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**FILED**

JUN 28 2016

BUREAU OF REAL ESTATE

By *[Signature]*

8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 VERTICAL REAL ESTATE SERVICES, INC. ; ) No. H-04807 SD  
13 ROSSANA PESTANA, individually )  
14 and as former designated officer of Vertical )  
15 Real Estate Services, Inc.; and )  
16 JOHNATHAN MICHAEL PURDY, individually )  
17 and as designated officer of Vertical )  
18 Real Estate Services, Inc., )  
19 Respondents. )

20 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the  
21 State of California, for cause of Accusation against VERTICAL REAL ESTATE SERVICES,  
22 INC.; ROSSANA PESTANA, individually and as former designated officer of Vertical Real  
23 Estate Services, Inc.; and JOHNATHAN MICHAEL PURDY, individually and as designated  
24 officer of Vertical Real Estate Services, Inc., alleges as follows:

25 1.

26 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the

1 State of California, makes this Accusation in her official capacity.

2 2.

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

5 LICENSE HISTORY

6 3.

7 Respondent VERTICAL REAL ESTATE SERVICES, INC. ("VRESI") is  
8 presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the  
9 Code) as a corporation, real estate broker license ID 01967295. Respondent VRESI was  
10 originally licensed by the Bureau of Real Estate (hereinafter "Bureau" or "BRE") on or about  
11 November 12, 2014. Respondent VRESI's current main office and mailing address of record are  
12 the same: 27372 Calle Arroyo, San Juan Capistrano, CA 92675 ("SJC office" or "main office");  
13 this SJC office address has been marked as unreliable by the Bureau since March 2, 2016.  
14 VRESI maintains no DBAs and has three branch offices: (1) 24619 Washington Ave., Ste. 201,  
15 Murrieta, CA 92563 ("Murrieta office"); (2) 11681 Sterling Ave., Unit 1, Riverside, CA 92501  
16 ("Riverside office"); and (3) 512 Via De LA Valle, Ste. 308, Solana Beach, CA 92075 ("Solana  
17 Beach office"). As of June 14, 2016, VRESI employs twelve (12) real estate salespersons.  
18 VRESI was audited by the Bureau for the examination period beginning on November 12, 2014  
19 and ending on August 31, 2015 ("audit examination period").

20 4.

21 Respondent ROSSANA PESTANA ("PESTANA") is presently licensed and/or  
22 has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a real estate  
23 broker ("REB"), license ID 01295924. Respondent PESTANA was originally licensed by the  
24 Bureau (then "Department of Real Estate") as a salesperson on March 3, 2001. Respondent  
25  
26  
27

1 PESTANA was the designated officer (“D.O.”) of record for VRESI from November 12, 2014  
2 until April 17, 2015.

3 5.

4 Respondent JOHNATHAN MICHAEL PURDY (“PURDY”) is presently licensed  
5 and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a REB,  
6 license ID 01845172. Respondent PURDY was originally licensed by the Bureau as a  
7 salesperson on May 15, 2008. Respondent PURDY is the D.O. of record for VRESI until  
8 November 11, 2018.

9 6.

10 Kent Charles Forsythe (“Forsythe”) was licensed by the Bureau as a REB, license  
11 ID 01096430. Forsythe was the branch manager for VRESI’s Riverside branch office during the  
12 audit examination period. On or about February 20, 2014, in BRE Case No. H-04590 SD, a  
13 Desist & Refrain Order was issued against Kent Charles Forsythe, doing business as Superior  
14 Property Management, and Superior Property<sup>1</sup>; on or about December 29, 2015, in BRE Case  
15 No. H-39364 LA, Forsythe’s real estate broker license was revoked, with a right to apply for a  
16 restricted real estate salesperson license. Forsythe is not presently licensed by the Bureau in any  
17 capacity.

18 7.

19 John Joseph Kralik (“Kralik”) was licensed by the Bureau as a real estate  
20 salesperson, license ID 01504128. On or about March 27, 2014, Kralik’s real estate salesperson  
21 license was revoked in BRE Case No. H-38918 LA. Kralik is not presently licensed by the  
22 Bureau in any capacity.

23 \_\_\_\_\_  
24 <sup>1</sup> Desist & Refrain Order H-04590 SD alleged, among other violations, that Forsythe: (1) permitted, allowed or  
25 caused the disbursement of trust funds where the disbursement reduced the total aggregate funds in the trust account  
26 to an amount which was \$341,056.75 less than the existing aggregate trust fund liability to every principal who was  
27 an owner of said funds, without first obtaining prior written consent of the owners of said funds (shortage, violation of  
Code Section 10145 and Regulation 2832.1) and (2) converted \$75,316.36 in trust funds (violation of Code Section  
10145, 10176(i) and/or 10177(j)).

1 8.

2 Jeffrey Mark Pinter ("Pinter") was licensed by the Bureau as a real estate  
3 salesperson, license ID 01176266. Pinter's real estate salesperson license expired on April 18,  
4 2007. Pinter is not presently licensed by the Bureau in any capacity.

5 BROKERAGE

6 9.

7 At all times mentioned in California, Respondent VRESI acted as a real estate  
8 broker, and ordered, caused, authorized or participated in licensed activities within the meaning  
9 of: (1) Code Section 10131(a), by selling or offering to sell, buying or offering to buy, soliciting  
10 prospective sellers or purchasers of, soliciting or obtaining listings of, or negotiating the  
11 purchase, sale or exchange of real property or a business opportunity ("real estate sales") and  
12 (2) Code Section 10131(b), by engaging in property management activities, and leasing or  
13 renting or offering to lease or rent, or placing for rent, or soliciting listings of places for rent, or  
14 soliciting for prospective tenants, or negotiating the sale, purchase or exchanges of leases on real  
15 property, or on a business opportunity, or collecting rent from real property, or improvements  
16 thereon, or from business opportunities ("property management").

17 10.

18 According to Respondent PURDY, the corporate structure and ownership of  
19 VRESI are: Pinter (Chief Executive Officer/Chief Financial Officer/Secretary), ninety percent  
20 (90%) ownership; Kralik (Vice-President), ten percent (10%) ownership; and PURDY (Vice-  
21 President), zero percent (0%) ownership.

22 11.

23 According to PURDY, during the audit examination period, VRESI managed  
24 approximately two hundred fourteen (214) properties for one hundred sixty-four (164) property  
25 owners at VRESI's Riverside branch office, and collected approximately \$3.1 million in trust  
26



1 work period”), and the audit was limited to VRESI’s property management activity at its  
2 Riverside office. The audit examination period beginning on November 12, 2014 and ending on  
3 August 31, 2015 spanned the tenures of two (2) D.O.s: (1) ROSSANNA PESTANA from  
4 November 21, 2014 to April 16, 2015, and (2.) JOHNATHAN MICHAEL PURDY, from April  
5 17, 2015 to the present. The final report of December 7, 2015 revealed VRESI’s violations of  
6 the Code and the Regulations as set forth in the following paragraphs, and more fully discussed  
7 in Audit Report SD 150007.

8 Bank Accounts

9 15.

10 During the audit examination period described in Paragraph 14 above,  
11 Respondent VRESI accepted or received funds including funds in trust (“trust funds”) from or on  
12 behalf of actual or prospective parties, including tenants and property owners, and thereafter  
13 made deposits or disbursements of such funds. During the examination period VRESI deposited  
14 and/or maintained said trust funds relating to its real estate activities in nine (9) accounts held at  
15 Plaza Bank and Citizens Business Bank. The BRE Auditor examined these nine accounts:

16 VRESI Trust Account 1 (“T/A 1”) - Riverside branch office

17 \* Account Name: VERTICAL REAL ESTATE SERVICES INC. Superior  
Operating Trust Account

18 \* Bank: Plaza Bank, Irvine, CA 92612

19 \* Account # xxxxxxxx0484

20 \* Signatories: Kent Forsythe (then-REB), Jeff Pintar (unlicensed), John Kralik  
(unlicensed)

21 \* Number of signatures required for withdrawals: one (1)

22 \* Date Opened: 4/1/15

23 T/A 1 was used for receipts and disbursements of trust funds related to property  
management activities at VRESI’s Riverside branch office.

24 VRESI Trust Account 2 (“T/A 2”) - Riverside branch office

25 \* Account Name: VERTICAL REAL ESTATE SERVICES INC. Superior  
Security Deposit Trust Account

26 \* Bank: Plaza Bank, Irvine, CA 92612

- 1 \* Account Name: VERTICAL REAL ESTATE SERVICES INC. Superior  
Security Deposit Trust Account  
2 \* Bank: Plaza Bank, Irvine, CA 92612  
3 \* Account # xxxxxxx4578  
4 \* Signatories: Kent Forsythe (then-REB), Jeff Pintar (unlicensed), John Kralik  
(unlicensed)  
5 \* Number of signatures required for withdrawals: one (1)

6 T/A 2 was used for receipts and disbursements of trust funds related to property  
7 management activities at VRESI's Riverside branch office.

8 VRESI Bank Account 3 ("B/A 3") - Riverside branch office

- 9 \* Account Name: Superior Real Estate Services Inc. DBA Superior Realty DBA  
Superior Property Management  
10 \* Bank: Citizens Business Bank, Corona, CA 92882  
11 \* Account # xxx-xx7765  
12 \* Signatory: Kent Forsythe (then-REB)  
13 \* Number of signatures required for withdrawals: one (1)

14 B/A 3 was used for receipts and disbursements of trust funds related to property  
15 management activities at VRESI's Riverside branch office. On April 3, 2015, the balance of the  
16 security deposit funds was transferred to T/A 2.

17 VRESI Bank Account 4 ("B/A 4") - main San Juan Capistrano ("SJC") office

- 18 \* Account Name: Dhandho Residential Rental Fund, L.P.  
19 \* Bank: Plaza Bank, Irvine, CA 92612  
20 \* Account # xxxxxx8646  
21 \* Signatory: Jeff Pintar (unlicensed)  
22 \* Number of signatures required for withdrawals: one (1)

23 B/A 4 was used for receipts and disbursements of trust funds related to property  
24 management activities at VRESI's main SJC office. B/A 4 was also used for receipts and  
25 disbursements of investors' funds to purchase real estate properties.

26 VRESI Bank Account 5("B/A 5") - main SJC office

- 27 \* Account Name: Dhandho Residential Rental Fund, L.P. Dhandho Security  
Deposit Trust Account  
\* Bank: Plaza Bank, Irvine, CA 92612

1 \* Account # xxxxxx4869

2 \* Signatories: Kent Forsythe (then-REB), Jeff Pintar (unlicensed), John Kralik  
(unlicensed)

3 \* Number of signatures required for withdrawals: one (1)

4 B/A 5 was used for receipts and disbursements of trust funds (security deposits)  
5 related to property management activities at VRESI's main SJC office.

6 VRESI Bank Account 6 ("B/A 6") - main SJC office

7 \* Account Name: Vertical Real Estate Services Inc. (FBO KMPV/Dhandho  
Operating Acct)

8 \* Bank: Plaza Bank, Irvine, CA 92612

9 \* Account # xxxxxx4352

10 \* Signatories: Pintar (unlicensed), Kralik (unlicensed)

11 \* Number of signatures required for withdrawals: one (1)

12 B/A 6 was used for receipts and disbursements of trust funds (rents) related to  
13 property management activities at VRESI's main SJC office. B/A 6 was also used for receipts  
14 and disbursements of investors' funds to purchase real estate properties.

15 VRESI Bank Account 7 ("B/A 7") - main SJC office

16 \* Account Name: Vertical Real Estate Services Inc. (FBO KMPV/Dhandho Trust  
Acct)

17 \* Bank: Plaza Bank, Irvine, CA 92612

18 \* Account # xxxxxx2199

19 \* Signatories: Kent Forsythe (then-REB), Jeff Pintar (unlicensed), John Kralik  
(unlicensed)

20 \* Number of signatures required for withdrawals: one (1)

21 B/A 7 was used for receipts and disbursements of trust funds (security deposits)  
22 related to property management activities at VRESI's main SJC office.

23 VRESI Bank Account 8 ("B/A 8") - main SJC office

24 \* Account Name: Del Prado Investors L.P.

25 \* Bank: Plaza Bank, Irvine, CA 92612

26 \* Account # xxxxxx5027

27 \* Signatories: Pintar (unlicensed)

\* Number of signatures required for withdrawals: one (1)

1 B/A 8 was used for receipts and disbursements of trust funds (rents) related to  
2 property management activities at VRESI's main SJC office. B/A 8 was also used for receipts  
3 and disbursements of investors' funds to purchase real estate properties.

4 VRESI Bank Account 9 ("B/A 9") main SJC office

5 \* Account Name: Del Prado investors L.P. Del Prado Security Deposit Trust  
6 Account

7 \* Bank: Plaza Bank, Irvine, CA 92612

8 \* Account # xxxxxx1670

9 \* Signatories: Kent Forsythe (then-REB), Jeff Pintar (unlicensed), John Kralik  
10 (unlicensed)

11 \* Number of signatures required for withdrawals: one (1)

12 B/A 9 was used for receipts and disbursements of trust funds (security deposits)  
13 related to property management activities at VRESI's main SJC office.

14 Violations of the Real Estate Law

15 16.

16 In the course of activities as described in Paragraph 9, above, and during the  
17 examination period described in Paragraph 14, Respondents acted in violation of the Code and  
18 the Regulations, as described below:

19 **A. Trust Fund Handling - Multiple Beneficiaries (Code Section 10145 and**  
20 **Regulation 2832.1)**

21 1. (D.O. PURDY) According to bank account records provided by VRESI and the  
22 bank reconciliations prepared by the BRE Auditor for T/A 1 and B/A 3 (rents accounts) as of the  
23 cut-off date of August 31, 2015 a combined **shortage** of <\$22,776.33> was discovered that was  
24 attributable to overdrawn property accounts, during a period of time when VRESI was under  
25 PURDY's supervision. Additionally, it was discovered that there were unidentified/unaccounted  
26 for funds totaling \$7,678.63 due to inadequate recordkeeping, VRESI's funds totaling \$1,130.00,  
27

1 and VRESI's commingled fees/commissions totaling \$4,612.88 that were kept for over twenty-  
2 five (25) days in T/A 1 and B/A 3 as of August 31, 2015.

3 a. On or about November 3, 2015, PURDY made a transfer from VRESI's general  
4 business account ending -4410 into T/A 1 in the amount \$22,776.33 to cure the trust fund  
5 shortages in T/A 1 and B/A 3.

6 2. **(D.O. PURDY)** According to bank account records provided by VRESI and the  
7 bank reconciliations prepared by the BRE Auditor for T/A 2 (security deposits accounts) as of the  
8 cut-off date of August 31, 2015 a **shortage** of **<\$5,395.00>** was discovered that was attributable  
9 to overdrawn property accounts, during a period of time when VRESI was under PURDY's  
10 supervision. Additionally, it was discovered that there were unidentified/unaccounted for funds  
11 totaling \$1,875.00 in T/A 2.

12 a. On or about November 3, 2015, PURDY made a transfer from VRESI's  
13 general business account ending -4410 into T/A 2 in the amount \$5,395.00 to cure the trust fund  
14 shortage in T/A 2 and B/A 3.

15 3. **(Former D.O. PESTANA)** According to bank account records provided by  
16 VRESI and the bank reconciliations prepared by the BRE Auditor for T/A 1 and B/A 3 (rents  
17 accounts) as of the cut-off date of April 16, 2015 a combined **shortage** of **<\$7,292.38>** was  
18 discovered that was attributable to overdrawn property accounts, during a period of time when  
19 VRESI was under PESTANA's supervision. Additionally, it was discovered that there were  
20 unidentified/unaccounted for funds totaling \$9,567.41 due to inadequate recordkeeping and  
21 VRESI's funds in T/A 1 and B/A 3 totalling \$253.18 as of Aril 16, 2015.

22 4. **(Former D.O. PESTANA)** According to bank and account records provided by  
23 VRESI and the bank reconciliations prepared by the BRE Auditor for T/A 2 (security deposits  
24 accounts) as of the cut-off date of April 16, 2015, it was discovered that there were  
25  
26  
27

1 unidentified/unaccounted for funds totaling \$3,245.00 in T/A 2as of April 16, 2015, which was  
2 during a period of time when VRESI was under PESTANA's supervision.

3 5. **(D.O. PURDY, Former D.O. PESTANA)** During the audit field examination,  
4 no evidence was discovered that indicated the owners of the trust fund owners gave PURDY  
5 and/or PESTANA written consent to allow them to reduce the balance of funds in T/A 1, T/A 2,  
6 and B/A 3 to an amount less than the aggregate trust fund liabilities of VRESI to all owners of  
7 the funds, a violation of **Code Section 10145 and Regulation 2832.1**.

8 **B. Trust Fund Handling - Records To Be Maintained (Code Section 10145**  
9 **and Regulation 2831)**

10 1. **(D.O. PURDY)** The audit field examination discovered that the control records  
11 maintained for T/A 1 and T/A 2 used for receipts and disbursements of trust funds in connection  
12 with VRESI's property management activity during a period of time when VRESI was under  
13 PURDY's supervision were inaccurate; the control records were maintained in a format that did  
14 not readily enable tracing and reconciliation in accordance with Code Section 2831.2, a violation  
15 of **Code Section 10145 and Regulation 2831**. Some receipts were entered into subaccount 1103  
16 (for undeposited funds) instead of into subaccount 1000 (for operating cash/rents) or subaccount  
17 1005 (for security deposits), examples of which include:

18 Examples during the period of time when VRESI was under PURDY's supervision:

<u>Owner Name</u>	<u>Property</u>	<u>Date</u>	<u>Amount</u>
Ali, Mohsin	37 Via Villario	8/3/15	\$3,300.00
Anvia, Franklin	1020 Marigold Dr.	7/31/15	\$1,475.00
Anvia, Franklin	1020 Marigold Dr.	8/31/15	\$1,475.00
Bakhit, Gabriel	1395 Iverson P.	8/4/15	\$2,000.00
Balogun, Kimberly	1589 Wrentree	8/4/15	\$1,400

1                                    2. (D.O. PURDY, Former D.O. PESTANA) The audit field examination  
 2 discovered that the control records maintained for T/A 1, T/A 2, and B/A 3 used for receipts and  
 3 disbursements of trust funds in connection with VRESI's property management activity during  
 4 periods of time under PESTANA's and PURDY's supervision were incomplete. In some  
 5 instances, the control records were missing information regarding from whom the trust funds  
 6 were received, a violation of **Code Section 10145 and Regulation 2831**, examples of which  
 7 include:

<u>Date</u>	<u>Property</u>	<u>Amount</u>
12/2/14	1589 Wrentree Way	\$1,400.00
12/2/14	1020 Marigold Drive	\$1,425.00
12/3/14	6151 Antioch Ave.	\$1,295.00
12/3/14	1881 Siena Court	\$1,650.00
13 3/2/15	1395 Iverson Place	\$2,000.00
14 3/2/15	3714 Segovia Drive	\$3,050.00
15 3/5/15	7840 Fillipi Court	\$2,050.00
16 3/5/15	14342 Laurel Drive	\$1,500.00
17 7/2/15	5877 Cynthia Street	\$1,600.00
18 7/2/15	19433 Fredonia Court	\$1,770.00
19 7/6/15	1248 Judson Street	\$1,326.00
20 7/6/15	4515 Riverview	\$1,800.00

21                                    **C. Trust Fund Handling - Separate Records for Each Beneficiary or**  
 22 **Transaction (Code Section 10145 and Regulation 2831)**

23                                    1. (D.O. PURDY) The audit field examination discovered that  
 24 the separate records maintained for T/A 1 and T/A 2 used for receipts and disbursements of trust  
 25 funds in connection with VRESI's property management activity during a period of time when  
 26

1 VRESI was under PURDY's supervision were inaccurate; said separate records were maintained  
2 in a format that did not readily enable tracing and reconciliation in accordance with Code Section  
3 2831.2, a violation of **Code Section 10145 and Regulation 2831**. Some receipts were entered  
4 into subaccount 1103 (for undeposited funds) instead of into subaccount 1000 (for operating  
5 cash/rents) or subaccount 1005 (for security deposits), examples of which are cited above in  
6 paragraph 16B.

7 **2. (D.O. PURDY, Former D.O. PESTANA)** The audit field examination  
8 discovered that VRESI failed to maintain separate records for the "unidentified/unaccounted for  
9 funds" held in T/A 1 and B/A 3 (\$7,678.63) and in T/A 2 (\$1,875.00) as of August 31, 2015,  
10 during a period of time when VRESI was under PURDY's supervision, the failure of which is a  
11 violation of **Code Section 10145 and Regulation 2831**. Additionally, it was discovered that  
12 VRESI failed to maintain separate records for the "unidentified/unaccounted for funds" held in  
13 T/A 1 and B/A 3 (\$9,567.41) and T/A 2 (\$3,245.00) as of April 16, 2015, during a period of time  
14 when VRESI was under PESTANA's supervision, the failure of which is a violation of **Code**  
15 **Section 10145 and Regulation 2831**.

16 **D. Trust Fund Handling - Monthly Written Reconciliation for Separate**  
17 **Record Code Section 10145 and Regulation 2831.2**

18 **(D.O. PURDY, Former D.O. PESTANA)** VRESI failed to maintain a monthly  
19 written reconciliation of all the separate records to the control record of all trust funds received  
20 and disbursed for T/A 1, T/A 2 and B/A 3 in connection with the property management activity  
21 during the audit period. VRESI failed to reconcile the "unidentified/unaccounted for funds" held  
22 in T/A 1 and B/A 3 for \$7,678.63 and T/A 2 for \$1,875.00 as of August 31, 2015, during a period  
23 of time when VRESI was under PURDY's supervision, a violation of **Code Section 10145 and**  
24 **Regulation 2831.2**. VRESI also failed to maintain a reconciliation for the  
25 "unidentified/unaccounted for funds" held in T/A 1 and B/A 3 for \$9,567.41 and T/A 2 for  
26  
27

1 \$3,245.00 as of April 16, 2015, during a period of time when VRESI was under PESTANA's  
2 supervision, a violation of **Code Section 10145 and Regulation 2831.2.**

3 **E. Trust Fund Handling -Account Designation Code Section 10145 and**  
4 **Regulation 2832**

5 1. **(D.O. PURDY, Former D.O. PESTANA)** According to the bank signature  
6 card maintained at Citizens Business Bank for VRESI's Riverside branch office bank account  
7 B/A 3, used for trust funds received and disbursed in connection with VRESI's property  
8 management activity, the account was not set up and designated as a trust account, nor was  
9 VRESI named as a trustee on the account, a violation of **Code Section 10145 and Regulation**  
10 **2832.** Instead B/A 3 was set up in the name of "Superior Real Estate Services INC. DBA  
11 Superior Realty DBA Superior Property Management."

12 2. **(D.O. PURDY, Former D.O. PESTANA)** According to the bank signature  
13 card maintained at Plaza Bank for VRESI's main office bank accounts B/A 4 (account no.  
14 xxxxxx-8646) and B/A 5 (account no. xxxxxx-4869), used for trust funds received and disbursed  
15 in connection with VRESI's property management and real estate investments activities, the  
16 accounts were not set up and designated as trust accounts, nor was VRESI named as a trustee on  
17 the account, a violation of **Code Section 10145 and Regulation 2832.** Instead B/A 4 and B/A 5  
18 were set up in the name of "Dhando Residential Rental Fund, L.P."

19 3. **(D.O. PURDY, Former D.O. PESTANA)** According to the bank signature  
20 card maintained at Plaza Bank for VRESI's main office bank account B/A 8 (account no.  
21 xxxxxx-5027) and B/A 9 (account no. xxxxxx-1670), used for trust funds received and disbursed  
22 in connection with VRESI's property management and real estate investments activities, the  
23 accounts were not set up and designated as trust accounts, nor was VRESI named as a trustee on  
24 the account, a violation of **Code Section 10145 and Regulation 2832.** Instead B/A 8 and B/A 9  
25 were set up in the name of "Del Prado Investors L.P."

1                   4. **(D.O. PURDY, Former D.O. PESTANA)** According to the bank signature  
2 card maintained at Plaza Bank for VRESI's main office bank account B/A 6 (account no.  
3 xxxxxx-4352), used for trust funds received and disbursed in connection with VRESI's property  
4 management and real estate investments activities, the account was not set up and designated as a  
5 trust account, a violation of **Code Section 10145 and Regulation 2832.**

6                   **F. Trust Fund Handling - Account Withdrawals (Code Section 10145 and**  
7 **Regulation 2834)**

8                   **(D.O. PURDY, Former D.O. PESTANA)** According to the bank signature cards  
9 maintained at Plaza Bank for T/A 1, T/A 2, B/A 4, B/A 5, B/A 6, B/A 7, B/A 8, and B/A 9,  
10 PESTANA and PURDY: (1) allowed unlicensed employees and VRESI co-owners Pintar and  
11 Kralik to be signers on said accounts without fidelity bond coverage, and (2) themselves were not  
12 signers on said accounts, a violation of **Code Section 10145 and Regulation 2834.**

13                   **G. Trust Fund Handling – Commingling Code Sections 10145 and 10176(e)**  
14 **and Regulations 2835(a) and 2835(b)**

15                   The audit field examination discovered:

16                   1. **(Former D.O. PESTANA)** VRESI kept more than \$200 of its own funds in  
17 T/A 1 and B/A 3. As of April 16, 2015, during a period of time when VRESI was under  
18 PESTANA's supervision, VRESI had a balance of \$253.18 of its own funds in T/A 1 and B/A 3,  
19 in violation of **Code Sections 10145 and 10176(e) and Regulation 2835(a).**

20                   2. **(D.O. PURDY)** As of August 31, 2015, during a period of time when VRESI  
21 was under PURDY's supervision, VRESI kept \$4,612.88 of its own funds (broker's fees) in T/A  
22 1 and B/A 3, in connection with the property management activity, for over twenty-five (25) days  
23 after the deposit, in violation of **Code Sections 10145 and 10176(e) and Regulation 2835(b).**

24                   **H. Appointment of Branch or Division Managers – Failure to Notify Bureau**  
25 **(Code Section 10164)**

1                   **PURDY** and **PESTANA**, as corporate designated broker officers of VRESI,  
2 appointed then-real estate broker Forsythe as a branch manager of VRESI's Riverside branch  
3 office and delegated day-to-day supervision, oversight responsibility and supervision over  
4 clerical staff employed by VRESI, without notifying and submitting a copy of Forsythe's office  
5 management contract to the Bureau, in violation of **Code Section 10164**.

6                   **I. Unlicensed Fictitious Business Names (Code Section 10159.5 and**  
7 **Regulation 2731)**

8                   **(D.O. PURDY, Former D.O. PESTANA)** In connection with its property  
9 management and real estate sales activities during the audit period, VRESI used unlicensed  
10 fictitious business names "Superior Real Estate Services, Inc," and "Superior Real Estate  
11 Services, LLC." VRESI also used the unlicensed fictitious names "Vertical Real Estate,"  
12 "Vertical RE," "Vertical Real Estate Services," and "Vertical Realty" on broker-salesperson  
13 agreements, policy and procedures manuals, business cards, purchase contracts, and listing  
14 agreements. The unlicensed fictitious business names "Superior Real Estate Services, Inc,"  
15 "Superior Real Estate Services, LLC," "Superior Realty," and "Superior Property Management"  
16 were used property management agreements and appeared on bank signature cards and bank  
17 statements. VRESI's use of these fictitious business names without first obtaining a license from  
18 the Bureau bearing such fictitious business names is in violation of **Code Section 10159.5 and**  
19 **Regulation 2731**.

20                   **J. Secret Profit/Undisclosed Compensation Code Section 10176(g) and**  
21 **Regulation 2830**

22                   **(D.O. PURDY, Former D.O. PESTANA)** VRESI was engaged in an earnings  
23 credit relationship with Plaza Bank and Citizens Business Bank wherein VRESI received  
24 earnings credit from trust funds available in T/A 1, T/A 2 and B/A 3 in connection with VRESI's  
25 property management activity, and the earnings credit was maintained to offset bank service  
26

1 charges incurred in T/A 1, T/A 2, and B/A 3, B/A 2, and B/A 3, without written disclosure of  
2 such usage to the owners of the trust funds, in violation of **Code Sections 10176(g) and**  
3 **Regulation 2830.**

4 **K. Responsibility of Corporate Officer/Broker Supervision – Failure to**  
5 **Supervise (Respondents PESTANA and PURDY only) (Code Sections 10159.2 and**  
6 **10177(h) and Regulation 2725, and in conjunction with Code Section 10177(d)**

7 The acts and/or omissions of Respondents PESTANA and PURDY, as described  
8 in Paragraphs 16A. through 16J., above, demonstrate a failure to adequately supervise the  
9 property management activities of VRESI, as conducted by its licensees and employees, to  
10 ensure compliance with the Real Estate Law. Respondents PESTANA and PURDY failed to  
11 establish policies, rules, procedures and systems to review, oversee, inspect and manage VRESI  
12 and its salespersons and employees in their handling of trust funds. Respondents PESTANA and  
13 PURDY failed to maintain accurate, complete control and separate records, and permitted  
14 unlicensed individuals to sign on accounts into which trust funds were deposited and could be  
15 withdrawn, without obtaining fidelity bond coverage, and without authorizing themselves to be  
16 signers on said accounts. These acts and/or failures to act constitute grounds for the suspension  
17 or revocation of the licenses and license rights of Respondents PESTANA and PURDY under the  
18 provisions of **Code Sections 10159.2 and 10177(h) and Regulation 2725, and in conjunction**  
19 **with Code Section 10177(d).**

20 (Negligence and Willful Disregard of the Real Estate Law)

21 17.

22 The overall conduct of Respondents, as described above in Paragraphs 16A.  
23 through 16K., is violative of the Real Estate Law and constitutes cause for the suspension or  
24 revocation of the real estate licenses and license rights of **VRESI, PESTANA and PURDY**  
25 **under the provisions of Code Sections 10177(g) for negligence and 10177(d) for willful**  
26

1 disregard of the Real Estate Law.

2 COSTS

3 18.

4 A. Investigation and Enforcement Costs. Code Section 10106 provides, in  
5 pertinent part, that in any order issued in resolution of a disciplinary proceeding before the  
6 Bureau of Real Estate, the Commissioner may request the administrative law judge to direct a  
7 licensee found to have committed a violation of this part to pay a sum not to exceed the  
8 reasonable costs of the investigation and enforcement of the case.

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

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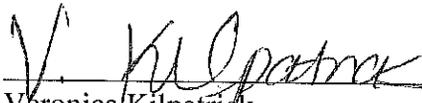
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1                   WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
3 action against the license and license rights of Respondents **VERTICAL REAL ESTATE**  
4 **SERVICES, INC., ROSSANNA PESTANA, and JOHNATHAN MICHAEL PURDY** under  
5 the Real Estate Law (Part 1 of vision 4 of the Business and Professions Code), for the cost of  
6 investigation and enforcement as permitted by law, and for such other and further relief as may  
7 be proper under other provisions of law, and for costs of audit.

8 Dated at San Diego, California

9 this 23<sup>rd</sup> day of June, 2016.

10   
11 Veronica Kilpatrick  
12 Supervising Special Investigator  
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21 cc: Vertical Real Estate Services, Inc.  
22 Rossana Pestana  
23 Johnathan Michael Purdy  
24 Sacto.  
25 Audits – Zaky Wanis  
26  
27