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FILED

JUN 03 2021

DEPT. OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation against	)	No. H-42024 LA
	)	
PATRICK EARTHLY	)	ACCUSATION
dba Solid Ground Property Management,	)	
	)	
Respondent.	)	
	)	
	)	

The Complainant, Veronica Kilpatrick, acting in her official capacity as a Supervising Special Investigator of the State of California, for cause of Accusation against PATRICK EARTHLY dba Solid Ground Property Management ("Respondent" or "EARTHLY"), is informed alleges as follows:

1.

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.

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6.

At all times mentioned, in the State of California, EARTHLY acted as a real estate broker and conducted licensed activities within the meaning of Code Section 10131(a) and 10131(b)¹.

APPLICABLE SECTIONS OF THE REAL ESTATE LAW

Trust Fund Handling

Code Section 10145 and Regulations 2831; 2831.1; 2831.2; 2832; and 2832.1

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.

¹ Pursuant to Code Section 10131 Broker Defined, “A real estate broker within this meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others: (a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity. (b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities. (c) Assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government. (d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity. (e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof.”

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

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

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

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

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

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

22 (ii) A cash deposit held in a separate account, apart from other
23 funds of the broker, the broker's employees, or the broker's
24 principals, in a bank or recognized depository in this state adequate
25 to cover the amount of the fidelity bond deductible and held
26

1 exclusively and solely for the purpose of paying the fidelity bond
2 deductible amount.

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

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

10 (4)(b) A real estate broker acting as a principal pursuant to Section 10131.1²
11 shall place all funds received from others for the purchase of real property sales contracts or
12 promissory notes secured directly or collaterally by liens on real property in a neutral escrow
13 depository unless delivery of the contract or notes is made simultaneously with the receipt of the
14 purchase funds.

15 ...

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

18 8.

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

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

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

1 (1) Date trust funds received.

2 (2) From whom trust funds received.

3 (3) Amount received.

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

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

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

9 (7) Daily balance of said account.

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

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

19 (d) Nothing in this section shall be construed to permit a violation of Section
20 10145 of the Code.

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

3 9.

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.”

10.

Pursuant to Regulation 2831.2 *Trust Account Reconciliation*:

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

11.

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 interest0bearing 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 (1) the check by its terms is not negotiable by the broker or if the offeror
2 has given written instructions that the check shall not be deposited nor
3 cashed until acceptance of the offer and

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

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

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

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

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

Retention of Records –Chargeable Audits – Cost Recovery –

Penalties for Unlawful Destruction of Records

Code Section 10148

13.

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

1 final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing
2 with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker
3 has violated Section 10145 or a regulation or rule of the commissioner interpreting Section
4 10145.

5 (c) If a broker fails to pay for the cost of an audit as described in subdivision (b)
6 within 60 days of mailing a notice of billing, the commissioner may suspend or revoke the
7 broker's license or deny renewal of the broker's license. The suspension or denial shall remain in
8 effect until the cost is paid or until the broker's right to renew a license has expired.

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

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

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17.

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

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

Grounds for Revocation or Suspension

Code Section 10176 (selected portions)

18.

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

1 estate licensee, in performing or attempting to perform any of the acts within the scope of this
2 chapter has been guilty of any of the following:

3 (a) Making any substantial misrepresentation.

4 ...

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

7
8 **Further Grounds for Disciplinary Action**

9 **Code Section 10177 (selected portions)**

10 19.

11 Pursuant to Code Section 10177 *Further Grounds for Disciplinary Action*:

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

15 ...

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

20 ...

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

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Costs Recovery
Code Section 10106

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Pursuant to Code Section 10106 *Cost Recovery of Investigations*:

“(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the department, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licensee that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the commissioner or the commissioner’s designated representative, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the commissioner to increase the cost award. The commissioner may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) Where an order for recovery of costs is made and timely payment is not made as directed in the commissioner’s decision, the commissioner may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the commissioner may have as to any licensee to pay costs.

1 (f) In any action for recovery of costs, proof of the commissioner's decision shall
2 be conclusive proof of the validity of the order of payment and the terms for payment.

3 (g) (1) Except as provided in paragraph (2), the department shall not renew or
4 reinstate the license of any licensee who has failed to pay all of the costs ordered under this
5 section.

6 (2) The department may, in its discretion, conditionally renew or reinstate for
7 a maximum of one year the license of any licensee who demonstrates financial
8 hardship and who enters into a formal agreement with the department to
9 reimburse the department within that one-year period for the unpaid costs.

10 (h) All costs recovered under this section shall be considered a reimbursement for
11 costs incurred and shall be deposited in the Real Estate Fund to be available, notwithstanding
12 Section 10451, upon appropriation by the Legislature.

13 (i) Nothing in this section shall preclude the department from including the
14 recovery of the costs of investigation and enforcement of a case in any stipulated settlement."

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **DRE AUDIT SD LA190024: PROPERTY MANAGEMENT ACTIVITIES**

3 21.

4 On February 28, 2020, the DRE completed its audit examination of the books and
5 records of Respondent EARTHLY pertaining to his property management activities
6 (SD 190024), which require a real estate license, pursuant to Code Section 10131(b). The audit
7 examination covered a period of time beginning on December 1, 2018 and ending on November
8 30, 2019 ("audit examination period" or "audit period"), and the field work was performed
9 between January 7, 2020 and February 10, 2020. The final audit report of February 28, 2020
10 revealed violations of the Code and the Regulations as set forth in the following paragraphs, and
11 more fully discussed in the Audit Report Transmittal, Report, and supporting work papers for
12 SD 190024.

13 22.

14 **Sales Activities**

15 According to EARTHLY, during the audit period, he closed five (5) sales
16 transactions valued at approximately \$2.1 million, and did not collect any Earnest Money
17 Deposits ("EMD"). According to EARTHLY, he did not maintain a trust account and did not
18 maintain a columnar record of trust funds received not placed in a broker's trust account in
19 connection with sales activities during the audit period; the EMDs were held and delivered
20 directly to escrow by buyers.

21 23.

22 **Property Management Activities**

23 According to EARTHLY and the records examined, during the audit period, he
24 managed about 23 properties with 33 units for about twenty (20) owners and charged a flat
25 management fee of between \$75.00 to \$125.00 per property per month, or 6.5% of the monthly
26

1 collected rent. In addition, EARTHLY collected about \$900.00 in application screening fees
2 from about 24 tenants/applicants and all but one set of fees were deposited into his general
3 business account, JPMorgan Chase Bank account #####5473 ("G/A 1"). During the audit
4 period, EARTHLY collected about \$525,000.00 in trust funds in connection with his property
5 management activities. DRE Audit SD 190024 was limited to EARTHLY's property
6 management activities.

7 24.

8 Bank Accounts

9 According to EARTHLY, he utilized G/A 1 for the aforementioned application
10 screening fees, as described above in Paragraph 23, and maintained one (1) bank account for
11 multiple beneficiaries, for handling the receipts and disbursements of trust funds, including rents
12 and security deposits, in connection with his property management activities during the audit
13 period:

14 Bank Account #####3193 ("B/A 1")

15 * Bank: JPMorgan Chase Bank, 1693 E. 2nd Street, Beaumont, CA 92223
16 * Account Name: Patrick Earthly DBA Solid Ground Property Management
17 * Signatory: EARTHLY
18 * Signatures required: 1
19 (Date of Bank Reconciliation: November 29, 2019)

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In the course of property management activities described in Paragraph 23 during the audit examination period described in Paragraph 21, Respondent EARTHLY violated the Code and the Regulations, as described below:

Trust Fund Records To Be Maintained
(Code Section 10145 and Regulation 2831)

B. No control record was maintained for the application screening fees (trust funds) that were received and disbursed during the audit period. In at least six (6) instances, said application screening fees were deposited into G/A 1, absent an accompanying control record. EARTHLY failed to maintain a control record of trust funds received and disbursed as application screening fees, in violation of **Code Section 10145 and Regulation 2831**.

Separate Record For Each Beneficiary or Transaction

A. The separate records maintained for B/A 1 were inaccurate and incomplete. In at least six (6) instances, some receipts that were deposited into B/A 1 were not recorded on the separate records. EARTHLY failed to maintain accurate and complete separate records of all trust funds received and disbursed, in violation of **Code Section 10145 and Regulation 2831.1.**

1 B. No separate record was maintained for each beneficiary of the application
2 screening fees (trust funds) that were received and disbursed during the audit period. In at least
3 six (6) instances, said application screening fees were deposited into G/A 1, absent
4 accompanying separate records. EARTHLY failed to maintain separate records of trust funds
5 received and disbursed as application screening fees, in violation of **Code Section 10145 and**
6 **Regulation 2831.1.**

7 C. EARTHLY failed to maintain a separate record for the
8 "unidentified/unaccounted for funds" totaling \$2,527.25 that were held in B/A 1 as of the bank
9 reconciliation date (November 29, 2019), in violation of **Code Section 10145 and Regulation**
10 **2831.1.**

11 28.

12 **Trust Account Reconciliation**

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

14 A. EARTHLY failed to perform and maintain a monthly reconciliation
15 comparing the separate records (the balance of the separate beneficiary or transaction records) to
16 the control record (the balance of all trust funds received and disbursed) for B/A 1, in violation of
17 **Code Section 10145 and Regulation 2831.2.**

18 B. EARTHLY failed to reconcile the "unidentified/unaccounted for funds"
19 totaling \$2,527.25 that were held in B/A 1 as of the bank reconciliation date, in violation of
20 **Code Section 10145 and Regulation 2831.2.**

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29.

Trust Fund Handling/ Trust Account Designation

(Code Section 10145 and Regulation 2832)

According to the B/A 1 bank signature card maintained at JPMorgan Chase Bank, B/A 1 was not designated as a trust account, in violation of **Code Section 10145 and Regulation 2832**.

30.

Trust Fund Handling for Multiple Beneficiaries

(Code Section 10145 and Regulation 2832.1)

As of the bank reconciliation date (November 29, 2019), B/A 1 had a shortage in the amount <\$1,832.66>. This shortage was caused by:

(1) negative property balances	<\$ 1,265.00>
(2) bank charges	<\$ 567.66>
	<\$ 1,832.66>

In addition, there were unidentified/unaccounted for funds totaling \$2,527.25 in B/A 1 as of the bank reconciliation date, attributable to inadequate record keeping. EARTHLY provided no evidence that the owners of the trust funds had given their written consent to allow a reduction in the balance of the B/A 1 trust funds to an amount less than the existing aggregate trust fund liabilities, in violation of **Code Section 10145 and Regulation 2832.1**.

31.

Commingling/ Trust Fund Handling/ Depositing Trust Funds Into General Account

(Code Section 10145 and Regulation 2832 and Code Section 10176(e))

EARTHLY collected application screening fees (trust funds) from principals (tenants) and deposited said fees into G/A 1 during the audit period, thereby commingling trust funds with his general funds, in violation of **Code Sections 10145 and Regulation 2832, in conjunction with Code Section 10176(e)**.

32.

Unlicensed Fictitious Business Name

(Code Section 10159.5 and Regulation 2731)

(From December 18, 2017 to July 22, 2018, "Solid Ground Real Estate" was a DBA licensed by the DRE to EARTHLY.) EARTHLY used the fictitious business name "Solid Ground Real Estate" in connection with his property management activities (on rental agreements sampled for the examination) during the audit period when it was not properly licensed by the DRE, in violation of **Code Section 10159.5 and Regulation 2731**.

33.

Unlicensed Branch Offices

(Code Section 10163 and Regulation 2715)

EARTHLY used the unlicensed branch offices located at 26940 E. Baseline Ave., Highland, CA 92346 and at 2130 N. Arrowhead Street, San Bernardino, CA 94205 in connection with his property management activities (on all property management agreements sampled for the examination) during the audit period when neither was properly licensed as EARTHLY's branch office by the DRE, in violation of **Code Section 10163 and Regulation 2715**.

34.

The overall conduct of Respondent EARTHLY is violative of the Real Estate Law and constitutes cause for the suspension or revocation of his real estate license and license rights under the provisions of **Code Section 10177(g) and Code Section 10177(d)**.

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(Code Sections 10176(a) and 10177(d))

On or about July 16, 2019, prospective tenant Sara D. submitted to EARTHLY a check (check number 6504 dated July 15, 2019) in the amount of \$152.00 and a rental application to rent property located at 80 Roosevelt Road, Banning, CA 92220 ("Banning property"). Sara D. understood the \$152.00 to be a credit check fee.

On or about July 22, 2019, EARTHLY deposited Sara D.'s check into G/A 1. A credit check of Sara D. was not performed.

EARTHLY denied Sara D.'s rental application shortly after he deposited check number 6504 to G/A 1.

On or about October 16, 2019, the DRE contacted EARTHLY regarding EARTHLY's denial of Sara D.'s rental application. EARTHLY submitted his written response to the DRE's inquiry on or about October 26, 2019 and indicated that the homeowner denied Sara D.'s application based on the number of occupants (applicants and pets), and that a reimbursement check was to be returned to Sara D., but that he inadvertently failed to do so. According to EARTHLY's October 26, 2019 correspondence, since Sara D.'s application was denied based on the number of applicants, no credit check was performed, and Sara D. was contacted to set up a time to retrieve her documents and refund check, which she failed to do.

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1 39.

2 On or about November 13, 2019, EARTHLY refunded \$152.00 to Sara D. from
3 G/A 1 (check number 6585, dated July 22, 2019).

4 40.

5 EARTHLY's conduct, acts, and/or omissions, as described above in Paragraphs
6 35 through 39, constitute making a substantial misrepresentation and negligence, and are cause
7 for the suspension or revocation of his real estate license and license rights under the provisions
8 of **Code Sections 10176(a) and 10177(g)**.

9 **COSTS**

10 **Investigation and Enforcement Costs**

11 41.

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

17 **Audit Costs**

18 42.

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

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

7 Dated at San Diego, California

8 this 19 day of May, 2021.

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11 Veronica Kilpatrick
Supervising Special Investigator

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17 cc: Patrick Earthly
18 Enforcement – V. Kilpatrick
19 Audits – Z. Wanis, J. Lin
20 Sacto.
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