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JUN 01 2017
BUREAU OF REAL ESTATE
By B. Nicholas

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 THE AZARI GROUP REAL ESTATE, INC., and)
13 MARIO ANTONIO BANUELOS,)
14 Respondents.)

NO. H- 11965 SF
FIRST AMENDED
ACCUSATION

15 The Complainant, HEATHER NISHIMURA, in her official capacity as a
16 Supervising Special Investigator of the State of California, brings this First Amended Accusation
17 against THE AZARI GROUP REAL ESTATE, INC. and MARIO ANTONIO BANUELOS,
18 (collectively "Respondents") and is informed and alleges as follows:
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21 Respondent THE AZARI GROUP REAL ESTATE, INC. ("Respondent AZARI
22 GROUP") is presently licensed by the California Bureau of Real Estate (hereinafter "the Bureau")
23 and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business
24 and Professions Code (hereafter "the Code"), as a real estate broker corporation, and from March
25 18, 2014 through August 13, 2014, and August 29, 2014 through October 17, 2014, was acting by
26 and through MARIO ANTONIO BANUELOS as its designated officer broker.

27 ¹ Effective July 1, 2013, the Department of Real Estate has become the Bureau of Real Estate pursuant to the
Governor's Reorganization Plan of 2012.

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2 At all times relevant herein, Respondent AZARI GROUP conducted real estate
3 activity under its individual license name, and the fictitious business name "Azari Property
4 Management" registered with the Bureau.

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6 Respondent MARIO ANTONIO BANUELOS ("Respondent BANUELOS") is
7 presently licensed by the Bureau and/or has license rights under the Real Estate Law, Part 1 of
8 Division 4 of the Code, as a real estate broker.

9 4

10 From March 18, 2014 through August 13, 2014, and August 29, 2014 through
11 October 17, 2014, Respondent BANUELOS was licensed by the Bureau as the designated officer
12 broker of Respondent AZARI GROUP. As the designated officer broker, Respondent
13 BANUELOS was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the
14 activities of the officers, agents, real estate licensees and employees of Respondent AZARI
15 GROUP for which a real estate license is required.

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17 At all times mentioned herein, Manzar Dokhat Azari ("Ms. Azari") owned AZARI
18 GROUP. Ms. Azari was licensed by the Bureau as a real estate broker from March 2006 to
19 February 2013. During that period, from September 7, 2011 to February 21, 2013, Ms. Azari
20 served as the designated officer broker for AZARI GROUP. Effective February 21, 2013, in
21 Bureau Case No. H-11229 SF, the Bureau revoked Ms. Azari's real estate broker license for,
22 violating Sections 10145, 10163, 10176(e), 10176(i), 10177(d), 10177(e), 10177(h), and 10177(j)
23 of the Code, and Sections 2715, 2725, 2830.1, 2831.1, 2831.2, 2832, 2832.1, 2834, and 2835 of
24 Title 10 of the California Code of Regulations.

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26 At no time mentioned herein was Denise Kilker ("Kilker") licensed by the Bureau
27 in any capacity.

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At no time mentioned herein was Jenny Filchenko ("Filchenko") licensed by the Bureau in any capacity.

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At no time mentioned herein was James Quintero ("Quintero") licensed by the Bureau in any capacity.

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At no time mentioned herein was Mark Machado ("Machado") licensed by the Bureau in any capacity.

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

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At all times relevant herein, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(b) of the Code (Broker Defined – Property Management/Collection of Rent), 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, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

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1 FIRST CAUSE OF ACTION

2 As Against All Respondents

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4 Each and every allegation in paragraphs 1 through 11, inclusive, above, is
5 incorporated by this reference as if fully set forth herein.

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7 On or about July 10, 2014, and continuing intermittently through September 29,
8 2014, an audit was conducted of Respondents' business activities at Respondents' main office
9 location at 521 Gough St., San Francisco, California, wherein the auditor examined Respondents'
10 records for the period of January 1, 2013 through September 12, 2014 (hereinafter "the audit
11 period").

12 14

13 While acting as a real estate broker as described in paragraph 11, above, and within
14 the audit period, Respondents accepted or received funds in trust (hereinafter "trust funds") and
15 deposited or caused the trust funds to be deposited into bank accounts maintained by Respondents,
16 and thereafter, from time-to-time, Respondents made disbursements of said trust funds, identified as
17 follows:

18 Trust Account #1

19 Bank Name: Bank of America
20 Account No.: Last 4 Digits: xxxxxx3105
21 Account Name: "The Azari Group Real Estate, Inc. Trust Account"
22 Signatories: Mario Antonio Banuelos (DO/REB)

23 Bank Account #1

24 Bank Name: Bank of America
25 Account No.: Last 4 Digits: xxxxxx4635
26 Account Name: "The Azari Group Real Estate, Inc. General 1 dba Azari
27 Property Management"
Signatories: Manzar Azari (unlicensed); Eugenia Mantzoros (RES)

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2 In the course of the real estate broker activities described in paragraph 11, above, and
3 during the audit period, Respondents:

4 (a) caused, suffered, or permitted the balance of funds in Trust Account #1 to be
5 reduced to an amount which, as of April 30, 2014 and June 30, 2014, was approximately
6 \$43,250.00 less than the aggregate liability of Trust Account #1 to all owners of such funds, without
7 the prior written consent of each and every owner of such funds, in violation of Section 10145 of
8 the Code and Section 2832.1 of Title 10 of the Regulations. The cause of said trust fund shortage
9 was attributed to a transaction wherein maintenance reserves were transferred from Trust Account
10 #1 to Bank Account #1 (general operating account), on April 28, 2014;

11 (b) caused, suffered, or permitted the balance of funds in Trust Account #1 to be
12 reduced to an amount which, as of September 12, 2014, was approximately \$1,400.00 less than the
13 aggregate liability of Trust Account #1 to all owners of such funds, without the prior written
14 consent of each and every owner of such funds, in violation of Section 10145 of the Code and
15 Section 2832.1 of the Regulations. The cause of said trust fund shortage was attributed to a
16 negative balance for one property;

17 (c) failed to maintain separate records for each beneficiary or property of trust
18 funds accepted or received for Trust Account #1, in violation of Section 10145(g) of the Code and
19 Section 2831.1 of the Regulations, in that Trust Account #1 contained unidentified and/or
20 unaccounted for funds totaling \$190.04 as of April 30, 2013, and \$260.58 as of June 30, 2014;

21 (d) deposited trust funds into Bank Account #1, and failed to designate Bank
22 Account #1 as a trust fund account in the name of Respondent AZARI GROUP or its registered
23 fictitious business name, as trustee, in violation of Section 10145 of the Code and Section 2832 of
24 the Regulations;

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1 (e) caused, suffered or permitted money of others, trust funds in the form of
2 maintenance reserves, which were received and held by Respondents in Bank Account #1 on or
3 about April 28, 2014, to be commingled with Respondents' own money, in violation of Section
4 10176(e) of the Code and Section 2835 of the Regulations;

5 (f) failed to maintain complete and accurate records of all trust funds received
6 and disbursed (control records) for Trust Account #1, including, but not limited to the failure to
7 record a transfer of maintenance reserves totaling \$43,250.00 on April 28, 2014 from Trust Account
8 #1 into Bank Account #1, and the failure to record the deposit of trust funds totaling \$4,398.00 in
9 the form of a security deposit collected from tenant Peter D., all in violation of Section 10145 of the
10 Code and Section 2831 of the Regulations;

11 (g) failed to maintain and/or keep accurate and complete separate records for
12 each beneficiary or property of trust funds accepted or received and disbursed for Trust Account #1,
13 in violation of Section 10145(g) of the Code and Section 2831.1 of the Regulations. Specifically,
14 after transferring maintenance reserves from Trust Account #1 into Bank Account #1, Respondents
15 failed to record the disbursement on any of the affected separate records. Additionally, the separate
16 record for the property located at 88 Amburst Lower Unit, Daly City, CA was inaccurate and
17 incomplete in that a security deposit totaling \$4,398.00 deposited into Trust Account #1 on or about
18 May 2, 2014 pertaining to that property was not recorded on the separate property record;

19 (h) failed to maintain and/or keep accurate and complete separate records for
20 each beneficiary or property of trust funds accepted or received and disbursed for Bank Account #1,
21 in violation of Section 10145(g) of the Code and Section 2831.1 of the Regulations. After April 27,
22 2014, Bank Account #1 held trust funds in the form of maintenance reserves totaling \$43,250.00 for
23 more than 170 properties;

24 (i) failed to reconcile the total of the separate beneficiary/property records with
25 the records of all trust funds received and disbursed (control records) on at least a monthly basis for
26 Bank Account #1, in violation of Section 2831.2 of the Regulations;

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1 (j) conducted activities requiring a real estate license during the period August
2 13, 2014 through August 28, 2014, when Respondent AZARI GROUP did not have a designated
3 officer broker registered with the Bureau, in violation of Section 10130 of the Code and Section
4 2740 of the Regulations. Specifically, Respondent AZARI GROUP collected and disbursed trust
5 funds in the form of rent receipts totaling \$31,468.33 pertaining to at least 7 properties during that
6 unlicensed period; and,

7 (k) employed and/or compensated unlicensed individuals including, but not
8 limited to, Ms. Azari, Kilker, Filchenko, Quintero, and Machado, to perform real estate activities on
9 behalf of Respondent AZARI GROUP within the meaning of Section 10131(b) of the Code
10 (property management-lease solicitation and negotiation), in violation of Sections 10130 and 10137
11 of the Code. Specifically, Azari, Kilker, and Filchenko entered into at least 7 property management
12 agreements on behalf of Respondent AZARI GROUP from April 9, 2013 through July 15, 2014.
13 Additionally, Kilker, Quintero, and Machado were compensated by Respondent AZARI GROUP
14 for such real estate activities during the period January 2014 through October 2014.

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16 The acts and/or omissions of Respondents as alleged in paragraph 15, above,
17 constitute grounds for the suspension or revocation of all licenses and license rights of Respondents
18 pursuant to the following provisions of the Code and Regulations:

19 As to paragraph 15(a), under Section 10177(d) and/or 10177(g) of the Code, in
20 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

21 As to paragraph 15(b), under Sections 10177(d) and/or 10177(g) of the Code, in
22 conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

23 As to paragraph 15(c), under Section 10177(d) and/or 10177(g) of the Code, in
24 conjunction with Section 10145(g) of the Code and Section 2832.1 of the Regulations;

25 As to paragraph 15(d), under Section 10177(d) and/or 10177(g) of the Code, in
26 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

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1 As to paragraph 15(e), under Sections 10176(e), and 10177(d) and/or 10177(g) of
2 the Code, in conjunction with Section 2835 of the Regulations;

3 As to paragraph 15(f), under Section 10177(d) and/or 10177(g) of the Code, in
4 conjunction with Section 10145 of the Code and Section 2831 of the Regulations;

5 As to paragraph 15(g), under Section 10177(d) and/or 10177(g) of the Code, in
6 conjunction with Section 10145(g) of the Code and Section 2831.1 of the Regulations;

7 As to paragraph 15(h), under Section 10177(d) and/or 10177(g) of the Code, in
8 conjunction with Section 10145(g) of the Code and Section 2831.1 of the Regulations;

9 As to paragraph 15(i), under Section 10177(d) and/or 10177(g) of the Code, in
10 conjunction with Section 2831.2 of the Regulations;

11 As to paragraph 15(j), under Section 10177(d) and/or 10177(g) of the Code, in
12 conjunction with Section 2740 of the Regulations; and,

13 As to paragraph 15(k), under Section 10177(d) and/or 10177(g) of the Code, in
14 conjunction with Sections 10130 and 10137 of the Code.

15 SECOND CAUSE OF ACTION

16 As Against Respondent BANUELOS

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18 Each and every allegation in paragraphs 1 through 16, inclusive, above, is
19 incorporated by this reference as if fully set forth herein.

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21 From March 18, 2014 through August 13, 2014, and August 29, 2014 through
22 October 17, 2014, Respondent BANUELOS, as the designated officer broker of Respondent
23 AZARI GROUP, was required to exercise reasonable supervision and control over the activities of
24 Respondent AZARI GROUP and its employees pursuant to Section 10159.2 of the Code and
25 Section 2725 of the Regulations.

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Respondent BANUELOS failed to exercise reasonable supervision over the acts and/or omissions of Respondent AZARI GROUP and its employees in such a manner as to allow the acts and/or omissions as described in paragraph 15, above, to occur, which constitutes cause for the suspension or revocation of the licenses and license rights of Respondent BANUELOS under Sections 10177(d) and/or 10177(g) of the Code, and Section 10177(h) of the Code, in conjunction with Section 10159.2 of the Code and Section 2725 of the Regulations.

COST RECOVERY

Audit Costs

The acts and/or omissions of Respondents as alleged in the First Cause of Action, above, entitle the Bureau to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund handling violations) of the Code.

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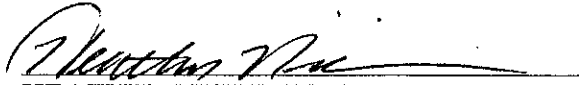
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1 Investigation and Enforcement Costs

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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 Bureau, the Commissioner may request the
5 Administrative Law Judge to direct a licensee found to have committed a violation of this part to
6 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

7 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of
8 this Accusation and that upon proof thereof, a decision be rendered revoking all licenses and license
9 rights of all Respondents named herein under the Real Estate Law (Part 1 of Division 4 of the
10 Business and Professions Code), for the cost of investigation and enforcement as permitted by law,
11 for the cost of the audit as permitted by law, and for such other and further relief as may be proper
12 under other provisions of law.

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15 HEATHER NISHIMURA
Supervising Special Investigator

16 Dated at Sacramento, California,
17 this 1st day of June, 2017.

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20 DISCOVERY DEMAND

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