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DEPARTMENT OF REAL ESTATE

By *Adel*

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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 RUEBEN ZAMUDIO,) No. H-3404 FR
13 Respondent.) ACCUSATION
14)

15 The Complainant, BRENDA SMITH, in her official capacity as a Supervising
16 Special Investigator of the State of California, Department of Real Estate ("Department"), brings
17 this Accusation against RUEBEN ZAMUDIO ("Respondent") and is informed and alleges as
18 follows:

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20 Respondent is presently licensed by the Department and/or has license rights under
21 the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code
22 ("Code"), as real estate broker, License No. 1333898, whose license is currently on RESTRICTED
23 status.

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25 At all relevant times, Respondent was doing business under the fictitious business
26 names of Calwestern Property Management ("CPM") and CalWestern Property Management
27 Group ("CPMG").

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2 At all relevant times, CPM and CPMG were not licensed by the Department.

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4 At all relevant times, Respondent 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, Respondent leased or rented or offered to lease or rent, and solicited
9 for prospective tenants of real property or improvements thereon, and collected rents from real
10 property or improvements thereon.

11 FIRST CAUSE OF ACTION
12 **(Audit Violations)**

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14 Each and every allegation made in Paragraphs 1 through 4, inclusive, is incorporated
15 by reference as if fully set forth herein.

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17 From on or about March 4, 2021, an audit was conducted of the real estate activities
18 of Respondent located at 1731 Hasti Acres Dr. Ste. 208, Bakersfield, CA 93309. The Department's
19 auditor examined the business records of Respondent for the period of August 1, 2019, through
20 March August 31, 2020, ("audit period").

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22 While engaging in the real estate activities described in Paragraph 4 and within the
23 audit period, Respondent accepted or received funds in trust ("trust funds") and deposited or caused
24 the trust funds to be deposited into the accounts maintained as follows:

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Bank Account #1:

Bank Name: Chase Bank
Bakersfield, CA
Account No.: Last 4 Digits: 3253
Account Name: DSI Enterprise, Inc.
DBA Vision Realty of CAL Western Property
Signatories: Rueben Zamudio (REB)
Description: Handling of trust funds from property management.

Bank Account #2:

Bank Name: Chase Bank
Bakersfield, CA
Account No.: Last 4 Digits: 7202
Account Name: DSI Enterprise, Inc.
DBA Vision Realty of CAL Western Property
Signatories: Rueben Zamudio (REB)
Description: Handling of trust funds from property management.

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In the course of the real estate activities described in Paragraph 4, above, and during the audit period, it was discovered:

(a) Bank Account #1 and Bank Account #2 were both used by Respondent for the handling of trust funds related to property management activities. Neither Bank Account #1 nor Bank Account #2 were designated as trust accounts and were not in the name of the broker or the broker's fictitious business name as trustee, in violation of Section 10145 of the Code and Section 2832 of Chapter 6, Title 10, California Code of Regulations ("Regulations");

(b) Respondent failed to reconcile at least once a month the balance of all separate beneficiary or transaction records to the balance of the record of trust funds received and disbursed from Bank Account #1 and Bank Account #1, in violation of Section 10145 of the Code and Section 2831.2 of the Regulations;

(c) Respondent failed to maintain separate beneficiary records in columnar format and in chronological order. The separate beneficiary records also failed to include check numbers for each related disbursement and a running balance after each posted transaction, in violation of Section 10145 of the Code and Section 2831.1 of the Regulations;

1 (d) Respondent maintained Bank Account #2 as an interest bearing account,
2 which earned interest, in violation of Section 10145 of the Code and Section 2830.1 of the
3 Regulations; and

4 (e) Respondent conducted property management activities under the unlicensed
5 DBA names of CPM and CPMG, in violation of Section 10159.5 of the Code and Section 2731 of
6 the Regulations.

7 SECOND CAUSE OF ACTION
8 **(Breach of Fiduciary Duties)**

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10 Each and every allegation made in Paragraphs 1 through 8, inclusive, is incorporated
11 by reference as if fully set forth herein.

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13 At all relevant times, while acting in his capacity as a real estate broker, Respondent
14 owed his clients and/or beneficiaries certain fiduciary duties that are inherent in a position of trust as
15 created by an agent/principal relationship, including, but not limited to the following: duty of
16 reasonable care and skill, duty of honesty, duty of good faith, duty of loyalty, and duty of diligence.

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18 Respondent breached his fiduciary duties by engaging in the acts and/or omissions
19 described above in the FIRST CAUSE OF ACTION.

20 MATTERS IN AGGRAVATION
21 **(Prior Discipline)**

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

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26 On or about November 18, 2010, the Department filed an Accusation, No. H-36926
27 LA, against Respondent. The Accusation was filed in response to an audit performed on Funding

The acts and/or omissions of Respondent as described above in the FIRST CAUSE OF ACTION constitute grounds for discipline of Respondent's license pursuant to Sections 10145, 10159.5, 10177(d), and 10177(g) of the Code, in conjunction with Sections 2731, 2830.1, 2831.2, 2831.1, and 2832 of the Regulations.

The acts and/or omissions of Respondent as described above in SECOND CAUSE OF ACTION constitute additional grounds for the discipline or Respondent's license pursuant to Sections 10177(d) and 10177(g) of the Code.

AUDIT COSTS

The acts and/or omissions of Respondent as alleged above, entitle the Department to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund violations) of the Code.

COST 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 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.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered revoking all licenses and license rights of Respondent under the Real Estate Law, for the cost of investigation and enforcement as permitted by law, for the cost of the audit as permitted by law, and for such other and further relief as may be proper under other provisions of law.

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BRENDA SMITH
Supervising Special Investigator

Dated at Fresno, California,
this 11 day of April, 2022.

DISCOVERY DEMAND

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