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FILED
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DEPARTMENT OF REAL ESTATE
By *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

12 In the Matter of the Accusation of) NO. H-4463 SD
13 FORECLOSURE SPECIALISTS, INC.) ACCUSATION
14 and JON F. FAZIO,)
15 Respondents.)

17 The Complainant, VERONICA KILPATRICK, in her official capacity as a
18 Deputy Real Estate Commissioner of the State of California, for cause of Accusation against
19 FORECLOSURE SPECIALISTS, INC. ("FSI") and JON F. FAZIO ("FAZIO"), (collectively
20 "Respondents"), is informed and alleges as follows:

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22 At all times relevant, FSI was licensed and/or had license rights by the
23 Department of Real Estate ("the Department") as a corporate real estate broker under the Real
24 Estate Law (Part 1 of Division 4 of the Business and Professions Code) ("the Code").

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26 At all times relevant, FAZIO was licensed and/or had license rights by the
27 Department as a real estate broker, and was licensed by the Department as the designated

1 broker/officer of FSI. As the designated broker/officer, FAZIO was responsible, pursuant to
2 Section 10159.2 (responsibility of corporate broker in charge) of the Code for the supervision of
3 the activities of the officers, agents, real estate licensees and employees of FSI for which a real
4 estate license is required.

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6 Whenever reference is made in an allegation in this Accusation to an act and/or
7 omission of FSI, such allegation shall be deemed to mean that FSI, its employees, agents and/or
8 real estate licensees employed by or associated with FSI and while acting within the course and
9 scope of their authority and employment with FSI committed such acts and/ or omissions in the
10 furtherance of the business or operations of FSI.

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12 At all times herein mentioned, Respondents were engaged in the business of,
13 acted in the capacity of, advertised or assumed to act as real estate brokers in the State of
14 California within the meaning of Sections 10131(d) and 10131(e) of the Code, including, but
15 not limited to, the operation and the conduct of a mortgage loan brokerage business with the
16 public wherein Respondents solicited private money lenders and private borrowers for loans
17 secured directly or collaterally by liens on real property or a business opportunity, and wherein
18 such loans were arranged, negotiated, processed, consummated and serviced by Respondents on
19 behalf of others and wherein promissory notes or interests therein were sold or purchased on
20 behalf of another or others for compensation or in expectation of compensation.

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22 At no time prior to March 30, 2011, did Dana A. Rowe-Fazio ("Rowe-Fazio"),
23 FSI's Secretary-CFO hold a real estate license issued by the Department. On or about
24 March 30, 2011, the Department issued her a real estate salesperson license.

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26 At no time has Judy Rowe ("JRowe"), FSI's President, been licensed by the
27 Department to conduct real estate activity in California.

1 FIRST CAUSE OF ACTION

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3 On or about June 22, 2010, and continuing intermittently through August 2, 2010,
4 an audit was conducted of Respondents at their main office located at 217 Escondido Avenue,
5 #2, Vista, California, where the auditor examined the records for the period of January 2, 2008,
6 through May 31, 2010 (the audit period).

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8 While acting as a real estate brokers as described in Paragraph 4, above, and
9 within the audit period, Respondents accepted or received funds in trust (trust funds) in the
10 course of the real estate activities described in Paragraph 4, above, and deposited or caused the
11 funds to be deposited into a bank account maintained by Respondents, including:

12 Trust Account #1

13 Pacific Western Bank
14 1690 South Melrose Drive
Vista, CA 92081

15 Account No.: XXXXXX7700

16 Account Name: Foreclosure Specialists Inc
17 DBA Zenith Trustee Services
Trust Account (update June 11, 2010)

18 Signatories: Judy R Rowe (unlicensed)
19 Dana A Fazio (unlicensed)
Jon F Fazio (updated June 22, 2010)

20 Trust Account #2

21 San Diego National Bank
22 245 Vista Village Drive
Vista, CA 92083

23 Account No.: XXXXXX9408

24 Account Name: Foreclosure Specialists Inc
25 DBA Zenith Trustee Services
Trust Account

26 Signatories: Judy R Rowe (unlicensed)
27 Dana A Fazio (unlicensed)

1 Respondents violate Section 10145 of the Code and Section 2831.2 (trust account
2 reconciliation) of the Regulations.

3 (d) Respondents failed to designate Trust Account #1 as a trust account prior
4 to June 11, 2010. Such acts and/or omissions by Respondents violate Section 10145 of the Code
5 and Section 2832 (trust fund handling) of the Regulations.

6 (e) Respondents allowed non-licensees Rowe-Fazio and JRowe to withdraw
7 funds from Trust Accounts #1 and #2, and did not provide adequate fidelity bond coverage for
8 them. In addition, FAZIO was not a signer on Trust Accounts #1 and #2 until after June 11,
9 2010. Such acts and/or omissions by Respondents violate Section 10145 of the Code and
10 Section 2834 (trust account withdrawals) of the Regulations.

11 (f) As of May 28, 2010, Respondents commingled broker funds with trust
12 funds in Trust Account #1. Such acts and/or omissions by Respondents violate Sections 10145
13 and 10176(e) (commingling) of the Code and Section 2835 (commingling) of the Regulations.

14 (g) As of March 31, 2010, Respondents commingled broker funds with trust
15 funds in Trust Account #2. Such acts and/or omissions by Respondents violate Sections 10145
16 and 10176(e) of the Code and Section 2835 of the Regulations.

17 (h) Respondents failed to notify the Department that they collected payments
18 of more than \$250,000.00 for a successive twelve (12) month period in 2010. Such acts and/or
19 omissions by Respondents violate Section 10232(e) (threshold notification) of the Code.

20 (i) Respondents failed to notify the Department that they collected loan
21 payments totaling more than \$125,000.00 in three consecutive quarters for fiscal year 2010.
22 Such acts and/or omissions by Respondents violate of Section 10238(a) and (b) (multi-lender
23 reporting requirements) of the Code.

24 (j) Respondents failed to submit Quarterly Trust Fund Status Reports with
25 Department within 30 days after the end of each fiscal quarter for fiscal year 2010. Such acts
26 and/or omissions by Respondents violate Section 10232.25 (disclosure statement requirements)
27 of the Code.

1 (k) Respondents failed to submit to the Quarterly Multi-Lender Servicing
2 reports for fiscal year 2010. Such acts and/or omissions by Respondents violate Section
3 10232.5 (disclosure statement content) of the Code.

4 (l) Respondents failed to maintain complete and accurate written servicing
5 agreements. Specifically, Respondents' files did not include the borrowers' signatures and did
6 not include the statement:

7 (T)he payments received would not be commingled with
8 FSI's assets; payments received would be transmitted to
9 lenders within 25 days after receipt; FSI would notify the
10 lenders of any default on the borrower's prior
encumbrances; and FSI would forward copies of any notice
of trustee sale and any request for re-conveyance of the
deed of trust.

11 Such acts and/or omissions by Respondents violate Section 10233 (service promissory note
12 authorization requirements), and Section 10238(k)(2) (multi-lender reporting requirements) of
13 the Code.

14 (m) Respondents received secret profits and/or undisclosed compensation in
15 by engaging in a credit-earning relationship with Pacific Western Bank (Trust Account #1) and
16 San Diego National Bank (Trust Account #2) whereby Respondents received bank charge
17 offsets with Pacific Western Bank and San Diego National Bank as a result of depositing loan
18 servicing trust funds in the respective banks which were not disclosed to the trust fund owners
19 as follows:

<u>Month/Year</u>	<u>Earning Credit</u>
February 2010	\$ 197.12
April 2010	\$ 335.26
May 2010	\$ 472.19

24 Such acts and/or omissions by Respondents violate Section 10176(g) (taking of secret or
25 undisclosed compensation) and Section 10238(n)(4) (multi-lender reporting requirements) of the
26 Code.

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The acts and/or omissions of Respondents as set forth in Paragraph 9, above, violate Sections 10145, 10176(e), 10176(g), 10232, 10232.25, 10232.5, 10233 and 10238 of the Code; and Sections 2831.2, 2832, 2832.1, 2834 and 2835 of the Regulations, and are grounds for discipline under Sections 10176(e), 10176(g), 10177(d) (willful disregard/violation of real estate law) and/or 10177(g) (negligence or incompetence) of the Code. In addition, the Department is entitled to reimbursement for the costs of its audit pursuant to Section 10148(b) (cost of audit in final decision following disciplinary hearing) of the Code.

SECOND CAUSE OF ACTION

As the designated broker/officer for FSI, FAZIO was responsible for the supervision and control of the activities conducted on behalf of FSI by its officers and employees. FAZIO failed to exercise reasonable supervision and control over the property management activities of FSI. In particular, FAZIO permitted, ratified and/or caused the conduct described in the First Cause of Action, 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, procedures and systems to ensure the compliance of the corporation with the Real Estate Law and the Regulations.

The acts and/or omissions of FAZIO set forth in Paragraph 11, above, violate Section 10159.2 of the Code and Section 2725 (broker supervision) of the Regulations, and are grounds for disciplinary action under Sections 10177(d) and/or 10177(g), and 10177(h) (reasonable broker supervision) of the Code.

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1 COST RECOVERY

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3 Section 10106 of the Code provides, in pertinent part, that in any order issued in
4 resolution of a disciplinary proceeding before the department, the commissioner may request
5 the administrative law judge to direct a licensee found to have committed a violation of this
6 part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
7 case.

8 WHEREFORE, Complainant prays that a hearing be conducted on the
9 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
10 disciplinary action against all licenses and license rights of Respondents under the Code, and
11 for such other and further relief as may be proper under the provisions of law.

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14 VERONICA KILPATRICK
15 Deputy Real Estate Commissioner

16 Dated at San Diego, California,

17 This 26 day of February, 2013.