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2 Julie L. To (SBN 219482)
3 Department of Real Estate
4 320 West 4th Street, Suite. 350
5 Los Angeles, California 90013-1105
6 (213) 576-6982 (office)
7 (213) 576-6916 (direct)
8 julie.to@dre.ca.gov
9 *Counsel for Complainant*

FILED

DEC 07 2023

DEPT. OF REAL ESTATE

By



BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation against) No. H-42769 LA
12)
13 RELIABLE REALTY INC) **ACCUSATION**
14 and)
15 KELLEE SPILLMAN-MALONE,)
16 as designated officer of Reliable Realty Inc)
17 Respondents.)

18 The Complainant, Veronica Kilpatrick, acting in her official capacity as a
19 Supervising Special Investigator of the State of California, for cause of Accusation against
20 RELIABLE REALTY INC (RRI) and KELLEE SPILLMAN-MALONE (MALONE)
21 (collectively, "Respondents"), is informed and alleges as follows:

22 1.

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

1 **DEPARTMENT OF REAL ESTATE LICENSE HISTORY**

2 **RELIABLE REALTY INC**

3 (RRI)

4 2.

5 According to Department of Real Estate (“DRE”) records to date and publicly
6 accessible online (https://www2.dre.ca.gov/PublicASP/pplinfo.asp?License_id=01290921),
7 RRI is presently licensed and/or has license rights under the Real Estate Law (Part 1 of
8 Division 4 of the Code) as a real estate broker (corporation) (REC), DRE license ID 01290921.

9 3.

10 According to DRE records to date and publicly accessible online: RRI was
11 originally licensed by the DRE on or about June 17, 2000; its mailing address of record is
12 28613 Old town Front St, #300, Temecula, CA 92590; its main address of record is 28693 Old
13 Town Front St, #400A 1, Temecula, CA 92590; and it currently has affiliated with its license
14 three (3) active licensed fictitious business names (FBN) (Celebration Escrow, A Non
15 Independent Broker Escrow; Reliable Real Estate Services; and Reliable Realty and Property
16 Management, one (1) broker associate (BA) (Hank Hunter Greer, DRE license ID 01869747),
17 and 30 real estate salespersons (RES).

18 4.

19 According to DRE records to date and publicly accessible online, real estate
20 broker (REB) KELLEEE SPILLMAN-MALONE is RRI’s current designated officer of record
21 (D.O.) until her officer affiliation expires on June 16, 2024 with the expiration of RRI’s
22 license.

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5.

According to DRE records to date and publicly accessible online, RRI's DRE license will expire on June 16, 2024. Upon license expiration and pursuant to Code Section 10201, RRI will retain renewal rights, and pursuant to Code Section 10103, the DRE will retain jurisdiction.

6.

According to DRE records to date and publicly accessible online, RRI's DRE license has not suffered any prior license discipline.

KELLEE SPILLMAN-MALONE

(MALONE)

7.

According to DRE records to date and publicly accessible online (https://www2.dre.ca.gov/publicasp/pplinfo.asp?License_id=01226866), Respondent MALONE is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Code) as a REB, DRE license ID 01226866.

8.

According to DRE records to date and publicly accessible online: MALONE was originally licensed by the DRE as a RES on or about September 9, 1997 and as a REB on or about April 12, 2004; her mailing and main address of record are the same: 28693 Old Town Front St 400, Temecula, CA 92590; and she currently has no current DBAs, RECs or RES affiliated with her license.

9.

According to DRE records to date and publicly accessible online, MALONE is the designated officer of record for RRI until her officer affiliation expires on June 16, 2024

1 with the expiration of RRI's license.

2 10.

3 According to DRE records to date and publicly accessible online, MALONE's
4 DRE license will expire on April 11, 2024. Upon license expiration and pursuant to Code
5 Section 10201, MALONE will retain renewal rights, and pursuant to Code Section 10103, the
6 DRE will retain jurisdiction.

7 11.

8 RRI's REAL ESTATE ACTIVITIES

9 At all times mentioned, in the State of California, RRI conducted licensed
10 activities within the meaning of Code Section 10131¹, which require a real estate license,
11 including, but not limited to activities performed by RRI's RES, employees and agents.

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20 ¹ Pursuant to Code Section 10131 Broker Defined, "A real estate broker within this meaning of this part is a
21 person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment,
22 does or negotiates to do one or more of the following acts for another or others: (a) Sells or offers to sell, buys or
23 offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the
24 purchase, sale or exchange of real property or a business opportunity. (b) Leases or rents or offers to lease or rent,
25 or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale,
26 purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real
27 property, or improvements thereon, or from business opportunities. (c) Assists or offers to assist in filing an
application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal
government. (d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for
borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real
property or on a business opportunity. (e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to
exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real
property or on a business opportunity, and performs services for the holders thereof."

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

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

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

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

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

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

21
22 (4)(b) A real estate broker acting as a principal pursuant to Section 10131.1²
23 shall place all funds received from others for the purchase of real property sales contracts or

24
25 ²Code Section 10131.1 states, "(a) A real state broker within the meaning of this part is also a person who
26 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 promissory notes secured directly or collaterally by liens on real property in a neutral escrow
2 depository unless delivery of the contract or notes is made simultaneously with the receipt of
3 the purchase funds.

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

8 13.

9 Pursuant to Regulation 2830 *Broker Placement of Trust Funds with Financial*
10 *Institutions:*

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

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

23 (b) For purposes of this section, a “compensating balance” is a balance
24 maintained in a checking account or other account in a bank or other recognized depository in
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1 the name of a real estate broker for the purpose of paying bank fees on a separate trust fund
2 account.

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

7 (1) Receiving or requesting payment for, accepting or requesting
8 provision of, or accepting or requesting assistance with business
9 expenses, including, but not limited to, rent, employee salaries,
10 furniture, copiers, facsimile machines, automobiles, telephone services
11 or equipment, or computers.

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

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

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

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

24 (d) Receipt or request of receipt of the following are not deemed to be unlawful
25 or in violation of this section:
26

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

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

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

13 14.

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

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

- 19 (1) Date trust funds received.
20 (2) From whom trust funds received.
21 (3) Amount received.
22 (4) With respect to funds deposited in an account, date of said deposit.
23 (5) With respect to trust funds previously deposited to an account, check
24 number and date of related disbursement.

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

(7) Daily balance of said account.

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

(c) Maintenance of journals of account cash receipts and disbursements, 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, shall constitute compliance with subdivision (a) provided that such journals, 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.

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

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

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Pursuant to Regulation 2831.1 *Separate Record for Each Beneficiary or*

Transaction:

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

- (1) Date of deposit.
- (2) Amount of deposit.
- (3) Date of each related disbursement.
- (4) Check number of each related disbursement.
- (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.”

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16.

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.”

17.

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 the broker is the holder of a license bearing such fictitious name, as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker’s salesperson. (b) Except as expressly provided by subdivision (d) of Section 10145 of the Code or by a regulation in this article, the account into which the trust funds are deposited shall not be an interest-bearing account for which prior written notice can by law or regulation be required by the financial institution as a condition to the withdrawal of funds. (c) A check received from the offeror may be held uncashed by the broker until acceptance of the offer if (1) the check by its terms is not negotiable by the broker or if the offeror has given written instructions that the check shall not be deposited nor cashed until acceptance of the offer and (2) the offeree is informed that the check is being so held before or

1 at the time the offer is presented for acceptance. (d) In these circumstances if the offeror's
2 check was held by the broker in accordance with subdivision (c) until acceptance of the offer,
3 the check shall be placed into a neutral escrow depository or the trust fund account, or into the
4 hands of the offeree if offeror and offeree expressly so provide in writing, not later than three
5 business days following acceptance of the offer unless the broker receives written
6 authorization from the offeree to continue to hold the check. (e) Notwithstanding the
7 provisions of subdivisions (a) and (d), a real estate broker who is not licensed under the
8 Escrow Law (Section 17000, et seq., of the Financial Code) when acting in the capacity of an
9 escrow holder in a real estate purchase and sale, exchange or loan transaction in which the
10 broker is performing acts for which a real estate license is required shall place all funds
11 accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow
12 depository or into a trust fund account in the name of the broker, or in a fictitious name if the
13 broker is the holder of a license bearing such fictitious name, as trustee at a bank or other
14 financial institution not later than the next business day following receipt of the funds by the
15 broker or by the broker's salesperson."

16 18.

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

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

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Pursuant to Regulation 2835 *Commingling*:

“Commingling” as used in Section 10176(e) of the Code is prohibited except as specified in this section. For purposes of Section 10176(e), the following shall not constitute “commingling”:

(a) The deposit into a trust account of reasonably sufficient funds, not to exceed \$200, to pay service charges or fees levied or assessed against the account by the bank or financial institution where the account is maintained.

(b) The deposit into a trust account maintained in compliance with subdivision (d) of funds belonging in part to the broker's principal and in part to the broker when it is not reasonably practicable to separate such funds, provided the part of the funds belonging to the broker is disbursed not later than twenty-five days after their deposit and there is no dispute between the broker and the broker's principal as to the broker's portion of the funds. When the right of a broker to receive a portion of trust funds is disputed by the broker's principal, the disputed portion shall not be withdrawn until the dispute is finally settled.

(c) The deposit into a trust account of broker owned funds in connection with activities pursuant to either subdivision (d) or (e) of Section 10131 of the Code or when making, collecting payments or servicing a loan which is subject to the provisions of Section 10240 of the Code provided:

(1) The broker meets the criteria of Section 10232 of the Code.

(2) All funds in the account which are owned by the broker are identified at all times in a separate record which is distinct from any separate record maintained for a beneficiary.

(3) All broker owned funds deposited into the account are disbursed from the account not later than 25 days after their deposit.

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(4) The funds are deposited and maintained in compliance with subdivision (d).

(5) For the purpose of this section, a broker shall be deemed to be subject to the provisions of Section 10240 of the Code if the broker delivers the statement to the borrower required by Section 10240.

(d) The trust fund account into which the funds are deposited is maintained in accordance with the provisions of Section 10145 and the regulations of this article.”

Broker Supervision

(Code Section 10159.2 and Regulation 2725)

20.

Pursuant to Code Section 10159.2 *Responsibility of Corporate Officer in*

Charge:

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

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

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

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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22.

False or Fictitious Business Name

(Code Section 10159.5 and Regulation 2731(a) in conjunction with Code Section 10130)

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

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

23.

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.”

24.

Place of Business

Pursuant to Code Section 10162 *Place of Business: Contact Information*:

“(a) Every licensed real estate broker shall have and maintain a definite place of business in the State of California that serves as his or her office for the transaction of business. This office shall be the place where his or her license is displayed and where personal consultations with clients are held.

(b) A real estate license does not authorize the licensee to do business except from the location stipulated in the real estate license as issued or as altered pursuant to Section 10161.8.

(c) (1) Every real estate broker and salesperson licensee shall provide to the commissioner his or her current office or mailing address, a current telephone number, and a

1 current electronic mail address that he or she maintains or uses to perform any activity that
2 requires a real estate license, at which the bureau may contact the licensee.

3 (2) Every real estate broker and salesperson licensee shall inform the
4 commissioner of any change to his or her office or mailing address,
5 telephone number, or electronic mail address no later than 30 days after
6 making the change.

7 (d) Notwithstanding Section 10185, a violation of this section is not a
8 misdemeanor.”

9 25.

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

11 “Every broker, except a broker acting in the capacity of a salesperson to
12 another broker under written agreement, shall maintain on file with the commissioner the
13 address of his principal place of business for brokerage activities, the address of each branch
14 business office and his current mailing address, if different from the business address. Every
15 broker who is acting in the capacity of a salesperson to another broker under written agreement
16 shall maintain on file with the commissioner the address of the business location where he
17 expects to conduct most of the activities for which a license is required and his current mailing
18 address. A real estate salesperson shall maintain on file with the commissioner his current
19 mailing address, and when applicable, the address of the principal business office of the broker
20 to whom the salesperson is at the time licensed. Whenever there is a change in the location or
21 address of the principal place of business or of a branch office of a broker, he shall notify the
22 commissioner thereof not later than the next business day following the change. This section
23 shall apply to the holder of a real estate license who fails to renew it prior to the period for
24 which it was issued and who is otherwise qualified for such license as set forth in Section
25 10201 of the Code.”

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26.

Branch Offices

Pursuant to Code Section 10163 *Branch Offices*:

“If the applicant for a real estate broker’s license maintains more than one place of business within the State he shall apply for and procure an additional license for each branch office so maintained by him. Every such application shall state the name of the person and the location of the place or places of business for which such license is desired. The commissioner may determine whether or not a real estate broker is doing a real estate brokerage business at or from any particular location which requires him to have a branch office license.”

27.

Grounds for Revocation or Suspension

(selected portions)

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, 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.

...

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

11 28.

12 **Further Grounds for Disciplinary Action**

13 **(Code Section 10177)**

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

15 "The commissioner may suspend or revoke the license of a real estate licensee,
16 delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an
17 applicant, who has done any of the following, or may suspend or revoke the license of a
18 corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to
19 a corporation, if an officer, director, or person owning or controlling 10 percent or more of the
20 corporation's stock has done any of the following:

21 (a) Procured, or attempted to procure, a real estate license or license
22 renewal, for themselves or a salesperson, by fraud, misrepresentation, or
23 deceit, or by making a material misstatement of fact in an application
24 for a real estate license, license renewal, or reinstatement.
25

1 (b) (1) Entered a plea of guilty or no contest to, or been found guilty of,
2 or been convicted of, a felony, or a crime substantially related to the
3 qualifications, functions, or duties of a real estate licensee, and the time
4 for appeal has elapsed or the judgment of conviction has been affirmed
5 on appeal, irrespective of an order granting probation following that
6 conviction, suspending the imposition of sentence, or of a subsequent
7 order under Section 1203.4 of the Penal Code allowing that licensee to
8 withdraw that licensee's plea of guilty and to enter a plea of not guilty,
9 or dismissing the accusation or information.

10 (2) Notwithstanding paragraph (1), and with the recognition that
11 sentencing may not occur for months or years following the entry of a
12 guilty plea, the commissioner may suspend the license of a real estate
13 licensee upon the entry by the licensee of a guilty plea to any of the
14 crimes described in paragraph (1). If the guilty plea is withdrawn, the
15 suspension shall be rescinded and the license reinstated to its status prior
16 to the suspension. The department shall notify a person whose license is
17 subject to suspension pursuant to this paragraph of that person's right to
18 have the issue of the suspension heard in accordance with Section
19 10100.

20 (c) Knowingly authorized, directed, connived at, or aided in the
21 publication, advertisement, distribution, or circulation of a material false
22 statement or representation concerning their designation or certification
23 of special education, credential, trade organization membership, or
24 business, or concerning a business opportunity or a land or subdivision,
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as defined in Chapter 1 (commencing with Section 11000) of Part 2, offered for sale.

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

(e) Willfully used the term “realtor” or a trade name or insignia of membership in a real estate organization of which the licensee is not a member.

(f) Acted or conducted themselves in a manner that would have warranted the denial of their application for a real estate license, or either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked, surrendered, or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, surrender, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

1 (g) Demonstrated negligence or incompetence in performing an act for
2 which the officer, director, or person is required to hold a license.

3 (h) As a broker licensee, failed to exercise reasonable supervision over
4 the activities of that licensee's salespersons, or, as the officer designated
5 by a corporate broker licensee, failed to exercise reasonable supervision
6 and control of the activities of the corporation for which a real estate
7 license is required.

8 (i) Used their employment by a governmental agency in a capacity
9 giving access to records, other than public records, in a manner that
10 violates the confidential nature of the records.

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

14 (k) Violated any of the terms, conditions, restrictions, and limitations
15 contained in an order granting a restricted license.

16 (l) (1) Solicited or induced the sale, lease, or listing for sale or lease of
17 residential property on the grounds, wholly or in part, of loss of value,
18 increase in crime, or decline of the quality of the schools due to the
19 present or prospective entry into the neighborhood of a person or
20 persons having a characteristic listed in subdivision (a) or (d) of Section
21 12955 of the Government Code, as those characteristics are defined in
22 Sections 12926 and 12926.1 of, subdivision (m) and paragraph (1) of
23 subdivision (p) of Section 12955 of, and Section 12955.2 of, the
24 Government Code.

1 (2) Notwithstanding paragraph (1), with respect to familial status,
2 paragraph (1) shall not be construed to apply to housing for older
3 persons, as defined in Section 12955.9 of the Government Code. With
4 respect to familial status, nothing in paragraph (1) shall be construed to
5 affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil
6 Code, relating to housing for senior citizens. Subdivision (d) of Section
7 51 and Section 4760 of the Civil Code and subdivisions (n), (o), and (p)
8 of Section 12955 of the Government Code shall apply to paragraph (1).
9 (m) Violated the Franchise Investment Law (Division 5 (commencing
10 with Section 31000) of Title 4 of the Corporations Code) or regulations
11 of the Commissioner of Business Oversight pertaining thereto.
12 (n) Violated the Corporate Securities Law of 1968 (Division 1
13 (commencing with Section 25000) of Title 4 of the Corporations Code)
14 or the regulations of the Commissioner of Business Oversight pertaining
15 thereto.
16 (o) Failed to disclose to the buyer of real property, in a transaction in
17 which the licensee is an agent for the buyer, the nature and extent of a
18 licensee's direct or indirect ownership interest in that real property. The
19 direct or indirect ownership interest in the property by a person related
20 to the licensee by blood or marriage, by an entity in which the licensee
21 has an ownership interest, or by any other person with whom the
22 licensee has a special relationship shall be disclosed to the buyer.
23 (p) Violated Article 6 (commencing with Section 10237).
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1 (q) Violated or failed to comply with Chapter 2 (commencing with
2 Section 2920) of Title 14 of Part 4 of Division 3 of the Civil Code,
3 relating to mortgages.

4 If a real estate broker that is a corporation has not done any of the foregoing acts, either
5 directly or through its employees, agents, officers, directors, or persons owning or controlling
6 10 percent or more of the corporation's stock, the commissioner may not deny the issuance or
7 delay the renewal of a real estate license to, or suspend or revoke the real estate license of, the
8 corporation, provided that any offending officer, director, or stockholder, who has done any of
9 the foregoing acts individually and not on behalf of the corporation, has been completely
10 disassociated from any affiliation or ownership in the corporation. A decision by the
11 commissioner to delay the renewal of a real estate license shall toll the expiration of that
12 license until the results of any pending disciplinary actions against that licensee are final, or
13 until the licensee voluntarily surrenders the licensee's license, whichever is earlier."

14 **CAUSE FOR DISCIPLINE**

15 **AUDIT SD220022: RRI**

16 **(Violations: Audit Examination Period from January 1, 2022 to January 31, 2023)**

17 29.

18 On June 23, 2023, the DRE completed its audit examination of the books and
19 records of Respondent RRI pertaining to its property management activities and sales activities
20 (Audit SD220022), which require a real estate license. The audit examination covered a
21 period of time beginning on January 1, 2022 and ending on January 31, 2023 (audit period),
22 and the DRE examination was performed between March 30, 2023 and June 23, 2023 at RRI's
23 main office address on record and at the DRE's Los Angeles District Office (LADO) located
24 at 320 W. 4th Street, Suite 350, Los Angeles, CA 90013-1105.

25 ///

1 30.

2 The final audit report dated June 23, 2023 revealed violations of the Code and
3 the Regulations as set forth in the following paragraphs, and more fully discussed in Audit
4 Report SD220022 (DRE Form RE 4541 (Rev. 7/18)).

5 31.

6 Background

7 At the time of Audit SD220022, according to DRE records dated March 30,
8 2023:

- 9 A. RRI's D.O. was MALONE;
- 10 B. RRI had three (3) FBNS, for Celebration Escrow, a Non Independent
11 Broker Escrow, active as of 11/01/19, Reliable Real Estate Services, active
12 as of 09/08/09, and Reliable Realty and Property Management, active as of
13 02/09/07.
- 14 C. RRI maintained one (1) branch office located at 41965 3rd Street, #B,
15 Temecula, CA 92591. (According to MALONE during the audit, and
16 according to DRE's license records dated June 7, 2023, RRI no longer
17 maintained this branch office.)
- 18 D. RRI had 28 licensed employees under its license.

19 32.

20 Corporate Structure

21 According to the DRE auditor's discussions with MALONE, the corporate
22 structure of RRI as of March 30, 2023 is as follows:

Name	Corporate Title	License	Shareholder %
MALONE	CFO-CEO	REB	100%
Sean Malone	Secretary	RES, DRE license ID 02021223	0%

1 33.

2 Business Activities

3 According to MALONE and the records examined, during the audit period, RRI
4 managed about 103 properties and collected about \$2.2 million in trust funds annually in
5 connection with its property management activities. RRI managed about 80 properties for
6 about 57 owners, and, depending on the property management agreement with each owner,
7 charged a management fee of \$99.00 to \$125.00 flat fee per property per month or 7% to 10%
8 of monthly rents.

9 34.

10 According to MALONE, during the audit period, RRI closed about 154 real
11 estate sales transactions valued at about \$114.4 million and did not collect any Earnest Money
12 Deposits (EMD) during the audit period.

13 35.

14 Bank Accounts for Sales Activities

15 According to MALONE, in connection with RRI's sales activities during the
16 audit period, neither a trust account nor a columnar record of trust funds received not placed in
17 broker's trust account was maintained. RRI maintained one (1) general business account in
18 connection with its real estate activities.

19 36.

20 Bank Accounts for Property Management Activities

21 RRI maintained two (2) bank accounts for handling the receipts and
22 disbursement of funds in connection with its property management activities during the audit
23 period.

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RRI's Bank Accounts

A. Bank Account 1: B/A 1

- * Bank: Wells Fargo Bank
- * Bank Address: 27630 Ynez Road, Temecula, CA 92591
- * Account Name: Reliable Realty Inc
- * Account No. #####9832
- * Signature(s) Required: 1
- * Signatory: MALONE

B/A 1 for multiple beneficiaries was maintained for handling the receipts and disbursements of trust funds (rents) in connection with RRI's property management activities. B/A 1 was also maintained for handling the receipts and disbursements of funds in connection with RR's property management general business activity. According to MALONE, B/A 1 was maintained for RRI's rents trust funds and property management general business activity since it was opened in 2006. A bank reconciliation for B/A 1 was prepared as of January 31, 2023. The accountability was determined based on the separate records provided by MALONE, and the adjusted bank balance was compared to the accountability.

B. Bank Account 2: B/A 2

- * Bank: Wells Fargo Bank
- * Bank Address: 27630 Ynez Road, Temecula, CA 92591
- * Account Name: Reliable Realty Inc
- * Account No. #####9865
- * Signature(s) Required: 1
- * Signatory: MALONE

B/A 2 for multiple beneficiaries was maintained for handling the receipts and disbursements of trust funds (security deposits) in connection with RRI's property management activities. A bank reconciliation for B/A 2 was prepared as of January 31, 2023. The accountability was determined based on the separate records provided by MALONE, and the adjusted bank balance was compared to the accountability.

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1 **CAUSE FOR DISCIPLINE**

2 **AUDIT FINDINGS: VIOLATIONS OF THE REAL ESTATE LAW**

3 38.

4 In the course of the real estate activities described in paragraphs 33 and 34
5 during the subject audit period described in paragraph 29, above, the DRE auditor made
6 findings that RRI violated the Code and the Regulations, as described below, and more fully
7 discussed in the DRE's Audit Report for Audit SD2200228 dated June 23, 2023

8 39.

9 **Audit SD220022 - Issue One:**

10 **Trust Fund Handling for Multiple Beneficiaries**

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

12 A. B/A 1: A bank reconciliation for B/A 1 was prepared as of January 31, 2023
13 (audit cut-off date). The accountability was determined based on the separate records provided
14 by MALONE, and the adjusted bank balance was compared to the accountability. There was a
15 shortage in B/A 1 of <\$8,368.58> as of January 31, 2023 due to negative property balances
16 totaling <\$7,240.30> and unauthorized disbursements/over disbursements of management fees
17 totaling <\$1,128.28>. There were also "unidentified/unaccounted for funds" held in B/A 1
18 totaling \$35,227.66 as of January 31, 2023.

19 B. B/A 2: A bank reconciliation for B/A 2 was prepared as of January 31, 2023
20 (audit cut-off date). The accountability was determined based on the separate records provided
21 by MALONE, and the adjusted bank balance was compared to the accountability. There was a
22 shortage in B/A 2 of <\$1,000.00> as of January 31, 2023 due to negative property balances
23 totaling <\$1,000.00>. There were also "unidentified/unaccounted for funds" held in B/A 2
24 totaling \$1,5,00.68 as of January 31, 2023.

1 C. D.O. MALONE provided no evidence that all the owners of the trust funds
2 had provided their written consent to allow MALONE and/or RRI to reduce the balance of
3 funds in B/A 1 and/or B/A 2 to an amount less than the existing aggregate trust fund liabilities,
4 in violation of **Code Section 10145 and Regulation 2832.1**.

5 40.

6 **Audit SD220022 - Issue Two:**

7 **Unauthorized Disbursements/Over Disbursements of Management Fees/**

8 **Mishandling of Trust Funds**

9 **(Code Section 10145(a))**

10 There were unauthorized disbursements/over disbursements of management
11 fees from B/A 1 totaling <\$1,128.28> as of January 31, 2023 (audit cut-off date). Said
12 unauthorized disbursements [due to Check No. 12386 in the amount of \$3,500.00 cut on
13 January 31, 2023 for RRI's office rent] caused part of the <\$1,128.28> shortage in B/A 1 as of
14 the audit cut-off date, in violation of **Code Section 10145(a)**.

15 41.

16 **Audit SD220022 - Issue Three:**

17 **Trust Fund Records to be Maintained**

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

19 The control record maintained for B/A 1, which was utilized for handling the
20 receipts and disbursements of rents trust funds in connection with the property management
21 activity was inaccurate and incomplete, in violation of **Code Section 10145 and Regulation**
22 **2831**. Check No. 12386 dated January 31, 2023 in the amount of \$3,500.00 was not recorded
23 on the control record of B/A 1; therefore the daily balance was incorrect. Additionally, the
24 control record was missing information as to from whom trust funds were received.

25 ///

Audit SD220022 - Issue Four:

Separate Record for Each Beneficiary or Transaction

(Code Section 10145 and Regulation 2831.1)

A. The separate records maintained for B/A 1, which was used for handling the receipts and disbursements of rents trust funds in connection with the property management activity were inaccurate and incomplete, in violation of **Code Section 10145 and Regulation 2831.1**. Some disbursements were made from B/A 1, but not recorded on the separate records of B/A 1.

B. RRI failed to maintain a separate record for its broker's fees/funds in B/A 1 during the audit period, in violation of **Code Section 10145 and Regulation 2831.1**. RRI reconstructed a separate record for its broker's fees/funds from January 2022 to January 2023 during the course of the audit. Additionally, the reconstructed broker's fees/funds ledger of B/A 1 was inaccurate and incomplete, also in violation of **Code Section 10145 and Regulation 2831.1**. Some disbursements were made from B/A 1 but were not recorded on the broker's fees/funds ledger of B/A 1.

C. RRI failed to maintain a separate record for the "unidentified/unaccounted for funds" held in B/A 1 totaling \$35,227.66 as of January 31, 2023 (audit cut-off date), in violation of **Code Section 10145 and Regulation 2831.1**.

D. RRI failed to maintain a separate record for the "unidentified/unaccounted for funds" held in B/A 2 totaling \$1,500.69 as of January 31, 2023 (audit cut-off date), in violation of **Code Section 10145 and Regulation 2831.1**.

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1 43.

2 **Audit SD220022 - Issue Five:**

3 **Trust Account Reconciliation**

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

5 A. RRI did not perform and maintain the monthly reconciliation comparing the
6 balance of all the separate beneficiaries' records to the balance of the control record for B/A 1
7 and B/A 2, as required in connection with the property management activity during the audit
8 period, in violation of **Code Section 10145 and Regulation 2831.2.**

9 B. RRI failed to reconcile the "unidentified/unaccounted for funds" held in B/A
10 1 totaling \$35,227.66 as of January 31, 2023, in violation of **Code Section 10145 and**
11 **Regulation 2831.2.**

12 C. RRI failed to reconcile the "unidentified/unaccounted for funds" held in B/A
13 2 totaling \$1,500.68 as of January 31, 2023, in violation of **Code Section 10145 and**
14 **Regulation 2831.2.**

15 44.

16 **Audit SD220022 - Issue Six:**

17 **Trust Fund Handling/Trust Account Designation**

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

19 A. According to the bank signature card maintained at Wells Fargo Bank for
20 B/A 1 which was used for handling the receipts and disbursements of the rents trust funds in
21 connection with the property management activity during the audit period, the bank account,
22 B/A 1 was not designated as a trust account, in violation of **Code Section 10145(a) and**
23 **Regulation 2832.**

24 B. According to the bank signature card maintained at Wells Fargo Bank for
25 B/A 2 which was used for handling the receipts and disbursements of the security deposits
26

1 trust funds in connection with the property management activity during the audit period, the
2 bank account, B/A 2 was not designated as a trust account, in violation of **Code Section**
3 **10145(a) and Regulation 2832.**

4 45.

5 **Audit SD220022 - Issue Seven:**

6 **Commingling/Excess Broker's Funds Held for Bank Fees/Mishandling of Trust Funds**

7 **(Code Sections 10145 and 10176(e) and Regulations 2835(a) and 2835(b))**

8 A. During the audit period, RRI kept more than \$200.00 of its own funds in
9 B/A 1 to cover bank service charges and checks that may be returned NSF (non-sufficient
10 funds) from tenants, in violation of **Code Sections 10145 and 10176(e) and Regulation**
11 **2835(a).** An examination of the separate record that identified the funds belonging to RRI
12 showed that it had a balance that exceeded \$200.00 most of the time during the audit period.

13 B. During the audit period, commissions, fees, or other income earned by RRI
14 and collectible from B/A 1 were left in B/A 1 for more than 25 days after their deposit, in
15 violation of **Code Sections 10145 and 10176(e) and Regulation 2835(b).** Specifically,
16 during the period from July 2022 to September 2022, an examination of the activities of the
17 broker's fees/funds ledger showed that RRI left its own fees/funds in B/A 1 for over 25 days.

18 46.

19 **Audit SD220022 - Issue Eight:**

20 **Commingling/Trust Funds Deposited into Broker's General Business Account/**

21 **Mishandling of Trust Funds**

22 **(Code Sections 10145 and 10176(e) and Regulation 2832)**

23 RRI commingled trust funds (rents and security deposits) with its general
24 business funds by depositing trust funds into the general business bank account number
25 #####4887 (G/A 1), in violation of **Code Sections 10145 and 10176(e) and Regulation**
26

1 **2832.** Trust funds deposited into G/A 1 were transferred back to B/A 1 and B/A 2. When
2 asked about the rents and security deposits trust funds deposited into G/A 1, D.O. MALONE
3 indicated that the trust funds deposited into G/A 1 were made in error, and that they were
4 transferred back to B/A 1 and B/A 2.

5 47.

6 **Audit SD220022 - Issue Nine:**

7 **Trust Fund Handling/Secret Profit or Undisclosed Compensation**

8 **(Code Sections 10145(a) and 10176(g))**

9 During the audit period, RRI charged the property owners maintenance fees
10 that were more than the amounts billed to RRI by the vendors; the mark-up amount, which
11 was ten percent (10%) of the vendor's invoice amount, was not disclosed in writing to the
12 property owners in all of the property management agreements sampled for examination, in
13 violation of **Code Sections 10145(a) and 10176(g)**.

14 48.

15 **Audit SD220022 - Issue Ten:**

16 **Use of False or Fictitious Name**

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

18 During the audit period, RRI used the unlicensed fictitious business name
19 (FBN) "Rancho Plaza Realty" in connection with its property management activity without
20 obtaining a license from the DRE bearing said FBN, in violation of **Code Section 10159.5 and**
21 **Regulation 2731.**

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1 49.

2 **Audit SD220022 - Issue Eleven:**

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

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

5 RRI used the unlicensed branch office located at 27994 Bradley Rd., Suite I,
6 Menifee, CA 92586 during the audit period in connection with its property management
7 activity without first obtaining a branch license from the DRE, in violation of **Code Section**
8 **10163 and Regulation 2715.**

9 50.

10 **Audit SD220022 - Issue Twelve:**

11 **Responsibility of corporate Officer in Charge/ Broker Supervision**

12 **(Code Section 10159.2 and Regulation 2725)**

13 Based on the above findings, D.O. MALONE did not exercise adequate
14 supervision and control over RRI's property management activity conducted by its licensees
15 and employees to ensure compliance with the Real Estate Laws and Regulations. MALONE
16 failed to establish policies, rules, procedures, and systems to review, oversee, inspect, and
17 manage transactions requiring a real estate license and the handling of trust funds, in violation
18 of **Code Section 10159.2 and Regulation 2725.**

19 51.

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

21 **(Code Sections 10177(d) and (h))**

22 The overall conduct of Respondents is in violation of the Real Estate Law and
23 constitutes cause for the suspension or revocation of the real estate licenses and license rights
24 of RELIABLE REALTY INC and KELLEEE SPILLMAN-MALONE under the provisions of
25 **Code Section 10177(d)** (for willful disregard of the Real Estate Law) and [as to MALONE]
26

1 **Code Section 10177(h)** (failure to exercise reasonable supervision).

2 **COSTS**

3 52.

4 **Investigation & Enforcement Costs**

5 **(Code Section 10106)**

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

11 53.

12 **Audit Costs**

13 **(Code Section 10148)**

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

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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 **RELIABLE REALTY INC** and **KELLEEE SPILLMAN-MALONE** under the Real Estate Law (Part 1 of vision 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 San Diego, California
this 6th day of December, 2023.


Veronica Kilpatrick
Supervising Special Investigator

cc: Reliable Realty Inc
Kellee Spillman-Malone
Enforcement – SD (V. Kilpatrick)
Audits – SD
Sacto.