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DEPARTMENT OF REAL ESTATE
By Angela Hanson

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BEFORE THE DEPARTMENT OF REAL ESTATE¹
STATE OF CALIFORNIA

In the Matter of the Accusation against)	DRE No. H-41010 LA
FCI EXCHANGE, INC. and)	OAH No. 2018060152
TERI LYN SNYDER, individually and as)	<u>FIRST AMENDED ACCUSATION</u>
designated officer for FCI Exchange, Inc.,)	
Respondents.)	

16 This First Amended Accusation amends the Accusation filed on April 19, 2018, in this
17 matter. The Complainant, Joe Carrillo, a Supervising Special Investigator for the Department of
18 Real Estate ("Department") of the State of California, for cause of Accusation against FCI
19 EXCHANGE, INC. and TERI LYN SNYDER, individually and as designated officer of FCI
20 Exchange, Inc. (collectively "Respondents"), alleges as follows:

21 1.

22 The Complainant, Joe Carrillo, acting in his official capacity as a Supervising Special
23 Investigator, makes this Accusation against Respondents.

24 ¹ Between July 1, 2013 and July 1, 2018, the Department of Real Estate operated as the Bureau of Real Estate under the Department of Consumer Affairs.

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2.

All references to the "Code" are to the California Business and Professions Code, all references to the "Real Estate Law" are to Part 1 of Division 4 of the Code, and all references to "Regulations" are to California Code of Regulations Title 10, Chapter 6.

3.

Respondents are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Code).

4.

From September 30, 2010 through the present, Respondent FCI EXCHANGE, INC. ("FCIEI") has been licensed by the Department as a real estate corporation, License ID 01889459.

5.

From December 23, 1996 through the present, Respondent TERI LYN SNYDER ("SNYDER") has been licensed by the Department as a real estate broker, License ID 01216525.

6.

From on or about December 11, 2014 through the present, Respondent FCI has been licensed as a real estate corporation, acting by and through Respondent SNYDER as its designated broker-officer. As the broker-officer designated by Respondent FCI pursuant to Section 10211 of the Code, SNYDER was responsible for the supervision and control of the activities conducted on behalf of Respondent FCI, by its officers and employees, as necessary to secure full compliance with Real Estate Law as set forth in Code section 10159.2 and Regulation 2725.

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Statutory Provisions

7.

Code section 10131 states, in relevant part, as follows:

“A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

(d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

(e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof.”

8.

Code section 10131.1 states:

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

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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."

9.

Code sections 10133 and 10133.1 and Regulation 2770 provide exemptions for licensing requirements. These exemptions are not applicable to persons who attempt to use them to evade licensing requirements.

10.

Financial Code section 17006(a)(4) exempts broker-controlled escrow activities performed in the course of or incidental to a real estate transaction in which the broker is an agent or a party to the transaction and in which the broker is performing an act for which a real estate license.

Factual Summary / Causes of Accusation

11.

Respondent SNYDER is the designated officer for FCI Lender Services, Inc., License ID 01022780. FCIEI and FCI Lender Services, Inc. list the same main office address with the Department.

12.

At all times relevant herein, Respondent FCIEI, through its website: fciexchange.com, engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Code section 10131(d) (soliciting

1 borrowers or lenders for or collecting payments or offering to perform services for note owners
2 in connection with loans secured directly or collaterally by liens on real property), Code section
3 10131(e) (offering to exchange a real property sales contract or a promissory note secured
4 directly or collaterally by a lien on real property or on a business opportunity, and performing
5 services for the holders thereof), and Code section 10131.1 (the performance of services in
6 connection with real property sales contracts or promissory notes secured directly or collaterally
7 by liens on real property). The sale of promissory notes was negotiated through FCIEI's
8 website. For compensation or in expectation of a compensation, FCIEI offered to perform
9 closing/escrow services for note sellers and purchasers. FCIEI charged a listing processing fee
10 that included disbursement of funds between sellers and buyers, preparation of Assignment of
11 Deeds of Trust or Mortgage, and Recording of Assignment.

12 13.

13 On or about December 8, 2016, Respondent FCIEI prepared a Mortgage Loan Purchase
14 and Sale Agreement for the sale of mortgage loan between UAM¹, a California limited liability
15 corporation, and B.F. According to the agreement, FCIEI was the escrow company selected by
16 the parties to handle the closing of the purchase and sale of the mortgage loan evidenced by a
17 mortgage note secured by a lien on mortgaged property. FCIEI was entitled to a sale processing
18 fee based on a percentage of the purchase price as described in the fee schedule noted in the
19 agreement or on FCIEI's webpage. The purchase price for the mortgage loan was to be paid to
20 FCIEI or the seller. All documents necessary for the transaction were to be transferred or
21 exchanged by the parties through FCIEI's website platform. The seller was subject to a
22 maximum penalty of \$2,500 penalty if the seller failed to complete the transaction through no
23

24 ¹ Initials are used in place of persons' full names to protect their privacy. Documents containing persons' full names will be provided during the discovery phase of this case to Respondents and/or their attorneys, after service of a timely and proper request for discovery on Complainant's counsel.

1 fault of the buyer. B.F. requested that FCIEI provide a copy of the Mortgage Loan Purchase and
2 Sale Agreement signed by both the seller and buyer, which FCIEI failed to provide to B.F., in
3 violation of Code sections 10177(j), 10148, Regulation 2950, 10177(d) and/or 10177(g).

4 14.

5 On or about May 8, 2017, buyer B.F. submitted a complaint against FCIEI to the
6 Department. B.F. alleged that the transaction described above in Paragraph 13 was not
7 completed and B.F. was due \$2,500 from the seller or FCIEI.

8 15.

9 FCIEI claimed that its activities did not fall within the purview of the Real Estate Law
10 that require a real estate broker license. Respondent FCIEI's activities, as described above and
11 in the further detail in the paragraphs below, fell within the meaning of Code sections 10131 and
12 10131.1.

13 Audit LA 150147

14 16.

15 On January 31, 2017, the Department completed an audit examination of the books and
16 records of Respondent FCIEI's mortgage loan activities including acting as a settlement agent
17 and providing broker escrow services for the sale or exchange of promissory note transactions.
18 The audit examination covered a period of time from May 1, 2015 through April 30, 2016
19 ("audit period"). The audit examination revealed violations of the Code and the Regulations as
20 set forth in the following paragraphs, and more fully discussed in Audit Report LA 150147 and
21 the exhibits and work papers attached to said audit report.

22 17.

23 An entrance interview was held with Respondent SNYDER. According to Respondent
24 SNYDER and/or the audit work papers examined, during the audit period, Respondent FCIEI

1 closed approximately thirty-four (34) sales of existing promissory notes of approximately
2 \$2,163,516.11 for properties in California. Based on the audit work papers examined, FCIEI
3 performed broker escrow activities for the sale or exchange of promissory note transactions for
4 properties in California and other states. Funds collected from the note purchasers and/or sellers
5 were deposited into and disbursed from FCIEI's bank account.

6 18.

7 Based on an examination of FCIEI's bank account statements, FCIEI collected trust
8 funds of approximately \$8,441,068.55 during the audit period. During the audit period, FCIEI
9 acted as a settlement agent and provided escrow services for at least eight (8) sales or exchanges
10 of promissory note transactions for properties in California and collected from the notes'
11 purchasers and/or sellers approximately \$1,335,048.00 in escrow trust funds that were handled
12 through FCIEI's bank account. FCIEI collected fees ranging from \$1,000 to \$9,000 per
13 transaction for the negotiation of the sales or exchanges of promissory notes and broker escrow
14 services.

15 19.

16 According to Respondent SNYDER, FCIEI's corporate structure as of May 27, 2016 was
17 as follows:

<u>Name</u>	<u>Title</u>	<u>License Status</u>	<u>Shareholder %</u>
Gordon Albrecht	President	Non-Licensee	10%
Michael Weldon Griffith	Secretary & Treasurer	Expired Salesperson license	0%
J.G.	--	Non-Licensee	35%
T.G.	--	Non-Licensee	35%
Alfredo Campana, Jr.	--	Non-Licensee	10%
May Baki	--	Broker	10%

20.

According to Respondent SNYDER, FCIEI maintained the following trust account for handling trust fund receipts and disbursements related to FCIEI's mortgage loan activity during the audit period:

Trust Account #1 (TA 1)

Bank: Grandpoint Bank
Account Name: FCI Exchange, Inc. Checking Holding Acct Trust
Account #: xxxxxx328

Signer(s): Respondent SNYDER, Gordon Albrecht, Michael Weldon Griffith, and Joni Helmick

of signatures required: One (1)

Description: TA 1 was maintained for the receipts and disbursements of trust funds received and disbursed for multiple beneficiaries in connection with the sale or exchange of existing promissory notes for private investors.

Audit Violations

21.

In the course of FCIEI's activities during the audit examination period described above in Paragraph 16, Respondent FCIEI acted in violation of the Code and the Regulations as follows:

21(A). Code sections 10176(e), 10145, and Regulation 2835(b). Commingling/Trust

Fund Handling

As of April 30, 2016, there was a balance of \$3,850.00 of fees earned in TA 1. FCIEI failed to disburse its fees earned within 25 days after their deposit and commingled said earned fees with trust funds in TA 1, in violation of Code sections 10176(e), 10145, and Regulation 2835(b). FCIEI withdrew its earned fees of \$3,850.00 from TA 1 on May 19, 2016.

21(B). Code section 10145 and Regulation 2834. Trust account withdrawals

Based on an examination of the signature card for TA 1, FCIEI authorized Gordon Albrecht and Michael Weldon to make withdrawals from TA 1 although those individuals were

1 not covered by a fidelity bond during the audit period, in violation of Code section 10145 and
2 Regulation 2834. In addition, during the audit period, Joni Helmick ("Helmick") was authorized
3 to make withdrawals from TA 1 although Helmick was not licensed under the employment of
4 FCIEI. Helmick was employed under FCI Lender Services, Inc.

5 21(C). Code section 10232(e). Threshold notification

6 In a successive three-month period, FCIEI negotiated the sale of two (2) or more sales or
7 exchanges of existing note transactions as an agent for the purchasers and sellers of notes in an
8 aggregate amount of more than \$250,000 which satisfied the threshold criteria under negotiation
9 of sales or exchanges of existing notes. During the audit period, FCIEI was involved in the
10 negotiation of at least eight (8) sales or exchanges of existing promissory notes for properties in
11 California with the note amount totaling \$491,582.63. FCIEI failed to notify the Department in
12 writing within 30 days when FCIEI met the threshold criteria on July 30, 2015, in violation of
13 Code section 10232(e).

14 Based on FCIEI's log of sales or exchanges of existing promissory notes, FCIEI
15 continued to negotiate the sales or exchanges of 26 existing promissory notes for properties in
16 California during the period from August 2015 to April 2016.

17 21(D). Code sections 10232.4, 10232.5, and Regulation 2846. Approved

18 Lender/Purchaser Disclosure Statement

19 Based on the examination of sample sales of existing promissory note transaction files,
20 FCIEI failed to provide proof that a Lender Purchaser Disclosure Statement ("LPDS") was
21 provided to the private investors/purchasers of the notes during the audit period, in violation of
22 Code sections 10232.4, 10232.5, and Regulation 2846. Examples of said transaction files
23 include, without limitation, FCIEI transaction numbers: 36353, 36099, 35004, 24540, 14086, and
24 36095.

1 21(E). Code section 10234. Recordation of Trust Deeds, Assignments

2 Based on an examination of the audit work papers, at least two (2) of the sales of notes
3 transaction files indicated that the Assignment of Trust Deeds were recorded in the name of the
4 buyers/purchasers of the notes. However, the Assignment of Trust Deeds were not recorded
5 within ten (10) working days after FCIEI or the sellers received funds from the
6 buyers/purchasers, or after close of escrow, in violation of Code section 10234. The two
7 transactions were FCIEI transaction numbers 36353 (close of escrow on 1/20/16) and 24540
8 (close of escrow on 7/9/15).

9 In addition, a recorded Assignment of Deed of Trust was not contained in the transaction
10 files for FCIEI transaction numbers: 36099 (close of escrow on 12/10/15) and 35586 (close of
11 escrow on 10/29/15).

12 On January 27, 2017, Respondent SNYDER provided to the Department's auditor proof
13 of five (5) Assignments of existing promissory notes in the names of the notes' purchasers as
14 beneficiaries. According to SNYDER, FCIEI was unable to locate two (2) of the recording dates
15 of the transaction files of sales or exchanges of notes that were examined.

16 21(F). Code section 10141.6. Notification of Escrow Activities

17 Based on an examination of the audit work papers, FCIEI collected trust funds from
18 purchasers/investors of existing promissory notes and deposited funds into TA 1. FCIEI handled
19 trust funds and acted as a settlement agent, prepared documents and settlement agreements for
20 the purchasers and sellers of the notes to close the sales or exchanges of existing promissory note
21 transactions for properties in California and other states. FCIEI provided broker escrow services
22 for the sales or exchanges of existing promissory note transactions during the audit period.

23 Based on FCIEI's log of sales or exchanges of existing promissory notes, FCIEI closed at
24 least 34 sales or exchanges of existing promissory note transactions for properties in California

1 with the purchase price of the notes totaling \$2,163,516.11, during the audit period.

2 Approximately 28 sales of promissory note transactions with the purchase price of notes totaling
3 \$1,999,845.11 were closed during the period from May 2015 to December of 2015.

4 During the audit period, FCIEI performed broker escrow activities for the sales or
5 exchanges of promissory note transactions for properties in California and other states. Based on
6 TA 1's bank statements for the audit period, FCIEI collected trust funds of approximately
7 \$8,441,068.55 which were handled through TA 1. Approximately \$6,082,320.29 in trust funds
8 were collected during the period from May 2015 to December 2015.

9 Based on an examination of the audit work papers including FCIEI's Standard Loan
10 Purchase and Sale Agreements or the Mortgage Loan Purchase and Sale Agreements used by the
11 parties, FCIEI acted as a Settlement Agent and provided broker escrow services for at least eight
12 (8) sales or exchanges of promissory note transactions for properties in California and collected
13 approximately \$1,335,548.00 in escrow trust funds from the notes' purchasers and/or sellers and
14 handled through FCIEI's TA 1 account, during the audit period from May 2015 to April 2016.

15 During the period from May 2015 to December 2015, FCIEI provided broker escrow
16 services for at least six (6) sales or exchanges of promissory note transactions for properties in
17 California and collected approximately \$1,211,248.00 in escrow funds from the notes'
18 purchasers or sellers and handled the trust funds through FCIEI's TA 1 account.

19 Examples of the transactions where trust funds collected and disbursed during the audit
20 period include, without limitation: FCIEI transaction numbers 36585, 36353, 36099, 35586,
21 35004, 24540, 14086, and 36095.

22 FCIEI did not file a 2015 Escrow Activity Report with the Department within 60 days
23 following the completion of the calendar year ending December 31, 2015, in violation of Code
24 section 10141.6.

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21(G). Regulation 2950. When broker handles escrow

FCIEI charged the parties a sales processing fee for services which included performing escrow activities and handling of trust funds without complying with the requirements of Regulation 2950. Examples of said transactions include FCIEI transaction numbers 14086 and 24540.

21(H). Code sections 10159.2, 10177(h), and Regulation 2725. Responsibility of Corporate Officer in Charge/Broker Supervision

Based on FCIEI's violations noted in Paragraphs 21(A) through 21(G), Respondent SNYDER failed to adequately supervise the activities conducted on behalf of FCIEI by its salespersons, employees, or agents and failed to establish policies, rules, procedures, and systems to review, oversee, inspect, and manage the afore-mentioned transactions and the handling of trust funds, in violation of Code sections 10159.2, 10177(h) and Regulation 2725.

22.

The conduct of Respondent FCIEI as described above in Paragraphs 21(A) through 21(G), violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
21(A)	Code sections 10176(e), 10145, and Regulations 2835(b)
21(B)	Code section 10145 and Regulation 2834
21(C)	Code section 10232(e)
21(D)	Code sections 10232.4, 10232.5, and Regulation 2846
21(E)	Code section 10234
21(F)	Code section 10141.6
21(G)	Regulation 2950

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23.

The acts, conduct and/or omissions of FCIEI as described above in Paragraphs 11 through 21(G) constitute cause for the suspension or revocation of the real estate licenses and license rights of Respondent FCIEI under the provisions of Code sections 10177(d), 10176(e), 10177(j), and/or 10177(g).

Respondent SNYDER - Broker Supervision

24.

The conduct, acts and/or omissions of Respondent SNYDER constitutes a failure to exercise the supervision and control over the activities of FCIEI to ensure compliance with the Real Estate Law and Regulations, as is required by Code section 10159.2 and Regulation 2725. Said conduct, acts, or omissions constitute cause to suspend or revoke the real estate license and license rights of Respondent SNYDER pursuant to Code sections 10177(h), 10177(d) and/or 10177(g).

Audit Costs

25.

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

Investigation/Enforcement Costs

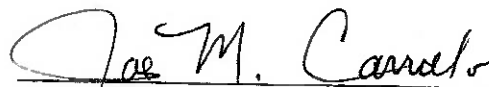
26.

Code section 10106 provides, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner may request the

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 the investigation and enforcement of the case.

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

9 Dated at Sacramento California this 10th day of AUGUST, 2018.

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11 
12 JOE CARRILLO
13 Managing Deputy Commissioner IV
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17

18 cc: FCI Exchange, Inc.
19 Teri Lyn Snyder
20 Frank M. Buda, Esq.
21 Mary E. Work, Esq.
22 Joe Carrillo
23 Sacto
24 Audits/Isabel Beltran
OAH