1	BUREAU OF REAL ESTATE
2	P. O. Box 137007 Sacramento, CA 95813-7007
3	
4	Telephone: (916) 263-8670 SEP 28 2015
5	BUREAU OF REAL ESTATE
6	By M. Contreras
7	
8	
9	BEFORE THE
10	BUREAU OF REAL ESTATE
11	STATE OF CALIFORNIA
12	***
13	In the Matter of the Accusation of
14	) NO. H-2890 FR THOMAS KENNETH MOULDING, )
15	) <u>STIPULATION AND AGREEMENT</u> Respondent. ) <u>IN SETTLEMENT AND ORDER</u>
16	)
17	It is hereby stipulated by and between Despendent THOMAS WENTHERTY
18	It is hereby stipulated by and between Respondent THOMAS KENNETH  MOULDING ("Respondent") and his attorney James J. Koufman, and the Countries of the Countries
19	MOULDING ("Respondent") and his attorney, James J. Kaufman, and the Complainant, acting
20	by and through John W. Barron, Counsel for the Bureau of Real Estate ("the Bureau"), as follows
21	for the purpose of settling and disposing of the Accusation filed on June 11, 2014, in this matter:
22	1. All issues which were to be contested and all evidence which was to be
23	presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing
24	was to be held in accordance with the provisions of the Administrative Procedure Act (APA),
25	shall instead and in place thereof be submitted solely on the basis of the provisions of this
	Stipulation and Agreement in Settlement and Order.
26    27	2. Respondent has received, read and understands the Statement to Respondent,
27	the Discovery Provisions of the APA, and the Accusation filed by the Bureau in this proceeding.
	H-2890 FR -1 - THOMAS KENNETH MOULDING

Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of Defense, he will thereby waive his right to require the Real Estate Commissioner ("Commissioner") to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that he will waive other rights afforded to him in connection with the hearing such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

4. This Stipulation and Agreement in Settlement and Order is based on the

3. A Notice of Defense was filed on January 9, 2015, by Respondent, pursuant to

- 4. This Stipulation and Agreement in Settlement and Order is based on the factual allegations contained in the Accusation. In the interests of expedience and economy, Respondent chooses not to contest these allegations at hearing, but rather understands that, as a result thereof, these allegations, without being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to herein. The Commissioner shall not be required to provide further evidence to prove said factual allegations.
- 5. This Stipulation and Respondent's decision not to contest the Accusation are made for the purpose of reaching an agreed disposition of this proceeding and are expressly limited to this proceeding and any other proceeding or case in which the Bureau, the state or federal government, an agency of this state, or an agency of another state is involved.
- 6. It is understood by the parties that the Commissioner may adopt the Stipulation and Agreement in Settlement and Order as his decision in this matter thereby imposing the penalty and sanctions on Respondent's real estate licenses and license rights as set forth in the below "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation and Agreement in Settlement and Order, it shall be void and of no effect, and Respondent shall retain the right to a hearing and proceeding on the Accusation under all the provisions of the APA and shall not be bound by any admission or waiver made herein.

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- 7. The Order or any subsequent Order of the Commissioner made pursuant to this Stipulation and Agreement in Settlement and Order shall not constitute an estoppel, merger, or bar to any further administrative or civil proceedings by the Bureau with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.
- 8. Respondent further understands that by agreeing to this Stipulation and Agreement, the findings set forth below in the Determination of Issues become final, and that the Commissioner may charge said Respondent for the costs of the investigation and enforcement herein. The amount of said costs is \$2,380.80.

## **DETERMINATION OF ISSUES**

The acts and omissions of Respondent as described in the Accusation are grounds for the suspension or revocation of the license and license rights of Respondent under Sections 10176(a) (misrepresentation), 10176(g) (written compensation agreement requirement), 10176(i) (dishonest dealing) and 10177(g) (negligence) of the Code, and Section 2079 (competent and diligent visual inspection requirement) of Title 10 of the California Code of Regulations.

## **ORDER**

All licenses and licensing rights of Respondent under the Real Estate Law are suspended for a period of forty-five (45) days from the effective date of this Order; provided, however, that:

- 1. Fifteen (15) days of said suspension shall be stayed, upon the condition that Respondent petitions pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at a rate of \$50.00 for each day of the suspension for a total monetary penalty of \$750.00.
- a. Said payment shall be in the form of a cashier's check or certified check made payable to the Consumer Recovery Account of the Real Estate Fund. Said check must be delivered to the Bureau prior to the effective date of the Decision in this matter.
  - b. No further cause for disciplinary action against the real estate

1	license of Respondent occurs within two (2) years from the effective date of the decision in this	
2	matter.	
3	c. If Respondent fails to pay the monetary penalty in accordance with the	e
4	terms and conditions of the Decision, the Commissioner shall, without a hearing, order the	
5	immediate execution of all or any part of the stayed suspension, in which event, Respondent sha	11
6	not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Bureau	
7	under the terms of this decision.	
8	d. If Respondent pays the monetary penalty, and if no further cause for	
9	disciplinary action against the real estate license of Respondent occurs within two (2) years from	
10	the effective date of the Decision herein, then the stay hereby granted shall become permanent.	
11	2. The remaining thirty (30) days of said suspension shall be stayed for two	
12	(2) years upon the following terms and conditions:	
13	a. Respondent shall obey all laws, rules and regulations governing the	
14	rights, duties and responsibilities of a real estate licensee in the State o	f
15	California; and	
16	b. That no final subsequent determination be made, after hearing or upon	
17	stipulation, that cause for disciplinary action occurred within two (2)	
18	years from the effective date of this Order. Should such a	
19	determination be made, the Commissioner shall, in his discretion,	
20	vacate and set aside the stay order and re-impose all or a portion of the	
21	stayed suspension. Should no such determination be made, the stay	
22	imposed herein shall become permanent.	
23	3. Respondent shall, within six (6) months from the effective date of this	
24	Order, take and pass the Professional Responsibility Examination administered by the Bureau,	
25	including the payment of the appropriate examination fee. If Respondent fails to satisfy this	
26	condition, Respondent's real estate license shall automatically be suspended until Respondent	
27	passes the examination.	

1	4. All licenses and licensing rights of Respondent are indefinitely suspended
2	unless or until Respondent pays the sum of \$2,380.80 representing the Commissioner's
3	reasonable cost of the investigation and enforcement which led to this disciplinary action. Said
4	payment shall be in the form of a cashier's check or certified check made payable to the Real
5	Estate Fund. Said check must be received by the Bureau prior to the effective date of the Order
6	in this matter at the following address:
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8	DIDEAU OF DEAL FOR A TOTAL
9	BUREAU OF REAL ESTATE Attn: Licensing Flag Section
10	Post Office Box 137013
11	Sacramento, CA 95813-7013
12	
13	
14	9/9/10
15	DATED JOINT BARROW
16	JOHN W. BARRON Real Estate Counsel
17	BUREAU OF REAL ESTATE
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19	
20	* * *
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22	I have read the Stipulation and Agreement in Settlement and Order and its terms
23	are understood by me and are agreeable and acceptable to me. I understand that I am waiving
24	rights given to me by the California APA (including but not limited to Sections 11506, 11508,
25	11509 and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive
26	those rights, including the right of requiring the Commissioner to prove the allegations in the
27	Accusation at a hearing at which I would have the right to cross-examine witnesses against me

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1	and to present evidence in defense and mitigation of the charges.
2	
3	B-27-7017 THOMAS KENNETH MOULDING
4	- Som is interested to the state of the stat
5	Respondent
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7	I have reviewed the Stipulation and Agreement as to form and content and
8	have advised my client accordingly.
9	DATED JAMES I, KAUFMAN
11	DATED JAMES J. KAUFMAN Attorney for Respondent
12	
13	* * *
14	The foregoing Stipulation and Agreement in Settlement and Order is hereby
15	adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on
16	<u> 0CT 1 9 2015</u>
17	IT IS SO ORDERED SEPTEMBER ZS, ZDIJ
18	THIS SO ONDERED CONTROL 21
19	REAL ESTATE COMMISSIONER
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22	By: JEFFREY MASON
23	Chief Deputy Commissioner
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THOMAS KENNETH MOULDING

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