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FILED

OCT 16 2020

DEPT. OF REAL ESTATE
By 

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

10 * * *

11 In the Matter of the Accusation of)

12 TRU PRO REALTY, INC.)

13 and)

14 MARIA ELENA GARDUNO,)
15 individually and as designated officer)
16 of Tru Pro Realty, Inc.)

17 Respondents.)

No. H-41802 LA

ACCUSATION

18 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of
19 the State of California, for cause of Accusation against TRU PRO REALTY, INC. and
20 MARIA ELENA GARDUNO, individually and as designated officer of TRU PRO REALTY,
21 INC. alleges as follows:

22 1.

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

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27 **DRE ACCUSATION: TRU PRO REALTY, INC. & MARIA ELENA GARDUNO**

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.

DEPARTMENT OF REAL ESTATE LICENSE HISTORY

3.

TRU PRO REALTY, INC.

A. Respondent TRU PRO REALTY, INC. ("TPRI") 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") (corporation), Department of Real Estate ("DRE" or "Department") license ID 02001856.

B. TPRI was originally licensed by the Department as a real estate corporation on or about April 26, 2016.

C. TPRI's DRE mailing and main address of record are the same: 601 S. Milliken Ave., Ste. K110, Ontario, CA 91761 ("Milliken address").

D. According to DRE records to date, TPRI has one (1) current DBA, for Serene Escrow a non-independent Broker Escrow, active as of April 26, 2016; no branch offices; and no real estate salespersons ("RES") licensed under its DRE license.

E. According to DRE records to date, MARIA ELENA GARDUNO was the designated officer ("D.O.") of record for TPRI until her officer license affiliation expiration date of April 25, 2020.

F. TPRI's DRE license was set to expire on April 25, 2020. Pursuant to Governor Gavin Newsom's Executive Order N-71-20, TPRI's DRE license will now expire on December 31, 2020.

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DRE ACCUSATION: TRU PRO REALTY, INC. & MARIA ELENA GARDUNO

MARIA ELENA GARDUNO

A. Respondent MARIA ELENA GARDUNO ("GARDUNO") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a REB, DRE license ID 01321086.

B. GARDUNO was originally licensed by the Department as a RES on or about March 6, 2002 and as a REB on or about June 4, 2013.

C. GARDUNO's mailing and main office address of record are the same: 3769 Tibbetts St., Riverside, CA 92506 ("Tibbetts address").

D. According to DRE records to date, GARDUNO has two (2) current DBAs, for Golden Circle Realty and Own It Real Estate, both active as of July 2, 2013; one (1) branch office at 3769 Tibbetts St., Ste. B, Riverside, CA 92506; and two (2) RES licensed under her license: Irma Dixon, DRE license ID 01332103 and Vickie Flores, DRE license ID 01302262.

E. According to DRE records to date, GARDUNO was the D.O. of record for TPRI until her officer license affiliation expiration date of April 25, 2020.

F. TPRI's DRE license was set to expire on April 25, 2020. Pursuant to Governor Gavin Newsom's Executive Order N-71-20, TPRI's DRE license will now expire on December 31, 2020, and GARDUNO will remain as the D.O. of record until TPRI's expiration date.

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APPLICABLE SECTIONS OF THE REAL ESTATE LAW

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Escrow Law Exemptions – Financial Code 17006

Pursuant to Financial Code Section 17006 *Exemptions from Escrow Law*:

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“(a) This division does not apply to:

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- (1) Any person doing business under any law of this state or the United States relating to banks, trust companies, building and loan or savings and loan associations, credit unions, or insurance companies.
 - (2) Any person licensed to practice law in California who has a bona fide client relationship with a principal in a real estate or personal property transaction and who is not actively engaged in the business of an escrow agent.
 - (3) Any person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of a policy of title insurance by a company doing business under any law of this state relating to insurance companies.
 - (4) Any broker licensed by the Real Estate Commissioner while performing acts in the course of or incidental to a real estate transaction in which the broker is an agent or a party to the transaction and in which the broker is performing and act for which a real estate license is required.

“(b) The exemptions provided for in paragraphs (2) and (4) of subdivision (a) are personal to the persons listed, and those 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

DRE ACCUSATION: TRU PRO REALTY, INC. & MARIA ELENA GARDUNO

1 not available for any arrangement entered into for the purpose of performing escrows for more
2 than one business.”

3 6.

4 **Engaging in Prohibited Activity - Code Section 10086 (selected portions)**

5 Pursuant to Code Section 10086 *Engaging in Prohibited Activity – Order to*
6 *Desist and Refrain:*

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

19 7.

20 **Notification of Escrow Activities – Code Section 10141.6**

21 Pursuant to Code Section 10141.6 *Notification of Escrow Activities:*

22 “(a) A real estate broker who engages in escrow activities for five or more
23 transactions in a calendar year pursuant to the exemption from the Escrow Law contained in
24 Section 17006 of the Financial Code, or whose escrow activities pursuant to that exemption
25 equal or exceed one million dollars (\$1,000,000) in a calendar year, shall file with the
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DRE ACCUSATION: TRU PRO REALTY, INC. & MARIA ELENA GARDUNO

1 department a report, within 60 days following the completion of the calendar year,
2 documenting the number of escrows conducted and the dollar volume escrowed during the
3 calendar year in which the threshold was met. This report shall be made on a form acceptable
4 to the commissioner.

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

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

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

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

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

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Code Section 10145 – Handling of Trust Funds

Pursuant to Code Section 10145 *Handling of Trust Funds – Interest-Bearing Accounts – Neutral Escrow Defined* (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;

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

(C) An unlicensed employee of the individual broker, if the broker has fidelity bond coverage equal to at least the maximum amount of the trust funds to which the unlicensed employee has access at any time. For purposes of this section, bonds providing coverage may be written with a deductible of up to 5 percent of the coverage amount. For bonds with a deductible, the

1 employing broker shall have evidence of financial responsibility
2 that is sufficient to protect members of the public against a loss
3 subject to the deductible amount.

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

6 (i) Separate fidelity bond coverage adequate to cover the
7 amount of the fidelity bond deductible.

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

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

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

21 ...

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

3 ...

4 (c) A real estate salesperson who accepts trust funds from others on behalf of
5 the broker under whom he or she is licensed shall immediately deliver the funds to the broker
6 or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal
7 or a neutral escrow depository or shall deposit the funds into the broker's trust fund account."

8 ...

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

11 9.

12 **Trust Fund Records To Be Maintained – Regulation 2831**

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

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

18 (1) Date trust funds received.

19 (2) From whom trust funds received.

20 (3) Amount received.

21 (4) With respect to funds deposited in an account, date of said deposit.

22 (5) With respect to trust funds previously deposited to an account, check
23 number and date of related disbursement.

24 (6) With respect to trust funds not deposited in an account, identity of
25 other depository and date funds were forwarded.

1 (7) Daily balance of said account.

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

4 (c) Maintenance of journals of account cash receipts and disbursements, or
5 similar records, or automated data processing systems, including computer systems and
6 electronic storage and manipulation of information and documents, in accordance with
7 generally accepted accounting principles, shall constitute compliance with subdivision (a)
8 provided that such journals, records, or systems contain the elements required by subdivision
9 (a) and that such elements are maintained in a format that will readily enable tracing and
10 reconciliation in accordance with Section 2831.2.

11 (d) Nothing in this section shall be construed to permit a violation of Section
12 10145 of the Code.

13 (e) A broker is not required to keep records pursuant to this section of checks
14 which are written by a principal, given to the broker and made payable to third parties for the
15 provision of services, including but not limited to escrow, credit and appraisal services, when
16 the total amount of such checks for any transaction from that principal does not exceed \$1,000.
17 Upon request of the Department or the maker of such checks, a broker shall account for the
18 receipt and distribution of such checks. A broker shall retain for three years copies of receipts
19 issued or obtained in connection with the receipt and distribution of such checks.”

20 10.

21 **Separate Record for Each Beneficiary or Transaction – Regulation 2831.1**

22 Pursuant to Regulation 2831.1 *Separate Record for Each Beneficiary or*
23 *Transaction:*

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

- 4 (1) Date of deposit.
- 5 (2) Amount of deposit.
- 6 (3) Date of each related disbursement.
- 7 (4) Check number of each related disbursement.
- 8 (5) Amount of each related disbursement.
- 9 (6) If applicable, dates and amounts of interest earned and credited to the
10 account.
- 11 (7) Balance after posting transactions on any date.

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

19 11.

20 **Trust Account Reconciliation -- Regulation 2831.2**

21 Pursuant to Regulation 2831.2 *Trust Account Reconciliation*:

22 “The balance of all separate beneficiary or transaction records maintained
23 pursuant to the provisions of Section 2831.1 must be reconciled with the record of all trust
24 funds received and disbursed required by Section 2831, at least once a month, except in those
25 months when the bank account did not have any activities. A record of the reconciliation must
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1 be maintained, and it must identify the bank account name and number, the date of the
2 reconciliation, the account number or name of the principals or beneficiaries or transactions,
3 and the trust fund liabilities of the broker to each of the principals, beneficiaries or
4 transactions.”

5 12.

6 **Trust Fund Handling – Regulation 2832**

7 Pursuant to Regulation 2832 *Trust Fund Handling*:

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

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

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

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

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

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

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

16 13.

17 **Trust Fund Handling for Multiple Beneficiaries – Regulation 2832.1**

18 Pursuant to Regulation 2832.1 *Trust Fund Handling for Multiple Beneficiaries:*

19 "The written consent of every principal who is an owner of the funds in the
20 account shall be obtained by a real estate broker prior to each disbursement if such a
21 disbursement will reduce the balance of funds in the account to an amount less than the
22 existing aggregate trust fund liability of the broker to all owners of the funds."

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When Broker Handles Escrow – Regulation 2950

Pursuant to Regulation 2950 *When Broker Handles Escrow*:

“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 15.

14 **Record Keeping and Funds Handling -- Regulation 2951**

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

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

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Retention of Records – Chargeable Audits – Cost Recovery – Penalties for Unlawful

Destruction of Records –

Code Section 10148

Pursuant to Code Section 10148 *Retention of Records – Chargeable Audits – Cost Recovery – Penalties for Unlawful Destruction of Records:*

“(a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature. This subdivision shall not be construed to require a licensed real estate broker to retain electronic messages of an ephemeral nature, as described in subdivision (d) of Section 1624 of the Civil Code.

(b) The commissioner shall charge a real estate broker for the cost of any audit, if the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145.

(c) If a broker fails to pay for the cost of an audit as described in subdivision (b) within 60 days of mailing a notice of billing, the commissioner may suspend or revoke

1 the broker's license or deny renewal of the broker's license. The suspension or denial shall
2 remain in effect until the cost is paid or until the broker's right to renew a license has
3 expired.

4 (d) The commissioner may maintain an action for the recovery of the cost of an
5 audit in any court of competent jurisdiction. In determining the cost incurred by the
6 commissioner for an audit, the commissioner may use the estimated average hourly cost for all
7 persons performing audits of real estate brokers.

8 (e) The bureau may suspend or revoke the license of any real estate broker, real
9 estate salesperson, or corporation licensed as a real estate broker, if the real estate broker, real
10 estate salesperson, or any director, officer, employee, or agent of the corporation licensed as a
11 real estate broker knowingly destroys, alters, conceals, mutilates, or falsifies any of the books,
12 papers, writings, documents, or tangible objects that are required to be maintained by this
13 section or that have been sought in connection with an investigation, audit, or examination of a
14 real estate licensee by the commissioner.”

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16 17.

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

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

20 “(a) The officer designated by a corporate broker licensee pursuant to Section
21 10211 shall be responsible for the supervision and control of the activities conducted on behalf
22 of the corporation by its officers and employees as necessary to secure full compliance with the
23 provisions of this division, including the supervision of salespersons licensed to the
24 corporation in the performance of acts for which a real estate license is required.

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

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

9 18.

10 Pursuant to Regulation 2725 *Broker Supervision*:

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

14 (a) Transactions requiring a real estate license.

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

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

18 (d) The handling of trust funds.

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

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

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

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

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

5 19.

6 **False or Fictitious Business Name – Code Section 10159.5 (selected portions) and**
7 **Regulation 2731 (selected portions)**

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

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

13 20.

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

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

18 21.

19 **Place of Business: Contact Information – Code Section 10162**

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

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

1 (b) A real estate license does not authorize the licensee to do business except
2 from the location stipulated in the real estate license as issued or as altered pursuant to Section
3 10161.8.

4 (c) (1) Every real estate broker and salesperson licensee shall provide to the
5 commissioner his or her current office or mailing address, a current telephone
6 number, and a current electronic mail address that he or she maintains or uses to
7 perform any activity that requires a real estate license, at which the bureau may
8 contact the licensee.

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

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

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Grounds for Revocation or Suspension – Code Section 10176 (selected portions)

Pursuant to Code Section 10176 *Grounds for Revocation or Suspension*:

“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 licensee 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:

...

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

Further Grounds for Disciplinary Action – Code Section 10177 (selected portions)

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

“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:

...

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

...

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

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

7 ...

8 (j) Engaged in any other conduct, whether of the same or a different character
9 than specified in this section, that constitutes fraud or dishonest dealing..."

10 DRE AUDIT OF TRU PRO REALTY, INC.

11 (LA190088)

12 24.

13 On August 25, 2020, the Department completed an audit examination of the
14 books and records of Respondent TPRI pertaining to the broker escrow activities described in
15 Paragraph 25, below, which require a real estate license. The audit examination covered a
16 period of time beginning on January 1, 2019 and ending on February 29, 2020 ("audit
17 examination period" or "audit period"), and was performed from March 11, 2020 to August
18 14, 2020, during which the D.O. of TPRI was GARDUNO.

19 25.

20 The Department's auditor held an entrance interview on March 11, 2020
21 GARDUNO at GARDUNO's Tibbetts address, during which GARDUNO furnished a letter
22 for representation allowing TPRI and GARDUNO's consultant to represent TPRI during the
23 audit.

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26.

A subpoena duces tecum dated April 29, 2020 was served on GARDUNO via certified mail by the Department's special investigator to produce books and records relating to TPRI's real estate activities during the audit period on June 12, 2020 at the Department's Los Angeles District Office.

27.

The final report of August 25, 2020 revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA190088.

28.

TPRI's Business Activities & Corporate Structure

At all times mentioned in Ontario and Riverside, California, Respondent TPRI acted as a real estate broker, and ordered, caused, authorized or participated in licensed activities within the exception of California Financial Code Section 17006(a)(4), by performing acts in the course of or incidental to a real estate transaction in which the broker (GARDUNO) is an agent or a party to the transaction and in which the broker is performing an act for which a real estate license is required ("broker escrow activities" or "broker-controlled escrow activities"). TPRI performed broker escrow activities on real estate transactions conducted under GARDUNO's individual REB license and loan transactions originated by a third party, of which TPRI was not a party to the transactions.

29.

At the March 11, 2020 entrance interview, GARDUNO represented that she was the President and 100% owner of TPRI. Based on an examination of the escrow log, separate records and bank statements provided by GARDUNO, TPRI conducted twelve (12) escrow transactions during the audit period and collected approximately \$882,272.00 in trust

1 funds related to its broker escrow activity during the twelve (12) months preceding the audit.
2 According to the Final Settlement Statements of the escrows sampled for the audit, the total
3 consideration amount escrowed during the audit period was \$1,348,735.

4 30.

5 Bank Accounts

6 According to books and records provided and GARDUNO's representations
7 during the audit, TPRI maintained one (1) bank account for the receipts and disbursements of
8 trust funds in connection with its broker escrow activities. The following bank account was
9 sampled for the DRE audit:

10 Bank Account 1 ("BA 1")

- 11 * Account Name: TRU PRO REALTY, INC.
- 12 * Bank: Wells Fargo Bank, N.A.
- 13 * Bank Address: P.O. Box 6995, Portland, Oregon 97228-6995
- 14 * Account #####3238
- 15 * Signatory: GARDUNO
- 16 * Opening Date: August 5, 2016

17 TPRI maintained BA 1 for multiple beneficiaries for handling the receipts and
18 disbursements of trust funds received in connection with its broker escrow activities.

19 According to the bank signature card provided for examination, BA 1 was not designated as a
20 trust account in the name of TPRI as trustee.

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2 Audit Findings: Violations of the Real Estate Law

3 31.

4 In the course of activities as described in Paragraphs 28 and 29, above, and
5 during the audit examination period described in Paragraph 24, also above, Respondent TPRI
6 acted in violation of the Code and the Regulations, as described below:

7 32.

8 Handling of Trust Funds/Trust Fund Handling for Multiple Beneficiaries/

9 When Broker Handles Escrow

10 (Code Section 10145 and Regulations 2832.1; 2950(g); and 2951)

11 Based on an examination of the records provided, BA 1 had a minimum
12 shortage of <\$45,202.82> as of February 29, 2020 caused by:

- 13 - minimum negative escrow balance <\$ 251.06>
- 14 - minimum bank charges <\$ 696.50>
- 15 - minimum unauthorized disbursements/conversion of funds . . . <\$ 7,918.20>
- 16 - minimum unidentified shortage <\$36,337.06>

17 Minimum Shortage <\$45,202.82>

18 There was no evidence in the files examined that the trust fund owners had given TPRI their
19 written consent to allow it to reduce the balance of funds in BA 1 to an amount less than the
20 existing aggregate trust fund liability, in violation of **Code Section 10145 and Regulations**
21 **2832.1; 2950(g); and 2951.**

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33.

**Handling of Trust Funds/Trust Fund Records to Be Maintained/
When Broker Handles Escrow
(Code Section 10145 and Regulations 2831; 2950(d); and 2951)**

TPRI did not maintain a complete and accurate control record for BA 1 during the audit period. Based on an examination of the records provided, the control record contained information recorded for funds received and disbursed that were an exact copy of the same activities of the transactions shown in the bank statements. The control record also included funds received and funds disbursed related to unauthorized disbursements for personal expenses (unrelated to trust fund handling) disbursed from BA 1 (see Paragraph 34, below). The DRE auditor discovered at least six (6) samples of funds disbursed and received that were not related to trust fund handling, but included in the control record. The control record for February 2020 was not provided during the audit. The records provided by TPRI for the audit were insufficient to identify all the funds related to the receipts and disbursements of trust funds collected in connection with TPRI's broker escrow activities. TPRI's failure to maintain a complete and accurate control record for BA 1 during the audit period is in violation of Code Section 10145 and Regulations 2831; 2950(d); and 2951.

34.

**Handling of Trust Funds/Separate Record For Each Beneficiary or Transaction/When
Broker Handles Escrow
(Code Section 10145 and Regulations 2831.1; 2950(d), and 2951)**

TPRI did not maintain accurate separate records of each escrow transaction for BA 1 during the audit period. Based on an examination of the records provided, the separate records did not record the accurate amounts disbursed as compared to BA 1's bank statement.

1 The DRE auditor discovered at least six (6) samples of inaccurate amounts recorded as
2 disbursed compared to amounts appearing on the bank statements. Said separate record did
3 not have an accurate ending balance after posting the transaction(s). TPRI's failure to
4 maintain accurate separate records of each escrow transaction for BA 1 during the audit period
5 are in violation of **Code Section 10145 and Regulations 2831.1, 2950(d), and 2951.**

6 35.

7 **Handling of Trust Funds/Trust Account Reconciliation/When Broker Handles Escrow**
8 **(Code Section 10145 and Regulations 2831.2; 2950(d); and 2951)**

9 During the audit period, TPRI did not perform and maintain monthly
10 reconciliation comparing the balance of all separate beneficiary or transaction records (separate
11 records) to the balance of the record of all trust funds received and disbursed (control record)
12 for BA 1 in connection with its broker escrow activity, as confirmed by GARDUNO and
13 TPRI's consultant. TPRI's failure to perform and maintain monthly reconciliation comparing
14 the separate records to the control record is in violation of **Code Section 10145 and**
15 **Regulations 2831.2; 2950(d); and 2951.**

16 36.

17 **Trust Fund Handling of Trust Funds/Trust Fund Handling/**
18 **When Broker Handles Escrow**
19 **(Code Section 10145 and Regulations 2832 and 2951)**

20 Based on an examination of the records provided, the bank signature card for
21 BA 1, which was used by TPRI for handling trust funds received and disbursed in connection
22 with its real estate activities, including its broker escrow activities, was not designated as a
23 trust account in the name of TPRI as trustee, in violation of **Code Section 10145 and**
24 **Regulations 2832 and 2951.**

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3 **Handling of Trust Funds/Unauthorized Disbursements/Conversion of Trust Funds**
4 **(Code Sections 10145 and 10176(i))**

5 Based on an examination of the records provided, GARDUNO made
6 unauthorized disbursements from BA 1 that were not traceable to the separate records for each
7 escrow transaction. According to the bank statements of BA 1 and TPRI's control records,
8 from November 2019 through and including January 2020, GARDUNO made over sixty (60)
9 unauthorized disbursements/conversions of funds from BA 1 to pay for personal expenses
10 totaling <\$7,918.20>, including, but not limited to: multiple ATM withdrawals and payments
11 credit cards, retail/department stores, veterinarians, and supermarkets. Additionally, TPRI
12 transferred \$25.00 from account number -5944 into BA 1 on December 20, 2019 as broker's
13 funds. GARDUNO's unauthorized disbursements of funds from BA 1 for personal expenses
14 not connected to TPRI's escrow transactions is in violation of Code Sections 10145 and
15 10176(i).

17 **Engaging in Prohibited Activity/Exemptions from Escrow Law/Third Party Escrow**
18 **Code Section 10086(a)/Financial Code 17006(a)(4)**

19 Based on an examination of the records provided, TPRI performed broker
20 escrow services in both sales transactions and loan transactions when it was not an agent or
21 party to the respective underlying transaction.

22 A. According to the sales escrow transaction file provided for the audit,
23 GARDUNO conducted the underlying real estate sales transaction under her individual REB
24 license (seller's brokerage was identified as "Own It Real Estate," by GARDUNO, DRE
25 license ID 01321086) as stated on the signed Residential Purchase Agreement and Residential
26

1 Listing Agreement), and TPRI performed the escrow, in violation of **Code Section 10086(a)**
2 **and Financial Code 17006(a)(4)**.

3 B. According to the loan escrow transaction files provided for the audit, TPRI
4 performed broker escrow services in at least two (2) loan transactions when it did not originate
5 the loan and was not a party to the underlying transactions, in violation of **Code Section**
6 **10086(a) and Financial Code 17006(a)(4)**.

7 39.

8 **Notification of Escrow Activities**

9 **(Code Section 10141.6)**

10 Based on an examination of the records provided, TPRI closed approximately
11 twelve (12) escrows during the subject audit period. According to the three (3) escrow files
12 provided by GARDUNO, the aggregate total of the three (3) escrows was \$1,348,735, thereby
13 exceeding the \$1,000,000 escrow threshold of Code Section 10141.6. Although TPRI met and
14 exceeded the escrow threshold, it did not submit an Escrow Activity Report (DRE Form 890)
15 to the Department within sixty (60) days after the end of the calendar year 2019, in violation of
16 **Code Section 10141.6**.

17 40.

18 **Retention of Records**

19 **(Code Section 10148)**

20 The DRE made multiple attempts for TPRI's books and records for the audit
21 examination of its broker escrow activities for subject audit period January 1, 2019 to February
22 29, 2020 (Audit LA190088); GARDUNO provided only limited records for the audit
23 examination.

24 A. On February 14, 2020, the DRE auditor contacted GARDUNO by telephone
25 and an audit appointment was scheduled for 9:00 A.M. on March 3, 2020 at GARDUNO's
26

1 REB's branch office address (Tibbetts address Suite B). A confirmation letter was sent to
2 TPRI's main office address of record (Milliken address) and to GARDUNO's branch office
3 address with a list of records [related to TPRI's real estate activities for the period January 1,
4 2019 to the present] pursuant to Code Section 10148, to be produced at the audit appointment
5 for examination.

6 B. On February 25, 2020, GARDUNO contacted the DRE auditor by telephone
7 and requested a postponement of the audit until after March 10, 2020, citing a family
8 emergency. The DRE auditor reschedule the audit to Wednesday, March 11, 2020 at 9:00
9 A.M., at which an entrance conference was held and GARDUNO provided copies of the bank
10 statements, bank signature card, escrow log, control record, separate records, letter of
11 consultant representation, and three (3) escrow transaction files. Upon receipt, the DRE
12 auditor reminded GARDUNO to produce for examination the other files for the other escrows
13 conducted by TPRI.

14 C. On March 24, 2020, the DRE auditor attempted to contact GARDUNO via
15 telephone and left a voicemail regarding the requested copies for the balance of the escrow
16 files conducted by TPRI, and an explanation of a major sequence gap in the chronological
17 order of the escrow file numbers. The DRE also sent an e-mail to GARDUNO regarding the
18 same.

19 D. On April 3, 2020 and April 17, 2020, the DRE auditor unsuccessfully
20 attempted to contact GARDUNO via telephone; instead, the DRE auditor left voicemails and
21 sent e-mails on both dates requesting GARDUNO's follow-up on the status of the requested
22 documents for the audit examination.

23 E. On May 14, 2020, GARDUNO e-mailed the DRE auditor and explained that
24 she was sick and that the sequence gap in the escrow numbers was due to TPRI randomly
25 selecting escrow numbers without an understanding of a need for sequential numbering. On
26

1 May 15, 2020, the DRE auditor requested a physician's note regarding GARDUNO's illness,
2 to which GARDUNO responded that she would not provide, but that she would send the
3 missing records "early next week." When the DRE auditor asked whether said missing records
4 could be provided by noon on Monday, May 18, 2020, GARDUNO requested Wednesday,
5 May 20, 2020 as her production date, to which the DRE auditor acquiesced.

6 F. A subpoena duces tecum dated April 29, 2020 was served to GARDUNO's
7 DRE address of record via certified mail by DRE Special Investigator S. Knapton ("SI
8 Knapton") to produce books and records related to TPRI's real estate activities for examination
9 on June 12, 2020 at 9:00 A.M. at the DRE's Los Angeles District Office located at 320 West
10 4th Street, Suite 350 in Los Angeles.

11 G. As of the subpoena production date (June 12, 2020), GARDUNO did not
12 provide all the books, records and transaction files related to TPRI's broker escrow activities.

13 H. During the audit, GARDUNO provided only the records produced on March
14 11, 2020, as described in Paragraph 40B., above. Subsequent to the March 11, 2020 entrance
15 conference, GARDUNO did not provide further books and records for the audit. GARDUNO
16 did provide for the audit: all the books and records related to BA 1, including cancelled checks,
17 escrow deposit receipts, escrow transaction files, and monthly bank reconciliation reports.

18 I. As of the audit report date (August 25, 2020), TPRI failed to retain and
19 provide all the books, records and transaction files related to its broker escrow activities for the
20 DRE's audit examination, in violation of **Code Section 10148**.

21 41.

22 **Use of False or Fictitious Name**

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

24 According to DRE records dated June 17, 2020, TPRI maintained one (1)
25 licensed FBN for "Serene Escrow a non-independent Broker Escrow," active as of April 26,
26

27

1 2016. Based on the records provided, including the three (3) escrow transaction files, TPRI
2 used the unlicensed FBN "Serene Escrow" and did not include the term "a non-independent
3 Broker Escrow" following "Serene Escrow," as required, in at least two (2) escrow
4 transactions it performed. Said use of unlicensed FBN "Serene Escrow" on escrow
5 instructions, final settlement statement, escrow trust receipt and cancelled check stubs is in
6 violation of **Code Section 10159.5 and Regulation 2731.**

7 42.

8 **Place of Business**
9 **(Code Section 10162)**

10 According to the DRE's records dated June 17, 2020, TPRI maintained its main
11 office at the Milliken address. However, the audit was conducted at the main office of
12 GARDUNO's individual REB address (Tibbetts address) in Suite B, where the records were
13 stored. GARDUNO explained to the DRE auditor that TPRI's main office address of record
14 (Milliken address) was TPRI's office but is now vacant. TPRI's failure to notify the DRE
15 within thirty (30) days of its change of main office location is in violation of **Code Section**
16 **10162.**

17 43.

18 **Responsibility of Corporate Officer in Charge/Broker Supervision – GARDUNO**
19 **(Code Section 10159.2 and Regulation 2725)**

20 The acts and/or omissions of GARDUNO, as described above in Paragraphs 32,
21 through 42., demonstrate a failure to adequately supervise and control the broker escrow
22 activities of TPRI, its salespersons, and its employees to ensure compliance with the Real
23 Estate laws and regulations, in violation of Code Section 10159.2 and Regulation 2725.
24 The violations cited in Audit LA190088 are indicative of GARDUNO's failure to establish
25 policies, rules, procedures and systems to review, oversee, inspect and manage: transactions
26

1 requiring a real estate license, the handling of trust funds in TPRI's activities, and the proper
2 reporting of activity to the Department. These acts and/or failures to act and supervise
3 constitute grounds for the suspension or revocation of the license and license rights of
4 **GARDUNO** under the provisions of **Code Sections 10159.2 and 10177(h) and Regulation**
5 **2725.**

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

7 **Negligence and Willful Disregard of the Real Estate Law**

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

9 44.

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

14 **COSTS**

15 **Investigation and Enforcement Costs**

16 **(Code Section 10106)**

17 45.

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

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Audit Costs
(Code Section 10148)

46.

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

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 TRU PRO REALTY, INC. and MARIA ELENA GARDUNO 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 San Diego, California

this 13 day of October, 2020.


Veronica Kilpatrick
Supervising Special Investigator

cc: TRU PRO REALTY, INC.
MARIA ELENA GARDUNO
V. Kilpatrick
Sacto.
Audits – J. Lin