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

13 In the Matter of the Accusation Against:

Case No. PF-2014-5

14 **MICHAEL I. GONZALEZ, JR.**
15 **4915 Hidden Dune Court**
16 **San Diego, CA 92130**

A C C U S A T I O N

Professional Fiduciary License No. PF 400

Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Julia Ansel (Complainant) brings this Accusation solely in her official capacity as
22 the Bureau Chief of the Professional Fiduciaries Bureau, Department of Consumer Affairs.

23 2. On December 14, 2009, the Professional Fiduciaries Bureau issued Professional
24 Fiduciary License Number PF 400 to Michael I. Gonzalez, Jr. (Respondent). The Professional
25 Fiduciary License was in full force and effect at all times relevant to the charges brought herein
26 and will expire on August 31, 2016, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Professional Fiduciaries Bureau (Bureau),
3 Department of Consumer Affairs, 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 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender or cancellation of a license shall not deprive the Director of jurisdiction to proceed
7 with a disciplinary action during the period within which the license may be renewed, restored,
8 reissued or reinstated.

9 5. Section 6580 of the Code states, in pertinent part:

10 (a) The bureau may upon its own, and shall, upon the receipt of a
11 complaint from any person, investigate the actions of any professional fiduciary.
12 The bureau shall review a professional fiduciary's alleged violation of statute,
13 regulation, or the Professional Fiduciaries Code of Ethics and any other complaint
referred to it by the public, a public agency, or the department, and may impose
sanctions upon a finding of a violation or a breach of fiduciary duty.

14 (b) Sanctions shall include any of the following:

15 (1) Administrative citations and fines as provided in Section 125.9
16 for a violation of this chapter, the Professional Fiduciaries Code of Ethics, or any
regulation adopted under this chapter.

17 (2) License suspension, probation, or revocation.

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19 6. Section 6582 of the Code states:

20 All proceedings against a licensee for any violation of this chapter or any
21 regulations adopted by the bureau shall be conducted in accordance with the
22 Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of
23 Part 1 of Division 3 of Title 2 of the Government Code), and shall be prosecuted
by the Attorney General's office, and the bureau shall have all the powers granted
therein.

24 **STATUTORY PROVISIONS**

25 7. Section 6584 of the Code states, in pertinent part:

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

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1 (d) Fraud, dishonesty, corruption, willful violation of duty, gross
2 negligence or incompetence in practice, or unprofessional conduct in, or related
3 to, the practice of a professional fiduciary. For purposes of this section,
4 unprofessional conduct includes, but is not limited to, acts contrary to
5 professional standards concerning any provision of law substantially related to the
6 duties of a professional fiduciary.

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8 COST RECOVERY

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

15 FACTS

16 9. On February 17, 2010, Audrey E. Morgan (AUDREY) was issued the title to a
17 Toyota Camry motor vehicle (CAMRY). On March 14, 2010, AUDREY gifted the CAMRY to
18 her son Erik Andrew Gerlach (ERIK). On March 17, 2010, the title to the CAMRY was
19 transferred to ERIK's name.

20 10. On May 21, 2010, pursuant to the terms of the Audrey E. Morgan Trust
21 (AUDREY TRUST), Respondent was appointed successor trustee by the former trustee. On
22 September 29, 2010, AUDREY died and the Erik Andrew Gerlach Special Needs Trust (ERIK
23 SNT) was created. Respondent serves as the trustee for both the AUDREY TRUST and the
24 ERIK SNT.

25 11. On April 12, 2011, without ERIK's knowledge, Respondent purchased an
26 accidental death insurance policy for ERIK using ERIK's personal account and listing the
27 AUDREY TRUST as the beneficiary.

28 12. Shortly prior to November 17, 2011, ERIK changed banks and ordered checks
from the new bank for his personal account. ERIK also paid for a new driver's license. The new
driver's license and personal checks were sent to ERIK's address, but ERIK did not receive the

1 checks and his driver's license as he was incarcerated before the checks and driver's license were
2 delivered. Respondent obtained ERIK's personal checks and driver's license from ERIK's house.
3 Without ERIK's permission, Respondent returned ERIK's personal checks bearing ERIK's
4 address and ordered new checks bearing Respondent's home address. Respondent also kept
5 ERIK's driver's license. Without ERIK's permission, Respondent wrote three checks using
6 ERIK's personal checking account and deposited the money in the ERIK SNT. The checks were
7 written on August 23, 2012 for \$3,000.00, on October 15, 2012 for \$3,000.00, and on December
8 10, 2012 for \$1,000.00. Respondent forged ERIK's name on two of the checks and signed his
9 own name to one of the checks.

10 13. Without ERIK's knowledge, Respondent applied to the DMV for a duplicate title
11 to the CAMRY using ERIK's driver's license number. On January 9, 2012 and February 9, 2012,
12 without ERIK's knowledge, Respondent advertised the CAMRY for sale for \$16,950.00 as an
13 estate sale for the AUDREY TRUST. The January 9, 2012 advertisement was paid for by the
14 ERIK SNT while the February 9, 2012 advertisement was paid for by the AUDREY TRUST. On
15 February 8, 2012, without ERIK's knowledge, Respondent purchased a new insurance policy for
16 the CAMRY using money from the ERIK SNT. On February 23, 2012, Respondent cancelled the
17 CAMRY's old insurance coverage and was refunded \$326.66.

18 14. On March 7, 2012, a buyer from Arizona purchased the CAMRY for \$16,000.00.
19 The DMV bill of sale dated March 7, 2012 bears ERIK's signature and driver's license number
20 and was signed under penalty of perjury. Respondent admitted to signing ERIK's name on the
21 DMV bill of sale without ERIK's permission. In the DMV's statement of facts, the buyer stated
22 that the original owner was an elderly woman who passed away less than a year after purchase,
23 and the seller was her son ERIK, who inherited the car upon his mother's death. On March 7,
24 2012, Respondent deposited \$8,000.00 into the AUDREY TRUST from the sale of the CAMRY.
25 On March 16, 2012, Respondent deposited \$7,000.00 into the AUDREY TRUST from the sale
26 of the CAMRY. Respondent did not account for the remaining \$1,000.00 of the CAMRY's sales
27 price. On March 26, 2012, the DMV title to the CAMRY was transferred in to the buyer's name.

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1 The ERIK SNT continued paying the CAMRY's new insurance coverage with monthly recurring
2 payments until September 9, 2013, even though the CAMRY had been sold since March 7, 2012.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct - Willful Violation of Duty)**

5 15. Respondent's Professional Fiduciary License is subject to disciplinary action for
6 unprofessional conduct under Code section 6584, subdivision (d) in that he displayed a willful
7 violation of his duty as a fiduciary. The circumstances are more specifically set forth in
8 paragraphs 9 through 14 above, and are as follows:

9 a. Respondent applied to the DMV for a duplicate title to the CAMRY without the
10 owner's knowledge or consent.

11 b. Respondent forged ERIK's name on the DMV's bill of sale dated March 7, 2012
12 for the CAMRY.

13 c. On January 9, 2012, Respondent advertised the CAMRY for sale without the
14 owner's knowledge, and charged the cost to the ERIK SNT.

15 d. On February 9, 2012, Respondent advertised the CAMRY for sale without the
16 owner's knowledge, and charged the cost to the AUDREY TRUST.

17 e. Respondent misrepresented to prospective buyers of the CAMRY that the original
18 owner was an elderly woman, who passed away less than a year after purchase, and the seller
19 was her son, who inherited the car upon his mother's death. However, ERIK already owned the
20 car before his mother death and that should have been disclosed to potential buyers.

21 f. Respondent sold the CAMRY for \$16,000.00 and deposited \$15,000.00 into the
22 AUDREY TRUST. Respondent failed to account for \$1,000.00 from the sale of the CAMRY.

23 g. Respondent continued paying the CAMRY's new insurance coverage with
24 monthly recurring payments from the ERIK SNT until September 9, 2013, even though
25 Respondent sold the CAMRY on March 7, 2012.

26 h. Respondent ordered checks with his address on them from ERIK's personal
27 checking account without ERIK's knowledge or consent.

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1 i. On August 23, 2012, Respondent wrote a check for \$3,000.00 from ERIK's
2 personal checking account and forged ERIK's signature without ERIK's knowledge or consent.

3 j. On October 15, 2012, Respondent wrote a check for \$3,000.00 from ERIK's
4 personal checking account and forged ERIK's signature without ERIK's knowledge or consent.

5 k. On December 10, 2012, Respondent wrote a check for \$1,000 from ERIK's
6 personal checking account and signed his name without ERIK's knowledge or consent.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct - Dishonesty)**

9 16. Respondent's Professional Fiduciary License is subject to disciplinary action for
10 unprofessional conduct under Code section 6584, subdivision (d) in that he was dishonest during
11 the course of his duties as a professional fiduciary. The circumstances are more specifically set
12 forth in paragraphs 9 through 14 above, and are as follows:

13 a. Respondent applied to the DMV for a duplicate title to the CAMRY without the
14 owner's knowledge or consent.

15 b. Respondent forged ERIK's name on the DMV's bill of sale dated March 7, 2012
16 for the CAMRY.

17 c. On January 9, 2012, Respondent advertised the CAMRY for sale without the
18 owner's knowledge, and charged the cost to the ERIK SNT.

19 d. On February 9, 2012, Respondent advertised the CAMRY for sale without the
20 owner's knowledge, and charged the cost to the AUDREY TRUST.

21 e. Respondent misrepresented to prospective buyers of the CAMRY that the original
22 owner was an elderly woman, who passed away less than a year after purchase, and the seller
23 was her son, who inherited the car upon his mother's death. However, ERIK already owned the
24 car before his mother death and that should have been disclosed to potential buyers.

25 f. Respondent sold the CAMRY for \$16,000 and deposited \$15,000 into the
26 AUDREY TRUST. Respondent failed to account for \$1,000 from the sale of the CAMRY.

27 g. Respondent ordered checks with his address on them from ERIK's personal
28 checking account without ERIK's knowledge or consent.

1 h. On August 23, 2012, Respondent wrote a check for \$3,000 from ERIK's personal
2 checking account and forged ERIK's signature without ERIK's knowledge or consent.

3 i. On October 15, 2012, Respondent wrote a check for \$3,000.00 from ERIK's
4 personal checking account and forged ERIK's signature without ERIK's knowledge or consent.

5 j. On December 10, 2012, Respondent wrote a check for \$1,000.00 from ERIK's
6 personal checking account and signed his name without ERIK's knowledge or consent.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct - Fraud)**

9 17. Respondent's Professional Fiduciary License is subject to disciplinary action for
10 unprofessional conduct under Code section 6584, subdivision (d) in that he committed fraud. The
11 circumstances are as follows:

12 a. Respondent forged ERIK's name on the DMV's bill of sale dated March 7, 2012
13 for the CAMRY.

14 b. Respondent ordered checks with his address on them from ERIK's personal
15 checking account without ERIK's knowledge or consent.

16 c. On August 23, 2012, Respondent wrote a check for \$3,000.00 from ERIK's
17 personal checking account and forged ERIK's signature without ERIK's knowledge or consent.

18 d. On October 15, 2012, Respondent wrote a check for \$3,000.00 from ERIK's
19 personal checking account and forged ERIK's signature without ERIK's knowledge or consent.

20 e. On December 10, 2012, Respondent wrote a check for \$1,000.00 from ERIK's
21 personal checking account and signed his name without ERIK's knowledge or consent.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct - Corruption)**

24 18. Respondent's Professional Fiduciary License is subject to disciplinary action for
25 unprofessional conduct under Code section 6584, subdivision (d) in that he committed an act of
26 corruption when he sold the CAMRY for \$16,000.00 and documented that the sale's price was
27 only \$15,000, thus failing to account for \$1,000.00 from the sale of the CAMRY.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Professional Fiduciaries Bureau issue a decision:

- 1. Revoking or suspending Professional Fiduciary License Number PF 400, issued to Michael I. Gonzalez, Jr.;
- 2. Ordering Michael I. Gonzalez, Jr. to pay the Professional Fiduciaries Bureau the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and
- 3. Taking such other and further action as deemed necessary and proper.

DATED: August 31, 2015

Julia Ansel

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

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