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FILED

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DEPARTMENT OF REAL ESTATE
By L. Knapp

9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of:)
13 NORCAL PROPERTY MANAGEMENT, INC.) No. H-12266 SF
14 and DAVID ABRAHAM KRAUSE,) ACCUSATION
15 Respondents.)
16 _____)

17 The Complainant, ROBIN S. TANNER, in her official capacity as a Supervising
18 Special Investigator of the State of California, Department of Real Estate ("Department"), brings
19 this Accusation against NORCAL PROPERTY MANAGEMENT, INC. ("NPMI") and DAVID
20 ABRAHAM KRAUSE ("KRAUSE"), (collectively "Respondents"), and is informed and alleges as
21 follows:

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23 NPMI is presently licensed by the Department and/or has license rights under the
24 Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code"), as
25 a corporate real estate broker.

26 2

27 KRAUSE is presently licensed by the Department and/or has license rights under
the Code as a real estate broker.

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2 At all relevant times herein, KRAUSE was the designated officer for NPMI.

3 4

4 At all relevant times herein, Respondents engaged in the business of, acted in the
5 capacity of, advertised or assumed to act as real estate licensees within the State of California within
6 the 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, Respondents 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.

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

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18 On or about June 19, 2017, the Department received an Enforcement Online
19 Complaint against Respondents.

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21 Beginning on or about October 3, 2017, and continuing through December 1, 2017,
22 an audit was conducted of the real estate business activities of Respondents, located at 1077
23 Sherman Oaks Dr., San Jose, CA 95128. The auditor examined the business records of NPMI for
24 the period of September 1, 2016, through October 31, 2017, ("audit period").

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2 While engaging in the real estate activities described in Paragraph 4, above, and
3 within the audit period, NPMI accepted or received funds in trust ("trust funds") and deposited or
4 caused the trust funds to be deposited into three accounts maintained as follows:

5 Trust Account #1

6 Bank Name: Comerica Bank
7 1191 Lincoln Ave., San Jose, CA 95125
8 Account Name: NorCal Property Management, Inc. Real Estate Trust Account
9 Account No.: Last 4 Digits: 9900
10 Signatories: David Krause, D.O./REB
11 Douglas Krause, RES
12 Description: Trust Account #1 was used for deposits or disbursements
13 related to management of properties.
14

15 Trust Account #2

16 Bank Name: Comerica Bank
17 1191 Lincoln Ave., San Jose, CA 95125
18 Account Name: NorCal Property Management, Inc. Real Estate Trust Account
19 Account No.: Last 4 Digits: 9918
20 Signatories: David Krause, D.O./REB
21 Douglas Krause, RES
22 Description: Trust Account #2 as used for handling FTB tax withholdings
23 for non-resident owners.
24

25 Trust Account #3

26 Bank Name: Comerica Bank
27 1191 Lincoln Ave., San Jose, CA 95125

1 Account Name: NorCal Property Management, Inc. Real Estate Trust Account
2 Account No.: Last 4 Digits: 9926
3 Signatories: David Krause, D.O./REB
4 Douglas Krause, RES
5 Description: Trust Account #3 was used for handling credit card purchases.

6 FIRST CAUSE OF ACTION

7 (Audit Violations)

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

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

14 (a) As of August 31, 2017, Trust Account #1 contained a shortage of \$72,775.21,
15 in violation of the Section 10145 of the Code and Section 2832.1 of the Regulations;

16 (b) As of October 31, 2017, Trust Account #1 contained a shortage of \$9,452.43,
17 in violation of the Section 10145 of the Code and Section 2832.1 of the Regulations;

18 (c) Respondents failed to obtain prior written permission from the owners of the
19 trust funds in Trust Account #1 so as to allow the balance of the funds to drop below the
20 accountability of the account, in violation of the Section 10145 of the Code and Section 2832.1 of
21 the Regulations;

22 (d) The bank signature cards for Trust Account #1, #2, and #3 listed Douglas R.
23 Klause, a real estate salesperson, as one of the signatories in violation of Sections 10145 of the
24 Code and Section 2834 of the Regulations;

25 (e) Respondents failed to maintain accurate control records for Trust Accounts
26 #1 and failed to maintain control records for Trust Account #3, in violation of Section 10145 of the
27 Code and Section 2831 of the Regulations;

1 (f) Respondents failed to maintain accurate separate beneficiary records for
2 Trust Account #1 and failed to maintain beneficiary records for Trust Accounts #2 and #3, in
3 violation of Section 10145 of the Code and Section 2831.1 of the Regulations;

4 (g) Respondents failed to perform and maintain trust account reconciliations of
5 Trust Accounts #2 and #3, in violation of Section 10145 of the Code and Section 2831.2 of the
6 Regulations;

7 (h) Respondents failed to disclose to their clients earnings of cash rewards
8 received on repair materials purchased through credit cards, in violation of Section 10176(g) of the
9 Code;

10 (i) NPMI used several business centers as a main office without a definite space
11 where NPMI could display its Department license number, in violation of Section 10162 of the
12 Code;

13 (j) NPMI failed to notify the Department regarding changes to its main office
14 address within 30 days of having made the change in violation of Section 10162 of the Code; and

15 (k) KRAUSE failed to exercise reasonable supervision over the acts and/or
16 omissions of NPMI in such a manner as to allow the occurrence of the acts and/or omissions
17 described herein, in violation of Section 10159.2 of the Code and Section 2725 of the Regulations.

18 SECOND CAUSE OF ACTION

19 **(Constructive Fraud)**

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

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24 At all relevant times herein, Respondents owed fiduciary duties to the beneficiaries
25 of Trust Accounts #1, #2 and #3.

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1 AUDIT COSTS

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

6 COST OF INVESTIGATION AND ENFORCEMENT

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

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

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20 ROBIN S. TANNER
Supervising Special Investigator

21 Dated at Oakland, California,
22 this 24th day of September, 2018.

23
24 DISCOVERY DEMAND

25 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedure Act*, the
26 Department of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth
27 in the *Administrative Procedure Act*. Failure to provide Discovery to the Department of Real Estate
Office of Administrative Hearings deems appropriate.