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FILED
SEP 07 2021
DEPT. OF REAL ESTATE
By *Zhi Jia*

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10 DEPARTMENT OF REAL ESTATE
11 STATE OF CALIFORNIA

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13 In the Matter of the Accusation of) No. H-42106 LA
14 KATHLEEN RENEE O'BRIEN) ACCUSATION
15 and)
16 BENNION & DEVILLE FINE)
17 HOMES, INC.)
18 Respondents.)
19)
20)

21 The Complainant, Veronica Kilpatrick, acting in her official capacity as a
22 Supervising Special Investigator of the State of California, for cause of Accusation against
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25 DRE Accusation against Kathleen Renee O'Brien and Bennion & Deville Fine Homes, Inc
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1 KATHELEN RENEE O'BRIEN and BENNION & DEVILLE FINE HOMES, INC. (collectively,
2 "Respondents"), is informed and alleges as follows:

3 1.

4 All references to the "Code" are to the California Business and Professions Code
5 and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

6 **DRE LICENSE HISTORY**

7 2.

8 **KATHLEEN RENEE O'BRIEN ("O'BRIEN")** is presently licensed and/or has
9 license rights under the Real Estate Law, Part 1 of Division 4 of the Code as a real estate
10 salesperson ("RES"), Department of Real Estate ("Department" or "DRE") license ID 01761721.

11 3.

12 According to DRE records to date, O'BRIEN was first licensed as a RES on or
13 about July 8, 2022.

14 4.

15 According to DRE records to date, O'BRIEN's RES license is affiliated with
16 responsible real estate broker ("REB") BENNION & DEVILLE FINE HOMES, INC. and will
17 expire on July 7, 2022.

18 5.

19 **BENNION & DEVILLE FINE HOMES, INC. ("BDFH")** is presently licensed
20 and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code as a real
21 estate corporation (broker) ("REC"), DRE license ID 01325548.

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1 6.

2 According to DRE records to date, BDFH was first licensed as a REC on or about
3 November 27, 2001, and real estate broker (“REB”) James Christopher Anderson (“Anderson”)
4 (DRE License ID 01400606, expiring March 12, 2022) is its designated officer (“D.O.”) of
5 record until his affiliation expires on April 11, 2025.

6 7.

7 According to DRE records to date, BDFH has affiliated with its REB license: 26
8 active DBAs, including Bennion Deville Homes, active as of November 24, 2015; twelve (12)
9 branch offices; 76 REB associates; and 488 RES.

10 8.

11 According to DRE records to date, BDFH’s license will expire on April 11, 2025.

12 **APPLICABLE SECTIONS OF THE REAL ESTATE LAW**

13 **False Advertising**

14 **(Code Section 10140)**

15 9.

16 Pursuant to Code Section 10140 *False Advertising*:

17 “Every officer, agent or employee of any company, and every other person who
18 knowingly authorizes, directs or aids in the publication, advertisement, distribution or
19 circularization of any false statement or representation concerning any land or subdivision
20 thereof, as defined in Chapter 1 (commencing at Section 11000) of Part 2 of this division, offered
21 for sale or lease, or, if the land is owned by the State or Federal Government, which such person
22 offers to assist another or others to file an application for the purchase or lease of, or to locate or
23 enter upon, and every person who, with knowledge that any advertisement, pamphlet, prospectus
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1 or letter concerning any said land or subdivision, as defined in Chapter 1 (commencing at Section
2 11000) of Part 2 of this division, contains any written statement that is false or fraudulent, issues,
3 circulates, publishes or distributes the same, or causes the same to be issued, circulated,
4 published or distributed, or who, in any other respect, willfully violates or fails to comply with
5 any of the provisions of this section, or who in any other respect willfully violates or fails, omits
6 or neglects to obey, observe or comply with any order, permit, decision, demand or requirement
7 of the commissioner under this section, is guilty of a public offense, and shall be punished by a
8 fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not
9 exceeding one year, or by both such fine and imprisonment, and, if a real estate licensee, he shall
10 be held to trial by the commissioner for a suspension or revocation of his license, as provided in
11 the provisions of this part relating to hearings. The district attorney of each county in this State
12 shall prosecute all violations of the provisions of this section in respective counties in which the
13 violations occur.”

14 10.

15 **False or Fictitious Business Name**

16 **(Code Section 10159.5 and Regulation 2731)**

17 Pursuant to Code Section 10159.5(a)(1) *Fictitious Name*:

18 “Every person applying for a license under this chapter who desires to have the
19 license issued under a fictitious business name shall file with his or her application a certified
20 copy of his or her fictitious business name statement filed with the county clerk pursuant to
21 Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.”

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1 11.

2 Pursuant to Regulation 2731(a) *Use of False or Fictitious Name:*

3 "A licensee shall not use a fictitious name in the conduct of any activity for which
4 a license is required under the Real Estate Law unless the licensee is the holder of a license
5 bearing the fictitious business name."

6 12.

7 **Grounds for Revocation or Suspension**

8 **(Code Section 10176 (selected portions))**

9 Pursuant to Code Section 10176 *Grounds for Revocation or Suspension:*

10
11 "The commissioner may, upon his or her own motion, and shall, upon the verified
12 complaint in writing of any person, investigate the actions of any person engaged in the business
13 or acting in the capacity of a real estate licensee within this state, and he or she may temporarily
14 suspend or permanently revoke a real estate licensee at any time where the licensee, while a real
15 estate licensee, in performing or attempting to perform any of the acts within the scope of this
16 chapter has been guilty of any of the following:

17 (a) Making any substantial misrepresentation...

18 (b) Making any false promise of a character likely to influence, persuade, or
19 induce..."

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Further Grounds for Disciplinary Action

(Code Section 10177 (selected portions))

Pursuant to Code Section 10177 *Further Grounds for Disciplinary Action*:

“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:

...

(c) Knowingly authorized, directed, connived at, or aided in the publication, advertisement, distribution, or circulation of a material false statement or representation concerning their designation or certification of special education, credential, trade organization membership, or business, or concerning a business opportunity or a land or subdivision, as defined in Chapter 1 (commencing with Section 11000) of Part 2, offered for sale.

(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 that licensee’s salespersons, or, as the officer designated by a corporate broker

1 licensee, failed to exercise reasonable supervision and control of the activities of the corporation
2 for which a real estate license is required...”

3 **FACTS DISCOVERED BY THE DRE**

4 14.

5 **3/4/21 Anonymous Online Complaint to the DRE**

6 On or about March 4, 2021, the DRE received an anonymous online complaint
7 regarding O’BRIEN. Specifically, the March 4, 2021 complaint indicated that, “Kathleen
8 O’Brien regularly advertises that she has sold properties that she has not” and provided both
9 printouts and internet links to O’BRIEN’s advertisement in the November-December 2020 and
10 January-February 2021 editions of the Palm Desert County Club Association (“PDCCA”)
11 Newsletter at: http://pdcca.com/pdfs/PDCCA_JanFeb21_web.pdf and
12 http://pdcca.com/pdfs/PDCCA_NovDec20.pdf.

13 15.

14 **“I Need More Listings, Sold All Mine!” Advertisements**

15 Both editions of the PDCCA Newsletter that were provided in the anonymous
16 complaint included an advertisement for “Kathleen Sunshine O’Brien & Associates,” identified
17 as “DRE #01761721 | 01325548” and indicated, “I need more listings, sold all mine!” The
18 O’BRIEN advertisement that appeared in both editions also included identical lists of twenty-six
19 (26) property addresses described as “Some of the properties I sold in 2020:” [numeric references
20 added]

- 21 (1) 42985 Texas Avenue;
22 (2) 43765 Elkhorn Trail;
23 (3) 42825 Warner Trail;

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- (4) 42755 Warner Trail;
- (5) 76925 California Drive;
- (6) 42465 Tennessee Avenue;
- (7) 43390 Virginia Avenue;
- (8) 43760 Elkhorn Trail;
- (9) 43605 Warner Trail;
- (10) 76995 Oklahoma Avenue;
- (11) 77040 Utah Circle;
- (12) 43505 Texas Avenue;
- (13) 76974 California Drive;
- (14) 76586 New York Avenue;
- (15) 42925 Texas;
- (16) 77065 New York Avenue;
- (17) 77020 New York Avenue;
- (18) 77700 Missouri Drive;
- (19) 76763 Oklahoma Avenue;
- (20) 43380 Illinois Avenue [sic];
- (21) 77760 Missouri Drive;
- (22) 76696 Florida Avenue;
- (23) 42430 Tennessee Avenue;
- (24) 42945 Texas Avenue;
- (25) 43420 Alabama Street; and
- (26) 77594 Missouri Drive.

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1 16.

2 4/8/21 DRE Letter to BDFH

3 On or about April 8, 2021, the DRE's Special Investigator sent a letter to
4 O'BRIEN's REB of record, BDFH, and requested copies of the following:

- 5 A. listing agreements for all properties listed in O'BRIEN's advertisements in the
6 PDCCA November-December 2020 and January-February 2021 newsletters;
7 B. O'BRIEN's three (3) most recent closed sales transaction files;
8 C. Multiple Listing Service ("MLS") printout(s) for the noted properties;
9 D. Current advertising materials; and
10 E. REB-sales agreement for O'BRIEN.

11 17.

12 4/21/21 BDFH Letter to DRE

13 On or about April 21, 2021, Anderson, on behalf of BDFH responded to the
14 DRE's April 8, 2021 request for information and in his cover letter, indicated that O'BRIEN
15 admitted to him that she "may have approved a proof designed by our [BDFH's] marketing
16 department without fully scrutinizing it."

17 18.

18 6/28/21 DRE Subpoena Duces Tecum to Palm Springs Regional Association of Realtors

19 On or about June 28, 2021, the DRE served a *subpoena duces tecum* ("SDT") on
20 the Palm Springs Regional Association of Realtors ("PSRAR") and commanded that PSRAR
21 produce to the DRE for copying and inspection its records, papers, books, accounts and
22 documents in its possession or under its control all MLS listings from January 1, 2020 to
23 December 31, 2020 for the twenty-six (26) properties described in O'BRIEN's PDCCA
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1 advertisement as "Some of the properties I sold in 2020" (see paragraph 21, above).

2 19.

3 7/12/21 PSRAR Response to DRE Subpoena Duces Tecum

4 On or about July 12, 2021, the PSRAR to the DRE its responsive records to the
5 June 28, 2021 SDT. According to the MLS listings produced by PSRAR for the period January
6 1, 2020 to December 31, 2020, of the twenty-six (26) properties described in O'BRIEN's
7 PDCCA advertisement as "Some of the properties I sold in 2020" (see paragraph 21, above), the
8 following five (5) properties were the only properties for which O'BRIEN was identified as the
9 listing agent ("LA") or the selling agent ("SA") per the MLS listing:

- 10 A. 42465 Tennessee Avenue (O'BRIEN/Bennion Deville Homes was the SA);
- 11 B. 43605 Warner Trail (O'BRIEN/Bennion Deville Homes was the LA);
- 12 C. 43505 Texas Avenue (O'BRIEN/Bennion Deville Homes was the LA);
- 13 D. 76974 California Drive (O'BRIEN/Bennion Deville Homes was the LA); and
- 14 E. 42925 Texas Avenue (O'BRIEN/Bennion Deville Homes was the LA and the
15 SA).

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1 **VIOLATIONS OF THE REAL ESTATE LAW - CAUSES FOR DISCIPLINE**

2 20.

3 Complainant re-alleges and incorporates by reference the preceding paragraphs as
4 set forth herein.

5
6 **First Cause for Discipline: O'BRIEN and BDFH**

7 **Violation of Code Section 10140 – False Advertising**

8 21.

9 In the course of the activities described above, and based on the facts discovered
10 by the Department, also described above, **RES KATHLEEN RENEE O'BRIEN** and **REC**
11 **BENNION & DEVILLE FINE HOMES, INC** knowingly authorized, directed or aided in the
12 publication, advertisement, distribution or circularization of false written statements or
13 representations concerning property offered for sale or lease, in violation of **Code Section 10140**.
14 Said violation constitutes cause for the suspension or revocation of all licenses and license rights
15 of respondents O'BRIEN and BDFH under the Real Estate Law.

16 **Second Cause for Discipline: O'BRIEN and BDFH**

17 **Violation of Code Section 10176(a) – Substantial Misrepresentation**

18 22.

19 In the course of the activities described above, and based on the facts discovered
20 by the Department, also described above, **RES KATHLEEN RENEE O'BRIEN** and **REC**
21 **BENNION & DEVILLE FINE HOMES, INC** substantially misrepresented to the subscribers
22 of the PDCCA newsletter by way of advertisement that O'BRIEN sold at twenty-six (26)
23 properties in calendar year 2020, when in fact she was the listing agent or selling agent on five
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1 (5) properties, in violation of **Code Section 10176(a)**. Said violation constitutes cause for the
2 suspension or revocation of all licenses and license rights of respondents O'BRIEN and BDFH
3 under the Real Estate Law.

4 **Third Cause for Discipline: O'BRIEN and BDFH**

5 **Violation of Code Section 10177(c) – Material False Statement or Representation**

6 23.

7 In the course of the activities described above, and based on the facts discovered
8 by the Department, also described above, **RES KATHLEEN RENEE O'BRIEN** and **REC**
9 **BENNION & DEVILLE FINE HOMES, INC** knowingly authorized, directed, connived at, or
10 aided in the publication, advertisement, distribution, or circulation of a material false statement
11 or representation concerning their business, in violation of **Code Section 10176(c)**. Said
12 violation constitutes cause for the suspension or revocation of all licenses and license rights of
13 respondents O'BRIEN and BDFH under the Real Estate Law.

14 **Fourth Cause for Discipline: O'BRIEN and BDFH**

15 **Violation of Code Section 10177(g) – Negligence**

16 24.

17 In the course of the activities described above, and based on the facts discovered
18 by the Department, also described above, **RES KATHLEEN RENEE O'BRIEN** and **REC**
19 **BENNION & DEVILLE FINE HOMES, INC** demonstrated negligence in knowingly
20 misrepresenting their business in advertisements concerning their business, in violation of **Code**
21 **Section 10177(g)**. Said violation constitutes cause for the suspension or revocation of all
22 licenses and license rights of respondents O'BRIEN and BDFH under the Real Estate Law.

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1 **Fifth Cause for Discipline: O'BRIEN**

2 **Violation of Code Section 10159.5 – Fictitious Business Name**

3 25.

4 In the course of the activities described above, and based on the facts discovered
5 by the Department, also described above, **RES KATHLEEN RENEE O'BRIEN** used the
6 fictitious business name ("FBN") "Kathleen Sunshine O'Brien & Associates" to advertise
7 licensed real estate activities when she was not the holder of a DRE license bearing said FBN, in
8 violation of **Code Section 10159.5**. Said violation constitutes cause for the suspension or
9 revocation of all licenses and license rights of respondent O'BRIEN under the Real Estate Law.

10 **COSTS**

11 26.

12 **Code Section 10106** provides, in pertinent part that in any order issued in
13 resolution of a disciplinary proceeding before the Department, the Commissioner may request the
14 administrative law judge to direct a licensee found to have committed a violation of this part to
15 pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

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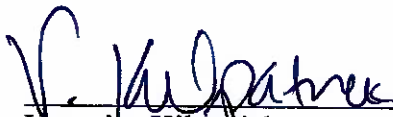
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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all the licenses and license rights of Respondents **KATHLEEN RENEE**
4 **O'BRIEN and BENNION & DEVILLE FINE HOMES, INC** under the Real Estate Law (Part
5 1 of Division 4 of the Business and Professions Code), and for such other and further relief as
6 may be proper under other applicable provisions of law.

7 Dated at San Diego, California

8 this 31 day of August 2021.

9
10
11 
12 Veronica Kilpatrick
13 Supervising Special Investigator
14

15 cc: Kathleen Renee O'Brien
16 Bennion & Deville Fine Homes, Inc (D.O. James Christopher Anderson)
17 Veronica Kilpatrick
18 Sacramento D.O.
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