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DEPARTMENT OF REAL ESTATE

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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) 12) 13 PERFORMANCE PROPERTY MANAGEMENT, INC.) 14 and STEPHANIE DIANE MAZZA,) Respondents.)	No. H-3309 FR <u>ACCUSATION</u>
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15 The Complainant, BRENDA SMITH, acting in her official capacity as a
16 Supervising Special Investigator of the State of California, for cause of Accusation against
17 Respondents PERFORMANCE PROPERTY MANAGEMENT, INC. (PPMI) and STEPHANIE
18 DIANE MAZZA (MAZZA), sometimes collectively referred to as Respondents, is informed and
19 alleges as follows:

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

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24 On or about February 8, 2019, the Department issued to PPMI a real estate
25 broker corporation license. At no time herein mentioned, was PPMI licensed by the Department
26 as a real estate broker corporation prior to February 8, 2019.

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At all times mentioned herein, MAZZA was and is licensed by the Department individually as a real estate broker, and as the designated broker officer of PPMI. As the designated broker officer, MAZZA was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of officers, agents, real estate licensees and employees of PPMI for which a real estate license is required to ensure the compliance of the corporation with the Real Estate Law and Regulations.

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

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of Section 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or negotiated the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collected rents from real property, or improvements thereon, or from business opportunities.

FIRST CAUSE OF ACTION

Each and every allegation in Paragraphs 1 through 5, inclusive, is incorporated by this reference as if fully set forth herein.

On or about September 25, 2019, through September 26, 2019, an audit was conducted of the records of PPMI. The auditor examined records for the period of February 1, 2019, through August 31, 2019 (the audit period).

While acting as a real estate brokers as described in Paragraph 5, above, and within the audit period, Respondents accepted or received funds in trust (trust funds) from or on behalf of property owners, lessees and others in connection with property management activities, and deposited or caused to be deposited those funds into bank accounts maintained by Respondents, at Wells Fargo, 9000 Ming Avenue, Bakersfield, California 93311, including but not limited to the following:

TRUST ACCOUNT #1	
Account No.:	XXXXXX5236
Entitled:	PERFORMANCE PROPERTY MANAGEMENT, INC. PERFORMANCE PROPERTY MGNT TRUST PPM DBA PERFORMANCE PROPERTY MANAGEMENT

TRUST ACCOUNT #2	
Account No.:	XXXXXX4633
Entitled:	PERFORMANCE PROPERTY MANAGEMENT, INC. DBA PERFORMANCE PROPERTY MANAGEMENT SDA TRUST

and thereafter from time-to-time made disbursement of said trust funds.

In the course of the activities described in Paragraph 5, in connection with the collection and disbursement of trust funds, it was determined that:

- (a) An accountability was performed on Trust Account #1, and as of July 31, 2019, a shortage of \$185.00 was revealed, in violation of Section 10145 of the Code;

1 (b) An accountability was performed on Trust Account #2, and as of July 31,
2 2019, a shortage of \$212.00 was revealed, in violation of Section 10145 of
the Code;

3 (c) Respondents failed to obtain written permission from owners of trust
4 funds in Trust Account #1 and Trust Account #2 to allow the balance to drop
5 below accountability, in violation of Section 2832.1 of Chapter 6, title 10,
California Code of Regulations (Regulations);

6 (d) Respondents allowed an unlicensed person to be a signatory on Trust
7 Account #1 and Trust Account #2 without fidelity bond coverage as required
by Section 10145 of the Code and Section 2834 of the Regulations;

8 (e) Respondents allowed a salesperson who was not licensed under PPMI to
9 be a signatory on Trust Account #1 and Trust Account #2, in violation of
10 Section 2834 of the Regulations; and

11 (f) Respondents collected and retained compensation, commission, or profit,
12 and failed to disclose the compensation, commission or profit from
13 homeowners in connection with payment for property management
14 maintenance and repair services performed by Pinnacle General
Contractors, LLC, a maintenance company in which MAZZA, the
designated officer of PPMI, held ownership interest, in violation of
15 Section 10176 (g) of the Code.

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17 The acts and/or omissions described above constitute violations of Sections
18 2832.1 (Written Permission for Balance Below Accountability) and 2834 (Trust Fund
19 Signatory) of the Regulations and of Sections 10145 (Trust Fund Handling) and 10176 (g)
20 (Secret or Undisclosed Compensation) and are grounds for discipline under Sections 10176 (g),
21 10177(d) (Willful Disregard of Real Estate Laws) and/or 10177(g) (Negligence/Incompetence
22 Licensee) of the Code.

23 SECOND CAUSE OF ACTION

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25 Each and every allegation in Paragraphs 1 through 10, inclusive, is incorporated
26 by this reference as if fully set forth herein.

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On or about September 26, 2019, a broker office survey (BOS) was conducted regarding the real estate activities of Respondents. During the BOS, the Department Special Investigator discovered, in the course of activities described in Paragraph 5, MAZZO, negotiated and signed property management and lease agreements on behalf of PPMI, before PPMI was licensed with the Department, including but not limited to the following:

PROPERTY MANAGEMENT AGREEMENTS		
Date	Owner	Property Location
10/29/18	Crystal F.	5313 Lime Street, Bakersfield
1/3/19	Raimound B. E.	2108 Hughes Lane, Bakersfield

LEASE AGREEMENTS		
Date	Tenant	Property Location
1/9/19	Manolo M.	1110 Aegean Avenue, Bakersfield
1/28/19	Ana G. and Victorino G.	2108 Hughes Lane, Bakersfield

The acts and/or omissions described above constitute a violation of Section 10130 (Unlicensed Activity) of the Code, and are grounds for discipline under Sections 10177(d) and/or 10177(g) of the Code.

THIRD CAUSE OF ACTION

Each and every allegation in Paragraphs 1 through 13, inclusive, is incorporated by this reference as if fully set forth herein.

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Respondent MAZZA failed to exercise reasonable supervision and control over the property management activities of PPMI. In particular, MAZZA permitted, ratified and/or caused the conduct described above to occur, and failed to take reasonable steps, including but not limited to, the handling of trust funds, supervision of employees, and the implementation of policies, rules and systems to ensure the compliance of the business with the Real Estate Law and the Regulations.

The above acts and/or omissions of MAZZA violate Section 2725 (Broker Supervision) of the Regulations and Section 10159.2 (Responsibility/Designated Officer) of the Code and constitute grounds for disciplinary action under the provisions of Sections 10177(d), 10177(g) and/or 10177(h) (Broker Supervision) of the Code.

COST RECOVERY

Audit Costs

The acts and/or omissions of Respondents, as alleged above, entitle the Department to reimbursement of the costs of its audits pursuant to Section 10148(b) (Audit Costs for Trust Fund Handling Violations) of the Code.

Costs of Investigation and Enforcement

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

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary
3 action against all licenses and license rights of Respondents under the Real Estate
4 Law, for the cost of the investigation and enforcement as permitted by law, for the cost of the
5 audit as permitted by law, and for such other and further relief as may be proper under other
6 provisions of law.

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8 BRENDA SMITH
9 Supervising Special Investigator

10 Dated at Fresno, California,
11 this 21 day of February, 2020.

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13 DISCOVERY DEMAND

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