

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187007  
3 Sacramento, CA 95818-7007  
4 Telephone: (916) 227-0789

**FILED**  
APR 23 2012

DEPARTMENT OF REAL ESTATE  
By R. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

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11  
12 In the Matter of the Accusation of )  
13 ) NO. H-4178 SD  
14 LARSON-BERTONE, INC. and )  
15 JAMES SCOTT BERTONE, ) STIPULATION AND AGREEMENT  
16 Respondents. )

17 It is hereby stipulated by and between Respondents LARSON-BERTONE, INC.,  
18 (“LBI”) and JAMES SCOTT BERTONE (“BERTONE”), (collectively “Respondents”), acting  
19 by and through Richard Speare, Esq., Counsel for Respondents, and the Complainant, acting by  
20 and through Annette E. Ferrante, Esq., Counsel for the Department of Real Estate  
21 (“Department”), as follows for the purpose of settling and disposing of the Accusation filed on  
22 March 29, 2011, in this matter:

23 1. All issues which were to be contested and all evidence which was to be  
24 presented by Complainant and Respondents at a formal hearing on the Accusation, which  
25 hearing was to be held in accordance with the provisions of the Administrative Procedure Act  
26 (“APA”), shall instead and in place thereof be submitted solely on the basis of the provisions  
27 of this Stipulation and Agreement.

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

4           3.       Respondents filed a Notice of Defense pursuant to Section 11505 of the  
5 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.  
6 Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents  
7 acknowledge that Respondents understand that by withdrawing said Notice of Defense,  
8 Respondents will thereby waive Respondents' right to require the Real Estate Commissioner  
9 ("Commissioner") to prove the allegations in the Accusation at a contested hearing held in  
10 accordance with the provisions of the APA and that Respondents will waive other rights  
11 afforded to Respondents in connection with the hearing such as the right to present evidence in  
12 defense of the allegations in the Accusation and the right to cross-examine witnesses.

13           4.       Respondents, pursuant to the limitations set forth below, hereby admit that  
14 the factual allegations in the Accusation filed in this proceeding are true and correct and the  
15 Commissioner shall not be required to provide further evidence to prove such allegations.

16           5.       It is understood by the parties that the Commissioner may adopt the  
17 Stipulation and Agreement as her decision in this matter, thereby imposing the penalty and  
18 sanctions on Respondents' real estate licenses and license rights as set forth in the "Order"  
19 below. In the event that the Commissioner in her discretion does not adopt the Stipulation and  
20 Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing  
21 and proceeding on the Accusation under all of the provisions of the APA and shall not be bound  
22 by any admission or waiver made herein.

23           6.       The Order or any subsequent Order of the Commissioner made pursuant  
24 to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further  
25 administrative or civil proceedings by the Department with respect to any matters which were  
26 not specifically alleged to be causes for accusation in this proceeding.

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1           7.       Respondents understand that by agreeing to this Stipulation and  
2 Agreement, Respondents agree to pay, pursuant to Section 10148 of the California Business  
3 and Professions Code (“the Code”), the cost of the audit which resulted in the determination  
4 that Respondents committed the trust fund violation(s) found in the Determination of Issues.  
5 The amount of such costs is \$6,961.70.

6           8.       Respondents further understand that by agreeing to this Stipulation and  
7 Agreement, the findings set forth below in the Determination of Issues become final, and that  
8 the Commissioner may charge said Respondents for the costs of any audit conducted pursuant  
9 to Section 10148 of the Code to determine if the violations have been corrected. The  
10 maximum cost of said audit shall not exceed \$6,961.70.

11           9.       In lieu of proceeding in this matter in accordance with the provisions of  
12 the APA, LBI wishes to voluntarily surrender its corporate real estate broker license issued by  
13 the Department, pursuant to Code Section 10100.2. BERTONE is an officer and director of  
14 LBI, and is authorized to sign this declaration on behalf of LBI. BERTONE is represented by  
15 attorney Richard Speare, and is acting on behalf of LBI.

16           10.       BERTONE understands that by so voluntarily surrendering LBI’s license,  
17 LBI may be relicensed as a broker corporation only by petitioning for reinstatement pursuant to  
18 Section 11522 of the Government Code. BERTONE also understands that by so voluntarily  
19 surrendering LBI’s license, Respondents agree to the following:

20           a.       The filing of this Stipulation and Agreement shall be deemed as LBI’s  
21 declaration and petition for voluntary surrender.

22           b.       It shall also be deemed to be an understanding and agreement by LBI that  
23 it waives all rights LBI has to require the Commissioner to prove the allegations contained in  
24 the Accusation filed in this matter at a hearing held in accordance with the provisions of the  
25 APA, and that LBI also waives other rights afforded to LBI in connection with the hearing such  
26 as the right to discovery, the right to present evidence in defense of the allegations in the  
27 Accusation and the right to cross-examine witnesses.

1           11. BERTONE on behalf of LBI further agrees that upon acceptance by the  
2 Commissioner, as evidenced by an appropriate order, all affidavits and all relevant evidence  
3 obtained by the Department in this matter prior to the Commissioner's acceptance, and all  
4 allegations contained in the Accusation filed in the Department Case No. H-4178 SD, may be  
5 considered by the Department to be true and correct for the purpose of deciding whether to  
6 grant relicensure or reinstatement pursuant to Government Code Section 11522.

7           12. BERTONE on behalf of LBI freely and voluntarily surrenders all of  
8 LBI's licenses and license rights under the Real Estate Law.

9   DETERMINATION OF ISSUES

10           By reason of the foregoing stipulations, admissions and waivers and solely for  
11 the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed  
12 that the following determination of issues shall be made:

13   I.

14           The acts and omissions of Respondent LBI as described in the Accusation are  
15 grounds for the suspension or revocation of the licenses and license rights of Respondent LBI  
16 under the provisions of Sections 10145, 10085, 10146, 10176(e), 10240(a), 10177(d) and  
17 10177(g) of the Code, and Sections 2832, 2831, 2831.1, 2831.2, 2970, 2972, and 2835 of Title  
18 10 of the California Code of Regulations ("the Regulations").

19   II.

20           The acts and omissions of Respondent BERTONE as described in the  
21 Accusation are grounds for the suspension or revocation of the licenses and license rights of  
22 Respondent BERTONE under the provisions of Sections 10159.2, 10177(d), 10177(g) and  
23 10177(h) of the Code, and Section 2725 of Title 10 of the Regulations.

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1 ORDER

2 I.

3 All licenses and licensing rights of Respondent BERTONE under the Real  
4 Estate Law are suspended for a period of one-hundred twenty (120) days from the effective  
5 date of this Order; provided, however, that:

6 1. Sixty (60) days of said suspension shall be stayed for two (2) years upon  
7 the following terms and conditions:

8 a. Respondent BERTONE shall obey all laws, rules and regulations  
9 governing the rights, duties and responsibilities of a real estate licensee in the State of  
10 California; and

11 b. That no final subsequent determination be made, after hearing or upon  
12 stipulation, that cause for disciplinary action occurred within two (2) years from the effective  
13 date of this Order. Should such a determination be made, the Commissioner may, in her  
14 discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed  
15 suspension. Should no such determination be made, the stay imposed herein shall become  
16 permanent.

17 2. All licenses and licensing rights of Respondent BERTONE are  
18 indefinitely suspended unless or until Respondent BERTONE provides proof satisfactory to the  
19 Commissioner, of having made payment to Sean F. Finnegan in the amount of \$1,069.75, or as  
20 otherwise mutually agreed between Respondent BERTONE and Sean F. Finnegan.

21 3. All licenses and licensing rights of Respondent BERTONE are  
22 indefinitely suspended unless or until Respondent BERTONE provides proof satisfactory to the  
23 Commissioner, of having made payment to Thomas and Mary Clark in the amount of \$2,337.50,  
24 or as otherwise mutually agreed between Respondent BERTONE and Thomas and Mary Clark.

25 4. Respondent BERTONE shall, within six (6) months from the effective  
26 date of this Order, take and pass the Professional Responsibility Examination administered by  
27 the Department, including the payment of the appropriate examination fee. If Respondent

1 BERTONE fails to satisfy this condition, the Commissioner may order the suspension of all  
2 licenses and licensing rights of Respondent BERTONE until Respondent BERTONE passes the  
3 examination.

4 5. Respondent BERTONE shall pay the sum of \$6,961.70 for the  
5 Commissioner's cost of the audit which led to this disciplinary action. Respondent BERTONE  
6 shall pay such cost within sixty (60) days of receiving an invoice therefore from the  
7 Commissioner: The Commissioner may indefinitely suspend all licenses and licensing rights  
8 of Respondent BERTONE pending a hearing held in accordance with Section 11500, et seq., of  
9 the Government Code, if payment is not timely made as provided for herein, or as provided for  
10 in a subsequent agreement between Respondent BERTONE and the Commissioner. The  
11 suspension shall remain in effect until payment is made in full or until Respondent BERTONE  
12 enters into an agreement satisfactory to the Commissioner to provide for payment, or until a  
13 decision providing otherwise is adopted following a hearing held pursuant to this condition.

14 6. Respondent BERTONE shall pay the Commissioner's costs, not to  
15 exceed \$6,961.70, of any audit conducted pursuant to Section 10148 of the Code to determine  
16 if Respondent BERTONE has corrected the violations described in the Determination of  
17 Issues, above, and any other violations found in the audit which led to this disciplinary action.  
18 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use  
19 the estimated average hourly salary for all persons performing audits of real estate brokers, and  
20 shall include an allocation for travel time to and from the auditor's place of work. Respondent  
21 BERTONE shall pay such cost within sixty (60) days of receiving an invoice therefore from  
22 the Commissioner detailing the activities performed during the audit and the amount of time  
23 spent performing those activities. If Respondent BERTONE fails to pay such cost within the  
24 sixty (60) days, the Commissioner may indefinitely suspend all licenses and licensing rights of  
25 Respondent BERTONE under the Real Estate Law until payment is made in full or until  
26 Respondent BERTONE enters into an agreement satisfactory to the Commissioner to provide

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1 for payment. Upon full payment, the indefinite suspension provided for in this paragraph shall  
2 be stayed.

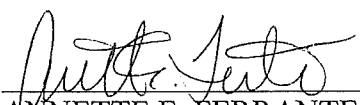
3 II.

4 Respondent LBI's petition for voluntary surrender of its corporate real estate  
5 broker licenses is accepted as of the effective date of this Order as set forth below, based upon  
6 the understanding and agreement expressed in Respondents' Declaration incorporated herein as  
7 part of this Stipulation and Agreement. Respondent LBI's license certificates, pocket cards,  
8 and any branch office license certificates shall be sent to the below listed address so that they  
9 reach the Department on or before the effective date of this Order:

10 DEPARTMENT OF REAL ESTATE  
11 Attn: Licensing Flag Section  
12 P. O. Box 187000  
13 Sacramento, CA 95818-7000

14 2-8-12

15 DATED



16 ANNETTE E. FERRANTE, Counsel  
17 Department of Real Estate

18 \* \* \*

19 I have read the Stipulation and Agreement and its terms are understood by me  
20 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by  
21 the California Administrative Procedure Act (including but not limited to Sections 11506,  
22 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and  
23 voluntarily waive those rights, including the right of requiring the Commissioner to prove the  
24 allegations in the Accusation at a hearing at which I would have the right to cross-examine  
25 witnesses against me and to present evidence in defense and mitigation of the charges.  
26 Respondents can signify acceptance and approval of the terms and conditions of this  
27

1 Stipulation and Agreement by faxing a copy of the signature page, as actually signed by  
2 Respondents, to the Department at fax number (916) 227-9458. Respondents agree,  
3 acknowledge and understand that by electronically sending to the Department a fax copy of  
4 Respondents' actual signatures as they appear on the Stipulation and Agreement, that receipt of  
5 the faxed copy by the Department shall be as binding on Respondents as if the Department had  
6 received the original signed Stipulation and Agreement.

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2/2/12

DATED

  
JAMES SCOTT BERTONE,  
Respondent

2/2/12

DATED

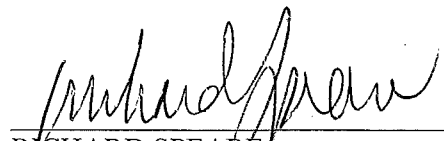
  
JAMES SCOTT BERTONE,  
As Designated Officer of Respondent  
LARSON-BERTONE, INC.

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*I have reviewed this Stipulation and Agreement and Order as to form and content and have advised my clients accordingly.*

2/7/12

DATED

  
RICHARD SPEARE  
Attorney for Respondents  
LARSON-BERTONE, INC. and  
JAMES SCOTT BERTONE

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The foregoing Stipulation and Agreement is hereby adopted by me as my  
Decision in this matter as to Respondents LARSON-BERTONE, INC. and JAMES SCOTT  
BERTONE, and shall become effective at 12 o'clock noon on **MAY 14 2012**

IT IS SO ORDERED 3/27/2012  
Real Estate Commissioner

