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FILED

MAR 21 2013

DEPARTMENT OF REAL ESTATE
By R. Mar

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

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12
13 In the Matter of the Accusation of)

14 MFS/TA, INC.,)
15 ROBERT ALLEN KISLING and)
16 BARBARA LEE McMANUS,)

17 Respondents.)

NO. H-4314 SD

SECOND AMENDED
ACCUSATION

18 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
19 of the State of California, for cause of Accusation against MFS/TA, INC., individually and doing
20 business as "Future Security Financial", "Golden Real Estate Group", "Golden Valley Lending
21 Group", "Millennium Financial Systems", "Millennium Real Estate Group", "Nationwide Loan
22 Modification Services" and "RK Funding" ("MFS"); ROBERT ALLEN KISLING, individually
23 and doing business as "Associated Financial Systems", "Millennium Financial Systems" and
24 "V.A. Mortgage Express" ("KISLING"); and, BARBARA LEE McMANUS, ("McMANUS")
25 (herein collectively "Respondents"); is informed and alleges as follows:

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27 The Complainant makes this Accusation in her official capacity.

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MFS is presently licensed by the Department of Real Estate (hereinafter "the Department") and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code ("the Code") as a corporate real estate broker.

3

KISLING is presently licensed and/or has license rights under the Code as a real estate broker, and is licensed by the Department as the designated broker/officer of MFS. As the designated broker/officer, KISLING was responsible, pursuant to Section 10159.2 (responsibility of corporate officer in charge) of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of MFS for which a real estate license is required.

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KISLING is presently licensed and/or has license rights under the Code as a mortgage loan originator.

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McMANUS is presently licensed by the Department and/or has license rights under the Code as a real estate salesperson. At all times relevant, neither MFS nor KISLING were the employing broker for McMANUS.

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Joel Saul Hernandez is presently licensed by the Department and/or has license rights under the Code as a real estate salesperson.

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At all times relevant herein, Sandi Alonzo (also known as "Sandra Lee Alonzo") was not licensed by the Department in any capacity in the State of California.

8

At all times relevant herein, MFS performed services for one or more borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation

1 of compensation: negotiate one or more loans for, or perform services for, borrowers and/or
2 lenders with respect to the collection of advance fees and loan modification, loan refinance,
3 principal reduction, foreclosure abatement or short sale services and/or those borrowers' lenders
4 in connection with loans secured directly or collaterally by one or more liens on real property;
5 operated and conducted a loan brokerage business with the public, wherein, on behalf of others,
6 for compensation or in expectation of compensation, Respondents solicited lenders and
7 borrowers for loans secured directly or collaterally by liens on real property, and wherein
8 Respondents arranged, negotiated, processed and consummated such loans; and charged,
9 demanded or collected an advance fee for any of the services offered.

10 FIRST CAUSE OF ACTION

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12 In or about the period of June 22, 2011, and continuing intermittently through
13 June 24, 2011, an audit was conducted of the records of MFS at its main office located at
14 105 N. Rose Street, Suite 201, Escondido, California, and the Department's Oakland District
15 Office. The auditor herein examined the records for the period of May 1, 2008, through April 30,
16 2011 (the audit period).

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18 While acting as a real estate broker as described in Paragraph 8, above, and within
19 the audit period, MFS accepted or received funds in trust (trust funds) from or on behalf of
20 lenders, investors, borrowers and others in connection with the sale/resale of real estate,
21 mortgage and loan brokerage activities, and deposited or caused to be deposited those funds into
22 a bank account maintained by MFS, including, but not limited to:

23 Bank Account #1

24 1st Centennial Bank/First California Bank
25 320 West Mission Avenue
Escondido, CA 92025

26 Account No.: XXXXX9984

27 Account Name: Abell Escrow

1 (g) MFS failed to maintain accurate written monthly reconciliations for the
2 balances of all of the separate records with the control records for Bank Account #1. Such acts
3 and/or omissions by MFS violate Section 10145 of the Code and Section 2831.2 (trust account
4 reconciliation) of the Regulations.

5 (h) MFS failed to furnish a verified copy of the accounting with respect to
6 advance fees it collected to the principals at the end of each calendar quarter and when each
7 contract was completely performed by MFS. Such acts and/or omissions by MFS violate
8 Section 10146 of the Code and Section 2972 (verified accounting content) of the Regulations.

9 (i) MFS failed to retain cancelled checks from Bank Account #1 and failed
10 to retain communications with lenders for loan modifications in its transaction files. Such
11 acts and/or omissions by MFS violate Section 10148 (record retention requirements) of the
12 Code.

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14 The acts and/or omissions of MFS as alleged in Paragraph 11, above, violate
15 Sections 10145, 10146 and 10148 of the Code, and Sections 2831, 2831.1, 2831.2, 2832, 2834
16 and 2972 of the Regulations.

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18 The facts alleged in Paragraph 11, above, are grounds for the suspension or
19 revocation of the license(s) and license rights of MFS under Sections 10177(d) (willful disregard
20 of Real Estate Law) and/or 10177(g) (negligence/incompetence) of the Code. In addition, the
21 Department is entitled to reimbursement for the costs of its audit pursuant to Section 10148(b)
22 (cost of audit in final decision following disciplinary hearing) of the Code.

23 SECOND CAUSE OF ACTION

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25 On or about March 9, 2009, Sandra Alonzo, while in the employ of and
26 representing MFS, doing business as Nationwide Modification Services, entered into a loan
27 modification services contract with Juan F. and Ysabel C. Under the terms of the loan

1 modification services contract, MFS agreed to negotiate a loan modification on behalf of Juan F.
2 and Ysabel C. for their real property located at 4063 Poppy Place, San Diego, California, in
3 exchange for an advance fee payment of \$3,500.00. On or about March 11, 2009, Juan F. and
4 Ysabel C., paid to MFS \$3,500.00 for loan modification services.

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6 After receiving advance fee payments from Juan F. and Ysabel C., MFS failed to
7 obtain a loan modification for them and did not repay the advance fees received from them.
8 MFS's failure to provide the services promised or to refund the funds paid by Juan F. and
9 Ysabel C., constitutes dishonest dealing.

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11 The facts alleged in Paragraphs 14 and 15, above, are grounds for the suspension
12 or revocation of the license(s) and license rights of MFS under Sections 10085 (advance fee
13 agreements and materials), 10085.6 (collection of unauthorized advance fees), 10131.2
14 (collection of advance fees), 10177(d) and/or 10177(g), and 10177(j) (fraud or dishonest dealing)
15 of the Code, and Section 2970 (submission of advance fee materials) of the Regulations.

16 THIRD CAUSE OF ACTION

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18 On or about March 11, 2009, Joel Saul Hernandez, while in the employ of and
19 representing MFS, doing business as Nationwide Modification Services, entered into a loan
20 modification services contract with Juan G., Adriana M., and Zoilo S. Under the terms of the
21 loan modification services contract, MFS agreed to negotiate a loan modification on behalf of
22 Juan G., Ysabel C., and Zoilo S. for their real property located at 2274 Montemar Avenue,
23 Escondido, California, in exchange for an advance fee payment of \$3,000.00. On or about
24 March 12, 2009, Juan G., Adriana M., and Zoilo S. paid \$1,500.00 in advance fees to MFS as
25 partial payment for loan modification services. On or about June 8, 2009, Juan G., Adriana M.,
26 and Zoilo S., paid the remaining advance fees of \$1,500.00 to MFS for loan modification services.

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After receiving advance fee payments from Juan G., Adriana M., and Zoilo S., MFS failed to obtain a loan modification for them and did not repay the advance fees received from them. MFS's failure to provide the services promised or to refund the funds paid by Juan G., Adriana M., and Zoilo S., constitutes dishonest dealing.

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The facts alleged in Paragraphs 17 and 18, above, are grounds for the suspension or revocation of the license(s) and license rights of MFS under Sections 10085, 10085.6, 10131.2, 10177(d) and/or 10177(g), and 10177(j) of the Code, and Section 2970 of the Regulations.

FOURTH CAUSE OF ACTION

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In connection with the collection and handling of advance fees as alleged in Paragraphs 13 through 18, above, MFS failed to submit the advance fee contract and all materials used in obtaining those advance fees to the Department for approval, prior to their use in obtaining the advance fees.

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The acts and/or omissions of MFS as alleged in Paragraph 19, above, violate Sections 10085.5, 10085.6 and 10177(d) in conjunction with Section 10085 of the Code, and Section 2970 of the Regulations.

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The facts alleged in Paragraph 20, above, are grounds for the suspension or revocation of MFS's license(s) and license rights under Sections 10177(d) and/or 10177(g) of the Code.

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The facts alleged in Paragraphs 26 and 27, above, are grounds for the suspension or revocation of McMANUS's license(s) and license rights under Sections 10177(d) and/or 10177(g) of the Code.

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The acts and/or omissions by MFS as alleged in Paragraphs 26 and 27, above, violate Section 10137 (payment of compensation to salesperson not employed under broker's license) of the Code.

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The facts alleged in Paragraphs 26 and 27, above, are grounds for the suspension or revocation of MFS's license(s) and license rights under Sections 10177(d) and/or 10177(g) of the Code.

SEVENTH CAUSE OF ACTION

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The Broker-Salesman Relationship Agreement between MFS and the following real estate salespersons employed by MFS failed to address material aspects of their relationship related to supervision of activities by KISLING:

- Philip Mitchell Anderson
- Christopher Filasky
- Sheryl Ann Alvarado

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The acts and/or omissions of MFS as alleged in Paragraph 32, above, violate Section 2726 (Required contents of broker-salesperson relationship agreements) of the Regulations.

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The facts alleged in Paragraph 32, above, are grounds for the suspension or revocation of KISLING's license(s) and license rights under Sections 10177(d) and/or 10177(g) of the Code.

EIGHTH CAUSE OF ACTION

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MFS failed to maintain possession of the original real estate salesperson license certificates for Jamie Ramona Ohlsen and Greg Weber.

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The acts and/or omissions of MFS as alleged in Paragraph 35, above, violate Section 10160 (possession/inspection of salesperson license) of the Code and Section 2753 (retention of real estate salesperson license by broker) of the Regulations.

37

The facts alleged in Paragraph 35, above, are grounds for the suspension or revocation of MFS's license(s) and license rights under Sections 10177(d) and/or 10177(g) of the Code.

NINTH CAUSE OF ACTION

38

In or about March 2010, MFS solicited Debra F. by mail offering to provide Debra F. with mortgage loan services for her real property located at 14451 Broadway, Whittier, California. At the time, Debra F.'s mortgage on her property was with First US Community Credit Union. Although MFS was not affiliated in any way with First US Community Credit Union, the mailing it sent to Debra F. referenced both First US Community Credit Union and Debra F.'s loan with that company. Nowhere in the solicitation was any language indicating otherwise. In addition, the solicitation listed MFS's dba of "Millennium Financial Systems" at the bottom of the page. The form and content of the letter clearly gave the appearance that

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1 Millennium Financial Systems was connected with First US Community Credit Union in some
2 fashion.

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4 In or about early 2012, MFS solicited Joseph P. by mail on two separate occasions
5 offering to provide Joseph P. with mortgage loan services for his real property located at 3021
6 Paulcrest Drive, Los Angeles, California. At the time, Joseph P.'s mortgage on his property was
7 with First Entertainment Credit Union. Although MFS was not affiliated in any way with First
8 Entertainment Credit Union, the mailings it sent to Joseph P. referenced both First Entertainment
9 Credit Union and Joseph P.'s loan with that company. Nowhere in the solicitation was any
10 language indicating otherwise. In addition, the solicitations listed MFS's dba of "Millennium
11 Financial Systems" at the bottom of the page. The form and content of the letters clearly gave
12 the appearance that Millennium Financial Systems was connected with First Entertainment
13 Credit Union in some fashion.

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15 The acts and/or omissions of MFS as alleged in Paragraphs 38 and 39, above,
16 violate Section 10140 (false advertising) and 10235 (misleading advertising) of the Code, and
17 Section 2848 (advertising criteria) of the Regulations.

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19 The facts alleged in Paragraphs 38 and 39, above, are grounds for the
20 suspension or revocation of MFS's license(s) and license rights under Sections 10176(i) (fraud
21 or dishonest dealing), 10177(d) and/or 10177(g) of the Code.

22 TENTH CAUSE OF ACTION

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24 On or about October 13, 2012, MFS solicited Joseph P. by mail on two separate
25 occasions offering to provide Jon L. with mortgage loan services for his real property located at 5
26 Hutton Circle Drive, Santa Ana, California. At the time, Jon L.'s mortgage on his property was
27 with Central Mortgage. Although MFS was not affiliated in any way with Central Mortgage, the

1 mailings it sent to Jon L. referenced both Central Mortgage and Jon L.'s loan with that company.
2 Nowhere in the solicitation was any language indicating otherwise. In addition, the solicitations
3 listed MFS's dba of "Millennium Financial Systems" at the bottom of the page. The form and
4 content of the letters clearly gave the appearance that Millennium Financial Systems was
5 connected with Central Mortgage in some fashion.

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7 The acts and/or omissions of MFS as alleged in Paragraph 42, above, violate
8 Sections 10140, 10140.6 (disclosure of license status in advertising), 10235, 10235.5 (license
9 disclosure in advertising) and 10236.4 (disclosure of license number in advertising) of the
10 Code, and Section 2848 of the Regulations.

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12 The facts alleged in Paragraph 42, above, are grounds for the suspension or
13 revocation of MFS's license(s) and license rights under Sections 10177(d) and/or 10177(g) of
14 the Code.

15 ELEVENTH CAUSE OF ACTION

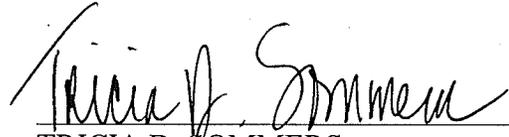
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17 At all times relevant herein, KISLING was responsible, as the designated
18 broker/officer for MFS, for the supervision and control of the activities conducted on behalf of
19 the corporation by its officers and employees. KISLING failed to exercise reasonable
20 supervision and control over the property mortgage loan brokering activities of MFS. In
21 particular, KISLING permitted, ratified and/or caused the conduct described in the First through
22 Tenth Causes of Action, above, to occur, and failed to take reasonable steps, including, but not
23 limited to, the supervision of employees and the implementation of policies, rules, procedures
24 and systems to ensure the compliance of the corporation with the Real Estate Law and the
25 Regulations.

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation, and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all licenses and license rights of Respondents under the Code, for the reasonable
4 cost of investigation and prosecution of this case, including agency attorney's fees, and for such
5 other and further relief as may be proper under applicable provisions of law.

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8 TRICIA D. SOMMERS
9 Deputy Real Estate Commissioner

10 Dated at Sacramento, California,
11 this 19th day of March, 2013.