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DEPT. OF REAL ESTATE

By: [Redacted]

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation against
12 AMC-CA INCORPORATED and
13 MICHAEL TERRENCE COBERY,
14 individually and as designated officer for
AMC-CA Incorporated,
15 Respondents.

DRE No. H-42888 LA
OAH No. 2024100190
FIRST AMENDED ACCUSATION

16
17 This First Amended Accusation amends the Accusation filed on July 11, 2024. The
18 Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the Department of Real
19 Estate¹ (“Department”) of the State of California, for cause of Accusation against AMC-CA
20 INCORPORATED and MICHAEL TERRENCE COBERY, individually and as designated
21 officer for AMC-CA Incorporated (collectively “Respondents”), alleges as follows:

22 1. The Complainant, Veronica Kilpatrick, acting in her official capacity as a
23 Supervising Special Investigator, makes this Accusation against Respondents.

24 ¹ Between July 1, 2013, and July 1, 2018, the Department of Real Estate operated as the Bureau of Real Estate under the Department of Consumer Affairs.

1 2. All references to the “Code” are to the California Business and Professions Code,
2 all references to the “Real Estate Law” are to Part 1 of Division 4 of the Code, and all references
3 to “Regulations” are to the Regulations of the Real Estate Commissioner, Title 10, Chapter 6,
4 California Code of Regulations.

5 Licenses

6 3. Respondents are presently licensed and/or have license rights under the Real
7 Estate Law (Part 1 of Division 4 of the Code).

8 4. On July 16, 2008, the Department issued a real estate corporation license to
9 Respondent AMC-CA INCORPORATED (“AMCCAI”), License ID 01525033. Respondent
10 AMCCAI’s license is scheduled to expire on May 15, 2027, unless renewed. Respondent has
11 renewal rights pursuant to Code section 10201. The Department retains jurisdiction pursuant to
12 Code section 10103.

13 5. On January 30, 2013, the Department issued a real estate broker license to
14 Respondent MICHAEL TERRENCE COBERY (“COBERY”), License ID 01449928.
15 Respondent COBERY’s broker license is scheduled to expire on January 19, 2025, unless
16 renewed. Respondent has renewal rights pursuant to Code section 10201. The Department
17 retains jurisdiction pursuant to Code section 10103.

18 6. Respondent COBERY was formerly licensed as a real estate salesperson from
19 approximately August 28, 2004, through August 27, 2012.

20 7. From approximately June 27, 2017, through the present, Respondent AMCCAI
21 was and now is licensed as a corporate real estate broker by and through Respondent COBERY
22 as designated broker-officer for Respondent AMCCAI to qualify said corporation and to act for
23 said corporation as a real estate broker.

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1 8. From approximately June 27, 2017, through the present, Respondent COBERY
2 has been the designated officer for Respondent AMCCAI, pursuant to Code section 10211. As
3 the designated officer for AMCCAI, Respondent COBERY, is responsible for the supervision
4 and control of the activities conducted on behalf of AMCCAI by its officers, agents, real estate
5 licensees, and employees, as necessary to secure full compliance with the provisions of the Real
6 Estate Law, pursuant to Code section 10159.2.

7 9. Whenever reference is made in an allegation in this Accusation to an act or
8 omission of Respondent AMCCAI, such allegation shall be deemed to mean that the officers,
9 directors, employees, agents and/or real estate licensees employed by or associated with
10 Respondent AMCCAI, committed such act or omission while engaged in the furtherance of the
11 business or operations of such corporate respondent and while acting within the course and
12 scope of their authority and employment.

13 10. Lindsey Daniels, Jennifer Fletcher, Trisha Hickman aka Trisha Elaine Newport,
14 Dana Murrah, Tyler Rinehart, Robert Tolstyka, Connie Jean Wirthlin, Gregory B. Wiseman,
15 Brent Wiseman, and Brenda Barrett Wright, are not, and have not been, licensed in any capacity
16 by the Department.

17 11. Thomas L. Bisanz is licensed as a real estate broker by the Department, License
18 ID 01913664.

19 12. At all times relevant herein, in the State of California, Respondents engaged in
20 activities that require a real estate broker license within the meaning of Code section 10131,
21 subdivision (b). Respondents' activities included soliciting or offering to negotiate the sale,
22 purchase or exchange of leases for real property and the collection of rents or security deposits
23 on real property or on a business opportunity for others, for compensation or in expectation of
24 compensation.

1 Cause of Accusation - Audit SD 230024

2 13. On or about March 15, 2024, the Department completed an audit examination of
3 the books and records of Respondent AMCCAI's property management activities, which require
4 a real estate license pursuant to Code section 10131, subdivision (b), to determine if Respondents
5 handled and accounted for trust funds in compliance with the Real Estate Law and the
6 Regulations.

7 14. The audit examination covered the period from January 1, 2022, through
8 September 30, 2023, ("audit period").

9 15. The audit examination revealed violations of the Code and the Regulations as set
10 forth in the following paragraphs, and more fully discussed in Audit Report SD230024 and the
11 exhibits and work papers attached to said audit report.

12 16. According to Respondents, AMCCAI's corporate structure is the following: Greg
13 Brent Wiseman is CEO, Brenda Barrett Wright is Secretary, and Connie Jean Wirthlin is CFO.

14 17. According to Respondents, during the audit period, AMCCAI managed 183
15 apartment complexes with approximately 27,501 units for 183 property owners. AMCCAI
16 collected approximately \$684.7 million in trust funds annually. AMCCAI collected rents, paid
17 expenses, and screened tenants for compensation. AMCCAI charged a management fee of
18 \$18.00 to \$65.00 flat fee per unit per month or 1.75% to 5% of monthly collected Effective
19 Gross Income ("EFI") depending on their property management agreement with each property
20 owner.

21 18. According to Respondents, during the audit period, AMCCAI did not conduct real
22 estate sales activities and did not maintain any trust account in connection with real estate sales
23 activities.

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C. Bank Account 3 (B/A 3)

Bank: Key Bank

Account #: xxx5335

Purpose: B/A 3 was used for a single beneficiary for handling the receipts and disbursements of trust funds in connection with the property management activity during the audit period for the Bay Vista apartment complex located at 470 Central Ave., Alameda, California 94501.

D. Bank Account 4 (B/A 4)

Bank: Bank of America

Account #: xxx9563

Purpose: B/A 4 was used for a single beneficiary for handling the receipts and disbursements of trust funds in connection with the property management activity during the audit period for the Atrium apartment complex located at 3733 Gibson Road, El Monte, California 91731.

Audit Violations

23. In the course of its property management activities during the audit period, Respondents acted in violation of the Code and the Regulations as follows:

Issue 1. Code section 10145(a). Trust fund handling.

B/A 1

24. The Department's auditor prepared a bank reconciliation for B/A 1 with the audit cutoff date of September 30, 2023. The accountability for B/A 1 was determined based on the control record provided by Respondents. The adjusted bank balance (\$599,280.46) was compared to the accountability (\$599,292.46).

1 25. As of September 30, 2023, there was discrepancy of <\$12.00> in B/A 1. The
2 cause of the <\$12.00> discrepancy could not be identified based on the records provided to the
3 Department's auditor during the audit.

4 B/A 2

5 26. The Department's auditor prepared a bank reconciliation for B/A 2 with the audit
6 cutoff date of September 30, 2023. The accountability for B/A 2 was determined based on the
7 control record provided by Respondents. The adjusted bank balance (\$12,244.19) was compared
8 to the accountability (\$12,244.19).

9 27. B/A 2 was in balance as of September 30, 2023. According to COBERY, B/A 1
10 was opened in July of 2023 to replace B/A 2.

11 B/A 3

12 28. The Department's auditor prepared a bank reconciliation for B/A 3 with the audit
13 cutoff date of September 30, 2023. The accountability for B/A 3 was determined based on the
14 control record provided by Respondents. The adjusted bank balance (\$868.12) was compared to
15 the accountability (\$868.12).

16 29. B/A 3 was in balance as of September 30, 2023.

17 B/A 4

18 30. The Department's auditor prepared a bank reconciliation for B/A 4 with the audit
19 cutoff date of September 30, 2023. The accountability for B/A was determined based on the
20 control record provided by Respondents. The adjusted bank balance (\$383,344.45) was
21 compared to the accountability (\$386,035.45).

22 31. As of September 30, 2023, there was discrepancy of <\$2,691.00> in B/A 4. The
23 cause of the discrepancy was due in part to rental funds totaling (\$2,645.00) that were received
24 on September 26, 2023, but not deposited until December 1, 2013. [Discussed further in Issue 7,

1 below.] The cause of the remaining (\$46.00) of the <\$2,691.00> discrepancy could not be
2 identified based on the records provided to the Department's auditor during the audit.

3 32. Respondents failed to provide evidence that the owners of the trust funds in B/A 1
4 and B/A 4 had given their written consent to allow Respondents to reduce the balance of the
5 funds in B/A 1 and B/A 4 to an amount less than the existing aggregate trust fund liabilities, in
6 violation of Code section 10145.

7 Issue (3) Three.² Code section 10145(d)(1)(2). Trust fund handling / Interest Bearing-Accounts

8 33. During the audit period, AMCCAI received and deposited trust funds into an
9 interest-bearing account (B/A 1) and failed to comply with the following requirements:

- 10 1) B/A 1 was not in the name of the broker as trustee for the designated beneficiary or
11 principal in connection with the property management activity; and
12 2) The total of the trust funds in the account were not fully covered by the Federal
13 Deposit Insurance Corporation maximum coverage of \$250,000, in violation of Code
14 section 10145, subdivision (d)(1)(2).

15 34. Examples of the excess/uncovered trust fund balances include the following,
16 without limitation:

<u>As of date</u>	<u>B/A 1 Balance over FDIC coverage limit</u>
08/01/2023	\$641,339.84
08/07/2023	\$118,159.92
08/31/2023	\$88,576.21
09/06/2023	\$208,314.50
09/08/2023	\$99,323.63

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² Issue Two was intentionally skipped.

1 Issue 4. Code section 10145 and Regulation 2831. Trust funds records required to be
2 maintained.

3 35. During the audit period, AMCCAI's control records for B/A 1, B/A 2, B/A 3, and
4 B/A 4 were inaccurate and incomplete, in violation of Code section 10145 and Regulation 2831.
5 The control records did not have an accurate daily balance. All deposits for the month were
6 recorded as a lump sum amount at the end of the month and therefore, the daily balance for each
7 of the bank accounts was not accurate. Examples of the total deposits recorded on the control
8 records include the following, without limitation:

9	<u>Bank Account</u>	<u>Date recorded</u>	<u>Total Deposit for the Month</u>
10	B/A 1	09/30/2023	\$689,613.31
11	B/A 2	03/31/2022	\$643,969.85
12	B/A 2	10/31/2022	\$718,667.62
13	B/A 2	01/31/2023	\$709,250.16
14	B/A 2	07/31/2023	\$708,145.09
15	B/A 3	07/31/2023	\$49,822.15
16	B/A 3	08/31/2023	\$50,415.56
17	B/A 3	09/30/2023	\$60,135.36
18	B/A 4	07/31/2023	\$41,133.72
19	B/A 4	08/31/2023	\$36,789.50

20 36. Moreover, the control records for B/A 1, B/A 2, B/A 3, and B/A 4 failed to
21 include sufficient information required in columnar form to identify the transaction and all
22 parties to the transaction, namely: from whom trust funds were received and the date that the
23 trust funds were deposited.

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1 37. AMCCAI produced a monthly "Bank Deposit Summary Report" for B/A 1, B/A
2 2, B/A 3, and B/A 4 which included the date trust funds were received and the total bank
3 deposits for each month. However, said report was not in chronological sequence by date and it
4 was also missing entries for from whom the trust funds were received.

5 Issue 5. Code section 10145(a) and Regulation 2832. Trust fund handling / Trust Account
6 Designation

7 38. During the audit period, AMCCAI used B/A 1, B/A 2, B/A 3, and B/A 4 for
8 handling trust fund receipts and disbursements belonging to others in connection with property
9 management activities. B/A 1, B/A 2, B/A 3, and B/A 4 were not in the name of AMCCAI or
10 AMCCAI's licensed fictitious business name, "Apartment Management Consultants," as trustee,
11 in violation of Code section 10145, subdivision (a), and Regulation 2832.

12 39. According to the bank signature cards examined, the bank accounts were named
13 as follows:

<u>Bank Account</u>	<u>Bank Account name</u>
B/A 1	JSP Sierra Del Oro II LLC, Apartment Management Consultants LLC as Agent
B/A 2	AMC-CA DBA Apartment Mgmt Consultants LLC FBO JSP Sierra Del Oro I LLC
B/A 3	* According to the bank signature card, the account name/ owner is, "SE Alameda LP." B/A 3 was set up as: SE-Alameda LP, AMC-CA, Inc dba Apartment Management Consultants LLC As Agent for SE-Alameda LP ITF Bay Vista-OP

1 Bank Account Bank Account name

2 B/A 4 Atrium Apartments, LLC

3 40. According to AMCCAI's Accounting Manager, Trisha Elaine Newport aka Trisha
4 Hickman, the Tax ID number on each of the bank signature cards for B/A 1, B/A 2, B/A 3, and
5 B/A 4 belonged to the legal entity/property owner [beneficiary] and was not AMCCAI's Tax ID
6 number.

7 Issue 6. Code section 10145(a) and Regulation 2832. Trust fund handling / Trust funds
8 deposited into Out-of-State bank account.

9 41. During the audit period, AMCCAI collected trust funds in connection with
10 property management activities for others and failed to place/maintain said trust funds in a bank
11 account of a bank with any branch office located within the State of California, in violation of
12 Code section 10145, subdivision (a), and Regulation 2832.

13 42. AMCCAI maintained trust funds in connection with property management
14 activities for the Sierra Del Oro apartment complex in B/A 1 with M&T Bank, which did not
15 have a bank branch office located in California.

16 43. Moreover, AMCCAI maintained trust funds in connection with property
17 management activities for the Bay Vista apartment complex in B/A 3 with Key Bank, which did
18 not have a bank branch office located in California.

19 Issue 7. Code section 10145(a) and Regulation 2832. Trust fund handling / Trust funds
20 deposited in a timely manner / Mishandling of trust funds.

21 44. AMCCAI received/collected trust funds and failed to place said trust funds into
22 B/A 4 within three (3) business days of receipt, in violation of Code section 10145, subdivision
23 (a), and Regulation 2832.

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1 45. On September 26, 2023, AMCCAI received six rent payments totaling \$2,645.00
2 in the form of money orders from tenant, L.M., for unit #3 at the Atrium apartment complex
3 located in El Monte, California. AMCCAI deposited the trust funds into B/A 4 on December 1,
4 2023. The delay in depositing the \$2,645.00 in rent payments appears to be the cause of part of
5 the balance discrepancy as of September 30, 2023, for B/A 4, as noted in Issue 1, above.

6 Issue 8. Code section 10145 and Regulation 2834. Trust account withdrawals.

7 46. During the audit period, AMCCAI used B/A 1, B/A 2, B/A 3, and B/A 4 for
8 handling trust fund receipts and disbursements belonging to others in connection with property
9 management activities. Respondent COBERY, AMCCAI's designated broker-officer was not a
10 signatory for B/A 1, B/A 2, and B/A 4 during the audit period. Moreover, Respondents allowed
11 unlicensed persons, including AMCCAI employees and shareholders, to be signers for B/A 1,
12 B/A 2, B/A 3, and B/A 4 without having sufficient fidelity bond or insurance coverage for those
13 unlicensed persons, in violation of Code section 10145 and Regulation 2834.

14 47. On November 15, 2023, during the audit entrance interview, the Department's
15 auditor asked Respondent COBERY if COBERY was a signer for the trust accounts maintained
16 by AMCCAI and COBERY stated that he was a signer for all trust accounts. However, based on
17 the examination of the records, COBERY was not a signer for B/A 1, B/A 2, and B/A 4, which
18 were used to handle trust funds.

19 48. According to the bank signature cards examined, the bank account signers were as
20 follows:

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Bank Account

Bank Account signers

B/A 1

Signatories: Trisha Elaine Newport (AMCCAI's Accounting Manager), Gregory B. Wiseman (AMCCAI's CEO), Brenda Barrett Wright (AMCCAI's Secretary), and Jennifer Fletcher (AMCCAI's Assistant Accounting Manager).

Signatures required: Two (2) signatures

Bank Account

Bank Account signers

B/A 2

Signatories: Trisha Elaine Newport, Gregory B. Wiseman, Brenda Barrett Wright, Jennifer Fletcher, Lindsey Daniels (AMCCAI's Vice-President of Operations), and Thomas L. Bisanz ("Bisanz"). Bisanz is licensed as a real estate broker by the Department. During the audit period, Bisanz was not licensed as affiliated with AMCCAI.

Signatures required: Two (2) signatures

B/A 3

Signatories: Trisha Elaine Newport, Gregory B. Wiseman, Brenda Barrett Wright, Jennifer Fletcher, Dana Murrah (AMCCAI's Chief Operations Manager), and Respondent COBERY.

Signatures required: Two (2) signatures

B/A 4

Signatories: Trisha Elaine Newport, Gregory B. Wiseman, Brenda Barrett Wright, Jennifer Fletcher, Dana Murrah, David Kim, Jerome Fink (a member of Atrium Apartments, LLC ("AALLC")), Tyler Rinehart (a member of AALLC), and Robert Tolstyka (Vice-President of Finance for AALLC).

Signatures required: Two (2) signatures

1 49. Respondents failed to retain or produce a written authorization on file to authorize
2 Trisha Elaine Newport, Gregory B. Wiseman, Brenda Barrett Wright, Jennifer Fletcher, Lindsey
3 Daniels, Dana Murrah, and Bisanz to be signers for, and make withdrawals from, B/A 1, B/A 2,
4 B/A 3, and B/A 4.

5 50. Further, Respondent COBERY provided an insurance coverage Certificate of
6 Liability Insurance, crime/employee theft policy no. XXXXX5879-06 for the period from
7 02/28/2023 to 02/28/2024. The policy provided coverage for \$2,000,000.00 with a \$25,000.00
8 deductible. However, the insured entity was "Apartment Management Consultants, LLC" not
9 "AMC-CA Incorporated." Further, the insurance coverage must be equal to at least the
10 maximum amount of trust funds to which the unlicensed employee/person has access to at any
11 time. According to Respondent COBERY, the annual trust funds collected by AMCCAI
12 exceeded \$684 million, averaging \$57 million per month.

13 51. AMCCAI failed to provide evidence of financial responsibility that sufficiently
14 protects beneficiaries and members of the public against a loss subject to the deductible amount.
15 AMCCAI did not have separate bond or insurance coverage adequate to cover the amount of the
16 deductible and/or a cash deposit held in a separate account, apart from other funds of the broker,
17 the broker's employees, or the broker's principals, in a bank or recognized depository in
18 California which was adequate to cover the amount of the fidelity bond deductible and held
19 exclusively and solely for the purpose of paying the fidelity bond deductible amount.

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1 Issue 9. Code sections 10145, 10176(e), and Regulation 2835(b). Commingling/Broker's funds
2 held longer than 25 days/ Mishandling of trust funds.

3 52. During the audit period, compensation, commissions, fees, or other income for
4 property management activities earned by AMCCAI and collectible from B/A 1, B/A 2, B/A 3,
5 and B/A 4, were left in said accounts for more than twenty-five (25) days after deposit of rents,
6 in violation of Code sections 10145, 10176, subdivision (e), and Regulation 2835(b).

7 53. Based on the examination of the bank deposit summary reports, control records,
8 and bank statements for B/A 1, B/A 2, B/A 3, and B/A 4, AMCCAI disbursed broker owned
9 funds belonging to AMCCAI from for B/A 1, B/A 2, B/A 3, and B/A 4 later than twenty-five
10 (25) days after their deposit. Examples of the broker owned funds include the following, without
11 limitation:

12 B/A 1

<u>Date of deposit</u>	<u>Amount</u>	<u>Broker fees earned</u>	<u>Month/Year earned</u>	<u>Date Disbursed</u>
08/07/2023	\$50,475.42	\$1,261.89	August 2023	09/15/2023
08/07/2023	\$50,147.31	\$1,253.68	August 2023	09/15/2023

16 B/A 2

<u>Date of deposit</u>	<u>Amount</u>	<u>Broker fees earned</u>	<u>Month/Year earned</u>	<u>Date Disbursed</u>
03/02/2022	\$73,109.36	\$1,827.73	March 2022	04/11/2022
03/02/2022	\$16,487.52	\$412.18	March 2022	04/11/2022
10/04/2022	\$215,284.04	\$5,382.10	October 2022	11/09/2022
10/04/2022	\$42,174.29	\$1,054.36	October 2022	11/09/2022
01/03/2022	\$26,548.14	\$663.70	January 2023	02/13/2023
01/04/2023	\$113,419.54	\$2,835.49	January 2023	02/13/2023

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B/A 3

<u>Date of deposit</u>	<u>Amount</u>	<u>Broker fees earned</u>	<u>Month/Year earned</u>	<u>Date Disbursed</u>
02/02/2022	\$5,527.92	\$138.20	February 2022	03/08/2022
02/03/2022	\$6,359.20	\$158.98	February 2022	03/08/2022
10/04/2022	\$20,477.03	\$511.93	October 2022	11/09/2022
10/04/2022	\$3,714.32	\$92.86	October 2022	11/09/2022
08/02/2023	\$2,100.00	\$52.50	August 2023	09/15/2023
08/03/2023	\$6,770.14	\$169.25	August 2023	09/15/2023

B/A 4

<u>Date of deposit</u>	<u>Amount</u>	<u>Broker fees earned</u>	<u>Month/Year earned</u>	<u>Date Disbursed</u>
02/02/2022	\$10,059.94	\$251.50	February 2022	03/14/2022
02/03/2022	\$3,472.40	\$86.81	February 2022	03/14/2022
10/04/2022	\$23,700.56	\$592.51	October 2022	11/11/2022
10/06/2022	\$7,317.24	\$182.93	October 2022	11/11/2022
08/03/2023	\$5,955.31	\$148.88	August 2023	09/14/2023
08/04/2023	\$9,680.63	\$242.02	August 2023	09/14/2023

54. According to Respondents, their property management agreements state that compensation for the property management services is calculated on the monthly total effective gross income (“EGI”). Said broker compensation is payable by the first day of the next succeeding month for the monthly EGI for the current month. Payments due to the Manager [broker] for periods of less than a calendar month shall be prorated over the number of days from which compensation is due. The amount is due and payable monthly and may be deducted by the Manager [broker] from receipts.

1 55. According to Respondents, the “broker management fee is not earned (and in
2 dispute) until the monthly total [EGI] is received, calculated and accepted by the property owner,
3 which is generally completed by the 10th of the following month.”

4 56. The Department’s auditor requested documentation/evidence from Respondents
5 regarding the broker compensation earned and disbursed. Respondents failed to provide evidence
6 as to when the EGI was accepted and approved by the property owners in writing for each month
7 requested. Respondents failed to provide the property owners’ statements requested by the
8 auditor. Further, Respondents failed to provide a ledger or other documentation of the
9 calculation of the management fees earned and disbursed or how the EGI was calculated for the
10 months/properties requested. Examples of the records requested for examination that were not
11 provided by Respondents include the following, without limitation:

- 12 • Documents/ledger of the breakdown of management fees that were earned and disbursed
13 and how the EGI was calculated for four months during the audit period: March 2022,
14 October 2022, January 2023, and August 2023 for the Sierra Del Oro apartment complex.
- 15 • Documents/ledger of the breakdown of management fees that were earned and disbursed
16 and how the EGI was calculated for three months during the audit period: February 2022,
17 October 2022, and August 2023 for the Bay Vista apartment complex.
- 18 • Documents/ledger of the breakdown of management fees that were earned and disbursed
19 and how the EGI was calculated for three months during the audit period: February 2022,
20 October 2022, and August 2023 for the Atrium apartment complex.
- 21 • Documentation/evidence as to when the disputed EGI was accepted and approved by the
22 property owners for the Sierra Del Oro, Bay Vista, and Atrium apartment complexes for
23 the months mentioned above.

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1 57. Further, according to Trisha Hickman, Respondent's Accounting Manager, the
 2 total deposits recorded on the control record for B/A 2 [used for the Sierra Del Oro apartment
 3 complex] towards the end of each month was the EGI. However, those totals are different from
 4 the total gross figure provided for each of the requested months. Examples of the different gross
 5 totals include the following, without limitation:

<u>Month/Year</u>	<u>Total EGI per Control Record</u>	<u>Total Gross Revenue per Sheet Provided</u>
7 March 2022	\$643,969.85	\$610,962.84
8 October 2022	\$718,667.62	\$685,051.76
9 January 2023	\$709,250.16	\$671,517.62

10 58. Moreover, according to Trisha Hickman, the total EGI recorded on the control
 11 record for B/A 2 [used for the Sierra Del Oro apartment complex] would not match the total
 12 deposits recorded on the bank deposit summary reports. According to Trisha Hickman, the
 13 deposits recorded on the bank deposit summary reports were on cash basis, but the total deposits
 14 on the control records of B/A 2 were on EGI basis. Examples include the following, without
 15 limitation:

<u>Month/Year</u>	<u>Total EGI per Control Record</u>	<u>Total Deposits per Bank Deposit Summary</u>
17 March 2022	\$643,969.85	\$640,100.44
18 October 2022	\$718,667.62	\$708,029.93
19 January 2023	\$709,250.16	\$694,664.95

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1 Issue 10. Code sections 10130, 10137, and 10131.01(a)(3). License required / Unlawful
2 retention and compensation / Some Managers and Employees exempt.

3 59. During the audit period, AMCCAI employed and/or compensated unlicensed
4 persons other than the resident manager or employees of the resident manager for performance of
5 acts which require a real estate license, in violation of Code sections 10130, 10137, and
6 10131.01.

7 60. Rental or lease agreements examined showed that non-licensees who were not
8 resident managers or employees of the resident manager signed the rental/lease agreements as
9 the agent on behalf of the landlord/property owner(s).

10 61. Examples for the Sierra Del Oro apartment complex include, without limitation:

<u>Date Rental Agreement signed</u>	<u>Non-Licensee signer</u>	<u>Property/Unit</u>
03/31/2022	A. Calvillo	2708 Ridge Line Dr. H104
03/05/2023	N. Cronin	2732 Ridge Line Dr. J103
03/31/2023	M. Mejia	2708 Ridge Line Dr. H104
09/28/2023	C. Arteaga	2711 Ridge Line Dr. F303

16 62. Examples for the Atrium apartment complex include, without limitation:

<u>Date Rental Agreement signed</u>	<u>Non-Licensee signer</u>	<u>Property/Unit</u>
08/31/2020	B. Hall	3733 Gibson Rd. #38
05/29/2021	L. Munguia	3733 Gibson Rd. #8
05/05/2022	L. Munguia	3733 Gibson Rd. #35
12/28/2023	A. Villanueva	3733 Gibson Rd. #1

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1 63. The Department’s auditor asked Respondents for employment contracts and job
2 descriptions indicating specific job duties for the non-licensees. According to Respondents, there
3 were no employment contracts, and the non-licensees are all W-2 employees. Respondent
4 COBERY provided a spreadsheet for the non-licensees indicating their job duties in columnar
5 form.

6 Issue 11. Code section 10159.5 and Regulation 2731. Use of unlicensed false or fictitious name.

7 64. During the audit period, AMCCAI used the unlicensed fictitious business names,
8 “AMC” and “Apartment Management Consultants, LLC” in connection with property
9 management activities, in violation of Code section 10159.5 and Regulation 2731.

10 65. “AMC” appeared on AMCCAI’s website, lease/rental agreements for the Sierra
11 Del Oro, Bay Vista, and Atrium apartment complexes, and on property management agreements
12 for the Sierra Del Oro and Bay Vista apartment complexes.

13 66. “Apartment Management Consultants, LLC” appeared on AMCCAI’s website;
14 bank signature cards, bank statements, and cancelled checks for B/A 1, B/A 2; cancelled checks
15 for B/A 3, and B/A 4; and on property management agreements for the Sierra Del Oro, Bay
16 Vista, and Atrium apartment complexes.

17 Issue 12. Code sections 10163, 10131.01(c), and Regulation 2715. Branch offices/Some
18 Managers and Employees exempt/Business and mailing address of licensees.

19 67. During the audit period, AMCCAI employed unlicensed persons who were not
20 resident managers, and who performed duties such as showed rental units, conveyed owner set
21 rental rates, accepted preapproved rental applications, and accepted security deposits, rents, or
22 other fees. AMCCAI failed to obtain branch licenses for each apartment complex building/site,
23 where the non-licensed person was employed, in violation of Code sections 10163, 10131.01(c),
24 and Regulation 2715.

1 68. AMCCA employed/compensated unlicensed persons who do not live on-site at
2 the following apartment complexes, without limitation:

3 <u>Non-Licensee</u>	<u>Apartment Complex / Address</u>
4 F. Fomey-Ramirez	Croaker Oaks / 8000 Painted Desert Way, Roseville, CA 95747
5 K. Gogue	Monte Vista Senior / 2600 Nuestra Castillo Ct., San Jose, CA 95127
6 G.M. Parga	Vivante / 26603 Gading Rd., Hayward, CA 94544
7 J.S. Ramos	Glasdore Lofts / 30 Dore St., San Francisco, CA 94103

8 Issue 13. Code section 10148. Retention of records

9 69. On or about December 4, 2023, an investigator for the Department served (via
10 email) Respondent COBERY on behalf of AMCCAI with a subpoena to produce records for the
11 audit examination. Trisha Hickman was also served with a copy of the subpoena. The
12 Department's auditor also made numerous attempts to request records from Respondents for the
13 audit examination. AMCCAI failed to retain and timely produce some of the requested books
14 and records relating to AMCCAI's property management activities during the audit period for
15 the audit examination, inspection, and copying, in violation of Code section 10148.

16 70. Examples of the requested records not provided by Respondents include the
17 following, without limitation:

18 1. The monthly statements to the property owner of the Sierra Del Oro
19 apartment complex for four (4) months during the audit period: March 2022, October 2022,
20 January 2023, and August 2023.

21 2. The monthly statements to the property owner of the Bay Vista apartment
22 complex for four (4) months during the audit period: February 2022, October 2022, and August
23 2023.

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1 3. The monthly statements to the property owner of the Atrium apartment
2 complex for three (3) months during the audit period: February 2022, October 2022, and August
3 2023.

4 4. Two (2) rental/lease agreements out of the four (4) rental/lease agreements
5 requested for the Bay Vista apartment complex were not signed and dated by the tenants and
6 AMCCAI. The rental/lease agreements were for 470 Central Ave. #26, tenant A.D.F. and 470
7 Central Ave. #28, tenant S.K.L.

8 5. One (1) rental/lease agreement out of the four (4) rental/lease agreements
9 requested for the Atrium apartment complex has mismatched dates. The rental/lease agreement
10 for 3733 Gibson Road #1, for tenants M.A.S, A.P, and M.P., is dated February 3, 2020, with a
11 commencement date of March 1, 2020. However, the tenants' signatures are dated 12/22/2023
12 and the signature for A. Villanueva (AMCCAI's agent/representative) is dated 12/28/2023.

13 Issue 14. Code section 10159.2 and Regulation 2725. Responsibility of Corporate Officer in
14 Charge/Broker supervision.

15 71. Based on the audit violations cited above, Respondent COBERY failed to
16 exercise adequate supervision and control over AMCCAI's property management activities to
17 ensure compliance with the Real Estate Law and Regulations, in violation of Code section
18 10159.2 and Regulation 2725.

19 72. Respondent COBERY failed to establish and enforce policies, rules, procedures,
20 and systems to review, oversee, inspect, and manage transactions requiring a real estate license
21 and the handling of trust funds. Respondent COBERY provided the Employee Handbook and
22 Employee Safety Manual to the Department's auditor. Further, Respondent COBERY was not an
23 authorized signer for B/A 1, B/A 2, and B/A 4.

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1 10159.2 and Regulation 2725. Said conduct, acts, or omissions constitute cause to suspend or
2 revoke the real estate licenses and license rights of Respondent COBERY pursuant to Code
3 section 10177, subdivisions (h), (d), and/or (g).

4 Audit Costs

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

9 Investigation/Enforcement Costs

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

15 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this
16 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action
17 against all licenses and/or license rights of Respondents under the Real Estate Law (Part 1 of
18 Division 4 of the Business and Professions Code), for the costs of the audit, investigation, and
19 enforcement as permitted by law, and for such other and further relief as may be proper under
20 other provisions of law.

21 Dated 10/29/2024 at San Diego, California.

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23 _____
24 VERONICA KILPATRICK
Supervising Special Investigator

.1 cc: AMC-CA Incorporated
2 Michael Terrence Cobery
3 Veronica Kilpatrick
4 Sacto
5 Audits/Zaky Wanis
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