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DEPARTMENT OF REAL ESTATE

By RJ dent

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:	)	
	)	No. H-3342 FR
MONTES-GONZALES MANAGEMENT, INC.,	)	
EMMA JULIETA GONZALES and	)	
MELISSA MONTES	)	<u>ACCUSATION</u>
	)	
Respondents.	)	

The Complainant, BREND SMITH, in her official capacity as Supervising Special Investigator of the State of California, Department of Real Estate ("Department"), brings this Accusation against MONTES-GONZALES MANAGEMENT, INC. ("MGM"), EMMA JULIETA GONZALES ("GONZALES"), and MELISSA MONTES ("MONTES"), (collectively "Respondents"), and is informed and alleges as follows:

1

MGM is presently licensed by the Department and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code"), as a corporate real estate broker, License No. 01521680.

2

GONZALES is presently licensed by the Department and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code as a real estate broker, License No. 01771559.

1
2 At all relevant times to this transaction, GONZALES was the designated broker
3 officer for MGM.

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5
6 MONTES is presently licensed by the Department and/or has license rights under
7 the Real Estate Law, Part 1 of Division 4 of the Code as a real estate salesperson, License No.
8 01716946.

9
10 From on or about March 2010 to December 12, 2019, MONTES was employed
11 under the real estate broker license of GONZALES.

12
13 On or about December 12, 2019, MONTES changed her employing broker from
14 GONZALES to MGM.

15
16 Whenever reference is made in this Accusation to an act or omission of MGM, such
17 allegation shall be deemed to mean that the employees, agents and real estate licensees employed
18 by or associated with MGM committed such act or omission while engaged in furtherance of the
19 business or operations of MGM and while acting within the course and scope of their authority
20 and/or employment.

21
22 Whenever reference is made in this Accusation to an act or omission of
23 GONZALES, such allegation shall be deemed to mean that GONZALES committed the act or
24 omission while engaged in furtherance of the business or operations of MGM and while acting
25 within the course and scope of her authority and employment.

26
27 Whenever reference is made in this Accusation to an act or omission of MONTES,
such allegation shall be deemed to mean that MONTES committed the act or omission while

1 engaged in furtherance of the business or operations of MGM and while acting within the course
2 and scope of her authority and employment.

3 10

4 At all relevant times herein, MGM engaged in the business of, acted in the capacity
5 of, advertised or assumed to act as real estate licensees within the State of California within the
6 meaning of Section 10131(b) of the Code including the operation and conduct of a property
7 management business with the public, wherein, on behalf of others, for compensation or in
8 expectation of compensation, MGM leased or rented or offered to lease or rent, and solicited for
9 prospective tenants of real property or improvements thereon, and collected rents from real
10 property or improvements thereon.

11 11

12 Beginning on December 12, 2019, and continuing through April 16, 2020, an audit
13 was conducted into the real estate business activities of MGM, located at 2 SE of 7th Street on
14 Dolores, Carmel, CA 93921. The Department's auditor examined the business records of MGM for
15 the period of December 1, 2018, through November 30, 2019. ("audit period").

16 **FIRST CAUSE OF ACTION**
17 (Audit Violations as to Respondents)

18 12

19 Each and every allegation made above in Paragraphs 1 through 11, inclusive, is
20 incorporated by reference as if fully set forth herein.

21 13

22 While engaging in the real estate activities described above in Paragraph 10, and
23 within the audit period, Respondents accepted or received funds in trust ("trust funds") and
24 deposited or caused the trust funds to be deposited into the following accounts:

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26 ///

27 ///

Bank Account #1

Bank Name: Union Bank
26380 Carmel Rancho Ln., Carmel, CA 93923
Account Name: Montes-Gonzales Management, Inc.
Vintage Property Management
Management Account
Account No.: Last 4 Digits: 9622
Signatories: Emma J. Gonzales (REB)
Melissa Motes (RES under Gonzales' REB license)
Description: Bank Account #1 was a Business Checking account that was
used for deposits and disbursements related to the
management of both Long Term and Short Term rental
properties. Deposits consisted of rents collected from tenants.
Disbursements consisted of payments for expenses related to
the properties managed, remittance to owners, and payment of
salaries to Gonzales and Montes.

Trust Account #1

Bank Name: Union Bank
26380 Carmel Rancho Ln., Carmel, CA 93923
Account Name: Montes-Gonzales Management, Inc.
Vintage Property Management
Management Account
Account No.: Last 4 Digits: 5346
Signatories: Emma J. Gonzales (REB)
Melissa Motes (RES under Gonzales' REB license)
Description: Trust Account #1 was a Business Checking account that was
used for deposits and disbursements related to management of
Long Term rental properties only. Deposits consisted of
security deposits collected from tenants. Disbursements
consisted of refunding security deposits to tenants and owners.

14

In the course of the real estate activities described above in Paragraph 10, and during
the audit period, the following was discovered:

a. As of October 31, 2019, there was a shortage of \$118,045.87 in Bank
Account #1. The shortage was caused by a negative balance of \$27,440.37 in seventeen short-term
property accounts. The remaining shortage of \$90,605.50 was unidentified. Respondents failed to
obtain prior written consent from the owners of the trust funds in Bank Account #1 so as to allow
the balance of the funds to drop below the accountability of the account, in violation of Section

1 10145 of the Code and Section 2832.1 of Chapter 6, Title 10, California Code of Regulations
2 (“Regulations”);

3 b. As of October 31, 2019, there was a shortage of \$441.23 in Trust Account #1.
4 The cause of the shortage was unidentified. Respondents failed to obtain prior written consent from
5 the owners of the trust funds in Trust Account #1 so as to allow the balance of the funds to drop
6 below the accountability of the account, in violation of Section 10145 of the Code and Section
7 2832.1 of the Regulations;

8 c. Bank Account #1, which was used to hold trust funds, was not designated as
9 a trust account in the name of the broker or the broker’s fictitious business name as a trustee, in
10 violation of Section 10145(a) of the Code and Section 2832 of the regulations;

11 d. MGM failed to maintain adequate records of all separate beneficiary
12 transactions for Bank Account #1 and MGM failed to maintain any separate beneficiary records for
13 Trust Account #1, in violation of Section 10145(a) of the Code and Section 2831.1 of the
14 Regulations;

15 e. MGM failed to perform and maintain a monthly trust account reconciliation
16 comparing the balance of the separate beneficiary records with the balance of control records for
17 Bank Account #1 and Trust Account #1, in violation of Section 10145(a) of the Code and Section
18 2831.2 of the Code;

19 f. Signatory cards for Bank Account #1 and Trust Account #1 showed
20 MONTES, who was licensed under GONZALES’ real estate broker license without a fidelity bond
21 or insurance, as a signatory on both accounts, in violation of Section 10145(a) of the Code and
22 Section 2834 of the Regulations;

23 g. MGM commingled trust funds with broker funds in Bank Account #1, in
24 violation of Section 10176(e) of the Code;

25 h. MONTES was performing real estate licensed activities, such as signing lease
26 agreements on behalf of MGM while MONTES was working under GONZALES’ individual real
27 estate broker license, in violation of Section 10137 of the Code; and

1 i. MGM used the unlicensed fictitious business name of Vintage Property
2 Management, in violation of Section 10159.5 of the Code and Section 2731 of the Regulations;

3 **SECOND CAUSE OF ACTION**
4 **(Failure to Supervise as to GONZALES)**

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6 Each and every allegation in Paragraphs 1 through 14, inclusive, is incorporated by
7 this reference as if fully set forth herein.

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9 As the designated officer for MGM, GONZALES was responsible for the
10 supervision and control over the activities conducted on behalf of MGM by the corporation's
11 officers, employees and agents, as necessary to ensure full compliance with all provisions of the
12 Real Estate Law, including the supervision of all salespersons licensed under the corporation in the
13 performance of acts for which a real estate license is required.

14 17

15 GONZALES failed to exercise reasonable supervision and control over the activities
16 of MGM. In particular, GONZALES permitted, ratified and/or caused the conduct described above
17 to occur, and failed to take reasonable steps, including but not limited to, supervision of employees
18 and agents, and the implementation of policies, rules and systems to ensure the compliance of the
19 business with the Real Estate Law and the Regulations.

20 **THIRD CAUSE OF ACTION**
21 **(Breach of Fiduciary Duties as to Respondents)**

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23 Each and every allegation in Paragraphs 1 through 17, inclusive, is incorporated by
24 reference as if fully set forth herein.

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At all relevant times herein, while acting as real estate agents, Respondents owed their principals fiduciary duties, including, but not limited to the following: duty of reasonable care and skill; duty of good faith; duty of loyalty; and duty of diligence.

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Respondents breached their fiduciary duties owed to their principals by engaging in the acts and/or omissions described above.

GROUND FOR DISCIPLINE

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Each and every allegation in Paragraphs 1 through 20, inclusive, is incorporated by this reference as if fully set forth herein.

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The acts and/or omissions of Respondents as alleged above in the FIRST CAUSE OF ACTION constitute grounds for the suspension or revocation of all licenses and license rights of Respondents pursuant to the following provisions:

As to Paragraph 14(a) and 14(b), under Sections 10145, 10177(d) and 10177(g) of the Code, in conjunction with Section 2832.1 of the Regulations;

As to Paragraph 14(c), under Sections 10145, 10177(d) and 10177(g) of the Code, in conjunction with Section 2832 of the Regulations;

As to Paragraph 14(d), under Sections 10145, 10177(d), and 10177(g) of the Code, in conjunction with Section 2831.1 of the Regulations;

As to Paragraph 14(e), under Sections 10145, 10177(d) and 10177(g) of the Code, in conjunction with Section 2831.2 of the Regulations;

As to Paragraph 14(f), under Sections 10145, 10177(d) and 10177(g) of the Code, in conjunction with Section 2834 of the Regulations;

As to Paragraph 14(g), under Sections 10176(e), 10177(d) and 10177(g) of the Code;

1 As to Paragraph 14(h), under Sections 10137, 10177(d) and 10177(g) of the Code;
2 and

3 As to Paragraph 14(i), under Sections 10159.5, 10177(d) and 10177(g) of the Code,
4 in conjunction with Section 2731 of the Regulations.

5 23

6 The acts and/or omissions of GONZALES as alleged above in the SECOND
7 CAUSE OF ACTION further constitute grounds for the suspension or revocation of the license and
8 license rights of GONZALES under Sections 10159.2, 10177(h), 10177(d), and 10177(g) of the

9 24

10 The acts and/or omissions of Respondents as alleged above in the THIRD CAUSE
11 OF ACTION further constitute grounds for the suspension or revocation of the license and license
12 rights of Respondents under Sections 10177(d) and 10177(g) of the Code.

13 COST RECOVERY

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15 Each and every allegation made above in Paragraphs 1 through 24, inclusive, is
16 incorporated by reference as if fully set forth herein.

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18 The acts and/or omissions of Respondents as alleged above entitle the Department to
19 reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund
20 handling violation) of the Code.

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

26 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of
27 this First Amended Accusation and that upon proof thereof, a decision be rendered imposing

1 disciplinary action against all licenses and license rights of Respondents under the Code, for the
2 cost of investigation and enforcement as permitted by law, for the cost of the audit, and for such
3 other and further relief as may be proper under other provisions of law.

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6 BREND A SMITH
7 Supervising Special Investigator

8 Dated at Fresno, California,
9 this 7 day of October, 2020.

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11 DISCOVERY DEMAND

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