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FILED

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DEPARTMENT OF REAL ESTATE

By B. Nicholas

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

12 PROPERTY FORCE, INC., and JOHN M. WAY)
13 JR.,)

14 Respondents.)

No. H-12470 SF

FIRST AMENDED ACCUSATION

15 The Complainant, STEPHANIE YEE, a Supervising Special Investigator of the
16 State of California, for cause of Accusation against PROPERTY FORCE, INC., and JOHN M.
17 WAY JR. (collectively "Respondents"), are informed and allege as follows:

18 PRELIMINARY ALLEGATIONS

19 1

20 The Complainant, STEPHANIE YEE, a Supervising Special Investigator of the
21 State of California, makes this Accusation in her official capacity.

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23 Respondents are presently licensed and/or have license rights under the Real
24 Estate Law, Part 1 of Division 4 of the Business and Professions Code (Code).

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At all times mentioned, Respondent PROPERTY FORCE, INC. (PFI) was and is licensed by the State of California Department of Real Estate (Department) as a real estate broker corporation.

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At all times mentioned, Respondent JOHN M. WAY JR. (WAY) was and is licensed by the Department as the designated broker officer of PFI. As said designated broker officer, WAY was responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees, and employees of PFI for which a license is required.

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

6

At all times mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in the State of California, within the meaning of Section 10131(b) of the Code in 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 and offered to lease or rent, and placed for rent, and solicited listings of places for 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

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3 Each and every allegation in Paragraphs 1 through 6, inclusive, is incorporated by
4 this reference as if fully set forth herein.

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6 On or about August 16, 2019, through September 13, 2019, an audit was
7 conducted of the records of PFI. The auditor herein examined the records for the period of
8 January 1, 2018, through April 30, 2019.

9 9

10 While acting as a real estate broker as described in Paragraph 6, Respondents
11 accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in
12 connection with the leasing, renting, and collection of rents on real property or improvements
13 thereon, as alleged herein, and thereafter from time-to-time made disbursements of said trust
14 funds.

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16 The trust funds accepted or received by Respondents as described in Paragraph 9
17 were deposited or caused to be deposited by Respondents into trust accounts which were
18 maintained by Respondents for the handling of trust funds, and thereafter from time-to-time
19 Respondents made disbursements of said trust funds, identified as follows:

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ACCOUNT # 1	
Bank Name and Location:	Wells Fargo Bank P.O. Box 6995 Portland, OR 97228-6995
Account No.:	xxxxxxx8222
Entitled:	Property Force Inc.

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	Real Estate Trust Account
	Deposit Trust Account

ACCOUNT # 2	
Bank Name and Location:	Wells Fargo Bank P.O. Box 6995 Portland, OR 97228-6995
Account No.:	xxxxxx4096
Entitled:	Property Force, Inc. Trust Account

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In the course of the activities described in Paragraph 6, Respondents:

(a) caused, suffered, or permitted the balance of funds in Account #1 to be reduced to an amount which, as of April 30, 2019, was approximately \$3,246.76 less than the aggregate liability of Account #1 to all owners of such funds in violation of Section 10145 of the Code and Section 2832.1 of Title 10, Chapter 6, of the California Code of Regulations (Regulations);

(b) caused, suffered, or permitted the balance of funds in Account #2 to be reduced to an amount which, as of April 30, 2019, was approximately \$9,926.58 less than the aggregate liability of Account #2 to all owners of such funds in violation of Section 10145 of the Code and Section 2832.1 of the Regulations;

(c) failed to reconcile the balance of separate beneficiary or transaction records with the control record of trust funds received and disbursed at least once a month, and/or failed to maintain a record of such reconciliations for Account #1 and 2 as required by Section 2831.2 of the Regulations;

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1 (d) caused, permitted, and/or allowed, the possible withdrawal of trust
2 funds from Account #1 and 2, by David Temple, a real estate salesperson who was not
3 licensed under Respondent after August 18, 2016, and not covered by an adequate
4 fidelity bond in violation of Section 2834 of the Regulations;

5 (e) deposited trust funds into an interest bearing account for Account
6 #2, in violation of Section 10145(d) of the Code; and

7 (f) Collected and retained unearned fees, compensation, and/or profit in the
8 amount of at least \$2,338.21 during the audit period, from homeowners in connection with
9 payment for property management maintenance and repair services performed by vendors, and
10 failed to disclose the collection of the unearned fees, compensation, and/or profit to the
11 homeowners, in violation of Sections 10145(a)(1) and 10176(g) of the Code. Specifically,
12 Respondents contracted with vendors to perform various services on the properties they managed
13 for homeowners. Vendors would bill Respondents at a discounted rate, but Respondents would
14 collect payment from homeowners at the full rate. Respondents retained the profit from the
15 vendor discount for themselves without fully disclosing the profit to homeowners.

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17 The facts alleged in the First Cause of Action are grounds for the suspension or
18 revocation of Respondents' licenses and license rights under the following Sections of the Code
19 and Regulations:

20 As to Paragraphs 11(a) and 11(b), under Sections 10177(d) and/or 10177(g) of
21 the Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

22 As to Paragraph 11(c), under Sections 10177(d) and/or 10177(g) of the Code in
23 conjunction with Section 10145 of the Code and Section 2831.2 of the Regulations;

24 As to Paragraph 11(d), under Sections 10177(d) and/or 10177(g) of the Code in
25 conjunction with Section 10145 of the Code and Section 2834 of the Regulations;

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1 As to Paragraph 11(e), under Sections 10177(d) and/or 10177(g) of the Code in
2 conjunction with Section 10145(d) of the Code;

3 As to Paragraph 11(f), under Sections 10176(g) of the Code.

4 SECOND CAUSE OF ACTION

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6 Each and every allegation in Paragraphs 1 through 12, inclusive, above are
7 incorporated by this reference as if fully set forth herein.

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9 Respondent WAY failed to exercise reasonable supervision over the acts of PFI in
10 such a manner as to allow the acts and events described above to occur.

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12 The acts and/or omissions of WAY as described in Paragraph 14, constitutes
13 failure on the part of WAY, as designated broker-officer for PFI, to exercise reasonable
14 supervision and control over the licensed activities of PFI as required by Section 10159.2 of the
15 Code and Section 2725 of the Regulations.

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17 The facts described above as to the Second Cause of Action constitute cause for
18 the suspension or revocation of the licenses and license rights of Respondent WAY under
19 Section 10177(g) and/or Section 10177(h) of the Code, and Section 10159.2 of the Code in
20 conjunction with Section 10177(d) of the Code.

21 COST RECOVERY

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23 The acts and/or omissions of Respondents as alleged above, entitle the
24 Department to reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs
25 for trust fund handling violation) of the Code.

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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 imposing discipline on all licenses and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), for the cost of the investigation and enforcement of this case as permitted by law, for the cost of the Department's audit as permitted by law, and for such other and further relief as may be proper under the provisions of law.



STEPHANIE YEE
Supervising Special Investigator

Dated at Oakland, California,

this 30th day of October, 2020

DISCOVERY DEMAND

Pursuant to Sections 11507.6, *et seq.* of the *Government Code*, 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.