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DEPT. OF REAL ESTATE
By _____

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
ERNESTO JIMENEZ,
Respondent.

No. H-42615-LA
ACCUSATION

The Complainant, Luke Martin, a Supervising Special Investigator for the Department of Real Estate ("Department" or "DRE") of the State of California, for cause of Accusation against ERNESTO JIMENEZ ("JIMENEZ" or "Respondent"), alleges as follows:

1. The Complainant, Luke Martin, acting in his official capacity as a Supervising Special Investigator, makes this Accusation against Respondent.
2. All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

LICENSE HISTORY

3. Respondent JIMENEZ has been licensed by the Department as a real estate broker, DRE license identification number ("License ID") 01146263, from on or about April 14, 2003, through the present, with JIMENEZ's license scheduled to expire on April 13, 2027, unless renewed. JIMENEZ was previously licensed by the DRE as a real estate salesperson from on or about September 22, 1992, to on or about September 21, 1996, and from August 28, 1997, to on or about August 27, 2001. JIMENEZ currently holds a Mortgage Loan Originator ("MLO") license

1 endorsement with the Department with National Mortgage Licensing System and Registry
2 (“NMLS”) ID 346168. JIMENEZ is also currently the designated officer for real estate corporation
3 JAA Enterprises Inc, License ID 01852894, of which JIMENEZ is 50% owner.

4 4. According to Department records to date, JIMENEZ employs five licensed real estate
5 salespersons (“RES”) and two broker associates. JIMENEZ has no branch offices. The following
6 two (2) fictitious business names are currently active and licensed to JIMENEZ with the
7 Department:

8 a. “Imperial 7 Realty,” effective from June 25, 2007; and

9 b. “Imperial Seven Escrow Division,” effective from September 14, 2007.

10 **BROKERAGE**

11 5. At all times mentioned, in the City of Carson, County of Los Angeles, JIMENEZ
12 acted as a real estate broker, conducting broker-controlled escrows under the exemption set forth in
13 California Financial Code section 17006(a)(4) for real estate brokers performing escrows incidental
14 to a real estate transaction where the broker is a party and where the broker is performing acts for
15 which a real estate license is required.

16 **AUDIT OF JIMENEZ: AUDIT NO. LA220079**

17 6. On April 24, 2023, the Department completed an audit examination of the books and
18 records of JIMENEZ’s real estate activities that require a real estate broker license under Code
19 section 10131. The audit examination, LA220079, covered the time period July 1, 2021, to January
20 31, 2023 (“audit period”) and was limited to JIMENEZ’s broker escrow activities.

21 7. According to JIMENEZ and records examined, during the last twelve months of the
22 audit period, JIMENEZ collected approximately \$1,053,116.74 in escrow trust funds. In addition,
23 JIMENEZ closed escrow for approximately three (3) sales transactions and five (5) refinance
24 transactions, totaling eight (8) escrow transactions. The mortgage loan broker for the refinance
25 transactions is JAA Enterprises Inc.

26 8. During the audit period, JIMENEZ maintained one (1) trust account for broker
27 escrow activities as follows:

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1 **Trust Account #1 ("TA1")**

2 Bank: Comerica Bank
3 685 E Del Amo Blvd Suite A
 Carson, CA 90746

4 Account Name: IMPERIAL SEVEN ESCROW DIVISION GP
 ESCROW TRUST ACCOUNT

5 Account #: XXXXXXXXXX7865

6 Signatories: JIMENEZ, Co-owner (REB)
7 Aril Manning, Co-owner (REB)

8 Signatures required: One (1) signature

9 **Audit Violations in Audit No. LA220079**

10 9. The audit examination revealed violations of the Code and the Regulations, as set
11 forth in the following paragraphs, and more fully discussed in Audit No. LA220079 and the exhibits
12 and work papers attached to the audit report:

13 **Issue One (1). Code section 10086(a) and Financial Code section 17006(a)(4): Engaging in**
14 **Prohibited Activity; Exemptions From Escrow Law; Third Party Escrow**

15 10. During the audit period, JIMENEZ performed escrow services for transactions in
16 which he was not an agent or party to the transaction for at least three (3) refinance escrow
17 transactions: Escrow No. 21-1366, 21-1375, and 22-1379. The mortgage broker for these refinance
18 escrow transactions was JAA Enterprises Inc, a real estate corporation where JIMENEZ was the
19 designated officer and 50% owner. JIMENEZ's acts and/or omissions in performing escrow services
20 for transactions in which he was not an agent or party to the transaction was in violation of Code
21 section 10086(a) and Financial Code section 17006(a)(4).

22 **Issue Two (2). Code section 10145 and Regulations 2832.1, 2950(g), and 2951: Trust Fund**
23 **Handling for Multiple Beneficiaries; When Broker Handles Escrow**

24 11. As of January 31, 2023, TA1 had a shortage of <\$270.92>, caused by negative
25 balances in four escrows: Escrow No. 20-1293 for <\$150.00>, Escrow No. 20-1294 for <\$0.30>,
26 Escrow No. 20-1296 for <\$60.00>, and Escrow No. 19-1264 for <\$60.62>.

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1 12. JIMENEZ provided no evidence that the owners of the trust funds gave their written
2 consent to allow JIMENEZ to reduce the balance of the trust funds in TA1 to an amount less than
3 the aggregate trust fund liabilities.

4 13. JIMENEZ cured the <\$270.92> shortage by depositing \$210.36 and \$60.62 into TA1
5 by check number 1220 dated February 21, 2023, and check number 1223 dated April 11, 2023, from
6 JIMENEZ's general account.

7 14. JIMENEZ's failure to obtain the written consent of the owners of the trust funds to
8 reduce the balance of the funds in TA1 to an amount less than the aggregate trust fund liabilities
9 was in violation of Code section 10145 and Regulations 2832.1, 2950(g), and 2951.

10 **Issue Three (3). Code section 10145 and Regulations 2831, 2950(d), and 2951: Trust Fund**
11 **Records to be Maintained; When Broker Handles Escrow**

12 15. Based on records examined, JIMENEZ failed to maintain a complete and accurate
13 columnar record of trust funds received and disbursed for TA1 during the audit period. Based on
14 the examination of TA1's control record, JIMENEZ did not maintain an accurate daily balance of
15 trust funds received and disbursed. The balance per the bank statement did not match the control
16 record after accounting for deposits in transit and outstanding checks. Due to the inaccurate and
17 incomplete recordkeeping, JIMENEZ was unable to explain unidentified/unaccounted for funds of
18 \$3,560.71 as of January 31, 2023.

19 16. JIMENEZ's failure to maintain a complete and accurate columnar record of trust
20 funds received and disbursed for TA1 during the audit period was in violation of Code section
21 10145 and Regulations 2831, 2950(d), and 2951.

22 **Issue Four (4). Code section 10145 and Regulations 2831.1, 2950(d), and 2951: Separate**
23 **Record for Each Beneficiary or Transaction; When Broker Handles Escrow**

24 17. Based on records examined, JIMENEZ did not maintain complete and accurate
25 separate records for TA1 during the audit period. Based on the examination of TA1's separate
26 records, the balance per the bank statement did not match the total balance of TA1's separate records
27 after accounting for deposits in transit and outstanding checks. Due to the inaccurate and incomplete

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1 recordkeeping, JIMENEZ was unable to explain unidentified/unaccounted for funds of \$3,560.71
2 as of January 31, 2023.

3 18. In addition, JIMENEZ did not maintain separate record for the
4 unidentified/unaccounted for funds of \$3,560.71.

5 19. JIMENEZ's failure to maintain complete and accurate separate records for TA1
6 during the audit period was in violation of Code section 10145 and Regulations 2831.1, 2950(d),
7 and 2951.

8 **Issue Five (5). Code section 10145 and Regulations 2831.2, 2950(d), and 2951: Trust Account**
9 **Reconciliation; When Broker Handles Escrow**

10 20. During the audit period, JIMENEZ did not perform and maintain a monthly
11 reconciliation comparing the balance of all separate beneficiary or transaction records (separate
12 records) to the balance of the record of all trust funds received and disbursed (control record) for
13 TA1.

14 21. In addition, JIMENEZ did not reconcile unidentified/unaccounted for funds of
15 \$3,560.71 as of January 31, 2023.

16 22. JIMENEZ's failure to perform and maintain a monthly reconciliation comparing the
17 balance of all separate beneficiary or transaction records (separate records) to the balance of the
18 record of all trust funds received and disbursed (control record) for TA1 was in violation of Code
19 section 10145 and Regulations 2831.2, 2950(d), and 2951.

20 **Issue Six (6). Code section 10176(e), and Regulations 2835(b) and 2951: Trust Fund Handling;**
21 **Commingling of Funds; When Broker Handles Escrow**

22 23. During the audit period, JIMENEZ kept his own funds in TA1 for over twenty-five
23 (25) days related to fees and commissions earned in escrow transactions. As of January 31, 2023,
24 JIMENEZ had at least \$34,065.52 of his own funds in the TA1, and commingled \$33,865.52 with
25 the trust funds in TA1 for more than 25 days.

26 24. JIMENEZ corrected the violations for some of the escrows above by disbursing his
27 funds from escrows with large balances from TA1.

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1 25. JIMENEZ’s commingling of escrow trust funds with his own funds in TA1 for more
2 than 25 days was in violation of **Code section 10176(e), and Regulations 2835(b) and 2951.**

3 **Issue Seven (7). Code sections 10145 and 10176(g), and Regulation 2830: Undisclosed**
4 **Compensation; Broker Placement of Trust Funds with Financial Institutions**

5 26. Based on an examination of records, JIMENEZ did not disclose to all the trust fund
6 owners who had trust funds in TA1 in writing that JIMENEZ was engaged in an earnings credit
7 relationship with Comerica Bank. The earnings credits were used to offset bank service fees incurred
8 for TA1 during the audit period. An examination by the DRE’s auditor revealed that JIMENEZ
9 earned \$189.79 of credit from TA1 for the period August 2022 to January 2023.

10 27. JIMENEZ’s acts and/or omissions in failing to disclose to the owners of the trust
11 funds in TA1 in writing that JIMENEZ was engaged in an earnings credit relationship with
12 Comerica Bank was in violation of **Code sections 10145 and 10176(g) and Regulation 2830.**

13 **Issue Eight (8). Code section 10141.6: Notification of Escrow Activities**

14 28. Code section 10141.6 provides in pertinent part:

15 “(a) A real estate broker who engages in escrow activities for five or
16 more transactions in a calendar year pursuant to the exemption from the
17 Escrow Law contained in Section 17006 of the Financial Code, or whose
18 escrow activities pursuant to that exemption equal or exceed one million
19 dollars (\$1,000,000) in a calendar year, shall file with the department a
report, within 60 days following the completion of the calendar year,
documenting the number of escrows conducted and the dollar volume
escrowed during the calendar year in which the threshold was met. This
report shall be made on a form acceptable to the commissioner.

20 [¶] . . . [¶]

21 (c) A real estate broker who fails to submit the report required pursuant
22 to subdivision (a) shall be assessed a penalty of fifty dollars (\$50) per day
23 for each day the report has not been received by the department, up to and
24 including the 30th day after the first day of the assessment penalty. On and
after the 31st day, the penalty shall be 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 department receives the report.”

25 29. Based on an examination of records, JIMENEZ engaged in escrow activities for five
26 or more transactions and his escrow activities equaled or exceed \$1 million in a calendar year during
27 2021, thus triggering the requirement under Code section 10141.6 that JIMENEZ file a report with
28 the Department within sixty (60) days following the completion of calendar year 2021, documenting

1 the number of escrows conducted and the dollar volume escrowed during the calendar year.
2 However, JIMENEZ did not submit the required 2021 Escrow Activity Report to the Department
3 within sixty (60) days following the completion of calendar year 2021. Based on JIMENEZ's
4 Escrow Log for calendar year 2021, JIMENEZ closed approximately twenty-one (21) escrow
5 transactions in calendar year 2021. In addition, based on TA1 bank statements, JIMENEZ collected
6 a total of approximately \$5,442,028.99 in escrow trust funds in calendar year 2021.

7 30. Because JIMENEZ engaged in escrow activities exceeding more than five
8 transaction in calendar year 2021, and because his escrow activities exceeded \$1 million in calendar
9 year 2021, JIMENEZ's failure to file reports within 60 days following the completion of calendar
10 year 2021 was in violation of **Code section 10141.6**.

11 CAUSE OF ACCUSATION

12 AUDIT VIOLATIONS IN AUDIT NO. LA220079

13 31. The Complainant realleges and incorporates by reference all of the allegations
14 contained in paragraphs 1 through 30 above, with the same force and effect as though fully set forth
15 herein.

16 32. JIMENEZ's conduct as described in paragraphs 10 through 30 above violated the
17 Code and the Regulations as set forth below:

<u>Issue No.</u>	<u>Paragraphs</u>	<u>Violations</u>
18 1	10	Code section 10086(a) and Financial Code section 17006(a)(4)
19 2	11-14	Code section 10145; Regulations 2832.1, 2950(g), and 2951
20 3	15-16	Code section 10145; Regulations 2831, 2950(d), and 2951
21 4	17-19	Code section 10145; Regulations 2831.1, 2950(d), and 2951
22 5	20-22	Code section 10145; Regulations 2831.2, 2950(d), and 2951
23 6	23-25	Code section 10176(e); Regulations 2835(b) and 2951
24 7	26-27	Code sections 10145 and 10176(g); Regulation 2830
25 8	28-30	Code section 10141.6

26 33. The foregoing violations constitute cause for the suspension or revocation
27 JIMENEZ's real estate license and license rights under the provisions of **Code sections 10176(e),**
28 **10176(g), and 10177(d) and/or 10177(g).**

34. In addition, the violations of **Code section 10141.6** in failing to file reports for
calendar year 2021, as alleged in paragraphs 28-30 above, constitute cause for assessment of
penalties against JIMENEZ as provided under **Code section 10141.6(c).**

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INVESTIGATION AND ENFORCEMENT COSTS

35. Code section 10106 provides that in any order issued in resolution of a disciplinary proceeding before the Department of Real Estate, 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.

AUDIT COSTS

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

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of ERNESTO JIMENEZ under the Real Estate Law, for the costs of investigation and enforcement, and audit as permitted by law, and for such other and further relief as may be proper under other applicable provisions of law, and for costs of audit.

Dated 07/12/2023, at Sacramento, California.



Luke Martin
Supervising Special Investigator

cc: ERNESTO JIMENEZ
JAA Enterprises Inc
Luke Martin
Sacto.