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DEPARTMENT OF REAL ESTATE

By By dea

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10 BEFORE THE DEPARTMENT OF REAL ESTATE
11 STATE OF CALIFORNIA

12 * * *

13 In the Matter of the Accusation of)
14)
15 KEYOPP, INC.;) No. H-12731 SF
16)
17 and)
18) ACCUSATION
19 MELANIE PHAN LEUNG, individually and)
20 as designated officer of KeyOpp, Inc.,)
21 Respondents.)

22 The Complainant, STEPHANIE YEE, a Supervising Special Investigator of the
23 State of California, for cause of Accusation against KEYOPP, INC. and MELANIE PHAN
24 LEUNG (collectively referred to as “Respondents”), is informed and alleges as follows:

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26 The Complainant, STEPHANIE YEE, a Supervising Special Investigator of the
27 State of California, makes this Accusation in her official capacity.

PRELIMINARY ALLEGATIONS

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3 Respondents are presently licensed and/or have license rights under the Real
4 Estate Law, Part 1 of Division 4 of the Business and Professions Code (“Code”).

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At all times after January 18, 2022, Respondent KEYOPP, INC. (“KI”) was and is licensed by the Department as a real estate broker corporation, License ID 02167546. On or about January 18, 2022, KI was licensed by the Department as a real estate broker corporation. Unless renewed, KI’s corporate broker license will expire January 17, 2026.

At all times mentioned, MELANIE PHAN LEUNG (“LEUNG”) was and is licensed by the Department as the designated broker officer of KI. As designated officer-broker, LEUNG is responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of KI for which a license is required.

At all times after February 17, 2022, KI was and is licensed to do business under the fictitious business names KeyOpp Investments, and KeyOpp Property Management.

At all times mentioned, Respondent LEUNG was and is licensed by the Department individually as a real estate broker, License ID 01797490. LEUNG was licensed as a real estate salesperson on March 5, 2007, and as a broker on October 5, 2007. Unless renewed, LEUNG’s broker license will expire October 4, 2027.

LEUNG is also licensed by the Department as the designated broker officer of KI.

Whenever reference is made in an allegation in this Accusation to an act or omission of KI, such allegation shall be deemed to mean that the officers, directors, employees, agents, and real estate licensees employed by or associated with KI committed such acts or omissions while engaged in furtherance of the business or operation of KI and while acting within the course and scope of their corporate authority and employment.

At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California

1 within the meaning of Section 10131(b) of the Code, including the operation and conduct of a
2 property management business with the public wherein, on behalf of others, for compensation or
3 in expectation of compensation, Respondents leased or rented and offered to lease or rent, and
4 solicited for prospective tenants of real property or improvements thereon, and collected rents
5 from real property or improvements thereon.

6 Respondents managed approximately 155 one-to-four-unit family residences,
7 thirty-eight (38) apartment complexes and four (4) mixed-use buildings for approximately two
8 hundred and twenty-six (226) owners. Respondents collected approximately \$9,240,320 in trust
9 funds annually.

10 Respondents' property management services include, but were not limited to,
11 collecting rents and security deposits for real property and responsibility for repairs and
12 maintenance. For such property management services, Respondents charged a management fee
13 of 6 percent of collected rents. Respondents also charged a lease execution fee of 50 to 100
14 percent of the 1st month's rent.

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16 While acting as a real estate broker as described in Paragraph 6, Respondents
17 accepted or received funds in trust ("trust funds") from or on behalf of owners and tenants in
18 connection with the leasing, renting, and collection of rents on real property or improvements
19 thereon, as alleged herein, and thereafter from time-to-time made disbursements of said trust
20 funds.

21 The trust funds accepted or received by Respondents were deposited or caused to
22 be deposited by Respondents into accounts which were maintained by Respondents for the
23 handling of trust funds, and thereafter from time-to-time Respondents made disbursements of
24 said trust funds, identified as follows:

BANK ACCOUNT # 1	
Bank Name and Location:	Bank of America P.O. Box 15284

	Wilmington, DE 19850
Account No.:	XXXXXXXXX5609
Account Name:	KeyOpp, LLC DBA KeyOpp Property Management
Signatories:	Lawrence K. Leung LEUNG
Purpose:	Bank Account #1 was opened in Sept. 2017 and was used as the primary rent operation account for LEUNG's property management activities. LEUNG continued to use Bank Account #1 as the primary rent operation account for KI's property management activities.

BANK ACCOUNT # 2	
Bank Name and Location:	Bank of America P.O. Box 15284 Wilmington, DE 19850
Account No.:	XXXXXXXXX7857
Account Name:	Melanie Leung Leung Real Estate Services, LLC Trust Account
Signatories:	Lawrence K. Leung LEUNG
Purpose:	Bank Account #2 was opened in 2009 for LEUNG's property management activities. LEUNG continued to use Bank Account #2 for rents remitted by San Francisco Housing Authority for LEUNG's and KI's property management activities. Bank Account #2 became inactive in April 2022.

BANK ACCOUNT # 3	
Bank Name and Location:	Bank of America P.O. Box 15284 Wilmington, DE 19850
Account No.:	XXXXXXXXX9941
Account Name:	KeyOpp Inc. DBA KeyOpp Property Management
Signatories:	Lawrence K. Leung
Purpose:	Bank Account #3 was opened in February 2020 for LEUNG's property management activities. Bank Account #3 was used by LEUNG as a primary rent operation account from January 2021 through May 2021 and subsequently became inactive in May 2021.

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1 AUDIT OK22-0024

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3 On or about February 13, 2023, the Department completed its audit (OK22-0024)
4 of the books and records of KI's property management activities described in Paragraph 6. The
5 auditor herein examined KI's records for the period of January 18, 2022, through July 31, 2022.

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7 In the course of the property management activities described in Paragraph 6, and
8 during the audit examination period described in Paragraph 8, Respondents violated the Code
9 and Title 10, Chapter 6, California Code of Regulations ("Regulations") described below:

10 Trust Account Accountability and Balances

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12 (Bank Account #1)

13 Based on the records provided during the audit, a bank reconciliation for Bank
14 Account #1 was prepared as of July 31, 2022. The adjusted bank balance of Bank Account #1 as
15 of July 31, 2022, was compared to the beneficiaries' accountability for Bank Account #1 as of
16 July 31, 2022.

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18 Adjusted Bank Balance	\$1,032,580.79
19 Accountability	<u>\$1,350,895.86</u>
20 Trust Fund Shortage	<u>(\$318,315.07)</u>

21 A shortage of \$318,315.07 was found in Bank Account #1 as of July 31, 2022.
22 \$234,237.16 of the shortage was caused by negative balances in thirty-four (34) owner ledgers.
23 \$84,077.90 of the shortage was caused by deposited/transfers into KI's general accounts instead
24 of Bank Account #1. The cause of the remaining shortage, \$0.01, was caused by a bookkeeping
25 error.

26 Respondents provided no evidence that the owners of the trust funds had given
27 their written consent to allow Respondents to reduce the balance of the funds in Bank Account

1 #1 to an amount less than the existing aggregate trust fund liabilities, in violation of Section
2 10145 of the Code and Section 2832.1 the Regulations.

3 11

4 (Bank Account #2)

5 Based on the records provided during the audit, a bank reconciliation for Bank
6 Account #2 was prepared as of July 31, 2022. The adjusted bank balance of Bank Account #2 as
7 of July 31, 2022, was compared to the beneficiaries' accountability for Bank Account #2 as of
8 July 31, 2022.

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10	Adjusted Bank Balance	\$14,861.00
11	Accountability	<u>\$87,421.76</u>
12	Trust Fund Shortage	<u>(\$72,560.76)</u>

13 A shortage of \$72,560.76 was found in Bank Account #2 as of July 31, 2022. The
14 cause of the shortage was negative balances in eleven (11) owner ledgers.

15 Respondents provided no evidence that the owners of the trust funds had given
16 their written consent to allow Respondents to reduce the balance of the funds in Bank Account
17 #2 to an amount less than the existing aggregate trust fund liabilities, in violation of Section
18 10145 of the Code and Section 2832.1 the Regulations.

19 Trust Account Designation

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21 During the audit period, Bank Account #1 and Bank Account #2, accounts used to
22 hold trust funds, were not designated as a trust account in the name of the broker or the broker's
23 fictitious business name as trustee, in violation of Section 10145 of the Code and Section 2832 of
24 the Regulations.

25 Bank Account #1 was titled in the name of "KeyOpp, LLC", an entity owned by
26 KI. Though Bank Account #2 was designated as a trust account, it was titled in the name of
27 "Melanie Leung/Leung Real Estate Services, LLC."

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Trust Account Signatory

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Respondents caused, permitted, and/or allowed, the possible withdrawal of trust funds from Bank Account #1 and/or Bank Account #2, by Lawrence Leung, a salesperson whose license was expired from May 22, 2022, to October 18, 2022. No evidence of a fidelity bond or insurance was provided in violation of Section 10145 of the Code and Section 2834 of the Regulations.

AUDIT OK22-0045

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On or about February 13, 2023, the Department completed its audit (OK22-0045) of the books and records of LEUNG's property management activities described in Paragraph 6. The auditor herein examined the records for the period of January 1, 2021, through January 17, 2022. Prior to January 18, 2022, LEUNG performed property management activities under her individual real estate broker license using the name "Leung Real Estate Services LLC"

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In the course of the property management activities described in Paragraph 6, and during the audit examination period described in Paragraph 14, LEUNG violated the Code and Regulations described below:

Trust Account Designation

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During the audit period, Bank Account #1 and Bank Account #2, accounts used to hold trust funds, were not designated as a trust account in the name of the broker or the broker's fictitious business name as trustee, in violation of Section 10145 of the Code and Section 2832 of the Regulations.

Bank Account #1 was titled in the name of "KeyOpp, LLC", an entity owned by KI. Though Bank Account #2 was designated as a trust account, it was titled in the name of

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1 “Melanie Leung/Leung Real Estate Services, LLC.” Bank Account #3 was titled in the name of
2 “KeyOpp Inc. dba KeyOpp Property Management.”

3 Trust Account Reconciliation

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5 LEUNG failed to reconcile the balance of separate beneficiary or transaction
6 records with the control record of trust funds received and disbursed at least once a month for
7 Bank Account #3, and/or failed to maintain a record of such reconciliations for Bank Account #3
8 holding trust funds as required by Section 2831.2 of the Regulations.

9 Unlicensed Fictitious Business Name

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11 LEUNG failed to obtain a real estate license bearing the fictitious business names
12 “KeyOpp Property Management,” while conducting activities during the audit period, for which
13 a license was required, in violation of Section 10159.5 of the Code and Section 2731 of the
14 Regulations.

15 COMMINGLING

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17 Respondents commingled with Respondents’ own money or property, the money
18 or property of others which was received or held by Respondents in trust in violation of Section
19 10176(e) of the Code.

20 Respondents failed to deposit trust funds collected into trust accounts for
21 Respondents’ property management activities. A review of KI’s reconciliation records of July
22 2022 showed that in two instances KI had deposited trust funds into KI’s general accounts
23 maintained by KI or KI’s affiliated entity. The deposits were as follows:

<u>Date</u>	<u>Amount</u>	<u>Account</u>
4/2/2021	\$5,044.00	KeyOpp, LLC Acct #8733
3/7/2022	\$52,541.77	KeyOpp, Inc. Acct #2786

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1 The two instances described above showed that trust funds deposited were still maintained in KI
2 business accounts as of the reconciliation cutoff of July 31, 2022.

3 FAILURE TO SUPERVISE

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5 Respondent LEUNG failed to exercise reasonable supervision over the acts of
6 Respondents' employees, agents and others acting on Respondents' behalf. LEUNG permitted,
7 ratified, and/or caused the conduct described above, to occur, and failed to take reasonable steps,
8 including but not limited to the handling of trust funds, supervision of employees, and the
9 implementation of policies, rules, procedures, and systems to ensure the compliance of the
10 corporation with the Real Estate Law and the Regulations.

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12 The acts and/or omissions of LEUNG as described in Paragraph 19, constitute
13 failure on the part of LEUNG to exercise reasonable supervision and control over the licensed
14 activities of KI and/or LEUNG's employees, agents and others acting on LEUNG's behalf as
15 required by Section 10159.2 of the Code and Section 2725 of the Regulations.

16 GROUND FOR DISCIPLINE

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18 The acts and/or omissions of Respondents, as alleged above, constitute grounds
19 for the suspension or revocation of all licenses and license rights of Respondents, pursuant to the
20 following provisions of the Code and Regulations:

21 As to Paragraphs 10 and 11, under Sections 10177(d) and/or 10177(g) of the
22 Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations.

23 As to Paragraph 12, under Sections 10177(d) and/or 10177(g) of the Code in
24 conjunction with Section 10145 of the Code and Section 2832 of the Regulations.

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1 As to Paragraph 13, under Sections 10177(d) and/or 10177(g) of the Code in
2 conjunction with Section 10145 of the Code and Section 2834 of the Regulations.

3 As to Paragraph 19, under Section 10176(e) of the Code.

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5 The acts and/or omissions of LEUNG, as alleged above, constitute grounds for the
6 suspension or revocation of all licenses and license rights of LEUNG, pursuant to the following
7 provisions of the Code and Regulations:

8 As to Paragraph 16, under Sections 10177(d) and/or 10177(g) of the Code in
9 conjunction with Section 10145 of the Code and Section 2832 of the Regulations.

10 As to Paragraph 17, under Sections 10177(d) and/or 10177(g) of the Code in
11 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations.

12 As to Paragraph 18, under Sections 10177(d) and/or 10177(g) of the Code in
13 conjunction with Section 10159.5 of the Code and Section 2731 of the Regulations.

14 As to Paragraphs 20 and 21, under Sections 10177(g) and/or 10177(h) of the
15 Code, and Section 10159.2 of the Code in conjunction with Section 10177(d) of the Code.

16 COST RECOVERY

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18 The acts and/or omissions of Respondents as alleged above, entitle the
19 Department to reimbursement of the costs of its audit pursuant to Section 10148(b) of the Code.

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

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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 cost of
4 investigation and enforcement as permitted by law, for the costs of the audit, and for such other
5 and further relief as may be proper under the provisions of law.



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7 STEPHANIE YEE
8 Supervising Special Investigator

9 Dated at Oakland, California,
10 this 31st day of May, 2024

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12 DISCOVERY DEMAND

13 Pursuant to Sections 11507.6, *et seq.* of the *Government Code*, the Department of
14 Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in the
15 *Administrative Procedure Act*. Failure to provide Discovery to the Department of Real Estate
16 may result in the exclusion of witnesses and documents at the hearing or other sanctions that the
17 Office of Administrative Hearings deems appropriate.

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