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Dept. of Real Estate

MAR 18 2002

Accounting #

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MAY - 1 2002

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

DEPARTMENT OF REAL ESTATE

Laurie G. Zosi

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-2538 SD
	)	
ROBERT MONTGOMERY,	)	OAH No. L-2000010466
STEVEN WILLIAM BROWN,	)	
GATEWAY PACIFIC CAPITAL AND	)	<u>STIPULATION AND AGREEMENT</u>
REALTY GROUP, INC.,	)	
DONN K. HARMS,	)	
TIMOTHY THOMAS TENBROOK,	)	
DANIEL ANTHONY TACON,	)	
	)	
Respondents.	)	

It is hereby stipulated by and between DONN K. HARMS (hereinafter "Respondent HARMS") and his attorney Mark Del Moral and Complainant, acting by and through David A. Peters, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on November 18, 1999 in this matter. This Stipulation and Agreement relates to Respondent HARMS only.

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

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1 to be held in accordance with the provisions of the
2 administrative Procedure Act (APA) (Government Code Section
3 11500 et seq.), shall instead and in place thereof be submitted
4 solely on the basis of the provisions of this Stipulation and
5 Agreement.

6 2. Respondent HARMS has received, read and
7 understands the Statement to Respondent, the Discovery
8 Provisions of the APA, and the Accusation filed by the
9 Department of Real Estate in this proceeding.

10 3. On January 6, 2000, Respondent HARMS filed his
11 Notice of Defense pursuant to Section 11505 of the Government
12 Code for the purpose of requesting a hearing on the allegations
13 of the Accusation. Respondent HARMS freely and voluntarily
14 withdraws his Notice of Defense. Respondent HARMS acknowledges
15 that by withdrawing said Notice of Defense he will thereby waive
16 the right to require the Commissioner to prove the allegations
17 in the Accusation at a contested hearing held in accordance with
18 the provisions of the APA and that he will waive other rights
19 afforded to him in connection with the hearing such as the right
20 to present evidence in defense of the allegations in the
21 Accusation and the right to cross-examine witnesses.

22 4. This stipulation is based on the factual
23 allegations contained in the Accusation. In the interests of
24 expedience and economy, Respondent HARMS chooses not to contest
25 these allegations, but to remain silent and understands that, as
26 a result thereof, these factual allegations, without being
27 admitted or denied, will serve as prima facia basis for the

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1 disciplinary action stipulated to herein. The Real Estate
2 Commissioner shall not be required to provide further evidence
3 to prove said factual allegations.

4 5. It is understood by the parties that the Real
5 Estate Commissioner may adopt the Stipulation and Agreement as
6 her Decision in this matter, thereby imposing the penalty and
7 sanctions on Respondent HARMS real estate license and license
8 rights as set forth in the below "Order". In the event that the
9 Commissioner in her discretion does not adopt the Stipulation
10 and Agreement, it shall be void and of no effect, and Respondent
11 HARMS shall retain the right to a hearing and proceeding on the
12 Accusation under all the provisions of the APA and shall not be
13 bound by any admission or waiver made herein.

14 6. The Order or any subsequent Order of the Real
15 Estate Commissioner made pursuant to this Stipulation and
16 Agreement shall not constitute an estoppel, merger or bar to any
17 further administrative or civil proceedings by the Department of
18 Real Estate with respect to any matters which were not
19 specifically alleged to be causes for accusation in this
20 proceeding.

DETERMINATION OF ISSUES

22 By reason of the foregoing stipulations, admissions
23 and waivers, and solely for the purpose of settlement of the
24 pending Accusation without a hearing, it is stipulated and
25 agreed that the following determination of issues shall be made:

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The conduct of Respondent HARMS as described in the Accusation, constitutes cause for the suspension or revocation of the real estate license and license rights of Respondent HARMS under the provisions of Section 10177(d) of the of the Business and Professions Code in conjunction with Section 10148 of the Business and Professions Code.

ORDER

A. All licenses and licensing rights of Respondent HARMS under the Real Estate Law are suspended for a period of ninety (90) days from the effective date of this Decision; provided, however, that all ninety (90) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

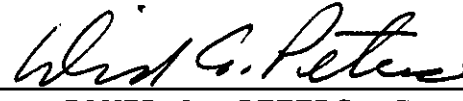
1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and
2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years of the effective date of this Decision. Should such a determination be made, the Commissioner in her discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no

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such determination be made, the ~~may~~ imposed
herein shall become permanent.

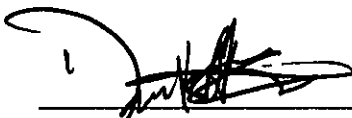
4/10/02
DATED


DAVID A. PETERS, Counsel
DEPARTMENT OF REAL ESTATE

* * *

I have read the Stipulation and Agreement, have discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am 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 I 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 I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

3-15-02
DATED


DONNY K. HARMS
Respondent

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

3-15-02
DATED


MARK DEL MORAL
Attorney for Respondent

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2 The foregoing Stipulation and Agreement for
3 Settlement is hereby adopted by the Real Estate Commissioner as
4 her Decision and Order and shall become effective at 12 o'clock
5 noon on MAY 22 , 2002.

6 IT IS SO ORDERED April 17, 2002.

7 PAULA REDDISH ZINNEBANN
8 Real Estate Commissioner

9 *Paula Reddish Zinnemann*
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FILED

MAY - 1 2002

DEPARTMENT OF REAL ESTATE

Laurie A. Zain

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

No. H-2538 SD

ROBERT MONTGOMERY,)
STEVEN WILLIAM BROWN,)
GATEWAY PACIFIC CAPITAL AND)
REALTY GROUP, INC.,)
DONN K. HARMS,)
TIMOTHY THOMAS TENBROOK,)
DANIEL ANTHONY TACON,)

Respondents.)

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On November 18, 1999, an Accusation was filed in this matter against Respondents.

On March 15, 2002, Respondent GATEWAY PACIFIC CAPITAL AND REALTY GROUP, INC. only petitioned the Commissioner to voluntarily surrender its real estate corporation license pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent GATEWAY PACIFIC CAPITAL AND REALTY GROUP, INC.'s petition for voluntary surrender of its real estate corporation license is accepted as

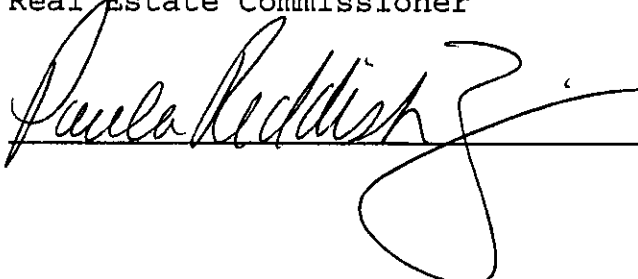
1 of the effective date of this Order as set forth below, based
2 upon the understanding and agreement expressed in Respondent
3 GATEWAY PACIFIC CAPITAL AND REALTY GROUP, INC.'s Declaration
4 dated March 15, 2002 (attached as Exhibit "A" hereto).

5 Respondent GATEWAY PACIFIC CAPITAL AND REALTY GROUP,
6 INC.'s license certificate and pocket card shall be sent to the
7 below-listed address so that they reach the Department on or
8 before the effective date of this Order:

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

13 This Order shall become effective at 12 o'clock
14 noon on MAY 22, 2002.

15 DATED: April 17, 2002

16 PAULA REDDISH ZINNEMANN
17 Real Estate Commissioner
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Accounting #1

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Business and Professions Code) GATEWAY PACIFIC CAPITAL AND REALTY GROUP, INC. wishes to voluntarily surrender its real estate license issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

I understand that GATEWAY PACIFIC CAPITAL AND REALTY GROUP, INC., by so voluntarily surrendering its license, can only have it reinstated in accordance with the provisions of Section 11522 of the Government Code. I also understand that by so voluntarily surrendering its license, GATEWAY PACIFIC CAPITAL AND REALTY GROUP, INC. agrees to the following:

The filing of this Declaration shall be deemed as its petition for voluntary surrender. It shall also be deemed to be an understanding and agreement by GATEWAY PACIFIC CAPITAL AND REALTY GROUP, INC. that, it waives all rights it has to require the Commissioner to prove the allegations contained in the Accusation filed in this matter at a hearing held in accordance with the provisions of the Administrative Procedure Act (Government Code Sections 1400 et seq.), and that it also waives other rights afforded to it in connection with the hearing such as the right to discovery, the right to present evidence in defense of the allegations in the Accusation and the right to cross examine witnesses. I further agree on behalf of GATEWAY PACIFIC CAPITAL AND REALTY GROUP, INC. that upon acceptance by the Commissioner, as evidenced by an appropriate order, all

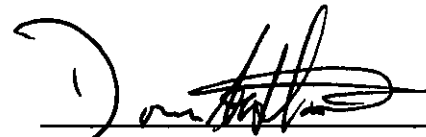
MAR 18 2002

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1 affidavits and all relevant evidence obtained by the Department
2 in this matter prior to the Commissioner's acceptance, and all
3 allegations contained in the Accusation filed in the Department
4 Case No. H-2538 SD, may be considered by the Department to be
5 true and correct for the purpose of deciding whether or not to
6 grant reinstatement of GATEWAY PACIFIC CAPITAL AND REALTY GROUP,
7 INC.'s license pursuant to Government Code Section 11522.

8 I declare under penalty of perjury under the laws of
9 the State of California that the above is true and correct and
10 that I am acting freely and voluntarily on behalf of GATEWAY
11 PACIFIC CAPITAL AND REALTY GROUP, INC. to surrender its license
12 and all license rights attached thereto.

13 DATED: 3-15-02

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16 GATEWAY PACIFIC CAPITAL AND
17 REALTY GROUP, INC., Respondent
18 BY: DONN K. HARMS
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FILED

MAY - 1 2002

DEPARTMENT OF REAL ESTATE

By Laurie L. Zain

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

No. H-2538 SD

ROBERT MONTGOMERY,
STEVEN WILLIAM BROWN,
GATEWAY PACIFIC CAPITAL AND
REALTY GROUP, INC.,
DONN K. HARMS,
TIMOTHY THOMAS TENBROOK,
DANIEL ANTHONY TACON,

Respondents.

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On November 18, 1999, an Accusation was filed in this matter against Respondents.

On March 5, 2002, Respondent TIMOTHY THOMAS TENBROOK only petitioned the Commissioner to voluntarily surrender his real estate broker license pursuant to Section 10100.2 of the Business and Professions Code.

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1 IT IS HEREBY ORDERED that Respondent's petition for
2 voluntary surrender of his real estate broker license is
3 accepted as of the effective date of this Order as set forth
4 below, based upon the understanding and agreement expressed in
5 Respondent's Declaration dated March 5, 2002 (attached as
6 Exhibit "A" hereto).

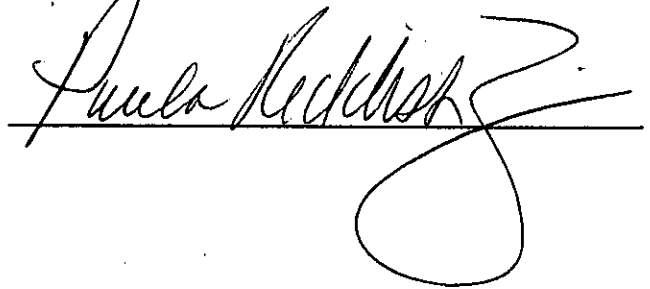
7 Respondent's license certificate and pocket card shall
8 be sent to the below-listed address so that they reach the
9 Department on or before the effective date of this Order:

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

13 This Order shall become effective at 12 o'clock.
14 noon on MAY 22, 2002

15 DATED: April 17, 2002

16 PAULA REDDISH ZINNEMANN
17 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) No. H-2538 SD
)
ROBERT MONTGOMERY,)
STEVEN WILLIAM BROWN,)
GATEWAY PACIFIC CAPITAL AND)
REALTY GROUP, INC.,)
DONN K. HARMS,)
TIMOTHY THOMAS TENBROOK,)
DANIEL ANTHONY TACON,)
Respondents.)

DECLARATION

My name is TIMOTHY THOMAS TENBROOK and that I am currently licensed as a real estate broker and/or have license rights with respect to said license. I am represented by Peter J. Hughes, Attorney at Law, in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Business and Professions Code), I wish to voluntarily surrender my real estate license issued by the

///



1 Department of Real Estate ("Department"), pursuant to Business
2 and Professions Code Section 10100.2.

3 I understand that by so voluntarily surrendering my
4 license, that it can only be reinstated in accordance with the
5 provisions of Section 11522 of the Government Code. I also
6 understand that by so voluntarily surrendering my license, I
7 agree to the following:

8 The filing of this Declaration shall be deemed as my
9 petition for voluntary surrender. It shall also be deemed to be
10 an understanding and agreement by me that, I waive all rights I
11 have to require the Commissioner to prove the allegations
12 contained in the Accusation filed in this matter at a hearing
13 held in accordance with the provisions of the Administrative
14 Procedures Act (Government Code Sections 11400 et seq.), and
15 that I also waive other rights afforded to me in connection with
16 the hearing such as the right to discovery, the right to present
17 evidence in defense of the allegations in the Accusation and the
18 right to cross examine witnesses. I further agree that upon
19 acceptance by the Commissioner, as evidenced by an appropriate
20 order, all affidavits and all relevant evidence obtained by the
21 Department in this matter prior to the Commissioner's
22 acceptance, and all allegations contained in the Accusation
23 filed in the Department Case No. H-2538 SD, may be considered by
24 the Department to be true and correct for the purpose of
25 deciding whether or not to grant reinstatement of my license
26 pursuant to Government Code Section 11522.

27 ///

1 I declare under penalty of perjury under the laws of
2 the State of California that the above is true and correct, and
3 that I freely and voluntarily surrender my license and all
4 license rights attached thereto.

5 DATED: 03-05-02

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8 TIMOTHY THOMAS TENBROOK
Respondent
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FILED

MAY - 1 2002

DEPARTMENT OF REAL ESTATE

By *Russell J. Z...*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

No. H-2538 SD

ROBERT MONTGOMERY,)
STEVEN WILLIAM BROWN,)
GATEWAY PACIFIC CAPITAL AND)
REALTY GROUP, INC.,)
DONN K. HARMS,)
TIMOTHY THOMAS TENBROOK,)
DANIEL ANTHONY TACON,)

Respondents.)

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On November 18, 1999, an Accusation was filed in this matter against Respondents.

On March 6, 2002, Respondent STEVEN WILLIAM BROWN only petitioned the Commissioner to voluntarily surrender his real estate salesperson license pursuant to Section 10100.2 of the Business and Professions Code.

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1 IT IS HEREBY ORDERED that Respondent's petition for
2 voluntary surrender of his real estate salesperson license is
3 accepted as of the effective date of this Order as set forth
4 below, based upon the understanding and agreement expressed in
5 Respondent's Declaration dated March 6, 2002 (attached as
6 Exhibit "A" hereto).

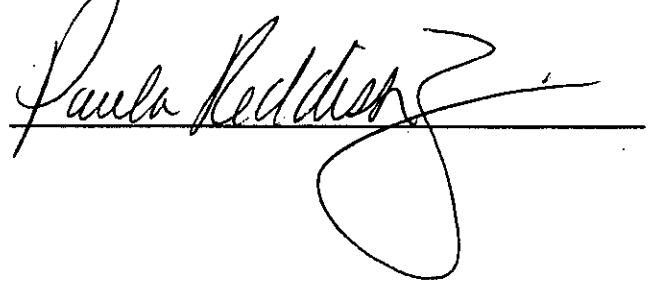
7 Respondent's license certificate and pocket card shall
8 be sent to the below-listed address so that they reach the
9 Department on or before the effective date of this Order:

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

14 This Order shall become effective at 12 o'clock
15 noon on MAY 22, 2002.

16 DATED: April 17, 2002

17 PAULA REDDISH ZINNEMANN
18 Real Estate Commissioner

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1 Department of Real Estate ("Department"), pursuant to Business
2 and Professions Code Section 10100.2.

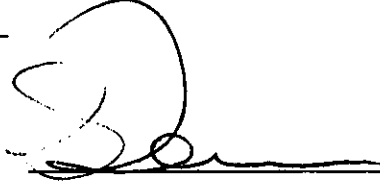
3 I understand that by so voluntarily surrendering my
4 license, that it can only be reinstated in accordance with the
5 provisions of Section 11522 of the Government Code. I also
6 understand that by so voluntarily surrendering my license, I
7 agree to the following:

8 The filing of this Declaration shall be deemed as my
9 petition for voluntary surrender. It shall also be deemed to be
10 an understanding and agreement by me that, I waive all rights I
11 have to require the Commissioner to prove the allegations
12 contained in the Accusation filed in this matter at a hearing
13 held in accordance with the provisions of the Administrative
14 Procedures Act (Government Code Sections 11400 et seq.), and
15 that I also waive other rights afforded to me in connection with
16 the hearing such as the right to discovery, the right to present
17 evidence in defense of the allegations in the Accusation and the
18 right to cross examine witnesses. I further agree that upon
19 acceptance by the Commissioner, as evidenced by an appropriate
20 order, all affidavits and all relevant evidence obtained by the
21 Department in this matter prior to the Commissioner's
22 acceptance, and all allegations contained in the Accusation
23 filed in the Department Case No. H-2538 SD, may be considered by
24 the Department to be true and correct for the purpose of
25 deciding whether or not to grant reinstatement of my license
26 pursuant to Government Code Section 11522.

27 ///

1 I declare under penalty of perjury under the laws of
2 the State of California that the above is true and correct, and
3 that I freely and voluntarily surrender my license and all
4 license rights attached thereto.

5 DATED: 02-06-02

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8 STEVEN WILLIAM BROWN
Respondent
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FILED

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DEPARTMENT OF REAL ESTATE

By *Laurie A. Zain*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

No. H-2538 SD

ROBERT MONTGOMERY,)
STEVEN WILLIAM BROWN,)
GATEWAY PACIFIC CAPITAL AND)
REALTY GROUP, INC.,)
DONN K. HARMS,)
TIMOTHY THOMAS TENBROOK,)
DANIEL ANTHONY TACON,)

Respondents.)

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On November 18, 1999, an Accusation was filed in this matter against Respondents.

On March 7, 2002, Respondent ROBERT MONTGOMERY only petitioned the Commissioner to voluntarily surrender his real estate broker license pursuant to Section 10100.2 of the Business and Professions Code.

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1 IT IS HEREBY ORDERED that Respondent's petition for
2 voluntary surrender of his real estate broker license is
3 accepted as of the effective date of this Order as set forth
4 below, based upon the understanding and agreement expressed in
5 Respondent's Declaration dated March 7, 2002 (attached as
6 Exhibit "A" hereto).

7 Respondent's license certificate and pocket card shall
8 be sent to the below-listed address so that they reach the
9 Department on or before the effective date of this Order:

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

14 This Order shall become effective at 12 o'clock
15 noon on MAY 21, 2002.

16 DATED: April 17, 2002

17 PAULA REDDISH ZINNEBANN
18 Real Estate Commissioner

19 *Paula Reddish*
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-2538 SD
	)	
ROBERT MONTGOMERY,	)	
STEVEN WILLIAM BROWN,	)	
GATEWAY PACIFIC CAPITAL AND	)	
REALTY GROUP, INC.,	)	
DONN K. HARMS,	)	
TIMOTHY THOMAS TENBROOK,	)	
DANIEL ANTHONY TACON,	)	
	)	
Respondents.	)	

DECLARATION

My name is ROBERT MONTGOMERY and that I am currently licensed as a real estate broker and/or have license rights with respect to said license. I am representing myself in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Business and Professions Code), I wish to voluntarily surrender my real estate license issued by the
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1 Department of Real Estate ("Department"), pursuant to Business
2 and Professions Code Section 10100.2.

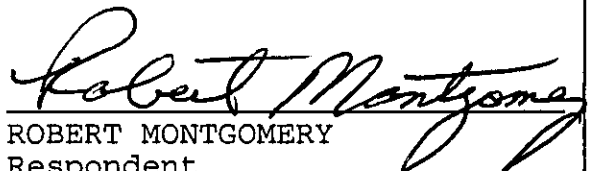
3 I understand that by so voluntarily surrendering my
4 license, that it can only be reinstated in accordance with the
5 provisions of Section 11522 of the Government Code. I also
6 understand that by so voluntarily surrendering my license, I
7 agree to the following:

8 The filing of this Declaration shall be deemed as my
9 petition for voluntary surrender. It shall also be deemed to be
10 an understanding and agreement by me that, I waive all rights I
11 have to require the Commissioner to prove the allegations
12 contained in the Accusation filed in this matter at a hearing
13 held in accordance with the provisions of the Administrative
14 Procedures Act (Government Code Sections 11400 et seq.), and
15 that I also waive other rights afforded to me in connection with
16 the hearing such as the right to discovery, the right to present
17 evidence in defense of the allegations in the Accusation and the
18 right to cross examine witnesses. I further agree that upon
19 acceptance by the Commissioner, as evidenced by an appropriate
20 order, all affidavits and all relevant evidence obtained by the
21 Department in this matter prior to the Commissioner's
22 acceptance, and all allegations contained in the Accusation
23 filed in the Department Case No. H-2538 SD, may be considered by
24 the Department to be true and correct for the purpose of
25 deciding whether or not to grant reinstatement of my license
26 pursuant to Government Code Section 11522.

27 ///

1 I declare under penalty of perjury under the laws of
2 the State of California that the above is true and correct, and
3 that I freely and voluntarily surrender my license and all
4 license rights attached thereto.

5 DATED: March 7, 2002

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8 ROBERT MONTGOMERY
9 Respondent
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**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

DEC 18 2001

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

ROBERT MONTGOMERY, et al.,

Case No. H-2538 SD

OAH No. L-2000010466

Respondents

**THIRD CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, 1350 FRONT STREET, ROOM 6022, SAN DIEGO, CA 92101** on **APRIL 8 THROUGH 19, 2002**, at the hour of **9:00 A.M.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

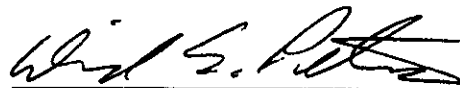
You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real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

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

DEPARTMENT OF REAL ESTATE

Dated: DECEMBER 18, 2001

By



DAVID A. PETERS, Counsel

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED

JUL 17 2001

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

ROBERT MONTGOMERY, et al.

Case No. H-2538 SD

OAH No. L-2000010466

Respondent

**SECOND CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at THE OFFICE OF ADMINISTRATIVE HEARINGS, 1350 FRONT STREET, SUITE 6022, SAN DIEGO, CA 92101 on DECEMBER 10 THROUGH 21, 2001, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

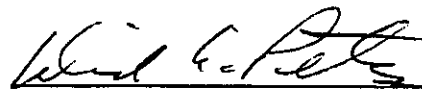
You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real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

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

DEPARTMENT OF REAL ESTATE

Dated: JULY 18, 2001

By



DAVID A. PETERS

Counsel

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
FEB - 9 2001

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

ROBERT MONTGOMERY, et al.

Case No. H-2538 SD

OAH No. L-2000010466

Respondent

**CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the OFFICE OF ADMINISTRATIVE HEARINGS, 1350 Front Street, Room 6022, San Diego, CA 92101 on JULY 23, 2001 THROUGH AUGUST 3, 2001, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: February 9, 2001

By

David A. Peters

DAVID A. PETERS

Counsel

1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789
5
6
7

FILED
JUL 12 2000

DEPARTMENT OF REAL ESTATE

Laurie A. Zain

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-2538 SD

12 ROBERT MONTGOMERY,)
13 STEVEN WILLIAM BROWN,)
14 GATEWAY PACIFIC CAPITAL AND)
15 REALTY GROUP, INC.,)
16 DONN K. HARMS,)
17 TIMOTHY THOMAS TENBROOK,)
18 DANIEL ANTHONY TACON,)

STIPULATION AND AGREEMENT

Respondents.)

18 It is hereby stipulated by and between DANIEL ANTHONY
19 TACON (hereinafter "Respondent TACON"), by and through his
20 attorney, Mark Del Moral; and the Complainant, acting by and
21 through David A. Peters, Counsel for the Department of Real
22 Estate, as follows for purpose of settling and disposing of the
23 Accusation filed November 18, 1999 in this matter:

24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and Respondent
26 TACON at a formal hearing on the Accusation, which hearing was to
27

1 be held in accordance with the provisions of the Administrative
2 Procedure Act (APA) (Government Code Section 11500 et seq.),
3 shall instead and in place thereof be submitted solely on the
4 basis of the provisions of this Stipulation and Agreement.

5 2. Respondent TACON has received, read and
6 understands the Statement to Respondent, the Discovery Provisions
7 of the APA, and the Accusation filed by the Department of Real
8 Estate in this proceeding.

9 3. On November 29, 1999, Respondent TACON filed his
10 Notice of Defense pursuant to Section 11505 of the Government
11 Code for the purpose of requesting a hearing on the allegations
12 in the Accusation. Respondent TACON hereby freely and
13 voluntarily withdraws his Notice of Defense. Respondent TACON
14 acknowledges that by withdrawing said Notice of Defense he will
15 thereby waive his right to require the Commissioner to prove the
16 allegations in the Accusation at a contested hearing held in
17 accordance with the provisions of the APA and that he will waive
18 other rights afforded to him in connection with the hearing such
19 as the right to present evidence in defense of the allegations in
20 the Accusation and the right to cross-examine witnesses.

21 4. This Stipulation is based on the factual
22 allegations contained in the Accusation. In the interests of
23 expedience and economy, Respondent TACON chooses not to contest
24 these allegations, but to remain silent and understands that, as
25 a result thereof, these factual allegations, without being
26 admitted or denied, will serve as prima facie basis for the
27 disciplinary action stipulated to herein. The Real Estate

1 Commissioner shall not be required to provide further evidence to
2 prove said factual allegations.

3 5. It is understood by the parties that the Real
4 Estate Commissioner may adopt the Stipulation and Agreement as
5 her Decision in this matter, thereby imposing the penalty and
6 sanctions on Respondent TACON's real estate license and license
7 rights as set forth in the below "Order". In the event that the
8 Commissioner in her discretion does not adopt the Stipulation and
9 Agreement, it shall be void and of no effect, and Respondent
10 TACON shall retain the right to a hearing and proceeding on the
11 Accusation under all the provisions of the APA and shall not be
12 bound by any admission or waiver made herein.

13 6. The Order or any subsequent Order of the Real
14 Estate Commissioner made pursuant to this Stipulation and
15 Agreement shall not constitute an estoppel, merger or bar to any
16 further administrative or civil proceedings by the Department of
17 Real Estate with respect to any matters which were not
18 specifically alleged to be causes for accusation in this
19 proceeding.

20 DETERMINATION OF ISSUES

21 By reason of the foregoing stipulations, admissions and
22 waivers, and solely for the purpose of settlement of the pending
23 Accusation without a hearing, it is stipulated and agreed that
24 the following determination of issues shall be made:

25 I

26 The conduct of Respondent TACON, as described in the
27 Accusation, constitutes cause for the suspension or revocation of

1 the real estate license and license rights of Respondent under
2 the provisions of Sections 10176(a) and 10176(i) of the Business
3 and Professions Code.

4 ORDER

5 I

6 A. The real estate salesperson license and all
7 license rights of Respondent DANIEL ANTHONY TACON under the Real
8 Estate Law are revoked; however, a restricted real estate
9 salesperson license shall be issued to Respondent TACON pursuant
10 to Section 10156.5 of the Business and Professions Code if
11 Respondent TACON makes application therefor and pays to the
12 Department of Real Estate the appropriate fee for the restricted
13 license within ninety (90) days from the effective date of this
14 Decision. The restricted license issued to Respondent TACON
15 shall be subject to all of the provisions of Section 10156.7 of
16 the Business and Professions Code and to the following
17 limitations, conditions and restrictions imposed under authority
18 of Section 10156.6 of that Code:

19 (1) The restricted license issued to Respondent TACON
20 may be suspended prior to hearing by Order of the Real Estate
21 Commissioner in the event of Respondent TACON's conviction or
22 plea of nolo contendere to a crime which is substantially related
23 to Respondent TACON's fitness or capacity as a real estate
24 licensee.

25 (2) The restricted license issued to Respondent TACON
26 may be suspended prior to hearing by Order of the Commissioner on
27 evidence satisfactory to the Commissioner that Respondent TACON

1 has violated provisions of the California Real Estate Law, the
2 Subdivided Lands Law, Regulations of the Real Estate Commissioner
3 or conditions attaching to the restricted license.

4 (3) Respondent TACON shall not be eligible to apply
5 for the issuance of an unrestricted real estate license nor for
6 the removal of any of the conditions, limitations or restrictions
7 of the restricted license until one (1) year has elapsed from the
8 effective date of this Decision.

9 (4) Respondent TACON shall submit with any application
10 for license under an employing broker, or any application for
11 transfer to a new employing broker, a statement signed by the
12 prospective employing broker on a form approved by the Department
13 of Real Estate which shall certify:

14 (a) That the employing broker has read the Decision of
15 the Commissioner which granted the right to a
16 restricted license; and

17 (b) That the employing broker will exercise close
18 supervision over the performance by the restricted
19 licensee relating to activities for which a real
20 estate license is required.

21 (5) Respondent TACON shall, within nine (9) months
22 from the effective date of the Decision, present evidence
23 satisfactory to the Real Estate Commissioner that Respondent
24 TACON has, since the most recent issuance of an original or
25 renewal real estate license, taken and successfully completed the
26 continuing education requirements of Article 2.5 of Chapter 3 of
27 the Real Estate Law for renewal of a real estate license. If

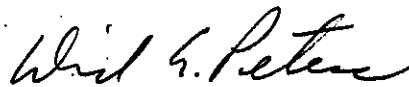
1 Respondent TACON fails to satisfy this condition, the
2 Commissioner may order the suspension of the restricted license
3 until Respondent TACON presents such evidence. The Commissioner
4 shall afford Respondent TACON the opportunity for a hearing
5 pursuant to the Administrative Procedure Act to present such
6 evidence.

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

14 (7) Any restricted real estate salesperson license
15 issued to Respondent TACON may be suspended or revoked for a
16 violation by Respondent TACON of any of the conditions attaching
17 to the restricted license.

18
19 6/5/00

20 DATED

21 

22 DAVID A. PETERS, Counsel
23 DEPARTMENT OF REAL ESTATE

24 * * *

25 I have read the Stipulation and Agreement, have
26 discussed it with my counsel, and its terms are understood by me
27 and are agreeable and acceptable to me. I understand that I am
waiving rights given to me by the California Administrative
Procedure Act (including but not limited to Sections 11505,
11598, 11509, and 11513 of the Government Code), and I

1 willingly, intelligently, and voluntarily waive those rights,
2 including the right of requiring the Commissioner to prove the
3 allegations in the Accusation at a hearing at which I would have
4 the right to cross-examine witnesses against me and to present
5 evidence in defense and mitigation of the charges.

6
7 6/1/00

DATED


DANIEL ANTHONY TOCAN
Respondent TACON

9 I have reviewed the Stipulation and Agreement in
10 Settlement as to form and content and have advised my client
11 accordingly.

12
13 6/1/00

DATED

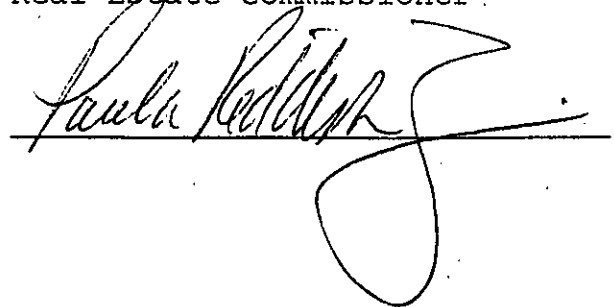

MARK DEL MORAL
Attorney for Respondent

14
15 * * *

16 The foregoing Stipulation and Agreement for
17 Settlement is hereby adopted by the Real Estate Commissioner as
18 his Decision and Order and shall become effective at 12 o'clock
19 noon on August 2, 2000.

20 IT IS SO ORDERED

June 27, 2000
PAULA REDDISH ZINNEMANN
Real Estate Commissioner



BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
FEB 22 2000

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

ROBERT MONTGOMERY, et al.

Case No. H-2538 SD

OAH No. L-2000010466

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the
Office of Administrative Hearings, 1350 Front Street, Room 6022,
San Diego, CA 92101

on September 11 - 22, 2000, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of
hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten
(10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days
will deprive you of a change in the place of the hearing.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: February 22, 2000

By

David A. Peters
DAVID A. PETERS Counsel

1 DAVID A. PETERS, Counsel (SBN 99528)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0781 (Direct)
7

FILED
NOV 18 1999

DEPARTMENT OF REAL ESTATE

By *Lucie L. Zan*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-2538 SD

12 ROBERT MONTGOMERY,)
13 STEVEN WILLIAM BROWN,)
14 GATEWAY PACIFIC CAPITAL AND)
15 REALTY GROUP, INC.,)
16 DONN K. HARMS,)
17 TIMOTHY THOMAS TENBROOK,)
18 DANIEL ANTHONY TACON,)

ACCUSATION

Respondents.)

18 The Complainant, Daniel M. Hatt, a Deputy Real Estate
19 Commissioner of the State of California, for cause of Accusation
20 against ROBERT MONTGOMERY dba Atlantic Pacific Financial Company
21 (hereinafter "Respondent MONTGOMERY"), STEVEN WILLIAM BROWN
22 (hereinafter "Respondent BROWN"), GATEWAY PACIFIC CAPITAL AND
23 REALTY GROUP, INC. (hereinafter "Respondent GPC"), DONN K. HARMS
24 (hereinafter "Respondent HARMS"), TIMOTHY THOMAS TENBROOK
25 (hereinafter "Respondent TENBROOK"), and DANIEL ANTHONY TACON
26 (hereinafter "Respondent TACON"), is informed and alleges as
27 follows:

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1 5.

2 Within the three-year period immediately preceding the
3 filing of this Accusation and continuing thereafter, Respondent
4 GPC was licensed as a real estate broker corporation acting by
5 and through its designated broker-officer Respondent HARMS.

6 6.

7 Within the three-year period immediately preceding the
8 filing of this Accusation through on or about March 5, 1997,
9 Respondent HARMS was licensed as a real estate salesperson.
10 Beginning on or about March 6, 1997, and continuing thereafter,
11 Respondent HARMS was licensed as a real estate broker and as
12 designated broker-officer for Respondent GPC.

13 7.

14 Within the three-year period immediately preceding the
15 filing of this Accusation and continuing thereafter, Respondent
16 TENBROOK was licensed as a real estate broker and from on or
17 about March 7, 1997 Respondent TENBROOK was in the employ of
18 Respondent GPC.

19 8.

20 Within the three-year period immediately preceding the
21 filing of this Accusation and continuing thereafter, Respondent
22 TACON was licensed as a real estate salesperson. Beginning on
23 or about December 24, 1996 through on or about December 9, 1997,
24 Respondent TACON was employed by Respondent TENBROOK. Beginning
25 on or about December 10, 1997 and continuing thereafter,
26 Respondent TACON was employed by Respondent GPC.

27 ///

1 9.

2 Whenever reference is made in an allegation in this
3 Accusation to an act or omission of "Respondents", such
4 allegations shall be deemed to mean the act or omission of each
5 of the Respondents named in the caption hereof, acting
6 individually, jointly and severally.

7 10.

8 At various times herein mentioned, Respondents,
9 engaged in the mortgage loan brokerage business with the public
10 wherein lenders and borrowers were solicited for loans secured
11 directly or collaterally by liens on real property, and wherein
12 such loans were arranged, negotiated, processed and consummated
13 on behalf of others for compensation or in expectation of a
14 compensation.

15 11.

16 Described herein below are certain transactions
17 involving the obtaining of loans secured by liens on real
18 properties. Within the three-year period immediately preceding
19 the filing of this Accusation, Respondents BROWN and TENBROOK
20 and/or Respondent BROWN and TENBROOK's confederates acting as
21 agents and/or appraisers entered into a plan and scheme with
22 reference to said loan transactions, as set forth below, with
23 the intent to substantially benefit themselves without regard to
24 the injury their acts would cause to Saxon Mortgage, Inc.
25 (hereinafter "the Lender") and without disclosing to the Lender
26 the true facts and their true intentions with respect to the
27 loan transactions described herein below.

12.

Beginning in May of 1997 and continuing thereafter, acting on behalf of Kevin Andersen (hereinafter "Borrower Andersen"), Respondents TENBROOK and/or BROWN, negotiated a loan in the amount of \$240,000.00 secured by a lien on real property owned by Borrower Anderson commonly known as 12560 Lemon Crest Drive, Lakeside, California (hereinafter "the Lemon Crest Property").

13.

On or after August 10, 1997, Respondents TENBROOK and BROWN or their confederates created a loan application for Borrower Andersen, requesting a loan in the amount of \$240,000.00. In said loan application Respondents TENBROOK and BROWN or their confederates misrepresented Borrower Andersen's monthly income as being \$4,952.00 per month when in truth and fact Respondents TENBROOK and/or BROWN knew or should have known that Borrower Andersen's monthly income was approximately \$3,496.00.

14.

On or about August 24, 1997, Respondents TENBROOK and/or BROWN or their confederates caused a false and fraudulent appraisal in the amount of \$300,000.00 to be completed on the Lemon Crest Property. Said appraisal was false and fraudulent in that the appraiser named in the appraisal did not appraise the property, the values of comparable properties included in the appraisal were false, and the appraised value of the Lemon

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1 Crest Property was not \$300,000.00 as listed in the appraisal
2 but was approximately \$179,000.00.

3 15.

4 On or about September 8, 1997, Respondent BROWN in
5 furtherance of the plan and scheme described in Paragraph 11.
6 above, submitted or caused to be submitted to the Lender the
7 loan application from Borrower Andersen described in Paragraph
8 13. above, for a loan in the amount of \$240,000.00 to be secured
9 by the Lemon Crest Property.

10 16.

11 On or after August 24, 1997, Respondent TENBROOK in
12 furtherance of the plan and scheme described in Paragraph 11.
13 above, submitted or caused to be submitted to the Lender the
14 false and fraudulent appraisal described in Paragraph 14. above.

15 17.

16 In reliance on the representations described in
17 Paragraphs 15. and 16. above, the Lender made a loan to Borrower
18 Andersen in the amount of \$240,000.00.

19 18.

20 On or about September 15, 1997, escrow closed on the
21 loan to Borrower Andersen secured by the Lemon Crest Property.

22 19.

23 On or about September 15, 1997, in connection with the
24 loan to Borrower Andersen secured by the Lemon Crest Property,
25 Respondents MONTGOMERY and/or BROWN falsely represented to
26 Borrower Andersen the material fact that an "appraisal review"
27 of the appraisal described in Paragraph 14. above, had been

1 completed for the benefit of the Lender. In truth and in fact
2 no such "appraisal review" was completed, a fact which
3 Respondents MONTGOMERY and BROWN knew or should have known but
4 was unknown to Borrower Andersen.

5 20.

6 On or about September 15, 1997, in reliance on the
7 false representation described in Paragraph 19. above, Borrower
8 Andersen paid Respondent MONTGOMERY an "appraisal review" fee in
9 the amount of \$150.00.

10 21.

11 In connection with the loan on the Lemon Crest
12 Property, Respondents GPC and HARMS, before Borrower Andersen
13 became obligated to complete said loan, failed to present to
14 Borrower Andersen, a written Borrower Disclosure Statement with
15 the contents set forth in Section 10241 of the Code, in
16 violation of Section 10240(a) of the Code.

17 22.

18 The acts and/or omissions of Respondents TENBROOK,
19 BROWN and MONTGOMERY set forth above in this First Cause of
20 Accusation constitute the making of substantial
21 misrepresentations and/or fraud and dishonest dealing and are
22 cause under Sections 10176(a), 10176(i) and/or 10177(j) of the
23 Code for suspension or revocation of all licenses and/or license
24 rights of Respondents TENBROOK, BROWN and MONTGOMERY under the
25 Real Estate Law.

26 The acts and/or omissions of Respondents GPC and HARMS
27 set forth above in this First Cause of Accusation constitute

1 cause under Section 10177(d) of the Code in conjunction with
2 Section 10240(a) of the Code for suspension or revocation of all
3 licenses and/or license rights of Respondents GPC and HARMS
4 under the Real Estate Law.

5 SECOND CAUSE OF ACCUSATION

6 23.

7 There is hereby incorporated in this second, separate
8 and distinct cause of Accusation, all of the allegations
9 contained in Paragraphs 1. through 11. of the First Cause of
10 Accusation with the same force and effect as if herein fully set
11 forth.

12 24.

13 Beginning in July 1997 and continuing thereafter,
14 acting on behalf of Jerry H. Alexander (hereinafter "Borrower
15 Alexander"), Respondents TENBROOK and/or BROWN negotiated a loan
16 in the amount of \$128,750.00, secured by a lien on real property
17 owned by Borrower Alexander commonly known as 2718 Mesa Drive,
18 Oceanside, California (hereinafter "the Mesa Property").

19 25.

20 On or about August 21, 1997, Respondents TENBROOK
21 and/or BROWN or their confederates caused a false and fraudulent
22 appraisal in the amount of \$184,000.00 to be completed on the
23 Mesa Property. Said appraisal was false and fraudulent in that
24 the appraiser named in the appraisal did not appraise the
25 property, the values of comparable properties included in the
26 appraisal were false, and the appraised value of the Mesa

27 ///

1 Property was not \$184,000.00 as listed in the appraisal but was
2 approximately \$134,000.00.

3 26.

4 On or about September 3, 1997, Respondent BROWN in
5 furtherance of the plan and scheme described in Paragraph 11.
6 above, submitted or caused to be submitted to the Lender a loan
7 application from Borrower Alexander for a loan in the amount of
8 \$128,750.00.

9 27.

10 On or after September 3, 1997, Respondent BROWN in
11 furtherance of the plan and scheme described in Paragraph 11.
12 above, submitted or caused to be submitted to the Lender the
13 false and fraudulent appraisal described in Paragraph 25. above.

14 28.

15 In reliance on the representations described in
16 Paragraphs 26. and 27. above, the Lender made a loan to Borrower
17 Alexander in the amount of \$128,750.00.

18 29.

19 On or about September 18, 1997, escrow closed on the
20 loan from Lender to Borrower Alexander secured by the Mesa
21 Property.

22 30.

23 On or about September 18, 1997, in connection with the
24 loan to Borrower Alexander secured by the Mesa Property,
25 Respondents MONTGOMERY and/or BROWN falsely represented to
26 Borrower Alexander the material fact that an "appraisal review"
27 of the appraisal described in Paragraph 25. above, had been

1 completed for the benefit of the Lender. In truth and in fact
2 no such "appraisal review" was completed, a fact which
3 Respondents MONTGOMERY and BROWN knew or should have known but
4 was unknown to Borrower Alexander.

5 31.

6 On or about September 18, 1997, in reliance on the
7 false representation described in Paragraph 30. above, Borrower
8 Alexander paid Respondent MONTGOMERY dba Atlantic Pacific
9 Financial an "appraisal review" fee in the amount of \$150.00.

10 32.

11 In connection with the loan on the Mesa Property,
12 Respondents GPC and HARMS, before Borrower Alexander became
13 obligated to complete said loan, failed to present to Borrower
14 Alexander, a written Borrower Disclosure Statement with the
15 contents set forth in Section 10241 of the Code, in violation of
16 Section 10240(a) of the Code.

17 33.

18 The acts and/or omissions of Respondents TENBROOK,
19 BROWN and MONTGOMERY set forth above in this Second Cause of
20 Accusation constitute the making of substantial
21 misrepresentations and/or fraud and dishonest dealing and are
22 cause under Sections 10176(a), 10176(i) and/or 10177(j) of the
23 Code for suspension or revocation of all licenses and/or license
24 rights of Respondents TENBROOK, BROWN and MONTGOMERY under the
25 Real Estate Law.

26 The acts and/or omissions of Respondents GPC and HARMS
27 set forth in this Second Cause of Accusation constitute cause

1 under Section 10177(d) of the Code in conjunction with Section
2 10240(a) of the Code for suspension or revocation of all
3 licenses and license rights of Respondents GPC and HARMS under
4 the Real Estate Law.

5 THIRD CAUSE OF ACCUSATION

6 34.

7 There is hereby incorporated in this third, separate
8 and distinct cause of Accusation, all of the allegations
9 contained in Paragraphs 1. through 11. of the First Cause of
10 Accusation with the same force and effect as if herein fully set
11 forth.

12 35.

13 Beginning in June 1997 and continuing thereafter,
14 acting on behalf of Felipe and Priscilla Villafuerte
15 (hereinafter "Borrowers Villafuerte"), Respondents TENBROOK
16 and/or BROWN, negotiated a loan in the amount of \$121,500.00
17 secured by a lien on real property owned by Borrowers
18 Villafuerte commonly known as 757 Arthur Avenue, Oceanside,
19 California (hereinafter "the Arthur Property").

20 36.

21 In or about June 1997, in order to induce Borrowers
22 Villafuerte into obtaining an adjustable rate loan, Respondents
23 TACON and TENBROOK represented to Borrowers Villafuerte the
24 material fact that the Borrowers Villafuerte would be able to
25 obtain a new fixed rate loan with no additional costs after
26 making payments for two years.

27 ///

1 37.

2 The representations made by Respondents TACON and
3 TENBROOK described in Paragraph 36. above, were false and
4 misleading and were known by Respondents TACON and TENBROOK to
5 be false and misleading or were made with no reasonable grounds
6 for believing said representations to be true.

7 38.

8 In truth and in fact the representations made by
9 Respondents TACON and TENBROOK were false in that the adjustable
10 rate note in connection with the loan obtained by Borrowers
11 Villafuerte through Respondents TACON and TENBROOK provided for
12 a prepayment penalty for any prepayment made within five years
13 of obtaining said loan.

14 39.

15 On or about September 6, 1997, Respondent TENBROOK
16 and/or BROWN or their confederates caused a false and fraudulent
17 appraisal in the amount of \$218,000.00 to be completed on the
18 Arthur Property. Said appraisal was false and fraudulent in
19 that the appraiser named in the appraisal did not appraise the
20 property, the values of the comparable properties included in
21 the appraisal were false, and the appraised value of the Arthur
22 Property was not \$218,000.00 as listed in the appraisal but was
23 approximately \$93,000.00.

24 40.

25 On or after September 10, 1997, Respondent BROWN in
26 furtherance of the plan and scheme described in Paragraph 11.
27 above, submitted or caused to be submitted to the Lender a loan

1 application from Borrowers Villafuerte for a loan in the amount
2 of \$164,000.00.

3 41.

4 On or after September 14, 1997, Respondent BROWN in
5 the furtherance of the plan and scheme described in Paragraph
6 11. above, submitted or caused to be submitted to the Lender the
7 false and fraudulent appraisal described in Paragraph 39. above.

8 42.

9 On or about September 26, 1997, in reliance on the
10 representations described in Paragraph 39. above, the Lender
11 made a loan to Borrowers Villafuerte in the amount of
12 \$164,000.00.

13 43.

14 On or about September 26, 1997, Escrow closed on the
15 loan from the Lender to Borrowers Villafuerte secured by the
16 Arthur Property.

17 44.

18 On or about September 26, 1997, in connection with the
19 loan to Borrowers Villafuerte secured by the Arthur Property,
20 Respondents MONTGOMERY and/or BROWN falsely represented to
21 Borrowers Villafuerte the material fact that an "appraisal
22 review" of the appraisal described in Paragraph 39. above, was
23 completed for the benefit of the Lender. In truth and in fact
24 no such "appraisal review" was completed, a fact which
25 Respondents MONTGOMERY and BROWN knew or should have known but
26 was unknown to Borrowers Villafuerte.

27 ///

1 45.

2 On or about September 26, 1997, in reliance on the
3 false representation described in Paragraph 44. above, Borrowers
4 Villafuerte paid Respondent MONTGOMERY dba Atlantic Pacific
5 Financial an "appraisal review" fee in the amount of \$175.00

6 46.

7 In connection with the loan on the Arthur Property,
8 Respondents GPC and HARMS, before Borrowers Villafuerte became
9 obligated to complete said loan, failed to present to Borrowers
10 Villafuerte, a written Borrower Disclosure Statement with the
11 contents set forth in Section 10241 of the Code, in violation of
12 Section 10240(a) of the Code.

13 47.

14 The acts and/or omissions of Respondents TENBROOK,
15 BROWN, MONTGOMERY and TACON set forth above in this Third Cause
16 of Accusation constitute the making of substantial
17 misrepresentations and/or fraud and dishonest dealing and are
18 cause under Sections 10176(a), 10176(i) and/or 10177(j) of the
19 Code for suspension or revocation of all licenses and/or license
20 rights of Respondents TENBROOK, BROWN, MONTGOMERY and TACON
21 under the Real Estate Law.

22 The acts and/or omissions of Respondents GPC and HARMS
23 set forth in this Third Cause of Accusation constitute cause
24 under Section 10177(d) of the Code in conjunction with Section
25 10240(a) of the Code for suspension or revocation of all
26 licenses and/or license rights of Respondents GPC and HARMS
27 under the Real Estate Law.

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1 Paragraph 11. above, submitted or caused to be submitted to the
2 Lender the loan application on behalf of Borrower Coy, for a
3 loan in the amount of \$220,000.00 to be secured by the
4 Abbeyfield Property.

5 52.

6 On or before July 31, 1997, Respondent TENBROOK in
7 furtherance of the plan and scheme described in Paragraph 11.
8 above, submitted or caused to be submitted to the Lender the
9 false and fraudulent appraisal described in Paragraph 50. above.

10 53.

11 On or about July 31, 1997, in reliance on the
12 representations described in Paragraphs 51. and 52. above, the
13 Lender made a loan to Borrower Coy in the amount of \$220,000.00.

14 54.

15 On or about July 31, 1997, escrow closed on the loan
16 to Borrower Coy secured by the Abbeyfield Property.

17 55.

18 On or about July 31, 1997, in connection with the loan
19 to Borrower Coy secured by the Abbeyfield Property, Respondents
20 MONTGOMERY and/or BROWN falsely represented to Borrower Coy the
21 material fact that an "appraisal review" of the appraisal
22 described in Paragraph 50. above, was completed for the benefit
23 of the Lender. In truth and in fact no such "appraisal review"
24 was completed, a fact which Respondents MONTGOMERY and BROWN
25 knew or should have known but was unknown to Borrower Coy.

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1 56.

2 On or about July 31, 1997, in reliance on the false
3 representation described in Paragraph 55. above, Borrower Coy
4 paid Respondent MONTGOMERY dba Atlantic Pacific Financial an
5 "appraisal review" fee in the amount of \$175.00

6 57.

7 In connection with the loan on the Abbeyfield
8 Property, Respondents GPC and HARMS, before Borrower Coy became
9 obligated to complete said loan, failed to present to Borrower
10 Coy, a written Borrower Disclosure Statement with the contents
11 set forth in Section 10241 of the Code, in violation of Section
12 10240(a) of the Code.

13 58.

14 The acts and/or omissions of Respondents TENBROOK,
15 BROWN and MONTGOMERY set forth above in this Fourth Cause of
16 Accusation constitute the making of substantial
17 misrepresentations and/or fraud and dishonest dealing and are
18 cause under Sections 10176(a), 10176(i) and/or 10177(j) of the
19 Code for suspension or revocation of all licenses and/or license
20 rights of Respondents TENBROOK, BROWN and MONTGOMERY under the
21 Real Estate Law.

22 The acts and/or omissions of Respondents GPC and HARMS
23 set forth in this Fourth Cause of Accusation constitute cause
24 under Section 10177(d) of the Code in conjunction with Section
25 10240(a) of the Code for suspension or revocation of all
26 licenses and/or license rights of Respondents GPC and HARMS
27 under the Real Estate Law.

1 FIFTH CAUSE OF ACCUSATION

2 59.

3 There is hereby incorporated in this fifth, separate
4 and distinct cause of Accusation, all of the allegations
5 contained in Paragraphs 1. through 11. of the First Cause of
6 Accusation with the same force and effect as if herein fully set
7 forth.

8 60.

9 On or about October 9, 1998, a representative of the
10 Real Estate Commissioner, after service of a subpoena duces
11 tecum on Respondent MONTGOMERY, required that records, papers,
12 books, accounts and documents executed or obtained in connection
13 with transactions for which a real estate license is required be
14 made available for examination and inspection. Respondent
15 MONTGOMERY failed or refused to make all said records available
16 for inspection and/or failed to retain said records.

17 61.

18 On or about October 13, 1998, a representative of the
19 Real Estate Commissioner, after service of a subpoena duces
20 tecum on Respondents GPC and HARMS, required that records,
21 papers, books, accounts and documents executed or obtained in
22 connection with transactions for which a real estate license is
23 required be made available for examination and inspection.
24 Respondents GPC and HARMS failed and refused to make said
25 records available for inspection and/or failed to retain said
26 records.

27 ///

1 62.

2 The acts and/or omissions of Respondents MONTGOMERY,
3 GPC and HARMS set forth above in this Fifth Cause of Accusation
4 are grounds for the suspension or revocation of Respondents
5 MONTGOMERY, GPC and HARMS licenses and/or license rights under
6 Section 10148 of the Code in conjunction with Section 10177(d)
7 of the Code.

8 SIXTH CAUSE OF ACCUSATION

9 63.

10 There is hereby incorporated in this sixth, separate
11 and distinct cause of Accusation, all of the allegations
12 contained in Paragraphs 1. through 11. of the First Cause of
13 Accusation with the same force and effect as if herein fully set
14 forth.

15 64.

16 On or before November 4, 1996, Respondent MONTGOMERY
17 falsely represented to the Lender, at a time when Respondent
18 MONTGOMERY was not licensed by the Department of Real Estate,
19 that Respondent MONTGOMERY was a licensed California real estate
20 broker.

21 65.

22 On or about November 4, 1996, in reliance on
23 Respondent MONTGOMERY's false representation described in
24 Paragraph 64. above, the Lender entered into a Broker Agreement
25 with Respondent MONTGOMERY wherein Respondent MONTGOMERY dba
26 APFC would originate and submit loans secured by real property
27 to be funded by the Lender.

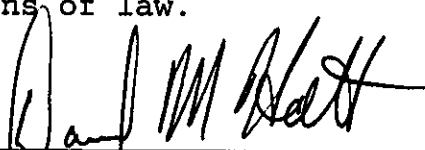
1 66.

2 On or about February 1, 1997, Respondent MONTGOMERY,
3 acting or assuming to act as a real estate broker, at a time
4 when Respondent was unlicensed by the Department of Real Estate,
5 entered into a broker salesperson agreement with Respondent
6 BROWN.

7 67.

8 The acts and/or omissions of Respondent MONTGOMERY
9 described in this Sixth Cause of Accusation, constitute cause,
10 under Section 10130 of the Code in conjunction with Section
11 10177(d) of the Code and Section 10177(j) of the Code, for
12 suspension or revocation of all licenses and license rights of
13 Respondent MONTGOMERY under the Real Estate Law.

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

21 
22
23 DANIEL M. HATT
Deputy Real Estate Commissioner

24 Dated at Los Angeles, California,
25 this 31st day of October, 1999.
26
27