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**FILED**

APR 19 2018

BUREAU OF REAL ESTATE

By Angela Ranner

7  
8 **BEFORE THE BUREAU OF REAL ESTATE**  
9 **STATE OF CALIFORNIA**

10 \* \* \*

11 In the Matter of the Accusation of )

No. H-41011 LA

12 MANDARIN REALTY 1 CORPORATION, and )

**ACCUSATION**

13 DAVID WAN, individually and as )  
14 designated officer of Mandarin Realty 1 )  
15 Corporation, )

16  
17 Respondents.

18 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the  
19 State of California, for cause of Accusation against MANDARIN REALTY 1 CORPORATION  
20 and DAVID WAN, alleges as follows:

21 1.

22 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the  
23 State of California, makes this Accusation in her official capacity.

24 ///

25 ///

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.

**BRE LICENSE HISTORY**

3.

**MANDARIN REALTY 1 CORPORATION**

A. Respondent MANDARIN REALTY 1 CORPORATION ("MR1C"), formerly known as Mandarin Realty Corporation, 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 (corporation), California Bureau of Real Estate ("BRE" or "Bureau" or "CalBRE") license ID 01322485.

B. MR1C was originally licensed by the BRE on or about April 22, 2002.

C. MR1C's BRE mailing and main address of record are the same: 111 N. Atlantis<sup>1</sup> Blvd., #258, Monterey Park, CA 91754.

D. According to BRE records to date, MR1C has no active DBAs and no branch offices under its BRE license.

E. According to BRE records to date, MR1C has thirty-one (31) licensed real estate salespersons ("RES") under the employ of its BRE license.

F. According to BRE licensing records to date, the designated officers ("D.O.") of record history for MR1c for the period 2010 through and including the present is as follows:

1. Walter Shigeru Hayashida (CalBRE license ID 00397260) ("Hayashida") until his officer license expiration date of April 22, 2010;
2. Raymond J. Wan ("R. Wan") until his officer affiliation cancellation of August 13, 2012; and

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<sup>1</sup> According to the BRE's records, MR1C's street address is "Atlantis Blvd." in the city of Monterey Park. There is no such street named Atlantis Blvd. in Monterey Park; however, there is an "Atlantic Blvd."

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3. DAVID WAN until his officer expiration date of April 21, 2022.

G. MR1C's BRE license will expire on April 21, 2022.

4.

DAVID WAN

A. Respondent DAVID WAN ("WAN") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a REB, CalBRE license ID 00661742.

B. WAN was originally licensed by the BRE as a REB on or about July 20, 1984.

C. WAN's BRE mailing and main address of record are the same: 111 N. Atlantic Blvd., #258, Monterey Park, CA 91754.

D. According to BRE records to date, WAN has no active DBAs and no branch offices under his BRE license.

F. WAN is the D.O. of record for MR1C until his officer expiration date of April 21, 2022.

H. WAN's BRE license will expire on July 19, 2020.

APPLICABLE SECTIONS OF THE REAL ESTATE LAW

5.

Trust Fund Handling -

Code Section 10145 and Regulations 2831, 2831.1, 2831.2, 2832.1, and 2834

Pursuant to Code Section 10145:

(a)(1): "A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds

1 deposited by the broker in a trust account shall be maintained there until disbursed by the broker  
2 in accordance with instructions from the person entitled to the funds.

3 (2) Withdrawals may be made from a trust fund account of an individual broker  
4 only upon the signature of that broker, or in the case of a corporate broker, only upon the  
5 signature of an officer through whom the corporation is licensed pursuant to Section 10158 or  
6 10211, or one, or more, of the following persons if specifically authorized in writing by the  
7 individual broker or officer:

8 (A) A real estate salesperson licensed to the broker.

9 (B) Another broker acting pursuant to a written agreement with the  
10 individual broker that conforms to the requirements of this part and any regulations promulgated  
11 pursuant to this part.

12 (C) An unlicensed employee of the individual broker, if the broker has  
13 fidelity bond coverage equal to at least the maximum amount of the trust funds to which the  
14 unlicensed employee has access at any time. For purposes of this section, bonds providing  
15 coverage may be written with a deductible of up to 5 percent of the coverage amount. For bonds  
16 with a deductible, the employing broker shall have evidence of financial responsibility that is  
17 sufficient to protect members of the public against a loss subject to the deductible amount.

18 Evidence of financial responsibility shall include one or more of the following:

19 (i) Separate fidelity bond coverage adequate to cover the amount  
20 of the fidelity bond deductible.

21 (ii) A cash deposit held in a separate account, apart from other  
22 funds of the broker, the broker's employees, or the broker's  
23 principals, in a bank or recognized depository in this state adequate  
24 to cover the amount of the fidelity bond deductible and held  
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exclusively and solely for the purpose of paying the fidelity bond deductible amount.

(iii) Any other evidence of financial responsibility approved by the commissioner.

(3) An arrangement under which a person enumerated in subparagraph (A),(B), or (C) of paragraph (2) 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.

...

(b) A real estate broker acting as a principal pursuant to Section 10131.1<sup>2</sup> shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or notes is made simultaneously with the receipt of the purchase funds.

...

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

6.

Pursuant to Regulation 2831:

"(a) Every broker shall keep a record of all trust funds received, including uncashed checks held pursuant to instructions of his or her principal. This record, including records maintained under an automated data processing system, shall set forth in chronological sequence the following information in columnar form:

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<sup>2</sup>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..."



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7.

Pursuant to Regulation 2831.1, "(a) A broker shall keep a separate record for each beneficiary or transaction, accounting for all funds which have been deposited to the broker's trust bank account and interest, if any, earned on the funds on deposit. The record shall include information sufficient to identify the transaction and the parties to the transaction. Each record shall set forth in chronological sequence the following information in columnar form:

(1) Date of deposit.

(2) Amount of deposit.

(3) Date of each related disbursement.

(4) Check number of each related disbursement.

(5) Amount of each related disbursement.

(6) If applicable, dates and amounts of interest earned and credited to the account.

(7) Balance after posting transactions on any date.

(b) Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, including computer systems and electronic storage and manipulation of information and documents, in accordance with generally accepted accounting principles will constitute compliance with subdivision (a), provided that such ledgers, records, or systems contain the elements required by subdivision (a) and that such elements are maintained in a format that will readily enable tracing and reconciliation in accordance with Section 2831.2."

8.

Pursuant to Regulation 2831.2, "The balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust funds received and disbursed required by Section 2831, at least once a

1 month, except in those months when the bank account did not have any activities. A record of  
2 the reconciliation must be maintained, and it must identify the bank account name and number,  
3 the date of the reconciliation, the account number or name of the principals or beneficiaries or  
4 transactions, and the trust fund liabilities of the broker to each of the principals, beneficiaries or  
5 transactions.”

6 9.

7 Pursuant to Regulation 2832.1, “The written consent of every principal who is an  
8 owner of the funds in the account shall be obtained by a real estate broker prior to each  
9 disbursement if such a disbursement will reduce the balance of the funds in the account to an  
10 amount less than the existing aggregate trust fund liability of the broker to all owners of the  
11 funds.”

12 10.

13 Pursuant to Regulation 2834:

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

17 (1) a salesperson licensed to the broker.

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

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

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



1 (1) an officer through whom the corporation is licensed pursuant to Section  
2 10158 or 10211 of the Code or

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

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

11 **Responsibility of Corporate Officer in Charge – Code Section 10159.2 and Regulation 2725**

12 11.

13 Pursuant to Code Section 10159.2 (a), "The officer designed by a corporate broker  
14 license pursuant to Section 10211 shall be responsible for the supervision and control of the  
15 activities conducted on behalf of the corporation by its officers and employees as necessary to  
16 secure full compliance with the provisions of this division, including supervision of salespersons  
17 licensed to the corporation in the performance of acts for which a real estate license is  
18 required..."

19 12.

20 Pursuant to Regulation 2725, "A broker shall exercise reasonable supervision over  
21 the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the  
22 establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

- 23 a) Transactions requiring a real estate license.  
24 b) Documents which may have a material effect upon the rights or obligations of  
25 a party to the transaction.  
26  
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- c) Filing, storage and maintenance of such documents.
- d) The handling of trust funds.
- e) Advertising of any service for which a license is required.
- f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.
- g) Regular and consistent reports of licensed activities of salespersons.

The form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices.

A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.”

**False or Fictitious Business Name – Code Section 10159.5 and Regulation 2731**

13.

Pursuant to Code Section 10159.5(a)(1), “Every person applying for a license under this chapter who desires to have the license issued under a fictitious business name shall file with his or her application a certified copy of his or her fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.”

14.

Pursuant to Regulation 2731(a), “A licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the Real Estate Law unless the licensee is the holder of a license bearing the fictitious business name.”

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1 Further Grounds for Disciplinary Action – Code Section 10177

2 15.

3 Pursuant to Code Section 10177, “The commissioner may suspend or revoke the  
4 license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the  
5 issuance of a license to an applicant, who has done any of the following:

6 ...

7 (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing  
8 with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and  
9 regulations of the commissioner for the administration and enforcement of the Real Estate Law  
10 and Chapter 1 (commencing with Section 11000) of Part 2.”

11 ...

12 (g) Demonstrated negligence or incompetence in performing an act for which he  
13 or she is required to hold a license.

14 (h) As a broker licensee, failed to exercise reasonable supervision over the  
15 activities of his or her salespersons, or, as the officer designated by a corporate broker licensee,  
16 failed to exercise reasonable supervision and control of the activities of the corporation for which  
17 a real estate license is required...”

18 BRE AUDIT OF MANDARIN REALTY 1 CORPORATION

19 (LA 160051)

20 16.

21 On April 26, 2017, the BRE completed an audit examination of the books and  
22 records of Respondent MR1C pertaining to its property management activities described in  
23 Paragraphs 17 through 20, below, which require a real estate license. The audit examination  
24 covered a period of time beginning on September 1, 2014 and ending on January 31, 2017 (“audit  
25 examination period” or “audit period”), and was performed between February 13, 2017 and April  
26  
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1 13, 2017 ("field work period"), during which the D.O. of MR1C was WAN. The final report of  
2 April 26, 2017 revealed violations of the Code and the Regulations as set forth in the following  
3 paragraphs, and more fully discussed in Audit Report LA 160051.

4 17.

5 MR1C's Business Activities & Corporate Structure

6 At all times mentioned in Los Angeles County, California, Respondent MR1C  
7 acted as a REB, and ordered, caused, authorized or participated in licensed activities within the  
8 meaning of Code Section 10131(b), wherein MR1C engaged in property management activities,  
9 and leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places  
10 for rent, or solicited for prospective tenants, or negotiated the sale, purchase or exchanges of  
11 leases on real property, or on a business opportunity, or collected rent from real property, or  
12 improvements thereon, or from business opportunities ("property management").

13 18.

14 MR1C's BRE Records During the Audit Field Work Period

15 At the time of the audit field work, as of April 18, 2017: MR1C's BRE main  
16 office address was 123 W. Garvey Ave., Monterey Park, CA 91754; MR1C had no active  
17 licensed fictitious business names ("FBN") under its BRE license; MR1C had no licensed branch  
18 offices; and MR1C had thirty-one (31) licensed RES in its employ.

19 19.

20 WAN's BRE Records During the Audit Field Work Period

21 At the time of the audit field work, as of April 18, 2017: WAN's BRE main office  
22 address was 123 W. Garvey Ave., Monterey Park, CA 91754; WAN had no active licensed FBNs  
23 under his BRE license; WAN had no licensed branch offices; and WAN had no licensed RES  
24 under his employ.

25 ///

1 20.

2 MRIC's Property Management Activities

3 According to D.O. WAN, as of the audit examination, MRIC managed: six (6)  
4 family residences and one (1) business property for approximately six (6) owners, and collected  
5 rents and paid expenses for compensation, charging monthly management fees ranging from  
6 \$100 or four (4%) to five percent (5%) per property based on monthly rents collected.

7 21.

8 MRIC Other Real Estate Activities

9 According to D.O. WAN, MRIC also engaged in licensed activities within the  
10 meaning of Code Section 10131(a), wherein it engaged in real estate sales activities, and sold or  
11 offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or  
12 obtained listings of, or negotiated the purchase, sale or exchange of real property or a business  
13 opportunity ("real estate sales"), and represented both buyers and sellers. However, the BRE  
14 audit examination (Audit LA 160051) was limited to MRIC's property management activity.

15 22.

16 Bank Account

17 MRIC bank the following trust account for the handling and disbursement of trust  
18 funds in connection with its property management activities during the audit period:

19 Trust Account 1 ("TA 1")

20 \* Account Name: "Mandarin Realty I Corp DBA Mandarin Realty Property  
Management II - Trust Account"

21 \* Bank: Mega Bank, 245 W. Valley Blvd., San Gabriel, CA 91776

22 \* Account No. #####0816

23 \* Signatories: WAN, Winnie Wan (bank signature card of 06/20/08)

24 TA 1 was used by MRIC as a depository for trust fund collection and  
25 disbursement. A bank reconciliation was prepared as of January 31, 2017, and the adjusted bank  
26 balance was compared to the total balance of the separate beneficiary records ("accountability").  
27

1 **AUDIT FINDINGS: VIOLATIONS OF THE REAL ESTATE LAW**

2 23.

3 In the course of activities as described in Paragraphs 17 through 20, above, and  
4 during the audit examination period described in Paragraph 16, Respondent MRIC acted in  
5 violation of the Code and the Regulations, as described below:

6 24.

7 **Trust Fund Handling for Multiple Beneficiaries**  
8 **(Code Section 10145 and Regulation 2832.1)**

9 Based on the records provided and the aforementioned prepared bank  
10 reconciliation as of January 31, 2017 for TA 1, the CalBRE auditor found that:

11 A. As of January 31, 2017, TA 1 had a minimum shortage of <\$5,241.92>

12 caused by:

13 1) Minimum negative beneficiary/property balance comprised of:

14	###-### W. Garvey Ave. negative property balance	\$	<2,384.36>
15	#### O'Sullivan Drive negative property balance	\$	< 946.98>
16	Total minimum negative property balance:	\$	<3,331.34>
17	2) Minimum Unidentified shortage	\$	<1,910.58>
18	Total TA 1 trust fund shortage as of 1/31/17:	\$	<5,241.92>

19 There was no evidence provided that the trust fund owners had given MRIC their  
20 written consent to reduce the balance of trust funds in TA 1 to an amount less than the aggregate  
21 trust fund liabilities, in violation of **Code Section 10145 and Regulation 2832.1**. Moreover,  
22 MRIC collected and disbursed trust funds without written instructions from the property owners  
23 who were entitled to the funds, in violation of **Code Section 10145(a)**.

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**Trust Fund Handling – Trust Fund Record To Be Maintained**

**(Code Section 10145 and Regulation 2831)**

During the audit period, MR1C failed to maintain complete and accurate records of all trust funds received and disbursed (“control record”) for TA 1. Said records did not reflect the trust funds receipt date; said records reflected inaccurate deposit dates; and said records reflected inaccurate running daily balance amounts, in violation of **Code Section 10145 and Regulation 2831**. Examples of MR1C’s failure to maintain control records include:

<u>Property Address</u>	<u>Amount</u>	<u>Recorded Date of Deposit</u>	<u>Actual Date of Deposit (per TA 1)</u>
#### N. Muscatel Ave.	\$2,400.00	12/3/14	12/19/14
#### N. Muscatel Ave.	\$2,400.00	11/5/14	11/14/14
#### N. Muscatel Ave.	\$2,400.00	11/4/16	11/17/16
#### N. Muscatel Ave.	\$2,400.00	9/2/16	9/9/16
#### O’Sullivan Dr.	\$1,000.00	1/3/17	2/13/17
#### O’Sullivan Dr.	\$1,000.00	11/4/16	11/17/16
#### O’Sullivan Dr.	\$1,000.00	9/2/16	9/9/16
#### E. Villa Street.	\$1,380.00	1/31/17	2/3/17
Total:	\$13,980.00		

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26.

**Trust Fund Handling – Separate Record For Each Beneficiary or Transaction**

**(Code Section 10145 and Regulation 2831.1)**

During the audit period, MR1C failed to maintain accurate and complete separate records for each beneficiary or transaction for TA 1 during the audit period. Said records reflected inaccurate posting of trust funds deposit dates, which resulted in inaccurate running balance amount after the actual transaction post dates, in violation of **Code Section 10145 and Regulation 2831.1**. Examples of MR1C's failure to maintain separate records include the examples cited in Paragraph 25, above.

27.

**Trust Fund Handling – Trust Account Reconciliation**

**(Code Section 10145 and Regulation 2831.2)**

During the audit period, MR1C failed to perform and maintain a monthly reconciliation comparing the balance of all the separate beneficiary or transaction records (separate records) to the balance of the record of all trust funds received and disbursed (control record) for TA 1, in violation of **Code Section 10145 and Regulation 2831.2**.

28.

**Trust Fund Handling – Trust Account Withdrawals**

**(Code Section 10145 and Regulation 2834)**

A. Based on an examination of TA 1's bank signature card dated June 20, 2008, MR1C secretary, unlicensed Sandy Guan was authorized to sign and make withdrawals from TA 1 as a signatory during the audit period, in violation of **Code Section 10145 and Regulation 2834**.

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1 B. Based on an examination of TA 1's bank signature card dated June 20, 2008,  
2 unlicensed Raymond J Wan<sup>3</sup> was authorized to sign and make withdrawals from TA 1 as a  
3 signatory during the audit period, in violation of **Code Section 10145 and Regulation 2834.**

4 C. Based on an examination of TA 1's bank signature card dated June 20, 2008,  
5 unlicensed Amy Wan was authorized to sign and make withdrawals from TA 1 as a signatory  
6 during the audit period, in violation of **Code Section 10145 and Regulation 2834.**

7 29.

8 **Use of False or Fictitious Business Names**

9 **(Code Section 10159.5 and Regulation 2731)**

10 During the audit period, MR1C used the unlicensed fictitious business name  
11 ("DBA") "Mandarin Realty" on business cards, its bank signature card, and a check issued for  
12 disbursement of trust funds, without first obtaining a license from the Bureau bearing such  
13 fictitious business name, in violation of **Code Section 10159.5 and Regulation 2731.**

14 30.

15 **Responsibility of Corporate Officer in Charge/Broker Supervision**

16 **(Code Sections 10159.2 and 10177(h) and Regulation 2725)**

17 The acts and/or omissions of WAN, as the D.O. of MR1C during the audit period,  
18 demonstrate a failure to adequately supervise the real estate activities of MR1C and its  
19 salespersons and its employees to ensure compliance with the Real Estate Law and Regulations.  
20 The acts and/or failures to act constitute grounds for the suspension or revocation of the license  
21 and license rights of Respondent WAN under the provisions of **Code Sections 10159.2 and**  
22 **10177(h) and Regulation 2725.**

23 ///

24  
25 <sup>3</sup> According to the BRE's records, a Raymond J. Wan was licensed by the BRE as a REB until his license expiration  
26 date of July 18, 2014.

1 **Additional Violations of the Real Estate Law**

2 31.

3 The overall conduct of Respondents MR1C and WAN is violative of the Real  
4 Estate Law and constitutes cause for the suspension or revocation of their real estate licenses and  
5 license rights under the provisions of Code Section 10177(g) for negligence and Code Section  
6 10177(d) for willful disregard of the Real Estate Law.

7 **COSTS**

8 **Investigation and Enforcement Costs**

9 32.

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

15 **Audit Costs**

16 33.

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

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the licenses and license rights of Respondents MANDARIN REALTY 1 CORPORATION and DAVID WAN under the Real Estate Law (Part 1 of vision 4 of the Business and Professions Code), for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under other provisions of law, and for costs of audit.

Dated at Los Angeles, California

this 10 day of April, 2018.

V. Kilpatrick  
Veronica Kilpatrick  
Supervising Special Investigator

cc: MANDARIN REALTY 1 CORPORATION  
DAVID WAN  
Enforcement – V. Kilpatrick  
Audits – C. Tse  
Sacto.