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Counsel for Complainant

FILED
APR 11 2023
DEPT. OF REAL ESTATE
By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation against)	No. H-42427 LA
TORRES REALTY INC)	FIRST AMENDED
and)	ACCUSATION
BERNADINE ANITA TORRES,)	
as designated officer of Torres Realty Inc,)	
Respondents.)	

The Accusation filed on August 30, 2022 is amended in its entirety as follows:

The Complainant, Jason Parson, acting in his official capacity as a Supervising Special Investigator of the State of California, for cause of Accusation against TORRES REALTY INC (“TRI”) and BERNADINE ANITA TORRES (“TORRES”) (collectively, “Respondents”), is informed and alleges as follows:

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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.

DEPARTMENT OF REAL ESTATE LICENSE HISTORY

TORRES REALTY INC ("TRI")

2.

According to Department of Real Estate ("DRE") records to date and publicly accessible online (https://www2.dre.ca.gov/PublicASP/pplinfo.asp?License_id=02074332), Respondent TRI is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate broker (corporation) ("REC"), DRE license ID 02074332.

3.

According to DRE records to date and publicly accessible online: TRI was originally licensed by the DRE on or about October 11, 2018; its mailing address of record is 16654 E. Greenhaven St., Covina, CA 91722 ("Greenhaven address"); its main address of record is 570 S. Barranca Ave., Covina, CA 91723 ("Barranca address"); and it currently has affiliated with its license two (2) DBAs, for Prominent One Realty (active as of March 30, 2021) and for Superior Escrow A Non-Independent Broker Escrow (active as of July 12, 2021) and six (6) real estate salespersons ("RES").

4.

According to DRE records to date and publicly accessible online, real estate broker ("REB") BERNADINE ANITA TORRES is TRI's designated officer of record ("D.O.") until her officer affiliation expires on October 10, 2026.

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According to DRE records to date and publicly accessible online, TRI's DRE license will expire on October 10, 2026.

BERNADINE ANITA TORRES ("TORRES")

6.

According to DRE records to date and publicly accessible online (https://www2.dre.ca.gov/publicasp/pplinfo.asp?License_id=01337559), Respondent TORRES 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 01337559.

7.

According to DRE records to date and publicly accessible online: TORRES was originally licensed by the DRE as a RES on or about May 23, 2002 and as a REB on or about April 10, 2018; her mailing address of record is TRI's Greenhaven address; her main address of record is 576 S. Barranca Ave., Covina, CA 91723; and she currently has no DBAs or RES affiliated with her license.

8.

According to DRE records to date and publicly accessible online, TORRES is the designated officer of record for TRI and for Prominent 1 Financial Group Inc (DRE license ID 02074332), both officer affiliations of which expire on October 10, 2026.

9.

According to DRE records to date and publicly accessible online, TORRES' DRE license will expire on April 9, 2026.

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2 According to DRE records to date and publicly accessible online, TORRES'
3 REB license includes a a Mortgage Loan Originator License ("MLO") Endorsement under
4 which she is authorized to conduct business in California, Nationwide Multistate Licensing
5 System ("NMLS") ID 242990. According to publicly accessible online NMLS records to date
6 (<https://www.nmlsconsumeraccess.org/entitydetails.aspx/individual/242990>), TORRES also
7 holds licenses/registrations [under her DRE license name of record and her other names of
8 Bernadine Anita Huerta, Bernadine Torres, and Bernie Torres], and is authorized to conduct
9 business in Arizona, Nevada and Texas. According to NMLS records to date and publicly
10 accessible online, TORRES is authorized to represent Prominent 1 Financial Group, Inc.,
11 Superior Mortgage Lending LLC, and Texas Wholesale Mortgage Inc.
12

13
14 TRI's REAL ESTATE ACTIVITIES

15 11.

16 At all times mentioned, in the State of California, TRI conducted licensed
17 activities within the meaning of Code Section 10131¹ and real estate sales activities, which
18

19 ¹ Pursuant to Code Section 10131 Broker Defined, "A real estate broker within this meaning of this part is a
20 person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment,
21 does or negotiates to do one or more of the following acts for another or others: (a) Sells or offers to sell, buys or
22 offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase,
23 sale or exchange of real property or a business opportunity. (b) Leases or rents or offers to lease or rent, or places
24 for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or
25 exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or
26 improvements thereon, or from business opportunities. (c) Assists or offers to assist in filing an application for the
27 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 require a real estate license, including, but not limited to activities performed by TRI's RES,
2 employees and agents.

3 **APPLICABLE SECTIONS OF THE REAL ESTATE LAW**

4 **Trust Fund Handling/When Broker Handles Escrow**

5 **(Code Section 10145 and Regulations: 2830; 2831; 2831.1; 2831.2; 2832.1; 2950; and**
6 **2951; and Financial Code Section 17006)**

7 12.

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

9 “(a)(1): A real estate broker who accepts funds belonging to others in
10 connection with a transaction subject to this part shall deposit all those funds that are not
11 immediately placed into a neutral escrow depository or into the hands of the broker's principal,
12 into a trust fund account maintained by the broker in a bank or recognized depository in this
13 state. All funds deposited by the broker in a trust account shall be maintained there until
14 disbursed by the broker in accordance with instructions from the person entitled to the funds.

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

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

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

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

7 Evidence of financial responsibility shall include one or more of the
8 following:

9 (i) Separate fidelity bond coverage adequate to cover the amount
10 of the fidelity bond deductible.

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

17 (iii) Any other evidence of financial responsibility approved by
18 the commissioner.

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

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

6
7 (4)(g) The broker shall maintain a separate record of the receipt and disposition
8 of all funds described in subdivisions (a) and (b), including any interest earned on the funds...”

9 13.

10 Pursuant to Regulation 2830 *Broker Placement of Trust Funds with Financial*
11 *Institutions:*

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

17 (a) Unless in possession of written permission from the client, it is unlawful for
18 any real estate broker, including any corporate broker, to receive, directly or indirectly, any
19 commission, compensation, or other consideration, whether personal or professional, from any
20 person or institution other than the client as an inducement for the placement of a trust fund
21 account in accordance with Section 10145 of the Business and Professions Code. Actual
22 placement of a trust fund account is not a precondition to a violation of this section, whether
23 the violation is or is not a per se violation pursuant to subsection (c), below.

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

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

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

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

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

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

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

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

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

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

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

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

15 14.

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

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

21 (1) Date trust funds received.

22 (2) From whom trust funds received.

23 (3) Amount received.

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

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

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

(7) Daily balance of said account.

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

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

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

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

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

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

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

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

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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.”

17.

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.”

18.

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).

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

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

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

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

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

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

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

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

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

4 19.

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

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

12 20.

13 Pursuant to California Financial Code Section 17006:

14 “(a) This division does not apply to:

15 (1) Any person doing business under any law of this state or the United
16 States relating to banks, trust companies, building and loan or savings and loan
17 associations, credit unions, or insurance companies.

18 (2) Any person licensed to practice law in California who has a bona
19 fide client relationship with a principal in a real estate or personal property
20 transaction and who is not actively engaged in the business of an escrow agent.

21 (3) Any person whose principal business is that of preparing abstracts or
22 making searches of title that are used as a basis for the issuance of a policy of
23 title insurance by a company doing business under any law of this state relating
24 to insurance companies.

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

Broker Supervision

(Code Section 10159.2 and Regulation 2725)

21.

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

Charge:

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

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

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

5 22.

6 Pursuant to Regulation 2725 *Broker Supervision*:

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

10 (a) Transactions requiring a real estate license.

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

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

14 (d) The handling of trust funds.

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

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

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

19 The form and extent of such policies, rules, procedures and systems shall take into
20 consideration the number of salespersons employed and the number and location of branch
21 offices. A broker shall establish a system for monitoring compliance with such policies, rules,
22 procedures and systems. A broker may use the services of brokers and salespersons to assist in
23 administering the provisions of this section so long as the broker does not relinquish overall
24 responsibility for supervision of the acts of salespersons licensed to the broker.”

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1 23.

2 **False or Fictitious Business Name**

3 **(Code Section 10159.5 and Regulation 2731(a) in conjunction with Code Section 10130)**

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

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

9 24.

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

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

14 25.

15 Pursuant to Code Section 10130 *License Required*:

16 “It is unlawful for any person to engage in the business of, act in the capacity of,
17 advertise as, or assume to act as a real estate broker or a real estate salesperson within this state
18 without first obtaining a real estate license from the department, or to engage in the business
19 of, act in the capacity of, advertise as, or assume to act as a mortgage loan originator within
20 this state without having obtained a license endorsement. The commissioner may prefer a
21 complaint for violation of this section before any court of competent jurisdiction, and the
22 commissioner and his or her counsel, deputies, or assistants, may assist in presenting the law or
23 facts at the trial. Prosecution of Violations: It is the duty of the district attorney of each
24 county in this state to prosecute all violations of this section in their respective counties in
25 which the violations occur.”

1 **Grounds for Revocation or Suspension**

2 **(Code Section 10176, selected portions)**

3 26.

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

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

11 . . .
12 (g) The claiming or taking by a licensee of any secret or undisclosed amount of
13 compensation, commission, or profit or the failure of a licensee to reveal to the
14 buyer or seller contracting with the licensee the full amount of the licensee’s
15 compensation, commission, or profit under any agreement authorizing the
16 licensee to do any acts for which a license is required under this chapter for
17 compensation or commission prior to or coincident with the signing of an
18 agreement evidencing the meeting of the minds of the contracting parties,
19 regardless of the form of the agreement, whether evidenced by documents in an
20 escrow or by any other or different procedure.”

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Engaging in Prohibited Activity – Order to Desist and Refrain

(Code Section 10086)

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

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

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

1 time prescribed by this section, or if the court refuses to restrain the respondent pending the
2 decision of the commissioner following the administrative hearing, the respondent may resume
3 the activities in question pending the rendering of the decision of the commissioner following
4 the administrative hearing.

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

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

15 **Further Grounds for Disciplinary Action**

16 **(Code Section 10177)**

17 28.

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

19 "The commissioner may suspend or revoke the license of a real estate licensee,
20 delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an
21 applicant, who has done any of the following, or may suspend or revoke the license of a
22 corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to
23 a corporation, if an officer, director, or person owning or controlling 10 percent or more of the
24 corporation's stock has done any of the following:
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(a) Procured, or attempted to procure, a real estate license or license renewal, for themselves or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

(b) (1) Entered a plea of guilty or no contest to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw that licensee's plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

(2) Notwithstanding paragraph (1), and with the recognition that sentencing may not occur for months or years following the entry of a guilty plea, the commissioner may suspend the license of a real estate licensee upon the entry by the licensee of a guilty plea to any of the crimes described in paragraph (1). If the guilty plea is withdrawn, the suspension shall be rescinded and the license reinstated to its status prior to the suspension. The department shall notify a person whose license is subject to suspension pursuant to this paragraph of that person's right to have the issue of the suspension heard in accordance with Section 10100.

(c) Knowingly authorized, directed, connived at, or aided in the publication, advertisement, distribution, or circulation of a material false

1 statement or representation concerning their designation or certification
2 of special education, credential, trade organization membership, or
3 business, or concerning a business opportunity or a land or subdivision,
4 as defined in Chapter 1 (commencing with Section 11000) of Part 2,
5 offered for sale.

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

11 (e) Willfully used the term “realtor” or a trade name or insignia of
12 membership in a real estate organization of which the licensee is not a
13 member.

14 (f) Acted or conducted themselves in a manner that would have warranted
15 the denial of their application for a real estate license, or either had a
16 license denied or had a license issued by another agency of this state,
17 another state, or the federal government revoked, surrendered, or
18 suspended for acts that, if done by a real estate licensee, would be
19 grounds for the suspension or revocation of a California real estate
20 license, if the action of denial, revocation, surrender, or suspension by
21 the other agency or entity was taken only after giving the licensee or
22 applicant fair notice of the charges, an opportunity for a hearing, and
23 other due process protections comparable to the Administrative
24 Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter
25 4 (commencing with Section 11370), and Chapter 5 (commencing with
26

1 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
2 Code), and only upon an express finding of a violation of law by the
3 agency or entity.

4 (g) Demonstrated negligence or incompetence in performing an act for
5 which the officer, director, or person is required to hold a license.

6 (h) As a broker licensee, failed to exercise reasonable supervision over
7 the activities of that licensee's salespersons, or, as the officer designated
8 by a corporate broker licensee, failed to exercise reasonable supervision
9 and control of the activities of the corporation for which a real estate
10 license is required.

11 (i) Used their employment by a governmental agency in a capacity
12 giving access to records, other than public records, in a manner that
13 violates the confidential nature of the records.

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

17 (k) Violated any of the terms, conditions, restrictions, and limitations
18 contained in an order granting a restricted license.

19 (l) (1) Solicited or induced the sale, lease, or listing for sale or lease of
20 residential property on the grounds, wholly or in part, of loss of value,
21 increase in crime, or decline of the quality of the schools due to the
22 present or prospective entry into the neighborhood of a person or
23 persons having a characteristic listed in subdivision (a) or (d) of Section
24 12955 of the Government Code, as those characteristics are defined in
25 Sections 12926 and 12926.1 of, subdivision (m) and paragraph (1) of
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subdivision (p) of Section 12955 of, and Section 12955.2 of, the Government Code.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(m) Violated the Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) or regulations of the Commissioner of Business Oversight pertaining thereto.

(n) Violated the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) or the regulations of the Commissioner of Business Oversight pertaining thereto.

(o) Failed to disclose to the buyer of real property, in a transaction in which the licensee is an agent for the buyer, the nature and extent of a licensee's direct or indirect ownership interest in that real property. The direct or indirect ownership interest in the property by a person related to the licensee by blood or marriage, by an entity in which the licensee has an ownership interest, or by any other person with whom the licensee has a special relationship shall be disclosed to the buyer.

(p) Violated Article 6 (commencing with Section 10237).

1 (q) Violated or failed to comply with Chapter 2 (commencing with
2 Section 2920) of Title 14 of Part 4 of Division 3 of the Civil Code,
3 relating to mortgages.

4 If a real estate broker that is a corporation has not done any of the foregoing acts, either
5 directly or through its employees, agents, officers, directors, or persons owning or controlling
6 10 percent or more of the corporation's stock, the commissioner may not deny the issuance or
7 delay the renewal of a real estate license to, or suspend or revoke the real estate license of, the
8 corporation, provided that any offending officer, director, or stockholder, who has done any of
9 the foregoing acts individually and not on behalf of the corporation, has been completely
10 disassociated from any affiliation or ownership in the corporation. A decision by the
11 commissioner to delay the renewal of a real estate license shall toll the expiration of that
12 license until the results of any pending disciplinary actions against that licensee are final, or
13 until the licensee voluntarily surrenders the licensee's license, whichever is earlier."

14 **CAUSE FOR DISCIPLINE**

15 **DRE AUDIT LA210023**

16 **TRI**

17 **(REB Escrow Activity Violations: 7/1/20 to 7/31/21)**

18 29.

19 On November 19, 2021, the DRE completed its audit examination of the books
20 and records of Respondent TRI pertaining to its broker escrow activities only (Audit
21 LA210023), which require a real estate license. The audit examination covered a period of
22 time beginning on July 1, 2020 and ending on July 31, 2021 ("audit examination period" or
23 "audit period"). The audit examination was conducted from August 10, 2021 through and
24 including November 19, 2021 at the DRE's Los Angeles District Office ("LADO") at 320
25 West 4th St., Suite 350, Los Angeles, CA 90013.

1 30.

2 The final audit report dated November 19, 2021 revealed violations of the Code
3 and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit
4 Report LA210023 (DRE Form RE 4511 (Rev. 7/14)).

5 31.

6 Background

7 At the time of Audit LA 210023, according to DRE licensing records dated
8 November 18, 2021, TRI maintained two (2) active DBAs: Prominent One Realty and Superior
9 Escrow A Non-Independent Broker Escrow,” effective July 12, 2021. TRI also maintained the
10 FBN Superior Escrow: A Non-Independent Broker Escrow, from March 4, 2019 to July 11,
11 2021. As of November 18, 2021, TRI did not maintain any branch offices or broker associates,
12 and had seven (7) RES.

13 32.

14 Corporate Structure

15 According to the DRE auditor’s discussions with D.O. TORRES, the
16 corporate structure of TRI as of August 10, 2021 is as follows: TORRES is a 50% owner and
17 the President and Secretary and RES (DRE license ID 01520838) Fernando Torres is the other
18 50% owner and CEO.

19 33.

20 Business Activities

21 According to the DRE auditor’s discussions with D.O. TORRES, TRI was
22 primarily engaged in real estate sales representing both buyers and sellers, and TRI also
23 provided escrow services to its own clients. According the records examined, TRI closed
24 approximately fifty (50) escrow transactions and collected escrow trust funds totaling
25 \$4,464,327.00 for the twelve (12) month period from August 1, 2020 to July 31, 2021.

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34.

Audit LA210023 was limited to TRI's broker escrow activities. A concurrent audit was also performed on the mortgage loan activities of Prominent 1 Financial Group Inc.

35.

A telephone exit conference was conducted with TORRES, Fernando Torres, and non-licensees Darlene Gomez (TRI's escrow officer) and J. Torres (TRI's junior escrow officer) on November 12, 2021.

36.

Bank Accounts

According to the books and records examined, TRI maintained two (2) trust accounts for multiple beneficiaries for its broker escrow activities:

TA 1

- * Bank: Citizens Business Bank (CBB)
- * Bank Address: 1010 E. Colorado Blvd., Pasadena, CA 91106
- * Account Name: Torres Realty Inc. DBA Superior Escrow A Non Independent Broker Escrow
- * Account No. #####5637
- * Signatories: TORRES, Fernando Torres

TA 2

- * Bank: CBB
- * Bank Address: 1010 E. Colorado Blvd., Pasadena, CA 91106
- * Account Name: Torres Realty Inc. DBA Superior Escrow A Non Independent Broker Escrow
- * Account No. #####9202
- * Signatories: TORRES, Fernando Torres

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1 **CAUSE FOR DISCIPLINE**

2 **AUDIT FINDINGS: VIOLATIONS OF THE REAL ESTATE LAW**

3 37.

4 In the course of the real estate activities (broker escrow activities) described in
5 paragraph 33 during the subject audit examination period described in paragraph 29, above, the
6 DRE's auditor ("auditor") made findings that TRI violated the Code and the Regulations, as
7 described below, and more fully discussed in the DRE's Audit Report for Audit LA210023
8 (DRE Form RE 4511 (Rev. 7/1), dated November 19, 2021.

9 38.

10 **Audit LA 210023**

11 **Trust Fund Handling for Multiple Beneficiaries / When Broker Handles Escrow**

12 **(Code Section 10145 and Regulations 2832.1/2950(g)/2951)**

13 A. TA 1: As of July 31, 2021, there was a shortage of <\$7,711.06> in TA 1,
14 caused by negative escrow balances totaling <\$7,711.06> as of July 31, 2021. Based on an
15 examination of the books and records produced for the audit, TA 1 has \$4,112.78 of
16 unidentified/unaccounted for funds as of July 31, 2021.

17 B. The negative escrow balances were as follows:

18

19 <u>Escrow No.</u>	<u>Buyer/Borrower</u>	<u>Amount</u>
20 SE-1115	Jorge & Virginia R.	<\$2,355.46>
21 SE-1132	David M.	<\$3,661.60>
22 SE-1144	Evelyn S.	<\$1,694.00>
23 Total:		<\$7,711.06>

24 C. TRI provided no evidence that the owners of the trust funds had given
25 written consent to allow TRI to reduce the balance of funds in the TA 1 trust account to an
26

1 amount less than the existing aggregate trust funds liabilities, in violation of **Code Section**
2 **10145 and Regulations 2832.1, 2950(g) and 2951.**

3 39.

4 **Audit LA 210023**

5 **Trust Fund Records To Be Maintained / When Broker Handles Escrow**

6 **(Code Section 10145 and Regulations 2831/2950(d)/2951)**

7 A. TA 1: TRI did not maintain a control record of trust fund receipts and
8 disbursements in connection with its broker escrow activity, in violation of **Code Section**
9 **10145 and Regulations 2831, 2950(d) and 2951.** Examples of said failure are as follows:

<u>Escrow No.</u>	<u>Buyer</u>	<u>Amount</u>	<u>Closed</u>
SE-1148	Guadalupe S., Anabel D., & Iahaira T.	\$ 460,000.00	6/8/21
SE-1147	Keyun Y. & Katie M.	\$ 740,000.00	5/15/21
SE-1069	Tommy H.	\$ 390,720.00	8/3/20
SE-1056	Raul & Alice P.	\$ 395,453.00	9/9/20
SE-1071	Joanna C.	\$ 276,000.00	10/8/20
SE-1159	Michael N.	\$ 343,000.00	6/1/21
Total:		\$2,606,173.00	

18 B. TA 2: The control records were provided after the exit conference date on
19 November 12, 2021.

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Audit LA 210023

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

(Code Section 10145 and Regulations 2831.1/2950(d)/2951)

A. The separate records maintained for all trust fund receipts and disbursements for TA 1 and TA 2 in connection with TRI’s broker escrow activity were inaccurate and incomplete, in violation of **Code Section 10145 and Regulation 2831.1, 2950(d) and 2951.**

B. During the audit period and in connection with the collection and disbursement of said trust funds, TRI failed to maintain a separate record of the receipt and disposition of all trust funds deposited into the TA 1 trust account, as required per Code Section 10145(g) and Regulation 2831.1, in that TA 1 has unidentified/unaccounted for funds of \$4,112.78 as of July 31, 2021.

C. Some of the checks issued were not posted on separate records provided for audit examination:

<u>Escrow No.</u>	<u>Check No.</u>	<u>Date Issued</u>	<u>Amount</u>	<u>Date Cleared</u>
SE-1115	1637	5/4/21	\$2,000.00	5/14/21
SE-1115	1638	5/4/21	\$ 355.46	5/12/21
SE-1132	1836	7/7/21	\$2,903.18	7/13/21
SE-1132	1837	7/16/21	\$ 758.42	7/22/21
SE-1144	1835	7/7/21	\$1,694.00	7/19/21
Total:			\$7,711.06	

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41.

Audit LA 210023

Trust Account Reconciliation / When Broker Handles Escrow

(Code Section 10145 and Regulations 2831.2 and 2951)

During the audit period, TRI did not maintain complete and accurate monthly reconciliation comparing the balance of all separate records to the control record of all trust funds received and disbursed for TA 1 and TA 2 accounts in connection with its broker escrow activity, as required, in violation of **Code Section 10145 and Regulations 2831.2 and 2951.**

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Audit LA 210023**Undisclosed Compensation / Broker Placement of Trust Funds With Financial Institution****(Code Section 10176 and Regulation 2830)**

A. TA 1: Based on an examination of the Subsidiary Account Analysis Summary Statements ("SAASS") from CBB for July 1, 2020 to June 30, 2021, TRI maintained an earnings credit relationship with CBB and received earnings credit from trust funds available from TA 1 and TA 2, but did not disclose it in writing to all TA 1 and TA 2 trust fund owners, in violation of **Code Section 10176 and Regulation 2830**. The monthly earnings credit was used to offset some of the TA 1 bank service charges. Between July 1, 2020 and June 30, 2021, TRI received earnings credit from CBB for TA 1 totaling \$708.65:

<u>Date</u>	<u>Analyzed Charges</u>	<u>Analyzed Fees Due</u>	<u>Earnings Credit 0.8%</u>
7/1/20 to 7/31/20	\$ 135.97	\$ 122.95	\$ 13.02
8/1/20 to 8/31/20	\$ 120.00	\$ 107.00	\$ 13.00
9/1/20 to 9/30/20	\$ 97.98	\$ 95.12	\$ 2.86
10/1/20 to 10/31/20	\$ 133.43	\$ 124.18	\$ 9.25
11/1/20 to 11/30/20	\$ 224.08	\$ 203.12	\$ 20.96
12/1/20 to 12/31/21	\$ 349.00	\$ 247.00	\$ 102.00
1/1/21 to 1/31/21	\$ 236.85	\$ 99.84	\$ 137.01
2/1/21 to 2/28/21	\$ 244.05	\$ 185.19	\$ 58.86
3/1/21 to 3/31/21	\$ 446.81	\$ 409.92	\$ 36.89
4/1/21 to 4/30/21	\$ 400.00	\$ 223.00	\$ 176.00
5/1/21 to 5/31/21	\$ 406.74	\$ 330.39	\$ 76.35
6/1/21 to 6/30/21	\$ 370.31	\$ 307.86	\$ 62.45
Total:	\$3,165.22	\$2,455.57	\$ 708.65

1 B. TA 2: Between July 1, 2020 and June 30, 2021, TRI received earnings credit
 2 from CBB for TA 2 totaling \$1.38:

<u>Date</u>	<u>Analyzed Charges</u>	<u>Analyzed Fees Due</u>	<u>Earnings Credit 0.8%</u>
5/1/21 to 5/31/21	\$ 60.00	\$ 60.00	\$ 0.00
6/1/21 to 6/30/21	\$ 126.28	\$ 124.90	\$ 1.38
Total:	\$ 186.28	\$ 184.90	\$ 1.38

7 43.

8 **Audit LA 210023**

9 **Exemption from Escrow Law / Third Party Escrow**

10 **(Code Section 10086/ Financial Code Section 17006(a)(4))**

11 TRI performed escrow services for loan transactions in which it was not an
 12 agent or a party to the transaction, in violation of **Code Section 10086 and Financial Code**
 13 **Section 17006(a)(4)**. TRI performed escrow services for loan transactions negotiated under
 14 Prominent 1 Financial Group Inc (“P1FGI”), the other REC, besides TRI, over which
 15 TORRES serves as the D.O. of record:

<u>Escrow No.</u>	<u>Closing Date</u>	<u>Borrower</u>
SE-1148	6/8/21	Guadalupe S., Anabel D. & Iahaira T.
SE-1069	8/3/20	Tommy H.
SE-1056	9/9/20	Raul and Alice P.
SE-1071	10/8/20	Joanna C.

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1 44.

2 **Audit LA 210023**

3 **Use of False or Fictitious Name**

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

5 During the audit period, TRI used the unlicensed fictitious business name
6 (“FBN”) “Prominent One Realty, Inc” on an Independent Contractor Compensation Schedule
7 for the following RES: Lizette Caceres (DRE License ID 01719162); Alicia Pacheco (DRE
8 license ID 01482190); and Stephen G. Salcido (DRE license ID 02089515) when TRI was not
9 the holder of a license bearing said FBN, in violation of **Code Section 10159.5 and**
10 **Regulation 2731.**

11 45.

12 **Audit LA 210023**

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

14 **(Code Section 10159.2 and Regulation 2725)**

15 Based on the findings, as described in paragraphs 38 through 44, D.O. TORRES
16 did not exercise adequate supervision and control over TRI’s broker escrow activities as
17 conducted by TRI’s licensees and employees, in violation of **Code Section 10159.2 and**
18 **Regulation 2725.** D.O. TORRES failed to establish policies, rules, procedures, and systems to
19 review, oversee, inspect and manage transactions requiring a real estate license and the
20 handling of trust funds to secure full compliance with the Real Estate Laws and
21 Commissioner’s Regulations.

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1 46.

2 **Audit LA 210023**

3 **Other Real Estate Laws and Commissioner's Regulations Discussed**

4 **At Audit Exit Conference**

5 **(Code Section 10148 and Regulation 2726)**

6 At the November 12, 2021 telephonic exit conference with D.O. TORRES,
7 Fernando Torres, Darlene Gomez and J. Torres, the DRE auditor also discussed Code Section
8 10148 (retention of records) and Regulation 2726 (broker-salesperson relationship agreement).

9 47.

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

11 **(Code Sections 10177(d) and (h))**

12 The overall conduct of Respondents is in violation of the Real Estate Law and
13 constitutes cause for the suspension or revocation of the real estate licenses and license rights
14 of TRI under the provisions of **Code Section 10177(d)** (for willful disregard of the Real Estate
15 Law) and [as to TORRES only] **Code Section 10177(h)** (failure to exercise reasonable
16 supervision).

17 **COSTS**

18 48.

19 **Investigation & Enforcement Costs**

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

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1 49.

2 **Audit Costs**

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

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

14 Dated at Los Angeles, California

15 this 7th day of April, 2023.

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18 _____
19 Jason Parson
20 Supervising Special Investigator

21 cc: Torres Realty Inc.
22 Bernadine Anita Torres
23 Enforcement – J. Parson, G. Yee
24 Audits – C. Soriano, A. Hartoonian
25 Sacto.