FILED

MAY 26 2022

DEPT. OF REAL ESTATE

By [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of: LENDINGXPRESS, INC., Respondent.	DRE No. *H-42156 LA*

ORDER VACATING DECISION AND SETTING ASIDE DEFAULT

On April 29, 2022, a Decision was rendered revoking the real estate broker license of Respondent, LENDINGXPRESS, INC., effective June 02, 2022.

On May 12, 2022, good cause was presented to vacate the Decision of April 29, 2022, and to have the matter remanded to the Office of Administrative Hearings as a contested matter.

///

///

///

///

///

///

///

NOW, THEREFORE, IT IS ORDERED that the Decision of April 29, 2022 is vacated and that the Matter of the Accusation filed on November 18, 2021, is remanded to the Office of Administrative Hearings.

This Order shall be effective immediately.

DATED: 5/26/22.

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Stephen L

for Doug McCauley

FILE

MAY 03 2022

DEPT. OF REAL ESTATE

By [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of: **LENDINGXPRESS, INC.** and ROBERT DUANE GRIFFIN Respondents.	)	DRE No. H-42156 LA

DECISION

This Decision as to LENDINGXPRESS, INC. only is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on March 29, 2022, and the Findings of Fact set forth herein, which are based on one or more of the following: (1) The express admissions of Respondent LENDINGXPRESS, INC. ("Respondent" or "LXI"); (2) affidavits; and (3) other evidence.

This Decision revokes one or more real estate licenses on the grounds of the violation of the Real Estate Law, Part 1 commencing with Section 10000 of the Business and Professions Code ("Code") and/or the Regulations of the Real Estate Commissioner, Title 10, Chapter 6 of the California Code of Regulations ("Regulations").

Pursuant to Government Code Section 11521, the California Department of Real Estate ("the Department") may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire thirty (30) days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license, or to the reduction of a penalty, is controlled by Section 11522 of the Government Code. A copy of Government Code Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of Respondent.

FINDINGS OF FACT

1.

On November 9, 2021, Ruth Corral made the Accusation in her official capacity as a Supervising Special Investigator of the Department. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by regular mail and certified mail, return receipt requested, to Respondent's last known mailing addresses on file with the Department on November 18, 2021.

2.

On March 29, 2022, no Notice of Defense having been received or filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

DEPARTMENT OF REAL ESTATE LICENSE HISTORY

3.

Respondent LENDINGXPRESS, INC. 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 corporation (broker) ("REC"), DRE license ID 02072559.

4.

According to DRE records to date, Respondent was first licensed by the Department on August 31, 2018.

5.

According to DRE records to date, Respondent's mailing and main address of record are the same: 17785 Sky Park Cir, Ste. E, Irvine, CA 92614 ("Irvine address"); Respondent has one (1) active DBA under his REB license, Aspire Real Estate (active as of February 11, 2021) and two real estate salespersons ("RES") affiliated with its license; and Robert Duane Griffin is its designated officer of record ("D.O.") until his officer affiliation expires on August 30, 2022.

6.

According to DRE records to date, Respondent's license will expire on August 30, 2022.

7.

Respondent has a mortgage loan originator ("MLO") license endorsement, Nationwide Multistate Licensing System ("NMLS") ID 01879867 (issued on December 2, 2019) and is authorized to conduct business.

8.

Attached as Exhibit "A" is a true and correct copy of the Accusation filed on November 18, 2021, which is incorporated herein as part of this Decision.

DETERMINATION OF ISSUES

1.

The overall conduct of Respondent LENDINGXPRESS, INC. is violative of the Real Estate Law (Code Section 10232.4; Code Sections 10232 and 10236.2; and Code Section 10232.3(b)) and constitutes cause for the suspension or revocation of its real estate license and license rights and associated license endorsement rights under the provisions of **Code Sections 10177(d) and 10177(g).**

2.

The standard of proof applied was clear and convincing evidence to a reasonable certainty.

3.

To date, the DRE has incurred investigative costs relating to this matter in the amount of $3,105.80, of which one-half are attributable to Respondent.

ORDER

All licenses and licensing rights of Respondent LENDINGXPRESS, INC. under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on JUN 02 2022.

DATED: 4.29.22

REAL ESTATE COMMISSIONER

Douglas R. McCauley

DOUGLAS R. McCAULEY

Department of Real Estate
1651 Exposition, Blvd.
Sacramento, CA, 95815

FILED
MAR 29 2022
DEPT. OF REAL ESTATE
By ____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of: LENDINGXPRESS, INC., Respondent.	DRE NO. ***H-42156 LA*** DEFAULT ORDER

Respondent LENDINGXPRESS, INC. , having failed to file a Notice of Defense within the time required by Section 11506 of the Government Code, is now in default. It is, therefore, ordered that a default be entered on the record in this matter.

IT IS SO ORDERED MARCH 29, 2022.

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

By: ____
CHIKA SUNQUIST
Assistant Commissioner, Enforcement

EXHIBIT "A"

Julie L. To (SBN 219482)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105
(213) 576-6982 (office)
(213) 576-6916 (direct)
julie.to@dre.ca.gov
Counsel for Complainant

FILED

NOV 18 2021

DEPT. OF REAL ESTATE

By [signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of LENDINGXPRESS, INC. and ROBERT DUANE GRIFFIN, Respondents.	No. H-42156 LA **ACCUSATION**

The Complainant, Ruth Corral, acting in her official capacity as a Supervising Special Investigator of the State of California, for cause of Accusation against LENDINGXPRESS, INC. and ROBERT DUANE GRIFFIN, is informed and alleges as follows:

///

///

///

1.

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

<u>DRE LICENSE HISTORY</u>

<u>LENDINGXPRESS, INC.</u>

2.

<u>Licensure</u>

Respondent **LENDINGXPRESS, INC. ("LXI")** is presently licensed and/or has license rights as a real estate corporation (broker) ("REC") under the Real Estate Law (Part 1 of Division 4 of the Code), Department of Real Estate ("DRE") license ID 02072559. LXI was originally licensed as a REC on August 31, 2018.

3.

<u>License Information</u>

According to DRE records to date:

A. LXI's mailing and main address of record are the same: 17785 Sky Park Cir, Ste. E, Irvine, CA 92614 ("Irvine address");

B. LXI has one (1) active DBA, Aspire Real Estate (active as of February 11, 2021) and two real estate salespersons ("RES") affiliated with its license; and

C. ROBERT DUANE GRIFFIN is LXI's designated officer of record ("D.O.") until his officer affiliation expires on August 30, 2022.

///

///

4.

License Expiration

LXI's REC license will expire on August 30, 2022.

5.

Mortgage Loan Originator License Endorsement

LXI has a mortgage loan originator ("MLO") license endorsement, Nationwide Multistate Licensing System ("NMLS") ID 01879867 (issued on December 2, 2019) and is authorized to conduct business.

ROBERT DUANE GRIFFIN

6.

Licensure

Respondent **ROBERT DUANE GRIFFIN ("GRIFFIN")** is presently licensed and/or has license rights as a real estate broker ("REB") under the Real Estate Law, DRE license ID 01299386. GRIFFIN was originally licensed as a RES on November 18, 2000 and as a restricted REB from December 14, 2012 through March 24, 2017, pursuant to DRE Case H-37830 LA.

7.

License Information

According to DRE records to date:

A. GRIFFIN's mailing and main address of record are the same Irvine address as that of LXI;

B. GRIFFIN has no active DBAs, one (1) previously active DBA (Aspire Real Estate, active from May 12, 2017 to April 26, 2021), and one (1) RES affiliated with his license; and

C. GRIFFIN is the D.O. for LXI until his officer affiliation expires on August 30, 2022 and for Ocean Capital, Inc. until his officer affiliation expires on September 5, 2022 (GRIFFIN was previously the D.O. for Media Ocean, Inc. until June 12, 2021 and for Aspire Real Estate, Inc. until June 22, 2021.).

8.

License Expiration

GRIFFIN's REB license will expire on May 15, 2025.

9.

Mortgage Loan Originator License Endorsement

GRIFFIN has a MLO endorsement, NMLS ID 1269107 (issued on August 15, 2019) and is authorized to represent LXI.

APPLICABLE SECTIONS OF THE REAL ESTATE LAW

10.

Application of Sections 10232.2, 10232.25, 10233 and 10236.6

(Code Section 10232)

Pursuant to Code Section 10232 Application of Sections 10232.2, 10232.25, 10233 and 10236.6:

"(a) Except as otherwise expressly provided, Sections 10232.2, 10232.25, 10233, and 10236.6 are applicable to every real estate broker who intends or reasonably expects in a successive 12 months to do any of the following:

(1) Negotiate a combination of 10 or more of the following transactions pursuant to subdivision (d) or (e) of Section 10131 or Section 10131.1 in an aggregate amount of more than one million dollars ($1,000,000):

(A) Loans secured directly or collaterally by liens on real property or on business opportunities as agent for another or others.

(B) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property or on business opportunities as agent for another or others.

(C) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property as the owner of those notes or contracts.

(2) Make collections of payments in an aggregate amount of two hundred fifty thousand dollars ($250,000) or more on behalf of owners of promissory notes secured directly or collaterally by liens on real property, owners of real property sales contracts, or both.

(3) Make collections of payments in an aggregate amount of two hundred fifty thousand dollars ($250,000) or more on behalf of obligors of promissory notes secured directly or collaterally by liens on real property, lenders of real property sales contracts, or both. Persons under common management, direction, or control in conducting the activities enumerated

above shall be considered as one person for the purpose of applying the above criteria.

(b) The negotiation of a combination of two or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than two hundred fifty thousand dollars ($250,000) in any three successive months or a combination of five or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than five hundred thousand dollars ($500,000) in any successive six months shall create a rebuttable presumption that the broker intends to negotiate new loans and sales and exchanges of an aggregate amount that will meet the criteria of subdivision (a).

(c) In determining the applicability of Sections 10232.2, 10232.25, 10233, and 10236.6, loans or sales negotiated by a broker, or for which a broker collects payments or provides other servicing for the owner of the note or contract, shall not be counted in determining whether the broker meets the criteria of subdivisions (a) and (b) if any of the following apply:

(1) The lender or purchaser is any of the following:

(A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the United States Department of Veterans Affairs.

(B) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, finance lender, or insurer doing business under the authority of, and in accordance with, the laws of this state, any other state, or the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, commercial finance lenders, or insurers, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.

(C) Trustees of a pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000).

(D) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation.

(E) A syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) that is organized to purchase the promissory note.

(F) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.

(G) A licensed residential mortgage lender or servicer acting under the authority of that license.

(H) An institutional investor that issues mortgage-backed securities, as specified in paragraph (11) of subdivision (i) of Section 50003 of the Financial Code.

(I) A licensed real estate broker selling all or part of the loan, the note, or the contract to a lender or purchaser specified in subparagraphs (A) to (H), inclusive.

(2) The loan or sale is negotiated, or the loan or contract is being serviced for the owner, under authority of a permit issued pursuant to applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code).

(3) The transaction is subject to the requirements of Article 3 (commencing with Section 2956) of Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code.

(d) If two or more real estate brokers who are not under common management, direction, or control cooperate in the negotiation of a loan or the sale or exchange of a promissory note or real property sales contract and share in the compensation for their services, the dollar amount of the transaction shall be allocated according to the ratio that the compensation received by each broker bears to the total compensation received by all brokers for their services in negotiating the loan or sale or exchange.

(e) A real estate broker who meets any of the criteria of subdivision (a) or (b) shall notify the department in writing within 30 days after that determination is made."

///

///

///

///

///

11.

Loan to Value and Other Requirements

(Code Section 10232.3)

Pursuant to Code Section 10232.3 Loan to Value and Other Requirements:

"(a) Any transaction that involves the sale of or offer to sell a note secured directly by an interest in one or more parcels of real property or the sale of an undivided interest in a note secured directly by one or more parcels of real property shall adhere to all of the following:

(1) Except as provided in paragraph (2), the aggregate principal amount of the note or interest sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, shall not exceed the following percentages of the current market value of each parcel of the real property, as determined in writing by the broker or appraiser pursuant to Section 10232.6, plus the amount for which the payment of principal and interest in excess of the percentage of current market value is insured for the benefit of the holders of the note or interest by an insurer admitted to do business in this state by the Insurance Commissioner:

(A) Single-family residence, owner occupied....................80%

(B) Single-family residence, not owner occupied..............75%

(C) Commercial properties and income-producing properties not described in (B) or (E)..............................65%

(D) Single-family residentially zoned lot or parcel that has installed offsite improvements including drainage, curbs, gutters, sidewalks, paved roads, and utilities as mandated by the political subdivision having jurisdiction over the lot or parcel...........65%

(E) Land that produces income from crops, timber, or minerals...........60%

(F) Land that is not income producing but has been zoned for (and if required, approved for subdivision as) commercial or residential development.........................50%

(G) Other real property............35%

(2) The percentage amounts specified in paragraph (1) may be exceeded when and to the extent that the broker determines that the encumbrance of the property in excess of these percentages is reasonable and prudent considering all relevant factors pertaining to the real property. However, in no event shall the aggregate principal amount of the note or interest sold, together with the unpaid principal amount of any encumbrances upon the property senior thereto, exceed 80 percent of the current fair market value of improved real property or 50 percent of the current fair market value of unimproved real property, except in the case of a single-family zoned lot or parcel as defined in paragraph (1), which shall not exceed 65 percent of the current fair market value of that lot or parcel, plus the amount insured

as specified in paragraph (1). A written statement shall be prepared by the broker that sets forth the material considerations and facts that the broker relies upon for his or her determination, which shall be retained as a part of the broker's record of the transaction. Either a copy of the statement or the information contained therein shall be included in the disclosures required pursuant to Section 10232.5.

(3) A copy of the appraisal or the broker's evaluation, for each parcel of real property securing the note or interest, shall be delivered to the purchaser. The broker shall advise the purchaser of his or her right to receive a copy. For purposes of this paragraph, "appraisal" means a written estimate of value based upon the assembling, analyzing, and reconciling of facts and value indicators for the real property in question. A broker shall not purport to make an appraisal unless he or she is qualified on the basis of special training, preparation, or experience.

(4) For construction or rehabilitation loans, where the amount withheld for construction or rehabilitation at the start of the project exceeds one hundred thousand dollars ($100,000), the term "current market value" may be deemed to be the value of the completed project if all of the following safeguards are met:

(A) An independent neutral third-party escrow holder is used for all deposits and disbursements relating to the construction or rehabilitation of the secured property.

(B) The loan is fully funded, with the entire loan amount to be deposited in escrow prior to the recording of the deed or deeds of trust.

(C) A comprehensive, detailed draw schedule is used to ensure proper and timely disbursements to allow for completion of the project.

(D) The disbursement draws from the escrow account are based on verification from an independent qualified person who certifies that the work completed to date meets the related codes and standards and that the draws were made in accordance with the construction contract and draw schedule. For purposes of this subparagraph, "independent qualified person" means a person who is not an employee, agent, or affiliate of the broker and who is a licensed architect, general contractor, structural engineer, or active local government building inspector acting in his or her official capacity.

(E) An appraisal is completed by a qualified and licensed appraiser in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

(F) The documentation includes a detailed description of the actions that may be taken in the event of a failure to complete the project, whether that failure is due to default, insufficiency of funds, or other causes.

(G) The entire amount of the loan does not exceed two million five hundred thousand dollars ($2,500,000).

(5) For construction or rehabilitation loans, where the amount withheld for construction or rehabilitation at the start of the project is one hundred thousand dollars ($100,000) or less, the term "current market value" may be deemed to be the value of the completed project if all of the following safeguards are met:

(A) The loan is fully funded, with the entire loan amount to be deposited in escrow prior to recording of the deed or deeds of trust.

(B) A comprehensive, detailed draw schedule is used to ensure proper and timely disbursements to allow for completion of the project.

(C) An appraisal is completed by a qualified and licensed appraiser in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

(D) The documentation includes a detailed description of the actions that may be taken in the event of a failure to complete the project, whether that failure is due to default, insufficiency of funds, or other causes.

(E) The entire amount of the loan does not exceed two million five hundred thousand dollars ($2,500,000).

(6) If a note or an interest will be secured by more than one parcel of real property, for the purpose of determining the maximum amount of the note

or interest, each security property shall be assigned a portion of the note or interest that shall not exceed the percentage of current market value determined by, and in accordance with, the provisions of paragraphs (1) and (2).

(b) The note or interest shall not be sold, unless the purchaser meets one or both of the qualifications of income or net worth set forth below and signs a statement, which shall be retained by the broker for four years, conforming to the following:

"Transaction Identifier:_________________

Name of Purchaser:____________ Date:___

Check either one of the following, if true:

( ) My investment in the transaction does not exceed 10% of my net worth, exclusive of home, furnishings, and automobiles.

( ) My investment in the transaction does not exceed 10% of my adjusted gross income for federal income tax purposes for my last tax year or, in the alternative, as estimated for the current year.

____

Signature""

///

///

///

///

///

///

///

12.

<u>Disclosure Statement – Delivery – Exception – Funds Handling</u>

(Code Section 10232.4)

Pursuant to Code Section 10232.4 Disclosure Statement – Delivery – Exception – Funds Handling:

"(a) In making a solicitation to a particular person and in negotiating with that person to make a loan secured by real property or to purchase a real property sales contract or a note secured by a deed of trust, a real estate broker shall deliver to the person solicited the applicable completed statement described in Section 10232.5 as early as practicable before that person becomes obligated to make the loan or purchase and, except as provided in subdivision (c), before the receipt by or on behalf of the broker of any funds from that person. The statement shall be signed by the prospective lender or purchaser and by the real estate broker, or by a real estate salesperson licensed to the broker, on the broker's behalf. When so executed, an exact copy shall be given to the prospective lender or purchaser, and the broker shall retain a true copy of the executed statement for a period of three years.

(b) The requirement of delivery of a disclosure statement pursuant to subdivision (a) shall not apply with respect to the following persons:

(1) The prospective purchaser of a security offered under authority of a permit issued pursuant to applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) that require that each prospective purchaser of a

security be given a prospectus or other form of disclosure statement approved by the department issuing the permit.

(2) The seller of real property who agrees to take back a promissory note of the purchaser as a method of financing all or a part of the purchase of the property.

(3) The prospective purchaser of a security offered pursuant to and in accordance with a regulation duly adopted by the Commissioner of Business Oversight granting an exemption from qualification under the Corporate Securities Law of 1968 for the offering if one of the conditions of the exemption is that each prospective purchaser of the security be given a disclosure statement prescribed by the regulation before the prospective purchaser becomes obligated to purchase the security.

(4) A prospective lender or purchaser, if that lender or purchaser is any of the following:

(A) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or corporate or other instrumentality of any one or more of the foregoing, including the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage

Corporation, the Federal Housing Administration, and the Veteran's Administration.

(B) Any bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, finance lender, or insurance company doing business under the authority of, and in accordance with, the laws of this state, any other state, or of the United States relating to banks, trust companies, savings banks or savings banks or industrial loan companies, commercial finance lenders, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(C) Trustees of pension, profitsharing, or welfare fund, if the pension, profitsharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000).

(D) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.

(E) Any syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) which is organized to purchase the promissory note.

(F) A licensed real estate broker engaging in the business of selling all or part of the loan, note, or contract to a lender or purchaser to whom no disclosure is required pursuant to this subdivision.

(G) A licensed residential mortgage lender or servicer when acting under the authority of that license.

(c) When the broker has custody of funds of a prospective lender or purchaser which were received and are being maintained with the express permission of the owner and in accordance with law, and the broker retains the funds in an escrow depository or a trust fund account pending receipt of the owner's express written instructions to disburse the funds for a loan or purchase, the broker shall cause the disclosure statement to be delivered to the owner and shall obtain the owner's written consent to the proposed disbursement before making the disbursement. Unless the broker has a written agreement with the owner as provided in Section 10231.1, the broker shall transmit to the owner not later than 25 days after receipt, all funds then in the broker's custody for which the owner has not given written instructions authorizing disbursement."

13.

Penalties for Noncompliance with Section 10232

(Code Section 10236.2)

Pursuant to Code Section 10236.2 Penalties for Noncompliance with Section 10232:

"(a) A real estate broker who satisfies the criteria of subdivision (a) or (b) of Section 10232 and who fails to notify the Bureau of Real Estate, in writing, of that fact within 30 days thereafter as required by subdivision (e) of Section 10232 shall be assessed a penalty of fifty dollars ($50) per day for each additional day written notification has not been received up to and including the 30th day after the first day of the assessment penalty. On and after the 31st day the penalty is one hundred dollars ($100) per day, not to exceed a total penalty of ten thousand dollars ($10,000), regardless of the number of days, until the bureau receives the written notification.

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

(c) All penalties paid or collected under this section shall be deposited into the Consumer Recovery Account of the Real Estate Fund."

14.

Further Grounds for Disciplinary Action

(Code Section 10177 (selected portions))

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

"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.

. . .

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

15.

Cost Recovery

(Code Section 10106)

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 licentiate to pay costs.

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

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

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

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

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

///

///

///

FACTS DISCOVERED BY THE DRE

DRE Broker Office Survey

16.

On September 22, 2020, a remote (telephonic) DRE Broker Office Survey ("BOS") was conducted of LXI, during which GRIFFIN indicated to the DRE special investigator ("SI") that he was the 100% owner of LXI, that LXI only performed private money loan origination for investment properties, and that LXI did not perform any other activities that required its DRE or NMLS licenses. GRIFFIN informed the SI that LXI performed three (3) to ten (10) private money loan transactions per month, that the transaction files were stored within a third party software called Encompass, and that he reviewed all work completed by his licensed employees.

17.

According to GRIFFIN, LXI only performed private money loan transactions for residential properties and did not perform any third party loan origination activities. GRIFFIN informed that 10% to 20% of the loans brokered are to individual private investors, and the remainder of the loans brokered are to LendingHome and Velocity Mortgage.

18.

In response to the SI's request for LXI's private money transaction files for the years 2018 through 2020, on or about October 19, 2020 GRIFFIN submitted a flash drive ("101920 flash drive") that included two (2) transaction files from 2019 and one (1) transaction file from 2020. Upon review, the SI discovered that these three (3) transaction files in LXI's 101920 flash drive were brokered to lenders who held Department of Financial Protection and

Innovation ("DFPI") licenses. As the transactions involved institutional lenders [that held DFPI licenses], they did not fit the criteria of private money transactions.

19.

When the SI inquired as to whether LXI brokered to lenders who do not have DRE or DFPI licenses, GRIFFIN responded in the affirmative. On or about February 3, 2021, the SI made a follow-up request via email to GRIFFIN for LXI's updated/corrected 2019 Business Activity Report ("BAR") (DRE Form RE881) and two (2) transaction files that involved private money/non-institutional lenders ("020321 email").

20.

By April 1, 2021, when GRIFFIN had not submitted the items requested in the SI's 020321 email, a *subpoena duces tecum ("subpoena")* was sent to LXI via certified mail to LXI/Griffin for the items requested in the 020321 email.

21.

In response to the *subpoena*, on or about April 15, 2021, GRIFFIN submitted a flash drive ("041521 flash drive") that included LXI's updated/corrected BAR for the fiscal year ending December 2019 (signed by GRIFFIN on May 13, 2020); one (1) private money transaction file from 2019 (Starling Drive property), and one (1) private money transaction file from 2020 (Wilshire Blvd., property).

22.

According to the 2019 and 2020 transaction files in LXI's 041521 flash drive, the transactions were brokered to private money lenders Cymach, LLC and Monaco Trade, LP, respectively. According to the respective transaction files submitted in LXI's 041521 flash drive, LXI did not provide Cymach, LLC or Monaco Trade LP with [the required] Lender/Purchaser Disclosure Statement ("LPDS") (DRE Form 851B).

23.

According to the updated/corrected 2019 BAR in LXI's 041521 flash drive, LXI brokered fifty-seven (57) private money transactions totaling $14,482,439, in excess of the DRE's reporting threshold amount pursuant to Code Section 10232. On or about May 17, 2021, GRIFFIN submitted LXI's initial Threshold Notification form (DRE Form RE853) to the DRE (received on or about May 17, 2021). To date, LXI has yet to file the Trust Fund Status Report (DRE Form RE855) for the quarter ending June 30, 2021.

24

On or about May 13, 2021, GRIFFIN informed the SI that investors in private money transactions are not provided with an investor suitability questionnaire, and that investors do not submit a signed statement attesting that they meet the net worth/income requirements. According to GRIFFIN, the only item sent to investors is a document that asks whether the investor is registered as an accredited investor; GRIFFIN provided two Lender Questionnaires, one executed on December 20, 2019 by Cymach LLC (by its owner/managing member), and the other executed on October 10, 2020 by Monaco Trade, LP (by its general partner). When the SI asked GRIFFIN asked whether investors are provided with an LPDS, GRIFFIN answered in the negative.

///

///

///

///

VIOLATIONS OF THE REAL ESTATE LAW - CAUSES FOR DISCIPLINE

25.

Complainant re-alleges and incorporates by reference the preceding paragraphs as set forth herein.

First Cause for Discipline

Violation of Code Section 10232.4

(Disclosure Statement – Delivery – Exception – Funds Handling)

26.

In the course of the activities described above, and based on the facts discovered by the Department, also described above, **REC LENDINGXPRESS, INC.** and **REB ROBERT DUANE GRIFFIN** are in violation of **Code Section 10232.4**, which constitutes cause for the suspension or revocation of all licenses and license rights of Respondents LXI and GRIFFIN under the Real Estate Law.

Second and Third Causes for Discipline

Violation of Code Section 10232

(Application of Sections 10232.2, 10232.25, 10233 and 10236.6)

and

Violation of Code Section 10236.2

(Penalties for Noncompliance with Section 10232)

27.

In the course of the activities described above, and based on the facts discovered by the Department, also described above, **REC LENDINGXPRESS, INC.** and **REB ROBERT DUANE GRIFFIN** are in violation of **Code Section 10232**, which constitutes cause for the suspension or revocation of all licenses and license rights of Respondents LXI and GRIFFIN under the Real Estate Law, and which subject said Respondents to penalties pursuant to **Code Section 10236.2.**

Fourth Cause for Discipline

Violation of Code Section 10232.3(b)

(Loan to Value and Other Requirements)

28.

In the course of the activities described above, and based on the facts discovered by the Department, also described above, **REC LENDINGXPRESS, INC.** and **REB ROBERT DUANE GRIFFIN** are in violation of **Code Section 10232.3(b)**, which constitutes cause for the suspension or revocation of all licenses and license rights of Respondents LXI and GRIFFIN under the Real Estate Law.

COSTS

29.

Code Section 10106 provides, in pertinent part that 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 investigation and enforcement of the case.

///

///

///

///

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 all the licenses and license rights of Respondents **LENDINGXPRESS, INC.** and **ROBERT DUANE GRIFFIN** under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Sacramento, California
this 9th day of November 2021.

Ruth Corral
Supervising Special Investigator

cc: LendingXpress, Inc.
Robert Duane Griffin
Ruth Corral
Sacramento D.O.