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9 **BEFORE THE**  
**PROFESSIONAL FIDUCIARIES BUREAU**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. PF-2013-84

13 **GARY LEE ARPS**  
14 **P.O. Box 5453**  
**Chula Vista, CA 91912**

**A C C U S A T I O N**

15 **Professional Fiduciary License No. PF 315**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

- 20 1. Julia Ansel (Complainant) brings this Accusation solely in her official capacity as the  
21 Bureau Chief of the Professional Fiduciaries Bureau, Department of Consumer Affairs.
- 22 2. On or about February 17, 2009, the Professional Fiduciaries Bureau issued  
23 Professional Fiduciary License Number PF 315 to Gary Lee Arps (Respondent). The Professional  
24 Fiduciary License was in full force and effect at all times relevant to the charges brought herein and  
25 will expire on August 31, 2015, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Director of Consumer Affairs (Director), for the  
3 Professional Fiduciaries Bureau (Bureau), under the authority of the following laws. All section  
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 6580 of the Code provides, in pertinent part, that the Bureau may investigate  
6 any professional fiduciary for alleged violations of statutes, regulations, or the Professional  
7 Fiduciaries Code of Ethics, including a person with a license that is retired, inactive, canceled, or  
8 suspended, and may impose sanctions upon a finding of a violation or a breach of fiduciary duty.

9 **STATUTORY PROVISIONS**

10 5. Section 22 of the Code states:

11 "Board," as used in any provision of this code, refers to the board in which the  
12 administration of the provision is vested, and unless otherwise expressly provided, shall  
13 include "bureau," "commission," "committee," "department," "division," "examining  
committee," "program," and "agency."

14 6. Section 482 of the Code states:

15 Each board under the provisions of this code shall develop criteria to evaluate the  
16 rehabilitation of a person when:

17 (a) Considering the denial of a license by the board under Section 480; or

18 (b) Considering suspension or revocation of a license under Section 490.

19 Each board shall take into account all competent evidence of rehabilitation furnished  
20 by the applicant or licensee.

21 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
22 revoke a license on the ground that the licensee has been convicted of a crime substantially related  
23 to the qualifications, functions, or duties of the business or profession for which the license was  
issued.

24 8. Section 493 of the Code states:

25 Notwithstanding any other provision of law, in a proceeding conducted by a board  
26 within the department pursuant to law to deny an application for a license or to suspend  
27 or revoke a license or otherwise take disciplinary action against a person who holds a  
28 license, upon the ground that the applicant or the licensee has been convicted of a crime  
substantially related to the qualifications, functions, and duties of the licensee in question,  
the record of conviction of the crime shall be conclusive evidence of the fact that the  
conviction occurred, but only of that fact, and the board may inquire into the

1 circumstances surrounding the commission of the crime in order to fix the degree of  
2 discipline or to determine if the conviction is substantially related to the qualifications,  
functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority," and  
4 "registration."

5 9. Section 6584 of the Code states:

6 A license issued under this chapter may be suspended, revoked, denied, or other  
7 disciplinary action may be imposed for one or more of the following causes:

8 (a) Conviction of any felony or any misdemeanor, if the misdemeanor is  
9 substantially related to the functions and duties of a professional fiduciary. The record of  
conviction, or a certified copy thereof, is conclusive evidence of the conviction.

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### 11 REGULATORY PROVISIONS

12 10. California Code of Regulations, title 16, section 4620 states:

13 For purposes of suspension or revocation of a license pursuant to Division 1.5  
14 (commencing with Section 475) of the Business and Professions Code, a crime or act  
15 shall be considered to be substantially related to the qualifications, functions or duties of a  
16 fiduciary if to a substantial degree it demonstrates present or potential unfitness of a  
person holding a license to perform the functions authorized by the license in a manner  
consistent with the public health, safety or welfare. Such crimes or acts shall include but  
not be limited to fiscal dishonesty or breach of fiduciary responsibilities of any kind.

17 11. California Code of Regulations, title 16, section 4622 states:

18 When considering the suspension or revocation of a license under Section 480 or  
19 6536 of the Business and Professions Code, the Bureau, in evaluating the rehabilitation of  
the licensee and his or her present eligibility for a license, shall consider the following  
20 criteria:

21 (a) The nature and severity of the act(s) or crime(s) under consideration as grounds  
for suspension or revocation.

22 (b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or  
23 crime(s) under consideration as grounds for suspension or revocation which also could be  
considered grounds for suspension or revocation under Section 6584 of the Business and  
24 Professions Code.

25 (c) The time that has elapsed since commission of the act(s) or crime(s) referred to  
in subdivision (a) or (b).

26 (d) The extent to which the licensee has complied with any terms of parole,  
27 probation, restitution or any other sanctions lawfully imposed against the licensee.

28 (e) Evidence, if any, of rehabilitation submitted by the licensee.

1 **COSTS**

2 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
7 included in a stipulated settlement.

8 **CAUSE FOR DISCIPLINE**

9 **(May 8, 2014 Criminal Conviction for Lewd Act Upon a Child)**

10 13. Respondent has subjected his license to disciplinary action under sections 490 and  
11 6584(a) of the Code in that he was convicted of a crime that is substantially related to the  
12 qualifications, functions, or duties of a professional fiduciary. The circumstances are as follows:

13 a. On May 8, 2014, in a criminal proceeding entitled *People of the State of*  
14 *California v. Gary Lee Arps*, in San Diego County Superior Court, case number CD248385,  
15 Respondent was convicted on his plea of guilty to violating Penal Code section 288(c)(1), lewd act  
16 upon a child 14 or 15 years old, a felony. In exchange for his plea, the court dismissed an  
17 additional count of misdemeanor sexual battery (Pen. Code, § 243.4(e)(1)).

18 b. As a result of the conviction, on January 14, 2015, Respondent was  
19 sentenced to serve 365 days in jail, suspended, pending successful completion of five years formal  
20 probation. Respondent was ordered to pay fees, fines, and restitution, register as a sex offender  
21 during the term of his probation, and comply with probation terms. A protective order was  
22 reissued for the victim.

23 c. The facts that led to the conviction are that on or about May 10, 2013, a  
24 14-year-old boy reported to the San Diego Police Department that Respondent, while working in  
25 the capacity of a substitute teacher at a middle school, touched the minor's penis over his clothing.  
26 Respondent subsequently admitted to the offense.

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**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Revoking or suspending Professional Fiduciary License Number PF 315 issued to Gary Lee Arps;
2. Ordering Gary Lee Arps to pay the Professional Fiduciaries Bureau the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: March 23, 2015 Julia Ansel

JULIA ANSEL  
Bureau Chief  
Professional Fiduciaries Bureau  
Department of Consumer Affairs  
State of California  
*Complainant*

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