

1 Julie L. To (SBN 219482)  
2 Department of Real Estate  
3 320 West 4th Street, Suite. 350  
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6916 (direct)  
6 -or- (213) 576-6982 (office)

**FILED**

NOV 29 2018

DEPT. OF REAL ESTATE

By *Suzanne Dennis*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )

No. H-41224 LA

12 FORWARD MANAGEMENT LONG )  
13 BEACH, INC.; )

**ACCUSATION**

14 JUDY NORMAN SHARP, )  
15 individually and as designated officer of )  
16 Forward Management Long Beach, Inc.; )

17 CHRISTOPHER JON ARRIETA; and )

18 ROBERT TORRES MARTIRES, )

19 )  
20 Respondents. )  
21 )

22 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the  
23 State of California, for cause of Accusation against FORWARD MANAGEMENT LONG  
24 BEACH, INC.; JUDY NORMAN SHARP, individually and as designated officer of Forward  
25  
26  
27

1 Management Long Beach, Inc.; CHRISTOPHER JON ARRIETA; and ROBERT TORRES  
2 MARTIRES, alleges as follows:

3 1.

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

6 2.

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

9 **RESPONDENTS**

10 3.

11 **JUDY NORMAN SHARP**

12 A. Respondent JUDY NORMAN SHARP ("SHARP") is presently licensed  
13 and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real  
14 estate broker ("REB"), California Department of Real Estate ("Department" or "DRE") License  
15 ID 00838484.

16 B. According to DRE records to date, SHARP is the designated officer ("D.O.")  
17 of record for FORWARD MANAGEMENT LONG BEACH, INC. until her officer expiration  
18 date of March 26, 2021.

19 C. According to DRE records to date, SHARP holds two (2) active DBAs under  
20 her DRE license: Keller Williams Pacific Estates (active as of August 18, 2011) and RE  
21 Referrals (active as of April 25, 2012).

22 D. According to DRE records to date, there are 66 real estate salespersons  
23 ("RES") affiliated with REB SHARP.

24 E. SHARP's REB license will expire on June 20, 2021.

25 ///

FORWARD MANAGEMENT LONG BEACH, INC.

A. Respondent FORWARD MANAGEMENT LONG BEACH, INC. ("FMLBI") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a REB (corporation), DRE License ID 01917184.

B. According to DRE records to date, SHARP is the D.O. of FMLBI until her officer expiration date of March 26, 2021.

C. According to DRE records to date, FMLBI's main and mailing address of record are the same: 2883 E. Spring St., #100, Long Beach, CA 90806 ("Spring St. address."). The Spring St. address was FMLBI's main office address of record between March 27, 2013 and January 19, 2017, and became the main office address of record again from January 16, 2018 to the present. The Spring St. address has been FMLBI's mailing address of record on September 27, 2013.

D. According to DRE records to date, FMLBI holds six (6) active DBAs under its DRE license:

1. KASE Group (active as of June 29, 2017);
2. Keller Williams Long Beach Pacific Estates (active as of April 11, 2013);
3. Keller Williams Pacific Estates (active as of April 11, 2013);
4. Pacific Estates Escrow, a non-independent broker escrow (active as of April 11, 2013);
5. Team Pennywise (active as of August 27, 2018); and
6. VB Realty Group (active as of August 30, 2018).

E. According to DRE record to date, FMLBI is the employing REB of record for RES Beatrix Whipple ("Whipple"), DRE License ID 01355505.

1  
2 F. According to DRE record to date, FMLBI is the employing REB of record for  
3 real estate salesperson ("RES") Jennifer Dykema ("Dykema"), DRE License ID 01937229. E.  
4 FMLBI's REB license will expire on March 26, 2021.

5 G. According to the California Secretary of State ("SOS"), FMLBI became an  
6 active domestic corporation in good standing (California Corporate Number C3370785) on April  
7 19, 2011. FMLBI has on file with the SOS two (2) Statements of Information ("SI"), filed June  
8 8, 2011 and October 13, 2017.

9 1. According to the June 8, 2011 SI, FMLBI is a real estate brokerage  
10 whose principal place of business is 2883 East Spring Street, Ste. 100, Long Beach, CA 90806.  
11 Its officers are Paul Morris, Wayne Ishimine, and Robert Aigner and its directors are Paul  
12 Morris, W. Darrow Fiedler, and Robert Aigner. Paul Morris was its agent for service of process  
13 and Anna Mangual, Regional Operations Ma [sic] submitted the SI on June 8, 2011. At page 2  
14 of the SI, Erica Hill was listed as a director who was also an officer.

15 2. The October 13, 2017 SI indicated there were no changes to the  
16 information contained in the June 8, 2011 SI. Corina Davis, MCA submitted this SI on October  
17 13, 2017.

18 5.

19 CHRISTOPHER JON ARRIETA

20 A. Respondent CHRISTOPHER JON ARRIETA ("ARRIETA") is presently  
21 licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as  
22 a RES, DRE License ID 01876203.

23 B. According to DRE records to date, ARRIETA's employing REB of record is  
24 Forward La Mirada, Inc., DRE License ID 02041452.

25 C. ARRIETA's RES license will expire on October 9, 2022.

26  
27

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

6.

ROBERT TORRES MARTIRES

A. Respondent ROBERT TORRES MARTIRES (“MARTIRES”) is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a RES, DRE License ID 01984496.

B. According to DRE records to date, MARTIRES’ employing REB of record is FMLBI.

C. MARTIRES’ RES license will expire on August 10, 2019.

APPLICABLE SECTIONS OF THE REAL ESTATE LAW

Trust Fund Handling –

Code Section 10145 and Regulations 2830, 2831, 2831.1, 2832, 2834, 2835, 2950 and 2951

7.

Pursuant to Code Section 10145 *Handling of Trust Funds* (selected portions):

“(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.

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

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

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

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

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

14 (i) Separate fidelity bond coverage adequate to cover the amount  
15 of the fidelity bond deductible.

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

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

24 (3) An arrangement under which a person enumerated in subparagraph (A),(B),  
25 or (C) of paragraph (2) is authorized to make withdrawals from a trust fund account of a broker  
26

1 shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from  
2 responsibility or liability as provided by law in handling trust funds in the broker's custody.

3 ...

4 (4)(b) A real estate broker acting as a principal pursuant to Section 10131.1<sup>1</sup>  
5 shall place all funds received from others for the purchase of real property sales contracts or  
6 promissory notes secured directly or collaterally by liens on real property in a neutral escrow  
7 depository unless delivery of the contract or notes is made simultaneously with the receipt of the  
8 purchase funds.

9 ...

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

12 8.

13 Pursuant to Regulation 2830 *Broker Placement of Trust Funds with Financial*  
14 *Institutions:*

15 "The relationship between a real estate broker and a client for whom the broker  
16 holds funds in trust is an agency relationship. As an agent, the broker owes a fiduciary duty to  
17 the client regarding the handling of the trust. Any benefit received by the broker relating to the  
18 broker's handling of client funds in trust belongs to the client by law, and the broker must pass  
19 that benefit along to the client.

20 (a) Unless in possession of written permission from the client, it is unlawful for  
21 any real estate broker, including any corporate broker, to receive, directly or indirectly, any  
22 commission, compensation, or other consideration, whether personal or professional, from any  
23 person or institution other than the client as an inducement for the placement of a trust fund

24 \_\_\_\_\_  
25 <sup>2</sup>Code Section 10131.1 states, "(a) A real state broker within the meaning of this part is also a person who engages as  
26 a principal in the business of making loans or buying from, selling to, or exchanging with the public, real property  
27 sales contracts or promissory notes secured directly or collaterally by liens on real property..."

1 account in accordance with Section 10145 of the Business and Professions Code. Actual  
2 placement of a trust fund account is not a precondition to a violation of this section, whether  
3 the violation is or is not a per se violation pursuant to subsection (c), below.

4 (b) For purposes of this section, a "compensating balance" is a balance  
5 maintained in a checking account or other account in a bank or other recognized depository in  
6 the name of a real estate broker for the purpose of paying bank fees on a separate trust fund  
7 account.

8 (c) Unless in possession of written permission from the client as described in  
9 subsection (a), the following activities, whether performed directly or indirectly, are deemed per  
10 se receipt of inducements for the placement of trust account business by any person and are  
11 unlawful:

12 (1) Receiving or requesting payment for, accepting or requesting  
13 provision of, or accepting or requesting assistance with business  
14 expenses, including, but not limited to, rent, employee salaries, furniture,  
15 copiers, facsimile machines, automobiles, telephone services or  
16 equipment, or computers.

17 (2) Receiving or requesting receipt of any form of consideration intended  
18 for the benefit of the broker, rather than the trust account itself, including  
19 cash, below market rate loans, automobile charges, or merchandise or  
20 merchandise credits.

21 (3) Receiving or requesting to receive on behalf of the broker or  
22 corporation, compensating balances or benefits in the pricing or fees for  
23 the maintenance of a compensating balance account.



1 (4) Receiving or requesting provision of all, or any part, of the time or  
2 productive effort of any employee of the bank or other recognized  
3 depository for any service unrelated to the trust account.

4 (5) Receiving or requesting expenditures for food, beverages, and  
5 entertainment.

6 (d) Receipt or request of receipt of the following are not deemed to be unlawful  
7 or in violation of this section:

8 (1) Promotional items with a permanently affixed company logo of the  
9 bank or other recognized depository with a value of not more than ten  
10 dollars (\$10) each. "Promotional item" does not include a gift certificate,  
11 gift card, or other item that has a specific monetary value on its face, or  
12 that may be exchanged for any other item having a specific monetary  
13 value.

14 (2) Receipt or requested receipt of education or educational materials  
15 exclusively related to the business of trust fund management if continuing  
16 education credits are not provided.

17 (e) The receipt or requested receipt of any form of consideration as an  
18 inducement for the placement of a trust account not specifically set forth in this section shall  
19 not be presumed lawful merely because it is not specifically prohibited."

20 9.

21 Pursuant to Regulation 2831 *Trust Fund Records To Be Maintained*:

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

- (1) Date trust funds received.
- (2) From whom trust funds received.
- (3) Amount received.
- (4) With respect to funds deposited in an account, date of said deposit.
- (5) With respect to trust funds previously deposited to an account, check number and date of related disbursement.
- (6) With respect to trust funds not deposited in an account, identity of other depository and date funds were forwarded.
- (7) Daily balance of said account.

(b) For each bank account which contains trust funds, a record of all trust funds received and disbursed shall be maintained in accordance with subdivision (a) or (c).

(c) Maintenance of journals of account cash receipts and disbursements, 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, shall constitute compliance with subdivision (a) provided that such journals, 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.

(d) Nothing in this section shall be construed to permit a violation of Section 10145 of the Code.

(e) A broker is not required to keep records pursuant to this section of checks which are written by a principal, given to the broker and made payable to third parties for the provision of services, including but not limited to escrow, credit and appraisal services, when the total amount of such checks for any transaction from that principal does not exceed \$1,000. Upon request of the Department or the maker of such checks, a broker shall account

1 for the receipt and distribution of such checks. A broker shall retain for three years copies of  
2 receipts issued or obtained in connection with the receipt and distribution of such checks.”

3 10.

4 Pursuant to Regulation 2831.1 *Separate Record for Each Beneficiary or*  
5 *Transaction:*

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

11 (1) Date of deposit.

12 (2) Amount of deposit.

13 (3) Date of each related disbursement.

14 (4) Check number of each related disbursement.

15 (5) Amount of each related disbursement.

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

18 (7) Balance after posting transactions on any date.

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

Pursuant to Regulation 2832 *Trust Fund Handling*:

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

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

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

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

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

(d) In these circumstances if the offeror’s check was held by the broker in accordance with subdivision (c) until acceptance of the offer, the check shall be placed into a neutral escrow depository or the trust fund account, or into the hands of the offeree if offeror and offeree expressly so provide in writing, not later than three business days following acceptance of the offer unless the broker receives written authorization from the offerree to continue to hold the check.

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

10 12.

11 Pursuant to Regulation 2834 *Trust Account Withdrawals*:

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

15 (1) a salesperson licensed to the broker.

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

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

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

23 (1) an officer through whom the corporation is licensed pursuant to Section  
24 10158 or 10211 of the Code or

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

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

9 13.

10 Pursuant to Regulation 2835 *Commingling*:

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

14 (a) The deposit into a trust account of reasonably sufficient funds, not to exceed  
15 \$200, to pay service charges or fees levied or assessed against the account by the bank or  
16 financial institution where the account is maintained.

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

24 (c) The deposit into a trust account of broker owned funds in connection with  
25 activities pursuant to either subdivision (d) or (e) of Section 10131 of the Code or when making,  
26

1 collecting payments or servicing a loan which is subject to the provisions of Section 10240 of  
2 the Code provided:

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

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

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

9 (4) The funds are deposited and maintained in compliance with  
10 subdivision (d).

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

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

16 14.

17 Pursuant to Regulation 2950 *When Broker Handles Escrow*:

18 “The following acts in the handling of an escrow by a real estate broker  
19 exempted from the provisions of the Escrow Law (by Section 17006(a)(4) of the Financial  
20 Code) are prohibited and may be considered grounds for disciplinary action:

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

24 (b) Permitting any person to make any addition to, deletion from, or alteration of  
25 an escrow instruction (or amended or supplemental escrow instruction) received by such  
26

1 licensee, unless such addition, deletion or alteration is signed or initialed by all persons who had  
2 signed or initialed such escrow instruction (or amended or supplemental escrow instruction)  
3 prior to such addition, deletion or alteration.

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

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

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

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

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

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

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

23 (j) Delivering or recording any instrument which purportedly transfers a party's  
24 title or interest in or to real property without first obtaining the written consent of that party to  
25 the delivery or recording.”



15.

Pursuant to Regulation 2951 *Record Keeping and Funds Handling*:

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

**Broker Supervision – Code Section 10159.2 and Regulation 2725**

16.

Pursuant to Code Section 10159.2 *Responsibility of Corporate Officer in Charge*:

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

(b) A corporate broker licensee that has procured additional licenses in accordance with Section 10158 through officers other than the officer designated pursuant to Section 10211 may, by appropriate resolution of its board of directors, assign supervisory responsibility over salespersons licensed to the corporation to its broker-officers.

(c) A certified copy of any resolution of the board of directors assigning supervisory responsibility over real estate salespersons licensed to the corporation shall be filed with the Real Estate Commissioner within five days after the adoption or modification thereof.”

17.

Pursuant to Regulation 2725 *Broker Supervision*:

1 "A broker shall exercise reasonable supervision over the activities of his or her  
2 salespersons. Reasonable supervision includes, as appropriate, the establishment of policies,  
3 rules, procedures and systems to review, oversee, inspect and manage:

4 (a) Transactions requiring a real estate license.

5 (b) Documents which may have a material effect upon the rights or obligations  
6 of a party to the transaction.

7 (c) Filing, storage and maintenance of such documents.

8 (d) The handling of trust funds.

9 (e) Advertising of any service for which a license is required.

10 (f) Familiarizing salespersons with the requirements of federal and state laws  
11 relating to the prohibition of discrimination.

12 (g) Regular and consistent reports of licensed activities of salespersons.

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

16 A broker shall establish a system for monitoring compliance with such policies,  
17 rules, procedures and systems. A broker may use the services of brokers and salespersons to  
18 assist in administering the provisions of this section so long as the broker does not relinquish  
19 overall responsibility for supervision of the acts of salespersons licensed to the broker."  
20

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

22 18.

23 Pursuant to Code Section 10159.5 *Fictitious Name* (a)(1):

24 "Every person applying for a license under this chapter who desires to have the  
25 license issued under a fictitious business name shall file with his or her application a certified  
26

1 copy of his or her fictitious business name statement filed with the county clerk pursuant to  
2 Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.”

3 . . .  
4 (b)(1) A salesperson using a fictitious business name authorized by subdivision  
5 (a), shall use that name only as permitted by his or her responsible broker.

6 (2) This section does not change a real estate broker’s duties under this  
7 division to supervise a salesperson..”

8 19.

9 Pursuant to Regulation 2731(a) *Use of False or Fictitious Name:*

10 “A licensee shall not use a fictitious name in the conduct of any activity for which  
11 a license is required under the Real Estate Law unless the licensee is the holder of a license  
12 bearing the fictitious business name.”

13 **Place of Business: Contact Information – Code Section 10162 and Regulation 2715**

14 20.

15 Pursuant to Code Section 10162 *Place of Business: Contact Information,*

16 “(a) Every licensed real estate broker shall have and maintain a definite place of  
17 business in the State of California that serves as his or her office for the transaction of business.  
18 This office shall be the place where his or her license is displayed and where personal  
19 consultations with clients are held.

20 (b) A real estate license does not authorize the licensee to do business except  
21 from the location stipulated in the real estate license as issued or as altered pursuant to Section  
22 10161.8.

23 (c) (1) Every real estate broker and salesperson licensee shall provide to the  
24 commissioner his or her current office or mailing address, a current telephone number, and a  
25

1 current electronic mail address that he or she maintains or uses to perform any activity that  
2 requires a real estate license, at which the bureau may contact the licensee.

3 (2) Every real estate broker and salesperson licensee shall inform the  
4 commissioner of any change to his or her office or mailing address, telephone  
5 number, or electronic mail address no later than 30 days after making the  
6 change.

7 (d) Notwithstanding Section 10185, a violation of this section is not a  
8 misdemeanor.”

9  
10 21.

11 Pursuant to Regulation 2715 *Business and Mailing Addresses of Licensees*:

12 “Every broker, except a broker acting in the capacity of a salesperson to another  
13 broker under written agreement, shall maintain on file with the commissioner the address of his  
14 principal place of business for brokerage activities, the address of each branch business office  
15 and his current mailing address, if different from the business address. Every broker who is  
16 acting in the capacity of a salesperson to another broker under written agreement shall maintain  
17 on file with the commissioner the address of the business location where he expects to conduct  
18 most of the activities for which a license is required and his current mailing address. A real  
19 estate salesperson shall maintain on file with the commissioner his current mailing address, and  
20 when applicable, the address of the principal business office of the broker to whom the  
21 salesperson is at the time licensed. Whenever there is a change in the location or address of the  
22 principal place of business or of a branch office of a broker, he shall notify the commissioner  
23 thereof not later than the next business day following the change. This section shall apply to the  
24 holder of a real estate license who fails to renew it prior to the period for which it was issued and  
25 who is otherwise qualified for such license as set forth in Section 10201 of the Code.”



1 (i) Any other conduct, whether of the same or a different character than specified  
2 in this section, which constitutes fraud or dishonest dealing...”

3 **Further Grounds for Disciplinary Action –**

4 **Code Section 10177**

5 23.

6 Pursuant to Code Section 10177 *Further Grounds for Disciplinary Action*  
7 (selected portions):

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

11 ...

12 (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing  
13 with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and  
14 regulations of the commissioner for the administration and enforcement of the Real Estate Law  
15 and Chapter 1 (commencing with Section 11000) of Part 2.

16 ...

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

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

23 ...

24 (j) Engaged in any other conduct, whether of the same or a different character than  
25 specified in this section, that constitutes fraud or dishonest dealing...”  
26

1 **DRE AUDIT LA 170094**

2 **(FMLBI's Broker Escrow Activities)**

3 24.

4 On December 27, 2017, the DRE completed an audit examination of the books  
5 and records of FMLBI pertaining to its broker escrow activities described in Paragraph 25 below,  
6 which require a real estate license. The audit examination covered a period of time beginning on  
7 January 1, 2016 and ending on September 29, 2017 ("audit period"), and was performed between  
8 October 17, 2017 and November 29, 2017. The final report of December 27, 2017 revealed  
9 violations of the Code and the Regulations as set forth in the following paragraphs, and more  
10 fully discussed in Audit Report LA 170094.

11 25.

12 **FMLBI's Business Activities & Corporate Structure: Real Estate Sales Activities**

13 A. According to D.O. SHARP's written statement to the DRE dated October 17,  
14 2017, FMLBI's business activities are "only sales, leases and broker escrow." SHARP also  
15 stated in the same written statement that, "FMLBI has never allowed property or mortgage loan  
16 activity since we opened. I am not aware of any of our agents or brokers who do either of these  
17 activities."

18 B. According to D.O. SHARP and corporate documents provided to the DRE on  
19 October 17, 2017, the corporate structure of FMLBI was as follows:

<u>Name</u>	<u>Corporate Title</u>	<u>License Status</u>	<u>Shareholder (%)</u>
Paul Morris	CEO	Non-Licensee	11.75%
Robert Aigner	Secretary	RES	11.00%
Lee Ziff	CFO	REB	21.25%
Erica Hill	VP	Non-Licensee	5.5%
W. Darrow Fiedler	VP	Non-Licensee	5.5%

1	JUDY NORMAN SHARP	VP	D.O./REB	1%
2	David Culen	N/A	RES	30%
3	Scott Kato	N/A	RES	4%
4	Jeff Anderson	N/A	RES	2.5%
5	Torey Carrick	N/A	RES	2.5%
6	Marvin Phillip	N/A	RES	2%
7	Steve Nottingham	N/A	RES	2%
8	Stacy Morel	N/A	Non-Licensee	1%

9  
10 B. Audit LA 170094 was limited to FMLBI's broker escrow activities pursuant to  
11 Section 17006 of the Financial Code<sup>2</sup>. A concurrent audit (Audit LA 170061) was also  
12 performed by the DRE which examined FMLBI's property management activities within the  
13 meaning of Code Section 10131(b).

14 26.

15 Bank Account

16 A. According to D.O. SHARP, FMLBI maintained one (1) trust account in  
17 connection with FMLBI's broker escrow activity. During the audit examination period, FMLBI  
18 closed approximately three hundred and two (302) escrow transactions and collected  
19 approximately \$86,703,483.94 in escrow trust funds.  
20  
21

22 <sup>2</sup> According to California Financial Code Section 17006 "(a) This division does not apply to... (4) Any broker  
23 licensed by the Real Estate Commissioner while performing acts in the course of or incidental to a real estate  
24 transaction in which the broker is an agent or a party to the transaction and in which the broker is performing an act  
25 for which a real estate license is required" may perform escrow services without an escrow license. (b) The  
26 exemptions provided for in paragraphs (2) and (4) of subdivision (a) are personal to the persons listed, and those  
27 persons shall not delegate any duties other than duties performed under the direct supervision of those persons.  
Notwithstanding the provisions of this subdivision, the exemptions provided for in paragraphs (2) and (4) of  
subdivision (a) are not available for any arrangement entered into for the purpose of performing escrows for more  
than one business."



1 B. FMLBI's one (1) trust account for its broker escrow activity was sampled for DRE  
2 Audit LA 170094:

3 Trust Account #1 ("T/A 1")

4 \* Bank Name: City National Bank

5 \* Bank Address: 525 S. Flower St., Los Angeles, CA 90071

6 \* Account No. #####3317

7 \* Account Name: FMBLI, dba Pacific Estates Escrow, a non independent broker  
8 escrow (Trust Account)

9 **AUDIT LA 170094**

10 **FMLBI'S BROKER ESCROW ACTIVITIES -**

11 **VIOLATIONS OF THE REAL ESTATE LAW**

12 27.

13 In the course of activities as described above, and during the audit period  
14 described in Paragraph 24, FMLBI acted in violation of the Code and the Regulations, as  
15 described below:

16 **Exemptions From Escrow Law/ Third Party Escrow**

17 **(Code Section 10086(a) / Financial Code Section 17006(a)(4)(b))**

18 28.

19 FMLBI performed escrow services in which it was not an agent or a party to the  
20 transaction, as required, for at least two (2) transactions during the audit period: Escrow  
21 #011011-LA and Escrow #011362, in violation of the exemption of **Financial Code Section**  
22 **17006(a)(4)(b)** [as a prohibited activity pursuant to Code Section 10086(a)].

23 **Trust Fund Handling -**

24 **Trust Fund Records to be Maintained/When Broker Handles Escrow**

25 **(Code Section 10145 and Regulations 2831, 2950(d), and 2951)**

26 29.

1 FMLBI did not maintain an adequate columnar record of trust funds received and  
2 disbursed for T/A 1 during the audit period:

3 A. FMLBI did not identify the dates trust funds were deposited into T/A 1, in  
4 violation of **Code Section 10145 and Regulations 2831, 2950(d) and 2951**.

5 B. The information pertaining to the "Date Received" was not always correct on  
6 FMLBI's T/A 1 control record, in violation of **Code Section 10145 and Regulations 2831,**  
7 **2950(d) and 2951**.

8 **Trust Fund Handling –**

9 **Separate Record for Each Beneficiary or Transaction/ When Broker Handles Escrow**

10 **(Code Section 10145 and Regulations 2831.1, 2950, and 2951)**

11 30.

12 A. During the audit period, FMLBI did not maintain adequate separate records for  
13 T/A 1. FMLBI did not identify the dates trust funds were deposited into T/A 1, in violation of  
14 **Code Section 10145 and Regulations 2831.1, 2950(d) and 2951**.

15 B. During the audit period, the information pertaining to the "Date Received" was  
16 not always correct on FMLBI's separate records for T/A 1, in violation of **Code Section 10145**  
17 **and Regulations 2831.1, 2950(d) and 2951**.

18 **Trust Fund Handling –**

19 **Trust Account Withdrawals/ Record Keeping**

20 **and Funds Handling/When Broker Handles Escrow**

21 **(Code Section 10145 and Regulations 2834 and 2951)**

22 31.

23 During the audit period, the following non-licensees were allowed to make  
24 withdrawals from T/A 1 without the fidelity bond coverage that fulfilled the requirements of the  
25  
26

1 California Bureau<sup>3</sup> of Real Estate: Lee Ann Adams, Carlo Bautista and Stacy Morel, in violation  
2 of **Code Section 10145 and Regulations 2834 and 2951.**

3 **Trust Fund Handling –**

4 **Commingling/When Broker Handles Escrow**

5 **(Code Sections 10145 and 10176(e) and Regulations 2835 and 2951)**

6 32.

7 Based on the ledger for Account #999917-99 “Messenger Fee Account” provided  
8 by FMLBI, as of September 29, 2017, FMLBI kept \$270.65 of its funds in T/A 1, over the  
9 allowable limit of \$200.00, in violation of **Code Section 10145 and 10176(e) and Regulations**  
10 **2835 and 2951.**

11 **Trust Fund Handling –**

12 **Secret Profit – Earnings Credit**

13 **(Code Sections 10145 and 10176(g) and Regulation 2830)**

14 33.

15 During the audit period, FMLBI maintained an earnings credit relationship with  
16 City National Bank without disclosing said earnings credit relationship to all the trust fund  
17 owners in writing in all of the escrow transaction files examined, in violation of **Code Sections**  
18 **10145 and 10176(g) and Regulation 2830.**

19 **Place of Business**

20 **(Code Section 10162)**

21 34.

22  
23  
24  
25 <sup>3</sup> Between July 1, 2013 and June 30, 2018, the California Department of Real Estate operated as the California  
26 Bureau of Real Estate.

1 During the audit period, FMLBI performed licensed real estate activities at 2883  
2 E. Spring St., #100, Long Beach, CA 90806 and did not notify the CalBRE<sup>4</sup> within thirty (30)  
3 days of using this office location, in violation of **Code Section 10162.**

4 **Fictitious Name/ Use of False or Fictitious Name**

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

6 35.

7 During the audit period, FMLBI used the unlicensed fictitious business name  
8 "Pacific Estates Escrow" to conduct its broker escrow activities in all of the escrow instructions  
9 examined, in violation of **Code Section 10159.5 and Regulation 2731.**

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

11 **(Code Section 10159.2 and 10177(h) and Regulation 2725)**

12 36.

13 During the audit period, D.O. SHARP failed to exercise reasonable control and  
14 supervision over the activities conducted by licensees and/or employees on behalf of FMLBI as  
15 necessary to secure full compliance with the Real Estate Laws and Regulations. D.O. SHARP's  
16 failure to establish policies, rules, procedures, and systems to review, oversee, inspect and  
17 manage transactions requiring a real estate license and the handling of trust funds relating to such  
18 transactions is in violation of **Code Sections 10159.2 and 10177(h) and Regulation 2725.**

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

20 **(Code Sections 10177(d) and (g))**

21 37.

22 The overall conduct of Respondents FMLBI and SHARP is violative of the Real  
23 Estate Law and constitutes cause for the suspension or revocation of their real estate licenses and  
24

---

25 <sup>4</sup> Please see Footnote 4, above.  
26

1 license rights under the provisions of **Code Section 10177(d)** for willful disregard of the Real  
2 Estate Law and **Code Section 10177(g)** for negligence.

3 **DRE AUDIT LA 170061**

4 **FMLBI'S PROPERTY MANAGEMENT ACTIVITIES –**

5 **VIOLATIONS OF THE REAL ESTATE LAW**

6 38.

7 On February 28, 2018, the DRE completed an audit examination of the books and  
8 records of FMLBI pertaining to its property management activities described in Paragraph 39  
9 below, which require a real estate license. The audit period was January 1, 2016 to September  
10 30, 2017, and the audit field work was performed between October 17, 2017 and January 25,  
11 2018. The final report of February 28, 2018 revealed violations of the Code and the Regulations  
12 by FMLBI, SHARP, ARRIETA, and MARTIRES, as set forth in the following paragraphs, and  
13 more fully discussed in Audit Report LA 170061.

14 39.

15 **FMLBI's Business Activities & Corporate Structure: Real Estate Sales Activities**

16 A. According to D.O. SHARP's written statement to the DRE dated October 17,  
17 2017, "FMLBI has never allowed property management or mortgage loan activity since we  
18 opened. I am not aware of any of our agents or brokers who do either of these activities."

19 B. Audit LA 170061 was limited to FMLBI's lease activities and RES Whipple  
20 and Dykema's property management activity within the meaning of Code Section 10131(b)<sup>5</sup>.

21 40.

22 **Bank Account(s)**

23 A. According to D.O. SHARP, FMLBI maintained one (1) trust account in  
24 connection with FMLBI's broker escrow activity, and no other trust accounts.

25 \_\_\_\_\_  
26 <sup>5</sup> RES Whipple and RES Dykema's property management activities are alleged in a separate Accusation.

1 B. According to RES ARRIETA and RES MARTIRES, they did not maintain any  
2 bank accounts to handle trust funds during the audit period.

3 **AUDIT LA 170061**

4 **VIOLATIONS OF THE REAL ESTATE LAW**

5 41.

6 In the course of activities as described above, and during the audit examination  
7 period described in Paragraph 45, Respondents FMLBI, SHARP, ARRIETA, and/or MARTIRES  
8 acted in violation of the Code and the Regulations, as described below:

9 **Lease for 3301 Terrace Ridge Ln., Long Beach, CA 90804 by RES ARRIETA**

10 **and RES MARTIRES –**

11 **Trust Fund Account (Code Section 10145(a) and Regulation 2832) and Trust Fund Records**

12 **to be Maintained (Code Section 10145 and Regulation 2831)**

13 42.

14 A. FMLBI did not maintain a trust account for trust funds collected by RES  
15 ARRIETA and RES MARTIRES on behalf of the property owners. The rent (trust funds ) and  
16 security deposit (trust funds) collected from the tenant at 3301 Terrace Ridge Ln., Long Beach,  
17 CA 90804 (“Terrace Ridge property”) were not deposited into a trust account; instead the trust  
18 funds were deposited into the general account of FMLBI (G/A 1: Wells Fargo Bank account  
19 #####7486), in violation of **Code Section 10145(a) and Regulation 2832.**

20 B. FMLBI/RES ARRIETA/RES MARTIRES did not maintain a Record of Trust  
21 Funds Received and Disbursed pertaining to the rent (trust funds) and security deposit (trust  
22 funds) collected from the tenant at the Terrace Ridge property, in violation of **Code Section**  
23 **10145 and Regulation 2831.**

24 **Lease for Terrace Ridge Property by RES ARRIETA and RES MARTIRES – Handling of**

25 **Trust Funds/Trust Fund Account –**

1 **(Code Section 10145(a) and Regulation 2832)**

2 43.

3 FMLBI did not maintain a trust account for \$8,200 in trust funds collected by its  
4 licensees, RES ARRIETA and RES MARTIRES, on behalf of property owners on March 3,  
5 2017, in violation of **Code Section 10145(a) and Regulation 2832**. The trust funds received  
6 were not deposited into a trust account and were deposited instead into G/A 1.

7 **Lease for Terrace Ridge Property by RES ARRIETA and RES MARTIRES - Trust Fund**

8 **Records to be Maintained**

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

10 44.

11 Trust funds in the form of first month's rent and security deposit collected from  
12 the tenant at the Terrace Ridge property by RES ARRIETA and RES MARTIRES were  
13 deposited into G/A 1. FMLBI/RES ARRIETA/RES MARTIRES did not maintain a Record of  
14 Trust Funds Received and Disbursed for said trust funds, in violation of **Code Section 10145**  
15 **and Regulation 2831**.

16 **D.O. SHARP - Responsibility of Corporate Officer in Charge/Broker Supervision**

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

18 45.

19 D.O. SHARP did not exercise reasonable control and supervision over the  
20 activities conducted by FMLBI's licensees as necessary to secure full compliance with Real  
21 Estate Laws and Regulations during the audit period, in violation of **Code Sections 10159.2 and**  
22 **10177(h) and Regulation 2725**. D.O. SHARP did not adequately supervise FMLBI's real estate  
23 licensees, RES ARRIETA and MARTIRES, who performed property management activities as  
24 and under the employ of FMLBI, in violation of **Code Sections 10159.2 and 10177(h) and**  
25 **Regulation 2725**.





1 ROBERT TORRES MARTIRES under the Real Estate Law (Part 1 of vision 4 of the Business  
2 and Professions Code), for the cost of investigation and enforcement as permitted by law, for  
3 costs of audit, and for such other and further relief as may be proper under other provisions of  
4 law.

5 Dated at San Diego, California

6 this 28 day of November, 2018.

7  
8   
9 Veronica Kilpatrick  
Supervising Special Investigator

10 cc:Forward Management Long Beach, Inc.  
11 Judy Norman Sharp  
12 Christopher Jon Arrieta  
13 Robert Torres Martires  
14 Enforcement-V. Kilpatrick  
15 Audits-A. Wjaya, J. Lin, Sacto  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27