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FILED

FEB 20 2019

DEPT. OF REAL ESTATE

By *Zoni Jn*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	DRE No. H-41000 LA
)	
<u>NIJJAR REALTY INC.</u> , doing)	
<u>business as Pama Management</u>)	OAH No. 2018050393
<u>Company; PAMA MANAGEMENT,</u>)	
<u>INC.; I E RENTAL HOMES, INC.;</u>)	
<u>MIKE SINGH NIJJAR</u> , individually)	
<u>and as Designated Officer of Nijjar</u>)	
<u>Realty Inc.; EVERET GORDON</u>)	
<u>MILLER</u> , individually and as)	
<u>Designated Officer of Nijjar Realty</u>)	
<u>Inc. and of Pama Management, Inc.;</u>)	
<u>MICHAEL PREET NIJJAR</u> ,)	
<u>individually and as Designated Officer</u>)	
<u>of I E Rental Homes, Inc.; and</u>)	
<u>DALJIT KAUR KLER</u> ,)	
)	
Respondents.)	

ORDER STAYING EFFECTIVE DATE

On January 29, 2019, a Decision was rendered in the above-entitled matter to become effective February 21, 2019.

IT IS HEREBY ORDERED that the effective date of the Decision of January 29, 2019, is stayed for a period of thirty (30) days to allow Respondents to file a petition for reconsideration.

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The Decision of January 29, 2019, shall become effective at 12 o'clock noon on
March 22, 2019.

DATED February 19, 2019.

DANIEL J. SANDRI
Acting Real Estate Commissioner



BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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FEB 01 2019

DEPT. OF REAL ESTATE

By 

In the Matter of the Accusation of:)
NIJJAR REALTY INC. doing business as) DRE No. H-41000 LA
Pama Management Company; PAMA) OAH No. 2018050393
MANAGEMENT, INC.; I E RENTAL)
HOMES, INC.; MIKE SINGH NIJJAR,)
individually and as Designated Officer of)
Nijjar Realty Inc.; EVERET GORDON)
MILLER, individually and as Designated)
Officer of Nijjar Realty Inc. and of Pama)
Management, Inc.; MICHAEL PREET)
NIJJAR, individually and as Designated)
Officer of I E Rental Homes, Inc.; and)
DALJIT KAUR KLER,)
Respondents.)

DECISION

The Proposed Decision dated December 28, 2018, Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision.

Factual Findings, Page 5, Paragraph No. 7.b., Line 7, "monthly for space" is amended to read "monthly fee for space".

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the

Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on FEB 21 2019.

IT IS SO ORDERED January 29, 2019.

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER

Daniel J. Sandri

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

NIJJAR REALTY INC. doing business as
Pama Management Company; PAMA
MANAGEMENT INC.; I E RENTAL
HOME, INC.; MIKE SINGH NIJJAR,
individually and as Designated Officer of
Nijjar Realty Inc.; EVERET GORDON
MILLER, individually and as Designated
Officer of Nijjar Realty Inc. and of Pama
Management, Inc.; MICHAEL PREET
NIJJAR, individually and as Designated
Officer of I E Rental Homes, Inc.; and
DALJIT KAUR KLER,

Respondents.

Case No. H-41000 LA

OAH No. 2018050393

PROPOSED DECISION

Irina Tentser, Administrative Law Judge (ALJ), heard this matter on October 22, 23, and 24, 2018, at the Office of Administrative Hearings in Los Angeles, California.

Amelia V. Vetrone, Counsel for the Department¹ of Real Estate (Department), represented Supervising Special Investigator, Brenda Smith (Complainant).

James E. Klinkert, Attorney, appeared and represented Nijjar Realty Inc., doing business as Pama Management Company (Respondent NRI), Mike Singh Nijjar, individually and as Designated Officer of Nijjar Realty Inc. (Respondent Nijjar), Everet Gordon Miller, individually and as Designated Officer of Nijjar Realty Inc. and Pama Management, Inc., (Respondent Miller), and Daljit Kaur Kler (Respondent Kler) (collectively, Respondents).

¹ Effective July 1, 2018, the Bureau of Real Estate became the Department of Real Estate. (SB 173; Bus. & Prof. Code, § 10050.)

Respondent Miller was present throughout hearing. Respondent Nijjar and Respondent Kler did not appear at hearing.

James E. Klinkert, Attorney, also represented Respondents I E Rental Homes, Inc., Pama Management, Inc., and Michael Preet Nijjar, who did not appear at hearing. Prior to the commencement of hearing, counsel represented to the ALJ that the matter had been dismissed as to Respondents I E Rental Homes, Inc. and Michael Preet Nijjar, and that Complainant was not proceeding on the second cause of action of the Accusation (audit of Pama Management Inc.) against Respondent Pama Management Inc. based on entry of a stipulated settlement between respondent and the Department. Respondents I E Rental Homes, Inc. and Michael Preet Nijjar were dismissed after the hearing concluded by Department Dismissal and Order dated November 28, 2018. Respondent Pama Management Inc. and the Department entered into a Stipulation and Agreement to Citation and Fine on October 24, 2018.

Oral and documentary evidence was received at hearing. The record was left open by the ALJ for submission of written closing argument by the parties no later than November 7, 2018. Respondents' and Complainant's closing briefs were received, on November 7, marked respectively as Exhibit C, and 26.

The record was closed and the matter was submitted for decision on November 7, 2018.

On November 11, 2018, by order of the ALJ, the record was reopened for submission of evidence by Complainant on or before December 5, 2018, of the dismissal of respondents I E Rental Homes, Inc. and Michael Preet Nijjar; the stipulated settlement as to Respondent Pama Management, Inc.; and any objection to Complainant's evidence by Respondents on or before December 12, 2018. Complainant's evidence of dismissal and stipulated settlement was received on December 3, 2018, marked and admitted as Exhibit 27. No objection was filed by Respondents.

The record was reclosed and the matter was submitted for decision on December 12, 2018.

FACTUAL FINDINGS

Jurisdiction

1. Complainant brought the Accusation in her official capacity. Respondents timely submitted a Notice of Defense, which contained a request for a hearing.
2. a. The Department issued Respondent NRI a corporate real estate broker license, license number C/00699775, on March 2, 1979. The license is scheduled to expire on March 1, 2019. There is no evidence of prior license discipline. From July 30, 1990,

through August 10, 2017, Respondent NRI maintained the fictitious business name "Pama Management Company" registered to its corporate real estate broker license with the Department. The DBA (doing business as) Pama Management Company was cancelled as of August 10, 2017.

b. Respondent Nijjar was Respondent NRI's Designated Officer from March 2, 1979 until his designation was cancelled as of February 11, 2014. Effective February 11, 2014, Respondent Miller was added as Respondent NRI's Designated Officer.

c. The Department issued Respondent Nijjar a real estate salesperson license on October 6, 1976. The salesperson license terminated as of January 27, 2018. Respondent Nijjar was then issued a real estate broker license, license number B/005781160, by the Department on January 27, 2018. The real estate broker license is scheduled to expire on January 26, 2022. There is no evidence of prior license discipline. Complainant did not establish through clear and convincing evidence the allegation that Respondent Nijjar is "the owner, holder of all corporate offices, and sole director of Respondent NRI." (Ex. 1, Accusation, p. 3, lns. 13-14.)

d. The Department issued Respondent Miller a real estate salesperson license on October 14, 1971. The salesperson license expired on December 9, 1983. Respondent Miller was issued a real estate broker license, license number B/00405530, by the Department on March 31, 1999. The real estate broker license is scheduled to expire on March 30, 2019. There is no evidence of prior license discipline.

e. The Department issued Respondent Kler a real estate salesperson license on March 14, 1986. The salesperson license terminated on July 23, 1991. Respondent Kler was then issued a real estate broker license, license number B/00916068, by the Department on July 23, 1991. The real estate broker license is scheduled to expire on July 22, 2019. There is no evidence of prior license discipline. Complainant did not establish through clear and convincing evidence the allegation that Respondent Kler is "the owner, holder of two corporate offices, and sole director of Respondent PMI [Pama Management Inc.]." (Ex. 1, Accusation, p. 4, lns. 2-3.)

f. Jose Balmore Rodriguez (Rodriguez) is not licensed by the Department in any capacity.

3. a. This matter came to the attention of the Department by a referral from the California Housing and Community Development Department (HCD). Based on the results of the Department's investigation, Complainant seeks to discipline Respondents' real estate licenses based on allegations that Respondents engaged in dishonest dealing in sales of motorhomes; employed and compensated an unlicensed individual to perform real estate activities; and allowed residential occupancy of the sold motorhomes, even though the units were not authorized for human occupancy, in violation of Real Estate Law.

b. In sum, the Accusation alleges that: Respondents owned and operated a mobile home park, "4Js Trailer Park," in the city of Oildale (Bakersfield), California; Respondents leased spaces in the mobile home park, sold mobile home units to consumers and managed the property under their real estate licenses; none of the Respondents possess licenses from the HCD to sell mobile homes, nor any licenses from the Department of Motor Vehicles to sell recreational vehicles; Respondent leased spaces and sold 10 recreational units consisting of one recreational vehicle and nine mobilehomes at the 4Js Trailer Park; Respondents conducted the sales and allowed immediate occupancy of the mobile home units even though the units were installed without the required construction permits, carbon monoxide detectors, or smoke detectors; the HCD had not inspected or permitted the units for occupancy before they were occupied; and, on January 24, 2016, one of the mobile homes caught fire causing the destruction of three mobilehomes and the death of an infant.

c. As more fully described below, some of the Complainant's allegations in the Accusation were established against Respondents NRI and Miller, while others were not. None of the allegations were established as to Respondents Nijjar and Kler.

d. The relevant established time period when events occurred was from 2015 through 2017 ("relevant time period".)

Sales of Mobilehomes

4. a. Respondents NRI and Miller engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers during the "relevant time period," in the County of Kern within the meaning of Business and Professions Code² section 10131, subdivision (b). Their activities included management of residential rental real property for and on behalf of others for compensation, as set forth in factual findings 7 and 8.

b. Complainant did not establish through clear and convincing evidence that Respondents Nijjar and Kler engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers during the "relevant time period" in the County of Kern within the meaning of section 10131, subdivision (b), as set forth in factual findings 2c, 2e, and 10.

5. Respondents did not possess a license from the HCD to sell mobilehomes³ during the "relevant time period," as set forth in factual finding 7.

6. a. Respondents NRI and Miller engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the meaning of section

² All subsequent statutory references are to the Business and Professions Code unless otherwise noted.

³ See Legal Conclusion 5 for the definition of "mobilehome."

10131.6, including the sale of mobilehomes as the agents of others, as set forth in factual finding 7.

b. Complainant did not establish through clear and convincing evidence that Respondents Nijjar and Kler engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the meaning of section 10131.6, including the solicitation of listings of and the negotiation of the purchase and sale of mobilehomes as the agents of others during the "relevant time period," as set forth in factual findings 2c, 2e, and 10.

7. a. Respondents NRI and Miller operated and managed a trailer park called "4J's Trailer Park" (Park) located at 123 McCord Avenue in Oildale, California. Respondent NRI's client, Cobra 28 No. 7, LP (Cobra 28), is the owner of Park. (Ex. 17.) Cobra 28 held an HCD permit to operate the Park. (Ex. 16.) It is unclear based on the evidence presented at hearing who were the owners of the individual mobilehomes in the Park. Respondents NRI and Miller also managed the adjacent larger mobilehome park, Plymouth Mobile Manor.

b. Rodriguez's employment with Respondent NRI began on or about August 1, 2013. (Ex. 20.) During the "relevant time period," Respondent NRI employed Rodriguez as the on-site manager both the Park and the adjacent mobilehome park. (Ex. 20.) Respondent Miller was the designated officer of NRI during the "relevant time period." Rodriguez was Respondents NRI and Miller's employee and agent at the Park during the "relevant time period." The Park's mobilehomes were leased to tenants with an option of ownership after they had paid off the principal balance. Lessees paid a monthly for space rent, utilities, an additional sum toward the outstanding principal owed to purchase the unit until it was paid in full. Rodriguez insisted that he did not directly lease or sell any of the Park's mobilehomes because he never personally showed the mobilehomes to prospective buyers. However, Rodriguez admitted to both HCD and Department investigators, that Rodriguez provided interested persons the key to the Park's mobilehomes and instructed them to inspect the mobilehomes for themselves. (Exs. 16 and 18.) If they were interested, Rodriguez would quote a lease to own price for the mobilehomes, the required amount for the downpayment and provide a breakdown of their monthly payments. If the prospective tenant agreed to the terms, Rodriguez would provide them a lease to own application form and park space lease application form. Rodriguez denied taking any cash or checks made out to him personally, asserting that he would direct the prospective tenants to obtain a money order made payable to Respondent NRI's dba "Pama Management." At the same time that Rodriguez denied that he was acting as an unlicensed salesperson by his actions, he acknowledged that leasing mobilehomes was part of his regular responsibilities as the Park manager. Rodriguez indicated that Respondent NRI's regional manager, Martin Jaimes, based in the company's El Monte office, approved the applications. Based on the HCD and Department's investigation, Jaimes was not licensed by the HCD or the Department. Rodriguez denied receiving a bonus or commission for the sale of the Park's mobilehomes, asserting that he only received a bonus if and when all the available Park mobilehomes were leased and the park was at full capacity.

c. On February 3, 2016, Rodriguez provided HCD Investigator George D. Jediny (HCD Investigator Jediny) a copy of the lease application forms, consisting of a standard rental agreement and rental lease agreement with option to purchase, for Park Spaces #1, #7, #8, #9 and #10. (Exs. 6, 10 through 13.)⁴ Each of the documents provided by Rodriguez to HCD Investigator Jediny consisted of a "Rental Lease Agreement With Option to Purchase." The forms identified "Pama Management Co" as the landlord and provided Respondent NRI's business address as a point of contact. The pricing information was detailed in the subsection titled, "OPTION TO PURCHASE." In each of the buyer's contracts the gross sales price was indicated, as was the down-payment amount placed on the motorhome. Each sales contract specified that in addition to the space rent of \$325, the buyers would pay \$150 per month toward the unpaid balance of their contracted purchase price with the unpaid balance accruing interest at a rate of 10 percent per year. The contracts specified that Respondent NRI would provide title to the buyers as indicated on page 2, "The landlord would convey the Premises to the Tenant by warranty deed with a merchantable title." What appeared to be Rodriguez's signature was on each of the contracts' signature line designated for "Landlord." (*Ibid.*) During the Department's subsequent investigation, on September 29, 2017, Rodriguez admitted to Department Special Investigator Ernie Ruiz (DRE Investigator Ruiz) that the signatures on the lease application forms for Spaces #8, #9, and #10 were Rodriguez's signatures. (Ex. 18.) DRE Investigator Ruiz also testified at hearing, consistent with his report, that the signatures on the foregoing lease application were the signatures Rodriguez admitted as his during their September 29 interview. Accordingly, Rodriguez signed the lease to own agreements and engaged in the sale of the Park's mobilehomes as an employee and agent of Respondents NRI and Miller for three mobilehomes (Spaces #8, 9 and 10), as described below. Complainant presented insufficient evidence to support a finding through clear and convincing evidence that Respondents NRI and Miller, through their employee and agent Rodriguez, entered into lease to own sales agreements to sell the Park's mobilehomes for Spaces #1 and 4 through 7, because, among other reasons set forth in factual finding 7h and 7i, Rodriguez did not confirm that he signed the agreements. Neither Rodriguez nor any of the buyers testified at hearing regarding the transactions described above.

d. *Space #8.* It was established through clear and convincing evidence, based on the contents of the sales agreement and Rodriguez's party admission,⁵ as credibly

⁴ HCD Investigator Jediny credibly testified at hearing that the agreements provided to him by Rodriguez for Spaces #8, #9, and #10, were the same agreements he referenced in his report (Ex. 16) and the same agreements admitted into evidence as Exhibits 11 through 13.

⁵ Under Government Code section 11513, subdivision (d), hearsay evidence, when objected to and not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a factual finding. This is often referred to as "administrative hearsay." Therefore, evidence that is not hearsay can be used for any purpose, but evidence that is administrative hearsay can be used only for these limited purposes. As explained in *Lake v. Reed* (1997) 16 Cal.4th 448, although a police report was

testified to at hearing by both HCD Investigator Jedin and DRE Investigator Ruiz, as corroborated by their respective report and memorandum (Exs. 16 and 18), and Space #8's lease to own sales agreement (Ex. 11), that on September 22, 2015, Respondent NRI and Miller, through their unlicensed employee and agent, Rodriguez, represented the seller in the sale of the mobilehome in Space #8 at the Park to a tenant through a lease to own agreement. Accordingly, Respondent NRI and Miller employed and compensated unlicensed Rodriguez, to perform real estate activities in contracting for that sale in violation of section 10137.⁶

e. Space #9. It was established through clear and convincing evidence, based on the contents of the sales agreement and Rodriguez's party admission, as credibly testified to at hearing by both HCD Investigator Jedin and DRE Investigator Ruiz, as corroborated by their respective report and memorandum (Exs. 16 and 18), and Space #9's lease to own sales agreement (Ex. 12), that on November 11, 2015, Respondent NRI and Miller, through their unlicensed employee and agent Rodriguez, represented the seller in the sale of the mobilehome in Space #9 at the Park to a tenant through a lease to own agreement. Accordingly, Respondent NRI and Miller employed and compensated unlicensed Rodriguez, to perform real estate activities in contracting for that sale in violation of section 10137.

f. Space #10. It was established through clear and convincing evidence, based on the contents of the sales agreement and Rodriguez's party admission, as credibly testified to at hearing by both HCD Investigator Jedin and DRE Investigator Ruiz, as corroborated by their respective report and memorandum (Exs. 16 and 18), and Space #10's

hearsay, a portion was an exception to the hearsay rule and could be used as direct evidence and for any purpose. The Court noted that the report, although unsworn, was potentially admissible because it was the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, as referenced in Government Code section 11513, subdivision (c). Further, the report was prepared by a public official in the scope of his duties and was therefore an official record under Evidence Code section 1280. The defendant's admission to the officer he was driving was an exception to the hearsay rule under Evidence Code section 1220 relating to admissions. A witness statement confirming that the defendant was driving was administrative hearsay but could be used to explain or supplement the defendant's admission. However, statements made by witnesses to the officer, as summarized in the report, were hearsay, no exception applied, and this administrative hearsay by itself could not be used to support a factual finding. As applied here, Rodriguez, as agent and employee of Respondents NRI and Miller, is a "party" to this matter and his admissions, as testified to by HCD Investigator Jeridy and DRE Investigator Ruiz, and corroborated by their respective reports (Exs. 16 and 18) are exceptions to the hearsay rule and provide credible and direct evidence sufficient to support the finding that Rodriguez sold mobilehomes at the Park. In contrast, non-party witness statements referred to in HCD Investigator Jeridy's report (Ex. 16), including the purported statement of the mobilehome buyers, constitute hearsay and are not relied upon in this decision.

⁶ See Legal Conclusion 7.

lease to own sales agreement (Ex. 13), that on September 2, 2015, Respondent NRI and Miller, through their unlicensed employee and agent Rodriguez, represented the seller in the sale of the mobilehome in Space #10 at the Park to a tenant through a lease to own agreement. Accordingly, Respondent NRC and Miller employed and compensated unlicensed Rodriguez, to perform real estate activities in contracting for that sale in violation of section 10137.

g. As convincingly established through both HCD and Department investigation, none of the Respondents and unlicensed Rodriguez possessed a dealer license from the HCD during the RTP. None of the Respondents disputed the assertions that they were not licensed by the HCD. Accordingly, as set forth in factual findings 7a through 7f, Respondents NRI and Miller, acting through their unlicensed employee and agent, Rodriguez, sold more than two mobilehomes in the same park without possessing a dealer license from the HCD in violation of section 10131.6, subdivision (b).⁷

h. *Spaces #1, and #4 through #7.* Complainant's allegations as to Respondents' roles in the sales of Park mobilehomes for Spaces #1, and #4 through #7 were not established through clear and convincing evidence. (Ex. 1, Accusation, p. 5, Ins. 1-27; Exs. 6 through 10.) For example, Rodriguez did not admit to signing the lease to own sales contracts. In addition, no direct evidence was presented by Complainant to establish that the buyers entered into the contracts. The hearsay statements from witnesses contained in HCD Inspector Jediny's report are insufficient to support such findings. Further, there is insufficient evidence that a binding contract was entered into as to Space #4 because the lease to own sales agreement does not bear a buyer's signature. (Ex. 7.)

i. *Space #7.* Complainant's allegation that the unit at Space #7 was a recreational vehicle, as defined in Health and Safety Code 18010,⁸ rather than a mobilehome, was unsupported by clear and convincing evidence. (Ex. 1, Accusation, p. 5, Ins. 23-27.) The vague testimony of Complainant's witnesses and conclusory statements in Department and HCD investigative reports (Exs. 16 and 18), absent stronger evidence, such as, for example, a picture of the unit at Space #7 or records from the Department of Motor Vehicles regarding Space #7's unit confirming that it was a recreational vehicle, is insufficient to support such a finding.⁹ Accordingly, Complainant did not establish that Respondents violated section 10176, subdivision (a),¹⁰ with regards to Space #7.

⁷ See Legal Conclusion 4.

⁸ See Legal Conclusion 6.

⁹ Evidence Code section 412 states that "[I]f weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."

¹⁰ See Legal Conclusion 8.

j. Based on the totality of the evidence, as set forth in factual findings 7a through 7f, it was established through clear and convincing evidence that Respondents NRI and Miller collected the down payment for the mobilehomes located at Spaces #8, #9, and #10, and continued to collect the rent to own payments as of the dates of those transactions. (Evid. Code § 600.)

Unpermitted Residential Occupancy of the Park's Mobilehomes

8. a. In 2015 and early 2016, HCD field inspector Robert Martinez (HCD Inspector Martinez) was the only HCD inspector who was responsible for the inspection of mobilehome parks in the geographic area where the Park was located during the RTP. HCD Inspector Martinez had an ongoing relationship with Respondent NRI based on his inspections of the larger mobile home park next door it also managed and operated. To the best of HCD Inspector Martinez's knowledge, the only permits that had been issued to the Park related to the Park's utility system; the mobilehomes were unoccupied and stored on the premises while the work was being completed.

b. HCD Inspector Martinez did not issue a permit for installation and occupancy for the Park on behalf of HCD and, to the best of his knowledge, did not believe that HCD had issued installation and occupancy permits for the Park. As a result, HCD Inspector Martinez was surprised when, on January 4, 2016, he stumbled on the unpermitted installation and human occupancy of the Park's mobilehomes. As a result, HCD Inspector Martinez conducted a field monitoring inspection. Based on the results of his inspection, HCD Inspector Martinez served the Park's management, Respondent NRI,¹¹ with a written Activity Report - Notice of Violation And Related Information (January 4 Notice of Violation) that mobilehomes at Spaces #1, #4, #5, #6, #8, #9, and #10, had been installed without obtaining the required construction permits from the HCD pursuant to Title 25, Chapter 2, California Code of Regulations (Regulations), sections 1018, 1324, subdivisions (a) and (b), and 1326, subdivision (e), and Health and Safety Code section 18550, subdivision (a).¹² The January 4 Notice of Violation did not reference Health and Safety Code sections 18035 and 18613, as alleged by Complainant. (Ex. 1, Accusation, p. 7, lns. 6-7.)¹³

¹¹ A copy of the January 4 Notice of Violation was provided by HCD Inspector Martinez to Respondent NRI's on-site management with whom he regularly interacted on the Park's behalf; posted at the Park; and e-mail certified mailed to Respondent NRI. (Ex. 14.)

¹² See Legal Conclusions 10, 12, 13, and 14.

¹³ Respondents were provided with sufficient notice to ensure due process and no prejudice resulted to Respondents as a result of Complainant's partial reference to incorrect law in the Accusation. The Accusation, as pled, clearly provided notice to Respondents that the issues and law addressed related to the unpermitted installation and human occupancy of mobilehomes at the Park. Further, the weight of the credible evidence indicates that the January 4 Notice of Violation (Ex. 14) was in Respondents NRI and Miller's possession as of

c. On January 24, 2016, the Park's mobilehome at Space #9 caught fire causing the destruction of three mobilehomes located at Spaces #8; #9, and #10, and resulting in the fatality of an infant. As a result, on January 29, 2016, HCD issued a second Activity Report – Notice of Violation and Related Information (January 29 Notice of Violation) to “Pama Management (park operator)” and 4J's Trailer Park, ordering that the unpermitted mobilehomes at Spaces #1, #4, #5, and #6, be vacated. (Ex. 15.)

d. The January 29 Notice of Violation stated, in pertinent part:

“The mobilehomes units installed at lot 1, 4, 5, and 6, are in violation of Title-25 of the California Code of Regulations §1018 §1606, these mobilehome units were installed without first obtaining the required mobilehome installation permit Title-25 of California Code of Regulations § 1018, § 1324 (a)(b), § 1326(e) these mobile home units are considered an imminent threat to the health and safety of the occupants of these units these mobile home units occupying lot numbers 1, 4, 5, 6 shall be vacated immediately and the residents shall be relocated, the mobilehome units shall not be occupied until the mobilehomes have been inspected and approved for occupancy by this Department [HCD].” (Ex. 15.)

e. It is unclear whether Respondent NRI complied with the January 4 and January 29, 2016 Notices. While Respondents asserted at hearing that they complied with the HCD Notices, their uncorroborated claims are not credited. None of the Respondents provided any HCD permits related to the Park to corroborate their assertions of compliance. (Evid., Code § 412.) Further, as of the date HCD Investigator Jediny reviewed his investigative report, September 27, 2016, none of the Respondents had obtained the required HCD installation and occupancy permits. (Ex. 15.) In fact, as of September 27, 2016, the main permit HCD could identify as part of its investigation was a permit to operate issued to Cobra 28. (*Id.*) Because Respondent NRI was a licensed real estate broker and held no HCD permits or licenses, the matter was referred by HCD to the Department for investigation by HCD. When DRE Investigator Ruiz subsequently visited the Park on September 19, 2017 to investigate the matter and interview unlicensed Rodriguez, he observed that the Park continued to have mobilehomes on lots, some of which were under construction. (Ex. 18.)

Willful Disregard and Violation Of Real Estate Law by Respondents NRI and Miller

9. The actions of Respondents NRI and Miller in employing an unlicensed individual, Rodriguez, to sell the Park's mobilehomes and in allowing the unpermitted human occupancy of the mobilehomes, as more fully described in factual findings 7 and 8,

January 4, 2016. Further, the January 4 Notice is referenced in Respondents' expert's declaration. As such, Respondents NRI and Miller were aware, as of January 4, 2016, pursuant to which statutes and regulations the Notice of Violation was issued.

constitutes a willful disregard and violation of Real Estate Law in violation of section 10177, subdivision (d).¹⁴

Respondents Nijjar and Kler

10. Complainant did not establish through clear and convincing evidence any of the Complainant's allegations as to Respondents Nijjar and Kler. Specifically, neither Respondents Nijjar nor Kler acted as the responsible broker officer for Respondent NRI during the "relevant time period." As set forth in factual finding 2a, Respondent Nijjar's broker designation was cancelled as of February 11, 2014. Similarly, Complainant failed to establish through clear and convincing evidence that Respondent Nijjar is the owner of Respondent NRI, as set forth in factual finding 2c. Similarly, no clear and convincing evidence of Respondent Kler's connection Complainant's allegations was established by Complainant at hearing. Respondent Miller's assertion that Respondent Kler supervised unlicensed Martin Jaimes is insufficient to support clear and convincing findings.

Respondents NRI and Miller

11. Respondents NRI and Miller deny any culpability. As a result, no evidence in mitigation and rehabilitation was presented by Respondents. Respondents NRI and Miller argue, through counsel, that Complainant has not established any basis to discipline their real estate licenses because of an absence of clear and convincing evidence to substantiate the allegations against them. To support their claims that they bear no responsibility for the sale and unpermitted human occupancy of the mobilehomes at the Park during the "relevant time period," Respondent Miller testified at hearing. In addition, Respondents NRI and Miller presented the expert testimony at hearing of Phillip Ihde (Expert Ihde) and submitted the supporting declaration (Report) detailing his opinions. (Ex. B.)

12. *Respondent Miller's Testimony.* At hearing, Respondent Miller admitted that he was the designated officer of Respondent NRI during the "relevant time period." However, he denied that Respondent NRI employed unlicensed Rodriguez to sell mobilehomes at the Park, insisting that the Park agreements were rental agreements and that Respondent NRI simply provided sales agreements to the tenants, which they signed. (Ex. 17.) On December 5, 2016, Respondent Miller wrote that Martin Jaimes was Rodriguez's "area supervisor." (*Id.*) As previously noted, Martin Jaimes is not licensed by the Department. Respondent Miller testified that Respondent NRI ceased property management at the end of 2015. He provided no explanation for why the Department's license certification records indicated that Respondent NRI did not stop doing business as Pama Management Company until August 10, 2017. Respondent Miller's self-serving testimony denying any responsibility in this matter is unconvincing based on the weight of the credible evidence to the contrary, as set forth in factual findings 7 and 8. Specifically, Respondent Miller negligently and willfully violated Real Estate Law because he was the designated officer of Respondent NRI during the "relevant time period" in which the licensee sold

¹⁴ See Legal Conclusion 16.

mobilehomes for Spaces #8, #9, and #10 through its unlicensed employee Rodriguez without holding an HCD license to sell the homes, and allowed human occupancy of Spaces #1, #4, #5, #6, #8, #9, and #10, without a permit from HCD, as set forth in factual findings 2 through 8.

13. a. *Expert Ihde's testimony.* In sum, Expert Ihde opined that Respondents NRI and Miller did not violate the Business and Professions Code Sections and Commissioner's Regulations cited in the Accusation. (Ex. B, p. 2.) Expert Ihde's opinions as to Respondents and Miller's culpability, were unconvincing, in part, because they were predicated on contentions that were not credited, as more fully discussed below.¹⁵ In addition, errors in Expert Ihde's report undermine the reliability of his opinions. For example, he incorrectly cites section 10176, subdivision (g), when, in fact, Complainant alleges section 10177, subdivision (g), as the basis for license discipline. (Ex. B, p. 5; Ex. 1, Accusation, p. 7, lns. 15-16.) Accordingly, Expert Ihde's opinion that Complainant did not establish violations of sections 10176, subdivision (m), and 10177, subdivisions (g) and (h), is unconvincing based on the weight of the credible evidence to the contrary, as set forth in factual findings 2 through 8. However, his opinions that Complainant did not establish violations of sections 10176, subdivisions (a), (i), and 10177, subdivision (j), is convincing based on the lack of sufficient evidence provided by Complainant to establish the foregoing violations. Expert Ihde's report did not provide an opinion as to whether Respondents violated section 10177, subdivision (d). (Ex. B.)

b. *Expert Qualification and Background.* Expert Ihde testified and executed a declaration, attaching a curriculum vitae, regarding his qualifications as an expert. (Ex. B.) Since 1979, he has been a licensed real estate broker and holds a Bachelor of Arts Degree in Business Management from the University of Redlands, in Redlands, California. Expert Ihde completed supplementary classes from the University of La Verne, in La Verne, California in Real Estate Law, Real Estate Practice, Appraisal, Escrow, Finance and Property Management. According to Expert Ihde, he has extensive experience in analyzing California real estate law and the duties of brokers and agents based upon his experience and training working for the Department. Expert Ihde began working in the Department's Los Angeles Office in 1990. Between 1990 and 1995, Expert Ihde worked as a Deputy Real Estate Commissioner investigating consumer fraud and real estate transaction law violations. In 1996, Expert Ihde was promoted to the Crisis Response Team investigating serious fraud issues, including mortgage loan, advance fee, institutional lender fraud and major trust fund shortage issues. In 1999, Expert Ihde was promoted to Managing Deputy Commissioner I, and in 2003 to Managing Deputy Commissioner II. In 2005, Expert Ihde was promoted to Managing Deputy Commissioner IV, a position he held until 2016. In that capacity, he reviewed and made recommendations on more than 10,000 complaints involving, among other things, allegations of fraud, misrepresentation, unlicensed activity, and home rescue fraud. During his Department tenure, Expert Ihde routinely provided testimony as a Deputy

¹⁵ Expert Ihde's opinions as to Respondents Nijjar and Kler are not discussed based on the finding by the ALJ that insufficient evidence was presented by Complainant to establish the allegations as to those respondents, as set forth in factual finding 10.

Real Estate Commissioner in administrative law proceedings. He has also testified as the Department's Person Most Qualified in criminal and civil proceedings related to violations of Real Estate Law. Since 2017, Expert Ihde has been self-employed as a real estate business consultant and expert. In that capacity, he has provided expert testimony in civil deposition and arbitration hearings.

c. *Basis of Opinion.* In forming the basis for his expert testimony and declaration, Expert Ihde interviewed Respondents Miller and Nijjar, and reviewed and relied upon documents listed in Exhibit B to his declaration (including, among other things, the Accusation, unspecified discovery responses, and Rodriguez's employment contract). (Ex. B.)

d. *Opinion as to Rodriguez's Unlicensed Sale of Park Mobilehomes.* Expert Ihde opined that Rodriguez's activity on behalf of Respondent NRI with regards to the Park was exempt either by section 10131.01, subdivision (a)(1), or the Department's "Guidelines for Unlicensed Assistants who Work in the Real Estates Industry" (Ex. B, pp. 6 and Ex. C thereto.) Expert Ihde's opinion is unpersuasive because it is based on faulty inferences. First, Expert Ihde accepts the proposition put forward by Respondents NRI and Miller that the lease to own sales agreements were rental, rather than sales agreements. That proposition lacks merit, as set forth in factual finding 7. Even assuming, arguendo, that the sales agreements for the mobilehomes were considered as rental, rather than sales agreements, Expert Ihde's opinion does not address how Rodriguez, as an unlicensed agent of Respondent NRI, was exempt from Department licensure when he signed the agreements as Respondent NRI's employee and agent, as set forth in factual finding 7. Accordingly, Expert Ihde's opinion as to Rodriguez is unconvincing.

e. *Opinion as to Respondent NRI and Miller's violation of section 10176, subdivision (a) (substantial representation).* Expert Ihde's opinion that Complainant did not establish through clear and convincing evidence that Respondents NRI and Miller made any substantial representation is persuasive and credited. The allegation is not supported by the established facts, as set forth in factual findings 2 through 8.

f. *Opinion as to Respondent NRI and Miller's violation of sections 10176, subdivision (i), and subdivision 10177(j) (fraud or dishonest dealing).* Expert Ihde's opinion that Complainant did not establish through clear and convincing evidence that Respondents NRI and Miller engaged in fraud and dishonest dealing is persuasive and credited. The allegation is not supported by the established facts, as set forth in factual findings 2 through 8.

g. *Opinion as to Respondents NRI and Miller's violation of section 10177, subdivision (g).* Expert Ihde cites and opines under the incorrect section, "Section 10176(g)" (Ex. B, p. 5.) As the Accusation alleges violation of section 10177, subdivision (g), his opinion is unreliable and unpersuasive. The allegation that Respondents NRI and Miller

“demonstrated negligence or incompetence in performing an act”¹⁶ for which they were required to hold a Department license, the sale of mobilehomes, by having unlicensed Rodriguez sell the mobilehomes at Spaces #8, #9, and #10, is supported by clear and convincing facts, as set forth in factual finding 7.

h. *Opinion as to Respondents NRI and Miller’s violation of section 10176, subdivision (m).* Expert Ihde asserted that a violation of section 10176, subdivision (m), requires the licensee to have violated another code which, if similar to the Department’s would be cause for discipline. (Ex. B, p. 5.) He opined that, in this case, a Department licensee had not violated HCD Codes and Regulations, indicating that “documentary evidence shows that SSM was the owner of the MH [mobilehome]” when the January 4 and January 29 Notices were issued to “Pama Management.”¹⁷ He therefore opined that “permits and repairs for the MH’s are the responsibility of SSM and the MH owner and not a licensee.” (*Id.*) Expert Ihde’s opinion is unconvincing. First, it was not established by clear and convincing that “SSM” was the owner of the Park because, among other things, Expert Ihde did not specify what “documentary evidence” he relied on in forming his opinion. Moreover, during the “relevant time period” the HCD permit to operate the Park was in the name of Cobra 28 (Ex. 16) and prior representations by Respondents NRI and Miller indicated that Cobra 28 was the Park’s owner and “SSM Investments, Inc.” was the owner of the Park’s mobilehomes. (Ex. 17.) Second, whoever was the true owner of the Park and the Park’s mobilehomes, Respondent NRI and Miller, acted as an agent of the owners through its on-site management of the Park, including allowing the unpermitted mobilehomes to be occupied by tenants in violation of HCD Codes and Regulations and selling mobilehomes, as more fully set forth in factual findings 7, 8 and 11. As Department licensees, Respondents NRI and Miller are, therefore, liable for violation of section 10176, subdivision (m), based on their established violation of the HCD Codes and Regulations, as detailed in the January 4 and January 29 Notices and this decision.

i. *Opinion as to Respondents NRI and Miller’s violation of section 10177, subdivision (h).* Expert Ihde opined that Respondent Miller provided proper supervision to “Pama Management and it’s (*sic*) employees in the transactions alleged in the Accusation and there is no evidence of a violation of Section 10177(h).” (Ex. B, p. 5.) His opinion is unconvincing based on the weight of the credible evidence that Respondents NRI and Miller failed to exercise reasonable supervision and control of the activities of Respondent NRI for which a real estate license is required by: (1) employing Roriguez, who, acting within the scope of his employment and as their agent, sold three mobilehomes without an HCD permit or a real estate license and (2) allowed unpermitted human occupancy of mobilehomes to the detriment of the public, as set forth in factual findings 7 and 8.

¹⁶ See Legal Conclusion 16.

¹⁷ Expert Ihde incorrectly references “2015,” instead of 2016 as the year the notices of violation were issued. (Ex. B, p. 5). Based on the violation number referenced, it is clear he is referring to the January 4 and 29 notices. (Exs. 14 and 15.)

Costs

14. The Department incurred reasonable enforcement and investigative costs in this matter totaling \$10,194.25. No evidence was presented as to what, if any, portion of the total costs was paid by Pama Management Inc. pursuant to its settlement with the Department in this matter.

LEGAL CONCLUSIONS

Jurisdiction, Standard and Burden of Proof

1. Jurisdiction was established to proceed in this matter pursuant to Business and Professions Code section 10100, based on factual findings 1 and 2.

2. The standard of proof in an administrative hearing to suspend or revoke a professional license, such as a real estate license, is clear and convincing evidence. (*The Grubb Co., Inc. v. Department of Real Estate* (2011) 194 Cal.App.4th 1494, 1505; *Ettinger v. Board of Med. Quality Assur.* (1982) 135 Cal.App.3d 853.) This means that the burden rests on Complainant to establish the charging allegations by proof that is clear, explicit and unequivocal—so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

Applicable Statutes and Regulations

3. Section 1013, subdivision (b) states:

“A real estate broker within the meaning of this part is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

“[¶] . . . [¶]

“(b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.”

4. Section 10131.6 states:

“(a) Notwithstanding any other provision of law, a person licensed as a real estate broker may sell or offer to sell, buy or offer to buy, solicit prospective purchasers of, solicit or obtain listings of, or negotiate the purchase, sale, or exchange of any manufactured home

or mobilehome only if the manufactured home or mobilehome has been registered under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code.

“(b) No real estate broker who engages in the activities authorized by this section shall maintain any place of business where two or more manufactured homes or mobilehomes are displayed and offered for sale by the person, unless the broker is also licensed as a mobilehome dealer as provided for by Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code.

“(c) As used in this chapter, ‘manufactured home’ means a structure as defined in Section 18007 of the Health and Safety Code, and ‘mobilehome’ means a structure as defined in Section 18008 of the Health and Safety Code. ‘Manufactured home’ and ‘Mobilehome’ do not include a recreational vehicle, as defined in Section 18010 of the Health and Safety Code, a commercial modular, as defined in Section 18001.8 of the Health and Safety Code, or factory-built housing, as defined in Section 19971 of the Health and Safety Code.

“(d) In order to carry out this section, the commissioner shall prescribe by regulation, after consultation with the Department of Housing and Community Development, methods and procedures to assure compliance with requirements of the Health and Safety Code pertaining to manufactured home and mobilehome registration, collection of sales and use taxes, and transaction documentation.

“(e) Nothing in this section increases or decreases, or in any way preempts, consumer notice requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974 and related regulations which are set forth in Sections 5414 and 5422 of Title 42 of the United States Code and Subparts E and I of Title 24 of the Code of Federal Regulations.”

5. Health and Safety Code section 18008 states:

“(a) ‘Mobilehome,’ for the purposes of this part, means a structure that was constructed prior to June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected onsite, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation system when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. ‘Mobilehome’ includes any structure that meets all the requirements of this paragraph and complies with the state standards for mobilehomes in effect at the time of construction. ‘Mobilehome’ does not include a commercial modular, as defined in Section 18001.8, factory-built housing, as defined in Section 19971, a manufactured home, as defined in Section 18007, a multifamily manufactured home, as defined in Section 18008.7, or a recreational vehicle, as defined in Section 18010.

“(b) Notwithstanding any other provision of law, if a codified provision of state law uses the term ‘mobilehome,’ and it clearly appears from the context that the term ‘mobilehome’ should apply only to mobilehomes, as defined under subdivision (a), the codified provision shall apply only to those mobilehomes. If any codified provision of state law, by its context, requires that the term applies to mobilehomes or manufactured homes without regard to the date of construction, the codified provision shall apply to both mobilehomes, as defined under subdivision (a), and manufactured homes, as defined under Section 18007.”

6. Health and Safety Code section 18010 states:

“‘Recreational vehicle’ means both of the following:

“(a) A motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation for recreational, emergency, or other occupancy, that meets all of the following criteria:

“(1) It contains less than 320 square feet of internal living room area, excluding built-in equipment, including, but not limited to, wardrobe, closets, cabinets, kitchen units or fixtures, and bath or toilet rooms.

“(2) It contains 400 square feet or less of gross area measured at maximum horizontal projections.

“(3) It is built on a single chassis.

“(4) It is either self-propelled, truck-mounted, or permanently towable on the highways without a permit.

“(b) A park trailer, as defined in Section 18009.3.”

7. Section 10137 states:

“It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesperson licensed under the broker employing or compensating him or her, or to employ or compensate, directly or indirectly, any licensee for engaging in any activity for which a mortgage loan originator license endorsement is required, if that licensee does not hold a mortgage loan originator license endorsement; provided, however, that a licensed real estate broker may pay a commission to a broker of another state.

“No real estate salesperson shall be employed by or accept compensation for activity requiring a real estate license from any person other than the broker under whom he or she is at the time licensed.

"It is unlawful for any licensed real estate salesperson to pay any compensation for performing any of the acts within the scope of this chapter to any real estate licensee except through the broker under whom he or she is at the time licensed.

"For a violation of any of the provisions of this section, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee, in accordance with the provisions of this part relating to hearings."

8. Section 10176, subdivision (a) states:

"The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

"(a) Making any substantial misrepresentation."

9. Health and Safety Code section 18035 states:

"a) (1) For every transaction by or through a dealer to sell or lease with the option to buy a new or used manufactured home or mobilehome subject to registration under this part, the dealer shall execute in writing and obtain the buyer's signature on a purchase order, conditional sale contract, or other document evidencing the purchase contemporaneous with, or prior to, the receipt of any cash or cash equivalent from the buyer, shall establish an escrow account with an escrow agent, and shall cause to be deposited into that escrow account any cash or cash equivalent received at any time prior to the close of escrow as a deposit, downpayment, or whole or partial payment for the manufactured home or mobilehome or accessory thereto. Checks, money orders, or similar payments toward the purchase shall be made payable only to the escrow agent.

"(2) The downpayment, or whole or partial payment, shall include an amount designated as a deposit, which may be less than, or equal to, the total amount placed in escrow, and shall be subject to subdivision (f). The parties shall provide for escrow instructions that identify the fixed amounts of the deposit, downpayment, and balance due prior to closing consistent with the amounts set forth in the purchase documents and receipt for deposit if one is required by Section 18035.1. The deposits shall be made by the dealer within five working days of receipt, one of which shall be the day of receipt.

"(3) For purposes of this section, 'cash equivalent' means any property, other than cash. If an item of cash equivalent is, due to its size, incapable of physical delivery to the escrowholder, the property may be held by the dealer for the purchaser until close of escrow and, if the property has been registered with the department or the Department of Motor

Vehicles, its registration certificate and, if available, its certificate of title shall be delivered to the escrowholder.

“(b) For every transaction by or through a dealer to sell or lease with the option to buy a new manufactured home or mobilehome subject to registration under this part, the escrow instructions shall provide all of the following:

“(1) That the original manufacturer’s certificate of origin be placed in escrow.

“(2) (A) That, in the alternative, either of the following shall occur:

“(i) The lien of any inventory creditor on the manufactured home or mobilehome shall be satisfied by payment from the escrow account.

“(ii) The inventory creditor shall consent in writing to other than full payment.

“(B) For purposes of this paragraph, ‘inventory creditor’ includes any person who is identified as a creditor on the manufacturer’s certificate of origin or any person who places the original certificate of origin in escrow and claims in writing to the escrow agent to have a purchase money security interest in the manufactured home or mobilehome, as contemplated by Section 9103 of the Commercial Code.

“(3) That the escrow agent shall obtain from the manufacturer a true and correct facsimile of the copy of the certificate of origin retained by the manufacturer pursuant to Section 18093.

“(c) For every transaction by or through a dealer to sell or lease with the option to buy a used manufactured home or mobilehome subject to registration under this part, the escrow instructions shall provide:

“(1) That the current registration card, all copies of the registration cards held by junior lienholders, and the certificate of title be placed in escrow.

“(2) That, in the alternative, either of the following shall occur:

“(A) (i) The registered owner shall acknowledge in writing the amount of the commission to be received by the dealer for the sale of the manufactured home or mobilehome, and (ii) the registered owner shall release all of its ownership interests in the manufactured home or mobilehome either contemporaneously upon the payment of a specified amount from the escrow account or at the close of the escrow where the buyer has executed a security agreement approved by the registered owner covering the unpaid balance of the purchase price.

“(B) (i) The dealer shall declare in writing that the manufactured home or mobilehome is its inventory, (ii) the registered owner shall acknowledge in writing that the

purchase price relating to the sale of the manufactured home or mobilehome to the dealer for resale has been paid in full by the dealer, (iii) the current certificate of title shall be appropriately executed by the registered owner to reflect the release of all of its ownership interests, and (iv) the dealer shall release all of its ownership interests in the manufactured home or mobilehome either contemporaneously upon the payment of a specified amount from the escrow account or at the close of escrow where the buyer has executed a security agreement approved by the dealer covering the unpaid balance of the purchase price.

“(3) That, in the alternative, the legal owner and each junior lienholder, respectively, shall do either of the following:

“(A) Release his or her security interest or transfer its security interest to a designated third party contemporaneously upon the payment of a specified amount from the escrow account.

“(B) Advise the escrow agent in writing that the new buyer or the buyer’s stated designee shall be approved as the new registered owner upon the execution by the buyer of a formal assumption of the indebtedness secured by his or her lien approved by the creditor at or before the close of escrow.

“(d) For every transaction by or through a dealer to sell or lease with the option to buy a used manufactured home or mobilehome subject to registration under this part:

“(1) The dealer shall present the buyer’s offer to purchase the manufactured home or mobilehome to the seller in written form signed by the buyer. The seller, upon accepting the offer to purchase, shall sign and date the form. Copies of the fully executed form shall be presented to both the buyer and seller, with the original copy retained by the dealer. Any portion of the form that reflects the commission charged by the dealer to the seller need not be disclosed to the buyer.

“(2) The escrow agent, upon receipt of notification from the dealer that the seller has accepted the buyer’s offer to purchase and receipt of mutually endorsed escrow instructions, shall, within three working days, prepare a notice of escrow opening on the form prescribed by the department and forward the completed form to the department with appropriate fees. If the escrow is canceled for any reason before closing, the escrow agent shall prepare a notice of escrow cancellation on the form prescribed by the department and forward the completed form to the department.

“(3) (A) The escrow agent shall forward to the legal owner and each junior lienholder at their addresses shown on the current registration card a written demand for a lien status report, as contemplated by Section 18035.5, and a written demand for either an executed statement of conditional lien release or an executed statement of anticipated formal assumption, and shall enclose blank copies of a statement of conditional lien release and a statement of anticipated formal assumption on forms prescribed by the department. The statement of conditional lien release shall include, among other things, both of the following:

“(i) A statement of the dollar amount or other conditions required by the creditor in order to release or transfer its lien.

“(ii) The creditor’s release or transfer of the lien in the manufactured home or mobilehome contingent upon the satisfaction of those conditions.

“(B) The statement of anticipated formal assumption shall include, among other things, both of the following:

“(i) A statement of the creditor’s belief that the buyer will formally assume the indebtedness secured by its lien pursuant to terms and conditions which are acceptable to the creditor at or before the close of escrow.

“(ii) The creditor’s approval of the buyer or his or her designee as the registered owner upon the execution of the formal assumption.

“(4) Within five days of the receipt of the written demand and documents required by paragraph (3), the legal owner or junior lienholder shall complete and execute either the statement of conditional lien release or, if the creditor has elected to consent to a formal assumption requested by a qualified buyer, the statement of anticipated formal assumption, as appropriate, and prepare the lien status report and forward the documents to the escrow agent by first-class mail. If the creditor is the legal owner, the certificate of title in an unexecuted form shall accompany the documents. If the creditor is a junior lienholder, the creditor’s copy of the current registration card in an unexecuted form shall accompany the documents.

“(5) If either of the following events occurs, any statement of conditional lien release or statement of anticipated formal assumption executed by the creditor shall become inoperative, and the escrow agent shall thereupon return the form and the certificate of title or the copy of the current registration card, as appropriate, to the creditor by first-class mail:

“(A) The conditions required in order for the creditor to release or transfer his or her lien are not satisfied before the end of the escrow period agreed upon in writing between the buyer and the seller or, if applicable, before the end of any extended escrow period as permitted by subdivision (g).

“(B) The registered owner advises the creditor not to accept any satisfaction of his or her lien or not to permit any formal assumption of the indebtedness and the creditor or registered owner advises the escrow agent in writing accordingly.

“(6) If a creditor willfully fails to comply with the requirements of paragraph (4) within 21 days of the receipt of the written demand and documents required by paragraph (3), the creditor shall forfeit to the escrow agent three hundred dollars (\$300), except where the creditor has reasonable cause for noncompliance. The three hundred dollars (\$300) shall be credited to the seller, unless otherwise provided in the escrow instructions. Any penalty

paid by a creditor under this paragraph shall preclude any civil liability for noncompliance with Section 18035.5 relating to the same act or omission.

“(e) For every transaction by or through a dealer to sell or lease with the option to buy a new or used manufactured home or mobilehome, the escrow instructions shall specify one of the following:

“(1) Upon the buyer receiving delivery of an installed manufactured home or mobilehome on the site and the manufactured home or mobilehome passing inspection pursuant to Section 18613 or after the manufactured home or mobilehome has been delivered to the location specified in the escrow instructions when the installation is to be performed by the buyer, all funds in the escrow account, other than escrow fees and amounts for accessories not yet delivered, shall be disbursed. If mutually agreed upon between buyer and dealer, the escrow instructions may specify that funds be disbursed to a government agency for the payment of fees and permits required as a precondition for an installation acceptance or certificate of occupancy, and the information that may be acceptable to the escrow agent.

“(2) Upon the buyer receiving delivery of an installed manufactured home or mobilehome not subject to the provisions of Section 18613 with delivery requirements as mutually agreed to and set forth in the sales documents, all funds in the escrow account, other than escrow fees, shall be disbursed.

“(f) Upon receiving written notice from a party to the escrow of a dispute, the escrow agent shall inform the party of his or her right to hold funds in escrow by submitting a written request to hold funds in escrow. Upon receipt by the escrow agent of a party’s written request to hold funds in escrow, all funds denoted as deposit shall be held in escrow until a release is signed by the disputing party, or pursuant to new written escrow instructions signed by the parties involved, or pursuant to a final order for payment or division by a court of competent jurisdiction. Any other funds, other than escrow fees, shall be returned to the buyer or any person, other than the dealer or seller, as appropriate. At the opening of escrow, the escrow agent shall give notice of the right to request that funds be held in escrow pursuant to this subdivision.

“(g) Escrow shall be for a period of time mutually agreed upon, in writing, by the buyer and the seller. However, the parties may, by mutual consent, extend the time, in writing, with notice to the escrow agent.

“(h) No dealer or seller shall establish with an escrow agent any escrow account in an escrow company in which the dealer or seller has more than a 5-percent ownership interest.

“(i) The escrow instructions may provide for the proration of any local property tax due or to become due on the manufactured home or mobilehome, and if the tax, or the license fee imposed pursuant to Section 18115, or the registration fee imposed pursuant to Section 18114, is delinquent, the instructions may provide for the payment of the taxes or fees, or both, and any applicable penalties.

“(j) For every transaction by or through a dealer to sell or lease with the option to buy a new or used manufactured home or mobilehome that is subject to inspection pursuant to Section 18613, and for which it is stated, on the face of the document certifying or approving occupancy or installation, that the issuance of the document is conditioned upon the payment of a fee, charge, dedication, or other requirement levied pursuant to Section 53080 of the Government Code, the escrow instructions shall provide that the payment of that fee, charge, dedication, or other requirement be made to the appropriate school district upon the close of escrow.

“(k) No agreement shall contain any provision by which the buyer waives his or her rights under this section, and any waiver shall be deemed contrary to public policy and shall be void and unenforceable.

“(l) If a portion of the amount in the escrow is for accessories, then that portion of the amount shall not be released until the accessories are actually installed.

“(m) Upon opening escrow on a used manufactured home or mobilehome which is subject to local property taxation, and subject to registration under this part, the escrow officer may forward to the tax collector of the county in which the used manufactured home or mobilehome is located, a written demand for a tax clearance certificate, if no liability exists, or a conditional tax clearance certificate if a tax liability exists, to be provided on a form prescribed by the office of the Controller. The conditional tax clearance certificate shall state the amount of the tax liability due, if any, and the final date that amount may be paid out of the proceeds of escrow before a further tax liability may be incurred.

“(1) Within five working days of receipt of the written demand for a conditional tax clearance certificate or a tax clearance certificate, the county tax collector shall forward the conditional tax clearance certificate or a tax clearance certificate showing no tax liability exists to the requesting escrow officer. In the event the tax clearance certificate's or conditional tax clearance certificate's final due date expires within 30 days of date of issuance, an additional conditional tax clearance certificate or a tax clearance certificate shall be completed which has a final due date of at least 30 days beyond the date of issuance.

“(2) If the tax collector on which the written demand for a tax clearance certificate or a conditional tax clearance certificate was made fails to comply with that demand within 30 days from the date the demand was mailed, the escrow officer may close the escrow and submit a statement of facts certifying that the written demand was made on the tax collector and the tax collector failed to comply with that written demand within 30 days. This statement of facts may be accepted by the department in lieu of a conditional tax clearance certificate or a tax clearance certificate, as prescribed by subdivision (a) of Section 18092.7, and the transfer of ownership may be completed.

“(3) The escrow officer may satisfy the terms of the conditional tax clearance certificate by paying the amount of tax liability shown on the form by the tax collector out of the proceeds of escrow on or before the date indicated on the form and by certifying in the

space provided on the form that all terms and conditions of the conditional tax clearance certificate have been complied with.

“(n) This section creates a civil cause of action against a buyer or dealer or other seller who violates this section, and upon prevailing, the plaintiff in the action shall be awarded actual damages, plus an amount not in excess of two thousand dollars (\$2,000). In addition, attorney’s fees and court costs shall also be awarded a plaintiff who prevails in the action.”

10. Health and Safety Code section 18550 states:

“It is unlawful for any person to use or cause, or permit to be used for occupancy, any of the following manufactured homes or mobilehomes wherever the manufactured homes or mobilehomes are located, or recreational vehicles located in mobilehome parks:

“(a) Any manufactured home, mobilehome, or recreational vehicle supplied with fuel, gas, water, electricity, or sewage connections, unless the connections and installations conform to regulations of the department.

“(b) Any manufactured home, mobilehome, or recreational vehicle that is permanently attached with underpinning or foundation to the ground, except for a manufactured home or mobilehome bearing a department insignia or federal label, that is installed in accordance with this part.

“(c) Any manufactured home, mobilehome, or recreational vehicle in an unsafe or unsanitary condition.

“(d) Any manufactured home, mobilehome, or recreational vehicle that is structurally unsound and does not protect its occupants against the elements.”

11. Health and Safety Code section 18613 states:

“(a) (1) A permit shall be obtained from the enforcement agency each time a manufactured home or mobilehome is to be located, installed, or reinstalled, on any site for the purpose of human habitation or occupancy as a dwelling.

“(2) For purposes of this section, the terms ‘located,’ ‘installed,’ and ‘reinstalled’ include alteration, modification, or replacement of the mobilehome stabilizing devices, load-bearing supports, or both.

“(b) The contractor engaged to install the manufactured home or mobilehome shall obtain the permit, except when the owner of the manufactured home or mobilehome proposes to perform the installation. When a contractor applies for a permit to install a manufactured home or mobilehome, he or she shall display a valid contractor’s license. The contractor shall complete the installation of the manufactured home or mobilehome in

accordance with the regulations adopted by the department within the time limitations which shall be established by regulations of the department. The time limitations shall allow contractors a reasonable amount of time within which to complete manufactured home or mobilehome installations.

“(c) If inspection of the manufactured home or mobilehome installation by the enforcement agency determines that the manufactured home or mobilehome cannot be approved for occupancy due to defective material, systems, workmanship, or equipment of the manufactured home or mobilehome, the contractor shall be allowed a reasonable amount of time, as determined by regulations of the department, to complete the installation after the defects in the manufactured home or mobilehome have been corrected.

“(d) The enforcement agency shall immediately notify the department whenever any manufactured home or mobilehome cannot be approved for occupancy due to defects of the manufactured home or mobilehome. The report of notification shall indicate health and safety defects and, in the case of new manufactured homes or mobilehomes, substantial defects of materials and workmanship. For purposes of this section, ‘substantial defects of materials and workmanship’ means defects objectively manifested by broken, ripped, cracked, stained, or missing parts or components and shall not include alleged defects concerning color combinations or grade of materials used. If the manufactured home or mobilehome fails the installation inspection because of conditions which do not endanger the health or safety of the occupant, the owner may occupy the manufactured home or mobilehome. If, however, the installation fails inspection due to immediate hazards to the health or safety of the occupant, as determined by the enforcement agency, the manufactured home or mobilehome shall not be occupied.

“(e) Except as provided in Section 18930, the department shall adopt regulations for the installations and regulations which specify a standard form required to be used statewide by enforcement agencies as a certificate of occupancy or statement of installation acceptance. The department shall transmit a copy of the standard form to all enforcement agencies. An enforcement agency shall not be required to use the standard forms until their existing stock of forms for this purpose is depleted. The regulations adopted by the department pursuant to this section shall establish the requirements which the department determines are reasonably necessary for the protection of life and property and to carry out the purposes of this section. In adopting building regulations or adopting other regulations pursuant to this section, the department shall consider reassembly of the manufactured home or mobilehome, stabilizing devices and load-bearing supports, and utility connections and connectors.

“(f) The department shall establish a schedule of fees for the permits required by this section commensurate with the cost of the enforcement of this section and the regulations adopted pursuant to this section. Where a city, county, or city and county is responsible for the enforcement, the city, county, or city and county may establish a schedule of fees not to exceed the actual cost of enforcement and not to exceed those fees established by the department where the department is the enforcement agency. Permit fees and reinspection fees shall be paid to the enforcement agency by the permittee.

“(g) This section does not apply to recreational vehicles or commercial coaches.”

12. Regulations section 1018, related to required mobilehome permits, states:

“(a) No person shall erect, construct, reconstruct, install, replace, relocate or alter any building, structure, accessory building or structure, or building component; any electrical, mechanical, or plumbing equipment; any fuel gas equipment and installations, or fire protection equipment; or installations of, or within, a park, or a lot, or perform any non-load bearing grading or area fill with a depth of one (1) foot or greater, unless exempted from obtaining a grading permit pursuant to Appendix J of the California Building Code, without first obtaining a written construction permit from the enforcement agency.

“(b) No person shall create or change a lot line within a park without first obtaining a permit from the enforcement agency pursuant to the requirements of section 1105 of this chapter.

“(c) Any person issued a notice indicating violations pursuant to this section, shall obtain the required permit from the enforcement agency and provide the appropriate fees as prescribed in this article.

“(d) The enforcement agency shall not require a permit to construct for the following work, when the construction is performed in a workmanlike manner, does not present a hazard, and otherwise complies with the requirements of this chapter:

“(1) Minor maintenance and repair including the replacement of existing utility metering devices.

“(2) Previously installed portable air conditioning equipment reinstalled with the unit

“(3) The installation of a storage cabinet on a lot.

“(4) Construction or installation of a stairway having a landing not to exceed twelve (12) square feet.

“(5) A landing not more than twelve (12) square feet in area.

“(6) Construction or installation of a window or door awning.

“(7) Construction or installation of removable insect screening, flexible plastic or canvas type material used as an awning or as awning or carport enclosures.

“(8) Construction or installation of a retaining wall less than four (4) feet in height measured from the bottom of the footing to the top of the wall, unless it is supporting a surcharge load.

“(9) Construction or installation of a patio, as defined in section 1002(p)(3).

“(10) Fences not over six (6) feet high.

“(11) Canvas or cloth awnings provided they meet the setback and separation requirements for combustible materials contained in section 1428 of this Chapter.”

13. Regulations section 1324, subdivisions (a) and (b), relates to mobilehome installation permits and state:

“(a) A permit shall be obtained from the enforcement agency each time an MH-unit, is located or installed on any site for the purpose of human habitation or occupancy. Permits are not required to locate recreational vehicles in a park.

“(b) Requirements for applications and MH-unit installation permits are contained in Article 1.”

14. Regulations section 1326, subdivision (e), relates to mobilehome inspections and states:

“(e) The MH-unit shall not be occupied for human habitation prior to inspection and approval of the installation by the enforcement agency.”

15. Section 10176 states, in relevant part:

“The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

“(a) Making any substantial misrepresentation.

[¶] . . . [¶]

“(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

“(m) Violating any section, division, or article of law which provides that a violation of that section, division, or article of law by a licensed person is a violation of that person’s licensing law, if it occurs within the scope of that person’s duties as a licensee.”

16. Section 10177 states, in relevant part:

“The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation’s stock has done any of the following:

“[¶] . . . [¶]

“(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

[¶] . . . [¶]

“(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

“(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

“(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealing.”

Causes for Discipline

17. Complainant did not establish through clear and convincing evidence cause to discipline Respondents Nijjar and Kler’s real estate licenses pursuant to sections 10176, subdivisions (a), (i), and (m), and 10177, subdivisions (d), (g), (h), and (j), as set forth in factual finding 10.

18. Complainant did not establish through clear and convincing evidence cause to discipline Respondents NRI and Miller’s real estate licenses pursuant to sections 10176, subdivisions (a) and (i), and 10177, subdivision (j), as set forth in factual findings 2 through 9, and 11 through 13.

19. Cause exists to discipline Respondents NRI and Miller’s real estate licenses pursuant to sections 10176, subdivision (m), and 10177, subdivisions (d), (g), and (h), as set forth in factual findings 2 through 9, and 11 through 13.

20. All evidence in mitigation and rehabilitation has been considered, as described in factual findings 2 through 13. Respondents NRI and Miller did not take any responsibility for the unlicensed sale and unpermitted occupancy of mobilehomes at the Park. Aside from uncorroborated claims that Respondent NRI was no longer engaged in the management of the Park, no policies and procedures were presented by respondents to ensure that future violations of Real Estate Law by respondents and their employees and agents acting on their behalf would not be perpetrated to the detriment of the public. Revocation of licensure is therefore warranted based on Respondents NRI and Miller's failure to accept responsibility for their actions and lack of demonstrated commitment to ensure the safety of the public.

Costs

21. Section 10106 states, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before the Department, the Commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. The reasonable costs of investigation and enforcement of this matter are \$10,194.25, by reason of factual finding 14.

22. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to section 10106. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, as applied here, the Department must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Department must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the Department must consider are a respondent's ability to pay; and the Department may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. (*Zuckerman*, supra, at p. 45.)

23. In this case, Complainant settled with one of the seven original respondents against whom the Accusation was originally filed, Pama Management, Inc., and has dismissed two of the seven respondents, Michael Preet Nijjar and IE Rental Homes. Some, but not all, of the allegations of violation of Real Estate Law were established at hearing by Respondents NRI and Miller. Under the circumstances, it is reasonable to reduce Respondents NRI and Miller's obligation to repay the Department's costs by three-quarters, so that the remaining amount to be paid is \$2,548.56.

ORDER

1. The Accusation against respondent Mike Singh Nijjar is dismissed.

2. The Accusation against respondent Daljit Kaur Krel is dismissed.
3. Respondent Nijjar Realty Inc., doing business as Pama Management Company's, corporate real estate broker license, license number C/00699775, is revoked.
4. Respondent Everet Gordon Miller's real estate broker license, license number B/00405530, is revoked.
5. Respondents Nijjar Realty Inc., doing business as Pama Management Company and Everet Gordon Miller shall pay the Department \$2,548.56 in reimbursement of its reasonable costs within 90 days of the effective date of this decision.

DATED: December 28, 2018

DocuSigned by:
Irina Jentser
IRINA JENTSER
Administrative Law Judge
Office of Administrative Hearings