

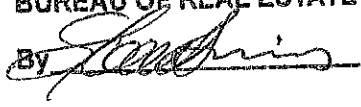
V. FRAG

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**FILED**

MAR 08 2016

BUREAU OF REAL ESTATE

By 

10 BUREAU OF REAL ESTATE  
11 STATE OF CALIFORNIA

12 \* \* \*

13 In the Matter of the Accusation of	)	No. H-40122 LA
	)	
14 FRANKLIN EQUITY CORPORATION,	)	<u>FIRST AMENDED</u>
15 doing business as Signature Escrow	)	<u>ACCUSATION</u>
16 Service, a non-independent broker escrow;	)	
17 and ANDRES OMAR PACHECO,	)	
18 individually, and as designated officer for	)	
19 Franklin Equity Corporation,	)	
	)	
20 Respondents.	)	
	)	

21 This First Amended Accusation amends the Accusation filed on February 1, 2016.

22 The Complainant, Maria Suarez, a Supervising Special Investigator, for cause of  
23 Accusation against Respondents FRANKLIN EQUITY CORPORATION, doing business as  
24 Signature Escrow Service, a non-independent broker escrow ("FRANKLIN"); and ANDRES  
25 OMAR PACHECO ("PACHECO"), individually, and as designated officer for FRANKLIN,  
26 (sometimes collectively referred to as Respondents) is informed and alleges as follows:  
27

1 1.

2 The Complainant, Maria Suarez, a Supervising Special Investigator, makes this  
3 Accusation in her official capacity.

4 2.

5 FRANKLIN is presently licensed and/or has license rights under the Real Estate  
6 Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter "Code"), as a real  
7 estate corporation acting by and through PACHECO as its designated broker-officer. The broker  
8 license of FRANKLIN is scheduled to expire on February 12, 2016.

9 3.

10 PACHECO is presently licensed and/or has license rights under the Real Estate  
11 Law as a real estate broker. At all times relevant herein PACHECO was the designated officer of  
12 FRANKLIN. The broker license of PACHECO is scheduled to expire on June 9, 2019.

13 4.

14 FRANKLIN is authorized to use the fictitious business name "Signature Escrow  
15 Service, a non-independent broker escrow."

16 5.

17 All further references to respondents herein includes FRANKLIN and  
18 PACHECO, and also includes officers, directors, employees, agents and real estate licensees  
19 employed by or associated with FRANKLIN and PACHECO, and who at all times herein  
20 mentioned were engaged in the furtherance of the business or operations of FRANKLIN and  
21 PACHECO, and who were acting within the course and scope of their authority and employment.

22 6.

23 At all times relevant herein PACHECO, as the officer designated by FRANKLIN,  
24 pursuant to Section 10211 of the Code, was responsible for the supervision and control of the  
25 activities conducted on behalf of FRANKLIN by its officers and employees as necessary to  
26 secure full compliance with the Real Estate Law as set forth in Section 10159.2 of the Code.

27 ///

1 7.

2 PACHECO ordered, caused, authorized or participated in the conduct of  
3 FRANKLIN, as is alleged in this Accusation.

4 8.

5 At all times relevant herein Respondents were engaged in the business of, acted in  
6 the capacity of, advertised or assumed to act as real estate brokers and/or real estate corporations  
7 in the State of California, within the meaning of Code Sections 10131(a). Said activities included  
8 soliciting sellers and buyers for the listing, sale and purchase of real property, negotiating the  
9 purchase and sale of real property on behalf of buyers and sellers, including negotiating short  
10 sales of real property on behalf of buyers and sellers, for compensation or in expectation of  
11 compensation.

12 9.

13 Respondents also conducted broker-controlled escrows through the escrow  
14 division of FRANKLIN, using the unauthorized fictitious business name "Signature Escrow  
15 Service," under the exemption set forth in California Financial Code Section 17006(a)(4) for real  
16 estate brokers performing escrows incidental to a real estate transaction where the broker is an  
17 agent or a party to the transaction and in which the broker is performing acts for which a real  
18 estate license is required.

19 FIRST CAUSE OF ACCUSATION

20 (Audit Violations)

21 10.

22 On or about August 31, 2015, the Bureau completed an audit examination of the  
23 books and records of Respondent FRANKLIN pertaining to the real estate activities described in  
24 Paragraph 8 and 9, above, covering a period from April 1, 2012, to March 31, 2015.

25 11.

26 At all times mentioned herein, and in connection with the activities described in  
27 Paragraphs 8 and 9, above, FRANKLIN accepted or received funds to be held in trust ("trust

1 funds") from or on behalf of actual or prospective parties to transactions handled by  
2 Respondents, and thereafter made deposits and/or disbursements of such funds. From time-to-  
3 time herein mentioned during the audit period, said trust funds were deposited into a bank  
4 account maintained by Respondents as follows:

5 B/A #1

6 Account Name: Franklin Equity Corporation  
7 Account No. xxxxxxxx4032  
8 Bank Name: US Bank N.A., P.O. Box 1800, St. Paul, Minnesota 55101  
9 Signatories: PACHECO  
10 Opened: July 26, 2012  
11 Signatories: One (1) signature required

12 12.

13 The audit examination revealed violations of the Code by Respondents, as set  
14 forth in the following paragraphs, and more fully discussed in Audit Report No. LA 140151 and  
15 the exhibits and work papers attached to the audit report:

16 (a) Respondents permitted, allowed or caused the withdrawal or disbursement of  
17 trust funds from the escrow trust account maintained as B/A #1 so that the trust account had a  
18 minimum shortage of \$904,116.13 as of March 31, 2015. The shortage was caused by minimum  
19 bank charges of \$2,826.01; minimum unauthorized disbursements to PACHECO'S personal  
20 account, debit cards, and customer/electronic withdrawals totaling \$308,333.86; minimum  
21 unauthorized/disbursement wire debits and checks with no escrow reference number totaling  
22 \$388,901.47; and minimum unidentified shortage totaling \$204,054.79.

23 Respondents caused, permitted and/or allowed the withdrawal or disbursement of  
24 trust funds from the trust account maintained at US Bank N.A. so that the total of aggregate  
25 funds remaining in the account was less than the existing aggregate trust fund liability of  
26 FRANKLIN to every principal who was an owner of said funds without first obtaining the prior  
27 written consent of the owners of said funds as is required by Code Section 10145(a) and Sections

1 2832.1 and 2951, Title 10, Chapter 6, Code of Regulations (“Regulations”).

2 (b) Respondents failed to designate BA #1 as a trust account in violation of Code  
3 Section 10145 and Sections 2832, 2950(d) and 2951 of the Regulations.

4 (c) Respondents failed to maintain a control record in the form of a columnar  
5 record in chronological order of all trust funds received, deposited and disbursed for BA #1 in  
6 violation of Code Section 10145 and Sections 2831, 2950(d) and 2951 of the Regulations.

7 (d) Respondents failed to maintain a separate record for each beneficiary of trust  
8 funds received and disbursed from BA #1. The auditor used BA #1’s bank statements, cancelled  
9 checks, withdrawal slips, records of deposits provided by US Bank N.A. pursuant to a subpoena  
10 duces tecum to reconstruct the separate records to determine the minimum accountability in  
11 violation of Code Section 10145 and Code Sections 2831.1, 2950(d) and 2951.

12 (e) Respondents failed to maintain a monthly reconciliation comparing the  
13 balance of all separate records to the balance of the record of trust funds received and disbursed  
14 (control record) for BA #1 in violation of Code Section 10145 and Sections 2831.2, 2950(d) and  
15 2951 of the Regulations.

16 (f) Based on three (3) months (January 2015 to March 2015) reconstruction of BA  
17 #1, using records provided by US Bank N.A. pursuant to a subpoena duces tecum, Respondents  
18 had minimum unauthorized disbursements from BA #1 to designated officer PACHECO’s  
19 personal account, debit cards and customer/electronic withdrawals totaling \$308,333.86. The  
20 balance of BA #1 was reduced to an amount that was less than the amount of trust funds  
21 deposited. Respondents issued checks and wire debits totaling \$388,901.47 from BA #1 without  
22 the written instruction of the party or parties depositing funds into escrow. The foregoing is in  
23 violation of Code Sections 10145, 10176(i) and/or 10177(j) and Sections 2950(g) and 2951 of  
24 the Regulations.

25 (g) Respondents collected trust funds in the course of performing escrow services  
26 which were deposited to BA #1 and commingled with funds of Respondents disbursed from BA  
27 #1 for personal/operating expenses in violation of Code Sections 10145 and 10176(e) and

1 Sections 2932 and 2951 of the Regulations.

2 (h) Respondents used a fictitious business name, "Signature Escrow Service," for  
3 activities requiring the issuance of a real estate license without filing an application for the use of  
4 such name with the Bureau in violation of Code Section 10159.5 and Section 2731(a) of the  
5 Regulations.

6 (i) Respondents did not fully disclose in writing to all principals that FRANKLIN  
7 and PACHECO have an interest as a stockholder, officer, partner, or owner of the agency holding  
8 the escrow in violation of Code Section 10145 and Section 2950(h) of the Regulations.

9 (j) Respondents engaged in real estate activities when the Franchise Tax Board of  
10 the State of California had suspended the powers, rights and privileges of FRANKLIN pursuant  
11 to the provisions of the California Revenue and Taxation Code in violation of Code Section  
12 10177(f) and Section 2742(c) of the Regulations.

13 (k) Despite the service of a subpoena duces tecum served on PACHECHO,  
14 Respondents failed to provide for examination all the books and records related to Respondents'  
15 real estate activities, including BA #1's bank statements, bank signature cards, deposit receipts,  
16 cancelled checks, records of receipt and disbursements, separate records, records of  
17 reconciliation, escrow transaction files and an accurate escrow log related to Respondents' broker  
18 escrow activity in violation of Code Section 10148 and Section 2950(e) of the Regulations.

19 (l) PACHECO failed to adequately supervise real estate activities conducted by  
20 FRANKLIN's salespersons and employees and, further, failed to establish policies, rules,  
21 procedures and systems to review, oversee, inspect and manage transactions requiring a real  
22 estate license and the handling of trust funds in violation of Code Sections 10159.2 and 10177(h)  
23 and Section 2725 of the Regulations.

24 DISCIPLINARY STATUTES AND REGULATIONS

25 13.

26 The conduct of Respondents described in Paragraph 12, above, violated the Code  
27 and the Regulations as set forth below:

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<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
12(a)	Code Section 10145(a); Sections 2832.1 and 2951 of the Regulations
12(b)	Code Section 10145; Section 2832, 2950(d) and 2951 of the Regulations
12(c)	Code Section 10145 and Sections 2831, 2950(d) and 2951 of the Regulations.
12(d)	Code Section 10145 and Code Sections 2831.1., 2950(d) and 2951 of the Regulations
12(e)	Code Section 10145 and Sections 2831.2, 2950(d) and 2951 of the Regulations.
12(f)	Code Sections 10145, 10176(i) and/or 10177(j) and Section 2950(g) and 2951 of the Regulations.
12(g)	Code Sections 10145 and 10176(e) and Sections 2932 and 2951 of the Regulations.
12(h)	Code Section 10159.5 and Section 2731(a) of the Regulations.
12(i)	Code Section 10145 and Section 2950(h) of the Regulations.
12(j)	Code Section 10177(f) and Section 2742(c) of the Regulations.
12(k)	Code Section 10148 and Section 2950(e) of the Regulations.

14.

The foregoing violations, as set forth hereinabove, constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondents FRANKLIN and PACHECO under the provisions of Code Sections 10177(d) for violation of the Real Estate Law and/or 10177(g) for negligence or incompetence.

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1 business premises and picked up a post-dated escrow disbursement check (Check #91851) signed  
2 by Respondent PACHECO on behalf of Signature Escrow Service in the amount of \$206,620.

3 The date on the refund check was January 27, 2015.

4 20.

5 Thereafter, on or about January 29, 2015, Check #91851 from Signature Escrow  
6 Service was returned to Thomas W. marked unpaid due to insufficient funds in Respondents'  
7 bank account.

8 21.

9 Despite subsequent repeat promises by Respondents and their agents that Thomas  
10 W.'s funds would be delivered to him, Respondents failed and refused to refund the sum of  
11 \$206,620 to him. The only sums received from Respondents by Thomas W. were two payments  
12 in the amount of \$2,500 each. Thomas W. was informed by Respondents and their agents that the  
13 foregoing \$5,000 in payments was intended to compensate Thomas W. for his "trouble" in  
14 failing to receive back the funds he deposited to Signature Escrow Service. As of the filing of the  
15 instant accusation, Thomas W.'s has not received a refund of his \$206,620.

16 22.

17 Respondents' representation that they would faithfully perform the duties of an  
18 escrow holder with respect to Thomas W.'s funds was false and fraudulent in that Respondents  
19 had no intention of using Thomas W.'s funds to effectuate the completion of the sale of the  
20 Lasselle Street Property, and instead intended to convert Thomas W.'s funds to their own use and  
21 benefit.

22 11920 Ivy Lane, Moreno Valley Transaction

23 23.

24 In or around October, 2014, Francisco R. entered into an agreement for the  
25 purchase of the property at 11920 Ivy Lane, Moreno Valley, CA ("Ivy Lane Property"). As part  
26 of the purchase and sale transaction, Francisco R. made an earnest money deposit in the amount  
27 of \$8,850. The earnest money was deposited to Escrow No. 14-6304, Signature Escrow Service.

1 24.

2 Thereafter, on or about November 3, 2014, at the request of the seller of the Ivy  
3 Lane Property, Francisco R. executed an escrow cancellation instruction directing Signature  
4 Escrow Service to cancel Escrow No. 14-6304.

5 25.

6 Upon the cancellation of the escrow with Signature Escrow Service, Francisco R.  
7 became entitled to receive back his earnest money deposit (less a \$200 fee) from Signature  
8 Escrow Service. On or about November 26, 2014, Francisco R. received an escrow refund check  
9 in the amount of \$8,650.

10 26.

11 Francisco R. deposited the refund check from Signature Escrow Service on or  
12 about December 3, 2014. On or about December 5, 2014, Francisco R.'s bank placed a hold on  
13 the deposited funds in his account on the ground that Francisco R.'s bank had reason to believe  
14 that the check from Signature Escrow Service would not be paid.

15 27.

16 Despite repeated requests by Francisco R. that Respondents refund the \$8,650 due  
17 to him, Respondents failed and refused to refund any portion of Francisco R.'s funds.

18 28.

19 Respondents' representation that they would faithfully perform the duties of an  
20 escrow holder with respect to Francisco R.'s funds was false and fraudulent in that Respondents  
21 had no intention of using Francisco R.'s funds to effectuate the completion of the sale of the Ivy  
22 Lane Property, and instead intended to convert Francisco R.'s funds to their own use and benefit.

23 12028 Lasselle Street, Moreno Valley – Transaction No. 2

24 29.

25 On or about February 28, 2015, Carrbridge LLC entered into an agreement to  
26 purchase the real property located at 12028 Lasselle Street, Moreno Valley, CA 92557 ("Lasselle  
27 Street Property II") for a purchase price of \$185,500. The Lasselle Street Property II was listed by

1 Respondents FRANKLIN and PACHECO as a short sale. The purchase agreement provided that  
2 escrow would be handled by Respondent FRANKLIN's escrow division, Signature Escrow  
3 Service. Escrow was subsequently opened at Signature Escrow Service as Escrow No. 15-6352-  
4 JR. On or about February 20, 2015, Carrbridge LLC wired an earnest money deposit in the  
5 amount of \$50,000 to Signature Escrow Service.

6 30.

7 The purchase and sale transaction could not be consummated, and Carrbridge  
8 LLC was entitled to receive back the entirety of its \$50,000 earnest money deposit. On or about  
9 October 19, 2015, Carrbridge LLC executed and delivered to escrow instructions for the  
10 cancellation of the transaction. Thereafter, on or about November 11, 2015, Carrbridge LLC  
11 executed a Buyer Demand for Release of Deposit and transmitted this to Respondent PACHECO  
12 at Signature Escrow Service. Despite these demands by Carrbridge LLC for a refund of the  
13 earnest money deposited to escrow, at no time has any portion of its funds been returned to them.

14 31.

15 Respondents' representation that they would faithfully perform the duties of an  
16 escrow holder with respect to Carrbridge's funds was false and fraudulent in that Respondents  
17 had no intention of using Carrbridge LLC's funds to effectuate the completion of the sale of the  
18 Lasselle Street Property II, and instead intended to convert Carrbridge's funds to their own use  
19 and benefit.

20 11232 Magnolia Avenue, Riverside, CA

21 32.

22 On or about April 6, 2015, Carrbridge LLC entered into an agreement to purchase  
23 the real property at 11232 Magnolia Avenue, Riverside, CA ("Magnolia Avenue Property") for  
24 the purchase price of \$325,000. The property was listed for sale by Respondents. Escrow was  
25 subsequently opened at Signature Escrow Service as Escrow No. 15-6352-JR. On or about  
26 February 20, 2015, Carrbridge LLC wired an earnest money deposit in the amount of \$25,000 to  
27 Signature Escrow Service.

1 33.

2 The purchase and sale transaction could not be consummated, and Carrbridge  
3 LLC was entitled to receive back the entirety of its \$25,000 earnest money deposit. On or about  
4 October 6, 2015, Carrbridge LLC executed and delivered to Respondent PACHECO instructions  
5 for the cancellation of the transaction. Thereafter, on or about November 2, 2015, Carrbridge  
6 LLC executed a Buyer Demand for Release of Deposit and transmitted this to Respondent  
7 PACHECO at Signature Escrow Service. Despite demands by Carrbridge LLC for a refund of the  
8 \$25,000 earnest money deposited to escrow, at no time has any portion of its funds been returned  
9 to it.

10 34.

11 Respondents' representation that they would faithfully perform the duties of an  
12 escrow holder with respect to Carrbridge's funds was false and fraudulent in that Respondents  
13 had no intention of using Carrbridge LLC's funds to effectuate the completion of the sale of the  
14 Magnolia Avenue Property, and instead intended to convert Carrbridge's funds to their own use  
15 and benefit.

16 945 N. Inglewood Avenue, Inglewood, CA

17 35.

18 On or about September 25, 2014, Shari P. entered into an agreement to purchase  
19 the real property at 945 N. Inglewood Avenue, Inglewood, CA ("N. Inglewood Avenue  
20 Property") for a total purchase price of \$435,000. The property was listed for sale by  
21 Respondents FRANKLIN and PACHECO as a short sale. The purchase agreement provided that  
22 escrow would be handled by Respondent FRANKLIN's escrow division, Signature Escrow  
23 Service. Escrow was subsequently opened at Signature Escrow Service as Escrow No. 14-6302-  
24 JR. On or about October 8, 2014, Shari P. wired an earnest money deposit in the amount of  
25 \$55,000 to Signature Escrow Service.

26 36.

27 Thereafter, the circumstances which had caused the seller to list her property for

1 sale changed, and she no longer wished to sell the N. Inglewood Avenue Property. By virtue of  
2 the seller's changed circumstances Shari P. was entitled to a refund of the entirety of her \$55,000  
3 earnest money deposit. Escrow cancellation instructions were executed on or about July 30,  
4 2015. On or about August 27, 2015, Shari P. executed a Buyer Demand for Release of Deposit  
5 and delivered it to escrow.

6 37.

7 Respondents' representation that they would faithfully perform the duties of an  
8 escrow holder with respect to Shari P.'s funds was false and fraudulent in that Respondents had  
9 no intention of using Shari P.'s funds to effectuate the completion of the sale of the N. Inglewood  
10 Avenue Property, and instead intended to convert Shari P.'s funds to their own use and benefit.

11 2141 N. Pacific Avenue, Santa Ana, CA 92706

12 38.

13 On or about October 24, 2015, Harris K. entered into an agreement to purchase  
14 the real property at 2141 N. Pacific Avenue, Santa Ana, CA 92706 ("Pacific Avenue Property")  
15 for a total purchase price of \$325,000. The property was listed for sale by Respondents  
16 FRANKLIN and PACHECO as a short sale. The purchase agreement provided that escrow  
17 would be handled by Respondent FRANKLIN's escrow division, Signature Escrow Service. In or  
18 around November, 2015, Harris K. wired a \$25,000 earnest money deposit to Signature Escrow  
19 Service at Respondent PACHECO's instruction.

20 39.

21 Thereafter, no further contact was had by Harris K. with Respondent PACHECO,  
22 or anyone else at Signature Escrow Service, despite repeated attempts to reach Respondent  
23 PACHECO which were made by Harris K. and his agent. On or about January 24, 2016, Harris  
24 K. executed an escrow instruction canceling the purchase contract, demanding the release of his  
25 \$25,000 earnest money deposit and the cancellation of escrow. Despite Harris K.'s demand for  
26 the return of his \$25,000, no portion of his funds has been returned to him.

27 ///

1 40.

2 Respondents' representation that they would faithfully perform the duties of an  
3 escrow holder with respect to Harris K.'s funds was false and fraudulent in that Respondents had  
4 no intention of using Harris K.'s funds to effectuate the completion of the sale of the Pacific  
5 Avenue Property, and instead intended to convert Harris K.'s funds to their own use and benefit.

6 41.

7 The conduct, acts and/or omissions of Respondents as described herein above  
8 constitute making a substantial misrepresentation, the making of false promise(s) of a character  
9 likely to influence, persuade or induce, the taking of a secret profit and fraud or dishonest  
10 dealing, and is cause for the suspension or revocation of all real estate licenses and license rights  
11 of Respondents under the provisions of Code Sections 10176(a), 10176(b), 10176(g), 10176(i)  
12 and/or 10177(j) and 10177(g).

13 THIRD CAUSE OF ACCUSATION

14 (Failure to Supervise against PACHECO)

15 42.

16 Complainant hereby incorporates by referenced the allegations set forth in  
17 Paragraphs 1 through 41, above.

18 43.

19 The conduct, acts and/or omissions of PACHECO in allowing FRANKLIN to  
20 violate the Real Estate Law, as set forth above, constitutes a failure by PACHECO, as the officer  
21 designated by the corporate broker licensee, to exercise the supervision and control over the  
22 activities of FRANKLIN as required by Code Section 10159.2, and is cause to suspend or revoke  
23 the real estate licenses and license rights of PACHECO under Code Sections 10177(d), 10177(g)  
24 and/or 10177(h).

25 Code Section 10106 provides, in pertinent part, that in any order issued in  
26 resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the  
27

1 administrative law judge to direct a licensee found to have committed a violation of this part to  
2 pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

3 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
4 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
5 action against all the licenses and license rights of Respondents FRANKLIN EQUITY  
6 CORPORATION and ANDRES OMAR PACHECO under the Real Estate Law (Part 1 of  
7 Division 4 of the Business and Professions Code), for the cost of investigation and enforcement  
8 as permitted by law, for the cost of the audit and follow-up audit as provided in Code Section  
9 10148, and for such other and further relief as may be proper under other applicable provisions of  
10 law.

11 Dated at Los Angeles, California

12 this 7<sup>th</sup> day of March, 2016.

13  
14   
15 Maria Suarez  
16 Deputy Real Estate Commissioner  
17  
18  
19  
20

21 cc: FRANKLIN EQUITY CORPORATION  
22 ANDRES OMAR PACHECO  
23 Maria Suarez  
24 Sacto  
25  
26  
27