FLAG

Department of Real Estate
320 W. 4TH Street, Suite 350
Los Angeles, CA 90013-1105

Telephone: (213) 576-6982

FILED

FEB 14 2011

DEPARTMENT OF REAL ESTATE
BY: _____

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of FUTURA FINANCIAL INC.; and SCOTT WILLIAM WILSON; individually and as designated officer Futura Financial Inc., Respondents.	No. H-36681 LA L-2010070696 STIPULATION AND AGREEMENT

It is hereby stipulated by and between Respondents FUTURA FINANCIAL INC. and SCOTT WILLIAM WILSON, (sometimes referred to as "Respondents"), represented by Michael A. Lanphere, Esq., and the Complainant, acting by and through Julie L. To, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation (Accusation) filed on June 15, 2010, in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing was to be

held in accordance with the provisions of the Administrative Procedure Act ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement ("Stipulation").

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

3. Respondents timely filed a Notice of Defense pursuant to Section 11506 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents acknowledge that they understand that by withdrawing said Notice of Defense they thereby waive their right to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that they will waive other rights afforded to them in connection with the hearing such as the right to present evidence in their defense the right to cross-examine witnesses.

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

not be required to provide further evidence to prove said factual allegations.

5. This Stipulation is made for the purpose of reaching an agreed disposition of this proceeding and is expressly limited to this proceeding and any other proceeding or case in which the Department of Real Estate ("Department"), the state or federal government, or any agency of this state, another state or federal government is involved, and otherwise shall not be admissible in any other criminal or civil proceedings.

6. It is understood by the parties that the Real Estate Commissioner may adopt this Stipulation as his Decision in this matter thereby imposing the penalty and sanctions on Respondents' real estate licenses and license rights as set forth in the "Order" herein below. In the event that the Commissioner in his discretion does not adopt the Stipulation, it shall be void and of no effect and Respondents shall retain the right to a hearing and proceeding on the Accusation under the provisions of the APA and shall not be bound by any stipulation or waiver made herein.

7. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department of Real Estate with respect to any matters which were not specifically alleged to be causes for Accusation in this proceeding but do constitute a bar, estoppel and merger as to any allegations actually contained in the Accusations against Respondents herein.

8. Respondents understand that by agreeing to this Stipulation, Respondents agree to pay, pursuant to Business and Professions Code Section 10148, the cost of original audit (LA 090025 (Futura Financial Inc.) which led to this disciplinary action. The amount of said cost for the audit is $2,846.95.

9. Respondents have received, read, and understand the "Notice Concerning Costs of Subsequent Audit". Respondents further understand that by agreeing to this Stipulation, the findings set forth below in the Determination of Issues become final, and the Commissioner may charge Respondents for the cost of any subsequent audit conducted pursuant to Business and Professions Code Section 10148 to determine if the violations have been corrected. The maximum cost of the follow-up audit will not exceed $2,846.95.

DETERMINATION OF ISSUES

By reason of the foregoing, it is stipulated and agreed that the following determination of issues shall be made:

I.

The conduct of FUTURA FINANCIAL INC. and SCOTT WILLIAM WILSON, as described in Paragraph 4, above, are in violation of Section 10145 of the Business and Professions Code ("Code") and Section 2832 of Title 10, Chapter 6 of the California Code of Regulations ("Regulations") and is a basis for discipline of Respondent's licenses and license rights as a violation of the Real Estate Law pursuant to Code Section 10177(d).

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II.

The conduct, acts or omissions of SCOTT WILLIAM WILSON, as described in Paragraph 4, above, are in violation of Code Section 10159.2 and is a basis for discipline of Respondent's license and license rights as violation of the Real Estate Law pursuant to Code Section 10177(h).

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

The license and licensing rights of Respondents FUTURA FINANCIAL INC. and SCOTT WILLIAM WILSON, under the Real Estate Law, are suspended for a period of sixty (60) days from the effective date of this Decision.

A. Provided, however, that if Respondents request, the initial thirty (30) days of said suspension (or a portion thereof) shall be stayed for two (2) years upon condition that:

1. Each Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of $66.66 per day for each day of the suspension for a monetary penalty of $2,000 each, or $4,000 total.

2. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.

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3. No further cause for disciplinary action against the real estate license of Respondents occur within two (2) years from the effective date of the Decision in this matter.

4. If Respondents fail to pay the monetary penalty in accordance with the terms of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension, in which event Respondents shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

5. If Respondents pay the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondents occurs within two (2) years from the effective date of the Decision, the stay hereby granted shall become permanent.

B. The remaining thirty (30) days of the sixty (60) day suspension shall be stayed for two (2) years upon the following terms and conditions:

1. Respondents shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

2. That no final subsequent determination be made after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years from the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed

suspension. Should no such determination be made, the stay imposed herein shall become permanent.

II.

Pursuant to Section 10148 of the Business and Professions Code, Respondents shall pay the Commissioner's reasonable cost for (a) the audit which led to this disciplinary action (b) a subsequent audit to determine if Respondents are now in compliance with the Real Estate Law. The cost of the original and subsequent audits which led to this disciplinary action is $2,846.95. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Said amount for the prior and subsequent audits shall not exceed $5,693.90.

Respondents shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities.

The Commissioner may suspend the license of Respondents pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondents enter into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is

adopted following a hearing held pursuant to this condition.

III.

All licenses and licensing rights of Respondent SCOTT WILLIAM WILSON, are indefinitely suspended unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that Respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision.

IV.

Respondent SCOTT WILLIAM WILSON shall, within nine (9) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of Respondent's license until Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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V.

Respondent SCOTT WILLIAM WILSON shall within six (6) months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

VI.

Respondent SCOTT WILLIAM WILSON shall, prior to the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has refunded to borrowers Apama Sarkar ($300.00), Christopher Michailov ($60.00), and Maria/Louis Quiroz ($24.97) totaling $384.97. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of Respondent's license until Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: 01-25-11

JULIE L. TO, Counsel for
the Department of Real Estate

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EXECUTION OF THE STIPULATION

We have read the Stipulation and Agreement and discussed it with our attorney. Its terms are understood by us and are agreeable and acceptable to us. We understand that we are waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and we willingly, intelligently and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which we would have the right to cross-examine witnesses against us and to present evidence in defense and mitigation of the charges.

Respondents (1) shall mail the original signed signature page of the stipulation herein to Julie L. To: Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Suite 350, Los Angeles, California 90013-1105. Additionally, Respondents (2) shall also facsimile or PDF a copy of signed signature page, to the Department at the following fax number: (213) 576-6917, Attention: Julie L. To.

A facsimile or PDF constitutes acceptance and approval of the terms and conditions of this stipulation. Respondents agree, acknowledge and understand that by electronically sending to the Department a facsimile or PDF copy of Respondents' actual signature as it appears on the stipulation that receipt of the

facsimile or PDF copy by the Department shall be as binding on Respondents as if the Department had received the original signed stipulation.

DATED: 1/19/11

FUTURA FINANCIAL INC.
BY: SCOTT WILLIAM WILSON,
President of Futura Financial Inc.,
Respondent

DATED: 1/19/11

SCOTT WILLIAM WILSON, Respondent

DATED: 1/20/11

MICHAEL A. LANPHERE, ESQ.
Attorney for Respondent Futura
Financial Inc.
Approved as to form

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The foregoing Stipulation and Agreement is hereby adopted as my Decision as to Respondents FUTURA FINANCIAL INC. and SCOTT WILLIAM WILSON, and shall become effective at 12 o'clock noon on MAR 1 6 2011, 2011.

IT IS SO ORDERED 2/9, 2011.

JEFF DAVI
Real Estate Commissioner

BY: Barbara J. Bigby
Chief Deputy Commissioner

SECTION 10148
CALIFORNIA BUSINESS AND PROFESSIONS CODE

10148. (a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature.

(b) The commissioner shall charge a real estate broker for the cost of any audit, if the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145.

(c) If a broker fails to pay for the cost of an audit as described in subdivision (b) within 60 days of mailing a notice of billing, the commissioner may suspend or revoke the broker's license or deny renewal of the broker's license. The suspension or denial shall remain in effect until the cost is paid or until the broker's right to renew a license has expired.

The commissioner may maintain an action for the recovery of the cost in any court of competent jurisdiction. In determining the cost incurred by the commissioner for an audit, the commissioner may use the estimated average hourly cost for all persons performing audits of real estate brokers.

JULIE L. TO, SBN 219482
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FILED
JUN 15 2010
DEPARTMENT OF REAL ESTATE
BY:

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of FUTURA FINANCIAL INC.; and SCOTT WILLIAM WILSON, individually and as designated officer of Futura Financial Inc., Respondents.	No. H-36681 LA A C C U S A T I O N

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against FUTURA FINANCIAL INC. and SCOTT WILLIAM WILSON, individually and as designated officer of Futura Financial Inc., alleges as follows:

1.

The Complainant, Maria Suarez, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against FUTURA FINANCIAL INC. ("FFI") and SCOTT WILLIAM WILSON ("WILSON") .

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2.

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

Licensing

3.

A. At all times mentioned, FFI and WILSON were licensed or had license rights issued by the Department of Real Estate ("Department") as real estate brokers.

B. At all times material herein, FFI was licensed by the Department as a corporate real estate broker by and through WILSON, pursuant to Code Sections 10211 and 10159.2 for supervising the activities requiring a real estate license conducted on behalf of FFI.

Brokerage

4.

At all times mentioned, in El Monte, County of Los Angeles, FFI and WILSON acted as real estate brokers and conducted licensed activities within the meaning of:

Code Section 10131(d). Respondents operated a mortgage and loan brokerage engaging in activities with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed and consummated on behalf of others for compensation or in expectation of compensation and for

fees often collected in advance as well as at the conclusion of transactions.

Audit

5.

On November 30, 2009, the Department completed an audit examination of the books and records of FFI pertaining to the mortgage and loan activities described in Paragraph 4 that require a real estate license. The audit examination covered a period of time beginning on September 1, 2006 to August 31, 2009. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 090025 and the exhibits and work papers attached to said audit report.

Trust Account

6.

A trust account was not maintained during the audit period.

Audit Violations

7.

In the course of activities described in Paragraph 4 above, and during the examination period described in Paragraph 5, Respondents FFI and WILSON, acted in violation of the Code and the Regulations in that Respondents:

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(a) Failed to maintain a control record in the form of a columnar record in chronological order of all "Trust Funds Received, Not Placed Broker's Trust Account", in violation of Code Section 10145 and Regulation 2831. Respondents did not maintain a columnar record for transactions where credit report fees and appraisal fees were collected at the close of escrow.

(b) Failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, in violation of Code Section 10145 and Regulation 2831.1. Respondents did not maintain a columnar record for transactions where credit report fees and appraisal fees were collected at the close of escrow.

(c) Permitted and/or caused the disbursement of trust funds to credit report companies on the representation that these amounts were needed to pay for credit report fees and appraisal fees, which payments exceeded the actual costs of these services. Respondents did not disclose these "mark-ups" to borrower-beneficiaries Aparna Sarkar, Christopher Michailov and Maria/Louis Quiroz of said trust funds, and did not obtain their consent to these "mark-ups". Respondents retained the difference between the amounts paid and the actual costs of the services, in violation of Code Section 10176(g).

(d) Mixed and commingled trust funds and personal funds by depositing credit report fees and appraisal fees received from escrow into FFI's general operating account and issuing checks from said account to the appraisers or credit companies after the escrow checks were deposited, in violation of Code Sections 10145

and 10176(e) and Regulation 2832.

(e)(1) Failed to retain a true and correct copy of a Department of Real Estate approved Mortgage Loan Disclosure Statement signed by the broker for borrowers William Moreno, Jose/Ana Bravo, Aparna Sarkar, Christopher Michailov and Maria/Louis Quiroz, in violation of Code Section 10240(a).

(e)(2) Failed to disclose (1) anticipated liens on the subject property nor disclose the (2) yield spread premiums from lenders on the approved Mortgage Loan Disclosure Statement for the aforesaid borrowers, in violation of Code Section 10240(a) and Regulation 2840.

(e)(3) Failed to provide or retain a true and correct copy of a Good Faith Estimate that satisfies the requirements of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.A 2601 et seq.), that (1) the Good Faith Estimate does not constitute a loan commitment; and, further sets forth all applicable disclosures including but not limited to (2) yield spread premiums rebates by the lenders outside of closing for borrowers William Moreno, Jose/Ana Bravo and Barbara Leon, in violation of Code Section 10240(c).

(f) Failed to display FFI's and the loan agents license numbers, Department's telephone number on the William Moreno, Jose/Ana Bravo, Aparna Sarkar, Christopher Michailov and Maria/Louis Quiroz Mortgage Loan Disclosure Statements, in violation of Code Section 10236.4.

(g) Used the fictitious name of "FFI", to conduct licensed activities including a loan modification and advanced

fee brokerage, without first obtaining from the Department a license bearing said fictitious business name, in violation of Code Section 10159.5 and Regulation 2731.

Disciplinary Statues

8.

The conduct of Respondents FFI and WILSON described in Paragraph 7, above, violated the Code and the Regulations below:

PARAGRAPH	PROVISIONS VIOLATED
7(a)	Code Section 10145 and Regulation 2831
7(b)	Code Section 10145 and Regulation 2831.1
7(c)	Code Section 10176(g)
7(d)	Code Section 10145 and 10176(e) and Regulations 2832
7(e)	Code Sections 10240 and 10240(a) and Regulation 2840
7(f)	Code Section 10236.4

7(g) Code Section 10159.5 and Regulation 2731

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of FFI and WILSON, under the provisions of Code Sections 10176(e), 10176(g), 10177(d) and/or 10177(g).

Negligence

9.

The overall conduct of Respondents FFI and WILSON constitutes negligence or incompetence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of Respondents FFI and WILSON pursuant to Code Section 10177(g).

Broker Supervision

10.

The overall conduct of Respondent WILSON constitutes a failure on Respondent's part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of FFI in violation of Code Section 10159.2, and to keep FFI in compliance with the Real Estate Law, and is cause for the suspension or revocation of the real estate license and license rights of WILSON pursuant to the provisions of Code Sections 10177(d), 10177(g) and/or 10177(h).

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of Respondents FUTURA FINANCIAL INC. and SCOTT WILLIAM WILSON, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this June 3, 2010.

Deputy Real Estate Commissioner

cc: Futura Financial Inc.
Maria Suarez
Sacto
Audits - Isabel Beltran