

1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
MAY 10 2003

DEPARTMENT OF REAL ESTATE

By Laurie G. Jones

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-3726 SAC
12 SOLANO PACIFIC CORPORATION,) STIPULATION AND AGREEMENT
13 a Corporation, RICHARD ALAN)
14 BORTOLAZZO, R. JOSEPH BANUAT,)
15 ARLENE DENISE CLAUSEN, and)
16 THOMAS LEWIS ADAMS,)
17 Respondents.)

17 It is hereby stipulated by and between Respondents
18 SOLANO PACIFIC CORPORATION, a corporation, RICHARD ALAN
19 BORTOLAZZO, R. JOSEPH BANUAT, ARLENE DENISE CLAUSEN, and
20 THOMAS LEWIS ADAMS, hereinafter collectively "Respondents",
21 individually and by and through Barbara D. Jewell, Esq.,
22 attorney of record herein for Respondents, and the Complainant,
23 acting by and through James L. Beaver, Counsel for the
24 Department of Real Estate, as follows for the purpose of
25 settling and disposing of the Accusation filed on October 9,
26 2002 in this matter (hereinafter "the Accusation"):

27 DRE No. H-3726 SAC

SOLANO PACIFIC CORPORATION et al.

1 1. All issues which were to be contested and all
2 evidence which was to be presented by Complainant and
3 Respondents at a formal hearing on the Accusation, which
4 hearing was to be held in accordance with the provisions of the
5 Administrative Procedure Act (APA), shall instead and in place
6 thereof be submitted solely on the basis of the provisions of
7 this Stipulation and Agreement.

8 2. Respondents have received, read and understand
9 the Statement to Respondent, the Discovery Provisions of the
10 APA and the Accusation filed by the Department of Real Estate
11 in this proceeding.

12 3. On October 21, 2002, Respondents each filed a
13 Notice of Defense pursuant to Section 11505 of the Government
14 Code for the purpose of requesting a hearing on the allegations
15 in the Accusation. Respondents hereby freely and voluntarily
16 withdraw said Notice of Defense. Respondents acknowledge that
17 Respondents understand that by withdrawing said Notice of
18 Defense Respondents will thereby waive Respondents' right to
19 require the Commissioner to prove the allegations in the
20 Accusation at a contested hearing held in accordance with the
21 provisions of the APA and that Respondents will waive other
22 rights afforded to Respondents in connection with the hearing
23 such as the right to present evidence in defense of the
24 allegations in the Accusation and the right to cross-examine
25 witnesses.

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27 DRE No. H-3726 SAC

SOLANO PACIFIC CORPORATION et al.

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4. This Stipulation is based on the factual allegations contained in the Accusation. In the interests of expediency and economy, Respondents choose not to contest the allegations contained therein, but to remain silent and understand that, as a result thereof, these factual allegations, without being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to herein. The Real Estate Commissioner shall not be required to provide further evidence to prove said factual allegations.

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5. It is understood by the parties that the Real Estate Commissioner may adopt the Stipulation and Agreement as her decision in this matter, thereby imposing the penalty and sanctions on Respondents' real estate license and license rights as set forth in the "Order" below. In the event that the Commissioner in her discretion does not adopt the Stipulation and Agreement, it shall be void and of no effect, and Respondents 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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6. This Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department of Real Estate with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.

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DRE No. H-3726 SAC

SOLANO PACIFIC CORPORATION et al.

DETERMINATION OF ISSUES

1 By reason of the foregoing stipulations, admissions and
2 waivers and solely for the purpose of settlement of the pending
3 Accusation without hearing, it is stipulated and agreed that the
4 acts and omissions of Respondents as described in the Accusation
5 are grounds for the suspension or revocation of the licenses and
6 license rights of Respondents under the following provisions of
7 the California Business and Professions Code (hereinafter "the
8 Code") and/or Chapter 6, Title 10, California Code of Regulations
9 (hereinafter "the Regulations"):
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11 (a) as to Paragraph XIII and XIV and Respondents
12 SOLANO, BANUAT, CLAUSEN, and ADAMS under Section 11012 of the
13 Code and Section 2800 of the Regulations in conjunction with
14 Section 10177(d) of the Code;

15 (b) as to Paragraph XIII and XV and Respondents
16 SOLANO, BANUAT, CLAUSEN, and ADAMS under Section 11018.1(a) of
17 the Code and Section 2795.1 of the Regulations in conjunction
18 with Section 10177(d) of the Code, and

19 (c) as to Paragraph XVI and Respondent BORTOLAZZO
20 under Section 10177(g) and Section 10177(h) of the Code and
21 Section 10159.2 of the Code in conjunction with Section
22 10177(d) of the Code.

ORDER

I

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24
25 All licenses and licensing rights of Respondent
26 SOLANO PACIFIC CORPORATION under the Real Estate Law are

27 DRE No. H-3726 SAC

SOLANO PACIFIC CORPORATION et al.

1 suspended for a period of one hundred (100) days from the
2 effective date of the Decision herein; provided, however,

3 (a) If Respondent petitions, fifty (50) days of said
4 one hundred (100) day suspension (or a portion thereof) shall
5 be stayed upon condition that:

6 (i) Respondent pays a monetary penalty pursuant to
7 Section 10175.2 of the Code at the rate of \$200.00 for each day
8 of the suspension for a total monetary penalty of \$10,000.00.

9 (ii) Said payment shall be in the form of a cashier's
10 check or certified check made payable to the Recovery Account
11 of the Real Estate Fund. Said check must be received by the
12 Department prior to the effective date of the Decision in this
13 matter.

14 (iii) If Respondent fails to pay the monetary penalty
15 in accordance with the terms and conditions of the Decision,
16 the Commissioner may, without a hearing, vacate and set aside
17 the stay order, and order the immediate execution of all or any
18 part of the stayed suspension.

19 (iv) No final subsequent determination be made, after
20 hearing or upon stipulation, that cause for disciplinary action
21 against Respondent occurred within two (2) years of the
22 effective date of the Decision herein. Should such a
23 determination be made, the Commissioner may, in his or her
24 discretion, vacate and set aside the stay order, and order the
25 execution of all or any part of the stayed suspension, in which
26 event the Respondent shall not be entitled to any repayment nor

1 credit, prorated or otherwise, for money paid to the Department
2 under the terms of this Decision.

3 (v) If Respondent pays the monetary penalty and if
4 no further cause for disciplinary action against the real
5 estate license of Respondent occurs within two (2) years from
6 the effective date of the Decision herein, then the stay hereby
7 granted shall become permanent.

8 (b) Fifty (50) days of said one hundred (100) day
9 suspension shall be stayed upon condition that no final
10 subsequent determination be made, after hearing or upon
11 stipulation, that cause for disciplinary action against
12 Respondent occurred within two (2) years of the effective date
13 of the Decision herein.

14 (i) Should such a determination be made, the
15 Commissioner may, in his or her discretion, vacate and set
16 aside the stay order, and order the execution of all or any
17 part of the stayed suspension, in which event the Respondent
18 shall not be entitled to any repayment nor credit, prorated or
19 otherwise, for money paid to the Department under the terms of
20 this Decision.

21 (ii) If no order vacating the stay is issued, and if
22 no further cause for disciplinary action against the real
23 estate license of Respondent occurs within two (2) years from
24 the effective date of the Decision, then the stay hereby
25 granted shall become permanent.

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27 DRE No. H-3726 SAC

SOLANO PACIFIC CORPORATION et al.

II

1 All licenses and licensing rights of Respondent
2 RICHARD ALAN BORTOLAZZO under the Real Estate Law are suspended
3 for a period of one hundred (100) days from the effective date
4 of the Decision herein; provided, however,

5 (a) If Respondent petitions, fifty (50) days of said
6 one hundred (100) day suspension (or a portion thereof) shall
7 be stayed upon condition that:

8 (i) Respondent pays a monetary penalty pursuant to
9 Section 10175.2 of the Code at the rate of \$200.00 for each day
10 of the suspension for a total monetary penalty of \$10,000.00.

11 (ii) Said payment shall be in the form of a cashier's
12 check or certified check made payable to the Recovery Account
13 of the Real Estate Fund. Said check must be received by the
14 Department prior to the effective date of the Decision in this
15 matter.

16 (iii) If Respondent fails to pay the monetary penalty
17 in accordance with the terms and conditions of the Decision,
18 the Commissioner may, without a hearing, vacate and set aside
19 the stay order, and order the immediate execution of all or any
20 part of the stayed suspension.

21 (iv) No final subsequent determination be made, after
22 hearing or upon stipulation, that cause for disciplinary action
23 against Respondent occurred within two (2) years of the
24 effective date of the Decision herein. Should such a
25 determination be made, the Commissioner may, in his or her

26 DRE No. H-3726 SAC

27 SOLANO PACIFIC CORPORATION et al.

1 discretion, vacate and set aside the stay order, and order the
2 execution of all or any part of the stayed suspension, in which
3 event the Respondent shall not be entitled to any repayment nor
4 credit, prorated or otherwise, for money paid to the Department
5 under the terms of this Decision.

6 (v) If Respondent pays the monetary penalty and if
7 no further cause for disciplinary action against the real
8 estate license of Respondent occurs within two (2) years from
9 the effective date of the Decision herein, then the stay hereby
10 granted shall become permanent.

11 (b) Fifty (50) days of said one hundred (100) day
12 suspension shall be stayed upon condition that no final
13 subsequent determination be made, after hearing or upon
14 stipulation, that cause for disciplinary action against
15 Respondent occurred within two (2) years of the effective date
16 of the Decision herein.

17 (i) Should such a determination be made, the
18 Commissioner may, in his or her discretion, vacate and set
19 aside the stay order, and order the execution of all or any
20 part of the stayed suspension, in which event the Respondent
21 shall not be entitled to any repayment nor credit, prorated or
22 otherwise, for money paid to the Department under the terms of
23 this Decision.

24 (ii) If no order vacating the stay is issued, and if
25 no further cause for disciplinary action against the real
26 estate license of Respondent occurs within two (2) years from
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1 the effective date of the Decision, then the stay hereby
2 granted shall become permanent.

3 III

4 All licenses and licensing rights of Respondent R.
5 JOSEPH BANUAT under the Real Estate Law are suspended for a
6 period of one hundred (100) days from the effective date of the
7 Decision herein; provided, however,

8 (a) If Respondent petitions, fifty (50) days of said
9 one hundred (100) day suspension (or a portion thereof) shall
10 be stayed upon condition that:

11 (i) Respondent pays a monetary penalty pursuant to
12 Section 10175.2 of the Code at the rate of \$100.00 for each day
13 of the suspension for a total monetary penalty of \$5,000.00.

14 (ii) Said payment shall be in the form of a cashier's
15 check or certified check made payable to the Recovery Account
16 of the Real Estate Fund. Said check must be received by the
17 Department prior to the effective date of the Decision in this
18 matter.

19 (iii) If Respondent fails to pay the monetary penalty
20 in accordance with the terms and conditions of the Decision,
21 the Commissioner may, without a hearing, vacate and set aside
22 the stay order, and order the immediate execution of all or any
23 part of the stayed suspension.

24 (iv) No final subsequent determination be made, after
25 hearing or upon stipulation, that cause for disciplinary action
26 against Respondent occurred within two (2) years of the

1 effective date of the Decision herein. Should such a
2 determination be made, the Commissioner may, in his or her
3 discretion, vacate and set aside the stay order, and order the
4 execution of all or any part of the stayed suspension, in which
5 event the Respondent shall not be entitled to any repayment nor
6 credit, prorated or otherwise, for money paid to the Department
7 under the terms of this Decision.

8 (v) If Respondent pays the monetary penalty and if
9 no further cause for disciplinary action against the real
10 estate license of Respondent occurs within two (2) years from
11 the effective date of the Decision herein, then the stay hereby
12 granted shall become permanent.

13 (b) Fifty (50) days of said one hundred (100) day
14 suspension shall be stayed upon condition that no final
15 subsequent determination be made, after hearing or upon
16 stipulation, that cause for disciplinary action against
17 Respondent occurred within two (2) years of the effective date
18 of the Decision herein.

19 (i) Should such a determination be made, the
20 Commissioner may, in his or her discretion, vacate and set
21 aside the stay order, and order the execution of all or any
22 part of the stayed suspension, in which event the Respondent
23 shall not be entitled to any repayment nor credit, prorated or
24 otherwise, for money paid to the Department under the terms of
25 this Decision.

26 (ii) If no order vacating the stay is issued, and if
27

1 no further cause for disciplinary action against the real
2 estate license of Respondent occurs within two (2) years from
3 the effective date of the Decision, then the stay hereby
4 granted shall become permanent.

5 IV

6 All licenses and licensing rights of Respondent
7 ARLENE DENISE CLAUSEN under the Real Estate Law are suspended
8 for a period of one hundred (100) days from the effective date
9 of the Decision herein; provided, however,

10 (a) If Respondent petitions, fifty (50) days of said
11 one hundred (100) day suspension (or a portion thereof) shall
12 be stayed upon condition that:

13 (i) Respondent pays a monetary penalty pursuant to
14 Section 10175.2 of the Code at the rate of \$100.00 for each day
15 of the suspension for a total monetary penalty of \$5,000.00.

16 (ii) Said payment shall be in the form of a cashier's
17 check or certified check made payable to the Recovery Account
18 of the Real Estate Fund. Said check must be received by the
19 Department prior to the effective date of the Decision in this
20 matter.

21 (iii) If Respondent fails to pay the monetary penalty
22 in accordance with the terms and conditions of the Decision,
23 the Commissioner may, without a hearing, vacate and set aside
24 the stay order, and order the immediate execution of all or any
25 part of the stayed suspension.

26 (iv) No final subsequent determination be made, after

1 hearing or upon stipulation, that cause for disciplinary action
2 against Respondent occurred within two (2) years of the
3 effective date of the Decision herein. Should such a
4 determination be made, the Commissioner may, in his or her
5 discretion, vacate and set aside the stay order, and order the
6 execution of all or any part of the stayed suspension, in which
7 event the Respondent shall not be entitled to any repayment nor
8 credit, prorated or otherwise, for money paid to the Department
9 under the terms of this Decision.

10 (v) If Respondent pays the monetary penalty and if
11 no further cause for disciplinary action against the real
12 estate license of Respondent occurs within two (2) years from
13 the effective date of the Decision herein, then the stay hereby
14 granted shall become permanent.

15 (b) Fifty (50) days of said one hundred (100) day
16 suspension shall be stayed upon condition that no final
17 subsequent determination be made, after hearing or upon
18 stipulation, that cause for disciplinary action against
19 Respondent occurred within two (2) years of the effective date
20 of the Decision herein.

21 (i) Should such a determination be made, the
22 Commissioner may, in his or her discretion, vacate and set
23 aside the stay order, and order the execution of all or any
24 part of the stayed suspension, in which event the Respondent
25 shall not be entitled to any repayment nor credit, prorated or
26 otherwise, for money paid to the Department under the terms of

1 this Decision.

2 (ii) If no order vacating the stay is issued, and if
3 no further cause for disciplinary action against the real
4 estate license of Respondent occurs within two (2) years from
5 the effective date of the Decision, then the stay hereby
6 granted shall become permanent.

7 V

8 All licenses and licensing rights of Respondent
9 THOMAS LEWIS ADAMS under the Real Estate Law are suspended for
10 a period of one hundred (100) days from the effective date of
11 the Decision herein; provided, however,

12 (a) If Respondent petitions, fifty (50) days of said
13 one hundred (100) day suspension (or a portion thereof) shall
14 be stayed upon condition that:

15 (i) Respondent pays a monetary penalty pursuant to
16 Section 10175.2 of the Code at the rate of \$100.00 for each day
17 of the suspension for a total monetary penalty of \$5,000.00.

18 (ii) Said payment shall be in the form of a cashier's
19 check or certified check made payable to the Recovery Account
20 of the Real Estate Fund. Said check must be received by the
21 Department prior to the effective date of the Decision in this
22 matter.

23 (iii) If Respondent fails to pay the monetary penalty
24 in accordance with the terms and conditions of the Decision,
25 the Commissioner may, without a hearing, vacate and set aside
26 the stay order, and order the immediate execution of all or any

27 DRE No. H-3726 SAC

SOLANO PACIFIC CORPORATION et al.

1 part of the stayed suspension.

2 (iv) No final subsequent determination be made, after
3 hearing or upon stipulation, that cause for disciplinary action
4 against Respondent occurred within two (2) years of the
5 effective date of the Decision herein. Should such a
6 determination be made, the Commissioner may, in his or her
7 discretion, vacate and set aside the stay order, and order the
8 execution of all or any part of the stayed suspension, in which
9 event the Respondent shall not be entitled to any repayment nor
10 credit, prorated or otherwise, for money paid to the Department
11 under the terms of this Decision.

12 (v) If Respondent pays the monetary penalty and if
13 no further cause for disciplinary action against the real
14 estate license of Respondent occurs within two (2) years from
15 the effective date of the Decision herein, then the stay hereby
16 granted shall become permanent.

17 (b) Fifty (50) days of said one hundred (100) day
18 suspension shall be stayed upon condition that no final
19 subsequent determination be made, after hearing or upon
20 stipulation, that cause for disciplinary action against
21 Respondent occurred within two (2) years of the effective date
22 of the Decision herein.

23 (i) Should such a determination be made, the
24 Commissioner may, in his or her discretion, vacate and set
25 aside the stay order, and order the execution of all or any
26 part of the stayed suspension, in which event the Respondent

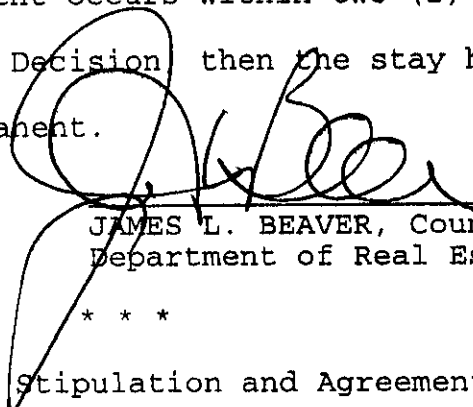
27 DRE No. H-3726 SAC

SOLANO PACIFIC CORPORATION et al.

1 shall not be entitled to any repayment nor credit, prorated or
2 otherwise, for money paid to the Department under the terms of
3 this Decision.

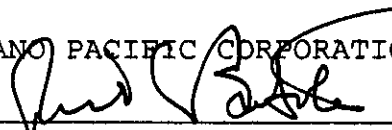
4 (ii) If no order vacating the stay is issued, and if
5 no further cause for disciplinary action against the real
6 estate license of Respondent occurs within two (2) years from
7 the effective date of the Decision, then the stay hereby
8 granted shall become permanent.

9 April 22, 2003
DATED


JAMES L. BEAVER, Counsel
Department of Real Estate
* * *

11 I have read the Stipulation and Agreement and have
12 discussed its terms with my attorney and its terms are
13 understood by me and are agreeable and acceptable to me. I
14 understand that I am waiving rights given to me by the
15 California Administrative Procedure Act (including but not
16 limited to Sections 11506, 11508, 11509, and 11513 of the
17 Government Code), and I willingly, intelligently, and
18 voluntarily waive those rights, including the right of
19 requiring the Commissioner to prove the allegations in the
20 Accusation at a hearing at which I would have the right to
21 cross-examine witnesses against me and to present evidence in
22 defense and mitigation of the charges.

23 4/6/2003
DATED

SOLANO PACIFIC CORPORATION
By 
RICHARD ALAN BORTOLAZZO
Designated Officer - Broker

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4/6/2003

DATED

RICHARD ALAN BORTOLAZZO
Respondent

4/5/03

DATED

R. JOSEPH BANUAT
Respondent

4-7-03

DATED

ARLENE DENISE CLAUSEN
Respondent

4-6-2003

DATED

THOMAS LEWIS ADAMS
Respondent

* * *

I have reviewed the Stipulation and Agreement as to form and content and have advised my clients accordingly.

4/18/03

DATED

BARBARA D. JEWELL, ESQ.
Attorney for Respondents

* * *

The foregoing Stipulation and Agreement is hereby adopted by as my Decision in this matter and shall become effective at 12 o'clock noon on MAY 30 , 2003.

IT IS SO ORDERED May 5 , 2003.

PAULA REDDISH ZINNE MANN
Real Estate Commissioner

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JAN 23 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

SOLANO PACIFIC CORPORATION,
a Corporation, RICHARD ALAN
BORTOLAZZO, R. JOSEPH BANUAT,
ARLENE DENISE CLAUSEN, and
THOMAS LEWIS ADAMS,

Respondents

}

Case No. H-3726 SAC

OAH No. N-2002120029

By Merid. Jasi

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, 560 J STREET, SUITE 340/360, SACRAMENTO, CA 95814** on **MAY 28 & 29, 2003**, at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: JANUARY 23, 2003

By James L. Beaver
JAMES L. BEAVER, Counsel (LZ)

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0788 (Direct)

FILED
OCT - 9 2002

DEPARTMENT OF REAL ESTATE

By Laurel G. Zan

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	
12 SOLANO PACIFIC CORPORATION,)	No. H-3726 SAC
13 a Corporation, RICHARD ALAN)	<u>ACCUSATION</u>
14 BORTOLAZZO, R. JOSEPH BANUAT,)	
15 ARLENE DENISE CLAUSEN, and)	
16 THOMAS LEWIS ADAMS,)	
)	
17 Respondents.)	

17 The Complainant, Charles W. Koenig, a Deputy Real
18 Estate Commissioner of the State of California, as and for an
19 Accusation against SOLANO PACIFIC CORPORATION, a corporation
20 (hereinafter "SOLANO"), RICHARD ALAN BORTOLAZZO (hereinafter
21 "BORTOLAZZO"), R. JOSEPH BANUAT (hereinafter "BANUAT"), ARLENE
22 DENISE CLAUSEN (hereinafter "CLAUSEN"), and THOMAS LEWIS ADAMS
23 (hereinafter "ADAMS"), hereinafter collectively "Respondents",
24 is informed and alleges as follows:

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1 I

2 The Complainant, Charles W. Koenig, a Deputy Real
3 Estate Commissioner of the State of California, makes this
4 Accusation in his official capacity.

5 II

6 At all times herein mentioned, Respondents were and
7 now are licensed and/or have license rights under the Real
8 Estate Law (Part 1 of Division 4 of the Business and Professions
9 Code) (hereinafter "the Code").

10 III

11 At all times herein mentioned, Respondent SOLANO was
12 and now is licensed by the Department of Real Estate of the
13 State of California (hereinafter "the Department") as a
14 corporate real estate broker by and through Respondent
15 BORTOLAZZO as designated officer-broker of Respondent SOLANO to
16 qualify said corporation and to act for said corporation as a
17 real estate broker.

18 IV

19 At all times herein mentioned, Respondent BORTOLAZZO
20 was and now is licensed by the Department as a real estate
21 broker, individually and as designated officer-broker of
22 Respondent SOLANO. As said designated officer-broker, Respondent
23 BORTOLAZZO was at all times mentioned herein responsible
24 pursuant to Section 10159.2 of the Code for the supervision of
25 the activities of the officers, agents, real estate licensees
26 and employees of Respondent SOLANO for which a license is
27 required.

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V

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

VI

At all times herein mentioned:

(a) Respondent BANUAT was licensed by the Department as a real estate broker, and was employed as a sales agent by Respondent SOLANO; and

(b) Respondents CLAUSEN and ADAMS were and now are licensed by the Department as real estate salespersons in the employ of Respondent SOLANO.

VII

At all times herein mentioned, Respondents SOLANO and BORTOLAZZO, and Respondents BANUAT, CLAUSEN and ADAMS acting on behalf of Respondents SOLANO and BORTOLAZZO, engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of Sections 10131(a) of the Code, including the operation and conduct of a real estate brokerage business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents sold and offered to

1 sell, solicited prospective sellers and purchasers of, and
2 negotiated the purchase and sale of real property.

3 VIII

4 At all times mentioned herein, Respondents were the
5 agents of the owners and/or subdividers of subdivided lands as
6 defined in Section 11004.5 of the Code.

7 IX

8 Said subdivided lands, known as or commonly called
9 "HARBOR HOME UNITS I AND II" (hereinafter "the Subdivision") is
10 a two-phase, 60-lot residential planned development subdivision
11 located at South Regatta Drive and Whitesides Drive within the
12 city limits of Vallejo, Solano County, California. Harbor Homes
13 Unit I (hereinafter "Unit I"), the first phase of the
14 Subdivision, contains 26 residential lots, and is identified in
15 the records of the Department under the Department's File Number
16 027832 SA. Harbor Homes Unit II (hereinafter "Unit II"), the
17 second phase of the Subdivision, contains 33 residential lots,
18 and is identified in the records of the Department under the
19 Department's File Number 108029 SA. At all times mentioned
20 herein Zeka Corporation, Louise Kao, and Lorenz Kao (hereinafter
21 "Subdividers") were the owners and subdividers of the
22 Subdivision.

23 X

24 From on or about September 28, 1999 through on or
25 about January 11, 2002, in File Number 027832 SA A02,
26 Subdividers applied to the Department for an amended final
27 subdivision public report (hereinafter "the public report")

1 authorizing Respondents to offer for sale or lease, negotiate
2 the sale or lease and sell or lease lots in Unit I, and, in
3 support of this application for the public report, the
4 Subdividers submitted a public report questionnaire and
5 additional supporting documents and information.

6 XI

7 In course of said application, in order to induce the
8 Department to issue the final public report, the Subdividers
9 submitted a proposed purchase and sale agreement in exemplar
10 form (hereinafter "the exemplar sales agreement"), and
11 represented to the Department that the written agreements used
12 by the Subdividers and Respondents in each and every sale,
13 lease, or option to sell or lease by Subdividers and/or
14 Respondents of lots in Unit I under authority of the final
15 public report would conform in all material respects to the
16 exemplar sales agreement.

17 XII

18 On or about January 11, 2002, in File Number 027832 SA
19 A02, in reliance upon the representations and assurances
20 described in Paragraph XI, above, the Department issued the
21 public report to the Subdividers. At no time mentioned herein
22 was the public report amended, renewed or otherwise superseded.

23 XIII

24 Between on or about January 26, 2002 and on or about
25 June 27, 2002, in course of the activities described in
26 Paragraph VII, above, in each of the transactions tabulated
27 below, Respondents offered for sale, negotiated for sale, and/or

1 sold lots in Unit I under authority of the public report, and,
2 in the course of each such transaction, Respondents solicited
3 and obtained the execution by purchasers of written agreements
4 for the purchase of lots in Unit I which differed materially
5 from the exemplar sales agreement described in Paragraph XI,
6 above:

7 TRANSACTIONS

8	<u>BUYERS</u>	<u>ADDRESS</u>	<u>LOT</u>
9	(1) Thomas L. Adams	15 Shoal Drive East	23
10	Barbara Adams	Vallejo, CA 94591	
11	(2) Renee Shoenborn	15 Shoal Drive East	7
12		Vallejo, CA 94591	
13	(3) John R. Schulte	15 Shoal Drive East	24
14	Jeannine Mockovciak	Vallejo, CA 94591	
15	(4) Lee North	15 Shoal Drive East	22
16	Susan L. North	Vallejo, CA 94591	
17	(5) Shari Morris	15 Shoal Drive East	18
18		Vallejo, CA 94591	
19	(6) Thomas L. Koenig	15 Shoal Drive East	16
20	Alexandra Koenig	Vallejo, CA 94591	

21 XIV

22 In committing the acts and omissions described in
23 Paragraph XIII, above:

24 (a) Respondents effected a material change within the
25 meaning of Sections 2800(d) and 2800(d)(1) in the methods of
26 marketing interests in the Subdivision; and

27 ///

1 (b) Respondents, after the setup of the offering of
2 interests was submitted to the Department in the applications
3 for the final public report, violated and/or willfully
4 disregarded the provisions Section 11012 of the Code by
5 knowingly changing the setup of the offering of interests in the
6 Subdivision without first notifying the Department in writing of
7 such intended change.

8 XV

9 In course of each of the transactions described in
10 Paragraph XIII, above, Respondents violated Section 11018.1(a)
11 of the Code in conjunction with Section 2795.1 of the
12 Regulations in that Respondents failed to provide the purchasers
13 with a copy of the public report prior to the execution of a
14 binding contract for the sale of a lot and to obtain a receipt
15 from the purchaser for the final public report in a form and
16 manner as set forth in Section 2795.1 of the Regulations.

17 XVI

18 Respondent BORTOLAZZO failed to exercise reasonable
19 supervision over the acts of Respondent SOLANO in such a manner
20 as to cause, suffer and permit the acts and omissions of
21 Respondents described in Paragraphs XIII through XVI, inclusive,
22 above, to occur.

23 XVII

24 The facts alleged in Paragraphs XIII and XIV, above,
25 constitute cause for the suspension or revocation of the
26 licenses and license rights of Respondents SOLANO, BORTOLAZZO,

27 ///

1 BANUAT, CLAUSEN, and ADAMS under the following provisions of the
2 Code and/or the Regulations:

3 (a) As to Paragraph XIII and XIV under Section 11012
4 of the Code in conjunction with Section 10177(d) of the Code;
5 and

6 (b) As to Paragraph XIII and XV under Section
7 11018.1(a) of the Code and Section 2795.1 of the Regulations in
8 conjunction with Section 10177(d) of the Code.

9 XVIII

10 The facts alleged in Paragraph XVI, above, constitute
11 cause for the suspension or revocation of the licenses and
12 license rights of Respondent BORTOLAZZO under Section 10177(g)
13 and/or Section 10177(h) of the Code and Section 10159.2 of the
14 Code in conjunction with Section 10177(d) of the Code.

15 WHEREFORE, Complainant prays that a hearing be
16 conducted on the allegations of this Accusation and that upon
17 proof thereof, a decision be rendered imposing disciplinary
18 action against all licenses and license rights of Respondent
19 under the Real Estate Law (Part 1 of Division 4 of the Business
20 and Professions Code), and for such other and further relief as
21 may be proper under other provisions of law.

22
23 
24 CHARLES W. KOENIG
25 Deputy Real Estate Commissioner

26 Dated at Sacramento, California,
27 this 8th day of October, 2002.