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Julie L. To (SBN 219482)
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FILED
DEC 26 2019
DEPT. OF REAL ESTATE
By Zmi-ga

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

| | | |
|--|---|----------------|
| In the Matter of the Accusation of |) | No. H-41566 LA |
| REAL\PROS REAL ESTATE GROUP INC and |) | ACCUSATION |
| MIKE L. VARLEY, as designated officer of |) | |
| Real\Pros Real Estate Group Inc, |) | |
| |) | |
| Respondents. |) | |

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the State of California, for cause of Accusation against REAL\PROS REAL ESTATE GROUP INC and MIKE L. VARLEY, alleges as follows:

1.

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

DEPARTMENT OF REAL ESTATE LICENSE HISTORY

3.

REAL\PROS REAL ESTATE GROUP INC

A. Respondent REAL\PROS REAL ESTATE GROUP INC ("RPREGI") 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 broker (corporation) ("REB"), California Department of Real Estate ("DRE" or "Department") license ID 01862588.

B. RPREGI was originally licensed by the DRE on April 30, 2009.

C. According to the DRE's records, RPREGI's main and mailing address of record are the same: 2790 Cabot Dr., #4-130, Corona, CA 92883 ("Corona address")

D. According to the DRE's records, RPREGI's license includes five (5) current DBAs, for:

(1) Real Pros Real Estate Group, active as of April 30, 2009;

(2) RE/MAX Real Pros, active as of June 6, 2018;

(3) Remax Real Pros, active as of October 31, 2012;

(4) RE/MAX Real Pros Escrow, a Non Independent Broker Escrow, active as of June 6, 2018; and

(5) REMAX Real Pros Escrow, a Non Independent Broker Escrow, active as of June 6, 2018.

E. According to the DRE's records, RPREGI has five (5) branch offices.

F. According to the DRE's records, the RPREGI has ninety-two (92) real estate salespersons ("RES") and nine (9) broker associates licensed under its DRE license.

1 G. MIKE L. VARLEY is the designated officer of RPREGI until his officer
2 expiration date of April 29, 2021.

3 H. Respondent RPREGI's REB license will expire on April 29, 2021.

4 4.

5 MIKE L. VARLEY

6 A. Respondent MIKE L. VARLEY ("VARLEY") is presently licensed and/or
7 has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a REB, DRE
8 license ID 01174083.

9 B. VARLEY was originally licensed by the DRE as a REB on July 6, 2006.
10 Prior to his licensure as a REB, VARLEY was licensed as a RES on January 6, 1994.

11 C. According to the DRE's records, VARLEY's main address of record is
12 RPREGI's Corona address and his mailing address of record is 1224 W. Chase Dr., Corona, CA
13 92822.

14 D. According to the DRE's records, VARLEY has two (2) branch offices.

15 E. VARLEY is the designated officer of RPREGI until his officer expiration
16 date of April 29, 2021.

17 F. VARLEY's REB license will expire on July 5, 2022.

18 **APPLICABLE SECTIONS OF THE REAL ESTATE LAW**

19 **Notification of Escrow Activities**

20 **Code Section 10141.6**

21 5.

22 Pursuant to Code Section 10141.6 *Notification of Escrow Activities*:

23 "(a) A real estate broker who engages in escrow activities for five or more
24 transactions in a calendar year pursuant to the exemption from the Escrow Law contained in
25 Section 17006 of the Financial Code, or whose escrow activities pursuant to that exemption
26

1 equal or exceed one million dollars (\$1,000,000) in a calendar year, shall file with the
2 department a report, within 60 days following the completion of the calendar year, documenting
3 the number of escrows conducted and the dollar volume escrowed during the calendar year in
4 which the threshold was met. This report shall be made on a form acceptable to the
5 commissioner.

6 (b) A real estate broker subject to this section and Section 10232.2 may file
7 consolidated reports that include all of the information required under this section and Section
8 10232.2. Those consolidated reports shall clearly indicate that they are intended to satisfy the
9 requirements of both sections.

10 (c) A real estate broker who fails to submit the report required pursuant to
11 subdivision (a) shall be assessed a penalty of fifty dollars (\$50) per day for each day the report
12 has not been received by the department, up to and including the 30th day after the first day of
13 the assessment penalty. On and after the 31st day, the penalty shall be one hundred dollars
14 (\$100) per day, not to exceed a total penalty of ten thousand dollars (\$10,000), regardless of the
15 number of days, until the department receives the report.

16 (d) The commissioner may suspend or revoke the license of a real estate broker
17 who fails to pay a penalty imposed pursuant to this section. In addition, the commissioner may
18 bring an action in an appropriate court of this state to collect payment of that penalty.

19 (e) All penalties paid or collected under this section shall be deposited into the
20 Recovery Account of the Real Estate Fund and shall, upon appropriation by the Legislature, be
21 available for expenditure for the purposes specified in Chapter 6.5 (commencing with Section
22 10470).

23 (f) The reports described in this section are exempted from any requirement of
24 public disclosure by paragraph (2) of subdivision (d) of Section 6254 of the Government
25 Code.”

1 **Trust Fund Handling**

2 **Code Section 10145 and Regulations 2831, 2831.1, 2831.2, and 2832.1**

3 6.

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

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

11 (2) Withdrawals may be made from a trust fund account of an individual
12 broker only upon the signature of that broker, or in the case of a corporate broker, only upon the
13 signature of an officer through whom the corporation is licensed pursuant to Section 10158 or
14 10211, or one, or more, of the following persons if specifically authorized in writing by the
15 individual broker or officer:

16 (A) A real estate salesperson licensed to the broker.

17 (B) Another broker acting pursuant to a written agreement with the
18 individual broker that conforms to the requirements of this part and any
19 regulations promulgated pursuant to this part.

20 (C) An unlicensed employee of the individual broker, if the broker has
21 fidelity bond coverage equal to at least the maximum amount of the trust
22 funds to which the unlicensed employee has access at any time. For
23 purposes of this section, bonds providing coverage may be written with a
24 deductible of up to 5 percent of the coverage amount. For bonds with a
25 deductible, the employing broker shall have evidence of financial
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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.

...

(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
2 the purchase funds.

3 . . .

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

6 7.

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
24 similar records, or automated data processing systems, including computer systems and
25 electronic storage and manipulation of information and documents, in accordance with
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1 generally accepted accounting principles, shall constitute compliance with subdivision (a)
2 provided that such journals, records, or systems contain the elements required by subdivision
3 (a) and that such elements are maintained in a format that will readily enable tracing and
4 reconciliation in 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 8.

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
20 to 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.”

9.

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.”

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1 10.

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

3 “The written consent of every principal who is an owner of the funds in the
4 account shall be obtained by a real estate broker prior to each disbursement if such a
5 disbursement will reduce the balance of funds in the account to an amount less than the existing
6 aggregate trust fund liability of the broker to all owners of the funds.”

7 11.

8 Pursuant to Regulation 2950 *When Broker Handles Escrow:*

9 “The following acts in the handling of an escrow by a real estate broker
10 exempted from the provisions of the Escrow Law (by Section 17006(a)(4) of the Financial
11 Code) are prohibited and may be considered grounds for disciplinary action:

12 (a) Soliciting or accepting an escrow instruction (or amended or supplemental
13 escrow instruction) containing any blank to be filled in after signing or initialing of such escrow
14 instruction (or amended or supplemental escrow instruction).

15 (b) Permitting any person to make any addition to, deletion from, or alteration of
16 an escrow instruction (or amended or supplemental escrow instruction) received by such
17 licensee, unless such addition, deletion or alteration is signed or initialed by all persons who
18 had signed or initialed such escrow instruction (or amended or supplemental escrow
19 instruction) prior to such addition, deletion or alteration.

20 (c) Failing to deliver at the time of execution of any escrow instruction or
21 amended or supplemental escrow instruction a copy thereof to all persons executing the same.

22 (d) Failing to maintain books, records and accounts in accordance with accepted
23 principles of accounting and good business practice.

1 (e) Failing to maintain the office, place of books, records, accounts, safes, files,
2 and papers relating to such escrows freely accessible and available for audit, inspection and
3 examination by the commissioner.

4 (f) Failing to deposit all money received as an escrow agent and as part of an
5 escrow transaction in a bank, trust account, or escrow account on or before the close of the next
6 full working day after receipt thereof.

7 (g) Withdrawing or paying out any money deposited in such trustee account or
8 escrow account without the written instruction of the party or parties paying the money into
9 escrow.

10 (h) Failing to advise all parties in writing if he has knowledge that any licensee
11 acting as such in the transaction has any interest as a stockholder, officer, partner or owner of
12 the agency holding the escrow.

13 (i) Failing upon closing of an escrow transaction to render to each principal in
14 the transaction a written statement of all receipts and disbursements together with the name of
15 the person to whom any such disbursement is made.

16 (j) Delivering or recording any instrument which purportedly transfers a party's
17 title or interest in or to real property without first obtaining the written consent of that party to
18 the delivery or recording.”

19 12.

20 Pursuant to Regulation 2951 *Record Keeping and Funds Handling*:

21 “The provisions of Sections 2831, 2831.1, 2831.2, 2832, 2832.1, 2834 and 2835
22 of these regulations shall apply to the handling of funds and the keeping of records by a real
23 estate broker who is not licensed under the Escrow Law (Section 17000, et seq., of the
24 Financial Code) when acting in the capacity of an escrow holder in a real estate purchase and
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1 sale, exchange or loan transaction in which the broker is performing acts for which a real estate
2 license is required.”

3 **Salesperson and Broker Associate Retention and Termination**

4 **Code Section 10161.8 and Regulation 2752**

5 13.

6 Pursuant to Code Section 10161.8 *Salesperson and Broker Associate Retention*
7 *and Termination*:

8 “(a) The commissioner shall specify the manner in which a responsible broker
9 shall provide notice to the commissioner of an affiliation with a real estate licensee or by which
10 a real estate licensee shall provide notice of a change of address or affiliation.

11 (b) Whenever a responsible broker retains a real estate salesperson to conduct
12 activities requiring a license, the responsible broker shall notify the commissioner in a manner
13 specified by the commissioner.

14 (c) Whenever a responsible broker retains a real estate broker to conduct
15 activities requiring a license, the responsible broker shall provide notice to the commissioner in
16 a manner specified by the commissioner.

17 (d) Whenever an affiliation with a real estate licensee is terminated, the
18 responsible broker shall provide notice to the commissioner in a manner specified by the
19 commissioner.

20 (e) Whenever a real estate licensee acquires a business address different from the
21 address shown in the records maintained by the commissioner, the licensee shall notify the
22 commissioner in a manner specified by the commissioner.”

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Pursuant to Regulation 2752 *Notice of Change of Broker:*

“Whenever a real estate salesperson enters the employ of a real estate broker, or whenever a real estate broker enters into a written agreement to act in the capacity of a salesperson to another broker, the responsible broker shall notify the Commissioner of that fact within five days. This notification shall be given on a form prepared by the Bureau and shall be signed by the responsible broker and the salesperson or broker acting as a salesperson. The form of notification shall provide for the furnishing of at least the following information:

- (1) Name and business address of the responsible broker.
- (2) Mailing address of the salesperson or broker acting as a salesperson, if different from the responsible broker’s business address.
- (3) Date when the salesperson or broker acting as a salesperson entered a written employment or retention agreement with the responsible broker.
- (4) Certification by the salesperson that he or she has complied with the provisions of Section 10161.8(d) of the Business and Professions Code.
- (5) When a salesperson is entering employment or a retention agreement, the name and business address of the real estate broker to whom the salesperson was last licensed and the date of termination of that relationship.
- (6) When a salesperson is entering employment or a retention agreement, certification by the salesperson that the predecessor responsible broker has notice of the termination of the relationship.

As an acceptable alternative to (5) and (6) above, the form may be utilized by the predecessor responsible broker to give notice of the termination of the broker/salesperson contract relationship as required by Section 10161.8(b) of the Business and Professions Code if this notice is mailed to the Commissioner not more than ten days following such termination.

1 A responsible broker that is involved in a contract to employ or retain another
2 broker to act in the capacity of a salesperson must give notice of the termination of that
3 broker/broker contract relationship as required by Section 10161.8(b) of the Business and
4 Professions Code by mailing such notice to the Commissioner not more than ten days following
5 such termination.”

6 **Broker Supervision**

7 **Code Section 10159.2 and Regulation 2725**

8 15.

9 Pursuant to Code Section 10159.2 *Responsibility of Corporate Officer in*
10 *Charge:*

11 “(a) The officer designated by a corporate broker licensee pursuant to Section
12 10211 shall be responsible for the supervision and control of the activities conducted on behalf
13 of the corporation by its officers and employees as necessary to secure full compliance with the
14 provisions of this division, including the supervision of salespersons licensed to the corporation
15 in the performance of acts for which a real estate license is required.

16 (b) A corporate broker licensee that has procured additional licenses in
17 accordance with Section 10158 through officers other than the officer designated pursuant to
18 Section 10211 may, by appropriate resolution of its board of directors, assign supervisory
19 responsibility over salespersons licensed to the corporation to its broker-officers.

20 (c) A certified copy of any resolution of the board of directors assigning
21 supervisory responsibility over real estate salespersons licensed to the corporation shall be filed
22 with the Real Estate Commissioner within five days after the adoption or modification thereof.”

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Pursuant to Regulation 2725 *Broker Supervision*:

“A broker shall exercise reasonable supervision over the activities of his or her salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

- (a) Transactions requiring a real estate license.
- (b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.
- (c) Filing, storage and maintenance of such documents.
- (d) The handling of trust funds.
- (e) Advertising of any service for which a license is required.
- (f) Familiarizing salespersons with the requirements of federal and state laws relating to the prohibition of discrimination.
- (g) Regular and consistent reports of licensed activities of salespersons.

The form and extent of such policies, rules, procedures and systems shall take into consideration the number of salespersons employed and the number and location of branch offices.

A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.”

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Pursuant to Regulation 2715 *Business and Mailing Addresses of Licensees*:

“Every broker, except a broker acting in the capacity of a salesperson to another broker under written agreement, shall maintain on file with the commissioner the address of his principal place of business for brokerage activities, the address of each branch business office and his current mailing address, if different from the business address. Every broker who is acting in the capacity of a salesperson to another broker under written agreement shall maintain on file with the commissioner the address of the business location where he expects to conduct most of the activities for which a license is required and his current mailing address. A real estate salesperson shall maintain on file with the commissioner his current mailing address, and when applicable, the address of the principal business office of the broker to whom the salesperson is at the time licensed. Whenever there is a change in the location or address of the principal place of business or of a branch office of a broker, he shall notify the commissioner thereof not later than the next business day following the change. This section shall apply to the holder of a real estate license who fails to renew it prior to the period for which it was issued and who is otherwise qualified for such license as set forth in Section 10201 of the Code.”

Grounds for Revocation or Suspension – Code Section 10176 (selected portions)

21.

Pursuant to Code Section 10176 *Grounds for Revocation or Suspension*:

“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,

1 while a real estate licensee, in performing or attempting to perform any of the acts within the
2 scope of this chapter has been guilty of any of the following:

3 ...

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5 (g) The claiming or taking by a licensee of any secret or undisclosed amount of
6 compensation, commission or profit or the failure of a licensee to reveal to the buyer or seller
7 contracting with the licensee the full amount of the licensee's compensation, commission, or
8 profit under any agreement authorizing the licensee to do any acts for which a license is
9 required under this chapter for compensation or commission prior to or coincident with the
10 signing of an agreement evidencing the meeting of the minds of the contracting parties,
11 regardless of the form of the agreement, whether evidenced by documents in an escrow or by
12 any other or different procedure.”

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

15
16 **Broker Placement of Trust Funds with Financial Institutions – Regulation 2830**

17 22.

18 Pursuant to Regulation 2830 *Broker Placement of Trust Funds with Financial*
19 *Institutions:*

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21 “The relationship between a real estate broker and a client for whom the broker
22 holds funds in trust is an agency relationship. As an agent, the broker owes a fiduciary duty to
23 the client regarding the handling of the trust. Any benefit received by the broker relating to the
24 broker's handling of client funds in trust belongs to the client by law, and the broker must pass
25 that benefit along to the client.

1 (a) Unless in possession of written permission from the client, it is unlawful for
2 any real estate broker, including any corporate broker, to receive, directly or indirectly, any
3 commission, compensation, or other consideration, whether personal or professional, from any
4 person or institution other than the client as an inducement for the placement of a trust fund
5 account in accordance with Section 10145 of the Business and Professions Code. Actual
6 placement of a trust fund account is not a precondition to a violation of this section, whether the
7 violation is or is not a per se violation pursuant to subsection (c), below.

8 (b) For purposes of this section, a "compensating balance" is a balance
9 maintained in a checking account or other account in a bank or other recognized depository in
10 the name of a real estate broker for the purpose of paying bank fees on a separate trust fund
11 account.

12 (c) Unless in possession of written permission from the client as described in
13 subsection (a), the following activities, whether performed directly or indirectly, are deemed per
14 se receipt of inducements for the placement of trust account business by any person and are
15 unlawful:
16

17 (1) Receiving or requesting payment for, accepting or requesting
18 provision of, or accepting or requesting assistance with business
19 expenses, including, but not limited to, rent, employee salaries, furniture,
20 copiers, facsimile machines, automobiles, telephone services or
21 equipment, or computers.

22 (2) Receiving or requesting receipt of any form of consideration intended
23 for the benefit of the broker, rather than the trust account itself, including
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cash, below market rate loans, automobile charges, or merchandise or merchandise credits.

(3) Receiving or requesting to receive on behalf of the broker or corporation, compensating balances or benefits in the pricing or fees for the maintenance of a compensating balance account.

(4) Receiving or requesting provision of all, or any part, of the time or productive effort of any employee of the bank or other recognized depository for any service unrelated to the trust account.

(5) Receiving or requesting expenditures for food, beverages, and entertainment.

(d) Receipt or request of receipt of the following are not deemed to be unlawful or in violation of this section:

(1) Promotional items with a permanently affixed company logo of the bank or other recognized depository with a value of not more than ten dollars (\$10) each. "Promotional item" does not include a gift certificate, gift card, or other item that has a specific monetary value on its face, or that may be exchanged for any other item having a specific monetary value.

(2) Receipt or requested receipt of education or educational materials exclusively related to the business of trust fund management if continuing education credits are not provided.

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1 (e) The receipt or requested receipt of any form of consideration as an
2 inducement for the placement of a trust account not specifically set forth in this section shall
3 not be presumed lawful merely because it is not specifically prohibited.

4 **Further Grounds for Disciplinary Action – Code Section 10177**

5 23.

6 Pursuant to Code Section 10177 *Further Grounds for Disciplinary Action*:

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

10 ...

11 (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing
12 with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and
13 regulations of the commissioner for the administration and enforcement of the Real Estate Law
14 and Chapter 1 (commencing with Section 11000) of Part 2.”

15 ...

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

18 **DRE AUDIT SD 170056: REAL\PROS REAL ESTATE GROUP INC**

19 **(BROKER ESCROW ACTIVITY)**

20 24.

21 On August 30, 2018, the DRE completed its audit examination of the books and
22 records of Respondent RPREGI pertaining to its broker escrow activities. The audit
23 examination covered a period of time beginning on January 1, 2017 and ending on April 30,
24 2018 (“audit examination period” or “audit period”), and was performed intermittently from
25 May 31, 2018 to August 30, 2018. The final report of August 30, 2018 revealed violations of
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1 the Code and the Regulations as set forth in the following paragraphs, and more fully discussed
2 in the Audit Report for SD 170056.

3 25.

4 RPREGI's Corporate Structure and Business Activities

5 A. D.O. VARLEY is a 49% owner and the CEO and CFO, and Susan Varley
6 (RES; DRE license ID 01174086²) is a 51% owner and the Secretary. RPREGI performs real
7 estate sales transactions and escrow transactions.

8 B. According to VARLEY, RPREGI closed about 456 escrow transactions and
9 collected about \$111.2 million in escrow trust funds during the twelve (12) months leading into
10 the audit field work period (May 1, 2017 to April 30, 2018), and maintained one (1) bank
11 account for handling the receipts and disbursements of trust funds in connection with its broker
12 escrow activity.

13 C. Also according to VARLEY, RPREGI closed about 1,277 real estate sales
14 transactions valued at \$509.1 million and did not collect any Earnest Money Deposits
15 ("EMDs") during the twelve (12) months leading into the audit field work period (May 1, 2017
16 to April 30, 2018), and did not maintain a trust account but maintained a columnar record of
17 trust funds received not placed in broker's trust in connection with the sales activity. According
18 to VARLEY, most of the EMDs were held and delivered directly to escrow by the buyers in
19 connection with the sales activity.

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25 ² According to the DRE's records, this DRE license ID belongs to Susanne Mary Varley.

1 missing the daily balance; some receipts were deposited into T/A 1, but not recorded on the
2 control record (receipts report); some receipts were recorded on the control record (receipts
3 report), but were not deposited into T/A 1; and a check cleared T/A 1 but was voided on the
4 control record (disbursements report). RPREGI's failure to maintain the reports of all trust
5 fund receipts and disbursements (control record) for T/A 1 is in violation of **Code Section**
6 **10145 and Regulations 2831, 2950(d) and 2951.**

7 31.

8 **Separate Record for Each Beneficiary or Transaction/When Broker Handles Escrow**
9 **(Code Section 10145 and Regulations 2831.1, 2950(d) & 2951)**

10 A. The separate records maintained for T/A 1, which was used for handling the
11 receipts and disbursements of trust funds in connection with RPREGI's broker escrow activity,
12 were inaccurate and incomplete. Some receipts were deposited into T/A 1, but not recorded on
13 the separate records; some receipts were recorded on the separate records, but were not
14 deposited into T/A 1; and a check that cleared T/A 1 was voided on the separate record.

15 B. RPREGI failed to maintain a separate record for the
16 "unidentified/unaccounted for funds" held in T/A 1 totaling \$22,510.32 as of April 30, 2018
17 and totaling \$29,324.57 as of April 28, 2017.

18 C. RPREGI's failure to maintain complete and accurate separate records for
19 T/A 1 is in violation of **Code Section 10145 and Regulations 2831.1, 2950(d) and 2951.**

20 32.

21 **Trust Account Reconciliation/When Broker Handles Escrow**
22 **(Code Section 10145 and Regulations 2831.2, 2950(d) & 2951)**

23 A. RPREGI did not maintain the monthly reconciliation of all the separate
24 records to the control record of all trust funds received and disbursed for T/A 1 in connection
25 with the broker escrow activity during the audit period.

1 B. RPREGI failed to reconcile the “unidentified/unaccounted for funds” held in
2 T/A 1 totaling \$22,510.32 as of April 30, 2018 and totaling \$29,324.57 as of April 28, 2017.

3 C. RPREGI’s failure to maintain a monthly reconciliation record of T/A 1 in
4 connection with its broker escrow activity is in violation of **Code Section 10145 and**
5 **Regulations 2831.2, 2950(d) and 2951.**

6 33.

7 **Notification of Escrow Activities**

8 **(Code Section 10141.6)**

9 In calendar year 2017 RPREGI conducted five (5) or more transactions and met
10 the escrow threshold. Additionally, the dollar volume of escrowed transactions by RPREGI in
11 calendar year 2017 exceeded \$1,000,000. RPREGI met the escrow threshold³ and was required
12 to submit an Escrow Activity Report (DRE Form RE 890) (“EAR”) within sixty (60) days after
13 the end of the calendar year. According to VARLEY and the records examined for the audit,
14 RPREGI closed 445 escrows valued at about \$168 million during the period from January 1,
15 2017 to December 31, 2017. RPREGI did not submit said EAR within sixty (60) days of the
16 end of the 2017 calendar year. According to VARLEY, he submitted the EAR for calendar year
17 2017 to the DRE on June 5, 2018. RPREGI’s failure to timely submit its required EAR form
18 for calendar year 2017, as required, is in violation of **Code Section 10141.6.**

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24 ³ Brokers who are exempt from the Escrow Law (California Financial Code Section 17006) and engaged in
25 broker-controlled escrow activities amounting to five or more transactions in one calendar year or whose escrow
26 activities equal or exceed \$1,000,000 in one calendar year will meet the escrow threshold and must submit and
27 Escrow Activity Report (RE 890).

Salesperson and Broker-Associate Employment and Termination

(Code Section 10161.8 and Regulation 2752)

A. Starting January 1, 2018, RPREGI failed to notify the DRE of the employment of six (6) broker-associates hired during the audit period. According to the DRE's licensing records dated June 6, 2018, the six (6) broker-associates were not included as licensed to RPREGI **Code Section 10161.8**.

B. RPREGI did not notify the DRE of the employment of one (1) RES hired during the audit period. According to the DRE's licensing records, Susanne Mary Varley (DRE license ID 01174086) was not registered under, or licensed to, RPREGI during the period from January 16, 2018 to April 3, 2018 despite being employed by RPREGI during said period, in violation of **Code Section 10161.8 and Regulation 2752**.

Use of False or Fictitious Name

(Code Section 10159.5 and Regulation 2731)

A. RPREGI used the unlicensed fictitious business name "Real/Pros Escrow" in connection with its broker escrow activity during the audit period, on business cards and escrow receipts.

B. RPREGI used the unlicensed fictitious business name "Remax Real Pros Escrow" in connection with its broker escrow activity during the audit period, on escrow instructions, real estate purchase contracts, and e-mails.

C. RPREGI's use of unlicensed fictitious business names "Real/Pros Escrow" and "Remax Real Pros Escrow" in connection with its broker escrow activities, on printed materials and e-mails, is in violation of **Code Section 10159.5 and Regulation 2731**.

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1 36.

2 **Branch Offices/Business and Mailing Addresses of Licensees**

3 **(Code Section 10163 and Regulation 2715)**

4 A. RPREGI used the unlicensed branch office located at 2790 Cabot Drive #4-
5 140, Corona, CA 92833 (“#4-140 address”) in connection with its broker escrow activity during
6 the audit period, on final escrow closing statements, estimated escrow closing statements,
7 escrow receipts, trust fund checks, wire authorizations, escrow instructions, amended escrow
8 instructions, escrow commission instructions, real estate purchase contracts, and e-mails,
9 without first obtaining a branch office license from the DRE, in violation of **Code Section**
10 **10163 and Regulation 2715.**

11 B. According to the DRE’s licensing records dated August 24, 2018, RPREGI
12 added the #4-140 address as a licensed branch office effective June 4, 2018.

13 37.

14 **Secret Profit or Undisclosed Compensation/Broker Placement of Trust Funds with**
15 **Financial Institutions**

16 **(Code Section 10176(G) and Regulation 2830)**

17 RPREGI engaged in an earnings credit relationship with City National Bank
18 whereby RPREGI received earnings credit from trust funds available in T/A 1 in connection
19 with its broker escrow activity during the audit period. The earnings credit was used to offset
20 bank service charges incurred on T/A 1 and was not disclosed in writing to the owners of the
21 trust funds, in violation of **Code Section 10176(g) and Regulation 2830.**

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1 38.

2 **Responsibility of Corporate Officer in Charge/Broker Supervision**

3 **(Code Section s 10159.2 and 10177(h) and Regulation 2725)**

4 D.O. VARLEY did not exercise adequate supervision and control over
5 RPREGI's broker escrow activity conducted by RPREGI's licensees and/or employees to
6 ensure compliance with the Real Estate Laws and Regulations, in violation of Code Sections
7 **10159.2 and 10177(h) and Regulation 2725.**

8 39.

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

10 **(Code Section 10177)**

11 The overall conduct of Respondent RPREGI and VARLEY is violative of the
12 Real Estate Law and constitutes cause for the suspension or revocation of their real estate
13 licenses and license rights under the provisions of **Code Section 10177(g)** for negligence and
14 **Code Section 10177(d)** for willful disregard of the Real Estate Law.

15 **COSTS**

16 **Investigation and Enforcement Costs**

17 **(Code Section 10106)**

18 40.

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

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Audit Costs

(Code Section 10148)

41.

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

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of Respondents REAL\PROS REAL ESTATE GROUP INC and MIKE L. VARLEY under the Real Estate Law (Part 1 of division 4 of the Business and Professions Code), for the cost of investigation and enforcement as permitted by law, and for such other and further relief as may be proper under other provisions of law, and for costs of audit.

Dated at Los Angeles, California

this 13 day of December, 2019.

V. Kilpatrick
Veronica Kilpatrick
Supervising Special Investigator

cc: REAL\PROS REAL ESTATE GROUP INC
Enforcement – V. Kilpatrick
Audits – Z. Wanis, J. Lin
Sacto.