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FILED

NOV 29 2018

DEPT. OF REAL ESTATE

By *Myra A. ...*

8 **BEFORE THE DEPARTMENT OF REAL ESTATE**

9 **STATE OF CALIFORNIA**

10 * * *

11 In the Matter of the Accusation of)

No. H-41226 LA

12)
13 BEATRIX ELIZABETH WHIPPLE, and)

ACCUSATION

14 JENNIFER DYKEMA,)

15)
16)
17 Respondents.)

18 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the
19 State of California, for cause of Accusation against BEATRIX ELIZABETH WHIPPLE and
20 JENNIFER DYKEMA, alleges as follows:

21 1.

22 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the
23 State of California, makes this Accusation in her official capacity.

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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.

RESPONDENTS

3.

BEATRIX ELIZABETH WHIPPLE

A. Respondent BEATRIX ELIZABETH WHIPPLE ("WHIPPLE") 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 salesperson ("RES"), DRE License ID 01355505.

B. According to DRE records to date, WHIPPLE's employing real estate broker ("REB") of record is Forward Management Long Beach, Inc. ("FMLBI"), DRE License ID 01917184.

C. WHIPPLE's RES license will expire on October 16, 2022.

D. On or about March 30, 2015, a corporation named The Whipple Group ("TWG") filed its Articles of Incorporation of a General Stock Corporation with the SOS. TWG has on file with the SOS two (2) SI, filed April 10, 2015 and March 2, 2016.

1. According to the April 10, 2016 SI, TWG is a real estate business whose principal place of business is 401 Pine Avenue, Long Beach, CA 90802 and its only officer and director is WHIPPLE. Legalzoom.com, Inc. was its agent for service of process and Cheyenne Mosely, Authorized Rep. submitted the SI on April 10, 2015.

2. According to the March 2, 2016 SI, TWG's principal place of business was revised to FMLBI's address at 2883 E. Spring St., Long Beach, CA 90806; all other information remained the same.

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1 4.

2 JENNIFER DYKEMA

3 A. Respondent JENNIFER DYKEMA (“DYKEMA”) is presently licensed and/or
4 has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a RES, DRE
5 License ID 01937229.

6 B. According to DRE records to date, DYKEMA’s employing REB of record is
7 FMLBI.

8 C. DYKEMA’s RES license will expire on October 16, 2022.

9 APPLICABLE SECTIONS OF THE REAL ESTATE LAW

10 License Required - Code Sections 10130, 10131, and 10132

11 5.

12 Pursuant to Code Section 10130 *License Required:*

13 “It is unlawful for any person to engage in the business of, act in the capacity of,
14 advertise as, or assume to act as a real estate broker or a real estate salesperson within this state
15 without first obtaining a real estate license from the department, or to engage in the business of,
16 act in the capacity of, advertise as, or assume to act as a mortgage loan originator within this state
17 without having obtained a license endorsement. The commissioner may prefer a complaint for
18 violation of this section before any court of competent jurisdiction, and the commissioner and his
19 or her counsel, deputies, or assistants, may assist in presenting the law or facts at the trial.

20 *Prosecution of Violations:* It is the duty of the district attorney of each county in this state to
21 prosecute all violations of this section in their respective counties in which the violations occur.”

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1 6.

2 Pursuant to Code Section 10131 *Broker Defined*:

3 "A real estate broker within this meaning of this part is a person who, for a
4 compensation or in expectation of a compensation, regardless of the form or time of payment,
5 does or negotiates to do one or more of the following acts for another or others:

6 (a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or
7 purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or
8 exchange of real property or a business opportunity.

9 (b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings
10 of places for rent, or solicits for prospective tenants, or negotiates the sale,
11 purchase or exchanges of leases o real property, or on a business opportunity, or
12 collects rents from real property, or improvements thereon, or from business
13 opportunities.

14 (c) Assists or offers to assist in filing an application for the purchase or lease of,
15 or in locating or entering upon, lands owned by the state or federal government.

16 (d) Solicits borrowers or lenders for or negotiates loans or collects payments or
17 performs services for borrowers or lenders or note owners in connection with
18 loans secured directly or collaterally by liens on real property or on a business
19 opportunity.

20 (e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange
21 a real property sales contract, or a promissory note secured directly or collaterally
22 by a lien on real property or on a business opportunity, and performs services for
23 the holders thereof."

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1 7.

2 Pursuant to Code Section 10132 *Salesperson Defined*:

3 "A real estate salesperson within the meaning of this part is a natural person who,
4 for a compensation or in expectation of a compensation, is employed by a licensed real estate
5 broker to do one or more of the acts set forth in Sections 10131, 10131.1, 10131.2, 10131.3,
6 10131.4, and 10131.6."

7 **Unlawful Employment or Payment of Compensation - Code Section 10137**

8 8.

9 Pursuant to Code Section 10137 *Unlawful Employment or Payment of*
10 *Compensation – Penalty*:

11 "It is unlawful for any licensed real estate broker to employ or compensate,
12 directly or indirectly, any person for performing any of the acts within the scope of this chapter
13 who is not a license real estate broker, or a real estate salesperson licensed under the broker
14 employing or compensating him or her, or to employ or compensate, directly or indirectly, any
15 licensee for engaging in any activity for which a mortgage loan originator license endorsement is
16 required, if that licensee does not hold a mortgage loan originator license endorsement; provided,
17 however, that a licensed real estate broker may pay a commission to a broker of another state.
18 No real estate salesperson shall be employed by or accept compensation for activity requiring a
19 real estate license from any person other than the broker under whom he or she is at the time
20 licensed. It is unlawful for any licensed real estate salesperson to pay any compensation for
21 performing any of the acts within the scope of this chapter to any real estate licensee except
22 through the broker under whom he or she is at the time licensed. For a violation of any of the
23 provisions of this section, the commissioner may temporarily suspend or permanently revoke the
24 license of the real estate licensee, in accordance with the provisions of this part relating to
25 hearings."

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Trust Fund Handling –

**Code Section 10145 and Regulations 2831, 2831.1, 2831.2, 2832, 2832.1, 2834, 2835, 2950
and 2951**

9.

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

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

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

- (A) A real estate salesperson licensed to the broker.
- (B) Another broker acting pursuant to a written agreement with the individual broker that conforms to the requirements of this part and any regulations promulgated pursuant to this part.
- (C) An unlicensed employee of the individual broker, if the broker has fidelity bond coverage equal to at least the maximum amount of the trust funds to which the unlicensed employee has access at any time. For purposes of this section, bonds providing coverage may be written with a deductible of up to 5 percent of the coverage amount. For bonds with a

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deductible, the employing broker shall have evidence of financial responsibility that is sufficient to protect members of the public against a loss subject to the deductible amount.

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

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

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

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

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

...

(4)(b) A real estate broker acting as a principal pursuant to Section 10131.1¹ shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow

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

1 depository unless delivery of the contract or notes is made simultaneously with the receipt of the
2 purchase funds.

3 . . .
4 (4)(g) The broker shall maintain a separate record of the receipt and disposition
5 of all funds described in subdivisions (a) and (b), including any interest earned on the funds...”

6 10.

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

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

12 (1) Date trust funds received.

13 (2) From whom trust funds received.

14 (3) Amount received.

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

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

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

20 (7) Daily balance of said account.

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

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

5 (d) Nothing in this section shall be construed to permit a violation of Section
6 10145 of the Code.

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

14 11.

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

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

- 22 (1) Date of deposit.
- 23 (2) Amount of deposit.
- 24 (3) Date of each related disbursement.
- 25 (4) Check number of each related disbursement.

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(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.”

12.

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.”

13.

Pursuant to Regulation 2832 *Trust Fund Handling:*

“(a) Compliance with Section 10145 of the Code requires that the broker place funds accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious name if

1 the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other
2 financial institution not later than three business days following receipt of the funds by the broker
3 or by the broker's salesperson.

4 (b) Except as expressly provided by subdivision (d) of Section 10145 of the Code
5 or by a regulation in this article, the account into which the trust funds are deposited shall not be
6 an interest-bearing account for which prior written notice can by law or regulation be required by
7 the financial institution as a condition to the withdrawal of funds.

8 (c) A check received from the offeror may be held uncashed by the broker until
9 acceptance of the offer if

10 (1) the check by its terms is not negotiable by the broker or if the offeror
11 has given written instructions that the check shall not be deposited nor cashed until acceptance of
12 the offer and

13 (2) the offeree is informed that the check is being so held before or at the
14 time the offer is presented for acceptance.

15 (d) In these circumstances if the offeror's check was held by the broker in
16 accordance with subdivision (c) until acceptance of the offer, the check shall be placed into a
17 neutral escrow depository or the trust fund account, or into the hands of the offeree if offeror and
18 offeree expressly so provide in writing, not later than three business days following acceptance of
19 the offer unless the broker receives written authorization from the offeree to continue to hold the
20 check.

21 (e) Notwithstanding the provisions of subdivisions (a) and (d), a real estate broker
22 who is not licensed under the Escrow Law (Section 17000, et seq., of the Financial Code) when
23 acting in the capacity of an escrow holder in a real estate purchase and sale, exchange or loan
24 transaction in which the broker is performing acts for which a real estate license is required shall
25 place all funds accepted on behalf of another into the hands of the owner of the funds, into a
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1 neutral escrow depository or into a trust fund account in the name of the broker, or in a fictitious
2 name if the broker is the holder of a license bearing such fictitious name, as trustee at a bank or
3 other financial institution not later than the next business day following receipt of the funds by
4 the broker or by the broker's salesperson."

5 14.

6 Pursuant to Regulation 2832.1 *Trust Fund Handling for Multiple Beneficiaries:*

7 "The written consent of every principal who is an owner of the funds in the
8 account shall be obtained by a real estate broker prior to each disbursement if such a
9 disbursement will reduce the balance of funds in the account to an amount less than the existing
10 aggregate trust fund liability of the broker to all owners of the funds."

11 15.

12 Pursuant to Regulation 2834 *Trust Account Withdrawals:*

13 "(a) Withdrawals may be made from a trust fund account of an individual broker
14 only upon the signature of the broker or one or more of the following persons if specifically
15 authorized in writing by the broker:

16 (1) a salesperson licensed to the broker.

17 (2) a person licensed as a broker who has entered into a written agreement
18 pursuant to Section 2726 with the broker.

19 (3) an unlicensed employee of the broker with fidelity bond coverage at least
20 equal to the maximum amount of the trust funds to which the employee
21 has access at any time.

22 (b) Withdrawals may be made from the trust fund account of a corporate broker
23 only upon the signature of:

24 (1) an officer through whom the corporation is licensed pursuant to Section
25 10158 or 10211 of the Code or

1 (2) one of the persons enumerated in paragraph (1), (2) or (3) of subdivision
2 (a) above, provided that specific authorization in writing is given by the officer through whom
3 the corporation is licensed and that the officer is an authorized signatory of the trust fund
4 account.

5 (c) An arrangement under which a person enumerated in paragraph (1), (2) or (3)
6 of subdivision (a) above is authorized to make withdrawals from a trust fund account of a broker
7 shall not relieve an individual broker, nor the broker-officer of a corporate broker licensee, from
8 responsibility or liability as provided by law in handling trust funds in the broker's custody."

9 **Retention of Records – Code Section 10148**

10 16.

11 Pursuant to Code Section 10148 *Retention of Records – Chargeable Audits – Cost*
12 *Recovery – Penalties for Unlawful Destruction of Records:*

13 "(a) A licensed real estate broker shall retain for three years copies of all listings,
14 deposit receipts, cancelled checks, trust records, and other documents executed by him or her or
15 obtained by him or her in connection with any transactions for which a real estate broker license
16 is required. The retention period shall run from the date of the closing of the transaction or from
17 the date of the listing if the transaction is not consummated. After notice, the books, accounts,
18 and records shall be made available for examination, inspection, and copying by the
19 commissioner or his or her designated representative during regular business hours; and shall,
20 upon the appearance of sufficient cause, be subject to audit without further notice, except that the
21 audit shall not be harassing in nature. This subdivision shall not be construed to require a
22 licensed real estate broker to retain electronic messages of an ephemeral nature, as described in
23 subdivision (d) of Section 1624 of the Civil Code.

24 (b) The commissioner shall charge a real estate broker for the cost of any audit, if
25 the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a
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1 final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing
2 with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker
3 has violated Section 10145 or a regulation or rule of the commissioner interpreting Section
4 10145.

5 ...

6 (e) The bureau may suspend or revoke the license of any real estate broker, real
7 estate salesperson, or corporation licensed as a real estate broker, if the real estate broker, real
8 estate salesperson, or any director, officer, employee, or agent of the corporation licensed as a
9 real estate broker knowingly destroys, alters, conceals, mutilates, or falsifies any of the books,
10 papers, writings, documents, or tangible objects that are required to be maintained by this section
11 or that have been sought in connection with an investigation, audit, or examination of a real
12 estate licensee by the commissioner.”

13 **False or Fictitious Business Name – Code Section 10159.5 and Regulation 2731**

14 17.

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

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

20 ...

21 (b)(1) A salesperson using a fictitious business name authorized by subdivision
22 (a), shall use that name only as permitted by his or her responsible broker.

23 (2) This section does not change a real estate broker’s duties under this
24 division to supervise a salesperson...”

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18.

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

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

Grounds for Revocation or Suspension –

Code Section 10176

19.

Pursuant to Code Section 10176 *Grounds for Revocation or Suspension* (selected portions):

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

...

(e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her.

...

(g) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission, or profit or the failure of a licensee to reveal to the employer of the licensee the full amount of the licensee’s compensation, commission, or profit under any

1 agreement authorizing or employing the licensee to do any acts for which a license is required
2 under this chapter for compensation or commission prior to or coincident with the signing of an
3 agreement evidencing the meeting of the minds of the contracting parties, regardless of the form
4 of the agreement, whether evidenced by documents in an escrow or by any other or different
5 procedure.

6 (i) Any other conduct, whether of the same or a different character than specified
7 in this section, which constitutes fraud or dishonest dealing...”

8
9 **Further Grounds for Disciplinary Action –**

10 **Code Section 10177**

11 20.

12 Pursuant to Code Section 10177 *Further Grounds for Disciplinary Action*

13 (selected portions):

14 “The commissioner may suspend or revoke the license of a real estate licensee,
15 delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an
16 applicant, who has done any of the following:

17 ...

18 (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing
19 with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and
20 regulations of the commissioner for the administration and enforcement of the Real Estate Law
21 and Chapter 1 (commencing with Section 11000) of Part 2.

22 ...

23 (g) Demonstrated negligence or incompetence in performing an act for which he
24 or she is required to hold a license.

25 ...

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

3 **DRE AUDIT LA 170061**

4 **(WHIPPLE & DYKEMA’s Property Management Activities)**

5 **VIOLATIONS OF THE REAL ESTATE LAW**

6 21.

7 On February 28, 2018, the DRE completed an audit examination of the books and
8 records of FMLBI pertaining to its property management activities described in Paragraph 22
9 below, which require a real estate license. The audit period was January 1, 2016 to September
10 30, 2017, and the audit field work was performed between October 17, 2017 and January 25,
11 2018. The final report of February 28, 2018 revealed violations of the Code and the Regulations
12 as set forth in the following paragraphs, and more fully discussed in Audit Report LA 170061.

13 22.

14 **Forward Management Long Beach, Inc.’s Business Activities & Corporate Structure: Real Estate**

15 **Sales Activities**

16 A. According to FMLBI’s Designated Officer (“D.O.”) of record Judy Norman
17 Sharp’s (DRE License ID 00838484) written statement to the DRE dated October 17, 2017,
18 “FMLBI has never allowed property or mortgage loan activity since we opened. I am not aware
19 of any of our agents or brokers who do either of these activities.”

20 B. According to RES WHIPPLE’s written statement to the DRE dated October
21 17, 2017, D.O. Sharp was not aware that she was performing property management activities
22 during the time it was occurring while she was licensed with FMLBI. WHIPPLE informed D.O.
23 Sharp of her property management activity after she ceased to perform said activities, in March
24 of 2017. According to WHIPPLE, she managed four (4) properties for four (4) property owners
25 until approximately March 2017. According to WHIPPLE, she together with RES DYKEMA
26

1 were authorized signers for a bank account used to handle the property management trust funds.
2 According to WHIPPLE, she charged fees between five percent (5%) to seven percent (7%)
3 based on the collected rent. Based on the statement for the property management bank account
4 B/A 1 (see Paragraph 27 below), she collected \$226,392.87 and the funds were handled through
5 B/A 1 during the last twelve (12) months before B/A 1 was closed in April 2017.

6 B. Audit LA 170061 was limited to Forward Management Long Beach Inc.'s
7 lease activities² and RES WHIPPLE and DYKEMA's property management activity within the
8 meaning of Code Section 10131(b).

9 23.

10 Bank Account(s)

11 A. According to D.O. SHARP, FMLBI maintained one (1) trust account in
12 connection with FMLBI's broker escrow activity, and no other trust accounts.

13 B. According to RES WHIPPLE, during the audit examination period, she
14 maintained one (1) bank account for her property management activity. WHIPPLE's bank
15 account was sampled for DRE Audit:

16 Bank Account #1 ("B/A 1")

- 17 * Bank Name: JPMorgan Chase Bank, N.A.
- 18 * Bank Address: 257 Pine Ave, Long Beach, CA 90802
- 19 * Account No. #####5618
- 20 * Account Name: The Whipple Group
- 21 * Signatories: WHIPPLE, DYKEMA

22 B/A 1 was used for handling trust fund receipts and disbursements for multiple
23 beneficiaries related to RES WHIPPLE and RES DYKEMA's property management activities
24 during the audit period. B/A 1 became inactive in April 2017. Its bank statement balance as of
25 April 5, 2017 (\$217.84) was used to pay utilities in the amount of \$61.61 to the City of Long

26 ² Forward Management Long Beach, Inc.'s lease activities are alleged in a separate Accusation.

1 Beach, and the remaining \$156.23 was transferred to checking account ending -1183 on the same
2 date. As of April 5, 2017, B/A 1 had a zero balance. Trust account reconciliation and control
3 records were not provided for the audit, and the information on the separate records provided by
4 RES WHIPPLE was incomplete or inaccurate. The DRE auditor prepared a bank reconciliation
5 was prepared with the cutoff date of February 28, 2017 based on the limited records provided

6 **AUDIT LA 170061**

7 **VIOLATIONS OF THE REAL ESTATE LAW**

8 24.

9 In the course of activities as described above, and during the audit examination
10 period described in Paragraph 21, Respondents acted in violation of the Code and the
11 Regulations, as described below:

12 **Trust Fund Handling – Trust Fund Handling for Multiple Beneficiaries**

13 **(Code Section 10145 and Regulation 2832.1)**

14 25.

15 As of February 28, 2017, there was a minimum trust fund shortage in B/A 1 in the
16 amount of <\$7,138.87> due to minimum negative property balances totaling <\$2,501.74>,
17 minimum unauthorized disbursements totaling <\$3,770.52>, minimum bank charges totaling
18 <\$463.50>, and minimum unidentified shortage totaling <\$403.11> attributable to poor book
19 keeping as of February 28, 2017. There was no evidence provided by RES WHIPPLE or RES
20 DYKEMA that the owners of the trust funds had given their written consent to allow RES
21 WHIPPLE and/or RES DYKEMA to reduce the balance of the funds in B/A 1 to an amount less
22 than the existing aggregate trust fund liabilities, in violation of **Code Section 10145 and**
23 **Regulation 2832.1.**

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1 **10176(i), and 10177(j).** Based on the explanation provided by RES WHIPPLE and the bank
2 statements and separate records examined, there were minimum unauthorized disbursements of
3 <\$3,770.52> from B/A 1 for the period September 2016 through February 2017 (see also
4 Paragraph 29).

5 F. RES WHIPPLE/RES DYKEMA used the unlicensed fictitious business names
6 “Keller Williams Pacific Estates/ The Whipple Group” and “WG Property Management” without
7 first obtaining a license from the DRE (then CalBRE) bearing such fictitious names, in violation
8 of **Code Section 10159.5 and Regulation 2731** (see also Paragraph 36).

9 **Retention of Records**

10 **(Code Section 10148)**

11 27.

12 A. On or about November 1, 2017, a *Subpoena Duces Tecum* (“SDT”) was served
13 on D.O. Sharp to produce the books and records related to the property management activities
14 conducted by RES WHIPPLE/RES DYKEMA on November 15, 2017 at the DRE’s Los Angeles
15 District Office located at 320 W. 4th Street, Suite 350, Los Angeles, CA 90013. Some of books
16 and records related to the property management activities conducted by RES WHIPPLE/RES
17 DYKEMA were not made available for examination for the audit period January 1, 2016 through
18 September 30, 2017, including property management agreements, rental agreements/leases,
19 records of receipts and disbursements, deposit slips, owner’s statements, invoices, and
20 compensation records, in violation of **Code Section 10148**. According to RES WHIPPLE’s
21 correspondence with the DRE auditor by mail (November 16, 2017) and e-mail (January 24,
22 2018), she could not provide some of the requested records, in violation of **Code Section 10148**.

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1 **Property Management Activity conducted by RES WHIPPLE and RES DYKEMA -**
2 **License Required/Unlawful Payment of Compensation –**
3 **(Code Sections 10130 and 10137)**

4 28.

5 According to the DRE auditor's discussions with D.O. Sharp and RES WHIPPLE
6 on October 17, 2017, and the written statements provided by Sharp and WHIPPLE on the same
7 day, RES WHIPPLE and RES DYKEMA conducted property management activity without D.O.
8 Sharp's knowledge. RES WHIPPLE and RES DYKEMA conducted property management
9 activity independently, collected trust funds on behalf of property owners, and failed to deposit
10 said funds into the REB's trust account. According to RES WHIPPLE, she and RES DYKEMA
11 ceased conducting property management activity in March of 2017. RES WHIPPLE and RES
12 DYKEMA acted in the capacity of a REB for compensation or in expectation of compensation
13 during the audit period, while licensed as RES employed under employing REB FMLBI, in
14 violation of **Code Sections 10130 and 10137**.

15 **Property Management Activity conducted by RES WHIPPLE and RES DYKEMA -**
16 **Handling of Trust Funds/Conversion of Trust Funds/ Unauthorized Disbursements**
17 **(Code Sections 10145, 10176(i) and 10177(j))**

18 29.

19 During the audit period, RES WHIPPLE and RES DYKEMA converted trust
20 funds from B/A 1 through unauthorized disbursements, in violation of **Code Sections 10145,**
21 **10176(i) and 10177(j)**. There were receipts and disbursements in B/A 1's bank statements that
22 could not be traced to the separate records provided by RES WHIPPLE. The auditor found there
23 were minimum unauthorized disbursements of <\$3,770.52> from B/A 1 during the period
24 September 2016 to February 2017 which were identified as "ATM & Debit Card Withdrawals"

1 in the bank statements for three cards, "Beatrix Whipple Card 8384," "Jennifer Dykema Card
2 8392," and "Beatrix Whipple Card 5616."

3 **Property Management Activity conducted by RES WHIPPLE and RES DYKEMA –**

4 **Handling of Trust Funds/Trust Fund Account –**

5 **(Code Section 10145(a) and Regulation 2832)**

6 30.

7 The trust funds collected by RES WHIPPLE and RES DYKEMA on behalf of
8 property owners were not deposited into a trust account, in violation of **Code Section 10145(a)**
9 **and Regulation 2832.**

10 **Property Management Activity conducted by RES WHIPPLE and RES DYKEMA –**

11 **Trust Account Withdrawals**

12 **(Code Section 10145 and Regulation 2834)**

13 31.

14 B/A 1 was used for the handling of trust fund receipts and disbursements for
15 multiple beneficiaries related to the property management activity conducted by RES WHIPPLE
16 and RES DYKEMA during the audit period. D.O. Sharp was not an authorized signer for B/A 1
17 during the audit period. RES WHIPPLE and RES DYKEMA were signers on B/A 1 without
18 written authorization from their REB, D.O. Sharp, in violation of **Code Section 10145 and**
19 **Regulation 2834.**

20 **Property Management Activity conducted by RES WHIPPLE and RES DYKEMA –**

21 **Trust Account Reconciliation**

22 **(Code Section 10145 and Regulation 2831.2)**

23 32.

24 B/A 1 was used for the handling of trust fund receipts and disbursements for
25 multiple beneficiaries related to the property management activity conducted by RES WHIPPLE
26

1 and RES DYKEMA during the audit period. RES WHIPPLE/RES DYKEMA did not maintain a
2 monthly reconciliation comparing the balance of all separate beneficiary or transaction records
3 (separate records) to the balance of the record of all trust funds received and disbursed (control
4 record) for B/A 1, as required, in violation of **Code Section 10145 and Regulation 2831.2.**

5 **Property Management Activity conducted by RES WHIPPLE and RES DYKEMA –**

6 **Trust Fund Records to be Maintained**

7 **(Code Section 10145 and Regulation 2831)**

8 33.

9 B/A 1 was used for the handling of trust fund receipts and disbursements for
10 multiple beneficiaries related to the property management activity conducted by RES WHIPPLE
11 and RES DYKEMA during the audit period. RES WHIPPLE/RES DYKEMA did not maintain
12 complete and accurate control records for B/A 1, in violation of **Code Section 10145 and**
13 **Regulation 2831.**

14 **Property Management Activity conducted by RES WHIPPLE and RES DYKEMA -**

15 **Separate Record for Each Beneficiary or Transaction**

16 **(Code Section 10145 and Regulation 2831.1)**

17 34.

18 During the audit period, FMLBI/RES WHIPPLE/RES DYKEMA did not
19 maintain complete and accurate separate records for B/A 1, in violation of **Code Section 10145**
20 **and Regulation 2831.1.**

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1 **Property Management Activity conducted by RES WHIPPLE and RES DYKEMA -**

2 **Misrepresentation**

3 **(Code Section 10176(a))**

4 35.

5 During the audit period, RES WHIPPLE used FMLBI's DRE license ID
6 (#01917184), FMLBI's main office address (Spring St. address), and FMLBI's fictitious business
7 name ("FBN") or names similar to FMLBI's FBN (Keller Williams Pacific Estates or Keller
8 Williams Pacific Estates/The Whipple Group) when RES WHIPPLE conducted property
9 management activities independently, without knowledge of her employing REB, in violation of
10 **Code Section 10176(a).**

11 **Property Management Activity conducted by RES WHIPPLE and RES DYKEMA -**

12 **Fictitious Name/Use of False or Fictitious Name**

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

14 36.

15 During the audit period, RES WHIPPLE/RES DYKEMA used the unlicensed
16 FBNs "Keller Williams Pacific Estates/The Whipple Group" and "WG Property Management"
17 without first obtaining a license from the DRE bearing such FBNs, in violation of **Code Section**
18 **10159.5 and Regulation 2731.**

19 **Handling of Trust Funds**

20 **(Code Section 10145(c))**

21 37.

22 RES WHIPPLE and RES DYKEMA conducted property management activities,
23 collected trust funds, and did not immediately deliver the funds to their employing REB FMLBI,
24 in violation of **Code Section 10145(c)**. Nor did RES WHIPPLE and RES DYKEMA deposit the
25 funds into the REB's trust fund account, also in violation of **Code Section 10145(c)**.

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

2 **(Code Sections 10177(d) and (g))**

3 38.

4 The overall conduct of Respondents RES WHIPPLE and RES DYKEMA is
5 violative of the Real Estate Law and constitutes cause for the suspension or revocation of their
6 real estate licenses and license rights under the provisions of **Code Section 10177(d)** for willful
7 disregard of the Real Estate Law and **Code Section 10177(g)** for negligence.

8 **COSTS**

9 **Investigation and Enforcement Costs**

10 39.

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

16 **Audit Costs**

17 40.

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

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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 licenses and license rights of Respondents BEATRIX ELIZABETH WHIPPLE
4 and JENNIFER DYKEMA under the Real Estate Law (Part 1 of vision 4 of the Business and
5 Professions Code), for the cost of investigation and enforcement as permitted by law, for costs of
6 audit, and for such other and further relief as may be proper under other provisions of law.

7 Dated at San Diego, California

8 this 28 day of November, 2018.

9
10 
11 Veronica Kilpatrick
12 Supervising Special Investigator

13 Cc: BEATRIX ELIZABETH WHIPPLE
14 JENNIFER DYKEMA
15 Enforcement – V. Kilpatrick
16 Audits – A. Wjaya, J. Lin
17 Sacto.