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SEP 20 2018

BUREAU OF REAL ESTATE

By 

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8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of	)	No. H-04994 SD
	)	
12 LARRY D.A. JUDGE III;	)	
13 SUMMIT PROPERTY MANAGEMENT, INC.;	)	<u>FIRST AMENDED</u>
14 and JOHN B. KISS, individually and as	)	<u>ACCUSATION</u>
15 designated officer of Summit Property	)	
16 Management, Inc.,	)	
	)	
17 Respondents.	)	

18 This First Amended Accusation amends the Accusation filed on or about May  
19 14, 2018. The Complainant, Veronica Kilpatrick, a Supervising Special Investigator of the  
20 State of California, acting in her official capacity, for cause of Accusation against LARRY D.A.  
21 JUDGE III ("JUDGE"), SUMMIT PROPERTY MANAGEMENT, INC. ("SPM"), and JOHN  
22 B. KISS ("KISS"), individually and as designated officer of Summit Property Management,  
23 Inc., is informed and alleges as follows:

24 1.

25 The Complainant, Veronica Kilpatrick, acting in her official capacity as  
26 Supervising Special Investigator of the State of California, makes this Accusation.  
27

2.

All references to the "Code" are to the California Business and Professions Code, and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations unless otherwise specified.

3.

A. LARRY D.A. JUDGE III: Respondent JUDGE was licensed as a real estate salesperson (license no. 01861855) from on or about June 1, 2009 to May 31, 2013 and from September 17, 2014 to July 29, 2018.<sup>1</sup> From on or about September 17, 2014 to June 7, 2015, JUDGE's sponsoring broker was KISS.<sup>2</sup> From on or about June 8, 2015 through the present, JUDGE has not had a sponsoring broker. At no time mentioned herein has JUDGE had a fictitious business name registered with the Department of Real Estate.

B. SUMMIT PROPERTY MANAGEMENT, INC.: Respondent SPMI is presently licensed and/or has license rights issued by the Department of Real Estate as a corporate real estate broker (license no. 01199163). SPMI has been licensed as a corporate real estate broker from on or about August 4, 1995 to August 3, 1999 and September 5, 2014 through the present. At all times that SPMI has been licensed, SPMI's designated officer has been KISS. At no point in time mentioned herein has SPMI had a fictitious business name registered with the Department of Real Estate.

C. JOHN B. KISS: Respondent KISS is presently licensed and/or has license rights issued by the Department of Real Estate as a real estate broker (license no. 01187187). KISS has been licensed as a real estate broker from on or about May 18, 1995 through the present. Previously, from on or about October 24, 1994 to May 17, 1995, KISS

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<sup>1</sup> On or about July 10, 2018, a Default Decision was filed herein against Judge, thereby revoking Judge's real estate salesperson license effective July 30, 2018.

<sup>2</sup> KISS terminated JUDGE's employment because JUDGE stole a check from him.

1 was licensed as a real estate salesperson. At no point in time mentioned herein has KISS had a  
2 fictitious business name registered with the Department of Real Estate.

3  
4 4.

5 Whenever reference is made in an allegation in this Accusation to an act or  
6 omission of "Respondents," such allegation shall be deemed to mean that the officers, directors,  
7 employees, agents, and real estate licensees employed by or associated with Respondents  
8 committed such act or omission while engaged in the furtherance of the business or operations  
9 of Respondents and while acting within the course and scope of their corporate authority and  
10 employment, including, but not limited to, JUDGE, SPMI, and KISS.

11 5.

12 At all times mentioned, in San Diego County, SPMI and KISS engaged in the  
13 business of real estate brokers conducting licensed activities within the meaning of Code  
14 section 10131(b). JUDGE, SPMI, and KISS engaged in operating a real property management  
15 company by leasing, renting, and/or offering to rent places for rent, soliciting for prospective  
16 tenants, and/or collecting rents from real property.

17 (JUDGE: PROPERTY MANAGEMENT)

18  
19 *Check No. 2024*

20 6.

21 JUDGE embezzled trust funds from SPMI and KISS by stealing check no. 2024,  
22 dating it May 26, 2015, forging KISS' signature, making the check out to himself for \$7,650.00,  
23 and cashing the check.

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25 ///

26 ///

27

1 *Arnold L.'s Property: Gail Park Ln. Property*

2 7.

3 On or about October 1, 2014, JUDGE and Arnold L. entered into a Property  
4 Management Agreement wherein JUDGE would provide property management services for  
5 Arnold L.'s property at 14754 Gail Park Lane, Poway, CA 92064 ("Gail Park Ln. Property")  
6 from October 1, 2014 to August 31, 2015. Therein, JUDGE agreed to disburse the rent, minus  
7 any charges and expenses, to Arnold L. aka "Bud", by the last day of each month. JUDGE also  
8 agreed to hold any reserves and the security deposit in a non-interest bearing trust account. In  
9 return, Arnold L. agreed to pay six (6) percent of monies collected, half of the late fees, and \$25  
10 for pre-inspection when tenants vacate.

11 8.

12 In or about May 2015, JUDGE collected \$1,750.00 in rent from the tenant in  
13 Gail Park Ln. Property, and was supposed to disburse \$1,600.00 of the \$1,750.00 to Arnold L.  
14 However, to date, JUDGE has failed to disburse the \$1,600.00 to Arnold L.

15 9.

16 In or about June 2015, JUDGE collected \$1,750.00 in rent from the tenant in  
17 Gail Park Ln. Property, and was supposed to disburse \$1,600.00 of the \$1,750.00 to Arnold L.  
18 However, to date, JUDGE has failed to disburse the \$1,600.00 to Arnold L.

19 10.

20 To date, JUDGE had failed to give rental receipts for both May 2015 and June  
21 2015 for the Gail Park Ln. Property to Arnold L.

22  
23 *Unlicensed Fictitious Business Name*

24 11.

25 From on or about June 12, 2014 until at least June 2015, JUDGE used the  
26 unlicensed fictitious business name of "Judge & Rose Management & Consulting, LLC" to  
27

1 conduct licensed activities, including property management services, without holding a license  
2 bearing that fictitious business name, in violation of Code section 10159.5 and Regulations  
3 section 2731. For example, JUDGE collected and disbursed rent monies using Judge & Rose  
4 Management & Consulting, LLC's bank account. These property management services  
5 included, but are not limited to, the Gail Park Ln. Property, Olive Meadows Pl. Property, and  
6 Lamont St. Property.

7  
8 *Unlicensed Activities*

9 12.

10 From on or about June 8, 2015 to at least September 31, 2015, JUDGE acted as  
11 a real estate broker by conducting licensed activities as a real estate salesperson without a  
12 sponsoring broker, in violation of Code section 10130.

13 13.

14 JUDGE's conduct, acts, and/or omissions as described above in paragraphs 6 to  
15 12 constitute making substantial misrepresentations and fraud and/or dishonest dealing, and are  
16 cause for the suspension or revocation of all real estate licenses and license rights of JUDGE  
17 under the provisions of Code sections 10176(a) (misrepresentation), 10177(d) (disregard or  
18 violate Real Estate Law), 10177(g) (negligence), and 10176(i) and 10177(j) (fraud or dishonest  
19 dealing).

20  
21 (SPMI and KISS: TRUST FUND AUDIT)

22 14.

23 On or about July 28, 2017, the Department of Real Estate completed an audit  
24 examination of the books and records of SPMI to determine whether SPMI handled and  
25 accounted for trust funds and conducted its real estate activities in accordance with the Real  
26 Estate Law and Regulations. The audit examination covered a period of time beginning on July  
27

1 1, 2014 and ended on November 30, 2016. The audit examination revealed violations of the  
2 Code and the Regulations set forth in the following paragraphs, and more fully discussed in  
3 Audit Report SD160024 and the exhibits and work papers attached to said audit report.

4  
5 Bank Accounts/Trust Accounts

6 15.

7 At all times mentioned, in connection with the activities described in Paragraph  
8 5, above, SPMI accepted or received funds including funds in trust ("trust funds") from or on  
9 behalf of actual or prospective parties, such as owners of real property, involved in property  
10 management services, and thereafter made deposits and/or disbursements of such funds. From  
11 time to time herein mentioned, during the audit period, said trust funds were deposited and/or  
12 maintained by SPMI in the bank accounts as follows:

13 \*\*\*\*\*9618  
14 California Bank and Trust  
15 P.O. Box 489  
16 Lawndale, CA 90260-0489 (BA 1)

17 \*\*\*\*\*9634  
18 California Bank and Trust  
19 P.O. Box 489  
20 Lawndale, CA 90260-0489 (BA 2)

21 \*\*\*\*\*5761  
22 California Bank and Trust  
23 P.O. Box 489  
24 Lawndale, CA 90260-0489 (BA 3)

25 \*\*\*\*\*5841  
26 California Bank and Trust  
27 P.O. Box 489  
Lawndale, CA 90260-0489 (BA 4)

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1  
2 In the course of activities described in Paragraphs 5 and 15, above, and during  
3 the audit examination period in Paragraph 14, above, Respondents SPMI and KISS acted in  
4 violation of the Code and the Regulations as set forth below:

5 (a)(1) Permitted, allowed, or caused the disbursement of trust funds from the  
6 bank account BA 1 where the disbursement of funds reduced the total of aggregate funds in BA  
7 1, to an amount which, on November 30, 2016, was at least \$18,966.85 less than the existing  
8 aggregate trust fund liability to every principal who was an owner of said funds, without first  
9 obtaining the prior written consent of the owners of said funds, in violation of Code section  
10 10145 and Regulations section 2832.1.

11 (a)(2) Permitted, allowed, or caused the disbursement of trust funds from the  
12 bank account BA 2 where the disbursement of funds reduced the total of aggregate funds in BA  
13 2, to an amount which, on November 30, 2016, was at least \$9,421.07 less than the existing  
14 aggregate trust fund liability to every principal who was an owner of said funds, without first  
15 obtaining the prior written consent of the owners of said funds, in violation of Code section  
16 10145 and Regulations section 2832.1.

17 (a)(3) Permitted, allowed, or caused the disbursement of trust funds from the  
18 bank account BA 3 where the disbursement of funds reduced the total of aggregate funds in BA  
19 3, to an amount which, on November 30, 2016, was at least \$8,399.59 less than the existing  
20 aggregate trust fund liability to every principal who was an owner of said funds, without first  
21 obtaining the prior written consent of the owners of said funds, in violation of Code section  
22 10145 and Regulations section 2832.1.

23 (a)(4) Permitted, allowed, or caused the disbursement of trust funds from the  
24 bank account BA 4 where the disbursement of funds reduced the total of aggregate funds in BA  
25 4, to an amount which, on October 30, 2015, was at least \$5,673.12 less than the existing  
26 aggregate trust fund liability to every principal who was an owner of said funds, without first  
27

1 obtaining the prior written consent of the owners of said funds, in violation of Code section  
2 10145 and Regulations section 2832.1.

3 (b) Failed to maintain accurate and complete control records in the form of a  
4 columnar record in chronological order of all trust funds received, deposited, and disbursed  
5 from BA 1, BA 2, BA 3, and BA 4, in violation of Code section 10145 and Regulations section  
6 2831.

7 (c)(1) Failed to maintain an accurate and complete separate record for each  
8 beneficiary or transaction, thereby failing to account for all trust funds received, deposited, and  
9 disbursed from BA 1, BA 2, BA 3, and BA 4, in violation of Code section 10145 and  
10 Regulations section 2831.1.

11 (c)(2) Failed to maintain a separate record for the unidentified and unaccounted  
12 for funds of \$884.25 in BA 3 as of October 30, 2015 and \$884.25 in BA 1 as of November 30,  
13 2016, in violation of Code section 10145 and Regulations section 2831.1.

14 (d) Failed to perform and maintain a monthly reconciliation comparing the  
15 balance of all separate records to the balance of the record of all trust funds received and  
16 disbursed (control record) for BA 1, BA 2, BA 3, and BA 4, in violation of Code section 10145  
17 and Regulations section 2831.2.

18 (e)(1) Deposited trust funds received in connection with property management  
19 activities into BA 1, BA 2, BA 3, and BA 4, which were not designated trust fund accounts, in  
20 violation of Code section 10145 and Regulations section 2832.

21 (e)(2) Failed to deposit trust funds received in connection with property  
22 management activities within three (3) business days for BA 1 and BA 2, in violation of Code  
23 section 10145 and Regulations section 2832.

24 (f) Failed to deposit trust funds received from tenants in cash into BA 1, BA  
25 2, BA 3, or BA 4, in violation of Code section 10145(a). Instead, the cash was held by the  
26  
27



1 property manager, Linda Houghton, or deposited into SPMI's corporate bank account and then  
2 a check for that amount would be deposited into BA 1, BA 2, BA 3, or BA 4.

3 (g) Failed to timely notify the Department of Real Estate of the employment  
4 of JUDGE and Jennifer Rimer, both salespersons, in violation of Code section 10161.8 and  
5 Regulations section 2752.

6 (h) Failed to disclose SPMI's real estate license number on SPMI's website,  
7 in violation of Code section 10140.6 and Regulations section 2773.

8 (i) Used the then-unlicensed fictitious business name of "Summit Property  
9 Management" prior to registering it with the Department of Real Estate, in violation of Code  
10 section 10159.5 and Regulations section 2731.

11 (j) Failed to produce some records and documents requested for the audit  
12 period of July 1, 2014 to November 30, 2016, in violation of Code section 10148.

13 (k) Failed to have notify the Department of Real Estate that it appointed real  
14 estate salesperson Jennifer Rimer was its officer manager, in violation of Code section 10164.

15 (l) Failed to maintain a broker-salesperson relationship agreement with  
16 JUDGE, in violation of Regulations section 2726.

17 (m) KISS failed to exercise reasonable control and supervision over the  
18 activities conducted on behalf of SPMI as necessary to secure full compliance with the Real  
19 Estate Laws, including, but not limited to, establishing policies, rules, procedures, and systems  
20 to review, oversee, and inspect the handling of trust funds, in violation of Code sections  
21 10159.2 and 10177(h) and Regulations section 2725. Since on or about November 2, 2015,  
22 KISS has resided in Tennessee.

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The conduct of Respondents SPMI and KISS described in Paragraph 8, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
16(a)	Code section 10145 and Regulations section 2832.1
16(b)	Code section 10145 and Regulations section 2831
16(c)	Code section 10145 and Regulations section 2831.1
16(d)	Code section 10145 and Regulations section 2831.2
16(e)	Code section 10145 and Regulations section 2832
16(f)	Code section 10145(a)
16(g)	Code section 10161.8 and Regulations section 2752
16(h)	Code section 10140.6 and Regulations section 2773
16(i)	Code section 10159.5 and Regulations section 2731
16(j)	Code section 10148
16(k)	Code section 10164
16(l)	Regulations section 2726
16(m)	Code sections 10159.2 and 10177(h) and Regulations section 2725

The foregoing violations constitute cause for discipline of the real estate license and license rights of SPMI and KISS under the provisions of Code sections 10177(d), 10177(g), 10177(h), and 10176(i)/10177(j) and Regulations section 2725.

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(SPMI and KISS: EMPLOYED NON-LICENSEES)

18.

From an unknown time, but from at least October 2017 to August 2018, SPMI and KISS employed Mom and Me Properties, Sue Gray, and Kim Legerretta, all unlicensed with the Department of Real Estate, to conduct licensed activities within the meaning of Code section 10131(b) (leasing, renting, and/or offering to rent places for rent, soliciting for prospective tenants, and/or collecting rents from real property), including, but not limited to advertising rental properties on the website, sandiego.craigslist.org, accepting applications from tenants, entering into property management agreements, and charging and collecting property management fees at the Park Villa South and North buildings in San Diego, California. in violation of Code section 10137.

19.

SPMI's and KISS's conduct, acts, and/or omissions as described above in paragraph 18 constitute employing unlicensed persons under the provisions of Code section 10137.

COSTS

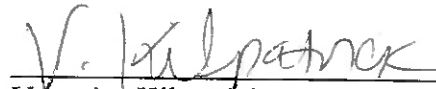
20.

Code section 10106 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 investigation and enforcement of the case.

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

1 WHEREFORE, Complainant prays that a hearing be conducted on the  
2 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing  
3 disciplinary action against all licenses and/or license rights under the Real Estate Law (Part 1 of  
4 Division 4 of the California Business and Professions Code) of Respondents LARRY D.A.  
5 JUDGE III, SUMMIT PROPERTY MANAGEMENT, INC., and JOHN B. KISS, individually  
6 and as designated officer of Summit Property Management, Inc., for the cost of investigation  
7 and enforcement as permitted by law, audit costs as permitted by law, and for such other and  
8 further relief as may be proper under applicable provisions of law.

9 Dated at San Diego, California: September 19, 2018.

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12 Veronica Kilpatrick  
13 Supervising Special Investigator  
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23 cc: Larry D.A. Judge III  
24 Summit Property Management, Inc.  
25 John B. Kiss  
26 Veronica Kilpatrick  
27 Sacto  
Enforcement  
Audits – Linda Davies