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FILED

MAY 21 2018

BUREAU OF REAL ESTATE

By 

8 **BEFORE THE BUREAU OF REAL ESTATE**

9 **STATE OF CALIFORNIA**

10 * * *

11 In the Matter of the Accusation of

No. **H-41043 LA**

12 **ILOANMASTER INC**

ACCUSATION

13 and

14 **RICHARD CAN, individually and as**
15 **designated officer of ILoanmaster Inc**

16
17 Respondents.

18
19 The Complainant, Maria Suarez, a Supervising Special Investigator of the State
20 of California, for cause of Accusation against ILOANMASTER INC and RICHARD CAN,
21 alleges as follows:

22 1.

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

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.

ILOANMASTER INC

A. Respondent ILOANMASTER INC ("II") 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 01890009.

B. II also holds a Mortgage Loan Originator ("MLO") endorsement, Nationwide Mortgage Licensing System ("NMLS") ID 387587.

C. II was originally licensed by the BRE on or about November 3, 2010.

D. II's BRE mailing and main address of record are the same: 14371 Euclid St Ste 2C, Garden Grove, CA 92843 ("Garden Grove address").

E. According to BRE records to date, II has one (1) active DBA under its BRE license: iReal Estate Master (active as of March 13, 2014).

F. According to BRE records to date, II has no branch offices under its BRE license.

G. According to BRE records to date, II has four (4) real estate salespersons ("RES") under its BRE license.

H. According to BRE licensing records, the designated officer ("D.O.") of record for II is RICHARD CAN.

I. II's BRE license will expire on November 2, 2018.

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4.

RICHARD CAN

A. Respondent RICHARD CAN ("CAN") 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"), CalBRE license ID 01300900.

B. CAN was originally licensed by the BRE as a RES on or about December 26, 2000, and as a REB on or about October 13, 2010.

C. CAN's BRE mailing and main address of record is II's Garden Grove address.

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

E. CAN is the D.O. of record for II until his officer expiration date of November 2, 2018.

F. CAN's BRE license will expire on October 14, 2018.

APPLICABLE SECTIONS OF THE REAL ESTATE LAW

5.

Trust Fund Handling –

Code Section 10145 and Regulations 2831.2, 2832, 2832.1, 2835 and 2951

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

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

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

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

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

17 (i) Separate fidelity bond coverage adequate to cover the amount
18 of the fidelity bond deductible.

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

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

3 (3) An arrangement under which a person enumerated in subparagraph
4 (A),(B), or (C) of paragraph (2) is authorized to make withdrawals from a trust fund account of
5 a broker shall not relieve an individual broker, nor the broker-officer of a corporate broker
6 licensee, from responsibility or liability as provided by law in handling trust funds in the
7 broker's custody.

8 . . .
9 (b) A real estate broker acting as a principal pursuant to Section 10131.1¹ shall
10 place all funds received from others for the purchase of real property sales contracts or
11 promissory notes secured directly or collaterally by liens on real property in a neutral escrow
12 depository unless delivery of the contract or notes is made simultaneously with the receipt of
13 the purchase funds.

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

17 6.

18 Pursuant to Regulation 2831.2, "The balance of all separate beneficiary or
19 transaction records maintained pursuant to the provisions of Section 2831.1 must be reconciled
20 with the record of all trust funds received and disbursed required by Section 2831, at least once
21 a month, except in those months when the bank account did not have any activities. A record
22 of the reconciliation must be maintained, and it must identify the bank account name and
23 number, the date of the reconciliation, the account number or name of the principals or
24

25 ¹Code Section 10131.1 states, "(a) A real state broker within the meaning of this part is also a person who engages
26 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..."

1 beneficiaries or transactions, and the trust fund liabilities of the broker to each of the
2 principals, beneficiaries or transactions.”

3 7.

4 Pursuant to Regulation 2832:

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

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

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

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

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

22 (d) In these circumstances if the offeror's check was held by the broker in
23 accordance with subdivision (c) until acceptance of the offer, the check shall be placed into a
24 neutral escrow depository or the trust fund account, or into the hands of the offeree if offeror
25 and offeree expressly so provide in writing, not later than three business days following
26

1 acceptance of the offer unless the broker receives written authorization from the offeree to
2 continue to hold the check.

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

12 8.

13 Pursuant to Regulation 2832.1, "The written consent of every principal who is an
14 owner of the funds in the account shall be obtained by a real estate broker prior to each
15 disbursement if such a disbursement will reduce the balance of the funds in the account to an
16 amount less than the existing aggregate trust fund liability of the broker to all owners of the
17 funds."

18 9.

19 Pursuant to Regulation 2835:

20 "Commingling" as used in Section 10176(e) of the Code is prohibited except as
21 specified in this section. For purposes of Section 10176(e), the following shall not constitute
22 "commingling":

23 (a) The deposit into a trust account of reasonably sufficient funds, not to exceed
24 \$200, to pay service charges or fees levied or assessed against the account by the bank or
25 financial institution where the account is maintained.

1 (b) The deposit into a trust account maintained in compliance with subdivision
2 (d) of funds belonging in part to the broker's principal and in part to the broker when it is not
3 reasonably practicable to separate such funds, provided the part of the funds belonging to the
4 broker is disbursed not later than twenty-five days after their deposit and there is no dispute
5 between the broker and the broker's principal as to the broker's portion of the funds. When the
6 right of a broker to receive a portion of trust funds is disputed by the broker's principal, the
7 disputed portion shall not be withdrawn until the dispute is finally settled.

8 (c) The deposit into a trust account of broker owned funds in connection with
9 activities pursuant to either subdivision (d) or (e) of Section 10131 of the Code or when
10 making, collecting payments or servicing a loan which is subject to the provisions of Section
11 10240 of the Code provided:

12 (1) The broker meets the criteria of Section 10232 of the Code.

13 (2) All funds in the account which are owned by the broker are identified
14 at all times in a separate record which is distinct from any separate record
15 maintained for a beneficiary.

16 (3) All broker owned funds deposited into the account are disbursed from
17 the account not later than 25 days after their deposit.

18 (4) The funds are deposited and maintained in compliance with
19 subdivision (d).

20 (5) For the purpose of this section, a broker shall be deemed to be subject
21 to the provisions of Section 10240 of the Code if the broker delivers the
22 statement to the borrower required by Section 10240.

23 (d) The trust fund account into which the funds are deposited is maintained in
24 accordance with the provisions of Section 10145 and the regulations of this article.”

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10.

Pursuant to Regulation 2950, "The following acts in the handling of an escrow by a real estate broker exempted from the provisions of the Escrow Law (by Section 17006(a)(4) of the Financial Code) are prohibited and may be considered grounds for disciplinary action:

(a) Soliciting or accepting an escrow instruction (or amended or supplemental escrow instruction) containing any blank to be filled in after signing or initialing of such escrow instruction (or amended or supplemental escrow instruction).

(b) Permitting any person to make any addition to, deletion from, or alteration of an escrow instruction (or amended or supplemental escrow instruction) received by such licensee, unless such addition, deletion or alteration is signed or initialed by all persons who had signed or initialed such escrow instruction (or amended or supplemental escrow instruction) prior to such addition, deletion or alteration.

(c) Failing to deliver at the time of execution of any escrow instruction or amended or supplemental escrow instruction a copy thereof to all persons executing the same.

(d) Failing to maintain books, records and accounts in accordance with accepted principles of accounting and good business practice.

(e) Failing to maintain the office, place of books, records, accounts, safes, files, and papers relating to such escrows freely accessible and available for audit, inspection and examination by the commissioner.

(f) Failing to deposit all money received as an escrow agent and as part of an escrow transaction in a bank, trust account, or escrow account on or before the close of the next full working day after receipt thereof.

1 (g) Withdrawing or paying out any money deposited in such trustee account or
2 escrow account without the written instruction of the party or parties paying the money into
3 escrow.

4 (h) Failing to advise all parties in writing if he has knowledge that any licensee
5 acting as such in the transaction has any interest as a stockholder, officer, partner or owner of
6 the agency holding the escrow.

7 (i) Failing upon closing of an escrow transaction to render to each principal in
8 the transaction a written statement of all receipts and disbursements together with the name of
9 the person to whom any such disbursement is made.

10 (j) Delivering or recording any instrument which purportedly transfers a party's
11 title or interest in or to real property without first obtaining the written consent of that party to
12 the delivery or recording."

13 11.

14 Pursuant to Regulation 2951: "The provisions of Sections 2831, 2831.1, 2831.2,
15 2832, 2832.1, 2834 and 2835 of these regulations shall apply to the handling of funds and the
16 keeping of records by a real estate broker who is not licensed under the Escrow Law (Section
17 17000, et seq., of the Financial Code) when acting in the capacity of an escrow holder in a real
18 estate purchase and sale, exchange or loan transaction in which the broker is performing acts for
19 which a real estate license is required."

20 **Notification of Broker Escrow Activity – Code Section 10141.6**

21 12.

22 Pursuant to Code Section 10141.6:

23 "(a) A real estate broker who engages in escrow activities for five or more
24 transactions in a calendar year pursuant to the exemption from the Escrow Law contained in
25 Section 17006 of the Financial Code, or whose escrow activities pursuant to that exemption
26

1 equal or exceed one million dollars (\$1,000,000) in a calendar year, shall file with the
2 department a report, within 60 days following the completion of the calendar year, documenting
3 the number of escrows conducted and the dollar volume escrowed during the calendar year in
4 which the threshold was met. This report shall be made on a form acceptable to the
5 commissioner.

6 (b) A real estate broker subject to this section and Section 10232.2 may file
7 consolidated reports that include all of the information required under this section and Section
8 10232.2. Those consolidated reports shall clearly indicate that they are intended to satisfy the
9 requirements of both sections.

10 (c) A real estate broker who fails to submit the report required pursuant to
11 subdivision (a) shall be assessed a penalty of fifty dollars (\$50) per day for each day the report
12 has not been received by the department, up to and including the 30th day after the first day of
13 the assessment penalty. On and after the 31st day, the penalty shall be one hundred dollars
14 (\$100) per day, not to exceed a total penalty of ten thousand dollars (\$10,000), regardless of the
15 number of days, until the department receives the report.

16 (d) The commissioner may suspend or revoke the license of a real estate broker
17 who fails to pay a penalty imposed pursuant to this section. In addition, the commissioner may
18 bring an action in an appropriate court of this state to collect payment of that penalty.

19 (e) All penalties paid or collected under this section shall be deposited into the
20 Recovery Account of the Real Estate Fund and shall, upon appropriation by the Legislature, be
21 available for expenditure for the purposes specified in Chapter 6.5 (commencing with Section
22 10470).

23 (f) The reports described in this section are exempted from any requirement of
24 public disclosure by paragraph (2) of subdivision (d) of Section 6254 of the Government Code.
25
26

1 (g) This section shall become operative on July 1, 2012.”

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

4 **2725**

5 13.

6 Pursuant to Code Section 10159.2 (a), “The officer designed by a corporate
7 broker license pursuant to Section 10211 shall be responsible for the supervision and control of
8 the activities conducted on behalf of the corporation by its officers and employees as necessary
9 to secure full compliance with the provisions of this division, including supervision of
10 salespersons licensed to the corporation in the performance of acts for which a real estate
11 license is required...”

12 14.

13 Pursuant to Regulation 2725, “A broker shall exercise reasonable supervision
14 over the activities of his or her salespersons. Reasonable supervision includes, as appropriate,
15 the establishment of policies, rules, procedures and systems to review, oversee, inspect and
16 manage:

- 17
- 18 a) Transactions requiring a real estate license.
 - 19 b) Documents which may have a material effect upon the rights or obligations
 - 20 of a party to the transaction.
 - 21 c) Filing, storage and maintenance of such documents.
 - 22 d) The handling of trust funds.
 - 23 e) Advertising of any service for which a license is required.
 - 24 f) Familiarizing salespersons with the requirements of federal and state laws
 - 25 relating to the prohibition of discrimination.
 - 26 g) Regular and consistent reports of licensed activities of salespersons.
- 27

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.”

Grounds for Revocation or Suspension – Code Section 10176 and Regulation 2830

15.

Pursuant to Code Section 10176, "The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

• • •

(e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her.

• • •

Further Grounds for Disciplinary Action – Code Section 10177

16.

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

1 ...

2 (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing

3 with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and

4 regulations of the commissioner for the administration and enforcement of the Real Estate Law

5 and Chapter 1 (commencing with Section 11000) of Part 2.”

6 ...

7 (g) Demonstrated negligence or incompetence in performing an act for which he

8 or she is required to hold a license.

9 (h) As a broker licensee, failed to exercise reasonable supervision over the

10 activities of his or her salespersons, or, as the officer designated by a corporate broker licensee,

11 failed to exercise reasonable supervision and control of the activities of the corporation for

12 which a real estate license is required...”

13 **License Disclosure Required of Person Preparing Written Escrow Instructions –**

14 **Financial Code Section 17403.4 in conjunction with Code Section 10086**

15 17.

16 Pursuant to Financial Code Section 17403.4, “All written escrow instructions

17 and all escrow instructions transmitted electronically over the Internet executed by a buyer or

18 seller, whether prepared by a person subject to this division or by a person exempt from this

19 division under Section 17006, shall contain a statement in not less than 10-point type which

20 shall include the license name and the name of the department issuing the license or authority

21 under which the person is operating. This section shall not apply to supplemental escrow

22 instructions or modifications to escrow instructions.”

23 18.

24 Pursuant to Code Section 10086:

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1 “(a) If the commissioner determines through an investigation that (1) a person
2 has engaged or is engaging in an activity which is a violation of a provision of this part, other
3 than a provision of Article 8 (commencing with Section 10249) of Chapter 3, or which is a
4 violation of a regulation of the commissioner adopted for the purpose of implementing any
5 provision of this part, other than a regulation adopted pursuant to a provision of Article 8
6 (commencing with Section 10249) of Chapter 3, or (2) a real estate broker has engaged in or is
7 engaging in an activity which is a violation of a provision of Division 6 (commencing with
8 Section 17000) of the Financial Code, and which is not exempt pursuant to paragraph (4) of
9 subdivision (a) of Section 17006, the commissioner may direct the person to desist and refrain
10 from such activity by issuance of an order specifying the nature of the activity and the factual
11 and legal basis for his or her determination. The respondent to whom the order is directed shall
12 immediately, upon receipt of the order, cease the activity described in the order.

13 (b) The respondent may, within 30 days after service of the order to desist and
14 refrain, file a request for a hearing. If, with the request for hearing, the respondent also files a
15 written verification that the order of the commissioner precludes him or her from further
16 engaging in a substantial proportion of his or her business, the commissioner shall, within 10
17 days thereafter, file an action in superior court to restrain the respondent from continuing the
18 activity or doing any act in furtherance thereof pending the completion of a hearing pursuant to
19 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
20 Government Code.

21 If the commissioner fails to bring the action in superior court within the time
22 prescribed by this section, or if the court refuses to restrain the respondent pending the decision
23 of the commissioner following the administrative hearing, the respondent may resume the
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1 activities in question pending the rendering of the decision of the commissioner following the
2 administrative hearing.

3
4 (c) The administrative hearing shall be commenced by the commissioner within
5 30 days after receipt of respondent s request unless the respondent agrees to a postponement. If
6 the hearing is not commenced within 30 days after receipt of respondent s request or on the date
7 to which continued with respondent s consent, or if the commissioner does not render a decision
8 within 15 days after receipt of the proposed decision following the hearing, the order shall be
9 deemed rescinded.

10 (d) The provisions of Section 11019, and not the provisions of this section, shall
11 apply in the case of an activity which the commissioner determines to be in violation of Article
12 8 (commencing with Section 10249) of Chapter 3 or of a regulation of the commissioner for
13 implementation of any provision of that article.”

14 **BRE AUDIT OF ILOANMASTER INC's BROKER ESCROW ACTIVITY (LA 160193)**

15 19.

16 On August 11, 2017, the BRE completed an audit examination of the books and
17 records of Respondent II pertaining to its broker escrow activities described in Paragraphs 20
18 and 22 below, which require a real estate license. The audit examination covered a period of
19 time beginning on May 1, 2016 and ending on April 30, 2017 (“audit examination period” or
20 “audit period”), and were performed during the period June 21, 2017 through July 24, 2017
21 (“audit field work period”). The final report of August 11, 2017 revealed violations of the
22 Code and the Regulations as set forth in the following paragraphs, and more fully discussed in
23 Audit Report LA 160193.

24 20.

25 **II's Business Activities & Corporate Structure**

1 At all times mentioned in Garden Grove, California, Respondent II acted as a
2 REB, and ordered, caused, authorized or participated in licensed activities within the meaning
3 of the exception within Financial Code Section 17006(a)(4), wherein II, as a REB licensed by
4 the Real Estate Commissioner, performed acts in the course of or incidental to a real estate
5 transaction in which the broker is an agent or a party to the transaction and in which the broker
6 is performing an act for which a real estate license is required ("broker escrows").

7 21.

8 II

9 At the time of the audit examination, the corporate structure for II was as
10 follows: President and 100% owner REB CAN. At the time of the audit examination, II
11 employed five (5) RES and one (1) REB associate under its BRE license.

12 22.

13 II's Broker Escrow Activities

14 According to D.O. CAN, as of the audit examination, II is a mortgage
15 banker/corresponding lender that solicits borrowers and funds the loans through lines of credit.
16 II also performs residential resale activity, and represents both buyers and sellers. II also
17 provides escrow services to its own clients. During the audit period, II closed approximately
18 eighty (80) escrows and collected escrow trust funds amounting to \$4,039,664.00 for the
19 twelve-month period ending on April 30, 2017. II maintained two (2) bank accounts that
20 handled trust funds in connection with its broker escrow activity during the audit period.

21 23.

22 Bank Accounts

23 According to D.O. CAN, II maintained two (2) bank accounts that handled trust
24 funds in connection with its broker escrow activities during the audit period:

25 Bank Account #1

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AUDIT FINDINGS: VIOLATIONS OF THE REAL ESTATE LAW

24.

In the course of activities as described in Paragraphs 20 and 22, above, and during the audit examination period described in Paragraph 19, Respondent II violated the Code and the Regulations, as described below:

25.

Trust Fund Handling for Multiple Beneficiaries/When Broker Handles Escrow
(Code Section 10145 and Regulation 2832.1/2951)

A. Bank Account #1: Based on the records provided and the aforementioned prepared bank reconciliation as of April 30, 2017 for Bank Account #1, the BRE Auditor discovered that:

1. As of April 30, 2017, Bank Account #1 had a shortage of <\$2,384.32>:

Adjusted Bank Balance, 4/30/17		\$7,508.92
Accountability, 4/30/17	\$2,597.24	
Accumulated REB earned fees	\$7,256.00	
Broker Funds	\$ 40.00	
Total:	\$9,893.24	<\$9,893.24>
Trust Fund Shortage, 4/30/17:		<\$2,384.32>

2. The BRE Auditor discovered that the <\$2,384.32> shortage was caused by a negative escrow balance due to disbursements related to Escrow No. 1092-TL when there were insufficient funds to make such disbursements. There was no evidence provided that the trust

1 fund owners had given II or CAN their written consent to reduce the balance of trust funds in
2 Bank Account #1 to an amount less than the aggregate trust fund liabilities, in violation of Code
3 **Section 10145 and Regulation 2832.1.** (An examination of the Bank Account #1 deposit
4 records and bank statement for May 2017 showed that \$2,384.34 of Buyer's funds for Escrow
5 No. 1092-TL was wired to Bank Account #1 on June 14, 2017, before the completion of the
6 audit field work.)

7 B. Bank Account #2: Based on the records provided and the aforementioned
8 prepared bank reconciliation as of April 30, 2017 for Bank Account #2, the BRE Auditor
9 discovered that:

10 1. As of April 30, 2017, Bank Account #2 had a shortage of <\$76,022.95>:

11 Adjusted Bank Balance, 4/30/17		\$ 48,529.19
12 Accountability, 4/30/17	\$ 0.00	
13 Accumulated REB earned fees	\$ 122,768.89	
14 Broker Funds	\$ <u>1,783.25</u>	
15 Total:	\$ 124,552.14	<u><\$ 124,552.14></u>
16 <i>Trust Fund Shortage, 4/30/17:</i>		<i><\$ 76,022.95></i>

17 2. The BRE Auditor discovered that the <\$76,022.9> shortage was caused by:
18 a negative escrow balance of <\$75,000.00> due to disbursements related to Escrow No. 1095-
19 TL when there were insufficient funds to make such disbursements; the cause of the
20 <\$1,022.95> shortage could not be identified. There was no evidence provided that the trust
21 fund owners had given II or CAN their written consent to reduce the balance of trust funds in
22 Bank Account #2 to an amount less than the aggregate trust fund liabilities, in violation of Code
23 **Section 10145 and Regulation 2832.1.** (An examination of the Bank Account #1 deposit
24 records and bank statement for May 2017 showed that \$75,000 of Buyer's funds for Escrow
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1 NO. 1095-TL was wired to Bank Account #2 on May 31, 2017, before the completion of the
2 audit field work.)

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7 26.

8 **Commingling/Failed to Disburse Broker's Earned Fees and Commissioners Within**

9 **Twenty-Five (25) Days/ When Broker Handles Escrow**

10 **(Code Sections 10145 and 10176(e) and Regulations 2835(a), 2835(b), and 2951)**

11 A. During the audit period, II mixed trust funds with its own funds (comprised of
12 earned fees and commissions) in Bank Account #1 and Bank Account #2. II failed to disburse
13 its earned fees and commissions from Bank Account #1 and Bank Account #2 within twenty-
14 five (25) days from the date said fees and commissioners were earned. II kept at all times more
15 than \$200 of its own funds (\$1,783.25) in Bank Account #2 during the audit period.

16 B. As of April 30, 2017, Bank Account #1 had broker earned fees and
17 commissions in the amount of \$7,256.00, in violation of **Code Sections 10145 and 10176(e)**
18 **and Regulations 2835 and 2951**. II disbursed the accumulated earned fees and commissions in
19 the amount of \$7,746.00 via Check Number 1081 dated June 22, 2017 from Bank Account #1
20 on or about June 23, 2017.

21 C. As of April 30, 2017, Bank Account #2 had broker earned fees and
22 commissions in the amount of \$122,768.89, in violation of **Code Sections 10145 and 10176(e)**
23 **and Regulations 2835 and 2951**. II transferred \$124,766.06 of II's earned fees and
24 commissions to II's general bank account when CAN closed Bank Account #2 on June 8, 2017.

27.

Trust Fund Handling – Trust Account Reconciliation/When Broker Handles Escrow

(Code Section 10145 and Regulations 2831.2 and 2951)

A. During the audit period, III 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 Bank Account, in violation of **Code Section 10145 and Regulations 2831.2 and 2951.**

28.

Trust Account Designation/When Broker Handles Escrow

(Code Section 10145 and Regulations 2832 and 2951)

Bank Account #1 and Bank Account #2 were both bank accounts which held trust funds in connection with II's broker escrow activities. However, neither Bank Account #1 nor Bank Account #2 were set up as trust accounts in the name of the REB or REB's DBA as trustee (Bank Account #1 was maintained in the name of D.O. CAN as "RICHARD CAN, Sole Prop."), in violation of **Code Section 10145 and Regulations 2832 and 2951.**

29.

Deposit Trust Funds in a Timely Manner When Broker Handles Escrow

(Code Section 10145 and Regulations 2832, 2950, and 2951)

II collected trust funds in the form of earnest money deposits and loan funds in connection with its broker escrow activities and failed to place said funds into a designated trust account by the next business day following receipt of said funds, in violation of **Code Section 10145 and Regulations 2832, 2950, and 2951.** In Bank Account #1, the BRE Auditor discovered at least two (2) instances in which the date of deposit was five (5) days after the date of escrow receipt (Escrow Nos. 1088-TL and 1004-TL). In Bank Account #2, the BRE Auditor

1 discovered at least three (3) instances in which the date of deposit was more one business day
2 subsequent to the date of escrow receipt (Escrow Nos. 1095-TL, 3004-TL, and 3002-TL); in
3 one of these examples, the date of deposit was over thirty (30) days from the date of receipt. II
4 deposited said funds into Bank Account #1 or Bank Account #2, neither of which were properly
5 designated trust accounts, in violation of **Code Section 10145 and Regulations 2832, 2950,**
6 **and 2951.**

7 30.

8 **License Disclosure for Each Beneficiary or Transaction**

9 **(Financial Code Section 17403.4 in conjunction with Code Section 10086(a))**

10 II acted in the capacity of an escrow holder under the exemption of Financial
11 Code Section 17006(a)(4)/Code Section 10086(a) and failed to disclose on the sales escrow
12 instruction the name of the Bureau issuing the license under which II operated, in violation of
13 **Financial Code Section 17403.4 in conjunction with Code Section 10086(a)).**

14 31.

15 **Notification of Broker Escrow Activity**

16 **(Code Section 10141.6)**

17 II acted in the capacity of an escrow holder under the exemption of Financial
18 Code Section 17006(a)(4)/Code Section 10086(a), closed thirty-nine (39) escrow transactions in
19 calendar year 2016, and failed to notify the Bureau of its broker escrow activity within sixty
20 (60) days from December 31, 2016, in violation of **Code Section 10141.6.**

21 32.

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

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

24 The acts and/or omissions of CAN as the D.O. of ILOANMASTER INC during
25 the audit period, demonstrate a failure to adequately supervise the real estate activities of
26
27

1 ILOANMASTER INC and its salespersons and its employees to ensure compliance with the
2 Real Estate Law and Regulations. The acts and/or failures to act constitute grounds for the
3 suspension or revocation of the license and license rights of Respondent CAN under the
4 provisions of **Code Sections 10159.2 and 10177(h) and Regulation 2725.**

5 ///

6 ///

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

8 33.

9 The overall conduct of Respondents ILOANMASTER INC and CAN is violative
10 of the Real Estate Law and constitutes cause for the suspension or revocation of both real estate
11 licenses and license rights under the provisions of **Code Section 10177(g)** for negligence and
12 **Code Section 10177(d)** for willful disregard of the Real Estate Law.

13 **COSTS**

14 **Investigation and Enforcement Costs**

15 34.

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 35.

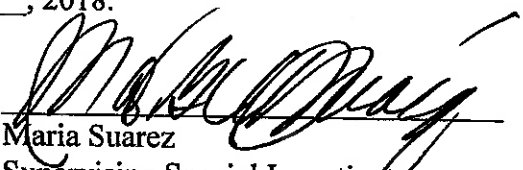
23 **Code Section 10148(b)** provides, in pertinent part, the Commissioner shall
24 charge a real estate broker for the cost of any audit, if the Commissioner has found in a final
25 decision following a disciplinary hearing that the broker has violated Code section 10145 or a
26

1 regulation or rule of the Commissioner interpreting said section.
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7 WHEREFORE, Complainant prays that a hearing be conducted on the
8 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
9 disciplinary action against the licenses and license rights of Respondents ILOANMASTER INC
10 and RICHARD CAN under the Real Estate Law (Part 1 of vision 4 of the Business and
11 Professions Code), for the cost of investigation and enforcement as permitted by law, and for
12 such other and further relief as may be proper under other provisions of law, and for costs of
13 audit.

14 Dated at Los Angeles, California

15 this 16th day of May, 2018.
16
17


18 Maria Suarez
19 Supervising Special Investigator
20
21
22

23 cc: ILOANMASTER INC
24 RICHARD CAN
25 Enforcement – N. Torres-Mancia, M. Suarez
26 Audits – G. King, M. Rivera
27 Sacto.