on
5 9/26/13. Prior to the update, Dale Andert Martin aka Dale Martin, POINT CENTER's Legal
6 Counsel (a real estate broker, ID # 01197958) was also a signer on this trust account. Dale
7 Martin did not maintain a written agreement pursuant to Regulation section 2726 with POINT
8 CENTER. This trust account was used by POINT CENTER to handle the trust funds received
9 from borrowers in loan servicing activity prior to August 2, 2013.

10 39.

11 Trust Account 2 (T/A 2)

12 Bank Name: Pacific Enterprise Bank

13 Bank Address: 17905 MacArthur Blvd., Irvine, CA 92614

14 Account No.: XXXXXX3827

15 Account Name: Point Center Financial Inc., A California Corporation Broker Servicing Trust
16 Account

17 Signatories: Dan Harkey (D.O.) and Dale Martin (POINT CENTER'S Legal Counsel).

18 One signature per check was required.

19 40.

20 T/A 2 was opened on July 3, 2012 and was used for depository of funds received from
21 borrowers in loan servicing activities. Disbursements were also made from this account to investors. The
22 account was closed on February 3, 2013.

23 41.

24 Trust Account 3 (T/A 3)

Bank Name: US Bank

Bank Address: P.O. Box 1800, Saint Paul, Minnesota 55101-0800

Account No.: XXXXXX5118

Account Name: Point Center Financial Inc. Broker Servicing Trust Account

Signatories: Dan Harkey (D.O.). One signature per check was required.

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42.

T/A 3 was opened on May 2, 2012, and was used for depository of funds received from borrowers, lenders, and title companies in connection with loan transactions. Disbursements were also made from this account to borrowers, lenders, and other parties. The account was closed on July 26, 2012.

43.

Trust Account 4 (T/A 4)
Bank Name: Pacific Mercantile Bank
Bank Address: 31601 Avenida Los Cerritos #100, San Juan Capistrano, CA 92675
Account No.: XXX4743
Account Name: Point Center Financial Inc. Main Trust Account
Signatories: Unknown.

44.

T/A 4 was used for depository of funds received from borrowers, lenders, and title companies in connection with loan transactions. Disbursements were also made from this account to borrowers, lenders, and other parties. The account was closed on June 27, 2012.

45.

Trust Account 5 (T/A 5)
Bank Name: Pacific Mercantile Bank
Bank Address: 31601 Avenida Los Cerritos #100, San Juan Capistrano, CA 92675
Account No.: XXXXXX4750
Account Name: Point Center Financial Inc. Client Funding Trust
Signatories: Unknown

46.

T/A 5 was used for depository of funds from borrowers, lenders, and title companies in connection with loan transactions. Disbursements were also made from this account to borrowers, lenders, and other parties. The account was closed on June 26, 2012.

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47.

Trust Account 6 (T/A 6)

Bank Name: Pacific Mercantile Bank
Bank Address: 31601 Avenida Los Cerritos #100, San Juan Capistrano, CA 92675
Account No.: XXX5245
Account Name: Point Center Financial Inc. IRS Withholding Account
Signatories: Unknown

48.

T/A 6 was used for depository of funds for lender, Murray Marcus, for tax purposes, in accordance with an instruction from the Internal Revenue Service. The account was closed on April 26, 2012.

49.

Trust Account 7 (T/A 7)

Bank Name: Pacific Mercantile Bank
Bank Address: 31601 Avenida Los Cerritos #100, San Juan Capistrano, CA 92675
Account No.: XXX7928
Account Name: Point Center Financial Inc. ITF: Keen Medical Group
Signatories: Unknown

50.

T/A 7 was used to handle receipts and disbursements of trust funds related to Keen Medical Group, Inc. The account was closed on February 28, 2013.

51.

Trust Account 8 (T/A 8)

Bank Name: Pacific Mercantile Bank
Bank Address: 31601 Avenida Los Cerritos #100, San Juan Capistrano, CA 92675
Account No.: XXX6342
Account Name: Point Center Financial Inc. ITF: Bristol Heights
Signatories: Unknown

52.

T/A 8 was used to handle receipts and disbursements of trust funds related to Bristol Heights loan. The account was closed on April 20, 2011. The balance of \$11,440.50 was transferred into T/A 4 on April 20, 2011.

1 Additional Background Information

2 53.

3 According to Melanson and documents provided on behalf of POINT CENTER, funds
4 were transferred due to a lawsuit from Brewer (Corporation) against POINT CENTER.

5 Melanson indicated that Orange County Sheriff Harbor Justice Center served a Notice of Levy
6 for \$1,416,715.97 on Pacific Mercantile Bank on April 26, 2012, where POINT CENTER
7 maintained its trust accounts and business accounts. The accounts listed on the levy were as
8 follows:

9 <u>Account #</u>	<u>Purpose of the account</u>
10 XXX4743	T/A 4 - Main Trust Account – loan servicing and trust fund accounting
11 XXX4785	General Operating Account
12 XXX4750	T/A 5 – Client Funding Trust Account – Receiving investors’ subscription 13 funds for funding loans
14 XXX5062	Portfolio Servicing Advance Account – POINT CENTER’s business Account
15 XXX5088	Mortgage Note Program Account
16 XXX5104	Commercial Paper Program Account
17 XXX5245	T/A 6 IRS Withholding Account

18 54.

19 Pacific Mercantile Bank remitted \$929,681.53 from POINT CENTER’s bank accounts
20 (including trust accounts) to the Orange County Sheriff on or about May 4, 2012. On May 16,
21 2012, POINT CENTER filed a lawsuit against Pacific Mercantile Bank for wrongful seizure of
22 trust funds. On June 26, 2012, Pacific Mercantile Bank restored trust funds to POINT
23 CENTER’s trust accounts and directed POINT CENTER to close the accounts. On February 19,
24 2013, POINT CENTER filed for Chapter 11 relief before the United States Bankruptcy Court,

1 Central District of California, Santa Ana Division, Case No. 8:13-bk-11495. On October 28,
2 2013, the Court granted the trustee's motion to convert the bankruptcy case to Chapter 7. The
3 bankruptcy case is still pending.

4 Violations

5 55.

6 Trust Fund Handling – Trust Funds Deposited into POINT CENTER's Attorney Trust Account

7 On or about July 17, 2012, The Preserve, LLC issued a check no. 870 in the amount of
8 \$302,575.00 to POINT CENTER for a loan payment related to loan #206070. Said check was
9 endorsed by Harkey and another endorsement that indicated "pay to the order of Jeffrey Benice
10 Trust account." Said check was deposited to the trust account of POINT CENTER's attorney,
11 Jeffrey Benice (not licensed by Bureau) on July 24, 2012. Said funds were subsequently
12 transferred by wire transfer to POINT CENTER'S TRUST ACCOUNT T/A 2. The transfer of
13 trust funds by POINT CENTER constitutes a violation of Code section 10145.

14 56.

15 Trust Fund Handling

16 a. Loan payments from various loans that were received from borrowers were deposited
17 by POINT CENTER into T/A 3 more than three (3) business days following receipt of the
18 payments. Examples of said payments include, but are not limited to, the following:

19

<u>Loan No.</u>	<u>Amount</u>	<u>Date Received</u>	<u>Date Deposited</u>	<u>Trust Account</u>
20 207080	\$3,704.50	5/02/2012	5/30/2012	T/A 3
21 202110	3,557.06	5/04/2012	5/30/2012	T/A 3
22 204005	2,500.00	5/04/2012	5/30/2012	T/A 3

23 b. POINT CENTER used T/A 1 to handle mortgage loan trust funds from November
24

1 2012 through July 2013. T/A 1 was not in POINT CENTER's name as trustee, T/A 1 was
2 named "National Financial Lending, Inc. Broker Servicing Trust Account."

3 c. The conduct alleged above in Paragraph 56(a) and 56(b) constitute a violation of
4 Code section 10145 and Regulation 2832.

5 57.

6 Trust Account Withdrawals

7 Dale Martin, former general counsel of POINT CENTER, was an authorized signor on
8 POINT CENTER's trust account T/A 2. Dale Martin is licensed by the Bureau as a broker.
9 However, Mr. Martin is not licensed with any affiliation to POINT CENTER. POINT CENTER
10 did not maintain a written agreement with Dale Martin in accordance with Regulation 2726, in
11 violation of Code section 10145 and Regulation 2834.

12 58.

13 Retention of Funds

14 POINT CENTER failed to forward funds received from borrower, Larry J. Living Trust
15 (Loan No. SF1766) to lenders within twenty-five (25) days after receiving said funds. POINT
16 CENTER received a loan payoff of \$559,439 on May 10, 2012 and disbursed said funds to
17 lenders on June 14, 2012, and June 15, 2012, in violation of Code sections 10145 and 10231.1.

18 59.

19 Retention of Records

20 POINT CENTER failed to retain the following records for examination by the Bureau's
21 auditor, in violation of Code section 10148:

- 22 1. Cancelled checks for T/A 2 for the period from July 2012 through January 2013 and
23 for T/A 3 for the period from May 2012 through August 2012.
24 2. Bank statements, deposit records, and cancelled checks for T/A 5, T/A 7, and T/A 8.

1 3. T/A 3, T/A 4, T/A 5, T/A 6, T/A 7, and T/A 8's bank signature cards and bank
2 account records.

3 60.

4 The violations alleged above in Paragraphs 55 through 59 constitute cause for the
5 suspension or revocation of the real estate license and license rights of POINT CENTER under
6 the provisions of Code Sections 10177, subdivisions (d) (violation of the Real Estate Law)
7 and/or (g) (negligence).

8 61.

9 The overall conduct of Respondent HARKEY constitutes a failure on his part, as officer
10 designated by a corporate broker licensee, to exercise the reasonable supervision and control
11 over the licensed activities of POINT CENTER as required by Code Section 10159.2, and
12 Regulation 2725 to ensure POINT CENTER's compliance with the Real Estate Law, and is
13 cause for the suspension or revocation of the real estate license and license rights of HARKEY
14 pursuant to the provisions of Code Sections 10177, subdivisions (h) (failure to reasonably
15 supervise), 10177(d) and/or 10177(g).

16 THIRD CAUSE OF ACCUSATION
17 (NATIONAL FINANCIAL and HARKEY)
18 (Audit No. LA 130144)

18 62.

19 Complainant herein incorporates by this reference the facts set forth in the preamble and
20 First and Second Causes of Accusation above in this separate and third cause of Accusation.

21 63.

22 Code Section 10233 provides:

23 "A real estate licensee who undertakes to service a promissory note
24 secured directly or collaterally by a lien on real property or a real property sales
contract shall comply with each of the following requirements:

1 (a) The licensee shall have a written authorization from the borrower, the
2 lender, or the owner of the note or contract, that is included within the terms of a
written servicing agreement that satisfies the requirements of paragraphs (1), (2),
3 (4), and (5) of subdivision (k) of Section 10238.

4 (b) The licensee shall provide the lender or the owner of the note or
contract with at least the following accountings:

5 (1) An accounting of the unpaid principal balance at the end of each year.

6 (2) An accounting of collections and disbursements received and made
during each year.

7 (3) Each accounting required under this subdivision shall identify the
person who holds the original note or contract and the deed of trust evidencing
and securing the debt or obligation for which the accounting has been provided.

8 (c) The licensee shall provide to the lender or the owner of the note or
contract written notification within 15 days of the occurrence of any of the
following events:

9 (1) The recording of a notice of default.

10 (2) The recording of a notice of trustee's sale.

11 (3) The receipt of any payment constituting an amount greater than or
equal to five monthly payments, together with a request for partial or total
reconveyance of the real property, in which case the notice shall also indicate any
further transfer or delivery instructions.

12 (4) The delinquency of any installment or other obligation under the note
or contract for over 30 days.”

13 64.

14 Code Section 10238, subdivision (k) provides that:

15 “[T]he notes or interests shall be sold subject to a written agreement that
obligates a licensed real estate broker, or a person exempted from the licensing
16 requirement for real estate brokers under this chapter, to act as agent for the
purchasers or lenders to service the note or notes and deed of trust, including the
17 receipt and transmission of payments and the institution of foreclosure
proceedings in the event of a default. A copy of this servicing agreement shall be
18 delivered to each purchaser. The broker shall offer to the lenders or purchasers the
services of the broker or one or more affiliates of the broker, or both, as servicing
19 agent for each transaction conducted pursuant to this article. The agreement shall
require all of the following:

20 (1) (A) That payments received on the note or notes be deposited
immediately to a trust account maintained in accordance with this section and with
21 the provisions for trust accounts of licensed real estate brokers contained in
Section 10145 and Article 15 (commencing with Section 2830.1) of Chapter 6 of
22 Title 10 of the California Code of Regulations.

23 (B) That payments deposited pursuant to subparagraph (A) shall not be
commingled with the assets of the servicing agent or used for any transaction
24 other than the transaction for which the funds are received.

1 (2) That payments received on the note or notes shall be transmitted to the
2 purchasers or lenders pro rata according to their respective interests within 25
3 days after receipt thereof by the agent. If the source for the payment is not the
4 maker of the note, the agent shall inform the purchasers or lenders in writing of
5 the source for payment. A broker or servicing agent who transmits to the
6 purchaser or lenders the broker's or servicing agent's own funds to cover payments
7 due from the borrower but unpaid as a result of a dishonored check may recover
8 the amount of the advances from the trust fund when the past due payment is
9 received. However, this article does not authorize the broker, servicing agent, or
10 any other person to issue, or to engage in any practice constituting, any guarantee
11 or to engage in the practice of advancing payments on behalf of the borrower.

12 (3) If the broker or person who is or becomes the servicing agent for notes
13 or interests sold pursuant to this article upon which the payments due during any
14 period of three consecutive months in the aggregate exceed one hundred twenty-
15 five thousand dollars (\$125,000) or the number of persons entitled to the payments
16 exceeds 120, the trust account or accounts of that broker or affiliate shall be
17 inspected by an independent certified public accountant at no less than three-
18 month intervals during the time the volume is maintained. Within 30 days after the
19 close of the period for which the review is made, the report of the accountant shall
20 be forwarded as provided in paragraph (6) of subdivision (j). If the broker is
21 required to file an annual report pursuant to subdivision (o) or pursuant to Section
22 10232.2, the quarterly report pursuant to this subdivision need not be filed for the
23 last quarter of the year for which the annual report is made. For the purposes of
24 this subdivision, an affiliate of a broker is any person controlled by, controlling, or
under common control with the broker.

(4) Unless the servicing agent will receive notice pursuant to *Section 2924b of the Civil Code*, the servicing agent shall file a written request for notice of default upon any prior encumbrances and promptly notify the purchasers or lenders of any default on the prior encumbrances or on the note or notes subject to the servicing agreement.

(5) The servicing agent shall promptly forward copies of the following to each purchaser or lender:

- (A) Any notice of trustee sale filed on behalf of the purchasers or lenders.
- (B) Any request for reconveyance of the deed of trust received on behalf of the purchasers or lenders.”

65.

Code section 10162 provides:

“Every licensed real estate broker shall have and maintain a definite place of business in the State of California which shall serve as his office for the transaction of business. This office shall be the place where his license is displayed and where personal consultations with clients are held.

No real estate license authorizes the licensee to do business except from the location stipulated in the real estate license as issued or as altered pursuant to Section 10161.8.”

1 66.

2 Regulation 2715 provides:

3 “Every broker, except a broker acting in the capacity of a salesperson
4 to another broker under written agreement, shall maintain on file with the
5 commissioner the address of his principal place of business for brokerage
6 activities, the address of each branch business office and his current mailing
7 address, if different from the business address.

8 Every broker who is acting in the capacity of a salesperson to another
9 broker under written agreement shall maintain on file with the commissioner the
10 address of the business location where he expects to conduct most of the activities
11 for which a license is required and his current mailing address.

12 A real estate salesperson shall maintain on file with the commissioner his
13 current mailing address, and when applicable, the address of the principal
14 business office of the broker to whom the salesperson is at the time licensed.

15 Whenever there is a change in the location or address of the principal
16 place of business or of a branch office of a broker, he shall notify the
17 commissioner thereof not later than the next business day following the change.

18 This section shall apply to the holder of a real estate license who fails to
19 renew it prior to the period for which it was issued and who is otherwise qualified
20 for such license as set forth in Section 10201 of the Code.”

21 67.

22 On July 16, 2014, the Bureau completed an audit examination of the books and records of
23 NATIONAL FINANCIAL pertaining to its activities that require a real estate license. The audit
24 examination covered a period of time beginning from October 24, 2012 through January 31,
2014. The audit examination revealed violations of the Code and the Regulations as set forth in
the following paragraphs, and more fully set forth in Audit Report LA 130144 and the exhibits
and workpapers attached thereto.

25 68.

26 *Corporate Structure*

27 According to HARKEY, the corporate structure of NATIONAL FINANCIAL prior to
28 January 27, 2014, was as follows: HARKEY was Chief Executive Officer, President, Secretary,
29 Chief Financial Officer, and sole shareholder of NATIONAL FINANCIAL. As of January 27,

1 2014, NATIONAL FINANCIAL's corporate structure is as follows: HARKEY is Chief
2 Executive Officer, President, and sole shareholder; Gwen Melanson (a person not licensed by the
3 Bureau) is Executive Vice-President, Secretary, Treasurer Non-licensee, Chief Financial Officer,
4 and Chief Operations Officer; and Rene Esparza (a licensed real estate salesperson, License ID
5 No. 01943809) is Senior Vice-President of the NATIONAL FINANCIAL. Rene Esparza is
6 licensed under the employment of CAL COMM.

7 69.

8 *Business Activities*

9 According to HARKEY, NATIONAL FINANCIAL did not negotiate any mortgage
10 loans during the audit period described above in Paragraph 67. NATIONAL FINANCIAL
11 handled loan services for sixteen (16) loans that were originated by POINT CENTER. The total
12 loan amount was \$12,263,200. NATIONAL FINANCIAL collected loan payments totaling
13 approximately \$1,244,398.32 related to loans serviced annually. NATIONAL FINANCIAL
14 handled the trust fund accounting and banking services to thirty-eight entities for POINT
15 CENTER. NATIONAL FINANCIAL claims to have sent a Threshold Notification on January
16 29, 2014, to notify the Bureau that NATIONAL FINANCIAL had met the threshold criteria.

17 70.

18 *Trust Account*

19 According to HARKEY, NATIONAL FINANCIAL maintained the following single trust
20 account pertaining to its loan servicing activities during the audit period.

21 Trust Account 1 (NATIONAL FINANCIAL T/A 1)

22 Bank Name: Pacific Enterprise Bank

23 Bank Address: 17905 MacArthur Blvd, Irvine, California, 92614

Account No. XXXXXX5236

24 Account Name: National Financial Lending, Inc. Broker Servicing Trust Account

1 Signatory: Dan Harkey

2 71.

3 T/A 1 was opened on October 30, 2012 and was used to deposit funds received from
4 borrowers for NATIONAL FINANCIAL's loan servicing activities. Disbursements were made
5 to investors from this account. Prior to September 26, 2013, Dale Martin, CAL COMM's legal
6 counsel was also a signatory on this trust account. Dale Martin has never been licensed by the
7 Bureau as an officer with NATIONAL FINANCIAL.

8 Violations

9 72.

10 In the course of activities described above in Paragraph 67 and during the examination
11 period described above in Paragraph 67, Respondent NATIONAL FINANCIAL, acted in
12 violation of the Code and the Regulations in that:

13 (A) Authorization required to Service Promissory Notes/Loan Servicing Agreements

14 NATIONAL FINANCIAL provided loan servicing for loans that were originated by
15 POINT CENTER and failed to maintain a written loan servicing agreement with each lender.
16 NATIONAL FINANCIAL also failed to satisfy the requirements of paragraphs (1), (2), (4), and
17 (5) of subdivision (k) of Code Section 10238. Said acts are in violation of Code Sections 10233
18 and/or and 10238.

19 (B) Trust Fund Handling

20 NATIONAL FINANCIAL and POINT CENTER entered into a "Trust Accounting and
21 Banking Agreement" ("TSA") as of November 1, 2012. In the TSA between NATIONAL
22 FINANCIAL and POINT CENTER, POINT CENTER employed NATIONAL FINANCIAL to
23 provide trust accounting and banking services for loans that were originated by POINT
24 CENTER. According to the TSA, NATIONAL FINANCIAL provided trust accounting and

1 banking services for thirty-eight entities. On July 17, 2012, NATIONAL FINANCIAL and
2 POINT CENTER entered into a "Payment Services Agreement. According to said agreement,
3 POINT CENTER required the assistance of NATIONAL FINANCIAL to provide bill payment
4 and other obligation paying services. Based on the trust fund records provided by HARKEY,
5 NATIONAL FINANCIAL started to provide trust fund accounting and banking services for
6 POINT CENTER on November 27, 2012. NATIONAL FINANCIAL deposited trust funds of
7 POINT CENTER into NATIONAL FINANCIAL T/A 1 without written authorization from the
8 trust fund owners, in violation of Code Section 10145 and Regulation 2832.

9 (C) Threshold Criteria

10 In January 2013, NATIONAL FINANCIAL collected \$455,190.08 from borrowers on
11 behalf of the investors in its loan servicing activity, which exceeded the \$250,000 threshold
12 qualifying amount for 2013. NATIONAL FINANCIAL failed to notify the Bureau within thirty
13 (30) days of qualification as a threshold broker, in violation of Code Section 10232, subdivision
14 (e). On January 29, 2014, NATIONAL FINANCIAL sent the Threshold Notification (Form RE
15 853) to the Bureau.

16 (D) Trust Funds Status Report

17 After meeting the threshold criteria, NATIONAL FINANCIAL failed to file a trust funds
18 status report with the Bureau within thirty (30) days after the end of each of the first three (3)
19 fiscal quarters of NATIONAL FINANCIAL's fiscal year which ended on December 31, 2013, in
20 violation of Code Section 10232.25.

21 (E) Business and Mailing Addresses of Licensees

22 NATIONAL FINANCIAL failed to notify the Bureau in a timely manner, of the change
23 of NATIONAL FINANCIAL's main place of business from 7 Argonaut to 9828 Research Drive,
24 Irvine, California 92618, in violation of Code Section 10162 and Regulation 2715.

1 73.

2 The violations alleged above in Paragraph 72 constitute cause for the suspension or
3 revocation of the real estate license and license rights of NATIONAL FINANCIAL under the
4 provisions of Code Sections 10177, subdivisions (d) (violation of the Real Estate Law) and/or (g)
5 (negligence).

6 74.

7 The overall conduct of Respondent HARKEY constitutes a failure on his part, as officer
8 designated by a corporate broker licensee, to exercise the reasonable supervision and control
9 over the licensed activities of NATIONAL FINANCIAL as required by Code Section 10159.2,
10 and Regulation 2725 to ensure NATIONAL FINANCIAL's compliance with the Real Estate
11 Law, and is cause for the suspension or revocation of the real estate license and license rights of
12 HARKEY pursuant to the provisions of Code Sections 10177, subdivisions (h) (failure to
13 reasonably supervise), 10177(d) and/or 10177(g).

14 FOURTH CAUSE OF ACCUSATION
15 (CAL COMM and HARKEY)
16 (Audit No. LA 130145)

17 75.

18 Complainant herein incorporates by this reference the facts set forth in the preamble,
19 First, Second, and Third Causes of Accusation above in this separate and fourth cause of
20 Accusation.

21 76.

22 On August 4, 2014, the Bureau completed an audit examination of the books and records
23 of CAL COMM pertaining to its mortgage loan activities that require a real estate license. The
24 audit examination covered a period of time beginning from February 1, 2011 through January 31,
2014. The audit examination revealed violations of the Code and the Regulations as set forth in

1 the following paragraphs, and more fully set forth in Audit Report LA 130145 and the exhibits
2 and workpapers attached thereto.

3 77.

4 *Corporate Structure*

5 According to HARKEY, the corporate structure of CAL COMM as of January 27, 2014,
6 was as follows: HARKEY is Chief Executive Officer, President, Designated Officer, and sole
7 shareholder of CAL COMM; Gwen Melanson is Executive Vice-President, Secretary, Treasurer,
8 Chief Financial Officer, and Chief Operations Officer; and Rene Esparza is Senior Vice-
9 President of the CAL COMM. Rene Esparza obtained his real estate salesperson license on
10 January 27, 2014, and is licensed under the employment of CAL COMM. From
11 April 09, 2012, through January 26, 2014, HARKEY was the sole shareholder and officer for
12 CAL COMM.

13 76.

14 *Business Activities*

15 (A) According to HARKEY, CAL COMM solicited borrowers and lenders, negotiated,
16 and serviced private investor commercial loans for compensation. During the audit period, CAL
17 COMM negotiated eight (8) commercial private money loans totaling \$3,074,750. Five (5) of
18 the eight (8) loans were funded by multi-investors with a total loan amount of \$1,324,750. CAL
19 COMM serviced

20 (B) CAL COMM serviced eight (8) loans with a total principal balance of \$3,074,750
21 during the audit period. Loan payments collected in connection with the loan servicing activity
22 totaled approximately \$138,668.73.

23 (C) CAL COMM also provided the trust fund accounting and banking services to thirty
24 (30) entities for POINT CENTER under a Trust Fund Accounting and Banking Agreement

1 (“TSA”) between POINT CENTER and CAL COMM.

2 (D) On January 29, 2014, CAL COMM sent a Threshold Notification to the Bureau to
3 notify the Bureau that CAL COMM met the threshold criteria.

4 77.

5 *Trust Account*

6 According to HARKEY, CAL COMM maintained the following three (3) trust accounts
7 pertaining to its loan negotiation and servicing activities during the audit period:

8 (A) Trust Account 1 (CAL COMM T/A 1)

9 Bank Name: Pacific Enterprise Bank

10 Bank Address: 17905 MacArthur Blvd, Irvine, California, 92614

11 Account No. XXXXXX3835

12 Account Name: Cal Comm Capital, Inc., A California Corp Broker Servicing Trust
13 Account

14 Signatory: Dan Harkey

15 CAL COMM T/A 1 was opened on July 9, 2012 and was used to deposit funds received
16 from borrowers for CAL COMM’s loan servicing activities. Disbursements were made to
17 investors from this account. Prior to July 3, 2012, Dale Andert Martin aka Dale Martin, CAL
18 COMM’s legal counsel was also a signatory on this trust account. Dale Andert Martin has never
19 been licensed by the Bureau as an officer with CAL COMM.

20 (B) Trust Account 2 (CAL COMM T/A 2)

21 Bank Name: US Bank

22 Bank Address: P.O. Box 1800 St. Paul, Minnesota, 55101-0800

23 Account No. XXXXXX5126

24 Account Name: Cal Comm Capital, Inc., Broker Servicing Trust Account

25 Signatory: Dan Harkey

1 CAL COMM T/A 2 was opened on May 31, 2012 and was used to deposit funds received
2 from borrowers, lenders, and title companies in connection with loan transactions.

3 Disbursements were made to borrowers, lenders, and other parties from this account. CAL
4 COMM T/A 2 was closed on August 1, 2012 and was replaced by CAL COMM T/A 1.

5 (C) Trust Account 3 (CAL COMM T/A 3)

6 Bank Name: Pacific Mercantile Bank

7 Bank Address: 31601 Avenida Los Cerritos #100, San Juan Capistrano, CA 92675

8 Account No. XXX4800

9 Account Name: Cal Comm Capital, Inc. "Main Trust Account"

10 Signatory: Dan Harkey

11 CAL COMM T/A 3 was opened on February 10, 2012 and was used to deposit funds
12 received from borrowers, lenders, and title companies in connection with loan transactions.
13 Disbursements were made to borrowers, lenders, and other parties from this account. CAL
14 COMM T/A 3 was closed on July 23, 2012 and was replaced by CAL COMM T/A 2 and CAL
15 COMM T/A 1.

16 78.

17 In the course of activities described above in Paragraph 76 and during the examination
18 period described above in Paragraph 76, Respondent CAL COMM, acted in violation of the
19 Code and the Regulations as set forth below.

20 Violations

21 79.

22 Handling of Trust Funds

23 (A) According to the "Trust Accounting and Banking Agreement" maintained between
24 CAL COMM and POINT CENTER, POINT CENTER employed CAL COMM to

1 provide trust accounting and banking services for loans that were originated by
2 POINT CENTER. According to the entities listed on the "Contractual Trust Fund
3 Accounting" and the records produced by HARKEY, CAL COMM provided trust
4 fund accounting and banking services for thirty (30) entities. Trust funds received
5 related to those entities including sales proceeds and funds from investors were
6 deposited into CAL COMM T/A 1. Based on the examined trust fund records
7 produced, CAL COMM started to provide the trust accounting and banking services
8 for POINT CENTER in April, 2012.

9 (B) During the audit period, trust funds from POINT CENTER, National Financial, LLC
10 (non-licensed entity), and Point Center Financial, LLC (non-licensed entity) were
11 transferred or deposited and disbursed through CAL COMM T/A 1 and CAL COMM
12 T/A 3.

- 13 1. National Financial, LLC and Point Center Financial, LLC, with POINT
14 CENTER as their manager, engaged in the business of making real estate
15 investments in mortgage loans and deeds of trust collateralized by real
16 properties.
- 17 2. According to Gwen Melanson and records provided by HARKEY, funds were
18 transferred due to a lawsuit from Brewer Corporation against POINT
19 CENTER. A notice of levy was served for \$1,416,715.97 on Pacific
20 Mercantile Bank ("PMB") on April 26, 2012 where POINT CENTER
21 maintained its trust and business accounts.
- 22 3. According to a letter dated April 26, 2012, from PMB to POINT CENTER
23 \$929,681.53 from POINT CENTER's bank accounts (including trust
24 accounts) was remitted to the Orange County Sheriff on May 4, 2012.

- 1 4. On May 16, 2012, POINT CENTER filed a lawsuit against PMB for wrongful
2 seizure of trust funds. On June 26, 2012, PMB restored trust funds to POINT
3 CENTER's trust account TA/3 and directed POINT CENTER to close the
4 account.
- 5 5. On February 19, 2013, POINT CENTER filed for Chapter 11 relief in the
6 United States Bankruptcy Court, Central District of California, Santa Ana
7 Division, Case No. 8:13-bk-11495.
- 8 6. On June 14, 2013, the Brewer Corporation filed a motion to impose liability
9 on National Financial, LLC, even though National Financial, LLC was not the
10 judgment debtor in POINT CENTER's bankruptcy case.
- 11 7. According to Gwen Melanson, funds from POINT CENTER, National
12 Financial, LLC, and Point Center Financial, LLC were transferred and
13 deposited into CAL COMM's T/A 1 to protect the trust funds for POINT
14 CENTER, National Financial, LLC, and Point Center Financial, LLC from
15 wrongful seizure.
- 16 8. As of August 6, 2013, CAL COMM's T/A 1 had an adjusted bank balance of
17 \$3,280,578.49, consisting of trust funds held for seventeen (17) beneficiaries
18 for whom POINT CENTER negotiated and serviced their loans, and \$100.00
19 were alleged to be CAL COMM's funds.

20 (C) Trust funds of POINT CENTER, National Financial, LLC, and Point Center
21 Financial, LLC, were deposited into CAL COMM's T/A 1 without written
22 authorization from the trust fund owners, in violation of Code Section 10145.

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24 ///

1 80.

2 Authorization required to Service Promissory Notes/Loan Servicing Agreements

3 According to a "Loan Servicing and Property Management Assistance Agreement" dated
4 August 1, 2010, between CAL COMM and POINT CENTER, CAL COMM provided loan
5 servicing and property management services. CAL COMM handled loan servicing for loans that
6 were negotiated by POINT CENTER. CAL COMM failed to maintain a written loan servicing
7 agreement with each lender and failed to satisfy the requirements of paragraphs (1), (2), (4), and
8 (5) of subdivision (k) of Code Section 10238, in violation of Code Sections 10233 and/or 10238.

9 81.

10 Threshold Criteria

11 In successive three (3) month periods from May, 2013, through July, 2013, CAL COMM
12 negotiated two (2) loans in an aggregate amount of more than \$250,000 which satisfied the
13 threshold criteria under loan negotiation but failed to notify the Bureau within thirty (30) days of
14 qualification as a threshold broker, in violation of Code Section 10232, subdivision (b). On
15 January 29, 2014, CAL COMM sent the Threshold Notification (Form RE 853) to the Bureau.

16 82.

17 Multi-Lender Transaction Notification

18 CAL COMM arranged loans secured by real property where there was more than one
19 lender. On February 13, 2013, CAL COMM negotiated a \$200,000 multi-lender loan with four
20 (4) lenders on the loan which was secured by real property located at 11253 G Street, Hesperia,
21 California 92345. CAL COMM failed to notify the Bureau of its multi-lender status within
22 thirty (30) days of its first multi-lender transaction, in violation of Code Section 10238,
23 subdivision (a). CAL COMM sent a Multi-Lender Transaction Notice to the Bureau on June 26,
24 2014.

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83.

Business and Mailing Addresses of Licensees

CAL COMM failed to notify the Bureau in a timely manner, of the change of CAL COMM's main place of business from 7 Argonaut to 9828 Research Drive, Irvine, California 92618, in violation of Code Section 10162 and Regulation 2715.

84.

The violations alleged above in Paragraphs 79 through 83 constitute cause for the suspension or revocation of the real estate license and license rights of CAL COMM under the provisions of Code Sections 10177, subdivisions (d) (violation of the Real Estate Law) and/or (g) (negligence).

85.

The overall conduct of Respondent HARKEY constitutes a failure on his part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of CAL COMM as required by Code Section 10159.2, and Regulation 2725 to ensure CAL COMM's compliance with the Real Estate Law, and is cause for the suspension or revocation of the real estate license and license rights of HARKEY pursuant to the provisions of Code Sections 10177, subdivisions (h) (failure to reasonably supervise), 10177(d) and/or 10177(g).

FIFTH CAUSE OF ACCUSATION
(POINT CENTER, CAL COMM, NATIONAL FINANCIAL, and HARKEY)
(Dishonest Dealing and/or Fraud)

86.

Complainant herein incorporates by this reference the facts set forth in the preamble, First, Second, Third, and Fourth Causes of Accusation above in this separate and fifth cause of Accusation.

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87.

Respondents HARKEY's and POINT CENTER's conduct in diverting funds from POINT CENTER to CAL COMM and/or NATIONAL FINANCIAL to avoid creditors in bankruptcy constitutes dishonest dealing and is grounds to revoke or suspend the broker licenses of HARKEY and POINT CENTER pursuant to Code Sections 10177(j), for conduct that constitutes fraud or dishonest dealing and/or Code Section 10177(g), for negligence or incompetence.

88.

Respondent HARKEY's conduct in diverting funds from POINT CENTER to CAL COMM and/or NATIONAL FINANCIAL to avoid creditors in bankruptcy constitutes dishonest dealing and is grounds to revoke or suspend the broker licenses of CAL COMM and NATIONAL FINANCIAL pursuant to Code Section 10177(f), for conduct by a controlling officer or owner that would have been grounds to deny their applications for real estate licenses.

89.

Respondent HARKEY executed, on behalf of all parties, several "Management Assistance Agreements" transferring certain rights from POINT CENTER and NATIONAL FINANCIAL to CAL COMM. The Management Assistance Agreements were backdated to August 1, 2010, even though said agreements were not prepared and executed until March 2012. Respondent HARKEY's conduct was in violation of Code Section 10233, constitutes fraud or dishonest dealing, and is grounds to revoke or suspend the broker licenses of Respondents pursuant to Code Sections 10176(a), 10177(d), 10176(i) or 10177(j), and/or Code Section 10177(g).

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1 90.

2 Respondents refused to furnish lists of the names and addresses of other purchasers of
3 notes or interests in loans after receiving requests for said lists from investors, including but not
4 limited to, Hugo R. Respondents violated Code Section 10238(m) by failing to furnish said lists
5 upon written request from a purchaser. Respondents' violation of Code Section 10238(m)
6 constitutes cause to revoke or suspend the broker licenses of Respondents pursuant to Code
7 Sections 10177(d), 10177(j), and/or Code Section 10177(g).

8 91.

9 Business and Professions Code Section 10106 provides, in pertinent part, that in
10 any order issued in resolution of a disciplinary proceeding before the Bureau, the commissioner
11 may request the administrative law judge to direct a licensee found to have committed a violation
12 of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement
13 of the case.

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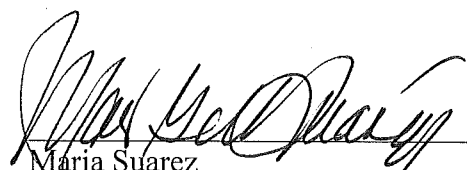
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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all licenses and/or license rights of Respondents POINT CENTER FINANCIAL,
4 INC., NATIONAL FINANCIAL LENDING, INC., CAL COMM CAPITAL, INC, and DAN
5 JOE HARKEY under the Real Estate Law, that Complainant be awarded its costs of
6 investigation and prosecution of this case, and for such other and further relief as may be proper
7 under other applicable provisions of law.

8 Dated at Los Angeles, California this 1st day of September, 2015.

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11 
12 Maria Suarez
13 Deputy Real Estate Commissioner
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17

18 cc: Dan Joe Harkey
19 Point Center Financial, Inc./Howard B. Grobstein, Trustee
20 National Financial Lending, Inc.
21 Cal Comm Capital, Inc.
22 Jeffrey S. Benice, Esq.
23 Maria Suarez
24 Sacto.
OAH