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FILED

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DEPARTMENT OF REAL ESTATE
By *L. S. Sneyd*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-7002 SAC
12)
13 LUIS ZUBIATE and) ACCUSATION
14 LISA PIRES)
15 Respondents.)

16 The Complainant, TRICIA D. PARKHURST, acting in her official capacity as a
17 Supervising Special Investigator of the State of California, for cause of Accusation against
18 LUIS ZUBIATE ("ZUBIATE") and LISA PIRES ("PIRES") (collectively referred to herein as
19 "Respondents"), is informed and alleges as follows:

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21 Respondent ZUBIATE is presently licensed by the Department of Real Estate
22 ("the Department") and/or has license rights under the Real Estate Law, Part 1 of Division 4 of
23 the Code ("The Real Estate Law"), as a real estate broker. At all relevant times, ZUBIATE
24 served as PIRES' supervising broker.

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Respondent PIRES is presently licensed by the Department and/or has license rights under the Real Estate Law as a real estate salesperson. At all relevant times, PIRES was licensed under ZUBIATE.

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At all times mentioned 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, 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 and 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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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 and real estate licensees 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.

COUNT ONE
AUDIT VIOLATIONS
(As to Respondent ZUBIATE)

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

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Beginning on or about November 7, 2018, and continuing intermittently through November 26, 2019, the Department conducted an audit of ZUBIATE's real estate activities at his office located at 68 East 11th Street, Suite 109 in Tracy, California, and at the Department of

1 Real Estate ("DRE") located at 1651 Exposition Boulevard, Sacramento, California 95815. The
2 auditor examined the records for the period of October 1, 2017, through September 30, 2018
3 ("the audit period").

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5 While acting as a real estate licensee, as described above in Paragraph 3, and
6 within the audit period, ZUBIATE accepted or received funds in trust (trust funds) from or on
7 behalf of owners and tenants in connection with the leasing, renting, and collection of rents on
8 real property or improvements thereon, as alleged herein, and thereafter from time-to-time made
9 disbursements of said trust funds,

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11 While acting as a real estate broker as described above in Paragraph 3, and within
12 the audit period, ZUBIATE accepted or received funds in trust ("trust funds") and deposited or
13 caused the trust funds to be deposited into bank accounts maintained by ZUBIATE, and
14 thereafter, from time-to-time, ZUBIATE made disbursements of said trust funds, identified as
15 follows:

16 BANK ACCOUNT #1

17 Bank Name: BAC Community Bank
18 (formerly Central Valley Community Bank)

19 Bank Address: 951 North Central Ave.
20 Tracy, CA 95376

21 Account No.: Last 4 Digits: 3902

22 Account Name: Luis Zubiato
23 C&C Property Management

24 Signatories: Luis Zubiato (REB)
25 Lisa Sanchez (RES)

26 Description: Used for deposits and disbursements related to the
27 management of properties under ZUBIATE's license.
Deposits consisted of rents and any property management

1 related fees. Disbursements were made for repairs,
2 maintenance, management fees, and owner proceeds.

3 BANK ACCOUNT #2

4 Bank Name: BAC Community Bank
(formerly Central Valley Community Bank)

5 Bank Address: 951 North Central Ave.
6 Tracy, CA 95376

7 Account No.: Last 4 Digits: 3910

8 Account Name: Luis Zubiato
9 C&C Property Management

10 Signatories: Luis Zubiato (REB)
11 Lisa Sanchez (RES)

12 Description: Used for the handling of security deposits related to the

13 BANK ACCOUNT #3

14 Bank Name: BAC Community Bank
(formerly Central Valley Community Bank)

15 Bank Address: 951 North Central Ave.
16 Tracy, CA 95376

17 Account No.: Last 4 Digits: 3872

18 Account Name: Luis Zubiato
19 Sassy Property Management

20 Signatories: Luis Zubiato (REB)

21 Description: Used for the handling of rents and security deposits
22 related to the properties managed under ZUBIATE's
23 license. Disbursements were made for repairs,
24 maintenance, management fees and owner proceeds.

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26 In the course of the activities described in Paragraph 4, and during the audit
27 period, ZUBIATE:

1 (a) caused, suffered or permitted the balance of funds in Bank Account #1
2 to contain a shortage of \$25,042.70 without the prior written consent of each and every owner of
3 such funds, in violation of Section 10145 of the Code and Section 2832.1 of Chapter 6, Title 10,
4 California Code of Regulations (“the Regulations”);

5 (b) caused, suffered or permitted the balance of funds in the Bank Account #2
6 to contain a shortage of \$10,860.52 without the prior written consent of each and every owner of
7 such funds, in violation of Section 10145 of the Code and Section 2832.1 of the Regulations;

8 (c) caused, suffered or permitted the balance of funds in the Bank Account #3
9 to contain a shortage of \$21,261.26 without the prior written consent of each and every owner of
10 such funds, in violation of Section 10145 of the Code and Section 2832.1 of the Regulations;

11 (d) failed to properly designate Bank Accounts 1, 2 and 3 as trust accounts
12 in the name of ZUBIATE or his fictitious business name, as trustee, in violation of section 10145
13 of the Code and section 2832 of the Regulations;

14 (e) caused, suffered or permitted funds of others which were received and
15 held by ZUBIATE in Bank Account #1 to be commingled with ZUBIATE’s own money, in
16 violation of Section 10176(e) of the Code and Section 2835 of the Regulations; and

17 (f) caused, suffered or permitted funds of others which were received and
18 held by ZUBIATE in Bank Account #3 to be commingled with ZUBIATE’s own money, in
19 violation of Section 10176(e) of the Code and Section 2835 of the Regulations.

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21 The acts and/or omissions of Respondents, as alleged above in Paragraph 9,
22 constitute grounds for the suspension or revocation of all licenses and license rights of
23 Respondents pursuant to the following provisions of the Code and Regulations:

24 As to Paragraph 9(a), under Section 10177(d) of the Code, in conjunction with
25 Section 10145 of the Code and Section 2832.1 of the Regulations;

26 As to Paragraph 9(b), under Section 10177(d) of the Code, in conjunction with
27 Section 10145 of the Code and Section 2832.1 of the Regulations;

1 As to Paragraph 9(c), under Section 10177(d) of the Code, in conjunction with
2 Section 10145 of the Code and Section 2832.1 of the Regulations;

3 As to Paragraph 9(d), under Section 10177(d) of the Code, in conjunction with
4 Section 10145 of the Code and 2832 of the Regulations;

5 As to Paragraph 9(e), under Section 10177(d) of the Code, in conjunction with
6 Section 10176(e) of the Code and 2835 of the Regulations; and

7 As to Paragraph 9(f), under Section 10176(e) of the Code and 2835 of the
8 Regulations.

9 **COUNT TWO**
10 **COMMINGLING**
(As to ZUBIATE and PIRES)

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12 Each and every allegation in Paragraphs 1 through 10, inclusive, above, is
13 incorporated by this reference as if fully set forth herein.

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15 During the audit period, complainants Veronica and Cecilia V. ("Complainants")
16 owned real property managed by Respondents located at 1533 Brookdale Way, Manteca, CA
17 95336 ("1533 Brookdale").

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19 In April 2018, Respondents collected rent from the tenant leasing 1533 Brookdale
20 and deposited said rents in a personal checking account belonging to and/or maintained by
21 PIRES and PIRES' husband ("PIRES' Personal Checking Account").

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23 On or about April 21, 2018, Respondents issued a check to Complainants for
24 \$4,643 from PIRES' Personal Checking Account.

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26 The acts and/or omissions of Respondents, as described above in Paragraphs 11
27 through 14, are grounds for the suspension or revocation of the real estate licenses and/or license

1 rights of Respondents under Sections 10177(d), 10176(e) of the Code and 2835 of the
2 Regulations.

3 **COUNT THREE**
4 **FAILURE TO SUPERVISE**
5 (As to ZUBIATE only)

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7 Each and every allegation in paragraphs 1 through 15, inclusive, above, is
8 incorporated by this reference as if fully set forth herein.

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10 At all relevant times, ZUBIATE, as the supervising broker of PIRES, was
11 required to exercise reasonable supervision and control over the activities of PIRES pursuant to
12 Section 10177(h) of the Code and Section 2725 of the Regulations.

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14 ZUBIATE failed to exercise reasonable supervision over the acts and/or
15 omissions of PIRES in such a manner as to allow the acts and/or omissions as described in the
16 Second Causes of Action to occur, which constitutes cause for the suspension or revocation of
17 the license(s) and license rights of ZUBIATE under Sections 10177(d) and/or 10177(g) of the
18 Code, and Section 10177(h) of the Code, in conjunction with Section 2725 of the Regulations.

19 **COST RECOVERY**

20 19

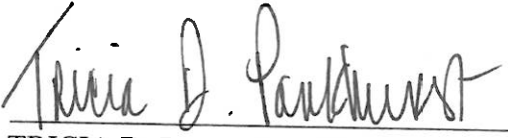
21 The acts and/or omissions of Respondents, as alleged above in First Cause of
22 Action entitle the Department to reimbursement of the costs of its audit pursuant to Section
23 10148(b) of the Code.

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25 Section 10106 of the Code provides, in pertinent part, that in any order issued in
26 resolution of a disciplinary proceeding before the Department, the Commissioner may request the
27 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.

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


TRICIA D. PARKHURST
Supervising Special Investigator

Dated at Sacramento, California,
this 26th day of October, 2020.

DISCOVERY DEMAND

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