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DEC - 5 2016

BUREAU OF REAL ESTATE

By *[Signature]*

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BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

No. H- 40479 LA

ADOBE HOLDINGS INC and
MICHAEL ANTHONY SCHALLER,
individually and as former designated officer
of Adobe Holdings Inc,

ACCUSATION

Respondents.

The Complainant, Maria Suarez, a Supervising Special Investigator of the State of California, for cause of Accusation against ADOBE HOLDINGS INC and MICHAEL ANTHONY SCHALLER, individually and as former designated officer of ADOBE HOLDINGS INC alleges as follows:

1.

The Complainant, Maria Suarez, a Supervising Special Investigator of the State of California, makes this Accusation in her official capacity.

2.

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

CalBRE Accusation – Adobe Holdings Inc & Michael Anthony Schaller

LICENSE HISTORY

3.

MICHAEL ANTHONY SCHALLER

A. Respondent MICHAEL ANTHONY SCHALLER ("SCHALLER") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate broker ("REB"), Bureau of Real Estate ("BRE" or "Bureau") license ID 01195885.

B. SCHALLER was originally licensed by the Bureau as a real estate salesperson ("RES") on or about April 18, 1995, and as a REB on January 4, 2001.

C. SCHALLER's BRE mailing address of record is: 383 Danville, Newbury Park, CA 91320.

D. SCHALLER's BRE main address of record is: 137 E. Thousand Oaks Blvd., #200, Thousand Oaks, CA 91360.

E. SCHALLER has two (2) DBAs under his BRE license: Schaller and Associates, active as of March 16, 2015 and Schaller and Associates Realty Group, active as of March 16, 2015.

F. SCHALLER was the designated officer ("D.O.") for ADOBE HOLDINGS INC until his officer license expired as of July 31, 2016.

G. SCHALLER employs two (2) RES under his BRE license.

H. SCHALLER's BRE license will expire on January 3, 2017.

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4.

ADOBE HOLDINGS INC

A. Respondent ADOBE HOLDINGS INC ("AHI") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate corporation ("REC"), license ID 01278699.

B. AHI was originally licensed by the Bureau on July 31, 2000.

C. AHI's mailing address of record is: 3339 Kimber Dr., Ste. D, Newbury Park, CA 91320.

D. AHI has no BRE main office address of record.

E. AHI's BRE license expired on July 30, 2016. Pursuant to Code Section 10201 AHI retains renewal rights, and, pursuant to Code Section 10103, the Bureau retains jurisdiction over AHI's license and license rights.

F. At the time of its BRE license expiration:

1. AHI's designated officer of record was SCHALLER, and
2. AHI maintained three (3) DBAs: Embassy Financial Services; Schaller and Associates; and Schaller and Associates Realty Group.

BROKERAGE

ADOBE HOLDINGS INC

5.

A. At all times mentioned in Newbury Park, California, Respondent AHI acted as a real estate broker, and ordered, caused, authorized or participated in licensed activities within the meaning of:

1. Code Section 10131(a), by selling or offering to sell, buying or offering to buy, soliciting prospective sellers or purchasers of, soliciting or obtaining listings of, or

1 negotiating the purchase, sale or exchange of real property or a business opportunity ("real estate
2 sales"), and

3 2. Code Section 10131(b), wherein AHI engaged in property management
4 activities, and leased or rented or offered to lease or rent, or placed for rent, or solicited listings
5 of places for rent, or solicited for prospective tenants, or negotiated the sale, purchase or
6 exchanges of leases on real property, or on a business opportunity, or collected rent from real
7 property, or improvements thereon, or from business opportunities ("property management").

8 B. According to SCHALLER, as of February 17, 2015, he is the President and one
9 hundred percent (100%) owner of AHI.

10 C. With respect to AHI's property management activities, D.O. SCHALLER,
11 represented to the BRE that AHI managed twelve (12) single family homes for eight (8) property
12 owners, and charged management fees based on seven percent (7%) to ten percent (10%) of all
13 monies collected, including rents and deposits, and the approximate amount of funds handled
14 through trust accounts totaled approximately \$223,343 during the audit period.

15 D. With respect to AHI's real estate sales activities, D.O. SCHALLER,
16 represented to the BRE that AHI closed approximately one hundred seventy-three (173) sales
17 transactions totaling \$94,101,000.

18 E. According to D.O. SCHALLER, AHI was also involved with leasing activity
19 and closed approximately one hundred eighty-seven leasing transactions during the audit period.

20 AUDIT OF ADOBE HOLDINGS INC

21 (LA 140112)

22 6.

23 On March 10, 2015, the Bureau completed an audit examination of the books and
24 records of Respondent AHI pertaining to the property management, real estate sales, and leasing
25 activities described in Paragraph 5 above, which require a real estate license. The audit
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1 examination covered a period of time beginning on January 1, 2012 and ending on January 31,
2 2015 ("audit examination period"), and was performed between February 17, 2015 and March 5,
3 2015 ("field work period"). The final report of March 10, 2015 revealed violations of the Code
4 and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit
5 Report LA 140112.

6 7.

7 At the February 17, 2015 audit entrance interview, BRE Auditor Benilda Emery
8 ("Emery") requested bank records from D.O. SCHALLER for bank account number xxxxxx5067
9 ("BA1"), which was closed in January 2015. According to SCHALLER, bank account number
10 xxxxxxxx1139 ("BA2") was opened on January 15, 2015, and he no longer had online access to
11 BA 1. SCHALLER indicated that he had not printed out the bank statements for BA1 because he
12 had viewed this account online. On February 23, 2015, D.O. SCHALLER faxed Auditor Emery
13 and presented a confirmation number for his request for bank statements from Bank of America's
14 archives. SCHALLER noted to Auditor Emery that Bank of America would process the request
15 by the close of business on February 25, 2015, and that as soon as he received the bank
16 statements for BA1 and BA2, he would forward them to Auditor Emery. On February 28, 2015,
17 Auditor Emery received a fax from D.O. SCHALLER which again stated that he was waiting for
18 Bank of America to process his documents request for BA1 and BA2, and that he would forward
19 them to the BRE upon receipt. At the March 5, 2015 audit exit interview, D.O. SCHALLER
20 again stated that he was waiting for Bank of America to process his documents request. Due to
21 the lack of bank records, Auditor Emery was unable to verify and determine the balances and
22 accountability for BA1 and BA2 as of the audit report date.

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According to the BRE's records as of March 6, 2015, Respondent AHI:

1) maintained fictitious business names "Century 21 Adobe Realty," "Century 21 Adobe Realty Escrow," and "Embassy Financial Services," 2) maintained one main office located at 3339 Kimber Dr., Ste. D, Newbury Park, CA 91320, and 3) employed twenty-one (21) real estate salespersons.

Bank Accounts

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During the audit examination period, AHI accepted or received funds including funds in trust ("trust funds") from or on behalf of actual or prospective parties, including, but not limited to, tenants and property owners, and thereafter made deposits or disbursements of such funds. During the audit examination period AHI deposited and/or maintained said trust funds relating to its real estate activities in the following accounts:

Bank Account #1 ("BA1")

* Account Name/Title: ADOBE HOLDINGS INC dba Schaller and Associates Realty Group

* Bank: Bank of America, Newbury Park, CA

* Account # xxxxxx5067

* Signatory: MICHAEL ANTHONY SCHALLER¹

BA1 was used as a depository for rents and security deposits collected from tenants, and for disbursements from BA1 were payments for expenses related to the properties managed, owner remittances, and AHI's management fees. Based on information submitted to the BRE, BA1's checks were used to pay a landlord and to pay AHI's agents' commission. According to D.O. SCHALLER, BA1 was closed in January 2015.

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¹ This information is based on check copies provided to the BRE. D.O. SCHALLER did not provide a bank signature card for this account during the audit examination.

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Based on the records provided, AHI did not maintain a complete control record of trust funds received and disbursed (control record) for BA1 and BA2. According to D.O. SCHALLER, BA1 was closed as of January 2015 and BA2 was opened on January 15, 2015 to be used for trust fund receipts and disbursements. The control record provided to the BRE failed to set forth the running daily balances for BA1, and failed to identify from whom the trust funds deposited to BA1 were received. According to the records provided for the audit examination period, AHI recorded only disbursements. During the audit examination period, AHI failed to maintain a complete and accurate control record for BA1 and BA2 of trust funds received and disbursed, in violation of **Code Section 10145 and Regulation 2831.**

During the audit examination period, AHI failed to maintain an accurate monthly reconciliation comparing the balance of all separate beneficiary records (separate records) to the balance of the record of all trust funds received and disbursed (control record) for B/A 1, in violation of **Code Section 10145 and Regulation 2831.2.**

According to the bank records provided for BA1 and BA2, both used to hold trust funds, neither BA1 nor BA2 was designated as a trust account in the name of AHI as trustee on the accounts, in violation of **Code Section 10145 and Regulation 2832.**

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1 **D. False or Fictitious Business Name (Code Section 10159.5 and Regulation**
2 **2731)**

3 Based on the records provided, AHI conducted its real estate activities and used
4 the fictitious business names "Schaller and Associates" and "Schaller and Associates Realty
5 Group" during the audit examination period without first obtaining a license from the Bureau
6 bearing such fictitious business names. AHI's use of "Schaller and Associates" on all separate
7 records is in violation of **Code Section 10159.5 and Regulation 2731.**

8 **E. Failure to Retain Records (Code Section 10148)**

9 AHI did not provide bank records for BA1 and BA2. On January 28, 2015, BRE
10 contacted AHI telephonically to schedule and audit appointment for February 17, 2015, a
11 confirmation letter of which was mailed on January 29, 2015 and faxed to D.O. SCHALLER on
12 February 5, 2015. The BRE requested the following documents of AHI for the audit examination
13 period: 1) bank statements; 2) cancelled checks; 3) deposit tickets/slips; and 4) signature cards.
14 At the February 17, 2015 audit entrance interview, Auditor Emery verbally requested the same
15 documents again. D.O. SCHALLER responded that he was unable to provide the documents
16 requested by the BRE because he did not have online access to BA1 since it was closed as of
17 January 2015. According to D.O. SCHALLER, he made multiple requests to Bank of America
18 for the BA1 records. As of the audit report date (March 10, 2015), the bank records were not
19 available for examination. AHI's failure to make available the records and documents requested
20 by the Bureau is in violation of **Code Section 10148.**

21 **F. Responsibility of Corporate Officer/ Failure to Supervise – D.O.**
22 **SCHALLER (Code Sections 10159.2 and 10177(h) and Regulation 2725)**

23 The acts and/or omissions of D.O. SCHALLER as described in Paragraphs 10A.
24 through 10E. above, demonstrate a failure to adequately supervise the property management
25 activities of AHI, its salespersons, and its employees. The violations found in Audit LA140112
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1 are indicative of Respondent SCHALLER's failure to establish policies, rules, procedures and
2 systems to review, oversee, inspect and manage transactions requiring a real estate license and
3 the handling of trust funds in AHI's sales and property management activities. These acts and/or
4 failures to act constitute grounds for the suspension or revocation of the license and license rights
5 of Respondent SCHALLER under the provisions of **Code Sections 10159.2 and 10177(h) and**
6 **Regulation 2725.**

7 Additional Violations of the Real Estate Law

8 11.

9 The overall conduct of Respondents AHI and SCHALLER are violative of the
10 Real Estate Law and constitute cause for the suspension or revocation of the real estate licenses
11 and license rights of AHI and SCHALLER under the provisions of **Code Section 10177(g)** for
12 negligence and **Code Section 10177(d)** for willful disregard of the Real Estate Law.

13 COSTS

14 Investigation and Enforcement Costs

15 12.

16 **Code Section 10106** provides, in pertinent part, that in any order issued in
17 resolution of a disciplinary proceeding before the Bureau of Real Estate, the Commissioner may
18 request the administrative law judge to direct a licensee found to have committed a violation of
19 this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of
20 the case.

21 Audit Costs

22 13.

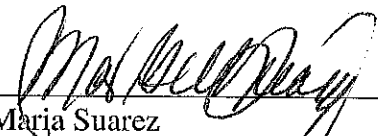
23 **Code Section 10148(b)** provides, in pertinent part, the Commissioner shall charge
24 a real estate broker for the cost of any audit, if the Commissioner has found in a final decision
25 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation
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1 or rule of the Commissioner interpreting said section.

2 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
3 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
4 action against the licenses and license rights of Respondents ADOBE HOLDINGS INC and
5 MICHAEL ANTHONY SCHALLER under the Real Estate Law (Part 1 of vision 4 of the
6 Business and Professions Code), for the cost of investigation and enforcement as permitted by
7 law, and for such other and further relief as may be proper under other provisions of law, and for
8 costs of audit.

9 Dated at Los Angeles, California

10 this 29th day of November, 2016.

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12 _____
13 Maria Suarez
14 Supervising Special Investigator
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23 cc: ADOBE HOLDINGS INC
24 MICHAEL ANTHONY SCHALLER
25 Sacto.
26 Audits – Benilda Emery
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